

Mem # 10D

City of Carson City
Agenda Report

Date Submitted: 10-09-2006

Agenda Date Requested: 10/19/06

Time Requested: 15 Minutes

To: Mayor and Supervisors

From: Linda Ritter, City Manager

Subject Title: Discussion of 2006 general election ballot questions and their possible effects on Carson City government..

Staff Summary: Staff will provide a brief overview of all of the ballot questions that will appear on the November 7, 2006 general election ballot and will report on the effects these questions, if passed, will have on City operations.

Type of Action Requested: No action - presentation only
 Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does this action require a Business Impact Statement: () Yes (X) No

Recommended Board Action: No action - report item only

Explanation for Recommended Board Action: n/a

Applicable Statute, Code, Policy, Rule or Regulation: n/a

Fiscal Impact: n/a

Explanation of Impact:

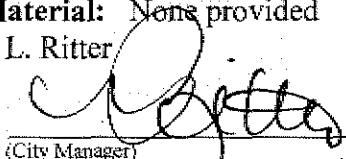
Funding Source:

Alternatives: n/a

Supporting Material: None provided

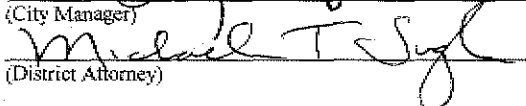
Prepared By: L. Ritter

Reviewed By:



(City Manager)

Date: 10/9/06



(District Attorney)

Date: 10-10-06

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

QUESTION NO. 1

Amendment to the Nevada Constitution

CONDENSATION (Ballot Question)

Shall the Nevada Constitution be amended to require the Nevada Legislature to fund the operation of the public schools for kindergarten through grade 12 before funding any other part of the state budget for the next biennium?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create five new sections to Section 6 of Article 11 of the Nevada Constitution. The amendment would provide that during a regular session of the Legislature, before any appropriation is enacted to fund a portion of the state budget, the Legislature must appropriate sufficient funds for the operation of Nevada's public schools for kindergarten through grade 12 for the next biennium, and that any appropriation in violation of this requirement is void. The appropriation requirement also applies to certain special sessions of the Legislature.

The following arguments for and against and rebuttals for Question No. 1 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 1

Question One seeks a constitutional amendment changing the process by which public school education is funded at the State Legislature.

Education First ensures our state's public school system will be funded, before any other program for the next fiscal biennium, during each legislative session, by an appropriation the Legislature deems to be sufficient to fund the operation of our public schools for the student population reasonably estimated for that biennium.

Education First preserves the Legislature's ability to first fund the cost of the legislative session or an emergency measure demanding immediate action. Education First does not determine the level or source of funding public school education receives, so there is no fiscal impact to the state.

Education First will substantially enhance Nevada's credibility as a stable environment for students and teachers. As the fastest growing state in the nation, that is critical if Nevada is to keep pace with its growing student population.

For example, for the 2002-03 school year, Nevada hired over 2300 new teachers. Most new teachers are hired from out-of-state because Nevada's University and Community College System cannot meet our state's demand for teachers. Teachers make a serious commitment

when they choose to move and teach here. Education First will help ensure Nevada is equally committed.

The budget deadlock we experienced during the 2003 legislative sessions must never be repeated. The consequences for our schools, our teachers and our children were significant. Schools opened late, new teachers could not be hired, and special programs were jeopardized as those teachers were designated for reassignment to the general classroom. School administrators could not adequately plan for the coming school year, a process that typically begins each January. Education First prevents that from ever happening again.

As long as public school education is allowed to be the last major budget bill considered, special sessions and court intervention could easily become the norm in the legislative process. When education is first, that won't happen, as it did in 2003. Education First will ensure that the funding of education in Nevada will be given the status intended by the framers of our Constitution and will help prevent another Supreme Court ruling that negates the Gibbons tax restraint portion of our Constitution.

Take the politics out of funding Nevada's public schools. A YES vote on Question One will put education and Nevada's children first in line at budget time.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 1

The Education Funding Crisis of the 2003 Legislative session is the first in 73 regular sessions of the Nevada legislature. It was generated for political reasons to push a huge tax increase. Voters have an opportunity in this election to punish those guilty without changing the constitution. One failure in 73 sessions is insufficient reason to change the constitution.

A "NO" vote on Question 1 will force legislators to do the job we elect them to do. A "YES" vote will NOT correct the grave disregard for the Nevada Constitution by the Nevada Supreme Court during 2003. The Court showed blatant disregard for the people's will of the original Gibbons' petition and there is no reason to believe this will improve their attention to their oath of office. Make representative government work by voting "NO" on Question 1.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT AGAINST QUESTION NO. 1

The last legislative session showed that education funding can become a political football and few would agree that scenario should ever be repeated; however, a single event should not be a reason to compromise the public health and safety of Nevadans by detrimentally removing the Legislature's and our Governor's ability to determine our state's priorities.

1. The education budget is such a large portion of the budget that it cannot be determined until after the final meeting of the Economic Forum. The Economic Forum is a panel

of experts appointed by Nevada elected officials to formulate detailed projections regarding our state's revenue. The Economic Forum's projections would not be done until just prior to April 30th.

2. In the normal 120 day legislative process, the small budgets with little or no changes are processed starting weeks before the end of the legislative session. This allows the legislative workload to remain reasonable and matters to be handled in a logical manner. Holding all those budgets until the education budget can be decided may actually impede the process of closing budgets and make special sessions more likely, adding unnecessarily to taxpayer expense. Thus, this measure is likely to cause an adverse fiscal impact.
3. Under the current system the smaller budgets come through early providing lawmakers that do not sit on the Assembly Ways and Means or Senate Finance Committees with the time to review these budgets and ask questions. If those budgets are held until the education budget is decided, then the review by other legislators will be lost in the rush to close the session. Public health, safety and the protection of our environment will necessarily be compromised because of the limited time to review non-education budget matters that are equally important to our state's welfare.
4. Further it might be much easier for a lawmaker on the money committees to add "pork" to some budgets without the check and balance time and review process to stop potential wasteful spending.
5. While we agree that the entire budgeting and funding process in Nevada needs to be reviewed to encourage fiscal responsibility and accountability by the legislators and all with budgets within the executive branch, this measure seems to complicate the matter rather than actually improve and simplify the process.

We urge voters not to make the budget process more difficult by passing this measure.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN OPPOSITION TO QUESTION NO. 1

1. Public education is one of five major budget bills. According to the Legislative Counsel Bureau, no budget can be closed prior to release of the Economic Forum's final report. This does not change. When budget bills are enrolled, education will be first.
2. The way the state budget is crafted does not change. The legislative workload is unaffected. The process becomes more logical when such a large component is dealt with first. The Legislature is responsible for managing its workload and adhering to a 120-day session. The status quo is more likely to result in special sessions.
3. Lawmakers not on money committees still participate. Issues are engaged in the same manner as now. Any impact should the Legislature not do its job as required by

the state Constitution is its responsibility. Public health, safety, welfare and the environment are not compromised by Education First.

4. Adding pork will always be tempting. Education First does not make it easier. If checks and balances aren't done, regardless of where in the process, legislators would be derelict in their duties.
5. When public education is no longer the budget's sacrificial lamb, the process is brought into check, improving accountability and simplicity.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – NO.

Approval of the proposal to amend the *Nevada Constitution* would have no adverse fiscal impact

FULL TEXT OF THE MEASURE

Education First Initiative Petition - State of Nevada

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

AN ACT relating to the funding of public education; amending the Constitution of the State of Nevada to require the Legislature to fund the operation of the public schools for kindergarten through grade 12 before any other part of the state budget for the next biennium is funded; providing that any appropriation enacted in violation of that requirement is void; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 6 of Article 11 of the Constitution of the State of Nevada is hereby amended to read as follows:

1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

2. During a regular session of the Legislature, before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.

3. During a special session of the Legislature that is held between the end of a regular session in which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the next ensuing biennium and the first day of that next ensuing biennium, before any other appropriation is enacted other than appropriations required to pay the cost of that

special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.

4. During a special session of the Legislature that is held in a biennium for which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the biennium in which the special session is being held, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the population reasonably estimated for the biennium in which the special session is held.

5. Any appropriation of money enacted in violation of subsection 2, 3 or 4 is void.

6. As used in this section, "biennium" means a period of two fiscal years beginning on July 1 of an odd-numbered year and ending on June 30 of the next ensuing odd-numbered year.

QUESTION NO. 2

Amendment to the Nevada Constitution

CONDENSATION (Ballot Question)

Shall Article 1 of the Nevada Constitution be amended in order: to provide that the transfer of property from one private party to another private party is not considered a public use; to provide that property taken for a public use must be valued at its highest and best use; to provide that fair market value in eminent domain proceedings be defined as the "highest price the property would bring on the open market;" and to make certain other changes related to eminent domain proceedings?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create a new section within Article 1 of the Nevada Constitution. The amendment provides that the transfer of property taken in an eminent domain action from one private party to another private party would not be considered taken for a public use.

The State or its political subdivisions or agencies would not be allowed to occupy property taken in an eminent domain action until the government provides a property owner with all government property appraisals. The government would have the burden to prove that any property taken was taken for a public use.

If property is taken by the State or its political subdivisions or agencies for a public use, the property must be valued at its highest and best use. In an eminent domain action, just compensation would be considered a sum of money that puts a property owner in the same position as if the property had not been taken, and includes compounded interest and reasonable costs and expenses. Fair market value, for eminent domain purposes, would be defined as the "highest price the property would bring on the open market."

If property taken in an eminent domain proceeding is not used for the purpose the property was taken for within five years, the original property owner would be able to reclaim the property upon repayment of the original purchase price.

ARGUMENT ADVOCATING PASSAGE

Question 2 is a response to the Supreme Court decision in *Kelo v. the City of New London* which expanded the definition of "public use" to include increasing city hall's tax base. It is also a response to the failure of the Nevada Supreme Court which made the same ruling three years ago in *Pappas v. the City of Las Vegas Redevelopment Agency* authored by Justice Nancy Becker. Suzette Kelo's home was taken by the government and given to a developer who wanted to build

QUESTION NO. 3

Question Number 3 was removed from the ballot by the Nevada Supreme Court in *Nevadans for Nevada et al. v. Beers et al.*, 122 Nev. Adv. Op. 80 (Sept. 8, 2006). Question Number 3 will therefore not appear on any ballots in the November 2006 General Election.

more expensive homes. In *Pappas*, the property was given to casinos. Transfers like this are absolutely "forbidden" under our proposed rules.

To help citizens whose homes are targeted to be "taken" by eminent domain, we are adding several new procedural protections. Before the government can force someone out of their home, the government will be required to provide the property owner with copies of ALL appraisals the government possesses. This will have the effect of helping a homeowner decide if the government is acting in "good faith." Right now, a landowner is not entitled to these appraisals, until their property is taken, and they are in the middle of a costly lawsuit. If a landowner disagrees with the government's decision that a project is a valid "public use," the landowner has the right to ask a jury to determine if the "public use" is legitimate, before the government has the right to occupy the land. Under current rules, once the city council or county commission approves the decision of its bureaucrats that a certain project is a "public use," the landowner has no remedy.

Lastly, if a landowner ends up in court in an eminent domain battle, we have added provisions to keep the playing field level. People who are standing their ground and fighting for their rights need not fear court costs and attorney's fees, because judges will not have the power to award fees and costs if the landowner should lose.

Question 2 will prevent the government from automatically pulling the "trigger" of eminent domain, when it wants to take someone's private property. It will give landowners legal weapons to fight back, when they find their land has been targeted for government seizure.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT ADVOCATING PASSAGE

Contrary to what proponents say, Question 2 will hurt the great majority of Nevadans by slowing and in some cases stopping construction of needed highways and other public projects. If this question was truly about the *Kelo* decision, it should have stopped after section two. Instead, eight additional sections are included that we believe would primarily benefit trial lawyers and their special interest clients, with all extra costs to be borne by you the taxpayer!

Keep in mind that the Nevada Constitution provides a framework upon which a duly elected State Legislature may add laws. However, this proposal bypasses all public hearings, discussions, and debate in the Legislature, as well as the final review and action of the Governor. If the voters approve Question 2, ALL nine sections would go into effect, both good and bad! The process to fix the Constitution at a later date is both costly and lengthy, taking five years or longer.

Vote NO on this question! DO NOT clutter our Constitution with language that undermines local community control and your quality of life! Instead, require the newly elected Legislature and Governor to do their jobs by dealing with the *Kelo* issue in 2007.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT OPPOSING PASSAGE

Voters Beware! Question 2 is *NOT* what it appears to be! The public should be suspicious of a proposal that adds over 400 words to Nevada's Constitution. Details like these belong in state law, not in the Constitution.

Question 2 fails the test of being in the public's best interest. Buried within are a number of provisions that primarily benefit a small number of lawyers and special interests. Current Nevada law requires payment of the "most probable price" when land is acquired for roads, schools, or other vital public facilities. However, this proposal requires payment of the "highest price." Further, we believe taxpayers may have to pay all lawyers fees and court expenses for any legal actions brought by private parties on eminent domain!

The total cost to Nevada's taxpayers is unknown, but every extra penny spent on settlement costs and attorney's fees may mean that fewer vital public projects get done. Nevada's Department of Transportation and the Regional Transportation Commission of Washoe County have estimated that this proposal will cost taxpayers a minimum of \$640 million more for transportation projects over the next ten years. Further, because Question 2 appears to violate federal transportation regulations, Nevada may lose an estimated \$210 million each year in federal highway funds.

Section 11 could greatly slow and increase the cost of constructing school, major road, water, flood control, or other vital public projects. It does this by requiring land acquired through eminent domain to be "used within five years for the original purpose stated," starting from the date the final order of condemnation is entered. Otherwise, such land automatically reverts back to the original property owner upon repayment of the purchase price. This would cause the eminent domain process to start all over again, with all the costs borne by Nevada's taxpayers! Acquisition of land and right-of-way, legal actions, and required environmental analyses all take time. Five years is an unreasonable time frame to put in our Constitution.

Vote *NO* on Question 2. It is not only misleading, it will be expensive for taxpayers and harmful to our communities! Your *NO* vote will send a message to the special interests backing this proposal that you want to stay in control of your community and protect your quality of life.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT OPPOSING PASSAGE

Question 2 is a concise blueprint to restore valuable rights that once belonged to all homeowners. Until 1993, Nevada defined "just compensation" as the "highest price" the property would bring on the open market. Our legislature changed that definition after strong lobbying to the "most probable price." Today, only Nevada and a small minority of other states refuse to use the "highest price" definition.

If landowners are not entitled to the appraisals in the government's possession, how do they know whether the government is acting in good faith, or what price, their property is really worth?

The Legislature and Courts had their chances to save the rights of homeowners, but instead of protecting homeowners, they acted as accomplices in allowing those rights to be taken away. Our opponents think that adding 400 words to the Constitution is unnecessary. Their complaint is not with the number of words we use, but the number of protections you will have restored.

Lastly, we believe the government has fabricated impact costs as can be seen on the Secretary of State's website which states it is unknown if there will be an increase in costs, because if litigation decreases, so will the costs to the public.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

Question 2 proposes to amend Article 1 of Nevada's Constitution regarding the determination of public use of property, payment for private property taken under eminent domain actions, and the rights of property owners in eminent domain actions. The provisions of Question 2 cannot become effective until after the 2008 General Election.

FINANCIAL IMPACT OF QUESTION 2

Question 2 declares that public use does not include transfers of property taken in an eminent domain proceeding from one private party to another private party. Although the use of this type of transfer of private property for projects by government entities is eliminated, an estimate of the financial impact to state and local governments planning to use this type of transfer after the effective date of the Question 2 cannot be determined.

The provision requiring taken or damaged property to be valued at its highest and best use potentially increases the costs incurred by state or local government entities to provide the required payments to property owners under eminent domain proceedings. Given the difficulty projecting the level and scope of eminent domain proceedings state and local governments may undertake after the effective date of the Question 2, the potential financial impact on state or local governments cannot be determined with any degree of certainty. The potential increase in the costs may cause government entities to forego certain projects requiring the taking of private property under eminent domain actions.

The provisions of the Question 2 may potentially increase the number of cases involving eminent domain actions. The potential increase in expenses incurred by state and district courts from handling a larger number of cases involving eminent domain actions cannot be determined with any degree of certainty.

The fiscal note was prepared by the Legislative Counsel Bureau pursuant to NRS 295.015

FULL TEXT OF MEASURE

(Sections 1, 3, 8, 9, and 10 have been stricken from the text of the measure by the Nevada Supreme Court in Nevadans for the Protection of Property Rights, Inc. et al v. Heller et al., 122 Nev. Adv. Op. 79 (Sept. 8, 2006))

NEVADA PROPERTY OWNERS BILL OF RIGHTS INITIATIVE

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

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 2. Article 1 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 22, to read as follows:

Sec. 22. Notwithstanding any other provision of this Constitution to the contrary:

~~1. All property rights are hereby declared to be fundamental constitutional rights and each and every right provided herein shall be self-executing.~~

2. *Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.*

~~3. Unpublished eminent domain judicial opinions or orders shall be null and void.~~

4. *In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.*

5. *If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.*

6. *In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.*

7. *In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.*

~~8. Government actions which result in substantial economic loss to private property shall require the payment of just compensation. Examples of such substantial economic loss include, but are not limited to, the down zoning of private property, the elimination of any access to private property, and limiting the use of private air space.~~

9. *No Nevada state court judge or justice who has not been elected to a current term of office shall have the authority to issue any ruling in an eminent domain proceeding.*

10. *In all eminent domain actions, a property owner shall have the right to preempt one judge at the district court level and one justice at each appellate court level. Upon prior notice to all parties, the clerk of that court shall randomly select a currently elected district court judge to replace the judge or justice who was removed by preemption.*

11. Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.

12. A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

13. For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

14. Any provision contained in this section shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.

DESCRIPTION OF EFFECT

(Portions of the Description of Effect have been stricken to be consistent with the Nevada Supreme Court Order in Nevadans for the Protection of Property Rights, Inc. et al v. Heller et al., 122 Nev. Adv. Op. 79 (Sept. 8, 2006))

The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.

- ~~Property rights are fundamental constitutional rights.~~
- ~~Transfer of land from one private party to another private party is not public use.~~
- ~~Before the government may occupy property, it must provide appraisals and prove the taking is for public use.~~
- ~~Property must be valued at the use which yields the highest value.~~
- ~~Government actions causing economic loss to property require the payment of just compensation.~~
- ~~Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.~~
- ~~In each action, the property owner may disqualify one judge at each judicial level.~~
- ~~Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.~~
- ~~Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.~~
- ~~Fair market value is the highest price the property would bring on the open market.~~
- ~~Property owners shall not be liable for the government's attorney fees or costs.~~

Nevada Property Owner's Bill of Rights
Filed with the Secretary of State - September 29, 2005
Comments Provided by Nevada Taxpayers Association Staff for the Association's members
January 2006

COMMENT: There is no question that the U. S. Supreme Court decision in the KELO case had a chilling impact on property owners and raised concerns about the practices surrounding the use of eminent domain by government. During the 2005 regular session, (before the KELO decision was issued) the Legislature addressed a number of issues involving the use of eminent domain in SB 326 and AB 143. Anyone who was involved in or followed the progress of the legislation is aware that the issue of eminent domain is very complex. The complexity of the issue and the specificity of the language in this proposed amendment to the Constitution, make it certain that there will be unintended consequences if this initiative is qualified and subsequently approved by the voters. If property owners believe there are still issues surrounding the use of eminent domain by Nevada state and local governments, it is the 2007 Legislature that should be called upon to address those issues.

Please Note that the fiscal note issued by the fiscal division of LCB says the fiscal impact of this initiative cannot be determined.

Initiative Petition

State of Nevada

Nevada Property Owners' Bill of Rights

Explanation - Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS;

Section 1. Article 1 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 22, to read as follows:

1. All property rights are hereby declared to be fundamental constitutional rights and each and every right provided herein shall be self-executing.

COMMENT: This section states that the rights enacted are "self-executing". In theory, that means that a property owner need do nothing or perform any act to perfect the rights granted by the constitution. It is unclear why this section is needed.

2. Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.

COMMENT: This precludes the use of eminent domain in any case where there is a taking that results in the property ending up in the hands of a private party. It effectively eliminates redevelopment projects that include private development. Further, it precludes what has been enacted by AB 143 of the 2005 Session which tightened up the use of eminent domain. This section also begs the question: "What constitutes an indirect transfer?"

3. Unpublished eminent domain judicial opinions or orders shall be null and void.

COMMENT: District Court opinions and jury verdicts are not published in the sense that Supreme Court decisions are published. Since there is a question if any opinion of a lower court would be considered published, this provision could potentially be used to say that the District Court has no power to issue a decision in the first place since its decision is not "published". Also, it appears that this provision is retroactive. If that is the correct reading, wouldn't this tell a litigant who prevailed in District Court (which could be a private citizen as well as the government) that their victory will be "null and void". Again, if this is the correct reading would that then require all cases to be tried by the Supreme Court, because that Court has the authority to publish its decisions?

4. In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.

COMMENT: Under this proposal, trials would have to take place BEFORE occupancy. This would cause major delays. Under present law, most individual cases are usually settled either (1) before a suit is filed, or (2) after the suit is filed (during construction), but before trial. In the meantime the project moves forward.

Depending on how "separate and distinct determination" is read it can mean that the property owner is entitled to a completely separate trial on the issue of public use. If that is the case it would take two jury trials in order to perfect the taking. Under any circumstances, from a practical perspective, it means that all eminent domain cases will be tried by jury as the right to a jury trial is "self-executing." (See Section 1.)

5. If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

COMMENT: This section requires a forward looking appraisal based on the use the property will be placed, and if higher than the current appraisal, the higher value must be used. Since it is unknown what is meant by "proprietary government purpose." would that phrase require the government to pay an amount greater than "highest and best use". It seems this provision would be unfair to the government and hence the taxpayers to the extent the purchase price to the government could potentially exceed the purchase price that a non-governmental entity would pay.

6. In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

COMMENT: This will increase the cost of takings; resulting in increased costs to all taxpayers because it eliminates the caps and sharing mechanisms currently provided in NRS 37.190. These increased costs can be substantial. At the present time, attorneys typically take these cases on a contingency basis, with the percentage based upon the difference between the amount the government originally offered, and what the property owner finally gets with the lawyer's assistance.

7. In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

COMMENT: In this section "fair market value" is defined as the "highest price" the property would bring. Currently "fair market value" is considered to be the most probable price a property would bring on the open market. It would appear that highest price would allow outliers to be used to inflate the price, the cost of which is ultimately borne by the taxpayer. How would an appraiser would apply a "highest price" standard?

8. Government actions which result in substantial economic loss to private property shall require the payment of just compensation. Examples of such substantial economic loss include, but are not limited to, the down zoning of private property, the elimination of any access to private property, and limiting the use of private airspace.

COMMENT: This provision applies to *ANY* government action *NOT* just eminent domain and would create numerous actionable offenses. This section would define as a taking, among other things, "the elimination of any access to private property", and "limiting the use of private airspace" This is too broad as limiting "any" access to property may not have a detrimental effect if other means of access remain available.

9. No Nevada state court judge or justice who has not been elected to a current term of office shall have the authority to issue any ruling in an eminent domain proceeding.

COMMENT: This is an odd provision. Senior (retired) judges can hear cases where sitting judges disqualify themselves, because of a conflict. A pro tem judge, or a judge who is appointed by the Governor to fill a vacant judicial position, would be prohibited from ruling in an eminent domain case. Senior judges who routinely assist the courts, but who are not currently elected may no longer hear these cases. In turn, the workload of currently sitting judges will increase.

10. In all eminent domain actions, a property owner shall have the right to preempt one judge at the district court level and one justice at each appellate court level. Upon prior notice to all parties, the clerk of that court shall randomly select a currently elected district court judge to replace the judge or justice who was removed by preemption.

COMMENT: This provision is one-sided as it does not allow government the same right to "shop". It would appear this section gives trial lawyers an advantage which doesn't appear elsewhere in the law. This is a substantial change from current law which allows the removal of a judge at the district court level for payment of a one-time fee. It also extends the removal process to Supreme Court judges who are now only removed for bias or conflict of interest by motion and supporting affidavits. (Supreme Court Rule 35.)

11. Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of entry of the final order of condemnation.

COMMENT: This provision would create a very small window for the government to do a major project. It is not uncommon for major projects which require obtaining multiple parcels of land, such as major road building projects to take longer than 5 years to acquire, design, go through environmental hearings before construction ever starts. This could provision could effectively stop major road and highway projects. Examples of this are the I-215 beltway in Southern Nevada and the 395 Project in Northern Nevada. If this provision were currently in place, neither project could have even been considered.

Additionally, what does "use" mean. Is it enough if the government just parks some cars on the property? Also, if the government doesn't "use" the property within five years but in the sixth year constructs improvements, can the property owner wait for improvements to be constructed and then demand to buy back the property at the original purchase price? While the term "use" might be clarified by legislative action, this provision doesn't appear to work as drafted.

12. A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

COMMENT: Eliminating an award of attorneys' fees to the government invites Litigants to advance frivolous claims in eminent domain proceedings, which are defended at the expense of taxpayers. Without a provision to address "frivolous claims" this section is an incentive to contest an action every time a government uses eminent domain regardless of merit.

13. For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

COMMENT: Presently, utilities and mining companies also have power of eminent domain. This power has been used historically, and has been considered to be in the public interest. This section then makes all actions by private entities subject to the same conditions as imposed on government, including the "right" to be subjected to "frivolous claims". In fact private entities could have more to be concerned about because they are generally viewed as "deep pockets".

14. Any provision contained in this section shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.

COMMENT: Self-explanatory

Note: This following appears after the above language.

DESCRIPTION OF EFFECT

The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.

- Property rights are fundamental constitutional rights.
- Transfer of land from one private party to another private party is not public use.
- Before the government may occupy property, it must provide appraisals and prove the taking is for public use.
- Property must be valued at the use which yields the highest value.
- Government actions causing economic loss to property require the payment of just compensation.
- Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.
- In each action, the property owner may disqualify one judge at each judicial level.
- Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.
- Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.
- Fair market value is the highest price the property would bring on the open market.
- Property owners shall not be liable for the government's attorney fees or costs.

Daily Physical Education Kindergarten through Twelfth Grade in all Public Schools
Filed with the Secretary of State - September 29, 2005
Comments Provided by Nevada Taxpayers Association Staff for the Association's Members
January 2006

COMMENT: The language of this initiative is akin to a statute. It is beyond a policy statement, which is what an amendment to the Constitution should be. It is case of "ballot box budgeting", whereby an expenditure is being proposed for which there is no funding. An excerpt from the fiscal note prepared by the Fiscal Division of the Legislative Counsel Bureau can be found at the bottom of page 2.

Initiative Petition

State of Nevada

The People of the State of Nevada do enact as follows:

We are amending the Constitution of the State of Nevada by adding a new section concerning
Daily Physical Education Kindergarten through Twelfth Grade in all Public Schools

Physical Education Requirements:

- A. Every pupil in a Kindergarten program through grade twelve, including pupils with disabling conditions and those in alternative education programs, shall participate in daily physical education for the entire school year. Pupils in elementary schools shall participate in physical education for at least one hundred fifty minutes during each school week, and students in middle schools and high schools shall participate for at least two hundred fifty minutes per week.
- B. Schools shall establish specific learning goals and objectives for physical education. A sequential, developmentally appropriate curriculum shall be designed, implemented and evaluated to help pupils develop the knowledge, motor skills, self-management skills, attitudes and confidence needed to adopt and maintain physical activity throughout the pupils' lives. The physical activity program prescribed in this section shall:
1. Emphasize knowledge and skills for a lifetime of regular physical activity.
 2. Be consistent with National Standards that are appropriate to the pupil's age, development and skills.
 3. Devote at least fifty percent of class time to actual physical activity each week, with as much time as possible spent in moderate to vigorous physical activity.
 4. Provide multiple and diverse physical activity choices.
 5. Feature cooperative activities and competitive games.
 6. Meet the needs of all pupils.
 7. Take into account gender and cultural differences.
 8. Teach self-management skills and movement skills.
 9. Actively teach cooperation, fair play and responsible participation in physical activity.
 10. Include ratios of teachers to pupils that are comparable to those in other curricular areas.
 11. Promote participation in physical activity outside of school.
 12. Be an enjoyable experience for pupils.
- C. Suitably adapted physical education shall be included as part of Individual Education Programs or other written plans for pupils with chronic health programs or other disabling conditions or other special needs that preclude certain pupils from participation in regular physical education instruction or activities.

Continued

D. All pupils shall be regularly assessed for attainment of physical education learning objectives. Health-related fitness testing shall be integrated into the curriculum as an instructional tool. The tests shall be appropriate to the developmental levels and physical abilities of pupils and shall be used to teach pupils how to assess their fitness levels, set goals for improvement and monitor progress in reaching fitness goals.

E. Exemptions from physical education courses shall not be permitted on the basis of participation on an athletic team; a community recreation program; participation in The Reserve Officer Training Corps; the marching band or other school or community activities. A pupil may be excused from physical education courses if a physician states in writing that physical activity will jeopardize the pupil's health and well-being or if a parent or guardian requests and exemption on religious grounds.

F. All physical education shall be provided by highly qualified and adequately prepared licensed physical education teachers. A physical education teacher is deemed highly qualified if they hold a current and valid physical education teaching license and have successfully passed a national certification examination such as PRAXIS II, and regularly participate in professional development activities to effectively deliver the physical education program.

DESCRIPTION OF EFFECT (Please Note: This is part of the initiative petition)

School-aged children and youth in grades in kindergarten through twelfth and attending public schools in the State of Nevada will be provided daily physical education by a highly qualified, licensed and credentialed physical education teacher. Elementary aged children will be provided a minimum of one-hundred-fifty minutes of physical education weekly. Middle school and high school students will be provided two-hundred-fifty minutes of physical education weekly. Teacher to student ratios will be comparable to those of other academic curricular areas. Exemptions from the physical education requirement will be provided for physician verified medical purposes and/or on religious grounds. Students will be required to attain learning objectives as delineated by National Standards from the National Association for Sport and Physical Education.

Excerpted from the Fiscal Note Prepared by LCB Fiscal Analysis Division

The note is based on 2009-2010 school year being the first school year the initiative would be effective if approved by the voters.

"The fiscal impact would depend on how the provisions of the Initiative are implemented. Utilizing the statewide average teacher-to-student ration, an estimated 2,470 additional PE teachers would be required at an estimated cost of \$120 million in the 2005-2006 school year. If the initiative was implemented without reducing instructional time devoted to core subject areas, additional instructional minutes would need to be added to the school day. Assuming instructional time devoted to core academic subjects would not be reduced, the Fiscal Analysis Division estimates that 30 additional minutes would need to be added to the elementary school day and one additional hour would need to be added each day for middle and high schools. The estimated cost for adding additional minutes to the school day is \$137.3 million in the 2005-06 school year. With these assumptions, the Fiscal Analysis Division estimates that the additional costs of this Initiative would approximate \$257.3 million for the 2005-06 school year."

"NOTE: Additional costs for facilities, developing standards for highly qualified status, teacher time spent on developing and implementing a PE curriculum with corresponding assessments, updating IEPs for special education students, and other costs related to program implementation are not included in this estimate."

QUESTION NO. 4

Amendment to Title 15 of the Nevada Revised Statutes

CONDENSATION (Ballot Question)

Shall Chapter 202 of the Nevada Revised Statutes be amended in order to prohibit smoking tobacco in certain public places, except all areas of casinos, gaming areas within establishments holding gaming licenses, bars and certain other locations?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would prohibit smoking tobacco at the following locations: certain indoor restaurants; certain child care facilities; elementary, secondary and high school property; hospitals and medical offices; theaters and concert halls; video arcades; government buildings; all areas within grocery stores, drug stores and convenience stores except the gaming areas; and museums, galleries, and other places of public display.

Smoking tobacco would continue to be allowed at the following locations: casinos or facilities with an unrestricted gaming license; bars, taverns, saloons; restaurants where persons under the age of 21 are not allowed; strip clubs and brothels; retail tobacco stores; private residences, including, hotel and motel rooms, and private residences that are used as office workplaces; and gaming areas within grocery stores, drug stores, convenience stores and any other businesses that hold a Nevada gaming license.

The proposed amendment would also provide that only the Nevada Legislature may regulate the smoking of tobacco.

The proposed amendment would also require "no smoking" signs to be conspicuously posted at locations where smoking tobacco is prohibited.

ARGUMENT ADVOCATING PASSAGE

We believe a "YES" vote for Question 4 will amend and strengthen current laws to protect the children of Nevada from second-hand smoke.

By prohibiting smoking on school grounds, movie theaters and government buildings – and by requiring restaurants to ban smoking in areas where children are permitted – Question 4 will enact common-sense changes to improve our community, protect our liberties and keep children away from second-hand smoke.

Question 4 is simple – it will protect Nevada residents and the millions of visitors who help drive our economy - from second-hand smoke, without stripping us of the personal choices that a free society should enjoy – or crippling the industries and businesses that provide the jobs and revenue to make our communities thrive.

A “YES” vote for Question 4 amends and strengthens current laws to require appropriate, set-aside areas for adults who choose to smoke – while protecting children and non-smokers from second-hand smoke.

A “YES” vote on Question 4 allows the owners of Nevada hotels, resorts and casinos to continue offering both “smoking” and “non-smoking” rooms.

A “YES” Vote on Question 4 allows owners of restaurants to make the choice between setting aside family sections where smoking would be banned or making the entire restaurant smoke-free.

A “YES” Vote on Question 4 allows the people of Nevada to make their own choice of whether to enjoy themselves at a smoking facility or a smoke-free facility.

A “YES” Vote on Question 4 is a vote for the future of our communities and our state and most importantly a vote for the future of our children.

Vote “YES” on Question 4 to protect our children from second-hand smoke.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT ADVOCATING PASSAGE

Children are not better protected. Smoking is still allowed in gaming areas of convenience stores and grocery stores. It appears that it is not banned in all school buildings. It is allowed in certain licensed child care facilities.

The recent Surgeon General’s report states: “Breathing secondhand smoke for even a short time can have immediate adverse effects on the cardiovascular system in ways that increase the risk of a heart attack. Secondhand smoke is not a mere annoyance, but a serious health hazard that causes premature death and disease in children and non-smoking adults.”

It also states, “there is no risk-free level of secondhand smoke exposure,” adding that separating smokers from non-smokers does not protect non-smokers.

Finally, it states that “smoke-free policies and regulations do not have an adverse economic impact on the hospitality industry.” Many areas with tourism-based economies have benefited from smoke-free laws.

Personal choice comes with responsibilities, especially when those choices harm others. Smoking is harmful to non-smokers. Question 4 is not responsible for behavior that harms others.

We believe Question 4 keeps Nevada's children and citizens at risk for cancer, heart disease and asthma.

We believe it benefits mainly special interests, not the majority of Nevadans.

Vote "No" on Question 4.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT OPPOSING PASSAGE

Don't be fooled by Question 4.

We believe Question 4 fails to protect citizens, especially children, from the harmful effects of secondhand smoke, a documented and accepted dangerous pollutant. According to the Center for Disease Control: "Environmental tobacco smoke contains at least 250 chemicals known to be toxic or cause cancer. Unfortunately, the general public's exposure to secondhand smoke is much higher than most people realize."

While on the surface Question 4 appears to ban smoking, we believe it repeatedly increases Nevadans exposure to secondhand smoke.

Currently, school districts are the only local authority that can adopt tougher regulations on smoking and tobacco products. That law would be repealed, placing control over smoking and tobacco solely with the Nevada State Legislature, thereby denying control to any local authority. Also, it appears that Question 4 does not ban smoking in all school buildings.

It allows smoking in licensed child care facilities that provide care for fewer than 13 children.

It does not ban smoking entirely in grocery stores or convenience stores if just one gaming device is present. We believe there are potential conflicts in the language of Question 4 leaving the consequences unclear as to where smoking is allowed.

If a single gaming device is present, smoking may occur in certain areas in a restaurant. It appears that the current law that requires restaurants seating 50 or more to provide non-smoking sections may be repealed.

Subject to certain exceptions, smoking is allowed anywhere in a casino, including all restaurants. We believe that it would provide an unfair advantage for those restaurants.

Moreover, any area where there is a single gaming device may become a smoking area, within retail establishments, grocery stores and other areas potentially frequented by children and families. Again, we believe there are potential conflicts in the language of Question 4 leaving the consequences unclear as to where smoking is allowed.

It appears any business other than a restaurant that holds a permanent or temporary liquor license may become a "bar, tavern or saloon," where smoking is allowed.

Question 4 is an attempt to confuse voters into casting a vote for public health. Don't keep Nevada as the 12th highest rate of adult smokers in the nation.

A "YES" vote for Question 4 benefits only the tobacco industry and other special interests. Don't let Nevadans continue to suffer from diseases caused by secondhand smoke. It's time to stand up against "Big Tobacco" and special interests.

Vote "NO" on Question 4.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT OPPOSING PASSAGE

Let's get to the truth.

Question 4 restricts where people can smoke.

Opponents of Question 4 have stated that it weakens current state law. Nothing could be further from the truth. In fact, it bans smoking in most public places where children are permitted – allows smoking in areas where children are currently not allowed - casinos, adult-only areas of restaurants, bars and taverns.

Question 4 continues to allow bar and restaurant owners the opportunity to have smoke-free establishments while prohibiting children from entering bars, taverns and other adult-only areas where smoking would be allowed.

Nevada state law continues to mandate Ventilation and Purification Systems that have been proven to help reduce second-hand smoke.

Opponents have stated that Question 4 benefits "Big Tobacco," but again, nothing could be further from the truth. This effort has not taken a penny from tobacco companies.

Question 4 has been funded by small businesses that understand that the more restrictive measure is an extreme attempt to ban smoking altogether – and recognize that this more reasonable approach will protect our children and our economy without stripping us of our rights.

Vote "YES" on Question 4.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

Question 4 proposes to amend Chapter 202 of *Nevada Revised Statutes* to prohibit smoking in government buildings, schools, child care facilities, hospitals and medical offices, video arcades,

indoor portions of restaurants, movie theaters, grocery stores and bakeries, retail establishments, drug and convenience stores, and museums, libraries, galleries, or other places of public display or collection. The proposed prohibition on smoking would not apply to facilities with non-restricted gaming licenses; bars, taverns, and saloons; retail tobacco stores; strip clubs and brothels; hotel and motel rooms; and private residences, unless that private residence houses a child care facility. The proposed prohibition would also not apply to areas of businesses, such as grocery stores, drug and convenience stores, and other retail establishments, that are leased to or operated by persons licensed to provide gaming.

FINANCIAL IMPACT OF THE INITIATIVE

Establishments where smoking is prohibited by Question 4 would be required to conspicuously post "No Smoking" signs at all entrances and throughout the establishment. State law currently prohibits smoking in public buildings, except in specific designated areas, and requires the posting of "No Smoking" signage in areas not designated as smoking areas. It is difficult to determine the amount of new or additional signage needed in state and local buildings, beyond those required by current statute, to comply with the provisions of Question 4. Thus, the specific financial impact to state and local governments, including school districts, with regard to the implementation of the provisions of Question 4 requiring "No Smoking" signage at all entrances and throughout public buildings cannot be determined with any degree of certainty.

The provisions of Question 4 give exclusive power over all regulations regarding the smoking of tobacco to the Nevada Legislature. Under current law, local governments are permitted to create ordinances regarding the smoking of tobacco, and to collect fines for violations of these ordinances. This provision of Question 4 would eliminate the authority of local governments to create ordinances and collect fines related to smoking. Any fines collected for the violation of regulations established by the Nevada Legislature in accordance with the provisions of Question 4 would be deposited in the State Permanent School Fund, as required under Article 11, Section 3 of the Nevada Constitution. With regard to the change of regulatory power over smoking from local governments to the Nevada Legislature, Question 4 would have a negative financial impact upon local governments and a positive financial impact upon the State Permanent School Fund. However, as it is difficult to determine the number of offenses or amount of fines that will occur as a result of the provisions of Question 4, the specific financial impact to local governments or the State Permanent School Fund cannot be reliably estimated.

Current statute requires health authorities and law enforcement agencies to enforce smoking laws within the state, but it is difficult to identify any potential increase in duties or responsibilities requiring additional resources to enforce Question 4 compared to those required by current statute. Since the need or demand for additional resources cannot be easily predicted, a reasonable estimate of the financial impact upon state and local governments with regard to enforcement of Question 4 cannot be made.

The fiscal note was prepared by the Legislative Counsel Bureau pursuant to NRS 295.015

FULL TEXT OF THE MEASURE

Responsibly Protect Nevadans From Second-Hand Smoke Act.

Section 1. This statutory initiative shall be known as the Responsibly Protect Nevadans From Second-Hand Smoke Act.

Sec. 2. Chapter 202 of the Nevada Revised Statutes is amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, smoking tobacco in any form is prohibited in the following specific places:

- (a) Indoor dining areas within restaurants;
- (b) Child care facilities;
- (c) All elementary, secondary and high school property;
- (d) Hospitals and medical offices;
- (e) Any motion picture house, theatre, concert hall;
- (f) Video arcades;
- (g) Government buildings;
- (h) Grocery stores and bakeries;
- (i) Retail establishments;
- (j) Drug stores and convenience stores; and
- (k) Any museums, libraries, gallery or other place of public display or collection.

2. Smoking tobacco is *not* prohibited in:

- (a) Facilities with non-restricted gaming licenses;
- (b) Bars, taverns and saloons;
- (c) Strip clubs or brothels;
- (d) Retail tobacco stores;
- (e) Areas within restaurants where persons under the age of 21 years are not permitted;
- (f) Private residences, including hotel and motel rooms, and private residences that serve as office workplaces unless such private residence is used as a childcare facility; and
- (g) Any area within a business that is leased to or operated by a person who is licensed pursuant to NRS Chapter 463, including, but not limited to, areas within retail establishments, grocery stores, drug stores and convenience stores.

Smoking is prohibited in any specific place enumerated in Sections 2.1(b)-(k) that is located within one of the businesses enumerated in Sections 2.2(a)-(f). The list of establishments enumerated in Sections 2.2(a)-(g) is not exclusive or exhaustive.

3. In areas or establishments where smoking is not prohibited by this Act, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke-free.

4. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every place where smoking is prohibited by this Act. Each place where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited.

5. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this Act.

6. For the purpose of this Act, the following terms have the following definition:

(a) "Childcare facility" has the meaning ascribed to it by NRS 202.2491.

(b) "Video arcade" has the meaning ascribed to it by NRS 453.3345.

(c) "Government building" means any building or office space owned or occupied by: (1) any component of the University and Community College System of Nevada and used for any purpose related to the system, (2) the State of Nevada and used for any public purpose, or (3) any county, city, school district or other political subdivision of the State and used for any public purpose.

(d) "Grocery store" means a store that is principally devoted to the sale of food for human consumption off the premises.

(e) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(f) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(g) "Non-restricted gaming license" has the meaning ascribed to it by NRS 463.0177.

(h) "Bar, tavern or saloon" means a business other than a restaurant that holds a license to sell alcoholic beverages for consumption on premises.

(i) "Restaurant" means a food establishment in the business of selling food primarily for human consumption on the premises.

(j) "Retail establishment" means a store in the business of selling goods, wares or merchandise on-premises where the general public is invited to such premises.

(k) "Retail tobacco store" means a retail establishment utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Sec. 3. To the extent that any provision of this Act conflicts with the provisions of NRS 202.2491, the provisions of this Act shall prevail. Any establishment that is not specifically enumerated in Section 2 of this Act is unaffected by this Act.

Sec. 4. Whenever a section of the Nevada Revised Statutes is referenced in the Act, such section of the Nevada Revised Statute shall at all times be read as it existed on January 1, 2004.

Sec. 5. All power over the regulation of smoking of tobacco shall be exclusively vested in the legislature of the State of Nevada.

Sec. 6. This Act shall be in full force and effect 10 days from and after its passage and approval.

QUESTION NO. 5

Amendment to Title 15 of the Nevada Revised Statutes

CONDENSATION (Ballot Question)

Shall Chapter 202 of the Nevada Revised Statutes be amended in order to prohibit smoking tobacco in certain public places, in all bars with a food-handling license, but excluding gaming areas of casinos and certain other locations?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would prohibit smoking tobacco within indoor places of employment including the following locations: child care facilities; movie theaters; video arcades; government buildings; public places; malls; retail establishments; all parts of grocery stores; all bars with a food-handling license; and all indoor restaurants. Smoking tobacco would also be prohibited within school buildings and on school property.

Smoking tobacco would continue to be allowed at the following locations: areas within casinos where loitering by minors is prohibited; stand-alone bars, taverns and saloons; strip clubs or brothels; retail tobacco stores; and private residences, including a private residence that serves as an office workplace. A stand-alone bar, tavern or saloon means an establishment devoted primarily to the sale of alcohol, in which food service is limited to the sale of prepackaged food items that are exempt from Nevada food-handling license requirements.

The proposed amendment would also allow a county, city or town to adopt tobacco control measures stricter than those provided in the text of the Question itself.

The proposed amendment would also require "no smoking" signs to be conspicuously posted at locations where smoking tobacco is prohibited.

ARGUMENT ADVOCATING PASSAGE

Secondhand smoke is a known carcinogen. It is dangerous to non-smokers, particularly children. It causes lung cancer, heart disease and chronic lung ailments. In children, for example, it causes and exacerbates asthma, pneumonia, bronchitis, ear infections, and increases the risk of Sudden Infant Death Syndrome.

Even cigarette-maker Philip Morris Company acknowledges this, stating "the public should be guided by the conclusions of public health officials regarding the health effects of secondhand smoke," and particular care "should be exercised where children are concerned, and adults should avoid smoking around them."

Voting "YES" for this measure provides the most significant change to state laws on smoking in public places. Voting "YES" protects Nevadans by prohibiting smoking in many indoor public places, primarily those where children are allowed. This includes most indoor workplaces. Smoking is still allowed in gaming areas of casinos, stand-alone bars, retail tobacco shops, brothels and strip clubs.

We strongly believe that this measure does not affect hotel and motel rooms in any way because, as with other private residences, occupants of hotel and motel rooms have a reasonable expectation of privacy and the right to engage in legal behavior if not otherwise prohibited, as the proponents of Question 5 never intended for hotel and motel rooms to become non-smoking areas.

This measure also lets local authorities make tougher regulations on tobacco use. Existing law provides for some local control, from public safety to liquor to gaming.

Nevadans want change. In 2002, about 68% of voters in both Clark and Washoe counties supported an advisory question whether smoking should be prohibited in public places where children are allowed. About 58% of voters in each county supported a second advisory question whether local boards of health should be able to adopt regulations tougher than state law. Nationally, 23 states plus Washington, D.C. have smoke-free laws.

Filtration systems are not the answer to eliminating health risks from secondhand smoke exposure – don't let special interests tell you otherwise. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) states filtration systems should not be relied on to control health risks from secondhand smoke. Further, ASHRAE "encourages the elimination of smoking in the indoor environment" as the only way to effectively eliminate health risks.

Smoke-free laws do not harm businesses such as restaurants and bars. At worst, they've had no effect at all; at best, they produce positive trends. These types of businesses recognize these laws can mean a healthier bottom line. Restaurants in states that have enacted smoke-free laws, for example, have seen increases in sales, profits, tax receipts, patronage, employment and liquor license applications. Various chambers of commerce in other states support smoke-free laws. It has been found that smoke-free legislation has been easy to implement.

Nevadans deserve the right to breathe clean indoor air. Voting "YES" provides meaningful public benefit and best protects families and children from the health risks of secondhand smoke.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT ADVOCATING PASSAGE

Question 5 bans smoking – in specific places. Unfortunately, it also requires all Nevada residents – smokers and non-smokers – to give up important freedoms.

The supporters of Question 5 want you to believe that there is only one way to protect Nevadans from second-hand smoke – by enacting one of the most extreme smoking bans in the country –

without regard for our economy or our ability to make common-sense choices for ourselves and our families. Question 5's language bans smoking in indoor places of employment, therefore, it appears that smoking is banned in hotel and motel rooms, which further shows how Question 5 goes too far.

Supporters of this initiative will tell you other states have not been negatively affected by smoking bans – but none of those examples rely as heavily on tourism as Nevada.

Chambers of Commerce in both Northern and Southern Nevada support Question 4 - a common-sense smoking ban, but have declined to endorse Question 5 because they understand that Nevada residents and small businesses will suffer if this is passed.

Protect our rights. Protect our Children. Vote Responsibly. Vote "No" on Question 5."

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT OPPOSING PASSAGE

We believe Question 5 is a masked attempt to saddle Nevada residents and businesses with one of the strictest smoking bans in the nation.

Question 5 allows the government to take away your decision-making rights and a spokesman for the Las Vegas Metropolitan Police Department stated that Question 5 will lead to more Drunk Drivers.

Question 5 is deceptive in its intent and seeks to eliminate smoking altogether within most businesses frequented by adults. Quite simply, under the onerous provisions of Question 5, if a bar, tavern or saloon serves hot or cooked food, thus requiring a food-handling license, smoking is not allowed anywhere in that bar, tavern or saloon. If passed, Question 5 forces bar owners to choose between serving food other than pre-packaged popcorn, peanuts or chips to their patrons or allowing them to smoke and forces every Nevada restaurant to become entirely smoke-free – even in areas where children are already banned.

According to a spokesman from the Las Vegas Metropolitan Police Department, if Question 5 is passed, it will lead to an increased number of drunk driving incidents as the consumption of food is widely considered an important offset when consuming alcohol.

Question 5 is an extreme measure that may ban all Nevada hotels, resorts and casinos from offering smoking and non-smoking room options and will take away the right of certain business owners to set-aside designated smoking areas for people over 21 years of age.

A "NO" vote on Question 5 is a vote for the economic future of Nevada.

Supporters of Question 5 – have stated that passage of Question 5 will not have a negative impact on businesses, however, many of Nevada small business owners have stated that they will stop food service in their facility, which we believe may lead to a loss of Nevada jobs and significant tax revenue.

Question 5 makes smoking in most places a crime and creates a drain on local law enforcement resources. Police officers will be faced with the choice of enforcing this smoking law, like writing a citation to someone smoking in a food-serving neighborhood bar, or protecting people from violent crime.

A "NO" vote on Question 5 is a vote against extreme actions and additional government intrusion in our lives.

A "NO" vote on Question 5 is a vote to protect your rights and personal liberties.

Nevada children need to be protected from second-hand smoke, but we must do it in a responsible and thoughtful manner.

Nevadans should reject this extreme measure by voting no on Question 5 and improve our quality of life.

Vote "NO" on Question 5.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT OPPOSING PASSAGE

Question 5 is not extreme. It is consistent with smoke-free laws enacted in other states.

Disease caused by secondhand smoke is a serious public health issue. Compliance is typically self-enforcing and carried out in a manner consistent with other public health matters. Only if complaints are filed is law enforcement involved.

Freedom of choice is not compromised. People can choose to smoke or not smoke – that does not change. Laws exist to protect people from harm by the behavior of others. Even brief exposure to secondhand smoke harms non-smokers.

We strongly believe that this measure does not affect hotel and motel rooms in any way because, as with other private residences, occupants of hotel and motel rooms have a reasonable expectation of privacy and the right to engage in legal behavior if not otherwise prohibited, as the proponents of Question 5 never intended for hotel and motel rooms to become non-smoking areas.

Most, if not all, bars, taverns and saloons that serve meals prepared on site, thereby requiring a food-handling license, such as Nevada's many sports bars, allow children and families in their establishments, so prohibiting smoking in these places is consistent with the measure's intent to protect children and all non-smokers from the dangers of secondhand smoke. It is pure speculation that Question 5 will lead to more drunk drivers. Having a liquor license is a privilege. If bar owners choose to stop food service in order to allow smoking and turn drunk drivers out on our streets, their licenses should be revoked.

Providing non-smoking areas is not effective. Separating smoking and non-smoking areas does not protect non-smokers. That's not the responsible way to protect children or adults.

Smoke-free laws in other states have no adverse economic impact on the hospitality industry – restaurants and bars. Tourist destinations such as New York, California and Florida are smoke-free (Hawaii's laws take effect this November). Restaurants and bars there have increased sales, profits, tax receipts, employment and patronage.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

Question 5 proposes to amend Chapter 202 of the *Nevada Revised Statutes* to prohibit smoking in government buildings, schools, and other indoor places of employment, including, but not limited to, child care facilities, video arcades, indoor portions of restaurants, movie theaters, grocery stores, malls, and other retail establishments. The proposed prohibition on smoking would not apply to areas of casinos where loitering by minors is prohibited; stand-alone bars, taverns, and saloons; retail tobacco stores; strip clubs and brothels; and private residences, unless that private residence houses a child care, adult day care, or health care facility.

FINANCIAL IMPACT OF THE INITIATIVE

Establishments where smoking is prohibited by Question 5 would be required to conspicuously post "No Smoking" signs at all entrances and throughout the establishment. State law currently prohibits smoking in public buildings, except in specific designated areas, and requires the posting of "No Smoking" signage in areas not designated as smoking areas. It is difficult to determine the amount of new or additional signage needed in state and local buildings, beyond those required by current statute, to comply with the provisions of Question 5. Thus, the specific financial impact to state and local governments, including school districts, with regard to the implementation of the provisions of Question 5 requiring "No Smoking" signage at all entrances and throughout public buildings cannot be determined with any degree of certainty.

State and local governments would also be required to remove all ashtrays and other smoking paraphernalia from public buildings where smoking is prohibited. State law currently prohibits smoking in public buildings, except in specific designated areas. It is difficult to determine the amount of ashtrays or other smoking paraphernalia that may need to be removed from these designated areas in order to comply with the provisions of Question 5. Therefore, the specific financial impact to state and local governments, including school districts, with regard to the implementation of the provisions of Question 5 requiring the removal of ashtrays and other smoking paraphernalia from public buildings cannot be reliably estimated.

Current statute requires health authorities and law enforcement agencies to enforce smoking laws within the state, but it is difficult to identify any potential increase in duties or responsibilities requiring additional resources to enforce Question 5 compared to those required by current statute. Since the need or demand for additional resources cannot be easily predicted, a

reasonable estimate of the financial impact upon state and local governments with regard to enforcement of Question 5 cannot be made.

The fiscal note was prepared by the Legislative Counsel Bureau pursuant to NRS 295.01

FULL TEXT OF THE MEASURE

CLEAN INDOOR AIR ACT INITIATIVE PETITION

SUMMARY: Provides for enactment of Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, excluding stand-alone bars and gaming areas of casinos.

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

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

Section 1. This Act shall be known, cited and referred to as the “Nevada Clean Indoor Air Act: Protecting children and families from secondhand smoke in most public places, excluding stand- alone bars and gaming areas of casinos.”

Sec. 2. Chapter 202 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

- (a) Child care facilities;
- (b) Movie theatres;
- (c) Video arcades;
- (d) Government buildings and public places;
- (e) Malls and retail establishments;
- (f) All areas of grocery stores; and
- (g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is *not* prohibited in:

- (a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;
- (b) Stand-alone bars, taverns and saloons;
- (c) Strip clubs or brothels;
- (d) Retail tobacco stores;
- (e) Private residences, including private residences which may serve as an office workplace, except if used as a childcare, an adult day care or a health care facility.

4. In areas or establishments where smoking is not prohibited by this Act, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

5. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this Act.

6. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Act. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

7. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this Act and shall issue citations for violations of this Act pursuant to NRS 202.2492 and NRS 202.24925.

8. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this Act.

9. For the purposes of this Act, the following terms have the following definitions:

(a) "Childcare facilities" has the meaning ascribed to it in NRS 432A.024;

(b) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345;

(c) "Government building" means any building or office space owned or occupied by (1) any component of the University and Community College System of Nevada and used for any purpose related to the system, (2) the State of Nevada and used for any public purpose, or (3) any county, city, school district or other political subdivision of the State and used for any public purpose;

(d) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted;

(e) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103;

(f) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103;

(g) "Casino" means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word 'casino' as part of its proper name;

(h) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere;

(i) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas;

(j) "Health Authority" has the meaning ascribed to it in NRS 202.2485;

(k) "Stand-alone bar, tavern or saloon" means an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this Act. In addition, a stand-alone bar, tavern or saloon must be housed in either: (1) a physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this Act, or (2) a completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use;

(l) "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling;

(m) "Incidental food service or sales" means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870;

(n) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

10. Any statute or regulation inconsistent with this Act is null and void.

11. The provisions of this Act are severable. If any provision of this Act or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the Act as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 3. This act shall be in full force and effect 10 days from and after its passage and approval.

QUESTION NO. 6
Amendment to the Nevada Constitution

CONDENSATION (Ballot Question)

Shall the Nevada Constitution be amended to raise the minimum wage paid to employees?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create a new section to Article 15 of the Nevada Constitution. The amendment would require employers to pay Nevada employees \$5.15 per hour worked if the employer provides health benefits, or \$6.15 per hour worked if the employer does not provide health benefits. The rates shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), with no CPI adjustment for any one-year period greater than 3%.

The following arguments for and against and rebuttals for Question No. 6 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 6

All Nevadans will benefit from a long-overdue increase in the state's minimum wage through a more robust economy, a decreased taxpayer burden and stronger families.

Low-income workers who do not currently earn enough to cover the basic costs of living for their families – housing, health care, food and child care – will clearly benefit. Many low-income Nevada families live in poverty even though they have full-time jobs. A Nevada worker at the current minimum wage for 40 hours per-week — every week, all year – makes only \$10,712. If the minimum wage had been increased to keep up with rising prices over the last 25 years, it would now bring in \$15,431 per-year – not \$10,712. At the current \$5.15 an hour, many minimum wage workers in Nevada have incomes below the federal poverty line. We want to encourage people to work and be productive members of society. It's economic common sense.

Taxpayers will benefit as an increased minimum wage allows low-income working families to become more financially able to free themselves from costly taxpayer-provided services such as welfare, childcare and public health services.

Our state's economy will benefit as we develop a workforce that will earn more spendable income and put dollars directly into local stores and businesses.

Raising the minimum wage one dollar affirms Nevada's beliefs that we value work, especially the difficult jobs performed by nursing home employees, childcare workers, and restaurant employees.

Minimum wage workers are not just teenagers working part-time to pay for movies, CDs and fast food. The vast majority of minimum wage workers in Nevada are adults (79% are 20 and older). Most work full-time. Six out of 10 minimum wage earners are women. Twenty-five percent are single mothers. And altogether they are the parents of 25,000 children. The paycheck these workers bring home accounts for about half of their families' earnings.

No matter what special interests and big corporations who oppose a fair minimum wage tell you, virtually every reputable economic study has found that workers don't get fired when minimum wages are passed or increased. In fact, employment increases. Eight of the eleven states that had a minimum wage above the federal level in 2003 are producing more jobs than the United States as a whole.

Raising the minimum wage makes sense for *all* of Nevada. Cast a vote for Nevada working people, Nevada taxpayers, Nevada values and a stronger Nevada economy.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 6

Contrary to claims by those eager to change Nevada's constitution, the most credible economic research for over 30 years has shown that minimum wage hikes hurt, rather than help, low-wage workers.

A recent example is the study, *The Effects of Minimum Wages Throughout the Wage Distribution*, by David Neumark, National Bureau of Economic Research; Mark Schweitzer, Federal Reserve Bank of Cleveland; and William Wascher, Board of Governors of the Federal Reserve - Division of Research and Statistics: "The evidence indicates that workers initially earning near the minimum wage are adversely affected by minimum wage increases... Although wages of low-wage workers increase, their hours and employment decline, and the combined effect of these changes is a decline in earned income." *National Bureau of Economic Research, Working Paper 7519, 5/8/2000.*

The same year, Stanford University's Thomas MaCurdy & Frank McIntyre showed that the effect of a minimum wage increase is very similar to a "sales tax levied only on selective commodities" and conclude: "... three in four of the poorest workers *lose* from shouldering the costs of higher prices resulting from the wage increase. When these benefits and costs are considered, the minimum wage is *ineffective* as an anti-poverty policy."

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT AGAINST QUESTION NO. 6

This constitutional amendment would actually *increase* poverty in Nevada, rather than fight it.

Suffering the most would be single mothers with little education, and other unskilled workers who are just entering the job market.

Today, such entry-level employees are paid not just with wages, but also the chance to learn new job skills. With those new skills—and the work habits they learn—they are able to climb the job ladder and make better lives for themselves and their families.

But if government forces entry-level wages artificially higher, fewer businesses will be able to hire these unskilled workers. That's because their *total* cost to the company—their pay, plus their training costs—will often be greater than these workers contribute to the company. So some workers will be let go, and others will never be hired.

Nevada has long been known as a state where businesses enjoy economic opportunities they cannot find elsewhere. But this constitutional amendment would end all that.

It would suddenly place Nevada at a big economic disadvantage to many other states—states without these high wage requirements. Under this amendment, wages paid in Nevada must, from now on, exceed the federal minimum wage by about \$1 an hour. This would seriously damage Nevada businesses—especially small mom and pop businesses, which usually have fewer resources to work with.

This proposal also would discriminate against non-union companies—which means against the great majority of small businesses in Nevada. It would give labor union officials the power, under the law, to permit *union* companies to hire new employees at rates *below* the new minimum wage. This is unfair to both companies and union members. It is also a virtual invitation to union corruption.

The key to fighting poverty—and to achieving higher wages for *all* workers—is long-term economic growth. Artificially higher wages imposed by government will only obstruct such growth.

This proposed constitutional amendment should be rejected.

Fiscal impact: Negative.

Environmental impact: Neutral.

Public health, safety and welfare impact: Negative.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 6

Raising the minimum wage in Nevada will decrease poverty as it increases people's participation in the State's economy. If increased wages actually made people poorer – as the special interests opposed to this amendment ridiculously claim – *nobody* in Nevada would ever ask for a raise.

Single mothers, as well as anyone else working a minimum wage job, will see an increase in their wages that will actually allow them to pay for housing, healthcare, food and childcare.

All available economic studies show that *everyone* wins when the minimum wage is increased. Low-income workers earn more, become less dependent on welfare and other public programs which eases the burden on taxpayers, and have more money to spend on local goods and services -- which strengthens the economy and generates more jobs.

There is *nothing* in the amendment to raise the minimum wage that would exempt union companies – it's a federal minimum that all companies must follow.

Raise low-income workers' wage. Spur Nevada's economic growth. Generate more buying power to support Nevada businesses. Create jobs. Move low-wage workers away from dependence on public programs and ease taxpayers' burden.

You can achieve *all* of these goals by voting YES on the minimum wage amendment.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

Although the proposal to amend the *Nevada Constitution* to increase the minimum wage in Nevada could result in additional costs to Nevada's businesses, the impact on a particular business would depend on the number of employees working at a wage below the new requirement, the amount by which the wages would need to be increased and any actions taken by the business to offset any increased costs associated with the increased wage requirement.

The proposal would, however, result in beneficial financial impacts for employees who receive a wage increase as a result of the proposal and who are not impacted adversely by any actions taken by the business to offset the increased costs associated with the increased wage requirement.

In addition, if the proposal results in an increase in annual wages paid by Nevada's employers, revenues received by the State from the imposition of the Modified Business Tax would also increase.

FULL TEXT OF THE MEASURE

RAISE THE MINIMUM WAGE FOR WORKING NEVADANS

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

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Title.

This Measure shall be known and may be cited as “**The Raise the Minimum Wage for Working Nevadans Act.**”

Section 2. Findings and Purpose

The people of the State of Nevada hereby make the following findings and declare their purpose in enacting this Act is as follows:

1. No full-time worker should live in poverty in our state.
2. Raising the minimum wage is the best way to fight poverty. By raising the minimum wage from \$5.15 an hour to \$6.15 an hour, a full-time worker will earn an additional \$2,000 in wages. That’s enough to make a big difference in the lives of low-income workers to move many families out of poverty.
3. For low-wage workers, a disproportionate amount of their income goes toward cost of living expenses. Living expenses such as housing, healthcare, and food have far outpaced wage levels for Nevada’s working families.
4. In our state, 6 out of 10 minimum wage earners are women. Moreover 25 percent of all minimum wage earners are single mothers, many of whom work full-time.
5. At \$5.15 an hour, minimum wage workers in Nevada make less money than they would on welfare. When people choose work over welfare, they become productive members of society and the burden on Nevada taxpayers is reduced.
6. Raising the minimum wage from \$5.15 an hour to \$6.15 an hour affirms Nevada’s beliefs that we value work, especially the difficult jobs performed by hotel maids, childcare workers, and nursing home employees. We need to make sure the workers who are the backbone of our economy receive fair paychecks that allow them and their families to live above the poverty line.

Section 3.

Article 15 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to read as follows:

Sec. 16. Payment of minimum compensation to employees.

- A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such*

benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.

- B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.
- C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

QUESTION NO. 7

Amendment to Title 32, 40 and 43 of the Nevada Revised Statutes

CONDENSATION (Ballot Question)

Shall Titles 32, 40 and 43 of the Nevada Revised Statutes be amended in order to allow and regulate the sale, use and possession of one ounce or less of marijuana by persons at least 21 years of age, impose licensing requirements on marijuana retailers and wholesalers, allow for the sale of marijuana by licensed marijuana retailers and wholesalers, impose taxes and restrictions on the wholesale and retail sale of marijuana, and to increase the criminal penalties for causing death or substantial bodily harm when driving while under the influence of drugs or alcohol?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendments, if passed, would make various changes to Nevada law with respect to the possession and use of certain amounts of marijuana. The amendments would allow persons at least 21 years of age to purchase, possess, use and transport up to one ounce of marijuana.

The amendments would also require that marijuana retailers and wholesalers be licensed by the Nevada Department of Taxation. The amendments would subject the wholesale sale of marijuana to an excise tax, and would subject the retail sale of marijuana to the existing sales tax. The financial impact of license fees and excise taxes is further described in the Fiscal Note. After a deduction to defray the cost of tax collection, fifty percent of the tax revenue from the sale of marijuana would be used to fund voluntary programs for the prevention and treatment of the abuse of alcohol, tobacco, or controlled substances, and the other fifty percent would go to the state general fund.

Under the amendments, the following activities would continue to be unlawful: operation of vehicles and vessels under the influence of marijuana; possession a firearm while under the influence of marijuana; possession of marijuana by a prisoner; and possession of marijuana in a public place, correctional facility, or school.

The proposed amendments would increase the maximum prison terms and fines for violations of NRS 484.3795 (death or substantial bodily harm from driving under the influence) from 20 to 40 years imprisonment and from \$5,000 to \$10,000 in fines. The proposed amendments would also make it a class B felony for a person over 21 to sell or give marijuana to a minor.

The proposed amendments would have no affect on federal laws that prohibit the sale, possession, use and transport of marijuana.

ARGUMENT ADVOCATING PASSAGE

Our marijuana laws do not work.

Despite over 10,000 marijuana arrests in Nevada during the last three years alone, marijuana remains widely available and easy to get. We believe the criminal marijuana market is a free-for-all, with no oversight or safeguards to speak of.

It's time for a new approach: – the taxation and regulation of marijuana sales. Marijuana will continue to be widely available – whether permitted or not – so a sensible alternative is to place it into a tightly controlled and regulated market. Once we regulate the marijuana market, we create the opportunity to tax it and establish safeguards that are currently lacking.

Specifically, under Question 7, adults over the age of 21 will be allowed to purchase up to one ounce of marijuana from state-licensed retailers – roughly the equivalent of a pack-and-a-half of cigarettes. Retailers would have to buy their marijuana from state-licensed manufacturers.

Question 7 establishes a “We Card” program for marijuana. If you aren't 21 or older, or do not have proper ID, you won't be allowed to enter an establishment that sells marijuana – much less buy it. Marijuana use by anyone younger than 21, driving under the influence of marijuana, and smoking marijuana in public would all remain illegal. In fact, the maximum penalty for any adult who gives or sells marijuana to a minor would DOUBLE, as would the maximum penalty for anyone who kills someone while driving under the influence of alcohol, marijuana, or any drug.

Retailers who sell marijuana couldn't be located within 500 feet of a school or place of worship. No establishment that sells alcohol or allows gaming will be allowed to sell marijuana – nor would gas stations, convenience stores, grocery stores, or nightclubs. Question 7 doesn't put marijuana in the local 7-11 – in fact, it specifically forbids it.

And once we regulate marijuana, we can tax it. Half of the tax revenue generated by Question 7 would go to drug education and treatment; the other half would go to the general fund, potentially generating millions of dollars for our most pressing needs – like education and fixing roads.

We believe that after decades of marijuana laws that don't accomplish what they were meant to – yet cause real societal harm by financing violent gangs and drug dealers, destroying the lives of otherwise law-abiding Nevadans, and wasting precious police resources – it's time for a new approach.

Vote YES on Question 7.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT ADVOCATING PASSAGE

Police resources are not being wasted on marijuana arrests. Nevada police made more than 460,000 arrests in the previous three years; only 2% of those were for marijuana.

Despite "safeguards," there are nearly 11 million underage drinkers of alcohol and about 50% of students nationally who purchased cigarettes in a store were not asked to show proof of age.

More children have used alcohol and tobacco – which are illegal for them, than have used marijuana, which is illegal for all persons. Of students nationwide:

74% have used alcohol;

54% have smoked cigarettes; and

38% have smoked marijuana at least once in their lifetime.

Laws prohibiting marijuana send a clear message that smoking pot is dangerous and an activity that society strongly disapproves. Many experts believe legalizing marijuana for adults will likely result in children smoking marijuana as a sign of growing up believing it is a "badge of adulthood," much like alcohol and tobacco are today.

Claims that we should eliminate marijuana laws because people use the drug is like saying we should remove laws for theft because people steal.

Voters should consider the warning from society's experience with alcohol before legalizing another mind-altering drug.

Vote No on Question 7.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT OPPOSING PASSAGE

Nevada law classifies possession of one ounce of marijuana a misdemeanor subject to a ticket and a fine. Therefore, we believe law enforcement and courts are not over-burdened with minor marijuana offenses.

Statements regarding the number of persons charged with a marijuana offense are misleading because they do not differentiate between a person who gets a ticket for a small amount of marijuana and a trafficker with several tons.

We believe laws prohibiting marijuana sends the message to our youth that it is a dangerous drug. Legalization of marijuana for adults will increase use by minors.

When Alaska permitted the private use of marijuana, use among children rose rapidly reaching twice the national average.

A Canadian study found that the country's liberal marijuana policies have resulted in Canadian youth topping all other nations for frequent use of marijuana. The lead researcher attributes the increased use to affordability, availability and acceptability.

After marijuana became legal and sold in smoke shops in the Netherlands, consumption nearly tripled among 18 to 20 year olds.

The Las Vegas Metropolitan Police Managers Supervisors Association, the Las Vegas Police Protective Association Metro and the Nevada Sheriffs' and Chiefs' Association, believe criminals profiting from illegal drug sales won't be out of business, they will likely increase efforts to expand the number of underage users.

Nationwide, Marijuana was involved in more than 215,000 emergency department visits impacting an already burdened emergency care system.

Smoking a marijuana cigarette deposits about three to five times more tar into the lungs than one filtered cigarette.

Smoking three to four joints per day causes as much harm to the respiratory system as smoking a full pack of cigarettes a day.

Marijuana smoke contains 50 to 70 percent more carcinogenic hydrocarbons than tobacco smoke.

Subject to certain exceptions, doctors, teachers, bus drivers, police, firefighters, and others over the age of 21 would be "exempt from arrest, civil penalty" and CANNOT face "discipline by any state or local licensing board" for "possession, transfer or use of one ounce or less of marijuana" if Question 7 passes.

Marijuana users have 55% more industrial accidents than non-users and have been shown to have a 78% increase in absenteeism over non-users.

Workers who tested positive for marijuana use had disciplinary problems at work 64% more often than workers who test negative for marijuana.

Accident records from one study showed that up to 12% of nonfatally injured drivers and up to 16% of fatally injured drivers had marijuana in their bloodstream.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT OPPOSING PASSAGE

Many of the opposition's statistics share one theme: Marijuana is a "dangerous" substance. In reality, it's safer than alcohol. It appears no fatal overdoses from marijuana have ever been recorded, yet alcohol overdoses kill nearly 20,000 Americans annually.

Over twice as many Nevada teens have used marijuana under prohibition as have Dutch teenagers. Teen use has declined or stabilized in every medical marijuana state, despite opponents' claims these laws would send the wrong message to children. Question 7 doubles the maximum penalty to anyone who gives or sells marijuana to a minor and establishes a "We Card" program. Drug dealers don't card.

Question 7 wouldn't allow doctors, police, or anyone to work under the influence of marijuana. Currently, a surgeon who drinks off-duty isn't sanctioned. Yet a surgeon operating drunk faces dire consequences. Similarly, under Question 7, a surgeon operating under the influence of marijuana would still face severe penalties.

The opposition spotlights marijuana-related driving fatalities, while ignoring that Question 7 doubles the maximum penalty for killing someone while driving under the influence of marijuana, alcohol, or any drug.

Please visit www.RegulateMarijuana.org/sos to get the full story on the opposition's misleading arguments.

Vote YES on Question 7.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

Question 7 proposes to amend the *Nevada Revised Statutes* to legalize and regulate the sale, possession, and use of one ounce or less of marijuana and marijuana paraphernalia within the state of Nevada, by persons at least 21 years of age, under certain circumstances. Question 7 increases the criminal penalties for causing death or substantial bodily harm while driving under the influence of drugs or alcohol. Question 7 also provides for licensure of wholesalers and retailers of marijuana, requires the collection of state and local sales taxes on marijuana sold by retailers, and requires the Nevada Department of Taxation to collect an excise tax on marijuana sold by wholesalers.

FINANCIAL IMPACT OF QUESTION 7

State and local courts and law enforcement agencies may need additional resources or the reallocation of current resources to administer and enforce the provisions of Question 7. It is not possible to estimate the resources that may be required by state and local governments due to the legalization of marijuana under Question 7. The specific financial impact on the state or any of

the various local government entities from changes in law enforcement activities and court proceedings cannot be determined with any degree of certainty.

Question 7 increases the maximum penalty for causing death or substantial bodily harm while driving under the influence from 20 years in state prison and a \$5,000 fine to 40 years in state prison and a \$10,000 fine. Increasing the maximum sentence that can be imposed may increase the cumulative costs associated with incarceration in state correctional facilities. Since it is difficult to predict the number of cases requiring the imposition of a sentence and the length of sentence set by judges, a specific financial impact on the state budget cannot be established.

Question 7 requires the Department of Taxation to develop and implement regulations regarding the licensing of wholesalers and retailers, and collect an annual \$1,000 license fee from these entities. The Department would also be required to collect an excise tax of \$45 on each ounce of marijuana sold by wholesalers licensed under Question 7. The Department would incur costs related to the development and administration of regulations regarding licensing and collection of the excise tax and license fees. This should not have a financial impact upon the state budget, as the provisions of Question 7 allow the Department to retain a portion of the proceeds sufficient to cover the administrative costs incurred by the Department as a result of these requirements.

Revenues generated from the excise tax and license fees, less the administrative costs retained by the Department of Taxation, must be deposited in the State General Fund. Question 7 requires that 50 percent of these funds be distributed to the Health Division of the Department of Human Resources for voluntary drug, alcohol, and tobacco treatment and prevention programs. Additionally, retailers would be required to collect state and local sales taxes on any marijuana sold, resulting in additional sales tax revenue for the State General Fund, local governments and school districts. The level of production and consumption of marijuana that would occur cannot be easily established. Although the taxes collected from the wholesale and retail sales of marijuana could generate additional revenue for state and local governments, including school districts, a specific dollar amount cannot be reasonably estimated.

The fiscal note was prepared by the Legislative Counsel Bureau pursuant to NRS 295.015

FULL TEXT OF THE MEASURE

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

AN ACT relating to marijuana; providing that a person who is 21 years of age or older is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board and state prosecution for the possession, use and transfer of one ounce or less of marijuana and the use and possession of marijuana paraphernalia under certain circumstances; providing that retailers and wholesalers who perform certain acts pertaining to marijuana and marijuana paraphernalia are exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board and state prosecution; providing a penalty for a person who is 18 years of age or older who knowingly furnishes marijuana to a person who is under 18 years of age and at least 3 years his junior; providing a penalty for a minor to falsely represent himself to be 21 years of age in order to obtain marijuana; providing for the regulation of the cultivation, sale, transfer, possession and use of marijuana and marijuana paraphernalia under certain circumstances; providing for the licensing

of retailers and wholesalers of marijuana and establishing fees for such licensing; enacting provisions governing the taxation and sale of marijuana by retailers and wholesalers; increasing the penalty for the offense of operating a vehicle while under the influence of or while having a certain amount of alcohol or a controlled or prohibited substance in the body that results in substantial bodily harm or death; providing penalties; and providing other matters properly relating thereto.

WHEREAS, Approximately 700,000 people are arrested for marijuana offenses in the United States each year, which is more than the entire populations of Las Vegas and Reno combined; and

WHEREAS, Because decades of arresting millions of marijuana users has failed to prevent teenagers—or anyone else—from using marijuana, the State of Nevada should take a new approach by strictly regulating marijuana with the goal of reducing teenage access to marijuana; and

WHEREAS, Rather than spending millions of taxpayer dollars arresting marijuana users, the State of Nevada should instead generate millions of dollars by taxing and regulating marijuana, and earmark part of these revenues to prevent and treat the abuse of marijuana, tobacco, alcohol, and other drugs; and

WHEREAS, By allowing adults aged 21 and older to use marijuana legally in the privacy of the home, police will be able to spend more time preventing and investigating serious crimes like

murder, rape, assault, robbery, burglary and driving under the influence of alcohol and other drugs; and

WHEREAS, Patients with cancer, AIDS, multiple sclerosis, and other serious illnesses should be able to obtain medical marijuana from legally regulated establishments instead of illegal drug dealers; and

WHEREAS, If certain portions of this initiative are found to be inoperable or unconstitutional, it is the intent of the people of the State of Nevada to implement as much of the initiative as possible; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Title 40 of NRS is hereby amended by adding thereto a new chapter consisting of the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Marijuana” means a plant of the genus Cannabis or its product, but the term does not include hashish.*

Sec. 4. *“Marijuana paraphernalia” means objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana into the human body.*

Sec. 5. *“Retailer” means an establishment licensed pursuant to sections 15 to 28, inclusive, of this act to purchase marijuana from a wholesaler and to sell marijuana and marijuana paraphernalia to the customer.*

Sec. 6. "State prosecution" means prosecution initiated or maintained by the State of Nevada or an agency or political subdivision of the State of Nevada.

Sec. 7. "Wholesaler" means an establishment licensed pursuant to sections 15 to 28, inclusive, of this act to cultivate, prepare, package and sell marijuana to a retailer or another wholesaler, but not to sell marijuana to the customer or general public.

Sec. 8. Except as otherwise provided in this chapter:

1. A person who is 21 years of age or older and who acts in compliance with the provisions of this chapter is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board and state prosecution for the following acts:

(a) Possession or use of one ounce or less of marijuana.

(b) Possession or use of marijuana paraphernalia.

(c) Transfer of one ounce or less of marijuana without remuneration to a person who is 21 years of age or older.

(d) Aiding and abetting another person who is 21 years of age or older in the possession or use of one ounce or less of marijuana.

(e) Aiding and abetting another person who is 21 years of age or older in the possession or use of marijuana paraphernalia.

(f) Any combination of the acts described in paragraphs (a) to (e), inclusive.

2. A retailer or any person who is 21 years of age or older and acting in his capacity as an owner, employee or agent of a retailer who acts in compliance with the provisions of this chapter is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board and state prosecution for the following acts:

(a) Possession of marijuana.

(b) Possession of marijuana paraphernalia.

(c) Purchasing or selling marijuana or marijuana paraphernalia.

(d) Aiding and abetting any person who is 21 years of age or older in the possession or use of one ounce or less of marijuana.

(e) Aiding and abetting another person who is 21 years of age or older in the possession or use of marijuana paraphernalia.

(f) Any combination of the acts described in paragraphs (a) to (e), inclusive.

3. A wholesaler or any person who is 21 years of age or older and acting in his capacity as an owner, employee or agent of a wholesaler who acts in compliance with the provisions of this chapter is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board and state prosecution for the following acts:

(a) Cultivating, packing, processing, transporting or manufacturing marijuana.

(b) Possession of marijuana.

(c) Selling marijuana to a retailer or a wholesaler.

(d) Purchasing marijuana from a wholesaler.

(e) Aiding and abetting any person who is 21 years of age or older in the possession or use of one ounce or less of marijuana.

(f) Any combination of the acts described in paragraphs (a) to (e), inclusive.

4. Except as otherwise provided in subsection 5, in a prosecution for selling, giving or otherwise furnishing marijuana or marijuana paraphernalia to any person who is under 21 years of age, it is a complete defense if:

(a) The person who sold, gave or otherwise furnished marijuana or marijuana paraphernalia to a person who is under 21 years of age was a retailer or was acting in his capacity as an owner, employee or agent of a retailer at the time the marijuana or marijuana paraphernalia was sold, given or otherwise furnished to the person; and

(b) Immediately before selling, giving or otherwise furnishing marijuana or marijuana paraphernalia to a person who is under 21 years of age, the person who sold, gave or otherwise furnished the marijuana or marijuana paraphernalia was shown a document which appeared to be issued by an agency of a federal, state or local government and which indicated that the person to whom the marijuana or marijuana paraphernalia was sold, given or otherwise furnished was 21 years of age or older at the time the marijuana or marijuana paraphernalia was sold, given or otherwise furnished to the person.

5. The complete defense set forth in subsection 4 does not apply if:

(a) The document which was shown to the person who sold, gave or otherwise furnished the marijuana or marijuana paraphernalia was counterfeit, forged or altered, or was issued to a person other than the person to whom the marijuana or marijuana paraphernalia was sold, given or otherwise furnished; and

(b) Under the circumstances, a reasonable person would have known or suspected that the document was counterfeit, forged or altered, or was issued to a person other than the person to whom the marijuana or marijuana paraphernalia was sold, given or otherwise furnished.

Sec. 9. The provisions of this chapter do not authorize, and no person is exempt from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board and state prosecution for, nor may he establish an affirmative defense to charges arising from, any of the following acts:

1. Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

2. Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

3. Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

4. Possessing marijuana if the person is a prisoner. As used in this subsection, "prisoner" has the meaning ascribed to it in NRS 208.085.

5. Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the use of marijuana in:

(a) Any public place or in any place open to the public or exposed to public view; or

(b) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(c) Any public school or private school.

6. Possessing, using, transferring, selling or cultivating marijuana or committing any other act involving marijuana in violation of the provisions of this chapter.

Sec. 10. The provisions of this chapter do not require employers to accommodate the use, possession or being under the influence of marijuana in a place of employment.

Sec. 11. Unless a greater penalty is provided pursuant to specific statute, a person who is 18 years of age or older and who knowingly sells, gives or otherwise furnishes marijuana to a person who is under 18 years of age and at least 3 years his junior is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not

less than 1 year and a maximum term of not more than 8 years, and may be further punished by a fine of not more than \$10,000.

Sec. 12. Any minor who falsely represents himself to be 21 years of age or older in order to obtain any marijuana or marijuana paraphernalia pursuant to this chapter is guilty of a misdemeanor.

Sec. 13. NRS 453.005 is hereby amended to read as follows:

453.005 The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of chapter 453A of NRS [.] or sections 2 to 12, inclusive, of this act.

Sec. 14. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 15 to 28, inclusive, of this act.

Sec. 15. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 16, 17 and 18 of this act have the meanings ascribed to them in those sections.

Sec. 16. "Marijuana" has the meaning ascribed to it in section 3 of this act.

Sec. 17. "Retailer" has the meaning ascribed to it in section 5 of this act.

Sec. 18. "Wholesaler" has the meaning ascribed to it in section 7 of this act.

Sec. 19. Except as otherwise provided in section 21 of this act:

1. An establishment may apply, in accordance with the provisions of this chapter and the regulations adopted pursuant thereto, for the issuance of a license authorizing the establishment to act as a retailer pursuant to the provisions of this chapter.

2. The Department shall issue a license authorizing an establishment to act as a retailer pursuant to the provisions of this chapter if the Department determines that the applicant satisfies the requirements set forth in this chapter and the regulations adopted pursuant thereto. The Department shall approve each qualified applicant within 90 days of its submission of its application.

3. The fee for the initial issuance of a license as a retailer is \$1,000. A license as a retailer must be renewed annually. The fee for renewal of a licenses as a retailer is \$1,000.

4. If the Department fails to issue a retailer license to a qualified applicant within 90 days of its submission of its application and the applicant is licensed as a retail dealer of tobacco pursuant to chapter 370, the licensed retail dealer of tobacco shall be deemed to be a retailer.

5. As used in this section, "qualified applicant" means any establishment that:

(a) Complies with any regulations adopted pursuant to section 28 of this act concerning application for and issuance of a license; and

(b) Satisfies the requirements set forth in this chapter and the regulations adopted pursuant thereto.

Sec. 20. Except as otherwise provided in section 21 of this act:

1. An establishment may apply, in accordance with the provisions of this chapter and the regulations adopted pursuant thereto, for the issuance of a license authorizing the establishment to act as a wholesaler pursuant to the provisions of this chapter.

2. The Department shall issue a license authorizing an establishment to act as a wholesaler pursuant to the provisions of this chapter if the Department determines that the applicant satisfies the requirements set forth in this chapter and the regulations adopted pursuant thereto. The Department shall approve each qualified applicant within 90 days of its submission of its application.

3. The fee for the initial issuance of a license as a wholesaler is \$1,000. A license as a wholesaler must be renewed annually. The fee for renewal of a license as a wholesaler is \$1,000.

4. If the Department fails to issue a wholesaler license to a qualified applicant within 90 days of its submission of its application and the applicant is licensed as a wholesale dealer of tobacco pursuant to chapter 370, the licensed wholesale dealer of tobacco shall be deemed to be a wholesaler.

5. As used in this section, "qualified applicant" means any establishment that:

(a) Complies with any regulations adopted pursuant to section 28 of this act concerning application for and issuance of a license; and

(b) Satisfies the requirements set forth in this chapter and the regulations adopted pursuant thereto.

Sec. 21. 1. The Department may not issue a license as a retailer or wholesaler to an establishment:

(a) That is located within 500 feet of the property line of a public school, private school or structure used primarily for religious services or worship;

(b) That is engaged in business as a gas station, convenience store, grocery store, night club, dance hall or licensed gaming establishment; or

(c) That sells intoxicating liquor for consumption on or off the premises.

2. As used in this section:

(a) "Licensed gaming establishment" has the meaning ascribed to it in NRS 463.0169.

(b) "Private school" has the meaning ascribed to it in NRS 394.103.

(c) "Public school" has the meaning ascribed to it in NRS 385.007.

Sec. 22. 1. A retailer shall not:

(a) Sell, give or otherwise furnish marijuana or marijuana paraphernalia to any person who is under 21 years of age.

(b) Allow any person who is under 21 years of age to be present on the premises of its establishment.

(c) Knowingly sell, give or otherwise furnish an amount of marijuana to a person that would cause that person to possess more than one ounce of marijuana.

(d) Purchase marijuana from any person other than a wholesaler.

(e) Purchase or sell, give or otherwise furnish marijuana in any manner other than as authorized pursuant to the provisions of this chapter and any regulations adopted pursuant thereto.

(f) Sell marijuana that has been adulterated or contaminated by any other substance including, without limitation, any controlled substance.

2. In addition to any other penalty provided pursuant to specific statute, a person who violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.

3. Except as otherwise provided in this subsection, in a prosecution for a violation of paragraph (b) of subsection 1, it is a complete defense that immediately before allowing the

person who is under 21 years of age onto the premises, the person who allowed the person onto the premises was shown a document which appeared to be issued by an agency of a federal, state or local government and which indicated that the person who was allowed onto the premises of the retailer was 21 years of age or older at the time the person was allowed onto the premises of the retailer. The complete defense set forth in this subsection does not apply if:

(a) The document which was shown to the person who allowed the person who is under 21 years of age onto the premises of the retailer was counterfeit, forged or altered, or was issued to a person other than the person who was allowed onto the premises of the retailer; and

(b) Under the circumstances, a reasonable person would have known or suspected that the document was counterfeit, forged or altered, or was issued to a person other than the person who was allowed onto the premises.

4. As used in this section, "marijuana paraphernalia" has the meaning ascribed to it in section 4 of this act.

Sec. 23. 1. A wholesaler shall not:

(a) Allow any person who is under 21 years of age to be present on the premises of its establishment.

(b) Sell, give or otherwise furnish marijuana to any person other than a retailer or wholesaler.

(c) Purchase marijuana from any person other than a wholesaler.

(d) Purchase or sell, give or otherwise furnish marijuana in any manner other than as authorized pursuant to the provisions of this chapter and any regulations adopted pursuant thereto.

(e) Sell marijuana that has been adulterated or contaminated by any other substance, including, without limitation, any controlled substance.

2. In addition to any other penalty provided pursuant to specific statute, a person who violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.

3. Except as otherwise provided in this subsection, in a prosecution for a violation of paragraph (a) of subsection 1, it is a complete defense that immediately before allowing the person who is under 21 years of age onto the premises, the person who allowed the person onto the premises was shown a document which appeared to be issued by an agency of a federal, state or local government and which indicated that the person who was allowed onto the premises of the wholesaler was 21 years of age or older at the time the person was allowed onto the premises of the wholesaler. The complete defense set forth in this subsection does not apply if:

(a) The document which was shown to the person who allowed the person who is under 21 years of age onto the premises of the wholesaler was counterfeit, forged or altered, or was issued to a person other than the person who was allowed onto the premises of the wholesaler; and

(b) Under the circumstances, a reasonable person would have known or suspected that the document was counterfeit, forged or altered, or was issued to a person other than the person who was allowed onto the premises.

Sec. 24. 1. An excise tax is hereby levied upon wholesalers and must be collected respecting all marijuana sold to retailers at the rate of \$45 per ounce or proportionate part thereof.

2. For the purpose of determining the tax for the retail sale of marijuana pursuant to this chapter, the tax for the sale of marijuana must be the same as the taxes for the retail sale of other products generally.

Sec. 25. The Department shall apportion the money remitted to the Department from license fees and taxes collected pursuant to this chapter in the following manner:

1. The Department shall retain sufficient money to defray the entire cost of administration of this chapter.

2. After retaining sufficient money to defray the entire cost of administration of this chapter pursuant to subsection 1, the Department shall remit the remaining money to the State General Fund, 50 percent of which must be distributed to the Health Division of the Department of Human Resources for use in voluntary programs for the prevention or treatment of the abuse of alcohol, tobacco or controlled substances.

Sec. 26. 1. A person shall not advertise the sale of marijuana through television, radio, newspapers, magazines, billboards, the Internet or any other written or oral commercial media.

2. As used in this section, "Internet" has the meaning ascribed to it in NRS 453.3625.

Sec. 27. The provisions of this chapter do not authorize any person to transport marijuana into or outside the State of Nevada unless federal law permits such transport.

Sec. 28. 1. The Department is responsible for administering and carrying out the provisions of this chapter.

2. The Department may adopt regulations that are necessary and convenient to administer and carry out the provisions of this chapter.

3. The Department shall adopt regulations that:

(a) Set forth the procedures for the application for and issuance of licenses to retailers and wholesalers, including, without limitation, the content and form for an application to be licensed as a retailer or wholesaler.

(b) Specify the procedures for the collection of taxes levied pursuant to this chapter.

(c) Specify the content, form and timing of reports which must be submitted to the Department by a retailer or wholesaler, including, without limitation, the requirement that information on sales, expenses, inventory and taxes collected must be reported to the Department.

(d) Establish the requirements concerning the records that must be created and maintained by a retailer or wholesaler.

(e) Specify the requirements for the packaging and labeling of marijuana.

(f) Require the posting or display of the license of a retailer or wholesaler.

(g) Establish the procedures for inspecting and auditing the records or premises of a retailer or wholesaler.

(h) Set forth the procedures for hearings to contest the denial of an application for a license as a retailer or wholesaler.

(i) Set forth the procedures for hearings to contest the suspension or revocation of a license as a retailer or wholesaler for a violation of any provision of this chapter, the regulations adopted pursuant to this chapter or any provision of the Nevada Revised Statutes.

Sec. 29. NRS 372A.060 is hereby amended to read as follows:

372A.060 1. This chapter does not apply to [any]:

- (a) Any person who is registered or exempt from registration pursuant to NRS 453.226 [or any];
- (b) Any retailer or wholesaler or any owner, employee or agent acting on behalf of a retailer or wholesaler; or
- (c) Any other person who is lawfully in possession of a controlled substance.

2. Compliance with this chapter does not immunize a person from criminal prosecution for the violation of any other provision of law.

3. As used in this section:

- (a) "Retailer" has the meaning ascribed to it in section 5 of this act.
- (b) "Wholesaler" has the meaning ascribed to it in section 7 of this act.

Sec. 30. NRS 484.3795 is hereby amended to read as follows:

484.3795 1. A person who:

- (a) Is under the influence of intoxicating liquor;
- (b) Has a concentration of alcohol of 0.08 or more in his blood or breath;
- (c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his blood or breath;
- (d) Is under the influence of a controlled substance or is under the combined influence of intoxicating liquor and a controlled substance;
- (e) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle; or
- (f) Has a prohibited substance in his blood or urine in an amount that is equal to or greater than the amount set forth in subsection 3 of NRS 484.379, and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, a person other than himself, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than [20] 40 years and must be further punished by a fine of not less than \$2,000 nor more than [\$5,000.] \$10,000. A person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. A prosecuting attorney shall not dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial. A sentence imposed pursuant to subsection 1 may not be suspended nor may probation be granted.

3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood or breath was tested, to cause him to have a concentration of alcohol of 0.08 or more in his blood or breath. A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

4. If the defendant was transporting a person who is less than 15 years of age in the motor vehicle at the time of the violation, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

Sec. 31. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 32. 1. The Department of Taxation shall adopt regulations to implement this act and shall begin processing applications for retailers and wholesalers within 180 days of the effective date of this act.

2. If the Department fails to issue such regulations within 180 days of the effective date of this act, any establishment that is licensed as a retail dealer of tobacco pursuant to chapter 370 shall be deemed to be a retailer if the establishment that is licensed as a retail dealer of tobacco:

- (a) Notifies the Department in writing of its readiness to apply;
- (b) Pays the Department the \$1,000 license fee; and
- (c) Satisfies the requirements set forth in sections 15 to 28, inclusive, of this act.

3. If the Department fails to issue such regulations within 180 days of the effective date of this act, any establishment that is licensed as a wholesale dealer of tobacco pursuant to chapter 370 shall be deemed to be a licensed wholesaler if the establishment that is licensed as a wholesale dealer of tobacco:

- (a) Notifies the Department in writing of its readiness to apply;
- (b) Pays the Department the \$1,000 license fee; and
- (c) Satisfies the requirements set forth in sections 15 to 28, inclusive, of this act.

4. If the Department fails to adopt regulations to implement this act and begin processing applications for retailers and wholesalers within 180 days of the effective date of this act, a retailer, wholesaler or person who desires to purchase marijuana pursuant to this act may commence an action in a court of competent jurisdiction to compel the Department to perform the actions mandated pursuant to the provisions of this act.

5. As used in this section:

- (a) "Retailer" has the meaning ascribed to it in section 5 of this act.
- (b) "Wholesaler" has the meaning ascribed to it in section 7 of this act.

QUESTION NO. 8

Amendment to the Sales and Use Tax Act of 1955
Assembly Bill 554 of the 73rd Session

CONDENSATION (Ballot Question)

Shall the Sales and Use Tax Act of 1955 be amended to exempt from the tax the value of any used vehicle taken in trade on the purchase of another vehicle and the value of farm machinery and equipment?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from both the state and local portions of the tax: (1) the value of any used vehicle taken in trade on the purchase of another vehicle and (2) the value of farm machinery and equipment. The proposals set forth in the question may not be voted upon individually.

Currently, the exemption for the value of any used vehicle taken in trade on the purchase of another vehicle listed in the above explanation applies only to the portion of the Sales and Use Tax distributed at the local level (currently between 4.5 and 5.75 percent), but does not apply to the portion distributed at the state level (2 percent).

There is no current exemption for farm machinery and equipment from the local portion or the state portion of the Sales and Use Tax. If this proposal to provide the exemption from the state portion is approved, the Legislature has amended the Local School Support Tax Law and the City-County Relief Tax Law so that this exemption will also apply to the sales and use tax distributed at the local level.

A "Yes" vote approves both proposals set forth in the question. The exemptions will apply to both the local portion and the state portion of the Sales and Use Tax.

A "No" vote disapproves both proposals set forth in the question. The exemptions will not apply to either the local portion or the state portion of the Sales and Use Tax.

ARGUMENTS FOR PASSAGE

Many states, including Nevada and all of its surrounding states, provide an allowance for the trade-in value of a vehicle when determining the net sales price subject to their Sales and Use Tax. The exemption for the value of a used vehicle taken in trade on the purchase of another vehicle from the local portion of the Sales and Use Tax has provided millions of dollars of tax savings for the consumers in Nevada by reducing the sales tax on the purchase of a vehicle involving a trade-in. If this proposal is not approved, the exemption from the Sales and Use Tax will be entirely eliminated. Passage of this proposal will provide a complete exemption of the

trade-in value of a vehicle from the Sales and Use Tax. For example, if this proposal is not approved, a consumer trading-in a vehicle with a value of \$15,000 will pay additional sales taxes of approximately \$1,000, depending upon the county where the trade-in occurs.

Before January 1, 2006, the sales and use tax rate on farm machinery and equipment was only 2 percent. Now the tax rate is between 6.5 and 7.75 percent. As a result, many farmers in Nevada purchase farm machinery and equipment in certain neighboring states because those states do not impose a sales and use tax on farm machinery and equipment. The Sales and Use Tax places Nevada's farm equipment dealers at a disadvantage when competing with out-of-state dealers. The purchase of farm machinery and equipment from surrounding states may contribute to a loss of economic activity in Nevada's rural agricultural communities through reduced sales, resulting in lost jobs and wages. The exemption of farm machinery and equipment from the Sales and Use Tax will allow Nevada's farm equipment dealers to compete fairly with equipment dealers in surrounding states. The exemptions will help keep farm machinery and equipment purchases in the state and maintain the economic viability of Nevada's rural agricultural communities.

ARGUMENTS AGAINST PASSAGE

The policy of providing exemptions for specific goods or transactions only provides the benefit of reduced taxes to individuals participating in those activities. The exemption for the value of a used vehicle taken in trade on the purchase of another vehicle only provides a benefit to those individuals who trade in a used vehicle when purchasing another vehicle. Individuals who do not have a vehicle to trade in will receive no benefit from the exemption. The exemption for farm machinery and equipment only provides a benefit to those individuals who sell or purchase such machinery and equipment.

Providing exemptions from the Sales and Use Tax reduces the amount of revenue collected per sale by state and local government, including school districts. If the reduction in revenues from these exemptions becomes significant to state government or local governments, the need to replace these lost revenues from other sources may result in increased taxes.

If this proposal is not approved, the current exemption for the value of a used vehicle taken in trade on the purchase of another vehicle will be eliminated from the local portion of the Sales and Use Tax. Eliminating this exemption increases the amount of revenue collected per sale by local governments, including school districts.

FISCAL NOTE

FINANCIAL IMPACT - YES

IMPACT ON REVENUE COLLECTED BY STATE AND LOCAL GOVERNMENTS

Regardless of the outcome of this proposal, government revenues will be impacted in some manner. According to data provided by the Department of Taxation from Fiscal Year 2005, if the proposal is approved, state government revenues will likely be reduced in a single fiscal year by approximately \$19.6 million and revenues distributed to local governments, including school districts, will likely be reduced by \$1.6 million. Conversely, if the proposal is not approved,

revenues distributed to local governments, including school districts, will likely be increased by approximately \$51.0 million in a single fiscal year.

The table below indicates the increase or decrease in revenue that could result for a single fiscal year from each of the proposals described in the above explanation:

Subject	State Revenue <u>Loss</u> if Question is <u>Approved</u>	Local Revenue <u>Loss</u> if Question is <u>Approved</u>	Local Revenue <u>Gain</u> if Question is <u>Not Approved</u>
Used Vehicle Trade-In Allowance	\$18.8 Million		\$51.0 Million
Farm Machinery and Equipment	\$0.8 Million	\$1.6 Million	
TOTAL FISCAL YEAR IMPACT	\$19.6 Million	\$1.6 Million	\$51.0 Million

In addition, the Department of Motor Vehicles retains a commission of 2 percent on the Sales and Use Tax collected by the Department when a vehicle is registered in Nevada and the required state and local Sales and Use Tax has not been paid prior to registration. According to data provided by the Department of Motor Vehicles from Fiscal Year 2005, if the proposal is approved, the amount of 2 percent commissions on Sales and Use Tax paid directly to the Department from out-of-state dealer sales with a vehicle trade-in allowance will likely be reduced by approximately \$22,000 for a single fiscal year. If the measure is not approved, the amount of 2 percent commissions retained by the Department of Motor Vehicles will increase by approximately \$41,000 for a single fiscal year.

IMPACT ON AN INDIVIDUAL TAXPAYER

The impact of the question on the average voter would depend on the extent to which the voter participates in transactions affected by the proposal. An explanation of the manner in which each proposal could impact voters is set forth below:

USED VEHICLE TAKEN IN TRADE ON THE PURCHASE OF ANOTHER VEHICLE

Currently, a person who applies the trade-in value of his vehicle to the purchase of a new or used vehicle is required to pay the portion of the Sales and Use Tax distributed at the state level (2 percent) on the entire sales price of the new or used car without a deduction for the trade-in allowance. However, this person is authorized to deduct from the sales price the trade-in allowance for the purposes of the portion of the Sales and Use Tax distributed at the local level (currently between 4.5 to 5.75 percent depending on the county).

If the question is approved, the purchaser of a new or used car will be able to deduct the trade-in allowance from the sales price of the new or used car for the purposes of both the portion of the Sales and Use Tax distributed at the state level and the portion distributed at the local level. In effect, the amount of tax paid will be reduced by 2 percent of the trade-in value of the used vehicle if the question is approved.

If the question is not approved, the purchaser of a new or used car will be required to pay the portion of the Sales and Use Tax distributed at the state level and the portion distributed at the local level on the entire sales price of the new or used car without any deduction for the trade-in allowance. In effect, the amount of tax paid will increase by 4.5 to 5.75 percent of the trade-in value of the used vehicle if the question is not approved.

FARM MACHINERY AND EQUIPMENT

Currently, the gross receipts from the sale or the use of farm machinery and equipment are subject to both the state portion (2 percent) and the local portion (4.5 to 5.75 percent) of the Sales and Use Tax.

If the question is approved, the gross receipts from the sale or the use of farm machinery and equipment would be exempt from both the state portion and the local portion of the Sales and Use Tax. In effect, the tax would be eliminated and the amount of tax paid for farm machinery and equipment will be reduced by 6.5 to 7.75 percent.

NOTE TO VOTERS

Sales and Use Tax

Nevada's statewide sales tax rate consists of three separate parts levied at different rates on the sale and use of tangible personal property in the State. The current combined statewide rate that applies to each county is 6.50 percent. In addition to these three parts, each county also may impose additional taxes subject to the approval of voters or governing body in that county. These additional taxes have, in ten counties, increased the rate of sales tax above the 6.50 percent rate imposed statewide.

The tax includes:

- | | | |
|----|--|--------------|
| 1. | The State Sales and Use Tax | 2.00 percent |
| 2. | The Local School Support Tax | 2.25 percent |
| 3. | The City-County Relief Tax | 2.25 percent |
| 4. | Optional Local Taxes – currently not more than | 1.25 percent |

The State Sales and Use Tax may be amended or repealed only with the approval of the voters. The Local School Support Tax and the City-County Relief Tax may be amended or repealed by the Legislature without the approval of voters.

FULL TEXT OF THE MEASURE

Assembly Bill No. 554—Committee on Commerce and Labor

CHAPTER.....

AN ACT relating to taxation; clarifying the definition of "employer" for the purpose of the tax on business; revising the provisions governing the applicability and administration of the tax on live entertainment; clarifying the provisions governing the administration of the use taxes on certain personal property acquired free of charge at public events; expanding the

exemptions from the taxes on the transfer of real property; revising the provisions governing the application of sales and use taxes to retail sales of vehicles for which used vehicles are taken in trade; revising the provisions governing the application of sales and use taxes to retail sales of farm machinery and equipment; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption from the tax for sales of vehicles for which used vehicles are taken in trade and for farm machinery and equipment; providing exemptions from certain analogous taxes; and providing other matters properly relating thereto.

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

Section 1. NRS 363B.030 is hereby amended to read as follows:

363B.030 "Employer" means any employer who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter, except a financial institution, an Indian tribe, a nonprofit organization, [or] a political subdivision [.] *or any person who does not supply a product or service, but who only consumes a service.*

For the purposes of this section:

1. "Financial institution" has the meaning ascribed to it in NRS 363A.050.
2. "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.
3. "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax exempt organization pursuant to 26 U.S.C. § 501(c).
4. "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

Sec. 2. Chapter 368A of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. *"Casual assemblage" includes, without limitation:*

1. *Participants in conventions, business meetings or tournaments governed by chapter 463 of NRS, and their guests; or*
2. *Persons celebrating a friend's or family member's wedding, birthday, anniversary, graduation, religious ceremony or similar occasion that is generally recognized as customary for celebration.*

Sec. 4. *"Shopping mall" includes any area or premises where multiple vendors assemble for the primary purpose of selling goods or services, regardless of whether consideration is collected for the right or privilege of entering that area or those premises.*

Sec. 5. *"Trade show" means an event of limited duration primarily attended by members of a particular trade or industry for the purpose of exhibiting their merchandise or services or*

discussing matters of interest to members of that trade or industry.

Sec. 6. NRS 368A.010 is hereby amended to read as follows:

368A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, *and sections 3, 4 and 5 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 368A.020 is hereby amended to read as follows:

368A.020 "Admission charge" means the total amount, expressed in terms of money, of consideration paid for the right or privilege to have access to a facility where live entertainment is provided. *The term includes, without limitation, an entertainment fee, a cover charge, a table reservation fee, or a required minimum purchase of food, refreshments or merchandise.*

Sec. 8. NRS 368A.060 is hereby amended to read as follows:

368A.060 1. "Facility" means:

[1.] (a) Any area or premises where live entertainment is provided and for which consideration is collected for the right or privilege of entering that area or those premises if the live entertainment is provided at:

[(a)] (1) An establishment that is not a licensed gaming establishment; or

[(b)] (2) A licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

[2.] (b) Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

2. "Facility" encompasses, if live entertainment is provided at a licensed gaming establishment that is licensed for:

(a) *Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or*

(b) *At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.*

Sec. 9. NRS 368A.090 is hereby amended to read as follows:

368A.090 1. "Live entertainment" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

2. *The term:*

(a) *Includes, without limitation, any one or more of the*

following activities:

- (1) Music or vocals provided by one or more professional or amateur musicians or vocalists;*
- (2) Dancing performed by one or more professional or amateur dancers or performers;*
- (3) Acting or drama provided by one or more professional or amateur actors or players;*
- (4) Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;*
- (5) Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);*
- (6) Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;*
- (7) Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;*
- (8) A show or production involving any combination of the activities described in subparagraphs (1) to (7), inclusive; and*
- (9) A performance involving one or more of the activities described in this paragraph by a disc jockey who presents recorded music. For the purposes of this subsection, a disc jockey shall not be deemed to have engaged in a performance involving one or more of the activities described in this paragraph if the disc jockey generally limits his interaction with patrons to introducing the recorded music, making announcements of general interest to patrons, and explaining, encouraging or directing participatory activities between patrons.*

(b) Excludes, without limitation, any one or more of the following activities:

- (1) Instrumental or vocal music, which may or may not be supplemented with commentary by the musicians, in a restaurant, lounge or similar area if such music does not routinely rise to the volume that interferes with casual conversation and if such music would not generally cause patrons to watch as well as listen;*
- (2) Occasional performances by employees whose primary job function is that of preparing, selling or serving food, refreshments or beverages to patrons, if such performances are not advertised as entertainment to the public;*
- (3) Performances by performers of any type if the performance occurs in a licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, as long as the performers stroll continuously throughout the facility;*
- (4) Performances in areas other than in nightclubs, lounges, restaurants or showrooms, if the performances occur in a*

licensed gaming establishment other than a licensed gaming establishment that is licensed for less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, which enhance the theme of the establishment or attract patrons to the areas of the performances, as long as any seating provided in the immediate area of the performers is limited to seating at slot machines or gaming tables;

(5) Television, radio, closed circuit or Internet broadcasts of live entertainment;

(6) Entertainment provided by a patron or patrons, including, without limitation, singing by patrons or dancing by or between patrons;

(7) Animal behaviors induced by animal trainers or caretakers primarily for the purpose of education and scientific research; and

(8) An occasional activity, including, without limitation, dancing, that:

(I) Does not constitute a performance;

(II) Is not advertised as entertainment to the public;

(III) Primarily serves to provide ambience to the facility; and

(IV) Is conducted by an employee whose primary job function is not that of an entertainer.

Sec. 10. NRS 368A.200 is hereby amended to read as follows:

368A.200 1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.

(b) At least 7,500, the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for gratuities directly or indirectly remitted to persons employed at a facility where live entertainment is provided or for service charges, including those imposed in connection with the use of credit cards or debit cards, which are collected and retained by persons other than the taxpayer are not taxable pursuant to this section.

3. A business entity that collects any amount that is taxable pursuant to subsection 1 is liable for the tax imposed, but is entitled to collect reimbursement from any person paying that amount.

4. Any ticket for live entertainment must state whether the tax imposed by this section is included in the price of the ticket. If the ticket does not include such a statement, the taxpayer shall pay the tax based on the face amount of the ticket.

5. The tax imposed by subsection 1 does not apply to:

- (a) Live entertainment that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.
- (b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c) [.] *or a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS.*
- (c) Any boxing contest or exhibition governed by the provisions of chapter 467 of NRS.
- (d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum seating capacity of less than [300.] *200.*
- (e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility in which the live entertainment is provided has a maximum seating capacity of less than [300.] *200.*
- (f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.
- (g) Live entertainment that is provided at a trade show.
- (h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.
- (i) Live entertainment that is provided at a licensed gaming establishment at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.
- (j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.
- (k) Live entertainment that is incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction. For the purposes of this paragraph, live entertainment shall be deemed to be incidental to an amusement ride, a motion simulator or a similar digital, electronic, mechanical or electromechanical attraction if the live entertainment is:*
 - (1) Not the predominant element of the attraction; and*
 - (2) Not the primary purpose for which the public rides, attends or otherwise participates in the attraction.*
- (l) Live entertainment that is provided to the public in an outdoor area, without any requirements for the payment of an admission charge or the purchase of any food, refreshments or merchandise.*
- (m) An outdoor concert, unless the concert is provided on the*

premises of a licensed gaming establishment.

(n) Beginning July 1, 2007, race events scheduled at a race track in this State as a part of the National Association for Stock Car Auto Racing Nextel Cup Series, or its successor racing series, and all races associated therewith.

(o) Live entertainment provided in a restaurant which is incidental to any other activities conducted in the restaurant or which only serves as ambience so long as there is no charge to the patrons for that entertainment.

6. The Nevada Gaming Commission may adopt regulations establishing a procedure whereby a taxpayer that is a licensed gaming establishment may request an exemption from the tax pursuant to paragraph (o) of subsection 5. The regulations must require the taxpayer to seek an administrative ruling from the Chairman of the Board, provide a procedure for appealing that ruling to the Nevada Gaming Commission and further describe the forms of incidental or ambient entertainment exempted pursuant to that paragraph.

7. As used in this section, "maximum seating capacity" means, in the following order of priority:

- (a) The maximum occupancy of the facility in which live entertainment is provided, as determined by the State Fire Marshal or the local governmental agency that has the authority to determine the maximum occupancy of the facility;
- (b) If such a maximum occupancy has not been determined, the maximum occupancy of the facility designated in any permit required to be obtained in order to provide the live entertainment; or
- (c) If such a permit does not designate the maximum occupancy of the facility, the actual seating capacity of the facility in which the live entertainment is provided.

Sec. 11. NRS 368A.220 is hereby amended to read as follows:

368A.220 1. Except as otherwise provided in this section:

- (a) Each taxpayer who is a licensed gaming establishment shall file with the Board, on or before the 24th day of each month, a report showing the amount of all taxable receipts for the preceding month [.] *or the month in which the taxable events occurred.* The report must be in a form prescribed by the Board.
- (b) All other taxpayers shall file with the Department, on or before the last day of each month, a report showing the amount of all taxable receipts for the preceding month. The report must be in a form prescribed by the Department.

2. The Board or the Department, if it deems it necessary to ensure payment to or facilitate the collection by the State of the tax imposed by NRS 368A.200, may require reports to be filed not later than 10 days after the end of each calendar quarter.

3. Each report required to be filed by this section must be accompanied by the amount of the tax that is due for the period covered by the report.

4. The Board and the Department shall deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

Sec. 12. Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

In its administration of the use tax imposed by NRS 372.185, the Department shall not consider the storage, use or other consumption in this State of tangible personal property which is:

1. *Worth \$100 or less; and*
2. *Acquired free of charge at a convention, trade show or other public event.*

Sec. 13. NRS 372.7263 is hereby amended to read as follows:

372.7263 1. In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

- (a) The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;
- (b) The sale of farm machinery and equipment to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and
- (c) The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

(a) ["Agricultural use" has the meaning ascribed to it in NRS 361A.030.

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

- (1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or
- (2) Machinery or equipment only incidentally employed for [the agricultural use of real property.

(c) *agricultural purposes.*

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

[(d)] (c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 14. NRS 372.7263 is hereby amended to read as follows:

372.7263 [1.] In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

[(a)] 1. The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

[(b)] 2. The sale of farm machinery and equipment, *as defined in section 30 of this act*, to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

[(c)] 3. The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

[2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.]

Sec. 15. Chapter 374 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 and 17 of this act.

Sec. 16. *In its administration of the use tax imposed by NRS 374.190, the Department shall not consider the storage, use or other consumption in a county of tangible personal property which is:*

1. Worth \$100 or less; and

2. Acquired free of charge at a convention, trade show or other public event.

Sec. 17. 1. *There are exempted from the taxes imposed by this chapter the gross receipts from the sale, storage, use or other consumption in a county of farm machinery and equipment.*

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 18. NRS 374.030 is hereby amended to read as follows:

374.030 1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Department may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the county or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business.

If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or

importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

[(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.]

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Department that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 19. NRS 374.070 is hereby amended to read as follows:

374.070 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded in cash or credit, except that this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

- (e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from any retailer.

- (f) The amount of any allowance against the selling price given by a retailer for the value of a used [vehicle or] vessel which is taken in trade on the purchase of another [vehicle or] vessel.

Sec. 20. NRS 375.090 is hereby amended to read as follows:

375.090 The taxes imposed by NRS 375.020, 375.023 and 375.026 do not apply to:

1. A mere change in identity, form or place of organization, such as a transfer between a corporation and its parent corporation, a subsidiary or an affiliated corporation if the affiliated corporation has identical common ownership.
2. A transfer of title to the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.
3. A transfer of title recognizing the true status of ownership of the real property.
4. A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common.
5. A transfer of title between spouses, including gifts, or to effect a property settlement agreement or between former spouses in compliance with a decree of divorce.
6. A transfer of title to or from a trust without consideration if a certificate of trust is presented at the time of transfer.
7. Transfers, assignments or conveyances of unpatented mines or mining claims.
8. A transfer, assignment or other conveyance of real property to a corporation or other business organization if the person conveying the property owns 100 percent of the corporation or organization to which the conveyance is made.
9. A transfer, assignment or other conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of *lineal* consanguinity or affinity.
10. A conveyance of real property by deed which becomes effective upon the death of the grantor pursuant to NRS 111.109.
11. The making, delivery or filing of conveyances of real property to make effective any plan of reorganization or adjustment:
 - (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C. §§ 101 et seq.;
 - (b) Approved in an equity receivership proceeding involving a railroad, as defined in the Bankruptcy Act; or
 - (c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act,
_ if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 years after the date of the confirmation, approval or change.
12. The making or delivery of conveyances of real property to make effective any order of the Securities and Exchange Commission if:
 - (a) The order of the Securities and Exchange Commission in obedience to which the transfer or conveyance is made recites that the transfer or conveyance is necessary or appropriate to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79k;
 - (b) The order specifies and itemizes the property which is

ordered to be transferred or conveyed; and

(c) The transfer or conveyance is made in obedience to the order.

13. A transfer to an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.

14. A transfer to a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

Sec. 21. NRS 374.265 is hereby amended to read as follows:

374.265 "Exempted from the taxes imposed by this chapter," as used in NRS 374.265 to 374.355, inclusive, **and section 17 of this act** means exempted from the computation of the amount of taxes imposed.

Sec. 22. NRS 374.286 is hereby amended to read as follows:

374.286 1. There are exempted from the taxes imposed by this chapter the gross receipts from the sale , [of, and the] storage, use or other consumption in a county of [,] farm machinery and equipment . [employed for the agricultural use of real property.]

2. As used in this section:

(a) ["Agricultural use" has the meaning ascribed to it in NRS 361A.030.

(b)] "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for [the agricultural use of real property.

(c)] **agricultural purposes.**

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

[(d)] (c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 23. NRS 374.7273 is hereby amended to read as follows:

374.7273 1. In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

(a) The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

(b) The sale of farm machinery and equipment to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

(c) The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

2. As used in this section:

(a) ["Agricultural use" has the meaning ascribed to it in NRS 361A.030.

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for [the agricultural use of real property.

(c) *agricultural purposes.*

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

[(d)] (c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 24. NRS 374.7273 is hereby amended to read as follows:

374.7273 [1.] In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of State to include:

[(a)] 1. The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955;

[(b)] 2. The sale of farm machinery and equipment, *as defined in section 30 of this act*, to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of State not later than 15 days after the sale; and

[(c)] 3. The sale of a vessel to a nonresident who submits proof to the vendor that the vessel will be delivered out of State not later than 15 days after the sale.

[2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

- (1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or
- (2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.]

Sec. 25. Section 64 of Chapter 400, Statutes of Nevada 2003, at page 2374, is hereby amended to read as follows:

Sec. 64. NRS 374.070 is hereby amended to read as follows:

374.070 1. "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of the materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property before its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit; but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax, [(I) not including [, however,] any manufacturers' or importers' excise tax, D] imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.
- (e) The amount of any tax imposed by the State of Nevada upon or with respect to the storage, use or other consumption of tangible personal property purchased from

any retailer.

(f) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

[4. For the purpose of a sale of a vehicle by a seller who is not required to be registered with the Department of Taxation, the sales price is the value established in the manner set forth in NRS 374.112.]

Sec. 26. Section 138 of Chapter 400, Statutes of Nevada 2003, at page 2409, is hereby amended to read as follows:

Sec. 138. NRS [374.107,] 374.112, 374.113, 374.286, 374.291, 374.2911, 374.322 and 374.323 are hereby repealed.

Sec. 27. Section 139 of Chapter 400, Statutes of Nevada 2003, at page 2409, is hereby amended to read as follows:

Sec. 139. 1. This section and section 102 of this act become effective upon passage and approval.

2. Sections 103 to 135, inclusive, of this act become effective on July 1, 2003.

3. Sections 1 to 29, inclusive, 32 to 38, inclusive, 40 to 50, inclusive, 52 to 57, inclusive, 66, 67, 69 to 72, inclusive, 74 to 80, inclusive, 83, 84, 85, 87 to 92, inclusive, 94 to 101, inclusive, 136 and 137 of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2006, for all other purposes.

4. Sections 30 and 39 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is approved by the voters at the General Election on November 2, 2004.

5. Sections 31, 51, [58] 60 to 65, inclusive, 68, 73, 81, 82, 86, 93 and 138 of this act become effective on January 1, 2006, only if the proposal submitted pursuant to sections 103 to 107, inclusive, of this act is not approved by the voters at the General Election on November 2, 2004.

Sec. 28. At the General Election on November 7, 2006, a proposal must be submitted to the registered voters of this State to amend the Sales and Use Tax Act, which was enacted by the 47th session of the Legislature of the State of Nevada and approved by the Governor in 1955, and subsequently approved by the people of this State at the General Election held on November 6, 1956.

Sec. 29. At the time and in the manner provided by law, the Secretary of State shall transmit the proposed Act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

Sec. 30. The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the

following form:

Notice is hereby given that at the General Election on November 7, 2006, a question will appear on the ballot for the adoption or rejection by the registered voters of the State of the following proposed Act:

AN ACT to amend an Act entitled "An Act to provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto." approved March 29, 1955, as amended.

THE PEOPLE OF THE STATE OF NEVADA
DO ENACT AS FOLLOWS:

Section 1. The above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated as section 18.2, immediately following section 18.1, to read as follows:

Sec. 18.2. *"Vehicle" has the meaning ascribed to it in NRS 482.135.*

Sec. 2. The above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 762, is hereby amended by adding thereto a new section to be designated section 55.5, immediately following section 55 to read as follows:

Sec. 55.5. *1. There are exempted from the taxes imposed by this Act the gross receipts from the sale, storage, use or other consumption in a county of farm machinery and equipment.*

2. As used in this section:

(a) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for agricultural purposes.

(b) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(c) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used

for agricultural purposes.

Sec. 3. Section 11 of the above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 11. *I.* "Sales price" means the total amount for which tangible property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

- (a) The cost of the property sold.
- (b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.
- (c) The cost of transportation of the property [prior to] *before* its purchase.

2. The total amount for which property is sold includes all of the following:

- (a) Any services that are a part of the sale.
- (b) Any amount for which credit is given to the purchaser by the seller.

3. "Sales price" does not include any of the following:

- (a) Cash discounts allowed and taken on sales.
- (b) The amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or credit [; but] , *except that* this exclusion [shall] *does* not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- (c) The amount charged for labor or services rendered in installing or applying the property sold.
- (d) The amount of any tax , [() not including [, however,] any manufacturers' or importers' excise tax , D] imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

Sec. 4. Section 12 of the above-entitled Act, being Chapter 397, Statutes of Nevada 1955, at page 764, is hereby amended to read as follows:

Sec. 12. *I.* "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property [prior to] *before* making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses [,] or any other expense.

(c) The cost of transportation of the property [prior to] *before* its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits [,] and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" [do] *does* not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) [Sale] *The sale* price of property returned by customers when the full sale price is refunded either in cash or credit, [;] but this exclusion [shall] *does* not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, [(] not including [, however,] any manufacturers' or importers' excise tax, [)] imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

(e) The amount of any allowance against the selling price given by a retailer for the value of a used vehicle which is taken in trade on the purchase of another vehicle.

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the

sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

Sec. 5. This Act becomes effective on January 1, 2007.

Sec. 31. The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:

Shall the Sales and Use Tax Act of 1955 be amended to exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of any used vehicle taken in trade on the purchase of another vehicle and to exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of farm machinery and equipment?

Yes No

Sec. 32. The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of tangible personal property, the value of any used vehicle taken in trade on the purchase of another vehicle and the value of farm machinery and equipment. The Legislature has amended the Local School Support Tax Law and the City-County Relief Tax Law to provide the same exemption for farm machinery and equipment if this proposal is adopted.

Sec. 33. If a majority of the votes cast on the question submitted to the voters is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 2007. If less than a majority of votes cast on the question submitted to the voters is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

Sec. 34. All general election laws not inconsistent with this act are applicable.

Sec. 35. Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the Office of the Secretary of State whether the proposed amendment was adopted by a majority of those registered

voters.

Sec. 36. 1. NRS 368A.130 and 368A.210 are hereby repealed.

2. NRS 374.107 is hereby repealed.

3. Sections 58 and 59 of Chapter 400, Statutes of Nevada 2003, at page 2371, are hereby repealed.

Sec. 37. 1. This section becomes effective upon passage and approval.

2. Section 22 of this act:

(a) Becomes effective upon passage and approval for the purpose of adopting regulations and on July 1, 2005, for all other purposes; and

(b) Expires by limitation on December 21, 2005.

3. Sections 1 to 12, inclusive, 15, 16, 20 and subsection 1 of section 36 of this act become effective on July 1, 2005.

4. Sections 25 to 35, inclusive, and subsection 3 of section 36 of this act become effective on October 1, 2005.

5. Sections 13 and 23 of this act become effective on January 1, 2006.

6. Sections 14, 17, 21 and 24 of this act become effective on January 1, 2007, only if the proposal submitted pursuant to sections 28 to 35, inclusive, of this act is approved by the voters at the General Election on November 7, 2006.

7. Sections 18, 19 and subsection 2 of section 36 of this act become effective on January 1, 2007, only if the proposal submitted pursuant to sections 28 to 35, inclusive, of this act is not approved by the voters at the General Election on November 7, 2006.

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QUESTION NO. 9

Amendment to the Nevada Constitution

Assembly Joint Resolution No. 11 of the 72nd Session

CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to provide for the election of certain members of the Board of Regents of the University of Nevada and for the gubernatorial appointment of certain members, and to specify the number and terms of the members?

Yes.....

No.....

EXPLANATION

The *Nevada Constitution* authorizes the Board of Regents to control and manage the affairs and funds of the Nevada System of Higher Education, which consists of the state universities, state college, community colleges, research facilities, and public service departments. The *Constitution* currently requires the Legislature to provide for the election of the Regents. In 2001, the Legislature set the number of Regents at 13 members, determined the geographic boundaries of the districts, and fixed the terms of office at six years.

The proposed amendment to the *Constitution* would set the number of Regents at nine. One member would be elected from each of Nevada's congressional districts and the Governor would appoint the remaining members. Not more than two-thirds of the appointed members of the Board may be of the same political party. The length of term of office would be four years. Initially, the Legislature and the Governor would stagger the terms so that an equal number, as

nearly as possible, would expire every two years. If a vacancy occurs during the term of an appointed member, the Governor would appoint a similarly qualified person to fill the remainder of the unexpired term. Nevada currently is apportioned three seats in the United States House of Representatives. If at any time Nevada is apportioned more than nine congressional seats, the Legislature would establish the districts from which the nine members would be elected.

A "Yes" vote would amend the *Nevada Constitution* to set the membership of the Board of Regents at nine members, to fix the term of office at four years, and to provide for the election of one member from each congressional district with the appointment of the remaining members by the Governor according to staggered terms.

A "No" vote would retain existing provisions regarding the election of members of the Board of Regents under the *Nevada Constitution*.

ARGUMENTS FOR PASSAGE

Nevada is the only state to elect a single board to govern all public institutions of higher education. Most governing boards of public higher education institutions are appointed by the governor of the state. The proposed amendment continues a link to Nevada's past by maintaining the citizens' right to vote for representatives on the Board, while it moves Nevada into a more common governance structure by authorizing the Governor to appoint some members of the Board.

The Governor can appoint members with the necessary education, credentials, and experience to administer this complex system of higher education. Appointed Regents would be accountable to the Governor, who is responsible to the electorate for the quality of his appointments. This proposal would result in more state-level coordination of policy goals for higher education and economic development among the Executive and Legislative Branches and the Board of Regents.

At 13, the current number of Regents is too large, making the Board unworkable. The Board needs a serious reconfiguration. For many years, the number of Regents was fixed at nine members. In 1991, membership was increased to 11, where it remained until the increase to 13 in 2001. Reducing the number of Regents will decrease operational costs. A smaller board would more effectively resolve issues among Board members through improved communication. Reducing the term of elected members from six years to four years will make them more accountable and responsive to the voters.

ARGUMENTS AGAINST PASSAGE

The proposed amendment takes from the people their right to vote on some of the members of the Board of Regents. Inevitably, friction between the elected and appointed members would occur as the elected officials act to represent their constituents. Elected boards are accessible to the people. Appointed individuals would be far less responsive to average citizens. An elective

process requires individuals to undergo public scrutiny. The Governor might appoint only those who share his views.

The proposed four-year term is too short. Experienced Regents retain the institutional memory. Most boards around the country have terms of six or more years. To govern complex higher education institutions effectively, a board needs committees to study issues and to recommend policies to the full board. The existing number of Regents is necessary to make the committee structure work and to provide a range of opinions. Asking fewer people to commit even more time would result in less effective governance.

Neither an elected nor an appointed process guarantees a highly qualified board. Amending the *Constitution* to appoint Regents is not necessary. The voters may vote a Regent out of office at the end of a term, an option that would not apply to appointed Regents. In addition, the *Constitution* provides processes for impeachment or recall of elected officials.

As the number of congressional districts continues to increase, along with Nevada's growing population, the Regents would once again become an elected board. In the meantime, the districts from which individuals would be elected could be large, making campaigns more difficult and expensive.

FISCAL NOTE

FINANCIAL IMPACT – NO

The proposal to amend the *Nevada Constitution* would revise the method by which members of the Board of Regents of the Nevada System of Higher Education are selected. Approval of this proposal would have no adverse fiscal impact.

The proposal does not have a financial impact as it does not increase expenditures related to the Board of Regents. In fact, approval of the proposal would most likely decrease expenditures through reduced operational costs (per diem, travel, and related expenses) associated with the proposed nine member Board of Regents compared to the current 13 member Board.

FULL TEXT OF THE MEASURE

Assembly Joint Resolution No. 11—Committee on
Elections, Procedures, and Ethics

FILE NUMBER.....

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for the election of certain members of the Board of Regents and the gubernatorial appointment of certain members of the Board of Regents, and to specify the number and terms of the members.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF
NEVADA, JOINTLY, That Section 7 of Article 11 of the Nevada

Constitution be amended to read as follows:

~~{Sec. 7. The Governor, Secretary of State, and Superintendent of Public Instruction, shall for the first Four Years and until their successors are elected and qualified constitute}~~

Sec. 7. 1. There is hereby created a Board of Regents to control and manage the affairs of the University and the funds of the same under such regulations as may be provided by law. {But the}

2. The Board of Regents consists of nine members. Except as otherwise provided in this subsection, one member must be elected from each congressional district in this state and the remaining positions, if any, must be filled by the Governor by appointment. If at any time this state is apportioned more than nine congressional seats, the Legislature shall provide for the districts from which the nine members of the Board of Regents must be elected.

3. The Legislature shall provide for the arrangement of the terms of the elected members of the Board of Regents so that an equal number of terms, as nearly as may be, expire every 2 years. The Governor shall provide for the arrangement of the terms of the appointed members of the Board of Regents so that an equal number of terms, as nearly as may be, expire every 2 years. After initial terms of 2 or 4 years to ensure staggered terms, each member of the Board of Regents shall serve a term of 4 years, and until his successor is elected and qualified or appointed and qualified.

4. If a vacancy occurs during the term of a member appointed by the Governor, the Governor shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term.

5. Not more than two-thirds of the appointed members of the Board of Regents may be members of the same political party.

*6. The Legislature shall {at its regular session next preceding the expiration of the term of Office of said Board of Regents provide for the election of a new} *define the duties of the members of the Board of Regents.* {and define their duties.}*

And be it further

RESOLVED, That the term of any member of the Board of Regents who was elected before November 4, 2008, expires on January 5, 2009. The Governor shall make his appointments pursuant to subsection 2 of Section 7 of Article 11 of the Nevada Constitution as soon as practicable after January 5, 2009, and in making those appointments may appoint a former member of the Board of Regents.

And be it further

RESOLVED, That this resolution becomes effective on January 1, 2008, for purposes of nominating and electing members to the Board of Regents from each congressional district, and on January 5, 2009, for all other purposes.

QUESTION NO. 10

Amendment to the Nevada Constitution

Assembly Joint Resolution No. 13 of the 72nd Session

CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to change the provisions regarding special sessions of the Legislature to provide that a special session may be convened by a petition signed by two-thirds of the Legislature of each house; to limit the duration of special sessions of the Legislature to 20 calendar days; and to limit the matters which may be considered during a special session?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment to the *Nevada Constitution* would allow the Legislature to call itself into a special session. The proposal would provide that a special session of the Legislature may be convened, on extraordinary occasions, by a petition signed by two-thirds of the members of each house of the Legislature. During any special session called by the Legislature or the Governor, the Legislature would be authorized only to consider matters for which it was called into session. Finally, this proposal would limit any special session to 20 calendar days.

Currently, language in Section 2 of Article 4 and Section 9 of Article 5 of the *Nevada Constitution* provides that only the Governor may call special sessions of the Legislature but does not limit the length of such sessions. The proposed amendment would add a new

section to Article 4 and revise the existing language in both Articles 4 and 5 to provide that both the Legislature and the Governor may convene special sessions limited to 20 calendar days.

A "Yes" vote would change the language in the *Nevada Constitution* to allow the Legislature to call itself into special session on extraordinary occasions and would limit the duration of special sessions to not more than 20 calendar days.

A "No" vote would allow the existing language to remain unchanged so that only the Governor may call special sessions and that special sessions not be limited in duration.

ARGUMENTS FOR PASSAGE

The *Nevada Constitution* establishes three co-equal branches of state government—Legislative, Executive and Judicial. The Legislative Branch has ultimate authority and responsibility to enact laws, subject to final approval by the Governor. However, Nevada's existing constitutional language allows only the Governor to call the Legislature into special session. This limitation is contrary to the constitutional provision that vests the lawmaking authority in the Legislature. The Legislature should be authorized to operate with a reasonable degree of independence from the Executive and Judicial Branches as consistent with the separation of powers principle. The Legislature should be empowered to call a limited special session when deemed to be in the best interests of the people of the state.

The Legislature should have the authority to call itself into special session if the Governor is unwilling or incapable of calling a special session during a state emergency or executive crisis. Under the existing language in the *Nevada Constitution*, the Legislature is unable to call itself into special session to act in an emergency or to begin impeachment proceedings against a Governor or any other elected state official alleged to have violated provisions of the law.

Currently, 34 state legislatures have the ability to call a special legislative session. The Nevada Legislature is one of only 16 state legislative bodies in the nation that are not authorized to call a special session.

ARGUMENTS AGAINST PASSAGE

Allowing the Legislature to call itself into special session shifts the existing balance of power among the three branches of state government by increasing the power of the Legislative Branch in relation to the Executive and Judicial Branches. Nevadans may be subject to the passage of an increasing number of laws and taxes if the Legislature can call itself into special session. Although this proposal limits the length of any one special session to 20 days, it does not limit the number of special sessions that can be called by the Legislature. The potential exists for the Legislature to become a full-time, professional body with significant cost to the taxpayers. Allowing the Legislature to call itself into special session attempts to get around the voters' past opposition to annual sessions.

Amendment of the *Nevada Constitution* should be a rare undertaking and constitutional language should not be changed simply to respond to the wishes of members of the Legislature. The framers of the *Constitution* created a part-time, "citizen legislature" by limiting the occurrence of

regular sessions to once every two years. Nevada remains one of six states in the nation with biennial regular sessions. These states with biennial sessions are considered citizen legislatures and most do not allow their Legislatures to call themselves into special session. This proposal may move Nevada away from the tradition of a part-time legislature and toward a full-time legislature.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

The proposal to amend the *Nevada Constitution* would provide a method for members of the Nevada Legislature to convene a special session of the Legislature. If this proposal is approved there would be costs associated with convening and holding a special session called by the Legislature, but the financial impact cannot be established with any degree of certainty because the number and duration of such special sessions cannot be predicted. It should be noted that the costs to organize and hold a special session convened by the Legislature would be the same as a special session convened by the Governor.

The state may incur minimal costs to develop and circulate the petition required to convene a special session under the provisions of the proposal, which should have no adverse fiscal impact on the State.

FULL TEXT OF THE MEASURE

Assembly Joint Resolution No. 13–
Assemblyman Mortenson

FILE NUMBER.....

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to limit the duration of special sessions of the Legislature to 20 days, limit the matters which may be considered during a special session and provide that a special session may be convened by a petition signed by two-thirds of the Legislators of each house.

WHEREAS, There are currently 34 State Legislatures that have the ability to call a special legislative session when deemed necessary; and

WHEREAS, The Nevada Legislature is 1 of only 16 state legislative bodies in the Nation that may not call a special session, and 1 of only 9 Legislatures that may not determine any of the subject matter to be considered at a special session; and

WHEREAS, The Nevada Constitution is grounded on the principle of three equal branches of State Government, with the ultimate authority and responsibility to enact necessary legislation being vesting in the Legislative Branch, subject to final approval by the Governor; and

WHEREAS, Nevada's current constitutional language, which allows only the Governor to call the Legislature into special session, impedes and is contrary to the constitutional provision that vests the

legislative authority of the State of Nevada in its elected Legislature;
and

WHEREAS, The Nevada Legislature should be authorized to operate with a reasonable degree of independence from the Executive and Judicial Branches as consistent with the separation of powers principle, and should be empowered to identify those topics that may require the Legislature to call a limited special session deemed in the best interest of the people of the State of Nevada; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 2A, be added to Article 4 of the Nevada Constitution to read as follows:

Sec. 2A. 1. The Legislature may be convened, on extraordinary occasions, upon petition signed by two-thirds of the members of each House of the Legislature. A petition must specify the business to be transacted during the special session, indicate a date on or before which the Legislature is to convene and be transmitted to the Secretary of State. Upon receipt of one or more substantially similar petitions signed, in the aggregate, by the required number of members, calling for a special session, the Secretary of State shall notify all members of the Legislature and the Governor that a special session will be convened pursuant to this section.

2. No bills, except those related to the business specified in the petition and those necessary to provide for the expenses of the session, may be introduced at a special session convened pursuant to this section.

3. A special session convened pursuant to this section takes precedence over a special session called by the Governor pursuant to Section 9 of Article 5 of this Constitution, unless otherwise provided in the petition calling for the special session.

4. The Legislature may provide by law for the procedure for convening a special session pursuant to this section.

5. The Legislature shall adjourn sine die a special session convened pursuant to this section not later than midnight of the 20th calendar day of that session. Any legislative action taken after midnight on the 20th calendar day is void.

And be it further

RESOLVED, That Section 2 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec. 2. 1. The sessions of the Legislature shall be biennial, and shall commence on the 1st Monday of February following the election of members of the Assembly, unless the Governor of the State or the members of the Legislature

shall, in the interim, convene the Legislature by proclamation ~~{}~~ *or petition.*

2. The Legislature shall adjourn sine die each regular session not later than midnight Pacific standard time 120 calendar days following its commencement. Any legislative action taken after midnight Pacific standard time on the 120th calendar day is void, unless the legislative action is conducted during a special session . ~~{convened by the Governor.}~~

3. The Governor shall submit the proposed executive budget to the Legislature not later than 14 calendar days before the commencement of each regular session.

And be it further

RESOLVED, That Section 33 of Article 4 of the Nevada Constitution be amended to read as follows:

Sec . ~~{}~~ 33. The members of the Legislature shall receive for their services~~{}~~ a compensation to be fixed by law and paid out of the public treasury, for not to exceed 60 days during any regular session of the legislature and not to exceed 20 days during any special session ; ~~{convened by the governor.}~~ but no increase of such compensation shall take effect during the term for which the members of either house shall have been elected Provided, that an appropriation may be made for the payment of such actual expenses as members of the Legislature may incur for postage, express charges, newspapers and stationery not exceeding the sum of Sixty dollars for any general or special session to each member; and Furthermore Provided, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, during the time of their actual attendance as such presiding officers receive an additional allowance of two dollars per diem.

And be it further

RESOLVED, That Section 9 of Article 5 of the Nevada Constitution be amended to read as follows:

~~{Sec. 9. The}~~ *Sec. 9. 1. Except as otherwise provided in Section 2A of Article 4 of this Constitution, 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.}~~*

2. No bills, except those related to the purpose for which the Legislature has been specially convened and those necessary to provide for the expenses of the session, may be introduced at a special session convened pursuant to this section.

3. *The Legislature shall adjourn sine die a special session convened pursuant to this section not later than midnight of the 20th calendar day of that session. Any legislative action taken after midnight on the 20th calendar day is void.*

QUESTION NO. 11

Amendment to the Nevada Constitution

Senate Joint Resolution No. 11 of the 72nd Session

CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to provide for the payment of compensation to members of the Nevada Legislature for each day of service during regular and special sessions and to provide for the payment of reasonable allowances to legislators for postage, newspapers, telecommunications, and stationery?

Yes.....

No.....

EXPLANATION (Ballot Question)

Currently, the *Nevada Constitution* limits the number of days for which members of the Nevada Legislature are paid to 60 days in a regular session and 20 days in a special session. The *Nevada Constitution* also limits each legislator's allowance for postage and stationery to \$60 per legislative session. The proposed amendment would change this language to provide that legislators are paid for each day of service during regular and special sessions and to provide "reasonable allowances" to legislators for expenses incurred for postage, express charges, newspapers, telecommunications, and stationery. The proposed amendment does not change the amount of daily compensation for legislators, which is currently set by law at \$130.

A "Yes" vote would amend the language in Section 33, Article 4 of the *Nevada Constitution* referring to the compensation of legislators for days of service and the amount allocated to legislators for postage and stationery.

A "No" vote would allow the language of this provision to remain unchanged.

ARGUMENTS FOR PASSAGE

Nevadans who are elected to serve in the State Legislature perform a valuable public service and should be compensated for the days they work during session. In 1998, Nevada's voters limited the length of regular legislative sessions, which are conducted once every two years, to 120 days. However, no provisions were made at that time to compensate legislators beyond 60 days of service. Nevada's constitutional framers fully intended to pay legislators for each day of the session. Prior to 1958, the *Constitution* limited legislative sessions to 60 days and did not set a limit on the number of days legislators would be paid. Approval of this proposal would once again realign the compensation structure so legislators are paid for each day of the legislative session as the constitutional framers intended.

It is not fair to expect any wage earner to work without being paid. The compensation rate for Nevada legislators is among the lowest in the United States and the current 60-day limit on legislator salary may discourage some Nevadans from seeking legislative office. Many people cannot afford to serve in the Legislature. Most lawmakers must give up considerable income from their outside employment and make significant family sacrifices in order to serve in the Legislature. Legislators deserve a compensation package that pays them for their time worked while the Legislature is meeting.

The provision in the *Nevada Constitution* allocating \$60 per legislative session for postage, express charges, newspapers, and stationery was established in 1864 and is outdated. Legislators should be compensated reasonably for postage, mailing, and telecommunications expenses incurred while conducting legislative business. The proposed amendment provides a more rational approach by authorizing a reasonable allowance for these items. Through the legislative process, the Legislature would have the authority to determine what allowance would be considered reasonable. The population of the State of Nevada is growing rapidly and the need for communications with members of the public, both in writing and via telephone, has increased dramatically.

ARGUMENTS AGAINST PASSAGE

Amendment of the *Nevada Constitution* should be a rare undertaking and constitutional language should not be changed simply to alter the number of days legislators receive compensation. The 60-day limit on legislator salary has been in the *Constitution* since 1958 and candidates for legislative office are well aware of this provision when they file their declarations of candidacy. Nevada has a part-time, "citizen legislature" and providing a salary for days worked will increase the cost of conducting legislative sessions. In addition to their existing salary, legislators already receive certain allowances, including a per diem to cover lodging and meals for each day the Legislature is in session. These allowances and the current compensation level have been adequate to attract candidates for legislative office. Finally, a change to this provision may

discourage lawmakers from completing their work before the maximum constitutionally-mandated session limit of 120 days.

With the increased use of electronic mail, there is less need for postage, stationery, and telecommunication services. The use of the term "reasonable allowances" as set forth in the proposed amendment would need to be defined in state law and could increase further the cost of operating the State Legislature.

FISCAL NOTE

FINANCIAL IMPACT – YES

The proposal to amend the *Nevada Constitution* would provide compensation to the members of the Legislature for each day of service during a regular session and any special session. Additionally, the proposal would increase the allowance for expenses incurred for postage, express charges, newspapers, telecommunications, and stationery. Approval of the proposal is estimated to increase the total cost of a regular session by \$554,400.

Currently, the *Nevada Constitution* provides for compensation of \$130 per day for a maximum of 60 days during a regular session and a maximum of 20 days for a special session. Approval of this proposal would require up to 60 days of additional compensation for each legislator during a regular session, which would increase personnel expenses by \$491,400. Inasmuch as recent special sessions have lasted for less than 20 days, approval of the proposal is not projected to increase personnel expenses associated with a special session.

Currently, the *Nevada Constitution* provides Legislators a maximum allowance of \$60 per regular or special session for expenses incurred for postage, express charges, newspapers, and stationery. The proposal would allow for the inclusion of telecommunications within the allowed expenses and change the fixed sum of \$60 to a "reasonable allowance." An actual dollar amount for the reasonable allowance would need to be established by law at a later date, but for the purposes of estimating the financial impact, it is assumed that \$1,060 is a reasonable allowance based on available information. This results in an estimated net increase in operational expenses during a regular session of \$63,000. It should be noted that it is within the Legislature's authority to specify the actual amount for the reasonable allowance for each session.

FULL TEXT OF THE MEASURE

Senate Joint Resolution No. 11—Committee on Finance

FILE NUMBER.....

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for the payment of compensation to the members of the Legislature for each day of service during regular and special sessions and to provide for the payment of reasonable allowances to such members for postage, express charges, newspapers, telecommunications and stationery.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 33 of Article 4 of the Nevada Constitution be amended to read as follows:

~~{See:}~~ *Sec. 33.* The members of the Legislature shall receive for their services, a compensation to be fixed by law and paid out of the public treasury, for ~~{not to exceed 60 days}~~ *each day of service* during any regular session of the legislature and ~~{not to exceed 20 days}~~ during any special session convened by the governor; but no increase of such compensation shall take effect during the term for which the members of either house shall have been elected Provided, that an appropriation may be made for the payment of ~~{such actual expenses as}~~ *reasonable allowances to* members of the Legislature ~~{may incur}~~ *for expenses incurred* for postage, express charges, newspapers, telecommunications and stationery ~~{not exceeding the sum of Sixty dollars for}~~ *during* any general or special session . ~~{to each member; and~~ Furthermore Provided, that the Speaker of the Assembly, and Lieutenant Governor, as President of the Senate, shall each, ~~during the time of their actual attendance as such presiding officers receive an additional allowance of two dollars per diem.}~~

QUESTION NO. CC 1

CARSON CITY SCHOOL DISTRICT BOND QUESTION

Shall the Carson City School District be authorized to issue up to \$25,000,000 of general obligation bonds for the purposes of creating safer and more efficient schools by replacing, improving, acquiring, constructing and equipping school facilities? The Bonds are expected to require a property tax levy for 20 years. Due to the retirement of outstanding bonds and projected assessed value growth, passage of this question is not expected to result in an increase in the existing property tax rate levied to pay the School District's bonds.

EXPLANATION

The Carson City School District (the "School District") proposes to issue up to \$25,000,000 of general obligation bonds for the purposes of creating safer and more efficient schools. If the bond question is not approved, the tax rate levied by the School District for the repayment of the bonds will be reduced. Due to new property tax laws, however, the amount of an individual's tax bill may not decrease. If the bond question does pass, the proceeds of the bonds will be used to:

Upgrade facilities and buildings at Carson Middle School. This project will replace 13 portable buildings and associated decks, ramps and stairs with permanent buildings. The improvements will provide for more energy-efficient structures and greater security for students and staff, and will reduce the operational and maintenance costs of the campus.

Upgrade heating, ventilating and air conditioning systems in the District. This project will renovate, rehabilitate and replace mechanical systems in the School District in order to save maintenance and operational dollars as well as provide for a better teaching and working environment for students and staff. Technological advances in the design of mechanical systems will help the District realize operational efficiencies.

Roofing rehabilitation and replacement. The School District has more than 900,000 square feet of roofs; many of them are in need of rehabilitation or replacement. The School District has performed periodic preventative maintenance on the roofs; but, it is now more cost effective to rehabilitate or replace, rather than repair, the roofs.

Drainage, site and athletic improvements to Carson High School campus. Carson High School is located on a flat site with inadequate storm drainage runoff, which causes standing water to deteriorate the athletic fields and track. This project will make drainage improvements to the site, resulting in less maintenance and operational costs and providing for safer conditions for the School District and community use.

ARGUMENT FOR THE BONDS

The 13 portable buildings at Carson Middle School need to be replaced with permanent buildings. 11 of the 13 buildings are over 15 years old and it is no longer feasible to maintain and/or repair these buildings. Permanent buildings will provide better security and a safer, healthier, more efficient learning environment for the students and staff. The improved energy-

efficient structures will reduce the operational and maintenance costs of the Carson Middle School campus.

The School District is comprised mostly of older schools. Even though the School District has performed periodic preventative maintenance on the roofs of the schools, it is more cost effective, at this time, to rehabilitate or replace the roofs, rather than repair them. Additionally, the School District needs to rehabilitate or replace heating, ventilating and air conditioning systems with technologically advanced systems, which will result in energy-efficiency and the saving of maintenance and operational dollars.

The athletic fields and track at Carson High School suffer from inadequate storm drainage. Standing water causes deterioration of the athletic fields and track. Making drainage improvements will result in reduced maintenance and operational costs and better conditions for student and community use.

The School District is paying attention to the taxpayers' message to live within its means. This bond issue is structured so that the bonds are expected to be repaid from the School District's existing property tax rate and not require an increase in the existing property tax rate levied to pay the School District's bonds.

ARGUMENT AGAINST THE BONDS

The School District should focus on the basics of reading, writing and arithmetic. Spending by the School District should focus on providing improvements for the core curriculum rather than facilities for other purposes. It is not necessary to replace portable buildings with permanent buildings, replace school roofs with new roofs, or replace heating, ventilating and air conditioning systems with technologically advanced systems.

The School District should replace old roofs and heating, ventilating and air conditioning systems only if the old roofs and systems can no longer be repaired. If the School District postpones replacement of the systems, more technological advances will take place in the heating, ventilating and air conditioning systems to be purchased to replace the old systems.

It is not necessary to improve drainage on Carson High School's athletic fields.

If the assessed value of property within the School District does not increase as projected, approval of the Bond Question could increase the property tax rate resulting in an increase in the property tax paid by the property owner.

If the Bonds are not approved, the School District's current debt levy could decrease.

ADDITIONAL INFORMATION

The proceeds of the bond issue will be used to provide funds for replacing, improving, acquiring, constructing, and equipping school facilities within the School District for the purposes of creating safer and more efficient schools.

BOND INFORMATION

The maximum principal amount of the Bonds is \$25,000,000. The maximum maturity of the Bonds is thirty (30) years, and the School Board anticipates that all of the Bonds actually will mature within twenty-one (21) years of their issuance. The anticipated interest rate on the Bonds is 5.75% and the total anticipated interest cost is \$17,742,713. Accordingly the total anticipated Bond payments (principal and interest) on the Bonds are expected to be approximately \$42,742,713. The actual interest rate and total Bond payments on the Bonds may be higher or lower than the above estimate, depending on the interest rates at the time the Bonds are sold. The Board estimates that the range of property tax rates necessary to provide debt service on the Bonds for the dates on which they are expected to be redeemed will be from 7 cents to 14 cents

per \$100.00 of assessed value of the property in the School District. This represents an annual average of 11.39 cents per \$100 of assessed valuation, or \$39.87 per year for the owner of a new \$100,000 home. However, due to the current bond repayment schedule and projected growth in assessed value, the School District expects to repay the Bonds from its existing property tax of 47 cents per \$100 of assessed value. Assuming an average growth rate of 1.62%, the estimated assessed value of the property in the School District against which the Bonds are to be issued ranges from \$1,490,635,754 to \$2,006,797,260. The actual property tax rate necessary to pay the Bonds may be higher or lower than the above estimates, depending on the interest rates at the time the Bonds are sold, the maturity schedule, the term of the Bonds as actually issued, and the assessed value of property in the School District against which the Bonds are issued at the time taxes to repay the Bonds are levied.

The estimated annual operation, maintenance, and repair costs of the School District will not increase as a result of the projects associated with the Bonds. Any increase in estimated operation and maintenance costs are offset by savings generated by replacing less efficient buildings with permanent facilities; replacing less efficient heating, ventilating and air conditioning systems with energy efficient systems; replacing roofs; and making necessary drainage improvements. The Board anticipates that the costs of operation, maintenance and repair, as currently budgeted, will be paid from the School District's general operating budget, and will not result in any increase in the tax rate.