

The meeting was called to order at 2:20 P. M. on Tuesday, May 8, 1979, in Room 213, with Senator Norman Glaser in the Chair.

PRESENT: Chairman Norman Glaser
Senator Don Ashworth
Senator James Kosinski
Senator Mike Sloan
Senator William Raggio
Senator Carl Dodge
Mr. Ed Schorr, Fiscal Analyst

ABSENT: Vice-Chairman Floyd Lamb

GUESTS: See Exhibit "A"

A. B. 211 - Treats mobile homes as real property under certain circumstances.

Assemblyman Virgil Getto, District 37, was the first person to testify on this bill. He said the primary feature of the bill is that it opens up financing for homes for people who presently cannot qualify for conventional housing or mobile homes. The bill gives a person an option in that property can still be taxed as personal property or it can be taxed as real property. Mr. Getto mentioned another bill pending in the Assembly which he doubts will pass, which would direct the tax commission to tax mobile homes on their actual resale value; he said the bill has not yet come out of committee.

Senator Kosinski asked about that bill and wanted to know if that bill would tax mobile homes permanently affixed at cash value. Mr. Getto answered, "Yes," but he pointed out they would be taxed just as conventional homes are. Mr. Getto said that this bill, A. B. 211, would help solve the problem of crowding in mobile home parks as the long-term financing would make it possible for people to obtain their own property on which to place their mobile homes.

Senator Kosinski asked if it is optional in this bill for a mobile home to be treated as real property, or is it automatic if it is permanently affixed? Mr. Getto replied that if it is permanently affixed, he would read it as not being optional, and then it would qualify as real property. Senator Kosinski then asked if there had not been some difficulty in the past in defining what is permanently affixed? Mr. Getto answered that in the definition of real property, it has to be affixed to the land. Placing a foundation and removing running gear from a mobile home is essentially the definition of being permanently affixed.

Senator Kosinski then asked how this bill opens up financing for a prospective purchaser of a mobile home. Mr. Getto said that if long-term financing is made available as is done for custom homes,

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the monthly payment becomes lower and a great many more people will be able to make these lower payments, thereby qualifying more people for housing.

Senator Glaser said that as he understood the present taxing method on mobile homes, there is a fast depreciation and writeoff, and it is on personal property.

Senator Ashworth then referred to page 3, line 14 through line 17, asking that in regard to 18%, was that included because there was some feeling that perhaps the usury law would not be increased to 18% this session. Mr. Getto said he did not know why that provision was in there and noted that this subject would be addressed later in the meeting.

The Chair asked if there were further questions.

Mr. Robert Rusk, Assemblyman from District 28, then testified. He said the Assembly committee had given a great deal of time to this proposal. He said the bill evolved into a better definition of the installment loan act, mainly to accommodate mobile home and manufactured or factory-built housing. He stated that financing has been the most severe limitation on these types of housing over the years.

Senator Kosinski then asked if the affixing makes it more desirable, for better rates and longer terms. He also asked if the installment loan companies engaged in the same kind of terms even when the mobile homes were not permanently affixed.

Mr. Rusk replied the committee, after much deliberation, arrived at the decision that removal of the undercarriage and tongue and the installation of a mortar or brick foundation would suffice as a definition of "affixed." And it followed that any kind of housing that is on a permanent foundation makes the lender surer that the structure would be there in twenty years.

Mr. Bruce Robb, Nevada Manufactured Housing Association, testified next. The long-term financing which is sought through the passage of this bill would be obtained by allowing federally insured savings and loan associations to lend against mobile homes. If the mobile home is allowed to be defined as real property, then it is allowed to be taxed as a combined package. That is the major benefit sought in A. B. 211 and the prime reason why this association supports the bill.

Mr. Joe Midmore, representing the Nevada Consumer Finance Association, testified regarding A.B. 211. He said his concern with the bill is the fact that it could jeopardize a portion of his association's business because consumer finance companies are precluded by law in Nevada from making loans on real property, and over the years, a large portion of their business has been in loans on mobile homes.

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An amendment was agreed upon which would save for them that portion of their business which might be threatened by this bill as it was originally introduced. Mr. Midmore does not feel that the Nevada money market should be deprived of the considerable amount of money which the consumer finance groups could put into it.

Mr. Midmore made reference to page 5 of the bill, where certain fees are allowable and which are commonly referred to as "Regulation Z" fees--a federal regulation allowing the lender to charge an appraisal fee, attorney's fees, and other miscellaneous expenses present in a foreclosure proceeding.

Senator Kosinski asked what the maximum rate of interest would be that could be charged under existing law, and Mr. Midmore replied that it would be 18%.

The Chair asked for any other questions.

Senator Ashworth referred to Section 675.290 and asked if that dealt with Mr. Midmore's group specifically. Mr. Midmore answered that Section 675 is the Nevada Installment Loan Act. Senator Ashworth then asked if the 18%, in addition to applying to consumer finance companies, applied to everyone across the board and Mr. Midmore said it applied to anyone who operates under that act, which includes the so-called small loan or consumer loan companies, in addition to certain acceptance corporations.

Senator Glaser asked where banks fit into the picture and Mr. Midmore replied that if the usury bill now being considered goes through, the maximum rate for banks will be 18%. Senator Ashworth said he thought banks came under Section 675, and Mr. Midmore replied that they do not.

Mr. Midmore added that as he understood the bill, a person who has a mobile home permanently affixed to his property before July 1, 1979, will have eleven months in which to elect his status. Anyone in that position after July first will not be able to make such a choice. He noted that it is a grandfathering-in process frequently used.

The Chair asked if there was further testimony on A. B. 211

Mr. Robert Beech with the Nevada Consumer Finance Association then said he would reply to some of the questions asked so far in the meeting.

Senator Kosinski said Senator Dodge had just pointed out to him that the language on page 5 of the bill is similar to that in the usury bill, and he asked Mr. Beech if this was true. Mr. Beech said he would have to compare the language in the two bills to determine if the exact same language is used.

Mr. Beech continued that what is trying to be done in this bill is to open up avenues of financing to allow people that have lots

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to obtain long-term financing. He said his interest in the bill is that if the small loan companies were not allowed to participate in the mobile home lending market, it would dry this source of money up.

Senator Ashworth then again referred to the language in A. B. 211, saying it does not parallel S.B. 26, the usury bill, which is somewhat broader in concept. Senator Kosinski asked Mr. Beech to look at the language in each bill and report back to the committee.

Mr. Gil Buck, Nevada Association of Realtors, was the last person to testify on A. B. 211. He said this legislation was long overdue and his group is in favor of it. He feels it will open up avenues of financing that have been unavailable in the past.

Mr. Beech reported back on the language in S. B. 26. He said the usury bill is more comprehensive and explained why. He also pointed out some of the problems with the language. Senator Ashworth commented that one or the other of the two bills should be brought into conformity so there would not be different definitions in the law. Mr. Beech said he would be happy to accept S. B. 26. He said if the committee wanted to amend the bill, taking it from line 7 through line 20, and put in the language from page 5, line 3 of S. B. 26 through line 7 of page 2, it would bring about conformity.

Senator Dodge said he would agree with Senator Ashworth that it would be better to have the language conform. Mr. Beech said he would be happy with the amendment if the committee wishes to go that way.

Senator Kosinski said he would like to ask Mr. Nickson if the tax commission had not for some time been considering changing the method of assessing and taxing mobile homes. Mr. Nickson replied that for the current year, the commission would continue to use the American Mobile Home Association Bluebook. There will be public hearings in June or July of this year to consider going to the Automobile Dealer Association's Bluebook for Mobile Homes. There followed a discussion on the matter of appraisals and impact on mobile home owners in this bill.

The Chair asked if there were further questions on A.B. 211. There being none, the Chair announced the conclusion on the hearing of this bill.

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A. B. 750 - Authorizes boards of county commissioners to impose additional county motor vehicle fuel tax if approved by voters of county.

Mr. Robert Rusk, Assemblyman, opened testimony on this bill. He said there was no question of the need for funding for additional highways and roads. He presented the alternatives: the General Fund is not available in regard to counties and cities; election by the people is a very limited alternative; state funding for local roads is a very difficult item to justify. He noted the serious problem which the state highway department is facing. He distributed a listing of state motor fuel taxes (Exhibit "B") showing what each state has for a gasoline tax, and explained the various aspects of what the figures indicated. He mentioned Mr. Daykin's testimony regarding the constitutionality of going to the people with a referendum, except if done by counties. Mr. Rusk said, in conclusion, what is trying to be accomplished is not to implement a 2¢ increase in the gas tax but rather to put the tools in the hands of the county commissioners to implement such an increase, and they would have to be the ones to put the matter to a vote of the people. He feels the counties should have that option.

Mr. Rusk continued that he feels the state would prefer that this not happen, and then the state would be in a position to do something about implementing an increase in the gasoline tax. Mr. Rusk said his concern is that if A. B. 750 is not passed now, and there is a wait of two years for the next session, there is no guarantee that either by implementation of the legislature or by implementation of the vote of the people that a tax increase will occur, compounding the plight of the roads and highways. He feels A. B. 750 presents the local entities the only alternative to attacking this serious problem.

Senator Ashworth asked if there was not a risk involved in this procedure and Mr. Rusk answered that this is a problem with which they will have to deal.

Mr. Gene Phelps, representing the highway department, and Mr. Don Crosby, deputy state highway engineer, then testified. Mr. Phelps said that they are opposed to the passage of A. B. 750, as the greatest needs are in the state highway system. He said the effect of this bill would be one of pre-empting a revenue source that has traditionally been used to support the state system. He said that a number of needs pointed out as being on the local level are actually needs on the state level.

Mr. Crosby said he is well aware of the needs of the metropolitan areas and the local entities but his department's concern is one of self-preservation and they feel the state highway system is the backbone of the transportation system of the state. He said a more equitable package would be if legislation was developed to address funding for both state and local systems.

A. B. 750 - (con't.)

There was discussion of the fuel conservation program, the federal provisions as they apply to state highways, and environmental impact, and further reference to the exhibit presented by Mr. Rusk (Exhibit "B"). Mr. Phelps said there should be a ranking of needs and Mr. Crosby stated that if the legislature does not address the needs of the state highway system, there will be a disaster in that system.

Senator Sloan said the legislature will not take action on the highways this session and any bill that would pass would be vetoed by the governor.

Mr. Crosby said there are two major problems: one, the maintenance of the existing system; and two, the needs in the two metropolitan areas.

Senator Dodge asked Mr. Crosby and Mr. Phelps where they were with respect to the finance committees. Mr. Crosby said that with respect to the appropriation for equipment, it has never come out of Assembly Ways and Means and he has no indication of whether they are going to move it or not. He said he has received some indication of what would happen if it reached Senate Finance. He explained the reduction that had occurred in the highway department's original request for funds.

Senator Kosinski asked if diesel powered trucks use the city road systems. Mr. Phelps replied probably less so than their use of the state system. Senator Kosinski said he understood this bill only addresses gasoline, not diesel fuel. Mr. Phelps said he thought this was fair from the local standpoint. Senator Kosinski asked, in view of the fact that Mr. Phelps is familiar with the needs of the cities and counties, how far an increase in the fuel tax such as is contemplated would go in addressing those needs. Mr. Phelps said he could not hazard a reply as it would put him in the position of answering for those entities, although he recognizes the needs are there.

The Chair asked for the next witness on A. B. 750.

Mr. Jerry Hall, managing engineer for the regional state and highway commission in Reno, addressed the committee. He answered some of the questions that had been asked by the members of the committee and outlined what has been done in the Reno system in the last year. He said there has been a consortium of funds and a cooperative project approach. He presented figures on what had been expended on right-of-way acquisition.

Senator Sloan said he thought that diesel fuel should be included in the bill. Mr. Hall said that diesel trucks use just about all the main arterial highways but they have to be accommodated. He admitted that they do increase road cost. Mr. Hall said it was necessary to establish priorities as they never realize completion of all their projects.

A. B. 750 - (con't.)

Mr. Virgil Anderson of the American Automobile Association said there was a necessity of increasing funds for the highway system as he had indicated in previous appearances before the committee. He said his association has recommended support for both systems, state and local. He said his association has a concern about the pre-emption of funds for the state system at the local level, and so there is an element of non-support present. He said they feel it is a question of priorities and that perhaps the state has equal, if not greater, needs than local roads.

Mr. Bernie Gulla, councilman from the City of Sparks, and Chairman of the Washoe County Council of Governments, said there is total support for being able to submit this issue to the voters.

Mr. Marvin Humphrey, ex-commissioner of regional streets and highways in Washoe County, then testified. He said he can't see this bill would destroy the possibilities of developing some relief for the highway department in the future, and that he feels the people should have the opportunity to vote on this issue. There was a discussion between Senator Raggio and Mr. Humphrey, who feels that some move should be made regardless of what might happen in the future. He also feels that all motor vehicle fuels should come under this bill.

Senator Glaser asked if there were any other questions on this bill.

Mr. Robert Guinn of the Nevada Transport Association then testified and said there was a judgment factor present in respect to responsibility. He said he is disturbed about the staff requirements for spending fuel tax money, the administrative expenses, and the difficulties inherent with imposing the tax on diesel fuel.

Mr. Guinn wanted inserted in the record an opinion of the attorney general's office in 1975 saying the legislature does have the authority to initiate a referendum to the people, (Exhibit "C") and he quoted the language of that opinion. He added that if he were on the tax commission and this bill was adopted as law, he would feel it prudent to refuse to collect the tax until such time as the constitutional issue was resolved.

Senator Kosinski brought up the issue of any additional tax being permitted at the local level in other states, and asked for a breakdown state-by-state. Mr. Phelps said he did not have information readily available and that it may take some time to develop it. Mr. Hall said his information indicated that many states have options to let cities and counties impose an additional tax.

The Chair announced that the hearing on A. B. 750 was concluded.

A. B. 112 - Changes period for filing certain statements relating to assessment and taxation of net proceeds of mines. (Exhibit "D")

The Chair called for discussion on A. B. 112 and said the committee might want to rescind its action of the previous meeting relative to the amendments made to this bill. He said that in discussing this with Mr. Schorr, fiscal analyst. he was advised that with a change, some counties might have a problem with cash flow.

Senator Kosinski said the motion he made was based on information which apparently was the opposite of what was happening, that the net proceeds portion of the year that gets a lot of tax is in the last part of the year, not the first. In view of that information, probably the mechanics of the bill as proposed are the most desirable ones. He said his only comment is that he is not certain that the penalty contained in the bill is as fair as it might be.

Senator Ashworth said he thought the percentage was unrealistic and there was a brief discussion on this matter.

The Chair said the committee needed to consider rescinding its previous action.

Senator Sloan moved that the committee reconsider its prior action on Assembly Bill 112.

Senator Kosinski seconded the motion.

The Chair called for further discussion.

The motion carried.

The Chair opened discussion on A.B. 112.

Senator Kosinski asked the Chair if Mr. Nickson might comment on penalty procedures in this bill. Mr. Nickson replied that his only suggestion would be to make the penalty mandatory rather than optional on the part of the county commissioners. Senator Ashworth asked about raising the 50% to 80% and Mr. Nickson answered that 80% would be appropriate.

Senator Kosinski moved on line 15, page 2, "50" be changed to "80" and on line 16, "may" be changed to "shall" and do pass.

Senator Sloan seconded the motion.

The Chair called for discussion.

A. B. 112 - (con't.)

There ensued a discussion on the rationale behind using 80%. Mr. Warren said that making the penalty mandatory might not be as equitable as it would appear. The county assessors have advised that sometimes there is an underpayment because the miner or company reporting is in error, but not intentionally. The assessors feel that some flexibility would be appropriate, especially in a small operation, and that the assessors should retain the discretionary power in this matter.

Mr. John Marvel, Assemblyman from District 34, said he is concerned about too stiff a penalty, as it is based on just an estimate and the company would not know what the actual figures were until they were annualized. He said he would object some to making it mandatory that the penalty be applied.

Senator Ashworth said the only question he would have is regarding the use of that money during that period of time. Mr. Marvel replied that the miner may not have that money in hand during that time. Senator Ashworth said perhaps it could be done in two consecutive years. Mr. Marvel said that, hopefully, the bill would help to normalize the situation, and at the present time there are peaks and valleys in net proceeds. Mr. Marvel said he felt that it was a matter of equity that needed correction, as the miners were not receiving the equities that other taxpayers did.

Senator Sloan said he would not mind changing the "shall" back to "may" for one reason; the county is the one who will suffer. There was discussion on this matter, the Distributive School Fund, the ad valorem tax, and the percent of penalty.

Senator Sloan moved to amend the motion to substitute the word "may" for "shall" on line 16, page 2.

Senator Ashworth seconded the motion.

Senator Kosinski said in that case the 50% might as well be removed. There was a discussion on the merits of the 50% versus the 80%.

Senator Raggio said he concurred with Senator Kosinski that the language in lines 16 and 17 was unusual language on assessing a penalty. Senator Dodge added that in taxation the rules ought to be the same for each county, as a matter of policy.

Senator Sloan withdrew his motion.

Senator Ashworth withdrew his second.

The Chair asked that Senator Raggio's suggestion be put in the form of a motion.

A. B. 112 - (con't.)

Senator Raggio moved that on page 2, lines 16 and 17, the language be changed to read the county "shall"... and that the language be further amended to read the "county may waive said penalty for good cause shown."

The Chair called for discussion.

Senator Kosinski said he could not justify all sections of this bill.

The motion carried "amend and do pass."

Senator Kosinski voted no.

S. B. 309 - Imposes additional state tax on slot machines contingent upon expiration of federal tax on slot machines.

The Chair announced there was a bill in Senate Finance, A. B. 63, which came over from the Assembly and which is being considered as a part of the proposal to build sports arenas, and which is identical to S. B. 309. The Chair asked what the committee's pleasure was on this matter, and did it wish to hold this bill until disposition of A. B. 63 was made. It was agreed to hold S. B. 309 until A. B. 63 was processed.

S. B. 481 - Provides property tax credit for bicycle racks, imposes additional fuel tax to finance construction of bicycle pathways and proposes to remove sales and related taxes from bicycles.

The Chair said that Senator Faiss had added some amendments to this bill and asked for the pleasure of the committee.

Senator Sloan moved to indefinitely postpone Senate Bill 481.

Senator Ashworth seconded the motion.

The Chair called for discussion.

The motion carried, with Senator Glaser and Senator Kosinski voting no.

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(Committee Minutes)

S. B. 419 - Increases tax on motor vehicle fuel and on special fuels and requires a separate detailed budget for certain departments. (Exhibit "E")

The Chair called for action on this bill.

Senator Kosinski moved to amend out section 5 of Senate Bill 419 and do pass.

Senator Kosinski said he felt an excellent case had been made for the need for additional funds for the state highways, and that the committee should make a decision for itself without letting mitigating factors intervene.

The Chair called for a second to Senator Kosinski's motion.

Senator Ashworth asked what was the testimony regarding section 3 on page 2. Senator Ashworth asked Senator Kosinski why he wanted to amend out section 5, and Senator Kosinski replied that the fiscal division did not have time to handle the requests of that section. Senator Raggio asked why he was leaving section 3 in and Senator Kosinski replied that the section was a direction to the fiscal division.

Senator Sloan seconded the motion.

The Chair called for discussion.

Senator Raggio said he would vote "no" on this bill for the same reason he voted that way initially, the imposing of a tax at this time without the consent of the public.

Senator Sloan reiterated that all the testimony pointed to a disaster for the state highway system if some immediate steps were not taken to rectify the situation. Senator Kosinski said there is a clear need for additional revenue, and he feels that if the highway department needs additional dollars, they should come from the highway users, not the General Fund. He said that if the legislature waits until next session and presents the matter to the voters, it would be four years or more before funds would actually be available, and that is too long to go.

The Chair called for further discussion.

The motion carried, with Senator Dodge and Senator Raggio dissenting, as "amend and do pass."

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S. B. 562 - Authorizes legislative commission
to withdraw Nevada from multistate
tax compact under certain circumstances.
(Exhibit "F")

Mr. Roy Nickson of the state tax commission spoke in favor of this bill. He distributed a letter he had received from Donald R. Mello, Chairman of the Assembly Ways and Means Committee (Exhibit "G"). He testified that Nevada had received very little benefit from its membership in the multistate tax compact. He added that if the state does not receive certain benefits from such an association, it is a losing situation to be a member.

Mr. Nickson said Nevada is losing revenue to the other states in the compact and a tremendous amount of use tax. He recommended that Nevada remove itself from the compact.

There was a brief discussion.

Senator Raggio moved "do pass"
on Senate Bill 562.

Senator Kosinski seconded the motion.


The Chair called for discussion.

The motion carried.

The Chair announced that remainder of the agenda would be heard on Thursday, May 10, 1979.

The meeting adjourned at 4:55 P. M.


Respectfully submitted by:
Carolyn L. Freeland, Secretary


Approved by: Senator Norman Glaser,
Chairman

SENATE TAXATION COMMITTEE

GUEST LISTDATE: May 8, 1979

NAME	AGENCY OR ORGANIZATION
Don Crosby	Nevada Highway Department
Gene Phelps	Nevada Highway Department
Gil Buck	Nevada Association of Realtors
Jerry Hall	Regional Street and Highway Commission
M. B. Humphrey	Ex-commissioner of Streets and Highways
Joe Midmore	Nevada Consumer Finance Association
Robert F. Guinn	Nevada Motor Transport Association
Bruce Robb	Nevada Manufactured Housing Association
Bernie Gulla	City of Sparks
Bob Warren	Nevada Mining Association
Bill Macdonald	For Lander County District Attorney
Roy Nickson	Department of Taxation
Katie Galli	Lyon County Commissioners
Robert Hadfield	Douglas County Manager
Robert Rusk	Assemblyman
Virgil Getto	Assemblyman
Robert Beech	Nevada Consumer Finance Association
Virgil Anderson	American Automobile Association
John Marvel	Assemblyman

STATE MOTOR FUEL TAX
(GASOLINE ONLY)

Alabama	7	Nebraska	9.5
Alaska	8	Nevada	16
Arizona	8	New Hampshire	10
Arkansas	8.5	New Jersey	8
California	7	New Mexico	7
Colorado	7	New York	8
Connecticut	11	North Carolina	9
Delaware	11	North Dakota	8
Florida	8	Ohio	7
Georgia	7.5	Oklahoma	6.58
Hawaii	12.4	Oregon	7
Idaho	9.5	Pennsylvania	9
Illinois	7.5	Rhode Island	10
Indiana	8	South Carolina	9
Iowa	7	South Dakota	8
Kansas	8	Tennessee	7
Kentucky	9	Texas	5
Louisiana	8	Utah	9
Maine	9	Vermont	9
Maryland	9	Virginia	9
Massachusetts	8.5	Washington	11
Michigan	9	West Virginia	10.5
Minnesota	9	Wisconsin	7
Mississippi	9	Wyoming	8
Missouri	7	Dis. of Col.	10
Montana	8		

190 Referendum—The Nevada Legislature has the authority to refer legislation to a vote of the people on its own initiative. A referendum question which has been approved by the people in this fashion may be subsequently amended, annulled or repealed by the Legislature acting alone and without further recourse to a vote of the people.

CARSON CITY, May 15, 1975

THE HONORABLE PAUL MAY, *State Assemblyman, Nevada State Legislature, Legislative Building, Carson City, Nevada 89701*

DEAR MR. MAY:

You have stated that the Legislature is considering referring certain pieces of legislation to the people for their approval. In this connection, you have asked two questions.

QUESTIONS

1. If legislation is referred to the people for their approval, may such legislation be subsequently amended only by a vote of the people or may the Legislature alone amend such statutes?

2. If the answer to this question is that the Legislature alone may not amend these statutes, can it be stipulated in the original ballot question that the Legislature may amend the statutes in the future without going to the people?

ANALYSIS

The only provision in the Nevada Constitution which provides for referendum questions is Article 19. Section 1, paragraph 1 of that article provides that a question on a statute or resolution enacted by the Legislature may be referred to the people upon the filing of a petition signed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election. Section 1, paragraph 2 of the article then provides that if the statute or resolution is approved by the voters in the referendum question, the statute or resolution which has been approved " * * * shall stand as the law of the state and *shall not be amended, annulled, repealed, set aside, suspended, or in any way made inoperative except by the direct vote of the people. * * **" (Italics added.)

This is the only procedure which is specifically authorized by the Nevada Constitution for referendum questions. There is no provision whatever in the Nevada Constitution which directly authorizes the Legislature to refer a question to the people on its own initiative. Accordingly, Section 1, paragraph 2 of Article 19, which provides that a statute or resolution which has been approved by referendum shall not be amended, annulled or repealed, applies only to referendum questions which have arisen and been approved subject to the procedures outlined in Section 1, paragraph 1 of Article 19. *Tesoriere v. District Court*, 50 Nev. 302, 258 P. 291 (1927). Therefore, any referendum question which has been approved pursuant to Article 19 of the Nevada Constitution may not be amended, annulled or repealed except by direct vote of the people. However, if another form of referendum is permitted, then the prohibition against amendment, annulment or repeal of a referendum question except by vote of the people does not apply, unless specifically provided by some other constitutional provision or by a statute.

In this particular instance, the Legislature is not proposing that legislation be referred to the people pursuant to the provisions of Article 19 of the Nevada Constitution. Instead, the Legislature proposes, on its own initiative, to refer this question to the people. There is nothing in the Nevada Constitution, or anywhere else in the general statutes of the State, which directly authorizes the Nevada Legislature to refer legislation to the people on its own initiative.

However, the peculiarities of Nevada's own Constitution seem to indicate that the Legislature does have the authority to refer legislative matters on its own initiative to the people for their approval or rejection. The present form of Article 19 in the Nevada Constitution is not the original language of that article. The present language was adopted in 1962. Originally, Article 19, Section 3 of the Nevada Constitution provided as follows:

The people reserve to themselves the power to propose laws and the power to propose amendments to the constitution and to enact or reject the same at the polls, independent of the legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any act, item, section or part of any act or measure passed by the legislature. * * * The first power reserved by the people is the initiative. * * * *The second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections 1 and 2 of this article.* * * * (Italics added.)

Under the original language to Article 19, therefore, the entire power of initiative *and* referendum was reserved solely to the people. Furthermore, with regard to the referendum, the language of the Constitution specifically provided that the referendum should be exercised only in the manner provided in Sections 1 and 2 of the original article. Sections 1 and 2 are similar to paragraphs 1 and 2 of Section 1 of the present Article 19. That is, a referendum could arise only upon petition by the people and, once a referendum question was approved, could not be amended or repealed except by a vote of the people.

Under Section 2, paragraph 1 of the present language of Article 19 of the Nevada Constitution, the people of Nevada continue to reserve solely to themselves the power to propose initiative legislation. The language of Section 2, paragraph 1 specifically states, "* * * the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution and to enact or reject them at the polls." Significantly, however, the original language of Article 19 which provided that the people also reserved solely to themselves the power of the referendum has been entirely eliminated from the present language of Article 19. Nowhere in the present language of Article 19 is there a similar reservation to the people of the power of referendum. The original language reserving the power of referendum was specifically omitted by amendment. Additionally, the language of the original Article 19, which specified that referendums were to be conducted only in the manner provided in Sections 1 and 2, was also omitted. The general rule of legislative construction is that when a Legislature omits words in revising legislation, the courts are bound to assume that the omission was deliberate and for the purpose

of effecting a change. A substantial change in legislative language indicates a change of legislative intent. *Crane, Hastings & Co. v. Gloster*, 13 Nev. 279 (1878); *Camino v. Lewis*, 52 Nev. 202, 284 P. 766 (1930). A Legislature is presumed by amendment to intend to create a new right or withdraw an existing right where a former provision of legislation is omitted. *Utter v. Casey*, 81 Nev. 268, 401 P.2d 684 (1965).

It would appear, therefore, that it was the intent of the people, by enacting the present language of Article 19 which eliminated the reservation of the referendum solely to the people, that other means of proposing referendum questions should be permitted. In this case, the alternative means for proposing referendum questions would be through the legislative power granted to the Nevada Legislature in Article 4, Section 1 of the Nevada Constitution. This is permitted even though the Nevada Constitution does not specifically authorize the Legislature to refer legislation on its own initiative. The reason for this is that a state constitution, unlike the United States Constitution, does not act as a grant of power. State constitutions act solely as limitations of power and, therefore, an act of a state legislature, pursuant to its legislative function, is legal when the constitution contains no prohibition against the act. 16-Am. Jur.2d, Constitutional Law, § 17.

In other words, as a result of the repeal of the original language of Article 19, the Legislature is able to fully exercise its legislative function, pursuant to Article 4, Section 1 and, except where otherwise limited by the Constitution, to propose referendum questions on its own initiative. Such a referendum is part of the inherent power of the Legislature. *Adams v. Bolin*, 74 Ariz. 269, 247 P.2d 617 (1952).

This brings us back, therefore, to our original question as to whether, in a situation where the Nevada Legislature on its own initiative proposes a referendum question, an approved referendum may be amended only by a vote of the people or whether the Legislature alone may also amend such a statute. As already stated, where a referendum has been proposed and approved pursuant to the provisions of Article 19, such a referendum may not be amended, annulled or repealed except by a vote of the people. That prohibition, however, applies only to referendums proposed and adopted pursuant to the provisions of Article 19. *Tesoriere v. District Court*, supra. The prohibition does not apply to any alternative means of proposing a referendum question. The rule is that under the general constitutional provisions vesting the legislative power of the State in the Legislature, and where the people may also exercise referendum and initiative powers, there is no superiority between the two. The Legislature and the electorate are coordinate legislative bodies and in the absence of special constitutional restraints, either may amend or repeal an enactment by the other. 33 A.L.R.2d 1118. We have already concluded that the Legislature is authorized to propose referendum questions on its own initiative. There is nothing in the Nevada Constitution or in the general statutes which states that referendum questions proposed by the Legislature on its own initiative can be amended only by a vote of the people.

CONCLUSION

Accordingly, it is the opinion of this office that in the case of referendum questions proposed by the Legislature on its own initiative, statutes which are approved by that referendum may be amended in the future by

the Legislature acting alone. Of course, referendum questions approved by the people pursuant to the provisions of Article 19 may not be amended except by a direct vote of the people. Your first question having been answered in the above manner, it is, therefore, unnecessary to consider your second question.

Respectfully submitted,

ROBERT LIST, *Attorney General*
By DONALD KLASIC, *Deputy Attorney General*

191 Public Health—Chapter 326, Statutes of Nevada 1975, prohibits smoking in certain designated areas; violation of statute is misdemeanor.

CARSON CITY, June 30, 1975

MR. JOHN KOONTZ, *Acting Director, Nevada State Museum, Carson City, Nevada 89701*

DEAR MR. KOONTZ:

You recently requested from this office an interpretation of Assembly Bill No. 17 as it may affect the Nevada State Museum and other governmental agencies and institutions. Assembly Bill 17 is also known as Chapter 326, Statutes of Nevada 1975.

Chapter 326, which is effective July 1, 1975, sets forth a new public policy for the State of Nevada concerning the smoking of tobacco in certain specified public places, based upon a legislative finding that the quality of air is affected with the public interest.

The heart of Chapter 326 is Section 3 which, with certain exceptions noted below, prohibits smoking of tobacco in any form in the following locations:

1. A public elevator;
2. A library;
3. A museum;
4. A bus used by the general public, other than a chartered bus;
5. A room, including a lecture hall or a university concert hall, located in a public building while a public meeting is in progress in such room;
6. A hallway, waiting room or cafeteria open to the public and located in a state building; and
7. A public waiting room, lobby or hallway of any health and care facility as defined by NRS 499.007 or office of any chiropractor, dentist, physical therapist, physician, podiatrist, psychologist, optician, optometrist, osteopath or doctor of traditional Oriental medicine.

PUBLIC ELEVATOR

Minutes of the committee hearings on this law disclose that the Legislature intended the phrase "public elevator" to include any elevator generally used by members of the public, whether such elevator is located in a privately-owned or publicly-owned building.

Sec. 3. Referendum and initiative petitions: Contents; form; signatures; enacting clause. Each referendum petition and initiative petition shall include the full text of the measure proposed. Each signer shall affix thereto his or her signature, residence address and the name of the county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence. The affidavit shall be executed before a person authorized by law to administer oaths in the State of Nevada. The enacting clause of all statutes or amendments proposed by initiative petition shall be: "The People of the State of Nevada do enact as follows:".

[Added in 1912, amended in 1958 and 1962. The addition was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 347; Statutes of Nevada 1911, p. 446. The first amendment was proposed by initiative petition and approved and ratified by the people at the general election of 1958. The second amendment was proposed and passed by the 1960 legislature; agreed to and passed by the 1961 legislature; and approved and ratified by the people at the 1962 general election. See: Statutes of Nevada 1960, p. 512; Statutes of Nevada 1961, p. 813.]

Sec. 4. Initiative and referendum powers of registered voters of counties, municipalities. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.

[Added in 1962. Proposed and passed by the 1960 legislature; agreed to and passed by the 1961 legislature; and approved and ratified by the people at the 1962 general election. See: Statutes of Nevada 1960, p. 512; Statutes of Nevada 1961, p. 813.]

ASSEMBLY BILL NO. 112

(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 112

ASSEMBLY BILL NO. 112—ASSEMBLYMAN MARVEL

JANUARY 18, 1979

Referred to Committee on Taxation

SUMMARY—Changes period for filing certain statements relating to assessment and taxation of net proceeds of mines. (BDR 32-768)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to assessment and taxation of net proceeds of mines; requiring the filing of an annual statement and annual estimate of taxes, and simultaneous payment of the actual and estimated taxes owing; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 362.110 is hereby amended to read as follows:
 2 362.110 1. Every person, corporation or association operating any
 3 mine in this state containing gold, silver, copper, zinc, lead or other valu-
 4 able mineral or mineral deposit, whether metallic or nonmetallic, and
 5 every recipient of royalty payments in connection [therewith:] *with any*
 6 *mining operation:*
 7 (a) Shall [semiannually during July and January] *on or before Feb-*
 8 *ruary 15* of each year, except as provided in paragraph (b), file with the
 9 department a statement showing the gross yield and claimed net proceeds
 10 from each mine owned, worked or operated by [such] *that* person, cor-
 11 poration or association during the [6-month period] *calendar year*
 12 immediately preceding the [1st day of the month] *year* in which the
 13 statement is [so required to be made.] *filed.*
 14 (b) May have up to [15] *30* additional days to file [such] *the* state-
 15 ment, if beforehand he makes written application to the department and
 16 the department finds good cause for [such] *the* extension.
 17 2. [Such statement shall:] *The statement must:*
 18 (a) Show the claimed deductions from the gross yield in the detail set
 19 forth in NRS 362.120. [Such deductions shall be] *The deductions are*
 20 limited to the costs incurred during the [6-month] period covered by the
 21 statement.

SENATE BILL NO. 419

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S. B. 419

SENATE BILL NO. 419—COMMITTEE ON TAXATION

APRIL 4, 1979

Referred to Committee on Taxation

SUMMARY—Increases tax on motor vehicle fuel and on special fuels and requires a separate detailed budget for certain departments. (BDR 32-1264)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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

AN ACT relating to state financial administration; increasing the tax on motor vehicle fuel and on special fuels; requiring a separate detailed budget for the department of highways and the department of motor vehicles; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 365.170 is hereby amended to read as follows:
2 365.170 1. In addition to any other taxes provided by law, every
3 dealer shall, not later than the 25th day of each calendar month:
4 (a) Render to the department a statement of all motor vehicle fuel
5 sold, distributed or used by him in the State of Nevada, as well as all
6 motor vehicle fuel sold, distributed or used in this state by a purchaser
7 thereof upon which sale, distribution or use the dealer has assumed
8 liability for the tax thereon under NRS 365.020, during the preceding
9 calendar month; and
10 (b) Pay an excise tax of [4.5] 6.5 cents per gallon on all motor
11 vehicle fuel so sold, distributed or used, in the manner and within the
12 time prescribed in this chapter.
13 2. The department for good cause may extend for not to exceed 30
14 days the time for making any report or return required under this chapter.
15 The extension may be granted at any time if:
16 (a) A request [therefor] for it has been filed with the department
17 within or [prior to] before the period for which the extension may be
18 granted; and
19 (b) A remittance of the estimated tax is made when due.
20 Any dealer to whom an extension is granted shall pay, in addition to any
21 delinquent tax due, interest at the rate of one-half of 1 percent per
22 month, or fraction thereof, from the date on which the tax would have
23 been due without the extension to the date of payment.

SENATE BILL NO. 562

S. B. 562

SENATE BILL NO. 562—COMMITTEE ON TAXATION

MAY 4, 1979

Referred to Committee on Taxation

SUMMARY—Authorizes legislative commission to withdraw Nevada from multi-state tax compact under certain circumstances. (BDR 32-2148)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



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

AN ACT relating to the multistate tax compact; authorizing the legislative commission to withdraw Nevada under certain circumstances; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. The legislative commission is hereby authorized to with-
2 draw Nevada from the multistate tax compact upon a finding that the
3 revenues derived from audits under the multistate tax compact in other
4 states fall short of the expenses of Nevada's participation.
- 5 SEC. 2. 1. The multistate tax compact set forth in NRS 376.010 is
6 hereby repealed.
- 7 2. NRS 376.020, 376.030, 376.040, 376.050 and 376.060 are
8 hereby repealed.
- 9 SEC. 3. Section 2 of this act shall become effective when the legisla-
10 tive commission withdraws Nevada from the multistate tax compact pur-
11 suant to section 1 of this act.

COMMITTEES

CHAIRMAN

WAYS AND MEANS
LEGISLATIVE COMMISSION
INTERIM FINANCE

VICE CHAIRMAN

LEGISLATIVE FUNCTIONS

CHAIRMAN

SUBCOMMITTEE ON UNIVERSITY
SYSTEM BUDGET



Nevada Legislature

SIXTIETH SESSION

May 3, 1979

DONALD R. MELLO
SENIOR ASSEMBLYMAN
2590 OFFICE STREET
SPARKS, NEVADA 89431
(702) 358-0736

WILLIAM A. BIBLE
SPECIAL ASSISTANT
FISCAL ANALYST
885-5640

Mr. Roy Nickson, Executive Director
Nevada Department of Taxation
1100 E. Williams, Capital Plaza
Carson City, Nevada 89701

Dear Mr. Nickson:

In closing the budget for the Department of Taxation, the Ways and Means Committee, by formal action, requested that you appear before the Interim Finance Committee within a year to report on the progress that is being made in out-of-state audits through Nevada's participation in the Multistate Tax Compact. As you will recall, the committee had some reservations about Nevada's continuation in this program and they felt that it would be best if they were kept apprised of the results that are being obtained through Nevada's participation in this compact through a report to the Interim Finance Committee.

When you feel that you have sufficient information on which to base a report, please contact the secretary of the Interim Finance Committee in order to have an appearance scheduled.

Sincerely,

DRM
Donald R. Mello, Chairman
Ways and Means Committee

DRM:ca