# THE ONE HUNDRED AND NINTH DAY

CARSON CITY (Thursday), May 21, 2009

Senate called to order at 6:36 p.m.
President Krolicki presiding.
Roll called.
All present.
Prayer by the Senator Carlton.

Infinite and ultimate Mystery, the citizens of Nevada call You by many names: God, Yahweh, Creator, Allah, Brahman, Goddess, Satnam, Creative Interchange, Void, Ahura Mazda, Ground of Being. These names planted and transplanted here the great traditions of the world now growing in our own garden.

We are joined as the sagebrush is joined to the desert while it reaches upward beyond itself. We are joined as the rivers and streams originating in the Sierra Nevada are joined as they travel to the oceans of the planets. We are joined as the Mountain Bluebird is joined with the sky.

So are we joined in this Chamber with the citizens on whose behalf we hold offices of trust, and joined with the past and future as we live together honoring You as the Eternal Spirit of Service.

You, who from ancient times has joined us in shapes like covenant, compact and constitution, as the means by which we may cocreate a humane, educated and prosperous society; You, Spirit of Generations, bless all those here and everywhere serving the public well in many ways. On this new day, accept us anew as we join, again, with the calls to stewardship, justice, righteousness and love.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

## REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 149, 152, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAGGIE CARLTON, *Chair*

*Mr. President:*

Your Committee on Energy, Infrastructure and Transportation, to which was rereferred Assembly Bill No. 25, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL A. SCHNEIDER, *Chair*

*Mr. President:*

Your Committee on Finance, to which were referred Senate Bills Nos. 428, 430, 431; Assembly Bills Nos. 534, 549, 552, 556, 557, 563, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

BERNICE MATHEWS, *Cochair*

*Mr. President:*

Your Committee on Health and Education, to which was referred Assembly Bill No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

VALERIE WIENER, *Chair*

*Mr. President:*

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 238, 497, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

TERRY CARE, *Chair*

*Mr. President:*

Your Committee on Legislative Operations and Elections, to which was referred Assembly Bill No. 294, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Legislative Operations and Elections, to which were referred Assembly Bill No. 535; Assembly Joint Resolutions Nos. 5, 6, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Legislative Operations and Elections, to which was referred Senate Bill No. 373, has had the same under consideration, and begs leave to report the same back with the recommendation: Rerefer to the Committee on Natural Resources.

Also, your Committee on Legislative Operations and Elections, to which was referred Assembly Concurrent Resolution No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

JOYCE WOODHOUSE, *Chair*

## MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 20, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 55, Amendment No. 588; Senate Bill No. 68, Amendments Nos. 626, 877; Senate Bill No. 89, Amendment No. 719; Senate Bill No. 108, Amendment No. 862; Senate Bill No. 176, Amendment No. 779; Senate Bill No. 184, Amendment No. 718; Senate Bill No. 197, Amendment No. 780; Senate Bill No. 218, Amendments Nos. 742, 881; Senate Bill No. 227, Amendment No. 716; Senate Bill No. 230, Amendment No. 715; Senate Bill No. 246, Amendments Nos. 743, 802, 843; Senate Bill No. 310, Amendment No. 784; Senate Bill No. 332, Amendment No. 745; Senate Bill No. 338, Amendment No. 785; Senate Bill No. 350, Amendment No. 749, and respectfully requests your honorable body to concur in said amendments.

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

ASSEMBLY CHAMBER, Carson City, May 21, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 562.

Also, I have the honor to inform your honorable body that the Assembly amended, and on this day passed, as amended, Senate Bill No. 394, Amendment No. 879, and respectfully requests your honorable body to concur in said amendment.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to concur in the Senate Amendment No. 758 to Assembly Bill No. 463.

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

MOTIONS, RESOLUTIONS AND NOTICES

Senator Mathews moved that all necessary rules be suspended, reading so far had considered second reading, rules be further suspended, and that Assembly Bill No. 563 just reported out of Committee be declared an emergency measure under the Constitution and be immediately placed on the top of General File and final passage.

Motion carried.

Senator Carlton moved to reconsider the action whereby Senate Bill No. 426 was lost.

Motion carried.

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

SENATOR RAGGIO:

Mr. President, I rise to a point of order. The Senate adopted a new standing rule, yesterday, whereby the motion to reconsider is only in order on the day the final vote is taken.

PRESIDENT KROLICKI:

The point is well taken. A motion to rescind is in order at this time.

Senator Carlton moved to rescind the action whereby Senate Bill No. 426 was lost.

Motion carried.

Senator Carlton moved to rescind the action whereby Assembly Bill No. 146 was lost.

Motion carried.

Senator Carlton moved to place Senate Bill No. 426 and Assembly Bill No. 146 on the bottom of General File.

Motion carried.

Senator Horsford moved that for the remainder of session, all necessary rules be suspended, reading so far had considered second reading, rules further suspended, and that all Assembly bills and joint resolutions just reported out of Committee with a "do pass" be declared emergency measures under the Constitution and immediately placed on third reading and final passage on the next agenda, time permitting.

Remarks by Senator Horsford.

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

Immediately placing Assembly bills and joint resolutions, without amendments, will accommodate tomorrow's house-passage deadline. This suspension already applies to Senate bills and joint resolutions.

Motion carried.

Senator Horsford moved that for the remainder of this session, all necessary rules be suspended, and that all Assembly concurrent resolutions just reported out of committee with a "be adopted" be immediately placed on the Resolution File on the next agenda, time permitting.

Remarks by Senator Horsford.

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

This will immediately place Assembly concurrent resolutions, without amendments, on the Resolution File.

Motion carried.

Senator Horsford moved that for the remainder of this session, all necessary rules be suspended, and that all bills and joint resolutions returned from reprint be declared emergency measures under the Constitution and immediately placed on third reading and final passage on the next agenda, time permitting.

Remarks by Senator Horsford.

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

This eliminates the one-day notice for review of bills and joint resolutions that have been amended in order to expedite the process. Amendment and final passage and/or adoption of these measures will now be the same day. This will accommodate tomorrow's deadline as well. It will also move amended Senate measures to the Assembly for consideration before the end-of-session deadline.

Motion carried.

Senator Horsford moved that for the remainder of this session, all necessary rules be suspended, and that all concurrent resolutions returned from reprint be immediately placed on the Resolution File on the next agenda, time permitting.

Remarks by Senator Horsford.

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

This suspension will accommodate the movement of amended concurrent resolutions in the same manner as bills and joint resolutions in our previous motion.

Motion carried.

Senator Horsford moved to suspend Senate Standing Rule No. 92 which pertains to committee meetings, notice of bills, topics and public hearings.

Remarks by Senator Horsford.

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

This suspension will afford the Committees some flexibility in posting agendas, which will significantly accelerate the business of the Senate.

Motion carried.

Senator Care moved that Assembly Bill No. 215 be taken from the Second Reading File and placed on the Second Reading File on the next agenda.

Motion carried.

Senator Care moved that Assembly Bill No. 319 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

Senator Care moved that Assembly Bills Nos. 130, 162, 287 be taken from the General File and placed on the General File on the next agenda.

Motion carried.

Senator Washington moved that Senate Bill No. 311 and Assembly Bill No. 181 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Finance:

Senate Bill No. 433—AN ACT relating to public employees; establishing the maximum allowed salaries for certain employees in the classified and unclassified service of the State; requiring employees of the State to take a certain number of days of unpaid furlough leave during the 2009-2011 biennium; providing exceptions to the furlough requirement; making appropriations from the State General Fund and State Highway Fund for the salaries of certain employees of the State; making certain appropriations contingent on specified projections of unappropriated balances in the State General Fund; and providing other matters properly relating thereto.

Senator Mathews moved that all necessary rules be suspended, reading so far had considered first reading, rules further suspended, and that Senate Bill No. 433 be declared an emergency measure under the Constitution and placed on the General File for third reading and final passage, next agenda.

Motion carried.

Assembly Bill No. 562.

Senator Care moved that the bill be referred to the Committee on Finance.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 10.

Bill read second time and ordered to third reading.

Assembly Bill No. 102.

Bill read second time.

The following amendment was proposed by the Committee on Health and Education:

Amendment No. 867.

"SUMMARY—Revises provisions governing problem gambling. (BDR 40-329)"

"AN ACT relating to public health; authorizing a court to establish a program of treatment for problem gambling and to assign a person to the program; authorizing a problem gambler to elect to be assigned to such a program under certain circumstances; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law authorizes a court to assign a person who commits certain crimes to an appropriate program of treatment for the abuse of alcohol or drugs established by the court or to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the Health Division of the Department of Health and Human Services. (NRS 453.580) Section 6 of this bill authorizes a court to establish a program for the treatment of problem gambling. Existing law creates the Advisory Committee on Problem Gambling and provides a grant of money or a contract for services to certain programs for the prevention and treatment of problem gambling. (Chapter 458A of NRS) Sections 7-12 of this bill provide that a problem gambler who has been convicted of certain crimes *and who committed the crime in furtherance or as a result of problem gambling* is eligible to be assigned by a court to a program of treatment and provide eligibility requirements and conditions that must be completed for such treatment. *The conditions upon the election of treatment must include an agreement to pay restitution to the victim of the crime.*

Existing law allows a court to seal the records related to a dismissal or acquittal of criminal charges. (NRS 179.255) Section 14 of this bill allows a court to seal records relating to the setting aside of a conviction if the person satisfactorily completed a program for treatment of problem gambling and satisfied the conditions upon the election of that treatment. The sealing of these records is subject to the same procedures, and has the same effect, as the sealing of records related to a dismissal or acquittal of criminal charges. (NRS 179.255, 179.265-179.301)

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

Section 1. Chapter 458A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. *"Problem gambler" means a person who suffers from problem gambling.*

Sec. 5. *"Problem gambling" has the meaning ascribed to it in NRS 641C.110.*

Sec. 5.5. *1. "Qualified mental health professional" means any of the following persons:*

*(a) A person who is certified as a problem gambling counselor pursuant to the provisions of chapter 641C of NRS.*

*(b) A person who is certified as a problem gambling counselor intern pursuant to the provisions of chapter 641C of NRS.*

*(c) A physician who is licensed pursuant to the provisions of chapter 630 or 633 of NRS.*

*(d) A nurse who is licensed pursuant to the provisions of chapter 632 of NRS and is authorized by the State Board of Nursing to engage in the practice of counseling problem gamblers.*

*(e) A psychologist who is licensed pursuant to the provisions of chapter 641 of NRS* ~~[.]~~ *or a psychological assistant who is registered with the Board of Psychological Examiners pursuant to the provisions of chapter 641 of NRS and the regulations adopted pursuant thereto.*

*(f) A clinical professional counselor or clinical professional counselor intern who is licensed pursuant to chapter 641A of NRS.*

*(g) A marriage and family therapist or marriage and family therapist intern who is licensed pursuant to the provisions of chapter 641A of NRS and is authorized by the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors to engage in the practice of counseling problem gamblers.*

*(h) A person who is licensed as a clinical social worker pursuant to the provisions of chapter 641B of NRS and is authorized by the Board of Examiners for Social Workers to engage in the practice of counseling problem gamblers.*

*2. As used in this section, "practice of counseling problem gamblers" has the meaning ascribed to it in NRS 641C.105.*

*Sec. 5.7. "Restitution" means the total amount of money owed to a victim of a crime to compensate the victim for all losses suffered as a result of the crime and any statutory fees and costs associated with the collection of that amount of money.*

Sec. 6. *1. A court may establish a program for the treatment of problem gambling to which it may assign a person pursuant to section 7 of this act. The assignment must* ~~[include]~~ *:*

*(a) Include the terms and conditions for successful completion of the program* ~~[and provide]~~ *;*

*(b) Require that the person assigned to the program agree to pay restitution as a condition upon the election of treatment; and*

*(c) Provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress toward completion of the program.*

*2. A program established pursuant to this section must be administered by a qualified mental health professional and must include, without limitation:*

*(a) Information and encouragement for the participant to cease problem gambling through educational, counseling and support sessions;*

*(b) The opportunity for the participant to understand the medical, psychological, social and financial implications of problem gambling; and*

*(c) Appropriate referral to community, health, substance abuse, religious and social service agencies for additional resources and related services, as needed.*

*3. Before the court assigns a person to a program for the treatment of problem gambling, the person must agree to pay the cost of the program to which he is assigned, to the extent of his financial resources. If the person does not have the financial resources to pay all the related costs, the court* shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 7. Subject to the provisions of sections 2 to 12, inclusive, of this act, a problem gambler who has been convicted of a crime and who committed the crime in furtherance or as a result of problem gambling is eligible to elect to be assigned by the court to a program for the treatment of problem gambling before he is sentenced unless:

1. The crime is:

(a) A crime against the person punishable as a felony or gross misdemeanor as provided in chapter 200 of NRS;

(b) A crime against a child as defined in NRS 179D.0357;

(c) A sexual offense as defined in NRS 179D.097; or

(d) An act which constitutes domestic violence as set forth in NRS 33.018;

2. The problem gambler has a record of two or more convictions of a crime described in subsection 1 or a similar crime in violation of the laws of another state, or of three or more convictions of any felony;

3. Other criminal proceedings alleging commission of a felony are pending against the problem gambler; ~~[or]~~

4. The problem gambler is on probation or parole, except that the problem gambler is eligible to make the election if the appropriate probation or parole authority consents to the election or the court finds that the problem gambler is eligible to make the election after considering any objections made by the appropriate probation or parole authority ~~[.]~~ ; or

5. The problem gambler has previously been assigned by a court to a program for the treatment of problem gambling, except that the problem gambler is eligible to make the election if the court, in its discretion, finds that the problem gambler is eligible to make such an election.

Sec. 8. 1. If the court ~~[has]~~ :

(a) Has reason to believe that ~~[a]~~ :

(1) A person who has been convicted of a crime is a problem gambler ; and ~~[the court finds]~~

(2) The person committed the crime in furtherance or as a result of problem gambling; and

(b) Finds that he is eligible to make the election as provided in section 7 of this act, ~~[the]~~

➥ the court shall hold a hearing before it sentences the person to determine whether or not the person committed the crime in furtherance or as a result of problem gambling and whether or not he should receive treatment under the supervision of a qualified mental health professional. The district attorney may present the court with any evidence concerning whether the person committed the crime in furtherance or as a result of problem gambling and the advisability of permitting the person to make the election.

2. At the hearing, the court shall advise the person that sentencing will be postponed if he elects to submit to treatment and is accepted into a

*program for the treatment of problem gambling. In offering the election, the court shall advise him that:*

*(a) The court may impose any conditions upon the election of treatment that could be imposed as conditions of probation;*

*(b) If he elects to submit to treatment and is accepted, he ~~[may]~~ :*

*(1) May be placed under the supervision of the qualified mental health professional for a period of not less than 1 year and not more than 3 years; and*

*(2) Must agree to pay restitution as a condition upon the election of treatment;*

*(c) During treatment, he may be confined in an institution or, at the discretion of the qualified mental health professional, released for treatment or supervised care in the community;*

*(d) If he satisfactorily completes treatment and satisfies the conditions upon the election of treatment, as determined by the court, the conviction will be set aside, but if he does not satisfactorily complete treatment and satisfy the conditions, he may be sentenced and the sentence executed; and*

*(e) If his conviction is set aside pursuant to section 10 of this act, he may, at any time after the conviction is set aside, file a petition pursuant to NRS 179.255 for the sealing of all records relating to the setting aside of the conviction.*

Sec. 9. *1. If the court, after a hearing, determines that a person is entitled to accept the treatment offered pursuant to section 7 of this act, the court shall order a qualified mental health professional to conduct an examination of the person to determine whether he is a problem gambler , whether he committed the crime in furtherance or as a result of problem gambling and whether he is likely to be rehabilitated through treatment. The qualified mental health professional shall report to the court the results of the examination and recommend whether the person should be placed under supervision for treatment.*

*2. If the court, acting on the report or other relevant information, determines that the person is not a problem gambler, did not commit the crime in furtherance or as a result of problem gambling, is not likely to be rehabilitated through treatment or is otherwise not a good candidate for treatment, he may be sentenced and the sentence executed.*

*3. If the court determines that the person is a problem gambler, committed the crime in furtherance or as a result of problem gambling, is likely to be rehabilitated through treatment and is a good candidate for treatment, the court may:*

*(a) Impose any conditions upon the election of treatment that may be imposed as conditions of probation;*

*(b) Defer sentencing until such time, if any, as sentencing is authorized pursuant to section 10 of this act; and*

*(c) Place the person under the supervision of a qualified mental health professional for not less than 1 year and not more than 3 years.*

➥ *The court may require such progress reports on the treatment of the person as it deems necessary.*

*4. <u>If the court places a person under the supervision of a qualified mental health professional for the purpose of receiving treatment pursuant to sections 2 to 12, inclusive, of this act, the person must agree to pay restitution as a condition upon the election of treatment.</u>*

*<u>5.</u> A person who is placed under the supervision of a qualified mental health professional shall pay the cost of the program of treatment to which he is assigned and the cost of any additional supervision that may be required, to the extent of his financial resources. The court may issue a judgment in favor of the court or the qualified mental health professional for the costs of the treatment and supervision which remain unpaid at the conclusion of the treatment. The judgment constitutes a lien in like manner as a judgment for money rendered in a civil action, but in no event may the amount of the judgment include any amount of the debt which was extinguished by the successful completion of community service pursuant to subsection ~~[5.]~~ <u>6.</u>*

*~~[5.]~~ <u>6.</u> If the person who is placed under the supervision of a qualified mental health professional does not have the financial resources to pay all of the related costs:*

*(a) The court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs; and*

*(b) The court may order the person to perform supervised community service in lieu of paying the remainder of the costs relating to his treatment and supervision. The community service must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of this State or a charitable organization that renders service to the community or its residents. The court may require the person to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which the person performs the community service, unless, if the insurance is industrial insurance, it is provided by the authority for which he performs the community service.*

*~~[6.]~~ <u>7.</u> No person may be placed under the supervision of a qualified mental health professional pursuant to this section unless the qualified mental health professional accepts him for treatment.*

Sec. 10. *1. Whenever a person is placed under the supervision of a qualified mental health professional, his sentencing must be deferred and, except as otherwise provided in subsection 4, his conviction must be set aside if the qualified mental health professional certifies to the court that he has satisfactorily completed the program of treatment and the court approves the certification and determines that the conditions upon the election of treatment have been satisfied.*

*2. If, upon the expiration of the treatment period, the qualified mental health professional has not certified that the person has completed his program of treatment, the court shall sentence him. If he has satisfied the conditions upon the election of treatment and the court believes that he will complete his treatment voluntarily, the court may set the conviction aside.*

*3. If, before the treatment period expires, the qualified mental health professional determines that the person is not likely to benefit from further treatment, the qualified mental health professional shall so advise the court. The court shall then:*

*(a) Arrange for the transfer of the person to a more suitable program, if any; or*

*(b) Terminate the supervision and conduct a hearing to determine whether the person should be sentenced.*

➥ *If a person is sentenced pursuant to this section, any time spent in institutional care must be deducted from any sentence imposed.*

*4. Regardless of whether the person successfully completes treatment, the court shall not set aside the conviction of a person who has a record of two or more convictions of any felony for two or more separate incidents.*

Sec. 11. *1. The determination of problem gambling and civil commitment pursuant to sections 2 to 12, inclusive, of this act shall not be deemed a criminal conviction.*

*2. The records relating to the setting aside of a conviction pursuant to section 10 of this act may be sealed pursuant to NRS 179.255.*

Sec. 12. *The provisions of sections 2 to 12, inclusive, of this act do not require this State or any of its political subdivisions to establish or finance any program for the treatment of problem gambling.*

Sec. 13. NRS 458A.010 is hereby amended to read as follows:

458A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 458A.020 to 458A.050, inclusive, *and sections 2 to* ~~*[5.5,]*~~ *5.7, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 14. NRS 179.255 is hereby amended to read as follows:

179.255 1. If a person has been arrested for alleged criminal conduct and the charges are dismissed or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, at any time after the date the charges were dismissed; or

(b) The court in which the acquittal was entered, at any time after the date of the acquittal,

➥ for the sealing of all records relating to the arrest and the proceedings leading to the dismissal or acquittal.

2. *If the conviction of a person is set aside pursuant to section 10 of this act, the person may petition the court that set aside the conviction, at any time after the conviction has been set aside, for the sealing of all records relating to the setting aside of the conviction.*

*3.* A petition filed pursuant to ~~[this section]~~ *subsection 1 or 2* must:

(a) Be accompanied by a current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court;

(b) Include a list of any other public or private agency, company, official and other custodian of records that is reasonably known to the petitioner to have possession of records of the arrest and of the proceedings leading to the dismissal or acquittal and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

~~[3.]~~ *4.* Upon receiving a petition pursuant to ~~[this section,]~~ *subsection 1,* the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the charges were dismissed or the acquittal was entered in a district court or ~~[Justice Court,]~~ *justice court,* the prosecuting attorney for the county; or

(b) If the charges were dismissed or the acquittal was entered in a municipal court, the prosecuting attorney for the city.

➥ The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

~~[4.]~~ *5. Upon receiving a petition pursuant to subsection 2, the court shall notify:*

*(a) If the conviction was set aside in a district court or justice court, the prosecuting attorney for the county; or*

*(b) If the conviction was set aside in a municipal court, the prosecuting attorney for the city.*

➥ *The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.*

*6.* If, after the hearing *on a petition submitted pursuant to subsection 1,* the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal or dismissal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

*7. If, after the hearing on a petition submitted pursuant to subsection 2, the court finds that the conviction of the petitioner was set aside pursuant to section 10 of this act, the court may order sealed all records relating to the setting aside of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.*

Senator Cegavske moved the adoption of the amendment.

Remarks by Senators Cegavske and Wiener.

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

SENATOR CEGAVSKE:

Amendment No. 741 to Assembly Bill No. 102 includes a definition of restitution, meaning full restitution. It clarifies that the defendant must pay full restitution to the victim and clarifies that there must be a relationship between the crime committed and the problem gambling addiction of the defendant.

SENATOR WIENER:

Amendment No. 867 replaces Amendment No. 741. Amendment No. 867 to Assembly Bill No. 102 clarifies that a person who wants to participate in the problem-gambling program must agree to pay full restitution. It is important that participants buy into the program.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 111.

Bill read second time and ordered to third reading.

Assembly Bill No. 147.

Bill read second time.

The following amendment was proposed by the Committee on Government Affairs:

Amendment No. 789.

"SUMMARY—Requires local governments, under certain circumstances, to grant preference to local bidders bidding on certain contracts for goods or services ~~[.]~~ *for a temporary period.* (BDR 27-753)"

"AN ACT relating to purchasing by local governments; requiring local governments, under certain circumstances, to grant a preference to local bidders bidding on certain contracts for goods or services ~~[;]~~ *for a temporary period;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides for a 5-percent preference in bidding on public works and certain highway construction projects for contractors who provide evidence of the payment of certain taxes. (NRS 338.1389, 338.147, 338.1693, 338.1727, 408.3883, 408.3886) ~~[Sections]~~ *During the period between August 1, 2009, and July 31, 2013, sections* 1 and 2 of this bill provide for a 5-percent preference in bidding on local governmental purchasing contracts *for which the estimated annual amount required to perform exceeds $50,000* for contractors who qualify as a "local bidder," and set forth the criteria by which a bidder may qualify as a local bidder ~~[.]~~ *, including specific additional criteria if the contract is for the purchase of biodiesel blend fuel.*

Under existing law, certain local governmental contracts for certain goods and services are stated to be, by their nature, not adapted to award by competitive bidding. (NRS 332.115) ~~[Sections]~~ *During the period between August 1, 2009, and July 31, 2013, sections* 1 and 3 of this bill provide that, irrespective of this exclusion from competitive bidding, local governmental contracts for the following types of goods and services must reflect consideration for local contractors if the governing body of the local government or its authorized representative has a choice of more than one person or vendor to fulfill the contract: (1) professional services; (2) perishable goods; (3) insurance; (4) hardware and associated peripheral equipment and devices for computers; (5) software for computers; (6) books, library materials and subscriptions; (7) items for resale through a retail outlet operated in this State by a local government or the State of Nevada; and (8) the design of, and equipment and services associated with, systems of communication.

*Section 5 of this bill requires the submission of certain annual reports by local governments concerning any contracts awarded for which the estimated annual amount required to perform the contract exceeds $25,000 and contracts for goods and services not adapted to award by competitive bidding during the period between August 1, 2009, and July 31, 2013.*

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

Section 1. Chapter 332 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in subsections ~~[5 and 6,]~~ 6 and 7, with respect to the awarding of a contract pursuant to NRS 332.065 for which the estimated annual amount required to perform the contract is more than ~~[$25,000,]~~ $50,000, a responsive and responsible bidder who is a local bidder shall be deemed to have submitted a lower bid than a competing bidder who is not a local bidder if the amount of the bid of the local bidder is not more than 5 percent higher than the amount bid by the competing bidder.*

*2. With respect to the awarding of a contract of the type described in paragraph (b), (e), (f), (g), (h), (i), (n) or (q) of subsection 1 of NRS 332.115, if a governing body or its authorized representative has a choice of more than one person or vendor to fulfill the contract, at least one of whom is a local bidder, the contract must be awarded in such a manner as to reflect the preference described in subsection 6 of that section.*

*3. ~~[To]~~ Except as otherwise provided in subsection 4, to qualify as a local bidder for the purposes of this section:*

*(a) If the bidder is a business of which at least 51 percent of the ownership interest is held by a member of a minority group, a woman or a service-disabled veteran, the business must have continuously employed at least one full-time employee in this State during the immediately preceding 1-year period.*

*(b) If the bidder is a business that does not meet the requirements of paragraph (a), the business must have:*

*(1) Continuously conducted business operations in this State during the immediately preceding 2-year period; and*

*(2) Continuously employed at least one full-time employee in this State during the immediately preceding 2-year period.*

*4. If a governing body or its authorized representative is awarding a contract described in subsection 1 for the purchase of biodiesel blend fuel, in addition to the requirements set forth in subsection 3, to qualify as a local bidder, the bidder must provide to the governing body or its authorized representative a biodiesel blend fuel that is made from biodiesel fuel produced in this State.*

*5. Governing bodies and their authorized representatives ~~[shall]~~ may consult with the Purchasing Division of the Department of Administration to develop uniform standards for businesses to submit proof of their status for the purposes of subsection 3. Such uniform standards may include, without limitation, certification by reputable and reliable public or private entities to determine whether at least 51 percent of the ownership interest of a business is or is not held by a member of a minority group, a woman or a service-disabled veteran.*

*~~[5.]~~ 6. The provisions of this section do not require a local government or its authorized representative to award a contract to a bidder whose quality of services, supplies, materials, equipment or labor does not conform to the requirements of the local government or if the public interest would be served by rejection of the bid.*

*~~[6.]~~ 7. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular contract because of the provisions of this section, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that contract.*

*~~[7.]~~ 8. As used in this section:*

*(a) "Biodiesel fuel" means a fuel that:*

*(1) Is composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and designated "B100"; and*

*(2) Meets the requirements of the ASTM International specification D6751.*

*(b) "Biodiesel blend fuel" means a blend of biodiesel fuel that:*

*(1) Meets the requirements of the D6751 with petroleum-based diesel fuel; and*

*(2) Is designated "BXX," where "XX" represents the volume percentage of biodiesel fuel in the blend.*

*(c) "Minority group" has the meaning ascribed to it in NRS 232.472.*

*~~[(b)]~~ (d) "Service-disabled veteran" means a veteran of the Armed Forces of the United States who has a service-connected disability of 0 percent or greater as determined by the United States Department of Veterans Affairs.*

Sec. 2. NRS 332.065 is hereby amended to read as follows:

332.065 1. If a governing body or its authorized representative has advertised for or requested bids in letting a contract, the governing body or its authorized representative must, except as otherwise provided in subsection 2, award the contract to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder ~~[may]~~ ~~*[must]*~~ *:*

*(a) Must, if the estimated annual amount required to perform the contract is more than $50,000, be judged on the basis of the status of the bidder as a local bidder, as determined pursuant to section 1 of this act; and*

*(b) May* be judged on the basis of:

~~[(a)]~~ *(1)* Price;

~~[(b)]~~ *(2)* Conformance to specifications;

~~[(c)]~~ *(3)* Qualifications;

~~[(d)]~~ *(4)* Past performance;

~~[(e)]~~ *(5)* Performance or delivery date;

~~[(f)]~~ *(6)* Quality and utility of services, supplies, materials or equipment offered and the adaptability of those services, supplies, materials or equipment to the required purpose of the contract;

~~[(g) *The status of the bidder as a local bidder, as determined pursuant to section 1 of this act;*~~

~~*(h)]*~~ *(7)* The best interests of the public; and

~~[(h)]~~ ~~*[(i)]*~~ *(8)* Such other criteria as may be set forth by the governing body or its authorized representative in the advertisement or request for bids, as applicable, that pertains to the contract.

2. The governing body or its authorized representative:

(a) Shall give preference to recycled products if:

(1) The product meets the applicable standards;

(2) The product can be substituted for a comparable nonrecycled product; and

(3) The product costs no more than a comparable nonrecycled product.

(b) May give preference to recycled products if:

(1) The product meets the applicable standards;

(2) The product can be substituted for a comparable nonrecycled product; and

(3) The product costs no more than 5 percent more than a comparable nonrecycled product.

(c) May purchase recycled paper products if the specific recycled paper product is:

(1) Available at a price which is not more than 10 percent higher than that of paper products made from virgin material;

(2) Of adequate quality; and

(3) Available to the purchaser within a reasonable period.

3. If , after the lowest responsive and responsible bidder has been awarded the contract, during the term of the contract he does not supply goods or services in accordance with the bid specifications, or if he repudiates the contract, the governing body or its authorized representative may reaward the contract to the next lowest responsive and responsible bidder without requiring that new bids be submitted. Reawarding the contract to the next lowest responsive and responsible bidder is not a waiver of any liability of the initial bidder awarded the contract.

4. As used in this section:

(a) "Postconsumer waste" means a finished material which would normally be disposed of as a solid waste having completed its life cycle as a consumer item.

(b) "Recycled paper product" means all paper and wood-pulp products containing in some combination at least 50 percent of its total weight:

(1) Postconsumer waste; and

(2) Secondary waste,

➥ but does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(c) "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value.

Sec. 3. NRS 332.115 is hereby amended to read as follows:

332.115 1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:

(a) Items which may only be contracted from a sole source;

(b) Professional services;

(c) Additions to and repairs and maintenance of equipment which may be more efficiently added to, repaired or maintained by a certain person;

(d) Equipment which, by reason of the training of the personnel or of an inventory of replacement parts maintained by the local government is compatible with existing equipment;

(e) Perishable goods;

(f) Insurance;

(g) Hardware and associated peripheral equipment and devices for computers;

(h) Software for computers;

(i) Books, library materials and subscriptions;

(j) Motor vehicle fuel purchased by a local law enforcement agency for use in an undercover investigation;

(k) Motor vehicle fuel for use in a vehicle operated by a local law enforcement agency or local fire department if such fuel is not available within the vehicle's assigned service area from a fueling station owned by the State of Nevada or a local government;

(l) Purchases made with money in a store fund for prisoners in a jail or local detention facility for the provision and maintenance of a canteen for the prisoners;

(m) Supplies, materials or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration or another governmental agency located within or outside this State;

(n) Items for resale through a retail outlet operated in this State by a local government or the State of Nevada;

(o) Commercial advertising within a recreational facility operated by a county fair and recreation board;

(p) Goods or services purchased from organizations or agencies whose primary purpose is the training and employment of persons with disabilities; and

(q) The design of, and equipment and services associated with, systems of communication,

➥ are not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

2. The purchase of equipment for use by a local law enforcement agency in the course of an undercover investigation is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

(a) The equipment is an electronic or mechanical device which by design is intended to monitor and document in a clandestine manner suspected criminal activity; or

(b) Purchasing the equipment pursuant to such requirements would limit or compromise the use of such equipment by an agency authorized to conduct such investigations.

3. The purchase of personal safety equipment for use by a response agency or any other local governmental agency is not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative, if:

(a) The personal safety equipment will be used by personnel of the response agency or other local governmental agency in preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters in which the health, safety or welfare of those personnel may be compromised, impaired or otherwise threatened; and

(b) The cost of the personal safety equipment is comparable to the cost of similar personal safety equipment that is available for purchase by the public.

4. The governing body of a hospital required to comply with the provisions of this chapter, or its authorized representative, may purchase goods commonly used by the hospital, under a contract awarded pursuant to NRS 332.065, without additional competitive bidding even if at the time the contract was awarded:

(a) The vendor supplying such goods to the person awarded the contract was not identified as a supplier to be used by the person awarded the contract; or

(b) The vendor was identified as a supplier but was not identified as the supplier of such goods.

➥ The governing body of the hospital shall make available for public inspection each such contract and records related to those purchases.

5. This section does not prohibit a governing body or its authorized representative from advertising for or requesting bids.

6. *Notwithstanding the provisions of subsections 1 to 5, inclusive, and except as otherwise provided in subsections 7 and 8, if a governing body or its authorized representative is choosing between two or more businesses, contractors or vendors to fulfill a contract described in paragraph (b), (e), (f), (g), (h), (i), (n) or (q) of subsection 1, the governing body or authorized representative, as applicable, shall:*

*(a) Include within its selection criteria consideration of the following factors:*

*(1) The number of residents of this State that the business, contractor or vendor employs;*

*(2)* ~~*[The amount of taxes and fees paid by the business, contractor or vendor to state and local governmental entities in Nevada;*~~

~~*(3)]*~~ *The length of time in which the business, contractor or vendor has maintained business operations in this State or the applicable local jurisdiction; and*

~~*[(4)]*~~ *(3) If the contract to be fulfilled is a contract described in paragraph (b) of subsection 1, the number of owners and principals of the business, contractor or vendor who are residents of this State.*

*(b) If the governing body or authorized representative uses a point system or similar scoring rubric, and if one or more of the businesses, contractors or vendors being considered qualifies as a local bidder pursuant to section 1 of this act, the status of being a local bidder must account for not less than 5 percent of the points or score awarded.*

*7. The provisions of subsection 6 do not require a local government or its authorized representative to award a contract to a business, contractor or vendor whose quality of services, supplies, materials, equipment or labor does not conform to the requirements of the local government or if the public interest would be served by rejection of the offer to fulfill the contract.*

*8. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular contract because of the provisions of subsection 6, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that contract.*

*9.* As used in this section:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 239C.030.

(b) "Personal safety equipment" means safety equipment that personnel of a response agency or other local governmental agency:

(1) Use in the course of preventing, responding to or providing services of recovery or relief in connection with emergencies, acts of terrorism or other natural or man-made disasters; or

(2) Wear or otherwise carry on a regular basis.

➥ The term includes, without limitation, firearms, boots, bulletproof vests or other types of body armor, protective garments, protective eyewear, gloves, helmets, and any specialized apparatus, equipment or materials approved or recommended by the United States Department of Homeland Security.

(c) "Response agency" means an agency of a local government that provides services related to law enforcement, firefighting, emergency medical care or public safety.

Sec. 4. NRS 625.530 is hereby amended to read as follows:

625.530 Except as otherwise provided in NRS 338.1711 to 338.1727, inclusive, and 408.3875 to 408.3887, inclusive:

1. The State of Nevada or any of its political subdivisions, including a county, city or town, shall not engage in any public work requiring the practice of professional engineering or land surveying, unless the maps, plans, specifications, reports and estimates have been prepared by, and the work executed under the supervision of, a professional engineer, professional land surveyor or registered architect.

2. The provisions of this section do not:

(a) Apply to any public work wherein the expenditure for the complete project of which the work is a part does not exceed $35,000.

(b) Include any maintenance work undertaken by the State of Nevada or its political subdivisions.

(c) Authorize a professional engineer, registered architect or professional land surveyor to practice in violation of any of the provisions of chapter 623 of NRS or this chapter.

(d) Require the services of an architect registered pursuant to the provisions of chapter 623 of NRS for the erection of buildings or structures manufactured in an industrial plant, if those buildings or structures meet the requirements of local building codes of the jurisdiction in which they are being erected.

3. The selection of a professional engineer, professional land surveyor or registered architect to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of services to be performed and not on the basis of competitive fees ~~[.]~~ *, but this sentence does not prohibit consideration of the factors set forth in subsection 6 of NRS 332.115.* If, after selection of the engineer, land surveyor or architect, an agreement upon a fair and reasonable fee cannot be reached with him, the public agency may terminate negotiations and select another engineer, land surveyor or architect.

Sec. 5. ~~[Each]~~ *1. Except as otherwise provided in subsection 3, each* local government that awards a contract *for which the estimated annual amount required to perform the contract is more than $25,000* in accordance with the provisions of ~~[section 1 of this act]~~ *NRS 332.065, as amended by section 2 of this act,* or *a contract pursuant to* NRS 332.115, as amended by section 3 of this act, ~~[or both,]~~ shall, on or before October 1 of each year in which it awards such a contract, submit to the Director of the Legislative Counsel Bureau a report ~~[setting forth:~~

~~1.]~~ *detailing those contracts on the form prescribed by the Committee on Local Government Finance.*

*2. Before August 1, 2009, the Committee on Local Government Finance shall prescribe a form for the report described in subsection 1, which must include, without limitation:*

*(a)* The *total* number of ~~[transactions conducted]~~ *contracts described in subsection 1 awarded* by the local government ~~[that are subject to the provisions of this act.~~

~~2. The number of businesses, contractors and vendors that qualified as local bidders pursuant to section 1 of this act.~~

~~3.]~~ *during the year to which the report pertains; and*

*(b)* A description of each ~~[type of transaction conducted by the local government which was subject to the provisions of this act,]~~ *such contract,* including, without limitation:

~~[(a) Whether the transaction was for goods or services.~~

~~(b)]~~ *(1) The name of the person or entity to whom the contract was awarded.*

*(2)* The particular type of goods or services involved in the ~~[transaction.~~ ~~(c)]~~ *contract.*

*(3)* The total dollar amount of the ~~[transaction.~~

~~4. The number of businesses, contractors and vendors that:~~

~~(a) Were awarded a contract without being qualified as a local bidder or without receiving any consideration as a local bidder.~~

~~(b) Were awarded a contract, in whole or in part, because they were qualified as a local bidder or received consideration as a local bidder. The information required pursuant to this paragraph must include, for each such contract, the dollar amount of the contract.~~

~~5. Any other information determined to be relevant by the Director of the Legislative Counsel Bureau.]~~ *contract.*

*(4) Whether the person or entity to whom the contract was awarded was awarded the contract as a result of subsection 1 or 2 of section 1 of this act.*

*(5) If the person or entity to whom the contract was awarded was not qualified as a local bidder pursuant to section 1 of this act, the number of qualified local bidders that bid on the contract.*

*3. The report required to be submitted in 2013 pursuant to subsection 1 must be submitted by July 31, 2013, and must include the required information that is current through June 30, 2013.*

Sec. 6. This act becomes effective on ~~[July]~~ *August* 1, 2009 ~~[.]~~ *, and expires by limitation on July 31, 2013.*

Senator Lee moved the adoption of the amendment.

Remarks by Senators Lee and Cegavske.

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

SENATOR LEE:

Amendment No. 789 to Assembly Bill No. 147 raises the applicability of the bidding preference set forth in the bill from contracts over $25,000 to contracts over $50,000.

It clarifies the procedures for the use of a bidder's preference for the purchase of biodiesel-blend fuel.

It specifies that a bidder's status as a local bidder must be considered when awarding a contract for greater than $50,000.

The amendment deletes provisions that would have required a governing body or its authorized representative to consider the amount of taxes and fees paid by the business, contractor or vendor when awarding certain purchasing contracts that are not subject to competitive bidding.

It clarifies the form and content of the annual reports submitted to the Nevada Legislature and provides that the reports must include details of contracts awarded in the amount of $25,000 or more and sets forth a "sunset" provision for the measure of July 31, 2013.

SENATOR CEGAVSKE:

I would like to thank the Chair who worked well with the sponsor of the bill and others to clarify the questions we had.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 227.

Bill read second time and ordered to third reading.

Assembly Bill No. 254.

Bill read second time and ordered to third reading.

Assembly Bill No. 281.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 766.

"SUMMARY—Makes various changes concerning workers' compensation. (BDR 53-57)"

"AN ACT relating to industrial insurance; _revising provisions relating to the duty of an insurer to accept or deny a claim for compensation; revising provisions relating to the selection of a physician or chiropractor by an injured employee; revising provisions relating to the denial of compensation due to discharge from employment for misconduct; revising provisions relating to the closure of a claim;_ creating an expedited appeals process for certain claims by police officers, firefighters and emergency medical attendants; _repealing provisions requiring the reduction of compensation by the amount of federal disability insurance benefits received by an injured employee;_ and providing other matters properly relating thereto."

Legislative Counsel's Digest:

_Under existing law, an insurer is required to accept or deny a claim for compensation within 30 days after the insurer has been notified of an industrial accident. (NRS 616C.065) Section 2 of this bill provides that if an insurer is ordered by the Administrator of the Division of Industrial Relations of the Department of Business and Industry, a hearing or appeals officer, a district court or the Supreme Court of Nevada to make a new determination relating to a claim for compensation, such a determination must be made within 30 days after the order._

*Existing law provides that an injured employee may choose an alternative treating physician or chiropractor after making his initial choice if the alternative choice is made within 90 days after the injury. (NRS 616C.090) Section 3 of this bill clarifies existing law by providing that an injured employee may make the alternative choice without the insurer's approval if the alternative choice is made within 90 days after the injury. Section 3 also provides that an injured employee may make a change in the treating physician or chiropractor at any time, subject to the insurer's approval. Section 3 further requires an insurer to provide to an injured employee whose request for a change in the treating physician or chiropractor has been denied the specific reason for the denial.*

*Section 4 of this bill provides that the affidavit or declaration of a qualified laboratory director, chemist or any other person meeting certain qualifications may be used to prove the existence of alcohol or controlled substances in an employee's system in denying, reducing or suspending the payment of compensation for an injury. (NRS 616C.230)*

*Section 5 of this bill revises existing provisions governing the denial of compensation to injured employees who have been discharged for misconduct by providing that only compensation for temporary total disability may be denied. (NRS 616C.232)*

*Section 6 of this bill revises existing law by requiring an insurer to notify an injured employee whose claim will be closed whether an evaluation for a permanent partial disability has been scheduled or, if such an evaluation has not been scheduled, that the reason is because the insurer determined there is no possibility of a permanent impairment of any kind. (NRS 616C.235)*

Sections ~~[1]~~ *7* and ~~[2]~~ *8* of this bill authorize certain contested claims relating to certain occupational diseases of police officers, firefighters and emergency medical attendants to be submitted directly to an appeals officer, thereby bypassing the hearing officer to whom the contested claim would need to be submitted under existing law. (NRS 616C.315) Section ~~[2]~~ *8* also requires that the appeals officer set a hearing date within 60 days after receiving a notice of any such contested claim. (NRS 616C.345) Section ~~[3]~~ *9* of this bill requires that the appeals officer render a decision for any such contested claim within 15 days after certain specified events. (NRS 616C.360)

*Section 11 of this bill repeals the provisions requiring a reduction in the compensation received by an employee for temporary disability, permanent partial disability or permanent total disability by the amount of federal disability insurance benefits received by the employee. (NRS 616C.430)*

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

*Section 1. NRS 616C.050 is hereby amended to read as follows:*

616C.050 1. An insurer shall provide to each claimant:

(a) Upon written request, one copy of any medical information concerning his injury or illness.

(b) A statement which contains information concerning the claimant's right to:

(1) Receive the information and forms necessary to file a claim;

(2) Select a treating physician or chiropractor and an alternative treating physician or chiropractor in accordance with the provisions of NRS 616C.090;

(3) Request the appointment of the Nevada Attorney for Injured Workers to represent him before the appeals officer;

(4) File a complaint with the Administrator;

(5) When applicable, receive compensation for:

(I) Permanent total disability;

(II) Temporary total disability;

(III) Permanent partial disability;

(IV) Temporary partial disability;

(V) All medical costs related to his injury or disease; or

(VI) The hours he is absent from the place of employment to receive medical treatment pursuant to NRS 616C.477;

(6) Receive services for rehabilitation if his injury prevents him from returning to gainful employment;

(7) Review by a hearing officer of any determination or rejection of a claim by the insurer within the time specified by statute; and

(8) Judicial review of any final decision within the time specified by statute.

2. The insurer's statement must include a copy of the form designed by the Administrator pursuant to subsection ~~[7]~~ *8* of NRS 616C.090 that notifies injured employees of their right to select an alternative treating physician or chiropractor. The Administrator shall adopt regulations for the manner of compliance by an insurer with the other provisions of subsection 1.

*Sec. 2. NRS 616C.065 is hereby amended to read as follows:*

616C.065 1. Except as otherwise provided in NRS 616C.136, within 30 days after the insurer has been notified of an industrial accident, every insurer shall:

(a) Accept a claim for compensation, notify the claimant or the person acting on behalf of the claimant that the claim has been accepted and commence payment of the claim; or

(b) Deny the claim and notify the claimant or the person acting on behalf of the claimant and the Administrator that the claim has been denied.

2. *If an insurer is ordered by the Administrator, a hearing officer, an appeals officer, a district court or the Supreme Court of Nevada to make a new determination, including, without limitation, a new determination regarding the acceptance or denial of a claim for compensation, the insurer shall make the new determination within 30 days after the date on which the insurer has been ordered to do so.*

*3.* Payments made by an insurer pursuant to this section are not an admission of liability for the claim or any portion of the claim.

~~[3.]~~ *4.* Except as otherwise provided in this subsection, if an insurer unreasonably delays or refuses to pay the claim within 30 days after the insurer has been notified of an industrial accident, the insurer shall pay upon order of the Administrator an additional amount equal to three times the amount specified in the order as refused or unreasonably delayed. This payment is for the benefit of the claimant and must be paid to him with the compensation assessed pursuant to chapters 616A to 617, inclusive, of NRS. The provisions of this section do not apply to the payment of a bill for accident benefits that is governed by the provisions of NRS 616C.136.

~~[4.]~~ *5.* The insurer shall notify the claimant or the person acting on behalf of the claimant that a claim has been accepted or denied pursuant to subsection 1 *or 2* by:

(a) Mailing its written determination to the claimant or the person acting on behalf of the claimant; and

(b) If the claim has been denied, in whole or in part, obtaining a certificate of mailing.

~~[5.]~~ *6.* The failure of the insurer to obtain a certificate of mailing as required by paragraph (b) of subsection ~~[4]~~ *5* shall be deemed to be a failure of the insurer to mail the written determination of the denial of a claim as required by this section.

~~[6.]~~ *7.* Upon request, the insurer shall provide a copy of the certificate of mailing, if any, to the claimant or the person acting on behalf of the claimant.

~~[7.]~~ *8.* For the purposes of this section, the insurer shall mail the written determination to:

(a) The mailing address of the claimant or the person acting on behalf of the claimant that is provided on the form prescribed by the Administrator for filing the claim; or

(b) Another mailing address if the claimant or the person acting on behalf of the claimant provides to the insurer written notice of another mailing address.

~~[8.]~~ *9.* As used in this section, "certificate of mailing" means a receipt that provides evidence of the date on which the insurer presented its written determination to the United States Postal Service for mailing.

*Sec. 3. NRS 616C.090 is hereby amended to read as follows:*

616C.090 1. The Administrator shall establish a panel of physicians and chiropractors who have demonstrated special competence and interest in industrial health to treat injured employees under chapters 616A to 616D, inclusive, or chapter 617 of NRS. Every employer whose insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 shall maintain a list of those physicians and chiropractors on the panel who are reasonably accessible to his employees.

2. An injured employee whose employer's insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 may choose his treating physician or

chiropractor from the panel of physicians and chiropractors. If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor from the panel if the choice is made within 90 days after his injury. The insurer shall notify the first physician or chiropractor in writing. The notice must be postmarked within 3 working days after the insurer receives knowledge of the change. The first physician or chiropractor must be reimbursed only for the services he rendered to the injured employee up to and including the date of notification. Except as otherwise provided in this subsection, any further change is subject to the approval of the insurer, which must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee. If the treating physician or chiropractor refers the injured employee to a specialist for treatment, the treating physician or chiropractor shall provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is on the panel. After receiving the list, the injured employee shall, at the time the referral is made, select a physician or chiropractor from the list.

3. An injured employee whose employer's insurer has entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 must choose his treating physician or chiropractor pursuant to the terms of that contract. If the injured employee is not satisfied with the first physician or chiropractor he so chooses, he may make an alternative choice of physician or chiropractor pursuant to the terms of the contract *without the approval of the insurer* if the choice is made within 90 days after his injury. If the injured employee, after choosing his treating physician or chiropractor, moves to a county which is not served by the organization for managed care or providers of health care services named in the contract and the insurer determines that it is impractical for the injured employee to continue treatment with the physician or chiropractor, the injured employee must choose a treating physician or chiropractor who has agreed to the terms of that contract unless the insurer authorizes the injured employee to choose another physician or chiropractor. If the treating physician or chiropractor refers the injured employee to a specialist for treatment, the treating physician or chiropractor shall provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is available pursuant to the terms of the contract with the organization for managed care or with providers of health care services pursuant to NRS 616B.527, as appropriate. After receiving the list, the injured employee shall, at the time the referral is made, select a physician or chiropractor from the list. If the employee fails to select a physician or chiropractor, the insurer may select a physician or chiropractor with that

specialization. If a physician or chiropractor with that specialization is not available pursuant to the terms of the contract, the organization for managed care or the provider of health care services may select a physician or chiropractor with that specialization.

4. *If the injured employee is not satisfied with the physician or chiropractor selected by himself or by the insurer, the organization for managed care or the provider of health care services pursuant to subsection 3, the injured employee may make an alternative choice of physician or chiropractor pursuant to the terms of the contract. A change in the treating physician or chiropractor may be made at any time but is subject to the approval of the insurer, which must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee. If the insurer denies a request for a change in the treating physician or chiropractor under this subsection, the insurer must include in a written notice of denial to the injured employee the specific reason for the denial of the request.*

*5.* Except when emergency medical care is required and except as otherwise provided in NRS 616C.055, the insurer is not responsible for any charges for medical treatment or other accident benefits furnished or ordered by any physician, chiropractor or other person selected by the injured employee in disregard of the provisions of this section or for any compensation for any aggravation of the injured employee's injury attributable to improper treatments by such physician, chiropractor or other person.

~~[5.]~~ *6.* The Administrator may order necessary changes in a panel of physicians and chiropractors and shall suspend or remove any physician or chiropractor from a panel for good cause shown.

~~[6.]~~ *7.* An injured employee may receive treatment by more than one physician or chiropractor if the insurer provides written authorization for such treatment.

~~[7.]~~ *8.* The Administrator shall design a form that notifies injured employees of their right pursuant to subsections 2 *,* ~~[and]~~ 3 *and 4* to select an alternative treating physician or chiropractor and make the form available to insurers for distribution pursuant to subsection 2 of NRS 616C.050.

*Sec. 4.* *NRS 616C.230 is hereby amended to read as follows:*

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name or that he was not using in accordance with the provisions of chapter 453A of NRS, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS *50.310,* 50.315 *or 50.320* is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

➥ The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

*Sec. 5. NRS 616C.232 is hereby amended to read as follows:*

616C.232 1. If an injured employee is discharged from his employment as a result of misconduct, an insurer may deny compensation *for temporary total disability* to the injured employee because of that discharge for misconduct only if the insurer proves by a preponderance of the evidence that:

(a) The injured employee was discharged from his employment solely for his misconduct and not for any reason relating to his claim for compensation; and

(b) It is the injured employee's discharge from his employment for misconduct, and not his injury, that is the sole cause for the injured employee's inability to return to work with the preinjury employer.

2. An insurer waives its rights under subsection 1 if the insurer does not make a determination to deny or suspend compensation to the injured employee within 70 days after the date on which the insurer learns that the injured employee has been discharged for misconduct.

*3. An insurer may not deny any compensation pursuant to this section except for compensation for temporary total disability pursuant to subsection 1.*

*Sec. 6. NRS 616C.235 is hereby amended to read as follows:*

616C.235 1. Except as otherwise provided in subsections 2, 3 and 4:

(a) When the insurer determines that a claim should be closed before all benefits to which the claimant may be entitled have been paid, the insurer shall send a written notice of its intention to close the claim to the claimant by first-class mail addressed to the last known address of the claimant and, if the insurer has been notified that the claimant is represented by an attorney, to the attorney for the claimant by first-class mail addressed to the last known address of the attorney. The notice must include, on a separate page, a statement describing the effects of closing a claim pursuant to this section and a statement that if the claimant does not agree with the determination, he has a right to request a resolution of the dispute pursuant to NRS 616C.305 and 616C.315 to 616C.385, inclusive, including, without limitation, a statement which prominently displays the limit on the time that the claimant has to request a resolution of the dispute as set forth in NRS 616C.315. A suitable form for requesting a resolution of the dispute must be enclosed with the notice. The closure of a claim pursuant to this subsection is not effective unless notice is given as required by this subsection.

(b) If the insurer does not receive a request for the resolution of the dispute, it may close the claim.

(c) Notwithstanding the provisions of NRS 233B.125, if a hearing is conducted to resolve the dispute, the decision of the hearing officer may be served by first-class mail.

2. If, during the first 12 months after a claim is opened, the medical benefits required to be paid for a claim are less than $300, the insurer may close the claim at any time after he sends, by first-class mail addressed to the last known address of the claimant, written notice that includes a statement which prominently displays that:

(a) The claim is being closed pursuant to this subsection;

(b) The injured employee may appeal the closure of the claim pursuant to the provisions of NRS 616C.305 and 616C.315 to 616C.385, inclusive; and

(c) If the injured employee does not appeal the closure of the claim or appeals the closure of the claim but is not successful, the claim cannot be reopened.

3. In addition to the notice described in subsection 2, an insurer shall send to each claimant who receives less than $300 in medical benefits within 6 months after the claim is opened a written notice that explains the circumstances under which a claim may be closed pursuant to subsection 2. The written notice provided pursuant to this subsection does not create any right to appeal the contents of that notice. The written notice must be:

(a) Sent by first-class mail addressed to the last known address of the claimant; and

(b) A document that is separate from any other document or form that is used by the insurer.

4. The closure of a claim pursuant to subsection 2 is not effective unless notice is given as required by subsections 2 and 3.

*5. In addition to the requirements of this section, an insurer shall include in the written notice described in subsection 2:*

*(a) If an evaluation for a permanent partial disability has been scheduled pursuant to NRS 616C.490, a statement to that effect; or*

*(b) If an evaluation for a permanent partial disability will not be scheduled pursuant to NRS 616C.490, a statement explaining that the reason is because the insurer has determined there is no possibility of a permanent impairment of any kind.*

~~[Section 1.]~~ *Sec. 7.* NRS 616C.315 is hereby amended to read as follows:

616C.315 1. Any person who is subject to the jurisdiction of the hearing officers pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may request a hearing before a hearing officer of any matter within the hearing officer's authority. The insurer shall provide, without cost, the forms necessary to request a hearing to any person who requests them.

2. A hearing must not be scheduled until the following information is provided to the hearing officer:

(a) The name of:

(1) The claimant;

(2) The employer; and

(3) The insurer or third-party administrator;

(b) The number of the claim; and

(c) If applicable, a copy of the letter of determination being appealed or, if such a copy is unavailable, the date of the determination and the issues stated in the determination.

3. Except as otherwise provided in NRS 616B.772, 616B.775, 616B.787, 616C.305 and 616C.427, a person who is aggrieved by:

(a) A written determination of an insurer; or

(b) The failure of an insurer to respond within 30 days to a written request mailed to the insurer by the person who is aggrieved,

➥ may appeal from the determination or failure to respond by filing a request for a hearing before a hearing officer. Such a request must include the information required pursuant to subsection 2 and, except as otherwise provided in subsections 4 and 5, must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. The failure of an insurer to respond to a written request for a determination within 30 days after receipt of such a request shall be deemed by the hearing officer to be a denial of the request.

4. The period specified in subsection 3 within which a request for a hearing must be filed may be extended for an additional 90 days if the person aggrieved shows by a preponderance of the evidence that he was diagnosed with a terminal illness or was informed of the death or diagnosis of a terminal illness of his spouse, parent or child.

5. Failure to file a request for a hearing within the period specified in subsection 3 may be excused if the person aggrieved shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to request a hearing. The claimant or employer shall notify the insurer of a change of address.

6. The hearing before the hearing officer must be conducted as expeditiously and informally as is practicable.

7. The parties to a contested claim may, if the claimant is represented by legal counsel, agree to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer.

*8. A claimant may, with regard to a contested claim arising from the provisions of NRS 617.453, 617.455, 617.457, 617.485 or 617.487 as described in subsection 2 of NRS 616C.345, submit the contested claim directly to an appeals officer pursuant to subsection 2 of NRS 616C.345 without the agreement of any other party.*

~~[Sec. 2.]~~ *Sec. 8.* NRS 616C.345 is hereby amended to read as follows:

616C.345 1. Any party aggrieved by a decision of the hearing officer relating to a claim for compensation may appeal from the decision by, except as otherwise provided in subsections ~~[8 and 9,]~~ *9 and 10,* filing a notice of appeal with an appeals officer within 30 days after the date of the decision.

2. *A claimant aggrieved by a written determination of the denial of a claim, in whole or in part, by an insurer, or the failure of an insurer to respond in writing within 30 days to a written request of the claimant mailed to the insurer, concerning a claim arising from the provisions of NRS 617.453, 617.455, 617.457, 617.485 or 617.487 may file a notice of a contested claim with an appeals officer. The notice must include the information required pursuant to subsection 3 and, except as otherwise provided in subsections 9 and 11, must be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. The failure of an insurer to respond in writing to a written request for a determination within 30 days after receipt of such a request shall be deemed by the appeals officer to be a denial of the request. The insurer shall provide,*

*without cost, the forms necessary to file a notice of a contested claim to any person who requests them.*

*3.* A hearing must not be scheduled until the following information is provided to the appeals officer:

(a) The name of:

(1) The claimant;

(2) The employer; and

(3) The insurer or third-party administrator;

(b) The number of the claim; and

(c) If applicable, a copy of the letter of determination being appealed or, if such a copy is unavailable, the date of the determination and the issues stated in the determination.

~~[3.]~~ *4.* If a dispute is required to be submitted to a procedure for resolving complaints pursuant to NRS 616C.305 and:

(a) A final determination was rendered pursuant to that procedure; or

(b) The dispute was not resolved pursuant to that procedure within 14 days after it was submitted,

➥ any party to the dispute may, except as otherwise provided in subsections ~~[8 and 9,]~~ *9 and 10,* file a notice of appeal within 70 days after the date on which the final determination was mailed to the employee, or his dependent, or the unanswered request for resolution was submitted. Failure to render a written determination within 30 days after receipt of such a request shall be deemed by the appeals officer to be a denial of the request.

~~[4.]~~ *5.* Except as otherwise provided in NRS 616C.380, the filing of a notice of appeal does not automatically stay the enforcement of the decision of a hearing officer or a determination rendered pursuant to NRS 616C.305. The appeals officer may order a stay, when appropriate, upon the application of a party. If such an application is submitted, the decision is automatically stayed until a determination is made concerning the application. A determination on the application must be made within 30 days after the filing of the application. If a stay is not granted by the officer after reviewing the application, the decision must be complied with within 10 days after the date of the refusal to grant a stay.

~~[5.]~~ *6.* Except as otherwise provided in subsections ~~[2 and 6,]~~ *3 and 7,* within 10 days after receiving a notice of appeal pursuant to this section or NRS 616C.220, 616D.140 or 617.401, or within 10 days after receiving a notice of a contested claim pursuant to subsection 7 of NRS 616C.315, the appeals officer shall:

(a) Schedule a hearing on the merits of the appeal or contested claim for a date and time within 90 days after his receipt of the notice at a place in Carson City, Nevada, or Las Vegas, Nevada, or upon agreement of one or more of the parties to pay all additional costs directly related to an alternative location, at any other place of convenience to the parties, at the discretion of the appeals officer; and

(b) Give notice by mail or by personal service to all parties to the matter and their attorneys or agents at least 30 days before the date and time scheduled.

~~[6. A]~~

*7. Except as otherwise provided in subsection 12, a* request to schedule the hearing for a date and time which is:

(a) Within 60 days after the receipt of the notice of appeal or contested claim; or

(b) More than 90 days after the receipt of the notice or claim,

➥ may be submitted to the appeals officer only if all parties to the appeal or contested claim agree to the request.

~~[7. An]~~

*8. An* appeal or contested claim may be continued upon written stipulation of all parties, or upon good cause shown.

~~[8.]~~ *9.* The period specified in subsection 1 , *2* or ~~[3]~~ *4* within which a notice of appeal *or a notice of a contested claim* must be filed may be extended for an additional 90 days if the person aggrieved shows by a preponderance of the evidence that he was diagnosed with a terminal illness or was informed of the death or diagnosis of a terminal illness of his spouse, parent or child.

~~[9.]~~ *10.* Failure to file a notice of appeal within the period specified in subsection 1 or ~~[3]~~ *4* may be excused if the party aggrieved shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to appeal the determination. The claimant, employer or insurer shall notify the hearing officer of a change of address.

*11. Failure to file a notice of a contested claim within the period specified in subsection 2 may be excused if the claimant shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to file the notice. The claimant or employer shall notify the insurer of a change of address.*

*12. Within 10 days after receiving a notice of a contested claim pursuant to subsection 2, the appeals officer shall:*

*(a) Schedule a hearing on the merits of the contested claim for a date and time within 60 days after his receipt of the notice at a place in Carson City, Nevada, or Las Vegas, Nevada, or upon agreement of one or more of the parties to pay all additional costs directly related to an alternative location, at any other place of convenience to the parties, at the discretion of the appeals officer; and*

*(b) Give notice by mail or by personal service to all parties to the matter and their attorneys or agents within 10 days after scheduling the hearing.*

➥ *The scheduled date must allow sufficient time for full disclosure, exchange and examination of medical and other relevant information. A party may not introduce information at the hearing which was not previously disclosed to the other parties unless all parties agree to the introduction.*

~~[Sec. 3.]~~ *Sec. 9.* NRS 616C.360 is hereby amended to read as follows:

616C.360 1. A stenographic or electronic record must be kept of the hearing before the appeals officer and the rules of evidence applicable to contested cases under chapter 233B of NRS apply to the hearing.

2. The appeals officer must hear any matter raised before him on its merits, including new evidence bearing on the matter.

3. If there is a medical question or dispute concerning an injured employee's condition or concerning the necessity of treatment for which authorization for payment has been denied, the appeals officer may:

(a) Order an independent medical examination and refer the employee to a physician or chiropractor of his choice who has demonstrated special competence to treat the particular medical condition of the employee, whether or not the physician or chiropractor is on the insurer's panel of providers of health care. If the medical question concerns the rating of a permanent disability, the appeals officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians or chiropractors maintained by the Administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any examination requested by the appeals officer.

(b) If the medical question or dispute is relevant to an issue involved in the matter before the appeals officer and all parties agree to the submission of the matter to an external review organization, submit the matter to an external review organization in accordance with NRS 616C.363 and any regulations adopted by the Commissioner.

4. If an injured employee has requested payment for the cost of obtaining a second determination of his percentage of disability pursuant to NRS 616C.100, the appeals officer shall decide whether the determination of the higher percentage of disability made pursuant to NRS 616C.100 is appropriate and, if so, may order the insurer to pay to the employee an amount equal to the maximum allowable fee established by the Administrator pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.

5. The appeals officer shall order an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 to pay to the appropriate person the charges of a provider of health care if the conditions of NRS 616C.138 are satisfied.

6. Any party to the appeal *or contested case* or the appeals officer may order a transcript of the record of the hearing at any time before the seventh day after the hearing. The transcript must be filed within 30 days after the date of the order unless the appeals officer otherwise orders.

7. ~~[The]~~ *Except as otherwise provided in subsection 8, the* appeals officer shall render his decision:

(a) If a transcript is ordered within 7 days after the hearing, within 30 days after the transcript is filed; or

(b) If a transcript has not been ordered, within 30 days after the date of the hearing.

8. *The appeals officer shall render his decision on a contested claim submitted pursuant to subsection 2 of NRS 616C.345 within 15 days after:*

*(a) The date of the hearing; or*

*(b) If the appeals officer orders an independent medical examination, the date the appeals officer receives the report of the examination,*

➥ *unless both parties to the contested claim agree to a later date.*

*9.* The appeals officer may affirm, modify or reverse any decision made by ~~[the]~~ *a* hearing officer and issue any necessary and proper order to give effect to his decision.

*Sec. 10.* NRS 616C.475 is hereby amended to read as follows:

616C.475 1. Except as otherwise provided in this section, NRS 616C.175 and 616C.390, every employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out of and in the course of employment, or his dependents, is entitled to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.

2. Except as otherwise provided in NRS 616B.028 and 616B.029, an injured employee or his dependents are not entitled to accrue or be paid any benefits for a temporary total disability during the time the injured employee is incarcerated. The injured employee or his dependents are entitled to receive such benefits when the injured employee is released from incarceration if he is certified as temporarily totally disabled by a physician or chiropractor.

3. If a claim for the period of temporary total disability is allowed, the first payment pursuant to this section must be issued by the insurer within 14 working days after receipt of the initial certification of disability and regularly thereafter.

4. Any increase in compensation and benefits effected by the amendment of subsection 1 is not retroactive.

5. Payments for a temporary total disability must cease when:

(a) A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience;

(b) The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7; or

(c) Except as otherwise provided in NRS 616B.028 and 616B.029, the employee is incarcerated.

6. Each insurer may, with each check that it issues to an injured employee for a temporary total disability, include a form approved by the

Division for the injured employee to request continued compensation for the temporary total disability.

7. A certification of disability issued by a physician or chiropractor must:

(a) Include the period of disability and a description of any physical limitations or restrictions imposed upon the work of the employee;

(b) Specify whether the limitations or restrictions are permanent or temporary; and

(c) Be signed by the treating physician or chiropractor authorized pursuant to NRS 616B.527 or appropriately chosen pursuant to subsection 3 *or 4* of NRS 616C.090.

8. If the certification of disability specifies that the physical limitations or restrictions are temporary, the employer of the employee at the time of his accident may offer temporary, light-duty employment to the employee. If the employer makes such an offer, the employer shall confirm the offer in writing within 10 days after making the offer. The making, acceptance or rejection of an offer of temporary, light-duty employment pursuant to this subsection does not affect the eligibility of the employee to receive vocational rehabilitation services, including compensation, and does not exempt the employer from complying with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations adopted by the Division governing vocational rehabilitation services. Any offer of temporary, light-duty employment made by the employer must specify a position that:

(a) Is substantially similar to the employee's position at the time of his injury in relation to the location of the employment and the hours he is required to work;

(b) Provides a gross wage that is:

(1) If the position is in the same classification of employment, equal to the gross wage the employee was earning at the time of his injury; or

(2) If the position is not in the same classification of employment, substantially similar to the gross wage the employee was earning at the time of his injury; and

(c) Has the same employment benefits as the position of the employee at the time of his injury.

*Sec. 11. NRS 616C.430 is hereby repealed.*

*Sec. 12. 1. This section and sections 1 to 6, inclusive, 10 and 11 of this act become effective on July 1, 2009.*

*2. Sections 7, 8 and 9 of this act become effective on October 1, 2009.*

*TEXT OF REPEALED SECTION*

*616C.430 Reduction of compensation by amount of federal disability insurance benefits received by employee.*

*1. If an employee who is entitled to compensation under chapters 616A to 616D, inclusive, of NRS for temporary total disability, permanent partial disability or permanent total disability becomes entitled to federal disability insurance benefits under section 202 or 223 of the Social Security Act, as amended, 42 U.S.C. §§ 402 and 423, respectively, the employee's* *compensation under chapters 616A to 616D, inclusive, of NRS must be reduced by the amount of the federal benefits being received by him.*

*2. This section must not be applied to reduce the employee's compensation under chapters 616A to 616D, inclusive, of NRS to any greater extent than his federal benefits would have otherwise been reduced by the Social Security Administration under section 224 of the Social Security Act, as amended, 42 U.S.C. § 424a. After any reduction pursuant to this section, the combination of his state compensation and federal benefits must be at least as much as the greater of:*

*(a) The benefits payable pursuant to chapters 616A to 616D, inclusive, of NRS, without the reduction; or*

*(b) The benefits payable under the Social Security Act, without any reduction.*

*3. After a reduced amount of compensation for an employee has been established pursuant to this section, no further reduction in his compensation may be made because he receives an increase in his benefits under the Social Security Act as the result of an adjustment based on an increase in the cost of living.*

*4. No compensation may be reduced pursuant to this section until the Social Security Administration has determined the amount of benefits payable to the employee under section 202 or 223 of the Social Security Act and he has begun to receive those benefits.*

*5. If an employee:*

*(a) Fails to report the amount of benefits which he is receiving under section 202 or 223 of the Social Security Act, within 30 days after he is requested in writing by the insurer to make that report; or*

*(b) Fails to provide the insurer with a written authorization for the Social Security Administration to release information on the employee's average current earnings and the amount of benefits to which he is entitled, within 30 days after he is requested to provide that authorization,*

*➥ the insurer may reduce by 50 percent the compensation which the employee would otherwise receive pursuant to chapters 616A to 616D, inclusive, of NRS. Any compensation which is withheld pursuant to this subsection must be paid to the employee when he has furnished the report or authorization as requested.*

*6. If the provisions of section 224 of the Social Security Act are amended:*

*(a) To allow an employee to receive more compensation under chapters 616A to 616D, inclusive, of NRS without any reduction in benefits payable under section 202 or 223 of the Social Security Act; or*

*(b) To lower the maximum sum of compensation payable under chapters 616A to 616D, inclusive, of NRS and benefits payable under section 202 or 223 of the Social Security Act,*

*➥ the reduction imposed by this section must be increased or decreased correspondingly.*

*7. No reduction in compensation may be made under this section for any period of entitlement which:*

*(a) Occurs before January 1, 1982;*

*(b) Occurs before the employee has been given a written notice by mail of the intended reduction; or*

*(c) Includes any week after the week in which the employee becomes 62 years of age.*

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

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

Amendment No. 766 to Assembly Bill No. 281 incorporates various provisions regarding workers' compensation. The amendment requires an insurer to include a scheduled evaluation for permanent-partial disability with a notice of claim closure, or to include a notice that no evaluation will be scheduled.

It requires an insurer to make a new determination on claim acceptance or denial within 30 days after he is ordered to do so.

It allows certain injured employees to make an alternative choice of physician or chiropractor within 90 days of their injuries, without the insurer's approval, and requires an insurer to act within 10 days when the insurer's approval of a change in treating physician or chiropractor is required or the request is deemed granted.

It addresses an affidavit of a qualified chemist or medical-laboratory director admissible to prove the existence of alcohol or a controlled substance in an employee's system.

It allows an insurer to deny compensation for temporary-total disability if an injured employee is discharged as a result of misconduct. No other form of compensation other than temporary-total disability compensation may be denied under this provision and repeals the statute that reduces an employee's disability compensation by the amount of any federal disability benefits he receives.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 283.

Bill read second time and ordered to third reading.

Assembly Bill No. 314.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 765.

"SUMMARY—Makes various changes to provisions governing the practice of dentistry. (BDR 54-878)"

"AN ACT relating to dentistry; authorizing the Board of Dental Examiners of Nevada to issue a limited license to supervise certain courses of continuing education involving live patients; authorizing students to participate in such courses of continuing education under certain circumstances; *authorizing the Board to issue a specialist's license to a person who has completed the educational requirements for certification in a specialty under certain circumstances;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill allows a person who has received a degree in dentistry from an accredited program to receive a limited license to supervise certain courses of continuing education involving live patients. A limited license issued under section 1 expires 1 year after being issued and may be renewed annually. Section 1 also: (1) authorizes the Board of Dental Examiners of Nevada to charge a fee for the issuance or renewal of the limited license; (2) authorizes the Board to suspend or revoke the limited license under certain circumstances; and (3) imposes a duty upon the holder of the limited license to report certain events to the Board.

Section 2 of this bill provides that NRS 631.215 does not prevent a dentist who is licensed in another state or country from participating in a course of postgraduate continuing education in dentistry supervised by the holder of a limited license issued pursuant to section 1 under certain circumstances.

*Existing law authorizes the Board to issue a specialist's license to a person without requiring the person to take the clinical examination required pursuant to NRS 631.240 if the person presents a current certification as a diplomate from a certifying board approved by the Commission on Dental Accreditation of the American Dental Association and meets certain other qualifications. (NRS 631.255) Section 3 of this bill expands the authorization to include issuing a specialist's license to a person who has completed the educational requirements specified for qualification in a specialty area by a certifying board and who is eligible to be certified, so long as the person submits to the Board his certificate as a diplomate within 6 years after he is issued the specialist's license and maintains the certification while licensed as a specialist in this State.*

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

Section 1. Chapter 631 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The Board shall, without a clinical examination required by NRS 631.240 or 631.300, issue a limited license to a person to supervise courses of continuing education involving live patients at an institute or organization with a permanent facility registered with the Board for the sole purpose of providing postgraduate continuing education in dentistry if the person has received a degree from a dental school or college accredited by the Commission on Dental Accreditation of the American Dental Association or its successor.*

*2. A limited license issued pursuant to this section expires 1 year after the date of its issuance and may be renewed annually upon submission of proof acceptable to the Board of compliance with subsection 1 and payment of any fee required pursuant to subsection 3.*

*3. The Board may impose a fee of not more than $100 for the issuance and each renewal of a limited license issued pursuant to this section.*

*4. A limited license issued pursuant to this section may be suspended or revoked by the Board if the holder of the limited license:*

*(a) Has had his license to practice dentistry suspended, revoked or placed on probation in another state, territory or possession of the United States, the District of Columbia or a foreign country;*

*(b) Has been convicted of a felony or misdemeanor involving moral turpitude; or*

*(c) Has a documented history of substance abuse.*

*5. A holder of a limited license issued pursuant to this section shall notify the Board in writing by certified mail not later than 30 days after:*

*(a) The death of a patient being treated by a dentist under the supervision of the holder of a limited license;*

*(b) Any incident which:*

*(1) Results in the hospitalization of or a permanent physical or mental injury to a patient being treated by a dentist under the supervision of the holder of a limited license; and*

*(2) Occurs while the dentist is treating the patient under the supervision of the holder of a limited license; or*

*(c) Any event or circumstance described in subsection 4.*

Sec. 2. NRS 631.215 is hereby amended to read as follows:

631.215 1. Any person shall be deemed to be practicing dentistry who:

(a) Uses words or any letters or title in connection with his name which in any way represents him as engaged in the practice of dentistry, or any branch thereof;

(b) Advertises or permits to be advertised by any medium that he can or will attempt to perform dental operations of any kind;

(c) Diagnoses, professes to diagnose or treats or professes to treat any of the diseases or lesions of the oral cavity, teeth, gingiva or the supporting structures thereof;

(d) Extracts teeth;

(e) Corrects malpositions of the teeth or jaws;

(f) Takes impressions of the teeth, mouth or gums, unless the person is authorized by the regulations of the Board to engage in such activities without being a licensed dentist;

(g) Examines a person for, or supplies artificial teeth as substitutes for natural teeth;

(h) Places in the mouth and adjusts or alters artificial teeth;

(i) Does any practice included in the clinical dental curricula of accredited dental colleges or a residency program for those colleges;

(j) Administers or prescribes such remedies, medicinal or otherwise, as are needed in the treatment of dental or oral diseases;

(k) Uses X-ray radiation or laser radiation for dental treatment or dental diagnostic purposes, unless the person is authorized by the regulations of the Board to engage in such activities without being a licensed dentist;

(l) Determines:

(1) Whether a particular treatment is necessary or advisable; or

(2) Which particular treatment is necessary or advisable; or

(m) Dispenses tooth whitening agents or undertakes to whiten or bleach teeth by any means or method, unless the person is:

(1) Dispensing or using a product that may be purchased over the counter for a person's own use; or

(2) Authorized by the regulations of the Board to engage in such activities without being a licensed dentist.

2. Nothing in this section:

(a) Prevents a dental assistant, dental hygienist or qualified technician from making radiograms or X-ray exposures or using X-ray radiation or laser radiation for dental treatment or dental diagnostic purposes upon the direction of a licensed dentist.

(b) Prohibits the performance of mechanical work, on inanimate objects only, by any person employed in or operating a dental laboratory upon the written work authorization of a licensed dentist.

(c) Prevents students from performing dental procedures that are part of the curricula of an accredited dental school or college or an accredited school of dental hygiene or an accredited school of dental assisting.

(d) Prevents a licensed dentist or dental hygienist from another state or country from appearing as a clinician for demonstrating certain methods of technical procedures before a dental society or organization, convention or dental college or an accredited school of dental hygiene or an accredited school of dental assisting.

(e) Prohibits the manufacturing of artificial teeth upon receipt of a written authorization from a licensed dentist if the manufacturing does not require direct contact with the patient.

*(f) Prevents a person who is actively licensed as a dentist in another jurisdiction from treating a patient if:*

*(1) The patient has previously been treated by the dentist in the jurisdiction in which the dentist is licensed;*

*(2) The dentist treats the patient only during a course of continuing education involving live patients which:*

*(I) Is conducted at an institute or organization with a permanent facility registered with the Board for the sole purpose of providing postgraduate continuing education in dentistry; and*

*(II) Meets all applicable requirements for approval as a course of continuing education; and*

*(3) The dentist treats the patient only under the supervision of a person licensed pursuant to section 1 of this act.*

*Sec. 3. NRS 631.255 is hereby amended to read as follows:*

631.255 1. The Board may, without a clinical examination required by NRS 631.240, issue a specialist's license to a person who:

(a) Presents a current certification as a diplomate from a certifying board approved by the Commission on Dental Accreditation of the American Dental Association; *or*

(b) Has *completed the educational requirements specified for certification in a specialty area by a certifying board approved by the Commission on Dental Accreditation of the American Dental Association and is recognized by the certifying board as being eligible for that certification. A person who is licensed as a specialist pursuant to the provisions of this paragraph:*

*(1) Shall submit to the Board his certificate as a diplomate from the certifying board within 6 years after licensure as a specialist; and*

*(2) Must maintain certification as a diplomate of the certifying board during the period in which the person is licensed as a specialist pursuant to this paragraph.*

*2. In addition to the requirements set forth in subsection 1, a person applying for a specialist's license:*

*(a) Must hold* an active license to practice dentistry pursuant to the laws of another state or territory of the United States, or the District of Columbia [~~;~~

~~(c) Is~~] *, or pursuant to the laws of this State, another state or territory of the United States, or the District of Columbia, if the person is applying pursuant to paragraph (b) of subsection 1;*

*(b) Must be* a specialist as identified by the Board;

[~~(d) Pays~~]

*(c) Shall pay* the application, examination and renewal fees in the same manner as a person licensed pursuant to NRS 631.240;

[~~(e) Submits~~]

*(d) Must submit* all information required to complete an application for a license; and

[~~(f) Satisfies~~]

*(e) Must satisfy* the requirements of NRS 631.230.

[~~2.~~] *3.* The Board shall not issue a specialist's license to a person:

(a) Whose license to practice dentistry has been revoked or suspended;

(b) Who has been refused a license to practice dentistry; or

(c) Who is involved in or has pending a disciplinary action concerning his license to practice dentistry,

➥ in this State, another state or territory of the United States, or the District of Columbia.

[~~3.~~] *4.* The Board shall examine each applicant in writing on the contents and interpretation of this chapter and the regulations of the Board.

[~~4.~~] *5.* A person to whom a specialist's license is issued pursuant to this section shall limit his practice to the specialty.

[~~5.~~] *6.* The Board may revoke a specialist's license at any time upon submission of substantial evidence to the Board that the holder of the license violated any provision of this chapter or the regulations of the Board.

[~~Sec. 3.~~] *Sec. 4.* NRS 631.330 is hereby amended to read as follows:

631.330 1. Licenses issued pursuant to NRS 631.271 and 631.275 *and section 1 of this act* must be renewed annually. All other licenses must be renewed biennially.

2. Except as otherwise provided in NRS 631.271 and 631.275 ~~[:]~~ *and section 1 of this act:*

(a) Each holder of a license to practice dentistry or dental hygiene must, upon:

(1) Payment of the required fee;

(2) Submission of proof of completion of the required continuing education; and

(3) Submission of all information required to complete the renewal,

➥ be granted a renewal certificate which will authorize continuation of the practice for 2 years.

(b) A licensee must comply with the provisions of this subsection and subsection 1 on or before June 30. Failure to comply with those provisions by June 30 every 2 years automatically suspends the license, and it may be reinstated only upon payment of the fee for reinstatement and compliance with the requirements of this subsection.

3. If a license suspended pursuant to this section is not reinstated within 12 months after suspension, it is automatically revoked.

~~[Sec. 4.]~~ *Sec. 5.* NRS 631.345 is hereby amended to read as follows:

631.345 1. ~~[The]~~ *Except as otherwise provided in section 1 of this act, the* Board shall by regulation establish fees for the performance of the duties imposed upon it by this chapter which must not exceed the following amounts:

| | |
|---|---|
| Application fee for an initial license to practice dentistry | $1,500 |
| Application fee for an initial license to practice dental hygiene | 750 |
| Application fee for a specialist's license to practice dentistry | 300 |
| Application fee for a limited license or restricted license to practice dentistry or dental hygiene | 300 |
| Application and examination fee for a permit to administer general anesthesia, conscious sedation or deep sedation. | 750 |
| Fee for any reinspection required by the Board to maintain a permit to administer general anesthesia, conscious sedation or deep sedation | 500 |
| Biennial renewal fee for a permit to administer general anesthesia, conscious sedation or deep sedation | 600 |
| Fee for the inspection of a facility required by the Board to renew a permit to administer general anesthesia, conscious sedation or deep sedation | 350 |
| Biennial license renewal fee for a general license, specialist's license, temporary license or restricted geographical license to practice dentistry | 1,000 |
| Annual license renewal fee for a limited license or restricted license to practice dentistry | 300 |

Biennial license renewal fee for a general license, temporary license or restricted geographical license to practice dental hygiene ............................................................ 600
Annual license renewal fee for a limited license to practice dental hygiene .......................................................................... 300
Biennial license renewal fee for an inactive dentist.......................... 400
Biennial license renewal fee for a dentist who is retired or has a disability .......................................................................... 100
Biennial license renewal fee for an inactive dental hygienist ......... $200
Biennial license renewal fee for a dental hygienist who is retired or has a disability.......................................................... 100
Reinstatement fee for a suspended license to practice dentistry or dental hygiene....................................................... 500
Reinstatement fee for a revoked license to practice dentistry or dental hygiene...................................................................... 500
Reinstatement fee to return a dentist or dental hygienist who is inactive, retired or has a disability to active status .......................................................................................... 500
Fee for the certification of a license.................................................. 50

2. Except as otherwise provided in this subsection, the Board shall charge a fee to review a course of continuing education for accreditation. The fee must not exceed $150 per credit hour of the proposed course. The Board shall not charge a nonprofit organization or an agency of the State or of a political subdivision of the State a fee to review a course of continuing education.

3. All fees prescribed in this section are payable in advance and must not be refunded.

~~[Sec. 5.]~~ *Sec. 6.* NRS 631.350 is hereby amended to read as follows:

631.350 1. Except as otherwise provided in NRS 631.271 and 631.347, *and section 1 of this act,* the Board may:

(a) Refuse to issue a license to any person;

(b) Revoke or suspend the license or renewal certificate issued by it to any person;

(c) Fine a person it has licensed;

(d) Place a person on probation for a specified period on any conditions the Board may order;

(e) Issue a public reprimand to a person;

(f) Limit a person's practice to certain branches of dentistry;

(g) Require a person to participate in a program to correct alcohol or drug abuse or any other impairment;

(h) Require that a person's practice be supervised;

(i) Require a person to perform community service without compensation;

(j) Require a person to take a physical or mental examination or an examination of his competence;

(k) Require a person to fulfill certain training or educational requirements;

(l) Require a person to reimburse a patient; or

(m) Any combination thereof,

➥ upon submission of substantial evidence to the Board that the person has engaged in any of the activities listed in subsection 2.

2. The following activities may be punished as provided in subsection 1:

(a) Engaging in the illegal practice of dentistry or dental hygiene;

(b) Engaging in unprofessional conduct; or

(c) Violating any regulations adopted by the Board or the provisions of this chapter.

3. The Board may delegate to a hearing officer or panel its authority to take any disciplinary action pursuant to this chapter, impose and collect fines therefor and deposit the money therefrom in banks, credit unions or savings and loan associations in this State.

4. If a hearing officer or panel is not authorized to take disciplinary action pursuant to subsection 3 and the Board deposits the money collected from the imposition of fines with the State Treasurer for credit to the State General Fund, it may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is needed to pay attorney's fees or the costs of an investigation, or both.

5. The Board shall not administer a private reprimand.

6. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Senator Carlton moved the adoption of the amendment.

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

Amendment No. 765 to Assembly Bill 314 authorizes the Board of Dental Examiners to issue a specialist's license to a person who has completed educational requirements for certification in a specialty but has not yet become a diplomat in that specialty, if the applicant meets the other requirements for licensure.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 337.

Bill read second time and ordered to third reading.

Assembly Bill No. 349.

Bill read second time and ordered to third reading.

Assembly Bill No. 359.

Bill read second time and ordered to third reading.

Assembly Bill No. 381.

Bill read second time.

Senator Carlton moved that the bill be taken from the Second Reading File and be placed on the Second Reading File on the last agenda for this legislative day.

Motion carried.

Assembly Bill No. 426.

Bill read second time and ordered to third reading.

Assembly Bill No. 454.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 763.

"SUMMARY—Revises certain provisions relating to housing. (BDR 10-839)"

"AN ACT relating to housing; revising certain provisions relating to the grounds of termination for certain rental or lease agreements affecting certain tenants in a manufactured home park; ~~[revising certain provisions relating to an appeal from a judgment in an unlawful detainer action;]~~ and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 5 of this bill provides that a rental agreement between a landlord and a tenant for the rental or lease of certain lots in a manufactured home park in this State may only be terminated on one or more of the grounds listed in existing law regardless of the fact that a notice of termination may have been served upon the tenant. (NRS 118B.190, 118B.200)

~~[ Existing law provides that an eviction may be initiated by filing an unlawful detainer action or by using the procedures for summary eviction. (NRS 40.215-40.425) Existing law also generally provides that a person may obtain a stay of execution upon an appeal from an order entered in an action: (1) for summary eviction by filing with the trial court a bond in the amount of $250; and (2) for unlawful detainer if the person is a defendant and, within 10 days after the judgment is rendered, he files with the court or justice a bond with two or more sureties in the amount determined by the court or justice but that is not less than twice the amount of the judgment and costs. (NRS 40.380, 40.385) Existing law further provides that the summary eviction process may not be used against certain tenants in mobile home parks. (NRS 40.253) Section 6 of this bill changes the amount of the bond that certain defendants who are tenants in a mobile home park are required to file to obtain a stay of execution upon an appeal from an order entered in an action for unlawful detainer from twice the amount of the judgment and costs to $250. Section 6 also: (1) requires certain tenants in a mobile home park who retain possession of the premises that are the subject of the appeal to pay the landlord the rent in the amount provided in the underlying contract as it becomes due; and (2) authorizes, under certain circumstances, the court or justice to vacate the stay of execution if such a tenant fails to pay the rent. (NRS 40.380)]~~

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 118B.200 is hereby amended to read as follows:

118B.200 1. Notwithstanding the expiration of a period of a tenancy ~~[,]~~ *or service of a notice pursuant to subsection 1 of NRS 118B.190,* the rental agreement described in NRS 118B.190 may not be terminated except ~~[for:]~~ *on one or more of the following grounds:*

(a) Failure of the tenant to pay rent, utility charges or reasonable service fees within 10 days after written notice of delinquency served upon the tenant in the manner provided in NRS 40.280;

(b) Failure of the tenant to correct any noncompliance with a law, ordinance or governmental regulation pertaining to manufactured homes or recreational vehicles or a valid rule or regulation established pursuant to NRS 118B.100 or to cure any violation of the rental agreement within a reasonable time after receiving written notification of noncompliance or violation;

(c) Conduct of the tenant in the manufactured home park which constitutes an annoyance to other tenants;

(d) Violation of valid rules of conduct, occupancy or use of park facilities after written notice of the violation is served upon the tenant in the manner provided in NRS 40.280;

(e) A change in the use of the land by the landlord pursuant to NRS 118B.180;

(f) Conduct of the tenant which constitutes a nuisance as defined in NRS 40.140 or which violates a state law or local ordinance, specifically including, without limitation:

(1) Discharge of a weapon;

(2) Prostitution;

(3) Illegal drug manufacture or use;

(4) Child molestation or abuse;

(5) Elder molestation or abuse;

(6) Property damage as a result of vandalism; and

(7) Operating a motor vehicle while under the influence of alcohol or any other controlled substance; or

(g) In a manufactured home park that is owned by a nonprofit organization or housing authority, failure of the tenant to meet qualifications relating to age or income which:

(1) Are set forth in the lease signed by the tenant; and

(2) Comply with federal, state and local law.

2. A tenant who is not a natural person and who has received three or more 10-day notices to quit for failure to pay rent in the preceding 12-month period may have his tenancy terminated by the landlord for habitual failure to pay timely rent.

Sec. 6. ~~[NRS 40.380 is hereby amended to read as follows:~~

~~40.380 *1.* Either party may, within 10 days, appeal from the judgment rendered. [But] *Except as otherwise provided in subsection 2,* an appeal by the defendant shall not stay the execution of the judgment, unless, within the 10 days, he [shall execute and file] *executes and files* with the court or justice his undertaking to the plaintiff, with two or more sureties, in an amount to be fixed by the court or justice, but which [shall] *must* not be less than twice the amount of the judgment and costs, to the effect that, if the judgment appealed from be affirmed or the appeal be dismissed, the appellant will pay the judgment and the cost of appeal, the value of the use and occupation of the property, and damages justly accruing to the plaintiff during the pendency of the appeal. Upon taking the appeal and filing the undertaking, all further proceedings in the case [shall] *must* be stayed.~~

~~*2. If the appeal is by a defendant who is a tenant of a mobile home lot in a mobile home park or a tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215, the total amount of the sureties required to be executed and filed with the court or justice pursuant to subsection 1 is $250 except as otherwise provided in this subsection. In an action concerning a lease of a such a lot in a mobile home park for which the monthly rent exceeds $1,000, the court or justice may, upon its or his own motion or that of a party, and upon a showing of good cause, order an additional bond to be posted to cover the expected costs on appeal.*~~

~~*3. A tenant of a mobile home lot in a mobile home park or a tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215 who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If such a tenant fails to pay rent within 10 days after the date on which the rent is due, the court or justice shall vacate the stay of execution upon proper motion by the landlord if the court or justice determines that the tenant has failed to pay the required rent for the applicable period. Any payment made by a tenant pursuant to this subsection must first be credited against the rent required for the current month.*]~~ *(Deleted by amendment.)*

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

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

Amendment No. 763 to Assembly Bill No. 454 removes references in the bill to a proposed change to the amount of a bond that a tenant may purchase to obtain a stay of execution. The amendment also removes from the bill proposed changes to the requirements of a tenant during the pendency of the appeal. There were concerns about being able to buy the bond and have someone stay in the mobile home park. That may not be the best thing for the neighbors. We took that provision out.

Amendment adopted.
Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 548.
Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Woodhouse moved that Assembly Bill No. 373 be rereferred to the Committee on Natural Resources.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 563.
Bill read third time.
Remarks by Senators Amodei, Coffin and Schneider.
Senator Amodei requested that the following remarks be entered in the Journal.

SENATOR AMODEI:

Thank you, Mr. President. This is the first in a series of budget bills to be brought before us this Session. I would like to make a few comments because there will be a theme to my voting with regard to the budget bills.

I have represented the Capital Senatorial District for seven sessions. There are stereotypes about us as state employees, and they are in some instances true.

I salute my colleagues who have worked on the budget. There are no easy answers. As we take into account what we have done this time with regard to the budget, I am afraid there will be no easy answers in the coming biennium as far as how the State of Nevada collects money and spends money. We need the proper balance between revenue and spending.

One of the tenets we started out with was that there is plenty of misery to go around, but let us try to treat everyone equally. I understand the comments the Majority Leader has made at various times throughout this Session when he states that children are our priority. Education is one of our primary functions. I do not disagree with any of that. However, when we talk about the other functions that we do in state government and we talk about the value judgment that this series of bills represents, it is my opinion, though my intent is not to impugn nor inflame, that there are winners and losers in these budget bills. The K-12 people are the winners.

I will continue to try to understand where we were before the Governor's budget and where bills like this will put us in terms of percentage of cuts. Are we holding harmless or increasing areas of the budget? Absolutely, we are keeping K-12 harmless from these 2009 cuts. There is nothing equal about how different segments of the budget have been treated. Our revenues are down 44 percent. I am glad we did not have to visit a cut like that on anyone, but if you work for Mike Willden, Susan Martinovich, Dennis Nylander, this represents double-digit decreases in the salary and benefits of their employees.

Another bill is coming that concerns furloughs. None of this should be interpreted to say "shame on you, K-12," but I can tell you that someone has to stand up tonight and talk for those people who do not happen to be involved in the education system who do make up about 45 percent of the State General Fund funding. Those people will not fair as well as the K-12 folks will. From a fairness perspective, I will appose Assembly Bill No. 563 for the 45 percent of the state employees involved in the budget who will experience double-digit decreases in their compensation as a result of what is going on financially in the State.

SENATOR COFFIN:

Thank you, Mr. President. I served on the full Committee, but not on the subcommittee, which dealt with the K-12 and Higher Education Budgets. I have participated in helping to formulate the salary plan by trying to reduce the cuts as proposed by the Governor. Had we not tried to improve upon the Governor's plan, there still would have been a differential in how educators and noneducators were treated because the educators have contracts. The contracts have always been an obstacle in trying to equalize the losses to the various groups of employees.

If we do not enact a tax plan as proposed by a majority of the members here, you can guarantee that the cuts will be even greater to the constituency of the Senator from the Capital District. The K-12 educators and others will have less money educators.

SENATOR SCHNEIDER:

Thank you, Mr. President. In this bill is stimulus-fund money of about $600 million that is split with education.

We can put off building roads for a year or two or three. We can drive over potholes. However, you cannot put off an education for two, three or more years. That cannot be done.

Our main priority is education. That is what we should be funding. We have cut other things. We have been stupid to allow the gas tax to lag on and on. For 18 years, we have not touched the gas tax. There is 64-percent inflation on that. There goes our highway funding.

We continue to turn our head from taxes. We say, that somehow, we will get money for highways, but we do not step up to help ourselves.

Thankfully, we received some stimulus money to help save education. I had a bill, one that I have every session, Senate Bill No. 2 to fund education at the national average. We have not even made an attempt at that. We have not set ourselves on a course to move up and to make education better in this State. We refuse to do that because it may cost some money. We have high quality companies that turn away from Nevada because our education funding is so low. They cannot get good employees to move here. We say we are all for education. People say they are for education while running for election, but when they get here, they will not fund it. It is a crime that we are racing to the bottom. Even though I bring Senate Bill No. 2 out every session, we keep racing to the bottom in funding. We must be proud of it, but I am not. I am not happy with this bill, but I will take the $600 million in stimulus money, and I will vote for this because we cannot continue to put off the students in K-12 and let them flounder. We have to do better. I do not think we are doing good enough right now. I will continue to vote for education. I will continue to bring my bill to move us up so that we can have some target, instead of racing to the bottom as we have during the past 18 years since I have been here.

We give abatements to companies to move to the State. We stand in line to give abatements and to give tax dollars away, but we do not ask them to participate in our State. Good, high quality companies step over us to go to other states. We need to fund education better.

Roll call on Assembly Bill No. 563:

YEAS—20.

NAYS—Amodei.

Assembly Bill No. 563 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 433.

Bill read third time.

Remarks by Senators Amodei, Carlton, Horsford, Washington, Coffin and Raggio.

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

SENATOR AMODEI:

This clearly represents different treatment for the people this bill applies to than the previous measure.

SENATOR CARLTON:

I echo the sentiments of the Senator from the Capital District, but my curiosity lies more in the implementation and the discussion of the implementation as we allow these furloughs to go forward.

Will employees be allowed to use any vacation or comp time in order to supplement? We know that just because they are being furloughed does not mean their mortgage or their car payment is going down. Did we discuss the regulatory process and how all the rules will be set up? We know state employees do not have collective bargaining. They have collective begging. I want to make certain that this actually works as far as people taking the correct days off and not setting us up for more problems.

SENATOR HORSFORD:

There are a number of procedural steps being undertaken by the Legislative Counsel Bureau's Fiscal Staff with the Budget Office on the implementation of the furlough program. There is a recognition of and language in the bill about flexibility in specific departments. It may not be one day per month. The departments, with permission, may be able to amend that process. There is language dealing with critical-function positions, whereby, they can, through the Personnel Department, be exempted with approval. There are considerations throughout the measure based upon some of the considerations you are bringing forth at this time.

SENATOR WASHINGTON:

I appreciate the explanation from the Majority Leader. Did the Committee on Finance take into consideration the paid holidays when discussing the furloughs? Are they included or excluded?

SENATOR HORSFORD:

It is my understanding that there are 12 holidays throughout the year. Those are not affected by these provisions. The furloughs are unpaid days, in which state workers will not be authorized to work. They will not be paid for those days.

SENATOR WASHINGTON:

Some of those holidays are days that classified and unclassified workers must work. Do they still receive time and a half in overtime for those days?

SENATOR HORSFORD:

Yes, those provisions are not adjusted in this bill.

SENATOR CARLTON:

A number of our employees have certain duties that are done in a 40-hour week. Since they are required to take that day off, how are we going to adjust for that amount of workload that will be sitting on that desk? For the people who are line employees, they get up from the counter, walk away from the window, and they are finished for that 8-hour shift. But, you have a number of them at the professional level and upper-management level who are still in classified service and are still going to have that full in-box when they come back from that day off. Was there any discussion on workload and repercussions if that workload does not get accomplished?

SENATOR HORSFORD:

There needs to be a clear recognition that due to the cut, which is 4.6 percent, based on one day a month furlough that there will be a reduction in service delivery to the constituents of this State. There is flexibility in the bill to allow departments and divisions and supervisors at that level to make whatever adjustments they can to accommodate the services that they need to provide. The public needs to understand and state employees need to realize that we will be working with less. That will result in a reduction in the ability for caseworkers to get back to a constituent on a timeline that is longer than it would have been without this furlough. There will be an impact to all of the citizens and to the agencies that provide those services to our constituents.

SENATOR CARLTON:

I felt it was important to have this discussed openly.

I also, though not required to, wish to disclose that my husband is a state employee. I disclosed when he received a 2-percent raise and will disclose when he takes a 4.6-percent cut.

SENATOR COFFIN:

In some ways, the comments I made on the previous bill apply here. We have a regrettable situation in that we must cut the pay of our state employees. The cuts are deep. Please understand that it is not just the teachers. State employees and educators around the State will be going down in pay.

I hope that the pay cuts will be mitigated in future years. If money comes into the State at certain levels, then, the pay will be restored. However, there will never be enough in this or probably the next biennium to repay this pay cut. Many of these people will have lost the contribution to PERS forever except for the "hold harmless" built in. If they have a pay cut, it will not be deducted from the contribution to PERS so it will be as if they were not getting a pay cut. That is important, and members of the money committees fought for this in the negotiations. All of the regrets about the losses will be nothing compared to the losses suffered if the taxes, which are considered to support this pay scale, are not voted for. Let us make certain that we try to back up our feelings with our actions.

SENATOR HORSFORD:

One page 32, section 5 of the bill, it states that specifically for the critical services it is important that the public understand there is a recognition that there are some positions that are essential to the health, safety and welfare of the State. If that is determined to be the case, that the position is necessary for the protection of the public and it will significantly be diminished if mandatory furlough leave is implemented or if there are no alternatives that provide for the protection of the public health, safety or welfare, that the agency will be able, through the State Board of Examiners, request funds, allocated in the bill, to meet the needs of the people of this State. That was of the utmost importance to the members of the Committee on Finance.

SENATOR RAGGIO:

It was a difficult decision as to how to deal with these issues. This is painful and is in recognition of the economic downturn. We hope these measures are temporary. We hope that the economic situation for our State and across the country will improve by the end of this biennium. The choice of furloughs is not unique to Nevada. Across the Nation, many states are giving pay cuts and some are providing for furloughs, as we are. The intent is that this is better than layoffs. That is the reason we have supported this concept.

On page 38 of the bill, sections 10 and 11 have provisions in them for triggers. We have used that device in the past. If the situation does improve, there is a trigger mechanism that will provide some increases. It recognizes that it might be necessary during this biennium to draw on the line of credit from the Local Government Pool Investment Fund. There is a provision in the bill for the trigger to accommodate the necessary repayments of that draw. Section 11 provides that if the projected balance is $390 million by May 1, 2010, then, that would be sufficient to not only pay down the necessary payment on that line of credit but to grant a 1-percent increase to all of the employees affected by the furloughs. If the condition improves to the level of $425 million, then, the increase would be 2 percent. We understand the loss of pay, but we have dealt with this as efficiently and as fairly as we can.

Roll call on Senate Bill No. 433:

YEAS—20.

NAYS—Amodei.

Senate Bill No. 433 having received a constitutional majority, Mr. President declared it passed.

Senator Mathews moved that all necessary rules be suspended and that Senate Bill No. 433 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 242.

Bill read third time.

Roll call on Senate Bill No. 242:

YEAS—21.

NAYS—None.

Senate Bill No. 242 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 358

Bill read third time.

Senator Care moved that Senate Bill No. 358 be taken from the General File and placed on the General File on the next agenda.

Motion carried.

Senate Bill No. 422.

Bill read third time.

Roll call on Senate Bill No. 422:

YEAS—21.

NAYS—None.

Senate Bill No. 422 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 90.

Bill read third time.

Roll call on Assembly Bill No. 90:

YEAS—21.

NAYS—None.

Assembly Bill No. 90 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 135.

Bill read third time.

Roll call on Assembly Bill No. 135:

YEAS—21.

NAYS—None.

Assembly Bill No. 135 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 140.
Bill read third time.
Roll call on Assembly Bill No. 140:
YEAS—21.
NAYS—None.

Assembly Bill No. 140 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 141.
Bill read third time.
Roll call on Assembly Bill No. 141:
YEAS—21.
NAYS—None.

Assembly Bill No. 141 having received a two-thirds majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 144.
Bill read third time.
Roll call on Assembly Bill No. 144:
YEAS—21.
NAYS—None.

Assembly Bill No. 144 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 151.
Bill read third time.
Roll call on Assembly Bill No. 151:
YEAS—21.
NAYS—None.

Assembly Bill No. 151 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 202.
Bill read third time.
Senator Hardy disclosed that his wife and daughter are cosmetologists.
Roll call on Assembly Bill No. 202:
YEAS—21.
NAYS—None.

Assembly Bill No. 202 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 225.
Bill read third time.
Roll call on Assembly Bill No. 225:
YEAS—21.
NAYS—None.

Assembly Bill No. 225 having received a two-thirds majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 249.
Bill read third time.
Roll call on Assembly Bill No. 249:
YEAS—21.
NAYS—None.

Assembly Bill No. 249 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 262.
Bill read third time.
Roll call on Assembly Bill No. 262:
YEAS—21.
NAYS—None.

Assembly Bill No. 262 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 266.
Bill read third time.
Remarks by Senator Cegavske.
Senator Cegavske requested that her remarks be entered in the Journal.
I found out that if this bill is enacted and a storeowner is caught with any type of a lighter that resembles a toy, then, the storeowner will be charged with a misdemeanor on the spot.

Roll call on Assembly Bill No. 266:
YEAS—16.
NAYS—Care, Cegavske, Coffin, McGinness, Washington—5.

Assembly Bill No. 266 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 309.
Bill read third time.
The following amendment was proposed by Senator Care:
Amendment No. 876.
"SUMMARY—Revises provisions relating to the crime of stalking. (BDR 15-994)"

"AN ACT relating to crimes; revising provisions relating to the crime of stalking; ~~[increasing the penalties for the crime of stalking;]~~ and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law prohibits stalking and authorizes the issuance of a temporary or extended order restricting certain conduct related to the crime of stalking, aggravated stalking or harassment. (NRS 200.575, 200.591) ~~[Section 1 of this bill includes within the definition of the crime of stalking a course of conduct which would cause a reasonable person to feel fearful for the safety of a member of the person's family or household and which actually causes a victim to feel such fear. Section 1 also increases the penalty for a first offense for the crime of stalking from a misdemeanor to a gross misdemeanor and makes a subsequent offense a category D felony. Additionally, section 1]~~ *This bill* adds text messaging to the existing crime of stalking with the use of a communication device, which is punishable as a category C felony.

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

Section 1. NRS 200.575 is hereby amended to read as follows:

200.575 1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated ~~*[,]*~~ or harassed , ~~*[or fearful for the safety of a member of the person's family or household,]*~~ and that actually causes the victim to feel terrorized, frightened, intimidated ~~*[,]*~~ or harassed , ~~*[or fearful for the safety of a member of the victim's family or household,]*~~ commits the crime of stalking. Except where the provisions of subsection 2 or 3 are applicable, a person who commits the crime of stalking:

(a) For the first offense, is guilty of a ~~*[gross]*~~ misdemeanor.

(b) For any subsequent offense, is guilty of a gross misdemeanor. ~~*[category D felony and shall be punished as provided in NRS 193.130.]*~~

2. A person who commits the crime of stalking and in conjunction therewith threatens the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm commits the crime of aggravated stalking. A person who commits the crime of aggravated stalking shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $5,000.

3. A person who commits the crime of stalking with the use of an Internet or network site , ~~[or]~~ electronic mail , *text messaging* or any other similar means of communication to publish, display or distribute information in a manner that substantially increases the risk of harm or violence to the victim shall be punished for a category C felony as provided in NRS 193.130.

4. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal penalty provided for in this section may be imposed in addition to

any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

5. The penalties provided in this section do not preclude the victim from seeking any other legal remedy available.

6. As used in this section:

(a) "Course of conduct" means a pattern of conduct which consists of a series of acts over time that evidences a continuity of purpose directed at a specific person.

(b) "Internet or network site" has the meaning ascribed to it in NRS 205.4744.

(c) "Network" has the meaning ascribed to it in NRS 205.4745.

(d) "Provider of Internet service" has the meaning ascribed to it in NRS 205.4758.

(e) *"Text messaging" means a communication in the form of electronic text or one or more electronic images sent from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.*

*(f)* "Without lawful authority" includes acts which are initiated or continued without the victim's consent. The term does not include acts which are otherwise protected or authorized by constitutional or statutory law, regulation or order of a court of competent jurisdiction, including, but not limited to:

(1) Picketing which occurs during a strike, work stoppage or any other labor dispute.

(2) The activities of a reporter, photographer, cameraman or other person while gathering information for communication to the public if that person is employed or engaged by or has contracted with a newspaper, periodical, press association or radio or television station and is acting solely within that professional capacity.

(3) The activities of a person that are carried out in the normal course of his lawful employment.

(4) Any activities carried out in the exercise of the constitutionally protected rights of freedom of speech and assembly.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 176A.413 is hereby amended to read as follows:

176A.413 1. Except as otherwise provided in subsection 2, if a defendant is convicted of stalking with the use of an Internet or network site , ~~[or]~~ electronic mail , *text messaging* or any other similar means of communication pursuant to subsection 3 of NRS 200.575, an offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with mental illness through the use of a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560 and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The court is not required to impose a condition of probation or suspension of sentence set forth in subsection 1 if the court finds that:

(a) The use of a computer by the defendant will assist a law enforcement agency or officer in a criminal investigation;

(b) The defendant will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the defendant will assist companies that require the use of the specific technological knowledge of the defendant that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if a defendant is convicted of an offense that involved the use of a computer, system or network and the court grants probation or suspends the sentence, the court may, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Network" has the meaning ascribed to it in NRS 205.4745.

(c) "System" has the meaning ascribed to it in NRS 205.476.

*(d) "Text messaging" has the meaning ascribed to it in NRS 200.575.*

Sec. 4. NRS 213.1258 is hereby amended to read as follows:

213.1258 1. Except as otherwise provided in subsection 2, if the Board releases on parole a prisoner convicted of stalking with the use of an Internet or network site , ~~[or]~~ electronic mail , *text messaging* or any other similar means of communication pursuant to subsection 3 of NRS 200.575, an offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with mental illness through the use of a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560, the Board shall, in addition to any other condition of parole, require as a condition of parole that the parolee not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The Board is not required to impose a condition of parole set forth in subsection 1 if the Board finds that:

(a) The use of a computer by the parolee will assist a law enforcement agency or officer in a criminal investigation;

(b) The parolee will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the parolee will assist companies that require the use of the specific technological knowledge of the parolee that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if the Board releases on parole a prisoner convicted of an offense that involved the use of a computer, system or network, the Board may, in addition to any other condition of parole, require as a condition of parole that the parolee not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Network" has the meaning ascribed to it in NRS 205.4745.

(c) "System" has the meaning ascribed to it in NRS 205.476.

*(d) "Text messaging" has the meaning ascribed to it in NRS 200.575.*

Senator Care moved the adoption of the amendment.

Senator Care moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 7:48 p.m.

SENATE IN SESSION

At 7:50 p.m.

President Krolicki presiding.

Quorum present.

Remarks by Senators Care, Carlton and Amodei.

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

SENATOR CARE:

The bill brings the stalking statutes up to date. It states that stalking can include text messaging. When the bill came to us, it did three things. It increased the first offense of stalking from a misdemeanor to a gross misdemeanor. A subsequent offense went from a gross misdemeanor to a Class E felony. It stated that stalking would now include, "a person who without lawful authority willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the safety of a third person." In a prior amendment, we changed that to "immediate family member."

The purpose of the amendment is to do two things. First, it is to go back to current law, which is that the first offense is a misdemeanor and a subsequent offense would be a gross misdemeanor, and to delete from the bill the language about the immediate family member.

Everyone takes the offense of stalking seriously. This Legislature has addressed the issue on many occasions. One thing we have seen in the Judiciary Committee is what I call "felony creep." It is where we take an existing crime and over the years it gets elevated to a greater offense. Currently, stalking is a misdemeanor. The punishment is incarceration for up to 6 months and $1,000 fine. If you make the first offense a gross misdemeanor, it becomes 1 year and a $2,000 fine. If you make a subsequent offense a Class E felony, that means 1-4 years and probation with certain conditions and a fine for up to $5,000.

Something we have done this Session is that when someone brings forth a bill like this with stiffer penalties, we have asked, "How are you going to pay for the extra prosecutors, the extra jails and extra judges?" I understand that we have to get tough with the criminals, but with stalking, do you really want someone to go to jail for up to l year for a first offense? This is just for unnerving the victim. That is a crime, but the issue is should that be a gross misdemeanor with imprisonment up to a year for the first offense. Not everyone on the Committee agrees with my position. There was a 5-2 vote. Two of us voted against what is contained in the current bill.

As to stalking being expanded to include, "fearful for the life and for the safety of a member of the person's family or household," I do not take that lightly. No one does. However, already in statute we have the crime of harassment. A person is guilty of harassment if, "without lawful authority the person knowingly threatens to cause bodily injury in the future to the person threatened or to any other person." My point is, the crime is already covered. I think the amendment goes too far, and the immediate family members' provision is too problematic for prosecutors.

SENATOR CARLTON:

I rise in opposition to the amendment, and I understand the Chair of Judiciary's concerns about felony creep. What bothers me about this amendment is that we are taking out "the family." Stalking just does not happen to the one person in the family. Stalking happens to everyone who is involved. Perhaps, it is a young woman with young children and an ex-boyfriend, or it is a young girl in high school or college and every time she gets out of a car or goes to a movie or to get the mail, everyone around her is involved. Stalking is about the whole family.

This bill was brought forward by Assemblywoman Koivisto and I because a constituent of ours was murdered by a stalker. This woman lived four blocks from my home. Her family, including her small children, had been terrorized for a year. I understand there are things on the books for harassment, but my question is if you are being harassed, can you get a temporary restraining order to protect yourself and your children? I do not think you can. It is a harder thing to prove under harassment than under stalking. I am opposed to taking out the language that deals with the entire family and the entire household.

SENATOR CARE:

This body has addressed the issue of stalking on many occasions. Currently, on the books, there is the crime of aggravated stalking which is when a person threatens another person with the intent to cause harm and that person is placed in reasonable fear of death or substantial bodily harm. That is a Class B felony. The sentence for that is 2-15 years and a person does not have to carry through with the threats. Just to threaten is a Class B felony.

SENATOR AMODEI:

I plan to support the amendment. I have read the other statutes the Chair refers to and there is some coverage in those statutes. I do not think they leave a hole, which would be a legitimate concern of my colleague from District 2. I echo the sentiments on the seriousness of this crime. This represents a quantum step forward in dealing with it specifically, and in conjunction with the other matters, it will hopefully provide the protection that the people who are subject to this type of conduct richly deserve.

Mr. President, on a division of the House, declared the vote on Senator Care's motion to adopt Amendment No. 876 was 10 votes in favor to 10 votes against and that he would exercise his constitutional right and vote to break the tie.

Mr. President voted "Yea."

The motion having received a majority, Mr. President declared it carried.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 313.

Bill read third time.

The following amendment was proposed by Senator Care:

Amendment No. 854.

"SUMMARY—Makes various changes relating to tenants of property. (BDR 10-912)"

"AN ACT relating to property; ~~[limiting the amount of fees]~~ *prohibiting* a landlord ~~[may charge]~~ *from charging an unreasonable fee* for a late or partial rent payment; revising provisions governing unlawful detainer; extending the period for complying with a notice to quit by certain tenants in certain circumstances; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Under existing law, a tenant is obligated to pay periodic rent to a landlord in exchange for use of the premises. A landlord must include, as part of the rental agreement, a provision which sets forth the charges, if any, which may be required for late or partial payment of rent. (NRS 118A.200)

~~[This]~~ *Section 1 of this* bill ~~[limits the amount of the]~~ *prohibits a landlord from requiring a tenant to pay an unreasonable* late fee ~~[that may be charged by a landlord]~~ for late or partial payment of rent ~~[. Section 1 of this bill provides: (1) for monthly or longer periodic terms, the late fee may not exceed 3 percent of the periodic payment for payments made 3 to 6 days late, and may not exceed an additional 4 percent of the periodic payment if payment is made 7 days or more late; (2) for certain weekly periodic terms, the late fee may not exceed 7 percent of the weekly payment for payments made late; and (3)]~~ *and provides* that a late fee imposed by a landlord may only be imposed once for a late payment.

A tenant of real property is guilty of unlawful detainer under existing law if he: (1) fails to perform certain conditions of the lease; (2) fails to comply with a written notice directing him to perform the conditions or surrender the property; and (3) remains on the property for at least 5 days after the notice is served upon him. The tenant or subtenant may save the lease from forfeiture, however, by performing the conditions within 3 days after the notice is served. (NRS 40.2516) Section 3 of this bill extends from 5 to 7 days the period during which a tenant or subtenant of premises that are used as a residence may remain on the property before being guilty of unlawful detainer. Section 3 also extends the period by which such a tenant or subtenant must perform the conditions to save the lease from forfeiture from 3 to 5 days.

Existing law provides that, under certain circumstances, a landlord may obtain an order from the court directing the sheriff to remove a tenant who has failed to pay rent within 24 hours after receiving the order. (NRS 40.253) Section 4 of this bill extends that period if the tenant is in possession of a dwelling, apartment or mobile home or if the rent is reserved by a period of 1 week or less so that the sheriff may not remove the tenant sooner than 2 days after the sheriff receives the order.

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

Section 1. Chapter 118A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A landlord shall not require, as part of a rental agreement, ~~[the]~~ a tenant to pay ~~[a]~~ an unreasonable late fee for late or partial payment of rent in excess of the provisions of this section. To determine whether a late fee is unreasonable, a court shall consider, without limitation, the usual and customary late fees in the market in which the dwelling unit is located.*

*2. ~~[If the tenancy is from month to month and rent is due in monthly installments or if the tenancy is for a period greater than month to month as established by the rental agreement and the rent is:~~*

*~~(a) At least 3 days overdue but less than 7 days overdue, a landlord may charge a late fee not to exceed 3 percent of the periodic rent.~~*

*~~(b) Seven days or more overdue, a landlord may charge a late fee in addition to the late fee described in paragraph (a) not to exceed 4 percent of the periodic rent.~~*

*~~3. If the tenancy is from week to week and the rent is overdue, a landlord may charge a late fee not to exceed 7 percent of the weekly rent. As used in this subsection, "tenancy" does not include occupancy of any transient lodging for less than 30 consecutive calendar days.~~*

*~~4. If the rent is subsidized by the United States Department of Housing and Urban Development, the United States Department of Agriculture, a state agency, a public housing authority or a local government, any late fee charged by a landlord must be calculated in accordance with the provisions of this section on the tenant's share of the rent and the rent subsidy must not be included in the calculation.~~*

*~~5.]~~ If a late fee is imposed under this section, a landlord may only impose the late fee once for each late or partial payment.*

*~~[6.]~~ 3. Any provision of a rental agreement prohibited by this section is void as contrary to public policy and the tenant may recover any actual damages incurred through the inclusion of the prohibited provision.*

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 40.2516 is hereby amended to read as follows:

40.2516 A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property or mobile home is held, other than those mentioned in NRS 40.250 to 40.252, inclusive, and NRS 40.254, and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon him, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplied with for 5 days *or, when the premises are used as a residence, for 7 days* after the service thereof. Within 3 days after the service, *or within 5 days after the service when the premises are used as a residence,* the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.

Sec. 4. NRS 40.253 is hereby amended to read as follows:

40.253 1. Except as otherwise provided in subsection 10, in addition to the remedy provided in NRS 40.2512 and 40.290 to 40.420, inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or his agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

➥ As used in this subsection, "day of service" means the day the landlord or his agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or his agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of NRS 40.280. If the notice cannot be delivered in person, the landlord or his agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of NRS 40.280. The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when he took possession of the premises, that the landlord or his agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or his agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of his right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that he has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or his agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or his agent may apply by affidavit of complaint for eviction to the Justice Court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. ~~[The]~~ *If the tenant is in possession of commercial premises, the* court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. *If the tenant is in possession of a dwelling, apartment or mobile home or if the rent is reserved by a period of 1 week or less, the court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant not sooner than 2 days after receipt of the order.* The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with NRS 40.280.

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or his agent, and except when the landlord is prohibited pursuant to NRS 118A.480, the landlord or his agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the Justice Court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that ~~[there]~~ *:*

*(a) There* is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. ~~[If the court determines that there]~~

*(b) There* is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief ~~[,]~~ and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to NRS 40.290 to 40.420, inclusive.

➥ The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which he may be entitled. If the alleged unlawful detainer was based upon subsection 5 of NRS 40.2514, the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with NRS 40.251.

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to NRS 118A.460 for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant, whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to NRS 118A.460, and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or his agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in NRS 118A.240.

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of NRS 40.215.

Sec. 5. The provisions of section 1 of this act apply only to a rental agreement entered into or renewed on or after January 1, 2010, and to a rental agreement which is modified on or after January 1, 2010, to revise the terms of the agreement concerning late fees.

Sec. 6. This act becomes effective on January 1, 2010.

Senator Care moved the adoption of the amendment.

Remarks by Senators Care, Raggio and Lee.

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

SENATOR CARE:

The amendment streamlines the bill by prohibiting a landlord from requiring a tenant from paying an unreasonable late fee for late or partial payment of rent and describes how a court will determine if a fee is unreasonable based on local market conditions. The amendment deletes previous language detailing how late fees are to be calculated by the landlord.

SENATOR RAGGIO:

In section 1, it is indicated that a landlord shall not require a tenant to pay an unreasonable late fee. When a tenant signs a rental agreement or a lease, this is usually a provision. There is language to determine whether a late fee is unreasonable, "the court shall consider without limitation, the usual and customary late fees in the market in which the dwelling unit is located." I do not see anything else that qualifies that. I would have a hard time advising a client who is a landlord or a tenant as to what would be appropriate to put in the contract for a late fee. How would anyone know what an unreasonable late fee is? I do not see how this can be implemented. I am concerned about this.

SENATOR CARE:

Section 5 states that this provision would only apply to lease agreements entered into after January 1, 2010, or in lease agreements modified or renewed after January 1, 2010. It would not impact current lease language.

The language is modeled after a statute in Oregon. In section 1, it says, "deleted if adopted," in subsection 2 and 3, primarily. When the bill came forth, it had a rate cap that was quite low. If it is 3-days overdue, but less than 7-days overdue, then it is 3 percent. If it is 7 days or more then it would be at 4 percent. We could have continued to play with the percentage points, but it came down to what a court would do. A court might want to consider whether the rate is reasonable. Oregon has a statute with that language. "The usual and customary late fees in the market in which the dwelling unit is located" is what the court would use as a standard.

I have never seen a lease that did not have a specific rate in the contract. If a contract were executed after January 1, 2010, with a provision of 60 percent, a court would likely strike that down as being unreasonable. The courts have these matters before them and are accustomed to the standards. It puts a burden on the court, but it lifts the responsibility from this body for having to list the specific interest rates in a contract where the parties are free to negotiate the rate as long as it is reasonable.

SENATOR RAGGIO:

I do not see how this can be done. If you have to wait until you are sued to find out what is a reasonable late fee in a rental agreement, it is inappropriate. I would not know how to advise any client as to what is appropriate. There is no way to find out what is the customary late fee in the market.

SENATOR LEE:

As a law-abiding landlord, I do not know what I should put in my contract based on this amendment. I would like to generate a contract that everyone understands what the late fees are. If I put in a $50 late fee or if it is not paid in a week, it goes up to $100; there are ways to get someone's attention. The property owner has a bank note that also has late fees. I cannot go to a bank and say I am not going to pay more money because it is not going to be customary for me to charge late fees against a person I am renting to. This bill is onerous. I am opposed to this amendment.

Senator Lee disclosed that he owns rental properties.
Senator requested that his remark be entered in the Journal.
Senator Care moved to withdraw Amendment No. 854 to Senate Bill No. 313.
Motion carried.
Senator Care moved that Assembly Bill No. 313 be taken from the General File and placed on the General File for the next legislative day.
Motion carried.

Senator Horsford moved that the Senate recess subject to the call of the Chair.
Motion carried.

Senate in recess at 8:08 p.m.

## SENATE IN SESSION

At 8:34 p.m.
President Krolicki presiding.
Quorum present.

### MOTIONS, RESOLUTIONS AND NOTICES

Senator Coffin moved that Assembly Bill No. 378 be taken from the General File and placed on the General File on the next agenda.
Motion carried.

### GENERAL FILE AND THIRD READING

Assembly Bill No. 320.
Bill read third time.
The following amendment was proposed by Senator Cegavske:
Amendment No. 871.
"SUMMARY—Revises provisions relating to ~~[guardianships.]~~ *protection of persons.* (BDR 13-906)"
"AN ACT relating to ~~[guardianships;]~~ *protection of persons;* requiring additional information in a petition for appointment of a guardian under certain circumstances; requiring that a proposed adult ward be advised of his right to counsel; revising provisions relating to the attendance of a proposed adult ward at a guardianship hearing; requiring a guardian to petition a court before moving a ward into certain residential facilities under certain circumstances; making various other changes relating to guardianships; *authorizing patients of certain facilities to install electronic surveillance devices in the room of the patient under certain circumstances;* and providing other matters properly relating thereto."
Legislative Counsel's Digest:

Section 3 of this bill requires that a petitioner for the appointment of a guardian for a proposed adult ward provide the court with an assessment completed by a licensed physician of the proposed adult ward's needs and limitations in capacity before the court makes a final order in the case. (NRS 159.044)

Section 4 of this bill provides that a proposed adult ward must be advised of his right to counsel in the guardianship proceeding and requires that certain information or responses provided by the adult ward relating to his right to counsel and to the proceeding be transmitted to the court. (NRS 159.0485)

Existing law provides that a proposed ward found in this State must attend a hearing for the appointment of a guardian unless a certificate is signed indicating the reasons the proposed ward cannot appear. (NRS 159.0535) Section 5 of this bill provides that a proposed ward who is unable to attend a hearing for the appointment of a general or special guardian may attend by videoconference. Section 5 further provides that if a proposed ward is an adult and cannot attend the hearing or appear by videoconference, the court must have the person who signs the certificate to excuse the proposed adult ward from attending the hearing meet with the proposed adult ward and report back to the court regarding the proposed adult ward's desire for representation at the hearing, preferences if a guardianship is imposed and any information the person believes may have limited any of the proposed adult ward's responses.

Existing law provides that a guardian must file with the court annually, or at such other times the court deems appropriate, a written report on the condition of the ward and the exercise of authority and the performance of duties by the guardian. (NRS 159.081) Section 6 of this bill: (1) provides that a guardian must also file with the court a report within 10 days of moving a ward to a secured residential long-term care facility; and (2) authorizes the court to determine the form and contents of such a report.

Section 7 of this bill requires a guardian to petition the court and receive the court's consent before moving a ward into a secured residential long-term care facility. However, a guardian does not need to petition the court if the court has already granted the guardian the authority to move the ward to such a facility or if a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of the county's office of protective services recommends the transfer in writing. (NRS 159.113)

*Section 10 of this bill establishes the right of a patient or a person authorized to act on behalf of a patient who resides in a facility for hospice care, facility for intermediate care, facility for skilled nursing or residential facility for groups to install and operate a monitoring device in the room of the patient. Section 10 also prescribes the required waivers that must be obtained from the patient or the person authorized to act on his behalf who is* *installing the device and from each patient who also resides in the room or a person authorized to act on the patient's behalf.*

*Section 12 of this bill requires that the monitoring device be installed in a manner that is safe for the residents, employees and visitors to the room, that the monitoring device be installed in compliance with all applicable regulations and codes, and that all monitoring be conducted in plain view. Section 13 of this bill sets forth the conditions under which a video recording from such a monitoring device may be admitted into evidence in a civil or criminal court action or in an administrative proceeding*

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

Section 1. Chapter 159 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. "Secured residential long-term care facility" means a residential facility providing long-term care that is designed to restrict a resident of the facility from leaving the facility, a part of the facility or the grounds of the facility through the use of locks or other mechanical means unless the resident is accompanied by a staff member of the facility or another person authorized by the facility or the guardian.*

*2. The term does not include a residential facility providing long-term care which uses procedures or mechanisms only to track the location or actions of a resident or to assist a resident to perform the normal activities of daily living.*

Sec. 2. NRS 159.013 is hereby amended to read as follows:

159.013 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 159.014 to 159.027, inclusive, *and section 1 of this act,* have the meanings ascribed to them in those sections.

Sec. 3. NRS 159.044 is hereby amended to read as follows:

159.044 1. Except as otherwise provided in NRS 127.045, a proposed ward, a governmental agency, a nonprofit corporation or any interested person may petition the court for the appointment of a guardian.

2. To the extent the petitioner knows or reasonably may ascertain or obtain, the petition must include, without limitation:

(a) The name and address of the petitioner.

(b) The name, date of birth and current address of the proposed ward.

(c) A copy of one of the following forms of identification of the proposed ward which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;

(2) A taxpayer identification number;

(3) A valid driver's license number;

(4) A valid identification card number; or

(5) A valid passport number.

➥ If the information required pursuant to this paragraph is not included with the petition, the information must be provided to the court not later than 120 days after the appointment of a guardian or as otherwise ordered by the court.

(d) If the proposed ward is a minor, the date on which he will attain the age of majority and:

(1) Whether there is a current order concerning custody and, if so, the state in which the order was issued; and

(2) Whether the petitioner anticipates that the proposed ward will need guardianship after attaining the age of majority.

(e) Whether the proposed ward is a resident or nonresident of this State.

(f) The names and addresses of the spouse of the proposed ward and the relatives of the proposed ward who are within the second degree of consanguinity.

(g) The name, date of birth and current address of the proposed guardian. If the proposed guardian is a private professional guardian, the petition must include proof that the guardian meets the requirements of NRS 159.0595. If the proposed guardian is not a private professional guardian, the petition must include a statement that the guardian currently is not receiving compensation for services as a guardian to more than one ward who is not related to the person by blood or marriage.

(h) A copy of one of the following forms of identification of the proposed guardian which must be placed in the records relating to the guardianship proceeding and, except as otherwise provided in NRS 239.0115 or as otherwise required to carry out a specific statute, maintained in a confidential manner:

(1) A social security number;

(2) A taxpayer identification number;

(3) A valid driver's license number;

(4) A valid identification card number; or

(5) A valid passport number.

(i) Whether the proposed guardian has ever been convicted of a felony and, if so, information concerning the crime for which he was convicted and whether the proposed guardian was placed on probation or parole.

(j) A summary of the reasons why a guardian is needed and recent documentation demonstrating the need for a guardianship. The documentation may include, without limitation:

(1) A certificate signed by a physician who is licensed to practice medicine in this State stating the need for a guardian;

(2) A letter signed by any governmental agency in this State which conducts investigations stating the need for a guardian; or

(3) A certificate signed by any other person whom the court finds qualified to execute a certificate stating the need for a guardian.

(k) Whether the appointment of a general or a special guardian is sought.

(l) A general description and the probable value of the property of the proposed ward and any income to which the proposed ward is or will be entitled, if the petition is for the appointment of a guardian of the estate or a special guardian. If any money is paid or is payable to the proposed ward by the United States through the Department of Veterans Affairs, the petition must so state.

(m) The name and address of any person or care provider having the care, custody or control of the proposed ward.

(n) The relationship, if any, of the petitioner to the proposed ward and the interest, if any, of the petitioner in the appointment.

(o) Requests for any of the specific powers set forth in NRS 159.117 to 159.175, inclusive, necessary to enable the guardian to carry out the duties of the guardianship.

(p) Whether the guardianship is sought as the result of an investigation of a report of abuse or neglect that is conducted pursuant to chapter 432B of NRS by an agency which provides child welfare services. As used in this paragraph, "agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(q) Whether the proposed ward is a party to any pending criminal or civil litigation.

(r) Whether the guardianship is sought for the purpose of initiating litigation.

(s) Whether the proposed ward has executed a durable power of attorney for health care, a durable power of attorney for financial matters or a written nomination of guardian and, if so, who the named agents are for each document.

*3. Before the court makes a finding pursuant to NRS 159.054, a petitioner seeking a guardian for a proposed adult ward must provide the court with an assessment of the needs of the proposed adult ward completed by a licensed physician which identifies the limitations of capacity of the proposed adult ward and how such limitations affect the ability of the proposed adult ward to maintain his safety and basic needs. The court may prescribe the form in which the assessment of the needs of the proposed adult ward must be filed.*

Sec. 4. NRS 159.0485 is hereby amended to read as follows:

159.0485 1. *At the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to NRS 159.0535 and is not appearing by videoconference at the hearing, the person who signs the certificate pursuant to NRS 159.0535 to excuse the proposed adult ward from attending the hearing shall advise the proposed adult ward of his right to* *counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding.*

*2.* If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel, at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney must represent the adult ward or proposed adult ward until relieved of the duty by court order.

~~[2.]~~ *3.* Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation which must be paid from the estate of the adult ward or proposed adult ward. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney.

Sec. 5. NRS 159.0535 is hereby amended to read as follows:

159.0535 1. A proposed ward who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician who is licensed to practice in this State specifically states the condition of the proposed ward , ~~[and]~~ the reasons why the proposed ward is unable to appear in court ~~[;]~~ *and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward;* or

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed ward , ~~[and]~~ the reasons why the proposed ward is unable to appear in court ~~[.]~~ *and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward.*

2. *A proposed ward found in this State who cannot attend the hearing for the appointment of a general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by videoconference. If the proposed ward is an adult and cannot attend by videoconference, the person who signs the certificate described in subsection 1 shall:*

*(a) Inform the proposed adult ward that the petitioner is requesting that the court appoint a guardian for the proposed adult ward;*

*(b) Ask the proposed adult ward for a response to the guardianship petition;*

*(c) Inform the proposed adult ward of his right to counsel and ask whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding; and*

*(d) Ask the preferences of the proposed adult ward for the appointment of a particular person as his guardian.*

*3. If the proposed ward is an adult, the person who signs the certificate described in subsection 1 shall state in the certificate:*

*(a) That the proposed adult ward has been advised of his right to counsel and asked whether he wishes to be represented by counsel in the guardianship proceeding;*

*(b) The responses of the proposed adult ward to the questions asked pursuant to subsection 2; and*

*(c) Any conditions that the person believes may have limited the responses by the proposed adult ward.*

*4. The court may prescribe the form in which the certificate must be filed. If the certificate consists of separate parts, each part must be signed by a person identified in subsection 1.*

*5.* If the proposed ward is not in this State, the proposed ward must attend the hearing only if the court determines that the attendance of the proposed ward is necessary in the interests of justice.

Sec. 6. NRS 159.081 is hereby amended to read as follows:

159.081 1. A guardian of the person shall make and file in the guardianship proceeding for review of the court a written report on the condition of the ward and the exercise of authority and performance of duties by the guardian:

(a) Annually, not later than 60 days after the anniversary date of the appointment of the guardian; ~~[and]~~

(b) *Within 10 days of moving a ward to a secured residential long-term care facility; and*

*(c)* At such other times as the court may order.

2. *A report filed pursuant to paragraph (b) of subsection 1 must:*

*(a) Include a copy of the written recommendation upon which the transfer was made; and*

*(b) Be served, without limitation, on the attorney for the ward, if any.*

*3. The court may prescribe the form and contents for filing a report described in subsection 1.*

*4.* The guardian of the person shall give to the guardian of the estate, if any, a copy of each report not later than 30 days after the date the report is filed with the court.

~~[3.]~~ *5.* The court is not required to hold a hearing or enter an order regarding the report.

Sec. 7. NRS 159.113 is hereby amended to read as follows:

159.113 1. Before taking any of the following actions, the guardian shall petition the court for an order authorizing the guardian to:

(a) Invest the property of the ward pursuant to NRS 159.117.

(b) Continue the business of the ward pursuant to NRS 159.119.

(c) Borrow money for the ward pursuant to NRS 159.121.

(d) Except as otherwise provided in NRS 159.079, enter into contracts for the ward or complete the performance of contracts of the ward pursuant to NRS 159.123.

(e) Make gifts from the ward's estate or make expenditures for the ward's relatives pursuant to NRS 159.125.

(f) Sell, lease or place in trust any property of the ward pursuant to NRS 159.127.

(g) Exchange or partition the ward's property pursuant to NRS 159.175.

(h) Release the power of the ward as trustee, personal representative or custodian for a minor or guardian.

(i) Exercise or release the power of the ward as a donee of a power of appointment.

(j) Change the state of residence or domicile of the ward.

(k) Exercise the right of the ward to take under or against a will.

(l) Transfer to a trust created by the ward any property unintentionally omitted from the trust.

(m) Submit a revocable trust to the jurisdiction of the court if:

(1) The ward or the spouse of the ward, or both, are the grantors and sole beneficiaries of the income of the trust; or

(2) The trust was created by the court.

(n) Pay any claim by the Department of Health and Human Services to recover benefits for Medicaid correctly paid to or on behalf of the ward.

*(o) Except as otherwise provided in subsection 6, move the ward into a secured residential long-term care facility.*

2. Before taking any of the following actions, unless the guardian has been otherwise ordered by the court to petition the court for permission to take specified actions or make specified decisions in addition to those described in subsection 1, the guardian may petition the court for an order authorizing the guardian to:

(a) Obtain advice, instructions and approval of any other proposed act of the guardian relating to the ward's property.

(b) Take any other action which the guardian deems would be in the best interests of the ward.

3. The petition must be signed by the guardian and contain:

(a) The name, age, residence and address of the ward.

(b) A concise statement as to the condition of the ward's estate.

(c) A concise statement as to the advantage to the ward of or the necessity for the proposed action.

(d) The terms and conditions of any proposed sale, lease, partition, trust, exchange or investment, and a specific description of any property involved.

4. Any of the matters set forth in subsection 1 may be consolidated in one petition, and the court may enter one order authorizing or directing the guardian to do one or more of those acts.

5. A petition filed pursuant to paragraphs (b) and (d) of subsection 1 may be consolidated in and filed with the petition for the appointment of the guardian, and if the guardian is appointed, the court may enter additional orders authorizing the guardian to continue the business of the ward, enter contracts for the ward or complete contracts of the ward.

*6. Without filing a petition pursuant to paragraph (o) of subsection 1, a guardian may move a ward into a secured residential long-term care facility if:*

*(a) The court has previously granted the guardian authority to move the ward to such a facility based on findings made when the court appointed the general or special guardian; or*

*(b) The transfer is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county's office for protective services.*

*7. As used in this section, "protective services" has the meaning ascribed to it in NRS 200.5092.*

*Sec. 8.* *Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 9 to 13, inclusive, of this act.*

*Sec. 9.* *As used in sections 9 to 13, inclusive, of this act, "monitoring device" means a video surveillance instrument that broadcasts or records activity. The term does not include a camera used to take still photographs.*

*Sec. 10.* *1. A patient of a facility for hospice care, facility for intermediate care, facility for skilled nursing or residential facility for groups, or the person authorized pursuant to subsection 6 to act on his behalf may install and operate a monitoring device in the room of the patient if:*

*(a) The patient or the person acting on his behalf pays the expense of installing, operating and maintaining the monitoring device; and*

*(b) The waivers required pursuant to subsection 2 have been signed.*

*2. Before a monitoring device may be installed in the room of a patient pursuant to this section, a written waiver must be obtained from each patient who resides in the room in which the monitoring device will be installed and operated, or the person authorized pursuant to subsection 6 to act on the patient's behalf, including the patient or the person acting on his behalf who is installing the monitoring device. Each written waiver must include:*

*(a) Consent to the installation and operation of the monitoring device;*

*(b) A description of the type of monitoring device that will be installed;*

*(c) A description of whether the monitoring device will be in continuous operation in the room or if not, the prescribed circumstances under which the monitoring device will not be in operation to protect the dignity of a patient;*

*(d) Any conditions on the use of the device that another resident of the room requires as a condition to his consent;*

*(e) An acknowledgment that the patient or the person authorized pursuant to subsection 6 to act on his behalf releases the facility from any liability for violations of the right to privacy of the person who resides in the room in which the monitoring device is operated; and*

*(f) An acknowledgment that the patient or the person authorized pursuant to subsection 6 to act on his behalf releases the person who operates the*

*monitoring device from violations of the right to privacy relating to reasonable disclosures of the activities broadcast or recorded by the monitoring device.*

*3. A patient or a person authorized pursuant to subsection 6 to act on his behalf who is not installing and operating the monitoring device but who provides his consent for operation of the monitoring device in the room may, as a condition to his consent, require that the monitoring device be pointed away from the patient who is not installing and operating the monitoring device at all times.*

*4. If a monitoring device is in operation in a room and another patient is moved into the room who has not yet consented to the operation of the monitoring device, the monitoring must cease until the new resident of the room or the person authorized pursuant to subsection 6 to act on his behalf provides consent pursuant to this section.*

*5. A patient or a person authorized pursuant to subsection 6 to act on his behalf who signs a waiver pursuant to subsection 2:*

*(a) Releases the facility from liability for any violation of the right to privacy of the patient with regard to operation of a monitoring device.*

*(b) Releases the person who operates a monitoring device from any violation of the right to privacy relating to reasonable disclosures of the activities broadcast or recorded by the monitoring device.*

*(c) May revoke his signature and reinstate the right to privacy of the patient at any time. Such revocation must be in writing and signed by the patient or a person authorized pursuant to subsection 6 to act on his behalf.*

*6. If a patient lacks the mental capacity to consent to the installation and operation of a monitoring device pursuant to the provisions of this section:*

*(a) The guardian, attorney-in-fact designated pursuant to NRS 449.800 to 449.860, inclusive, or other legal representative of the patient may sign the waiver required pursuant to subsection 2 on behalf of the patient; or*

*(b) If a guardian, attorney-in-fact or other legal representative has not been designated for the patient, a member of the family of the patient may sign the waiver required pursuant to subsection 2 on behalf of the patient.*

*Sec. 11. 1. At the time of admission, a facility for hospice care, facility for intermediate care, facility for skilled nursing or residential facility for groups shall notify a patient or the person authorized to act on his behalf pursuant to subsection 6 of section 10 of this act of the right to install and operate a monitoring device pursuant to sections 9 to 13, inclusive, of this act. A facility shall not:*

*(a) Deny the admission of;*

*(b) Discharge from the facility; or*

*(c) Otherwise discriminate or retaliate against,*

➥ *a patient who wishes to have or has a monitoring device installed and operated in his room.*

*2. A facility for hospice care, facility for intermediate care, facility for skilled nursing or residential facility for groups shall:*

*(a) Cooperate with a patient or the person authorized to act on his behalf pursuant to subsection 6 of section 10 of this act to accommodate the installation of a monitoring device in the room of the patient;*

*(b) Post a notice at each public entrance to the facility stating that the rooms of some of the residents may be under electronic surveillance by or on behalf of the residents; and*

*(c) Post a notice in a conspicuous place at the entrance to each room in which a monitoring device is in use stating that the room is under electronic surveillance.*

*Sec. 12. 1. A monitoring device that is used pursuant to sections 9 to 13, inclusive, of this act must be installed in a manner that:*

*(a) Is safe for the residents, employees and visitors of the facility who may be in the room in which the monitoring device is installed.*

*(b) Complies with all applicable regulations and codes, including, without limitation, all building codes, health codes, and safety codes for the jurisdiction in which the facility for hospice care, facility for intermediate care, facility for skilled nursing or residential facility is located.*

*2. All monitoring authorized pursuant to sections 9 to 13, inclusive, of this act must be conducted in plain view.*

*Sec. 13. 1. Subject to the applicable rules of evidence and procedure and the provisions of this section, a video recording created through the use of a monitoring device that is installed and operated in accordance with sections 9 to 13, inclusive, of this act may be admitted into evidence in a civil or criminal court action or in an administrative proceeding if the contents of the video recording have not been edited, artificially enhanced or otherwise tampered with.*

*2. The video recording must not be admitted pursuant to subsection 1 unless the recording clearly shows the date and time of the events that are the subject of the action or proceeding.*

*3. If the contents of the video recording have been transferred from the original format to another technological format, the video recording in the transferred format must not be admitted pursuant to subsection 1 unless the transfer was done by qualified personnel and the contents of the video recording were not altered or otherwise tampered with.*

*Sec. 14. Each facility for hospice care, facility for intermediate care, facility for skilled nursing or residential facility for groups shall, on or before October 1, 2009, notify each patient who resides in the facility on that date or the person authorized to act on behalf of the patient pursuant to subsection 6 of section 10 of this act of the right of the patient or the person authorized to act on his behalf to install and operate a monitoring device pursuant to the provisions of sections 9 to 13, inclusive, of this act.*

Senator Cegavske moved the adoption of the amendment.

Remarks by Senator Cegavske.

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

This amendment places provisions of Senate Bill No. 290 into Assembly Bill No. 320. Those provisions give patients or a person authorized to act on the behalf of a patient who resides in a facility for hospice care, a facility for immediate care, a facility for skilled nursing or residential facility for group care the right to install and operate a monitoring device in the room of the patient. Before the device may be installed, waivers must be signed by each patient who resides in the room where the device is to be installed or by a person authorized to act on behalf of the patient.

The amendment also requires that the monitoring device be installed in plain view, be installed so that it is safe for residents, employees and visitors to the room and installed in compliance with any regulations or codes. This amendment provides that a video recording from such a monitoring device may be admitted into evidence in a civil or criminal court action and in an administrative proceeding only if certain conditions are satisfied.

This bill went through this House and to the other House, but there was not enough time to hear it. We had a lobbyist who had been in this House that had agreed to making changes with amendments. We all agreed. It was not until the last day that they decided they did not want to support it. There was a lot of concern about a procedure like that with a lobbyist making changes at the last minute. Since then, I have given more information to the Chair in the Assembly and talked to the sponsor of Assembly Bill No. 320 and indicated that this was where our Legal Staff thought that it was best to be applied. I talked to the Chair in each House and our Majority Leader. I appreciate your support.

Amendment adopted.
Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 387.
Bill read third time.
Roll call on Assembly Bill No. 387:
YEAS—21.
NAYS—None.

Assembly Bill No. 387 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 401.
Bill read third time.
Roll call on Assembly Bill No. 401:
YEAS—21.
NAYS—None.

Assembly Bill No. 401 having received a constitutional majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 467.
Bill read third time.
Conflict of interest declared by Senator Hardy.
Remarks by Senators Washington and Lee.
Senator Lee requested that the following remarks be entered in the Journal.

SENATOR WASHINGTON:
I would like an explanation of this bill.

SENATOR LEE:

Assembly Bill No. 467 clarifies the applicability of prevailing-wage statutes to certain lease-purchase and installment–purchase agreements by the state and local governments. The measure requires a person who enters into a lease or lease–purchase agreement with a Board of County Commissioners for the purposes of constructing or remodeling a facility to include in the agreement the contractual provisions requiring the payment of prevailing wages. The measure extends these same requirements to medium-term obligations and installment-purchase agreements of local governments to lease–purchase and installment-purchase agreements of the State of Nevada and to the City of Las Vegas. Finally, Assembly Bill No. 467 amends legislative declarations regarding lease–purchase and installment–purchase agreements by the tate and by local governments to reflect these requirements.

Roll call on Assembly Bill No. 467:

YEAS—20.

NAYS—None.

NOT VOTING—Hardy.

Assembly Bill No. 467 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that Assembly Bill No. 478 be taken from the General File and placed on the General File on the next agenda.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 483.

Bill read third time.

Roll call on Assembly Bill No. 483:

YEAS—21.

NAYS—None.

Assembly Bill No. 483 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 488.

Bill read third time.

Roll call on Assembly Bill No. 488:

YEAS—21.

NAYS—None.

Assembly Bill No. 488 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 426.

Bill read third time.

Roll call on Senate Bill No. 426:

YEAS—16.

NAYS—Amodei, Cegavske, Hardy, McGinness, Washington—5.

Senate Bill No. 426 having received a two-thirds majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 146.

Bill read third time.

Roll call on Assembly Bill No. 146:

YEAS—17.

NAYS—Amodei, Cegavske, McGinness, Washington—4.

Assembly Bill No. 146 having received a two-thirds majority, Mr. President declared it passed, as amended.

Senator Carlton moved that all necessary rules be suspended and that Assembly Bill No. 146 be immediately transmitted to the Assembly.

Motion carried unanimously.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 251.

The following Assembly amendment was read:

Amendment No. 744.

"SUMMARY—Revises certain provisions governing vehicles. (BDR 43-1115)"

"AN ACT relating to vehicles; specifying certain circumstances under which a tow car can display flashing amber warning lights; requiring the driver of a vehicle to take certain actions when he approaches a tow car which is stopped and making use of flashing amber warning lights; specifying the circumstances under which a vehicle operated by a licensed private patrolman or his employee may display flashing amber warning lights; providing fees for certain permits; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law authorizes the operator of a tow car to equip the tow car with flashing amber warning lights pursuant to a permit issued by the Nevada Highway Patrol. (NRS 484.579) Section 1.5 of this bill authorizes the use of flashing amber warning lights on a tow car when the tow car is ~~[stopped upon or adjacent to the highway]~~ at the scene of a traffic hazard.

Section 3 of this bill requires a driver, upon approaching a tow car which is stopped and is making use of flashing amber warning lights to: (1) decrease the speed of his vehicle; (2) proceed with caution; (3) be prepared to stop; and (4) if possible, drive in a lane that is not adjacent to the lane in which the tow car is stopped. (NRS 484.364)

Section 4 of this bill authorizes a tow car operator who during daylight attends to a motor vehicle disabled on the highway to place a red flare, red lantern, warning light or reflector in close proximity to each warning sign which the operator is required to place upon the highway in the vicinity of the disabled motor vehicle. (NRS 484.499)

Sections 2.5 and 5 of this bill authorize the Nevada Highway Patrol to issue a permit authorizing the display of flashing amber warning lights on a vehicle operated by a licensed private patrolman or his employee when the private patrolman or his employee who operates the vehicle is engaged in the business for which the private patrolman is licensed and the vehicle is: (1) on private property which the private patrolman is authorized to protect; (2) on a public road and stopped adjacent to private property which the private patrolman is authorized to protect; or (3) on a public road and moving at a speed slower than the normal flow of traffic. Section 5 requires the Nevada Highway Patrol to charge and collect certain fees for the issuance of permits to display flashing amber warning lights on a vehicle, including a vehicle operated by a licensed private patrolman or his employee. (NRS 484.579)

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

Section 1. Chapter 484 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.5 and 2.5 of this act.

Sec. 1.5. *1. A tow car which is equipped with flashing amber warning lights pursuant to NRS 484.579 may display flashing amber warning lights to the front, sides or rear of the tow car when* ~~[stopped upon or adjacent to the highway]~~ *at the scene of a traffic hazard.*

*2. Any flashing amber warning light used pursuant to this section must comply with the standards approved by the Department.*

Sec. 2. (Deleted by amendment.)

Sec. 2.5. *A vehicle which is operated by a private patrolman licensed pursuant to chapter 648 of NRS or his employee and which is equipped with flashing amber warning lights pursuant to NRS 484.579 may display flashing amber warning lights to the front, sides or rear of the vehicle when:*

*1. The private patrolman or his employee who operates the vehicle is engaged in the business for which the private patrolman is licensed; and*

*2. The vehicle is:*

*(a) On private property which the private patrolman is authorized to protect;*

*(b) On a public road and stopped adjacent to private property which the private patrolman is authorized to protect; or*

*(c) On a public road and moving at a speed slower than the normal flow of traffic.*

Sec. 3. NRS 484.364 is hereby amended to read as follows:

484.364 1. Upon approaching an authorized emergency vehicle which is stopped and is making use of flashing lights meeting the requirements of subsection 3 of NRS 484.787 ~~[,]~~ *or a tow car which is stopped and is making use of flashing amber warning lights meeting the requirements of section 1.5 of this act,* the driver of the approaching vehicle shall, in the absence of other direction given by a peace officer:

(a) Decrease the speed of his vehicle to a speed that is:

(1) Reasonable and proper, pursuant to the criteria set forth in subsection 1 of NRS 484.361; and

(2) Less than the posted speed limit, if a speed limit has been posted;

(b) Proceed with caution;

(c) Be prepared to stop; and

(d) If possible, drive in a lane that is not adjacent to the lane in which the emergency vehicle *or tow car* is stopped, unless roadway, traffic, weather or other conditions make doing so unsafe or impossible.

2. A person who violates subsection 1 is guilty of a misdemeanor.

Sec. 4. NRS 484.499 is hereby amended to read as follows:

484.499 Where a motor vehicle is disabled on the highway , ~~[during darkness,]~~ the tow car operator shall immediately upon arrival place warning signs upon the highway as prescribed in NRS 484.497 and *:*

*1. During darkness,* shall *, if it is safe to do so,* place not less than one red flare, red lantern, warning light or reflector in close proximity to each warning sign.

*2. During daylight, may place a red flare, red lantern, warning light or reflector in close proximity to each warning sign.*

Sec. 5. NRS 484.579 is hereby amended to read as follows:

484.579 1. It is unlawful to operate or display a flashing amber warning light on a vehicle except when an unusual traffic hazard exists or as authorized in NRS 484.582 ~~[.]~~ *or section 1.5 or 2.5 of this act.* This subsection does not prohibit the use of amber lights in electric signals for making turns.

2. It is unlawful for any person to mount flashing amber warning lights permanently on a vehicle without a permit from the Nevada Highway Patrol.

3. The Nevada Highway Patrol, upon written application, shall issue a permit to mount a flashing amber light on:

(a) Vehicles of public utilities.

(b) ~~[Trucks for towing vehicles.]~~ *Tow cars.*

(c) Vehicles engaged in activities which create a public hazard upon the streets or highways.

(d) Vehicles of coroners and their deputies.

(e) Vehicles of Civil Air Patrol rescue units.

(f) Vehicles of authorized sheriffs' jeep squadrons.

(g) Vehicles which escort funeral processions.

(h) Vehicles operated by vendors of food or beverages, as provided in NRS 484.582.

*(i) Vehicles operated by private patrolmen licensed pursuant to chapter 648 of NRS or their employees.*

4. Those permits expire on June 30 of each calendar year.

5. The Nevada Highway Patrol shall charge and collect the following fees for the issuance of a permit for the mounting of a flashing amber light:

(a) Permit for a single vehicle ........................................................ $2

(b) Blanket permit for more than 5 but less than 15 vehicles ................. 12

(c) Blanket permit for 15 vehicles or more ............................................ 24

6. Subsections 1 and 2 do not apply to an agency of any state or political subdivision thereof, or to an agency of the Federal Government.

7. All fees collected by the Nevada Highway Patrol pursuant to this section must be deposited with the State Treasurer for credit to the State Highway Fund.

Sec. 6. This act becomes effective on July 1, 2009.

Senator Schneider moved that the Senate concur in the Assembly amendment to Senate Bill No. 251.

Remarks by Senator Schneider.

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

This amendment has to do with warning lights on vehicles. The Assembly added, "during darkness, when it is safe to do so." They added "safe" to run with warning lights.

Motion carried by a two-thirds majority.

Bill ordered enrolled.

Senate Bill No. 253.

The following Assembly amendment was read:

Amendment No. 731.

"SUMMARY—Makes various changes to provisions relating to common-interest communities. (BDR 10-18)"

"AN ACT relating to common-interest communities; requiring a member of an executive board of a unit-owners' association who stands to profit personally from a matter before the *executive* board to disclose and abstain from voting on the matter; *requiring a member of an executive board who has a member of his household or relative who stands to profit from a matter before the executive board to disclose before voting on the matter;* requiring that bids for an association project be considered and opened at a meeting of the executive board; revising provisions relating to the renting or leasing of units; making provisions authorizing the transient commercial use of units in a planned community in certain circumstances applicable in all counties; revising the provisions relating to the resale package furnished to the purchaser of a unit; increasing the amount of the administrative fine for engaging in certain activity without holding the required certificate or permit; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 2 of this bill provides additional ethical requirements for members of an executive board of a unit-owners' association by requiring *: (1)* a member who stands to gain any personal profit or compensation from a matter before the executive board to disclose the matter to the executive board and to abstain from voting on the matter ~~[.]~~ *; and (2) a member who has a member of his household or relative who stands to profit from a matter before the executive board to disclose before voting on the matter.* (NRS 116.31185, 116.31187)

With some exceptions, existing law requires an executive board to hold open meetings, including meetings to consider a contract. (NRS 116.31085) Sections 3 and 5 of this bill require an association that solicits bids for association projects, including, without limitation, projects that involve maintenance, repair, replacement or restoration of any part of the common elements or which involve services provided to the association, to consider and open the bids during a meeting of the executive board of the association.

Existing law provides for remedial and disciplinary action for any violation of the provisions of chapter 116 of NRS governing common-interest communities which will apply to a violation of section 2 or 3 of this bill. (NRS 116.745-116.795)

Existing law provides that except as otherwise provided in the declaration, an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. (NRS 116.335) Section 6 of this bill provides that unless, at the time a unit's owner purchased his unit, the declaration prohibited the unit's owner from renting or leasing his unit or required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit, the association may not: (1) prohibit the unit's owner from renting or leasing his unit; or (2) require the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. Section 6 also provides that if ~~[, before October 1, 2009,]~~ a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased ~~[,]~~ *: (1)* that provision of the declaration may not be amended on or after October 1, 2009, to decrease that maximum number or percentage of units which may be rented or leased ~~[.]~~ *; (2) a unit's owner may request a waiver of such provision upon a showing of economic hardship under certain circumstances; and (3) any units owned by the declarant must not be counted or considered in determining the maximum number of units in the common-interest community that may be rented or leased.*

Section 7 of this bill makes the provisions allowing the transient commercial use of units within a planned community that is restricted to residential use in certain circumstances applicable in all counties rather than just in larger counties. (NRS 116.340)

Existing law requires a unit's owner or his authorized agent to furnish to a purchaser a resale package which includes certain documents relating to the association. (NRS 116.4109) Section 8 of this bill: (1) requires the unit's owner to furnish the resale package at his own expense; and (2) requires the disclosure of any transfer fees, transaction fees or other fees associated with the resale of the unit.

Section 9 of this bill increases the amount of the administrative fine that may be imposed against a person who engages in certain activity without holding the required certificate or permit from $5,000 to $10,000. (NRS 116A.900)

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:*

*(a) Disclose the matter to the executive board; and*

*(b) Abstain from voting on any such matter.*

*2. A member of an executive board who has a member of his household or any person related to him by blood, adoption or marriage within the third degree of consanguinity or affinity who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall disclose the matter to the executive board before voting on any such matter.*

*3. For the purposes of this section, an employee of a declarant or an affiliate of a declarant who is a member of the executive board shall not, solely by reason of such employment or affiliation, be deemed to gain any personal profit or compensation.*

Sec. 3. *1. If an association solicits bids for an association project, the bids must be opened during a meeting of the executive board.*

*2. As used in this section, "association project" includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements or which involves the provision of services to the association.*

Sec. 4. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, *and sections 2 and 3 of this act,* and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than six units.

Sec. 5. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to *open or consider bids for an association project as defined in section 3 of this act, or to* enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; and

(b) Is not entitled to attend the deliberations of the executive board.

5. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

6. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 6. NRS 116.335 is hereby amended to read as follows:

116.335 1. ~~[Except as otherwise provided in]~~ *Unless, at the time a unit's owner purchased his unit,* the declaration ~~[,]~~ *prohibited the unit's owner from renting or leasing his unit, the association may not prohibit the unit's owner from renting or leasing his unit.*

*2. Unless, at the time a unit's owner purchased his unit, the declaration required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit,* an association may not require ~~[a]~~ *the* unit's owner to secure or obtain any approval from the association in order to rent or lease his unit.

~~[2.]~~ *3. If ~~[, before October 1, 2009, the]~~ a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended ~~[on or after October 1, 2009,]~~ to decrease that maximum number or percentage of units in the common-interest community which may be rented or leased.*

*4.* The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations.

*5. Notwithstanding any other provision of law or the declaration to the contrary:*

*(a) If a unit's owner is prohibited from renting or leasing a unit because the maximum number or percentage of units which may be rented or leased in the common-interest community have already been rented or leased, the unit's owner may seek a waiver of the prohibition from the executive board based upon a showing of economic hardship, and the executive board may grant such a waiver and approve the renting or leasing of the unit.*

*(b) If the declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, in determining the maximum number or percentage of units in the common-interest community which may be rented or leased, the number of units owned by the declarant must not be counted or considered.*

Sec. 7. NRS 116.340 is hereby amended to read as follows:

116.340 1. Except as otherwise provided in subsection 2, ~~[in a county whose population is 400,000 or more,]~~ a person who owns, or directly or indirectly has an interest in, one or more units within a planned community that are restricted to residential use by the declaration ~~[,]~~ may use that unit or one of those units for a transient commercial use only if:

(a) The governing documents of the association and any master association do not prohibit such use;

(b) The executive board of the association and any master association approve the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of a master association and those governing documents do not prohibit such use; and

(c) The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

2. ~~[In a county whose population is 400,000 or more, a]~~ *A* declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by the declaration ~~[,]~~ may use that unit or those units for a transient commercial use during the period that the declarant

is offering units for sale within the planned community if such use complies with the requirements set forth in paragraphs (a) and (c) of subsection 1.

3. The association and any master association may establish requirements for the transient commercial use of a unit pursuant to the provisions of this section, including, without limitation, the payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use of the unit.

4. As used in this section:

(a) "Remuneration" means any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit.

(b) "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

Sec. 8. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall *, at the expense of the unit's owner,* furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152; ~~[and]~~

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge ~~[.]~~ *; and*

*(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.*

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by

prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) *,* ~~[and]~~ (d) *and (e)* of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must

be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 9. NRS 116A.900 is hereby amended to read as follows:

116A.900 1. In addition to any other remedy or penalty, the Commission may impose an administrative fine against any person who knowingly:

(a) Engages or offers to engage in any activity for which a certificate or permit is required pursuant to this chapter or chapter 116 or 116B of NRS, or any regulation adopted pursuant thereto, if the person does not hold the required certificate or permit or has not been given the required authorization; or

(b) Assists or offers to assist another person to commit a violation described in paragraph (a).

2. If the Commission imposes an administrative fine against a person pursuant to this section, the amount of the administrative fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or ~~[$5,000,]~~ *$10,000,* whichever amount is greater.

3. In determining the appropriate amount of the administrative fine, the Commission shall consider:

(a) The severity of the violation and the degree of any harm that the violation caused to other persons;

(b) The nature and amount of any gain or economic benefit that the person derived from the violation;

(c) The person's history or record of other violations; and

(d) Any other facts or circumstances that the Commission deems to be relevant.

4. Before the Commission may impose the administrative fine, the Commission must provide the person with notice and an opportunity to be heard.

5. The person is entitled to judicial review of the decision of the Commission in the manner provided by chapter 233B of NRS.

6. The provisions of this section do not apply to a person who engages or offers to engage in activities within the purview of this chapter or chapter 116 or 116B of NRS if:

(a) A specific statute exempts the person from complying with the provisions of this chapter or chapter 116 or 116B of NRS with regard to those activities; and

(b) The person is acting in accordance with the exemption while engaging or offering to engage in those activities.

Senator Care moved that the Senate concur in the Assembly amendment to Senate Bill No. 253.

Remarks by Senator Care.

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

It was a recommendation by the sponsor, who sits on the Judiciary Committee, that the Committee concur.

The Assembly made two changes. It added that a member of the Executive Board who has a member of his household or person related by blood within the third degree of consanguinity make that disclosure before voting on any matter before the Executive Board where there is a potential financial gain.

They added a provision whereby an owner of a unit within the HOA is prohibited from renting or leasing the unit because sometimes the HOA places a percentage of units that may be rented, then, by seeking permission from the Executive Board, it is permissible to rent out the unit anyway if there is an economic hardship.

Motion carried by a constitutional majority.

Bill ordered enrolled.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Schneider moved that Senate Bill No. 360 be taken from Unfinished Business File and placed on Unfinished Business File for the next legislative day.

Motion carried.

REMARKS FROM THE FLOOR

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

I would like to take a few minutes to acknowledge that the Nevada Supreme Court has made a decision in my ethics case and has ruled in favor of the Legislative Counsel Bureau and myself.

This ends an unpleasant experience for myself and my family. It ended on a good note. I feel good, not only for myself but for the process. I have been here for 20 years in one capacity or another and have come to feel strongly about the citizen-legislature process. It serves the citizens well to have people who have real jobs when we are not here, and we can bring our expertise to the legislative process. I believe, in a very specific way, that was what was threatened by the ethics complaint that was filed against me and to the challenge that was made to our ability to rely on the advice of our Counsel to be able to conduct business in this body.

The integrity of that process has been upheld. It was not an easy decision to go forward with this and to see it through to the end. My faith in the rule of law and the supremacy of our Constitution saw me through and my faith has been rewarded. I want to thank my colleagues in this House and in this Legislature. The leadership and members of both Houses and both Parties supported me in this. I want to thank my colleagues in my caucus who have rallied around me. They went to the court hearing and were there for me every step of the way. I want to thank our able Legal Counsel. I have joked that I have gone to the Brenda Erdoes, Eileen O'Grady and Kevin Powers School of Law for the last 18 months, and I have learned more about law than I thought I would in a lifetime. These are talented people who have a grasp and an understanding of what it takes to make a citizen-legislature work. They know how to implement it. They know how to defend it. I want to give them special recognition. I was ably represented, and that is the understatement of my life.

I am grateful that this will permit me to support the final product of this Legislature, helping to resolve the challenges that are facing our State. I am filled with pride to be able to work with both Parties in this House to work toward finding a resolution that will keep our State whole. I want to thank Senator Raggio for putting me on the Finance Committee. I have been able to help build a budget. It is not a great budget; not one that any of us would like to see but one that keeps the basic fundamental services in our State in tact. The job would be half done if I were not able to be in a position to vote to fund that budget. I have been advised by Counsel that because of the action of the Court this evening that my particular, personal issue no longer exists. I am free to support that resolution. I look forward to joining the majority of my caucus in supporting that. Thank you from myself and from the Hardy family for your support. I appreciate the opportunity to be a part of this body.

I would like the letter included in today's Journal.

May 21, 2009

SENATOR WARREN B. HARDY II
Senate Chamber
DEAR SENATOR HARDY:

Earlier today, you asked this office whether you should abstain from voting upon legislation relating to the tax package, such as Senate Bill No. 429, and upon legislation relating to statutory reforms regarding public employment based on potential conflicts of interest that arise because of your private employment.

In your private capacity, you serve as the President of the Associated Builders and Contractors of Southern Nevada, Inc., which is commonly known as ABC-LV. This organization is the Las Vegas chapter of a national trade association that represents contractors and other members of the construction industry. During the current legislative session, a member of the Board of Directors of your employer ABC-LV has participated in negotiations and lobbying efforts with regard to legislation relating to the tax package and legislation relating to statutory reforms regarding public employment.

When you first requested an opinion from this office regarding abstention, you were a litigant in an appeal pending before the Nevada Supreme Court that was filed by the Nevada Commission on Ethics. Commission on Ethics v. Warren B. Hardy II, Nevada Supreme Court Case No. 53064. This office has been representing you in that appeal as your legal counsel. The appeal involved an ethics complaint which alleged that because of your employment with ABC-LV, you violated NRS 281A.420 of the Nevada Ethics in Government Law (Ethics Law) by: (1) failing to adequately disclose an alleged conflict of interest regarding S.B. 509 of the 2007 Legislative Session; and (2) failing to abstain from voting on S.B. 509 during that session.

Because the appeal before the Nevada Supreme Court was still pending at the time of our first opinion, there was a possibility that the Court could decide the appeal against you and find that the Commission on Ethics had jurisdiction and authority to conduct administrative proceedings against you and impose significant civil penalties against you upon a finding of one or more willful violations of the Ethics Law. Thus, because the appeal before the Nevada Supreme Court had not been resolved by a final decision at that time, you remained subject to the potential for being held personally liable for civil penalties that could have totaled several thousand dollars. In particular, NRS 281A.480 of the Ethics Law provides that the Commission on Ethics may impose civil penalties on a public officer of $5,000 for the first willful violation, $10,000 for the second willful violation, and $25,000 for the third willful violation. Additionally, upon a finding of one or more willful violations by a State Legislator, the Commission on Ethics may file a report with the appropriate legislative House for possible disciplinary proceedings.

When a client faces the potential for substantial personal liability and governmental sanctions in a pending lawsuit, it is a widely accepted legal practice to advise the client to avoid similar factual situations that could result in additional exposure to personal liability and further governmental sanctions. Therefore, as your counsel in the appeal before the Nevada Supreme Court, this office advised you to abstain from voting upon legislation in situations involving your employment with ABC-LV when those situations raised ethical issues which were factually similar to the ethics allegations that were pending against you in the appeal before Nevada Supreme Court.

This office advised you to abstain even though the Senate recently adopted Senate Resolution No. 10, which expresses and explains the public policy governing abstention for conflicts of interest under Senate Standing Rule No. 23. The provisions of Senate Resolution No. 10 state that the members of the Senate do not have to abstain from voting upon legislative measures of immense statewide importance which globally impact all citizens of this State, such as bills raising revenue and bills approving the State Budget, because the very nature of such legislative measures presumptively makes the interests of every member of the Senate no greater than the interests of every other citizen of this State, and therefore, the independence of judgment of members is not impeded by those interests and they are not required to abstain.

Despite the adoption of Senate Resolution No. 10, this office advised you to abstain because unlike every other member of the Senate, you were the primary party in pending litigation before the Nevada Supreme Court which involved ethical issues concerning disclosure of conflicts, voting and abstention and which, if decided against you, could have resulted in substantial personal liability and other governmental sanctions. Under such extraordinary circumstances, which were unique and particularly personal to you because of the pending litigation, this office advised you, out of an abundance of caution, to abstain from voting upon legislation in situations that were factually similar to the case before the Nevada Supreme Court.

After this office advised you to abstain, the Nevada Supreme Court issued its decision in your appeal on May 21, 2009. The Court held that the Commission on Ethics is barred from conducting any further administrative proceedings against you based on the constitutional doctrine of separation of powers. Specifically, the Court determined that the discipline of State Legislators is a function constitutionally committed to each House of the Legislature, and that this exclusive constitutional function cannot be delegated to or exercised by the Commission on Ethics with regard to conduct that involves a core legislative function, such as voting on legislation and, by extension, disclosure of conflicts prior to voting on legislation.

The Court based its decision in part on Article 4, Section 6 of the Nevada Constitution, which provides:

Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers (except the President of the Senate), determine the rules of its proceedings and may punish its members for disorderly conduct, and with the concurrence of two thirds of all the members elected, expel a member.

Nev. Const. art. 4, § 6.

Because Article 4, Section 6 of the Nevada Constitution expressly invests each House with the exclusive constitutional power to determine the rules of its legislative proceedings and to punish its members for improper conduct related to those legislative proceedings, the Court concluded:

The power to discipline its membership with respect to a core function of voting and, by extension, disclosure of conflicts of interest, is a function constitutionally committed to the Legislature, and it cannot be delegated to another branch of government. Thus, any delegation to the Commission by the Legislature of the power to discipline its members with respect to a core function of voting is an unconstitutional delegation of power in violation of the separation of powers provision of the Nevada Constitution.

In light of the Court's decision in your appeal, it is now established precedent that the responsibility of a State Legislator to make disclosures of conflicts concerning a legislative matter and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a legislative matter are governed exclusively by the rules, decisions, customs and parliamentary practices of each House of the Legislature.

Thus, when the Senate recently adopted Senate Resolution No. 10 during the current legislative session, the Senate exercised its exclusive constitutional power under Article 4, Section 6 of the Nevada Constitution, and it established the rules, customs and parliamentary practices which govern members of the Senate with regard to abstention for conflicts of interest under Senate Standing Rule No. 23.

As discussed previously, the provisions of Senate Resolution No. 10 state that the members of the Senate do not have to abstain from voting upon legislative measures of immense statewide importance which globally impact all citizens of this State because the very nature of such legislative measures presumptively makes the interests of every member of the Senate no greater than the interests of every other citizen of this State, and therefore, the independence of judgment of members is not impeded by those interests and they are not required to abstain. The provisions of Senate Resolution No. 10 also provide that during this session, the legislative measures of immense statewide importance which globally impact all citizens of this State include the General Appropriations Act, the Authorized Expenditures Act, the Unclassified Pay Act, the State Distributive School Account Act and any legislative measures that increase various taxes and revenue sources necessary to fund the State Budget, such as Senate Bill No. 429.

Therefore, based on the provisions of Senate Resolution No. 10, it is the opinion of this office that you are not required to abstain from voting upon legislation relating to the tax package, such as Senate Bill No. 429, or upon legislation relating to statutory reforms regarding public employment which are part of the overall package of statewide budgetary, fiscal and economic reforms, regardless of any potential conflicts of interest that arise because of your private employment.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,
BRENDA J. ERDOES
*Legislative Counsel*
By________________________
KEVIN C. POWERS
*Senior Principal Deputy Legislative Counsel and Chief Litigation Counsel*

Senator Horsford moved that the Senate recess until 9:30 p.m.
Motion carried.

Senate in recess at 9:01 p.m.

## SENATE IN SESSION

At 10:55 p.m.
President Krolicki presiding.
Quorum present.

### REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Finance, to which was referred Assembly Bill No. 543, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BERNICE MATHEWS, *Cochair*

*Mr. President:*

Your Committee on Natural Resources, to which was rereferred Assembly Bill No. 246, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

DAVID R. PARKS, *Chair*

### MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 21, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day adopted, as amended, Assembly Concurrent Resolution No. 30.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 82, 451.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendments Nos. 847, 701 to Assembly Bill No. 101; Senate Amendment No. 821 to Assembly Bill No. 205.

Also, I have the honor to inform your honorable body that the Assembly on this day failed to sustain the Governor's veto of Assembly Bills Nos. 122, 257, 480 of the 75th Session.

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

### MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 2.
Resolution read.
Senator Woodhouse moved the adoption of the resolution.
Remarks by Senator Woodhouse.

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

This resolution directs the Legislative Commission to conduct a study during the 2009-2010 interim concerning the governance and the oversight of the system of public elementary and secondary education. The Committee composed of three members of the Senate and three members of the Assembly shall recommend actions necessary for the efficient and defective operation of that statewide system. The Legislative Commission will submit a report of the results of the study and any recommendations for legislation to the 76th Session of the Nevada Legislature. This measure was proposed by the Legislative Committee on Education.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

Assembly Concurrent Resolution No. 30.

Senator Care moved that the resolution be referred to the Committee on Legislative Operations and Elections.

Motion carried.

Senator Care moved that Assembly Bill No. 287 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

Senator Amodei moved that Assembly Bill No. 60 be taken from the General File and placed on the General File for the next legislative day, last agenda.

Motion carried.

Senator Schneider moved that Assembly Bill No. 25 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 82.

Senator Care moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

Assembly Bill No. 451.

Senator Care moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 3.

Bill read second time.

The following amendment was proposed by the Committee on Health and Education:

Amendment No. 892.

"SUMMARY—Requires ~~[each plot]~~ *the area immediately above and surrounding the interred remains* in each veterans' cemetery in this State to be landscaped with natural ~~[turf]~~ grass. (BDR 37-197)"

"AN ACT relating to veterans' cemeteries; requiring the area immediately *above and* surrounding ~~[each plot]~~ *the interred remains* in each veterans' cemetery in this State to be landscaped with natural ~~[turf]~~ grass; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law requires the Executive Director for Veterans' Services to establish, operate and maintain a veterans' cemetery in northern Nevada and a veterans' cemetery in southern Nevada and requires a cemetery superintendent to operate and maintain each cemetery. (NRS 417.200) This bill requires the cemetery superintendent to ensure that the area immediately *above and* surrounding ~~[each plot]~~ *the interred remains* in each veterans' cemetery is landscaped with natural ~~[turf]~~ grass.

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

Section 1. NRS 417.200 is hereby amended to read as follows:

417.200 1. The Executive Director shall establish, operate and maintain a veterans' cemetery in northern Nevada and a veterans' cemetery in southern Nevada, and may, within the limits of legislative authorization, employ personnel and purchase equipment and supplies necessary for the operation and maintenance of the cemeteries. The Executive Director shall employ a cemetery superintendent to operate and maintain each cemetery.

2. *The cemetery superintendent shall ensure that the area immediately above and surrounding ~~[each plot]~~ the interred remains in each veterans' cemetery is landscaped with natural ~~[turf]~~ grass.*

*3.* A person desiring to provide voluntary services to further the establishment, maintenance or operation of either of the cemeteries shall submit a written offer to the cemetery superintendent which describes the nature of the services. The cemetery superintendent shall consider all such offers and approve those he deems appropriate. The cemetery superintendent shall coordinate the provision of all services so approved.

Sec. 2. This act becomes effective upon passage and approval.

Senator Wiener moved the adoption of the amendment.

Remarks by Senator Wiener.

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

Amendment No. 892 revises the provisions to Assembly Bill No. 3, revising the measure by specifying that the area immediately above and surrounding the interred remains in each veterans' cemetery must be landscaped with natural grass.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 149.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 901.

"SUMMARY—Revises provisions governing foreclosures on property. (BDR 9-824)"

"AN ACT relating to real property; revising provisions governing foreclosures on property; providing for mediation under certain circumstances; providing for the imposition of a fee for mediation; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law sets forth procedures governing foreclosures on real property upon default. A trustee under a deed of trust has the power to sell the property to which the deed of trust applies, subject to certain restrictions. (NRS 107.080, 107.085) Section 1 of this bill establishes additional restrictions on the trustee's power of sale with respect to owner-occupied housing by providing a grantor of a deed of trust or the person who holds the title of record with the right to request mediation under which he may receive a loan modification. Once mediation is requested, no further action may be taken to exercise the power of sale until the completion of the mediation. Each mediation must be conducted by a senior justice, judge, hearing master or other designee pursuant to rules adopted by the Nevada Supreme ~~[Court or an entity designated by the Nevada Supreme]~~ Court, and a fee of not more than $85 per hour may be charged and collected for the mediation. Section 2 of this bill also restricts the trustee's power of sale with respect to owner-occupied housing by revising the period in which a deficiency in performance or payment under the trust agreement may be made good before the trustee may exercise that power. Similarly, section 3 of this bill restricts the trustee's power of sale with respect to owner-occupied housing by revising the manner in which service of notice that a person is in danger of losing his home must be made. In addition, section 4 of this bill authorizes the Nevada Supreme Court to adopt rules providing for voluntary mediation with respect to a homeowner who is not in default but is at risk of default.

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

Section 1. Chapter 107 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. In addition to the requirements of NRS 107.085, the exercise of the power of sale pursuant to NRS 107.080 with respect to any trust agreement which concerns owner-occupied housing is subject to the provisions of this section.*

*2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless the trustee:*

*(a) Includes ~~[in]~~ with the notice of default and election to sell which is mailed to the grantor or the person who holds the title of record as required by subsection ~~[2]~~ 3 of NRS ~~[107.085:]~~ 107.080:*

*(1) Contact information which the grantor or the person who holds the title of record may use to reach a person with authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust;*

*(2) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development; and*

*(3) A form upon which the grantor or the person who holds the title of record may indicate his election to enter into mediation or to waive mediation and one envelope addressed to the trustee and one envelope addressed to the Mediation Administrator, which the grantor or the person who holds the title of record may use to comply with the provisions of subsection 3;*

*(b) Serves a copy of the notice upon the Mediation Administrator; and*

*(c) Causes to be recorded in the office of the recorder of the county in which the trust property, or some part thereof, is situated:*

*(1) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 3 or 6 which provides that no mediation is required in the matter; or*

*(2) The certificate provided to the trustee by the Mediation Administrator pursuant to subsection 7 which provides that mediation has been completed in the matter.*

*3. The grantor ~~[and]~~ or the person who holds the title of record shall, not later than 30 days after service of the notice upon him in the manner required by NRS ~~[107.085,]~~ 107.080, complete the form required by subparagraph (3) of paragraph (a) of subsection 2 and return the form to the trustee by certified mail, return receipt requested. If the grantor or the person who holds the title of record indicates on ~~[his respective]~~ the form his election to enter into mediation, the trustee shall notify the beneficiary of the deed of trust and every other person with an interest as defined in NRS 107.090, by certified mail, return receipt requested, of the election of the grantor or the person who holds the title of record ~~[, or both,]~~ to enter into mediation and file the form with the Mediation Administrator, who shall assign the matter to a senior justice, judge, hearing master or other designee and schedule the matter for mediation. No further action may be taken to exercise the power of sale until the completion of the mediation. If ~~[both]~~ the grantor ~~[and]~~ or the person who holds the title of record ~~[indicate]~~ indicates on ~~[their respective forms their]~~ the form his election to waive mediation or ~~[if both fail]~~ fails to return ~~[their respective forms]~~ the form to the trustee as required by this subsection, the trustee shall execute an affidavit attesting to that fact under penalty of perjury and serve a copy of the affidavit, together with the waiver of mediation by the grantor ~~[and]~~ or the person who holds the title of record, or proof of service on the grantor ~~[and]~~ or the person who holds the title of record of the notice required by subsection 2 of this section and subsection ~~[2]~~ 3 of NRS 107.080, upon the Mediation Administrator. Upon receipt of the affidavit and the waiver or proof of service, the*

*Mediation Administrator shall provide to the trustee a certificate which provides that no mediation is required in the matter.*

*4. Each mediation required by this section must be conducted by a senior justice, judge, hearing master or other designee pursuant to the rules adopted pursuant to subsection 8. The beneficiary of the deed of trust or his representative shall attend the mediation. The grantor or his representative shall attend the mediation if the grantor elected to enter into mediation, ~~[and]~~ or the person who holds the title of record or his representative shall attend the mediation if the person who holds the title of record elected to enter into mediation. The beneficiary of the deed of trust shall bring to the mediation the original or a certified copy of the deed of trust, the mortgage note and each assignment of the deed of trust or mortgage note. If the beneficiary of the deed of trust is represented at the mediation by another person, that person must have authority to negotiate a loan modification on behalf of the beneficiary of the deed of trust or have access at all times during the mediation to a person with such authority.*

*5. If the beneficiary of the deed of trust or his representative fails to attend the mediation, fails to participate in the mediation in good faith or does not bring to the mediation each document required by subsection 4 or does not have the authority or access to a person with the authority required by subsection 4, the mediator shall prepare and submit to the Mediation Administrator a petition and recommendation concerning the imposition of sanctions against the beneficiary of the deed of trust or his representative. The court may issue an order imposing such sanctions against the beneficiary of the deed of trust or his representative as the court determines appropriate, including, without limitation, requiring a loan modification in the manner determined proper by the court.*

*6. If ~~[both]~~ the grantor ~~[and]~~ or the person who holds the title of record elected to enter into mediation and ~~[both fail]~~ fails to attend the mediation, ~~[or if only one of those persons elected to enter into mediation and that person fails to attend the mediation,]~~ the Mediation Administrator shall provide to the trustee a certificate which states that no mediation is required in the matter.*

*7. If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification, the mediator shall prepare and submit to the Mediation Administrator a recommendation that the matter be terminated. The Mediation Administrator shall provide to the trustee a certificate which provides that the mediation required by this section has been completed in the matter.*

*8. The Supreme Court ~~[or an entity designated by the Supreme Court]~~ shall adopt rules necessary to carry out the provisions of this section. The rules must, without limitation, include provisions:*

*(a) Designating an entity to serve as the Mediation Administrator pursuant to this section. The entities that may be so designated include,*

*without limitation, the Administrative Office of the Courts, the District Court of the county in which the property is situated or any other judicial entity.*

*(b) Ensuring that mediations occur in an orderly and timely manner.*

*(c) Requiring each party to a mediation to provide such information as the mediator determines necessary.*

*(d) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith.*

*(e) Establishing a total fee of not more than ~~[$85 per hour]~~ $400 that may be charged and collected by the Mediation Administrator for ~~[a]~~ mediation services pursuant to this section and providing that the responsibility for payment of the fee must be shared equally by the parties to the mediation.*

*9. Except as otherwise provided in subsection 11, the provisions of this section do not apply if:*

*(a) The grantor or the person who holds the title of record has surrendered the property, as evidenced by a letter confirming the surrender or delivery of the keys to the property to the trustee, the beneficiary of the deed of trust or the mortgagee, or an authorized agent thereof; or*

*(b) A petition in bankruptcy has been filed with respect to the grantor or the person who holds the title of record under chapter 7, 11, 12 or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure.*

*10. A noncommercial lender is not excluded from the application of this section.*

*11. The Mediation Administrator and each mediator who acts pursuant to this section in good faith and without gross negligence is immune from civil liability for those acts.*

*12. As used in this section:*

*(a) "Mediation Administrator" means the entity so designated pursuant to subsection 8.*

*(b) "Noncommercial lender" means a lender which makes a loan secured by a deed of trust on owner-occupied housing and which is not a bank, financial institution or other entity regulated pursuant to title 55 or 56 of NRS.*

*(c) "Owner-occupied housing" means housing that is occupied by an owner as his primary residence. The term does not include any time share or other property regulated under chapter 119A of NRS.*

Sec. 2. NRS 107.080 is hereby amended to read as follows:

107.080 1. Except as otherwise provided in NRS 107.085, *and section 1 of this act,* if any transfer in trust of any estate in real property is made after March 29, 1927, to secure the performance of an obligation or the payment of any debt, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

2. The power of sale must not be exercised, however, until:

(a) ~~[In]~~ *Except as otherwise provided in paragraph (b), in* the case of any trust agreement coming into force:

(1) On or after July 1, 1949, and before July 1, 1957, the grantor, ~~[or his successor in interest,]~~ *the person who holds the title of record,* a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property ~~[,]~~ has , for a period of 15 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment; or

(2) On or after July 1, 1957, the grantor, ~~[or his successor in interest,]~~ *the person who holds the title of record,* a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property ~~[,]~~ has , for a period of 35 days, computed as prescribed in subsection 3, failed to make good the deficiency in performance or payment;

(b) *In the case of any trust agreement which concerns owner-occupied housing as defined in section 1 of this act, the grantor, the person who holds the title of record, a beneficiary under a subordinate deed of trust or any other person who has a subordinate lien or encumbrance of record on the property has, for a period that commences in the manner and subject to the requirements described in subsection 3 and expires 5* ~~*[business]*~~ *days before the date of sale, failed to make good the deficiency in performance or payment;*

*(c)* The beneficiary, the successor in interest of the beneficiary or the trustee first executes and causes to be recorded in the office of the recorder of the county wherein the trust property, or some part thereof, is situated a notice of the breach and of his election to sell or cause to be sold the property to satisfy the obligation; and

~~[(c)]~~ *(d)* Not less than 3 months have elapsed after the recording of the notice.

3. The 15- or 35-day period provided in paragraph (a) of subsection 2 , *or the period provided in paragraph (b) of subsection 2,* commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder of the county in which the property is located and a copy of the notice of default and election to sell is mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor ~~[, and]~~ *or* to the person who holds the title of record on the date the notice of default and election to sell is recorded, at ~~[their respective addresses,]~~ *his address,* if known, otherwise to the address of the trust property. The notice of default and election to sell must describe the deficiency in performance or payment and may contain a notice of intent to declare the entire unpaid balance due if acceleration is permitted by the obligation secured by the deed of trust, but acceleration must not occur if the deficiency in performance or payment is made good and any costs, fees and expenses incident to the preparation or recordation of the notice and incident

to the making good of the deficiency in performance or payment are paid within the time specified in subsection 2.

4. The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the 3-month period following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:

(a) Providing the notice to each trustor and any other person entitled to notice pursuant to this section by personal service or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice pursuant to this section;

(b) Posting a similar notice particularly describing the property, for 20 days successively, in three public places of the township or city where the property is situated and where the property is to be sold; and

(c) Publishing a copy of the notice three times, once each week for 3 consecutive weeks, in a newspaper of general circulation in the county where the property is situated.

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and his successors in interest without equity or right of redemption. A sale made pursuant to this section may be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section ~~[;]~~ *or any applicable provision of section 1 of this act;*

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within 90 days after the date of the sale; and

(c) A notice of lis pendens providing notice of the pendency of the action is recorded in the office of the county recorder of the county where the sale took place within 30 days after commencement of the action.

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale.

7. The sale of a lease of a dwelling unit of a cooperative housing corporation vests in the purchaser title to the shares in the corporation which accompany the lease.

Sec. 3. NRS 107.085 is hereby amended to read as follows:

107.085 1. With regard to a transfer in trust of an estate in real property to secure the performance of an obligation or the payment of a debt, the provisions of this section apply to the exercise of a power of sale pursuant to NRS 107.080 only if:

(a) The trust agreement becomes effective on or after October 1, 2003 ~~[;~~ ~~and~~

~~(b) On]~~ *, and, on* the date the trust agreement is made, the trust agreement is subject to the provisions of § 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted by the Board of Governors of the Federal Reserve System pursuant thereto, including, without limitation, 12 C.F.R. § 226.32 ~~[.]~~ *; or*

*(b) The trust agreement concerns owner-occupied housing as defined in section 1 of this act.*

2. The trustee shall not exercise a power of sale pursuant to NRS 107.080 unless:

(a) In the manner required by subsection 3, not later than 60 days before the date of the sale, the trustee causes to be served upon the grantor ~~*[and]*~~ *or the person who holds the title of record* a notice in the form described in subsection 3; and

(b) If an action is filed in a court of competent jurisdiction claiming an unfair lending practice in connection with the trust agreement, the date of the sale is not less than 30 days after the date the most recent such action is filed.

3. The notice described in subsection 2 must be:

(a) Served upon the grantor ~~*[and]*~~ *or the person who holds the title of record:*

*(1) Except as otherwise provided in subparagraph (2),* by personal service or, if personal service cannot be timely effected, in such other manner as a court determines is reasonably calculated to afford notice to the grantor ~~[;]~~ ~~*[and]*~~ *or the person who holds the title of record; or*

*(2) If the trust agreement concerns owner-occupied housing as defined in section 1 of this act:*

*(I) By personal service;*

*(II) If the grantor or the person who holds the title of record is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the grantor or the person who holds the title of record at his place of residence or place of business; or*

*(III) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the trust property, delivering a copy to a person there residing if the person can be found and mailing a copy to the grantor or the person who holds the title of record at the place where the trust property is situated;* and

(b) In substantially the following form, with the applicable telephone numbers and mailing addresses provided on the notice and a copy of the promissory note attached to the notice:

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME!

Your home loan is being foreclosed. In *not less than* 60 days your home will be sold and you will be forced to move. For help, call:

Consumer Credit Counseling _______________

The Attorney General __________________

The Division of Financial Institutions ________________

Legal Services ______________________

Your Lender ___________________

Nevada Fair Housing Center ________________

4. This section does not prohibit a judicial foreclosure.

5. As used in this section, "unfair lending practice" means an unfair lending practice described in NRS 598D.010 to 598D.150, inclusive.

Sec. 3.5. NRS 107.095 is hereby amended to read as follows:

107.095 1. The notice of default required by NRS 107.080 must also be sent by registered or certified mail, return receipt requested and with postage prepaid, to each guarantor or surety of the debt. If the address of the guarantor or surety is unknown, the notice must be sent to the address of the trust property. Failure to give the notice, except as otherwise provided in subsection 3, releases the guarantor or surety from his obligation to the beneficiary, but does not affect the validity of a sale conducted pursuant to NRS 107.080 ~~[nor]~~ *or* the obligation of any guarantor or surety to whom the notice was properly given.

2. Failure to give the notice of default required by NRS 107.090, except as otherwise provided in subsection 3, releases the obligation to the beneficiary of any person who has complied with NRS 107.090 and who is or may otherwise be held liable for the debt or other obligation secured by the deed of trust, but such a failure does not affect the validity of a sale conducted pursuant to NRS 107.080 ~~[nor]~~ *or* the obligation of any person to whom the notice was properly given pursuant to this section or to NRS 107.080 or 107.090.

3. A guarantor, surety or other obligor is not released pursuant to this section if:

(a) The required notice is given at least 15 days before the later of:

(1) The expiration of the 15- or 35-day period described in *paragraph (a) of subsection 2 of* NRS 107.080; ~~[or]~~

(2) *In the case of any trust agreement which concerns owner-occupied housing as defined in section 1 of this act, the expiration of the period described in paragraph (b) of subsection 2 of NRS 107.080; or*

*(3)* Any extension of ~~[that]~~ *the applicable* period by the beneficiary; or

(b) The notice is rescinded before the sale is advertised.

Sec. 4. Chapter 2 of NRS is hereby amended by adding thereto a new section to read as follows:

*The Supreme Court may adopt rules providing for voluntary mediation with respect to a homeowner who is not in default but is at risk of default.*

Sec. 5. NRS 459.646 is hereby amended to read as follows:

459.646 1. A person who, without participating in the management of a parcel of real property, holds or is the beneficiary of evidence of title to the property primarily to protect a security interest in the property is not a responsible party with respect to a release of a hazardous substance on the property if:

(a) The owner of the property is relieved from liability under NRS 459.610 to 459.658, inclusive, with respect to the release;

(b) The owner or holder of evidence of title did not cause the release; and

(c) The owner or holder of evidence of title does not participate actively in decisions concerning hazardous substances on the property.

2. A lender to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 or a lender who forecloses his security interest in property pursuant to NRS 40.430 to 40.450, inclusive, or 107.080 to 107.100, inclusive, *and section 1 of this act,* and within a reasonable period after the foreclosure, not to exceed 2 years, sells, transfers or conveys the property to a prospective purchaser who has filed an application to participate in the program pursuant to NRS 459.634 is not a responsible party solely as a result of:

(a) Foreclosing a security interest in the property; or

(b) Making a loan to the prospective purchaser if the loan:

(1) Is to be used for acquiring property or removing or remediating hazardous substances on property; and

(2) Is secured by the property that is to be acquired or on which is located the hazardous substances that are to be removed or remediated.

*Sec. 5.5. The amendatory provisions of this act governing trust agreements which concern owner-occupied housing, as defined in section 1 of this act, apply only with respect to such agreements for which a notice of default is recorded on or after July 1, 2009.*

*Sec. 5.7. Notwithstanding any provision of NRS 2.120 to the contrary and in recognition of the emergency situation confronting this State concerning mortgage foreclosures and the need to implement the provisions of this act quickly, any rules adopted by the Supreme Court pursuant to subsection 8 of section 1 of this act take effect on the date specified by the Supreme Court in the order adopting the rules, which in no event may be less than 30 days after entry of the order.*

Sec. 6. This act becomes effective on July 1, 2009.

Senator Carlton moved the adoption of the amendment.

Remarks by Senators Carlton and Cegavske.

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

SENATOR CARLTON:

Amendment No. 901 to Assembly Bill No. 149 makes clarifying changes to the procedures used by a mediation administrator in a mediation, and notification requirements, involving foreclosure of an owner-occupied property. The amendment also makes changes to transitory language to carry out the bill. It specifies that the provisions in the bill apply only to trust agreements for which a notice of default is filed on or after July 1, 2009; the amendment further specifies that any rules adopted by the Supreme Court to implement those provisions are effective on the date specified by the Court or 30 days after the entry of the Court's order, whichever is later. That is to eliminate any delay in addressing the issues on the foreclosure crisis.

SENATOR CEGAVSKE:
On page 5, line 3, a total fee of not more than $400 is established. It went from $85 an hour to $400?

SENATOR CARLTON:
These meetings last about 4 hours, but if it is a more complicated case it may take longer and they did not want to make it cost prohibitive. Rather than listing an hourly amount, they decided to list a cap. It might not go up to $400, but that would the maximum. They have had commitments from those who are willing to help keep the cost of this mediation low. These people are in foreclosure. They do not have any money. They just need help.

SENATOR CEGAVSKE:
If someone was in the meeting for a half hour, they could be charged the $400?

SENATOR CARLTON:
No. The top cap is $400. They would negotiate the rate.

Amendment adopted.
Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 152.
Bill read second time.
The following amendment was proposed by the Committee on Commerce and Labor:
Amendment No. 770.
"SUMMARY—Makes various changes concerning mortgage lending and related professions. (BDR 54-787)"
"AN ACT relating to mortgage lending; defining the term "loan modification consultant"; requiring certain mortgage lending professionals to be licensed ~~[as a mortgage agent or mortgage broker;]~~ *; establishing certain requirements for the provision of services by certain mortgage lending professionals; establishing provisions governing compensation of certain mortgage lending professionals; establishing certain powers of the Commissioner of Mortgage Lending; revising provisions relating to the imposition of certain fees and assessments on certain mortgage lending professionals;* revising the definition of "homeowner" as it applies to services performed by certain mortgage lending professionals; revising provisions governing the applicability of requirements regarding foreclosure consultants and loan modification consultants; ~~[revising provisions governing compensation of foreclosure consultants;]~~ and providing other matters properly relating thereto."
Legislative Counsel's Digest:
Section 2 of this bill defines the term "loan modification consultant."
Existing law does not currently require a foreclosure consultant to be licensed. (NRS 645F.300-645F.450) Section 3 of this bill requires *the*

*Commissioner of Mortgage Lending to adopt separate regulations for the licensing of* a person who performs any of a variety of specified services for compensation, a foreclosure consultant and a loan modification consultant *.* ~~[to be licensed under the provisions of chapter 645B of NRS, which governs mortgage brokers and mortgage agents. This licensing requirement makes such persons subject to the regulatory and penalty provisions set forth in chapter 645B of NRS.]~~

*Section 3.1 of this bill requires such persons to execute a written contract with a homeowner before providing certain services for compensation. Section 3.1 also requires the Commissioner to adopt regulations describing the information that must be contained in such a written contract.*

*Sections 3.3 and 6.5 of this bill require a person who performs certain services for compensation, a foreclosure consultant and a loan modification consultant to deposit any money received as compensation for the performance of certain services in a trust account. Section 3.3 also requires such persons to maintain certain records regarding such trust accounts and prohibits withdrawals from such trust accounts until the completion of certain services as agreed upon in a written contract for the performance of such services. Section 3.3 further authorizes the Commissioner or his authorized agents to inspect and audit the records associated with the trust accounts.*

*Section 3.5 of this bill grants certain additional powers to the Commissioner with regard to the conduct of any examination, periodic or special audit, investigation or hearing.*

*Section 3.7 of this bill requires the Commissioner to adopt regulations to establish rates to be paid by a person who performs certain services for compensation, a foreclosure consultant and a loan modification consultant for supervision and examinations by the Commissioner or the Division of Mortgage Lending of the Department of Business and Industry. (NRS 645F.280) Section 3.9 of this bill requires the Commissioner to collect an assessment from such persons for deposit in the Fund for Mortgage Lending. (NRS 645F.290)*

Section 5 of this bill revises the definition of "homeowner" as it applies to services performed by foreclosure consultants by expanding the definition to include any record owner of residence, rather than only the record owner of a residence in foreclosure at the time the notice of the pendency of an action for foreclosure is recorded or the notice of default and election to sell is recorded. (NRS 645F.360)

Section 6 of this bill provides that an attorney at law is exempt from the provisions governing a person who performs any covered service for compensation, a loan modification consultant, a foreclosure consultant or a foreclosure purchaser unless the services rendered by the attorney are performed in the course and scope of his employment by or other affiliation with a mortgage broker or mortgage agent. (NRS 645F.380)

Section 6.5 of this bill ~~[clarifies that a foreclosure consultant is prohibited from claiming, demanding, charging, collecting or receiving any compensation until after the foreclosure consultant has fully performed every covered service he contracted to perform or represented he would perform, rather than after the performance of any individual service.]~~ *provides that the violation of certain provisions by such persons shall be deemed to constitute mortgage lending fraud, as that term is described in NRS 205.372.* (NRS 645F.400)

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

Section 1. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 2 ~~[and 3]~~ *to 3.5, inclusive,* of this act.

Sec. 2. *"Loan modification consultant" means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any act that the person represents will adjust the terms of a mortgage loan in a manner not provided for in the original or previously modified mortgage loan. Such an adjustment includes, without limitation:*

*1. A change in the payment amount;*

*2. A change in the loan amount;*

*3. A loan forbearance;*

*4. A change in the loan maturity; and*

*5. A change in the interest rate.*

Sec. 3. ~~*[A]*~~

*1. The Commissioner shall adopt separate regulations for the licensing of:*

*(a) A person who performs any covered service for compensation ~~[, a]~~ ;*

*(b) A foreclosure consultant ~~[and a]~~ ; and*

*(c) A loan modification consultant . ~~[must be licensed pursuant to chapter 645B of NRS in the following manner:~~*

~~*1. As a mortgage broker; or*~~

~~*2. If the person:*~~

~~*(a) Is an employee or independent contractor of a foreclosure consultant or loan modification consultant; and*~~

~~*(b) Is authorized by the foreclosure consultant or loan modification consultant to engage in, on behalf of the foreclosure consultant or loan modification consultant, any activity that would require the person, if he were not an employee or independent contractor of the foreclosure consultant or loan modification consultant, to be licensed pursuant to subsection 1,*~~

~~*→ as a mortgage agent.]*~~

*2. The regulations must prescribe, without limitation:*

*(a) The method and form of application for a license;*

*(b) The method and form of the issuance, denial or renewal of a license;*

*(c) The grounds and procedures for the revocation, suspension or nonrenewal of a license; and*

*(d) The imposition of reasonable fees for application and licensure.*

*Sec. 3.1. 1. A person who performs any covered service for compensation, a foreclosure consultant and a loan modification consultant shall execute a written contract with a homeowner before providing any covered service.*

*2. The Commissioner shall adopt regulations describing the information that must be contained in a written contract for covered services.*

*Sec. 3.3. 1. All money paid to a person who performs any covered service for compensation, a foreclosure consultant or a loan modification consultant by a person in full or partial payment of covered services to be performed:*

*(a) Must be deposited in a separate checking account located in a federally insured depository financial institution or credit union in this State which must be designated a trust account;*

*(b) Must be kept separate from money belonging to the person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant; and*

*(c) Must not be withdrawn by the person who performs any covered service for compensation, foreclosure consultant or loan modification consultant until the completion of every covered service as agreed upon in the contract for covered services.*

*2. The person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant shall keep records of all money deposited in a trust account pursuant to subsection 1. The records must clearly indicate the date and from whom he received money, the date deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and must show clearly for whose account the money is deposited and to whom the money belongs. The person who performs any covered service for compensation, the foreclosure consultant or the loan modification consultant shall balance each separate trust account at least monthly and provide to the Commissioner, on a form provided by the Commissioner, an annual accounting which shows an annual reconciliation of each separate trust account. All such records and money are subject to inspection and audit by the Commissioner and his authorized representatives.*

*3. Each person who performs any covered service for compensation, each foreclosure consultant and each loan modification consultant shall notify the Commissioner of the names of the banks and credit unions in which he maintains trust accounts and specify the names of the accounts on forms provided by the Commissioner.*

*4. As used in this section, "completion of every covered service" means:*

*(a) Successful results with respect to what the performance of each covered service was intended to yield for the homeowner, as described in the contract for covered services; or*

*(b) If the performance of one or more covered service has an unsuccessful result with respect to what the performance of that covered service was intended to yield for the homeowner, a showing that every reasonable effort was made, under the particular circumstances, to obtain successful results,*

*➥ as verified in a written statement provided to the homeowner.*

*Sec. 3.5. 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the Commissioner may:*

*(a) Compel the attendance of any person by subpoena.*

*(b) Administer oaths.*

*(c) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.*

*2. Any person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.*

*3. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the Commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.*

*Sec. 3.7. NRS 645F.280 is hereby amended to read as follows:*

645F.280 1. The Commissioner shall establish by regulation rates to be paid by escrow agencies, mortgage agents, mortgage brokers *,* ~~[and]~~ mortgage bankers *, persons who perform any covered service for compensation, foreclosure consultants and loan modification consultants* for supervision and examinations by the Commissioner or the Division.

2. In establishing a rate pursuant to subsection 1, the Commissioner shall consider:

(a) The complexity of the various examinations to which the rate applies;

(b) The skill required to conduct the examinations;

(c) The expenses associated with conducting the examination and preparing a report; and

(d) Any other factors the Commissioner deems relevant.

*Sec. 3.9. NRS 645F.290 is hereby amended to read as follows:*

645F.290 1. The Commissioner shall collect an assessment pursuant to this section from each:

(a) Escrow agency that is supervised pursuant to chapter 645A of NRS;

(b) Mortgage broker that is supervised pursuant to chapter 645B of NRS; ~~[and]~~

(c) Mortgage banker that is supervised pursuant to chapter 645E of NRS ~~[.]~~ *; and*

*(d) Person who performs any covered service for compensation, each foreclosure consultant and each loan modification consultant that is supervised pursuant to this chapter.*

2. The Commissioner shall determine the total amount of all assessments to be collected from the entities identified in subsection 1, but that amount must not exceed the amount necessary to recover the cost of legal services provided by the Attorney General to the Commissioner and to the Division. The total amount of all assessments collected must be reduced by any amounts collected by the Commissioner from an entity for the recovery of the costs of legal services provided by the Attorney General in a specific case.

3. The Commissioner shall collect from each entity identified in subsection 1 an assessment that is based on:

(a) An equal basis; or

(b) Any other reasonable basis adopted by the Commissioner.

4. The assessment required by this section is in addition to any other assessment, fee or cost required by law to be paid by an entity identified in subsection 1.

5. Money collected by the Commissioner pursuant to this section must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

Sec. 4. NRS 645F.300 is hereby amended to read as follows:

645F.300 As used in NRS 645F.300 to 645F.450, inclusive, *and sections 2* ~~*[and 3]*~~ *to 3.5, inclusive, of this act,* unless the context otherwise requires, the words and terms defined in NRS 645F.310 to 645F.370, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 645F.360 is hereby amended to read as follows:

645F.360 "Homeowner" means the record owner of a residence , *including, without limitation, the record owner of a residence* in foreclosure at the time the notice of the pendency of an action for foreclosure is recorded pursuant to NRS 14.010 or the notice of default and election to sell is recorded pursuant to NRS 107.080.

Sec. 6. NRS 645F.380 is hereby amended to read as follows:

645F.380 The provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2* ~~*[and 3]*~~ *to 3.5, inclusive, of this act* do not apply to, and the terms "foreclosure consultant" and "foreclosure purchaser" do not include:

1. An attorney at law rendering services in the performance of his duties as an attorney at law ~~[;]~~ *, unless the attorney at law is rendering those services in the course and scope of his employment by or other affiliation with a mortgage broker or mortgage agent;*

2. A person, firm, company or corporation licensed to engage in the business of debt adjustment pursuant to chapter 676 of NRS while engaging in that business;

3. ~~[A person licensed as a real estate broker, broker-salesman or salesman pursuant to chapter 645 of NRS while acting under the authority of that license;~~

~~4.]~~ A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank;

~~[5.]~~ *4.* A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person performs services in connection with this obligation or lien and the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

~~[6.]~~ *5.* Any person doing business under the laws of this State or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of those persons, and any agent or employee of those persons while engaged in the business of those persons;

~~[7.]~~ *6.* A person *, other than a* ~~*[mortgage agent or mortgage broker,]*~~ <u>*person who is licensed pursuant to section 3 of this act,*</u> *who is* licensed ~~[as an escrow agent, title agent, mortgage agent, mortgage broker or mortgage banker]~~ pursuant to *chapter 692A or any* chapter ~~[645A, 692A, 645B or 645E]~~ *of title 54* of NRS ~~[, respectively,]~~ while acting under the authority of his license;

~~[8.]~~ *7.* A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

~~[9.]~~ *8.* A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.

Sec. 6.5. NRS 645F.400 is hereby amended to read as follows:

645F.400 <u>*1.*</u> A <u>*person who performs any covered service, a*</u> foreclosure consultant <u>*and a loan modification consultant*</u> shall not:

~~[ 1. Claim,]~~

<u>*(a) Claim,*</u> demand, charge, collect or receive any compensation ~~[until after the foreclosure consultant has fully performed]~~ [each] ~~*[every* covered service that he contracted to perform or represented he would perform.~~

~~2.]~~ <u>*except in accordance with section 3.3 of this act.*</u>

*(b)* Claim, demand, charge, collect or receive any fee, interest or other compensation for any reason which is not fully disclosed to the homeowner.

~~[3.]~~ *(c)* Take any wage assignment, lien on real or personal property, assignment of a homeowner's equity or other interest in a residence in foreclosure or other security for the payment of compensation. Any such security is void and unenforceable.

~~[4.]~~ *(d)* Receive any consideration from any third party in connection with a covered service provided to a homeowner unless the consideration is first fully disclosed to the homeowner.

~~[5.]~~ *(e)* Acquire, directly or indirectly, any interest in the residence in foreclosure of a homeowner with whom the foreclosure consultant has contracted to perform a covered service.

~~[6.]~~ *(f)* Accept a power of attorney from a homeowner for any purpose, other than to inspect documents as provided by law.

*2. In addition to any other penalty, a violation of any provision of this section shall be deemed to constitute mortgage lending fraud for the purposes of NRS 205.372.*

Sec. 7. NRS 645F.430 is hereby amended to read as follows:

645F.430 A foreclosure purchaser who engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2* ~~*[and 3]*~~ *to 3.5, inclusive, of this act,* including, without limitation, a foreclosure reconveyance, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than $50,000, or by both fine and imprisonment.

Sec. 8. NRS 645F.440 is hereby amended to read as follows:

645F.440 1. In addition to the penalty provided in NRS 645F.430 and except as otherwise provided in subsection 5, if a foreclosure purchaser engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2* ~~*[and 3]*~~ *to 3.5, inclusive, of this act,* including, without limitation, a foreclosure reconveyance, the transaction in which the foreclosure purchaser acquired title to the residence in foreclosure may be rescinded by the homeowner within 2 years after the date of the recording of the conveyance.

2. To rescind a transaction pursuant to subsection 1, the homeowner must give written notice to the foreclosure purchaser and a successor in interest to the foreclosure purchaser, if the successor in interest is not a bona fide purchaser, and record that notice with the recorder of the county in which the property is located. The notice of rescission must contain:

(a) The name of the homeowner, the foreclosure purchaser and any successor in interest who holds title to the property; and

(b) A description of the property.

3. Within 20 days after receiving notice pursuant to subsection 2:

(a) The foreclosure purchaser and the successor in interest, if the successor in interest is not a bona fide purchaser, shall reconvey to the homeowner title to the property free and clear of encumbrances which were created subsequent to the rescinded transaction and which are due to the actions of the foreclosure purchaser; and

(b) The homeowner shall return to the foreclosure purchaser any consideration received from the foreclosure purchaser in exchange for the property.

4. If the foreclosure purchaser has not reconveyed to the homeowner title to the property within the period described in subsection 3, the homeowner may bring an action to enforce the rescission in the district court of the county in which the property is located.

5. A transaction may not be rescinded pursuant to this section if the foreclosure purchaser has transferred the property to a bona fide purchaser.

6. As used in this section, "bona fide purchaser" means any person who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the foreclosure purchaser engaged in conduct which violates subsection 1.

Sec. 9. NRS 645F.450 is hereby amended to read as follows:

645F.450 The rights, remedies and penalties provided pursuant to the provisions of NRS 645F.300 to 645F.450, inclusive, *and sections 2* ~~[and 3]~~ <u>*to 3.5, inclusive,*</u> *of this act* are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to NRS 645F.430.

Sec. 10. NRS 205.372 is hereby amended to read as follows:

205.372 1. A person who, with the intent to defraud a participant in a mortgage lending transaction:

(a) Knowingly makes a false statement or misrepresentation concerning a material fact or deliberately conceals or fails to disclose a material fact;

(b) Knowingly uses or facilitates the use of a false statement or misrepresentation made by another person concerning a material fact or deliberately uses or facilitates the use of another person's concealment or failure to disclose a material fact;

(c) Receives any proceeds or any other money in connection with a mortgage lending transaction that the person knows resulted from a violation of paragraph (a) or (b);

(d) Conspires with another person to violate any of the provisions of paragraph (a), (b) or (c); or

(e) Files or causes to be filed with a county recorder any document that the person knows to include a misstatement, misrepresentation or omission concerning a material fact,

➥ commits the offense of mortgage lending fraud which is a category C felony and, upon conviction, 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 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment.

2. A person who engages in a pattern of mortgage lending fraud or conspires or attempts to engage in a pattern of mortgage lending fraud is guilty of a category B felony and, upon conviction, shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 20 years, or by a fine of not more than $50,000, or by both fine and imprisonment.

3. Each mortgage lending transaction in which a person violates any provision of subsection 1 constitutes a separate violation.

4. Except as otherwise provided in this subsection, if a lender or any agent of the lender is convicted of the offense of mortgage lending fraud in violation of this section, the mortgage lending transaction with regard to which the fraud was committed may be rescinded by the borrower within 6 months after the date of the conviction if the borrower gives written notice to the lender and records that notice with the recorder of the county in which the mortgage was recorded. A mortgage lending transaction may not be rescinded pursuant to this subsection if the lender has transferred the mortgage to a bona fide purchaser.

5. The Attorney General may investigate and prosecute a violation of this section.

6. As used in this section:

(a) "Bona fide purchaser" means any person who purchases a mortgage in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the lender or any agent of the lender engaged in mortgage lending fraud in violation of this section.

(b) "Mortgage lending transaction" means any transaction between two or more persons for the purpose of making or obtaining, attempting to make or obtain, or assisting another person to make or obtain a loan that is secured by a mortgage or other lien on residential real property. The term includes, without limitation:

(1) The solicitation of a person to make or obtain the loan;

(2) The representation or offer to represent another person to make or obtain the loan;

(3) The negotiation of the terms of the loan;

(4) The provision of services in connection with the loan; and

(5) The execution of any document in connection with making or obtaining the loan.

(c) "Participant in a mortgage lending transaction" includes, without limitation:

(1) A borrower as defined in NRS 598D.020;

(2) An escrow agent as defined in NRS 645A.010;

(3) A foreclosure consultant as defined in NRS 645F.320;

(4) A foreclosure purchaser as defined in NRS 645F.330;

(5) An investor as defined in NRS 645B.0121;

(6) A lender as defined in NRS 598D.050;

(7) *A loan modification consultant as defined in section 2 of this act;*

*(8)* A mortgage agent as defined in NRS 645B.0125;

~~[(8)]~~ *(9)* A mortgage banker as defined in NRS 645E.100; and

~~[(9)]~~ *(10)* A mortgage broker as defined in NRS 645B.0127.

(d) "Pattern of mortgage lending fraud" means one or more violations of a provision of subsection 1 committed in two or more mortgage lending transactions which have the same or similar intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics.

*Sec. 10.5. The Commissioner of Mortgage Lending shall adopt regulations required by sections 3 and 3.1 of this act and submit the regulations to the Legislative Commission for review within 90 days after the passage and approval of this act.*

Sec. 11. This act becomes effective ~~[on]~~ *:*

*1. Upon passage and approval for the purposes of adopting regulations and performing any other preparatory actions that are necessary to carry out the provisions of this act; and*

*2. On* July 1, 2009 ~~[.]~~ *for all other purposes.*

Senator Copening moved the adoption of the amendment.

Remarks by Senators Copening, Cegavske, Townsend and Carlton.

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

SENATOR COPENING:

Amendment No. 770 to Assembly Bill No. 152 requires the Commissioner of Mortgage Lending to adopt regulations for the licensing of foreclosure consultants and loan-modification consultants, as well as persons who perform other specified services for compensation. It removes the requirement that such persons be licensed as mortgage brokers or mortgage agents under chapter 645B of the Nevada Revised Statutes. The amendment requires persons regulated under these provisions to enter into a written contract with homeowners before providing services and requires the Commissioner to prescribe, through regulation, the form and contents of such an agreement.

The amendment also stipulates that funds received for compensation must be deposited in a trust account and requires the maintenance and retention of records related to those trust accounts until services are completed. The Commissioner is authorized to inspect and audit such records.

Amendment No. 770 also requires the Commissioner to adopt regulations regarding fees to be paid by regulated persons for supervision and examination by the Commissioner. Any fees collected are to be deposited in the Fund for Mortgage Lending.

Finally, the amendment provides additional investigative and enforcement authority to the Commissioner to carry out the provisions of the bill and stipulates that a violation of the provisions is to be considered mortgage-lending fraud.

SENATOR CEGAVSKE:

On page 10, section 10.5 is new language. We are asking that the Commission of Mortgage Lending shall adopt regulations and then go before the Legislative Commission for review. The Legislature is going to have the final say as to what their regulations are. Is that correct?

SENATOR COPENING:
They do go before the Legislative Commission. They have the final review and passage.

SENATOR CEGAVSKE:
Why did we establish this?

SENATOR TOWNSEND:
The language on page 10 is superfluous. All regulations drafted in the State of Nevada with regard to any of the statutory requirements are required to be reviewed by the Legislative Commission. Some members of this body have had to serve on it and have listened to the hours of questioning of the parties who come before the Commission to make certain that the regulation drafted meets legislative intent, and it is the Legislature that should appropriately do that. It should be fully vetted. If a party to the action does not feel they received the appropriate hearing, were not treated fairly or were not able to make their case, they are allowed to do so in front of the Commission. At that point, the Commission makes the determination whether it has met legislative intent, if the hearing was held properly, if all parties were allowed to make their presentation; then, the Commission has final authority to accept or reject that regulation. The hearing includes the input of our Legal Counsel. We do not have the authority to pick the regulation apart to accept or reject parts of it. It either must be accepted in total or rejected in total.

SENATOR CARLTON:
The language says the regulations need to go before the Commission within 90 days. This was to incentivize the Commissioner to get the regulations drafted quickly. I would like to applaud my colleague from Clark District No. 6. This was a difficult bill. She worked hard and did well.

Amendment adopted.
Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 215.
Bill read second time.
The following amendment was proposed by the Committee on Commerce and Labor:
Amendment No. 767.
"SUMMARY—Requires a contractor or an applicant for an original or a renewal of a contractor's license to obtain and maintain certain liability insurance ~~[.]~~ *or to self-insure.* (BDR 54-893)"
"AN ACT relating to contractors; requiring licensed contractors and applicants for issuance or renewal of a contractor's license to obtain and provide proof of liability insurance ~~[;]~~ *or to provide proof of tangible net assets sufficient to self-insure;* and providing other matters properly relating thereto."
Legislative Counsel's Digest:
Section 1 of this bill requires a contractor *who is actively* licensed pursuant to chapter 624 of NRS or an applicant for an original or renewal license under that chapter to obtain, maintain and provide proof of insurance, with coverage having specified limits of liability *, or to self-insure by providing proof of tangible net assets equal to those same specified limits,* for claims ~~[for injury to persons or damage to property]~~ which may arise from or in connection with the work of the contractor or applicant or his agents, representatives, employees or subcontractors. *Section 1 also authorizes the*

*State Contractors' Board to adopt regulations for the verification of liability insurance and to inspect the books and records of a licensee who is self-insured.*

*Section 1.2 of this bill revises provisions relating to the confidentiality of a licensee's information to provide that information relating to the tangible net worth of a licensee or an applicant for a contractor's license is also confidential.*

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

Section 1. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Before granting an original or renewal of a contractor's license to an applicant, the Board shall require that the applicant submit to the Board proof of liability insurance that provides coverage for liability for products and completed operations against claims ~~[for injury to persons or damage to property]~~ which may arise from or in connection with work that is subject to regulation pursuant to this chapter supplied, provided or performed by the applicant or his agents, representatives, employees or subcontractors in an amount not less than the amount set forth in subsection 2.*

*2. To satisfy the requirements of this section, a licensee or an applicant for a contractor's license shall ~~[obtain]~~ :*

*(a) Obtain and provide proof of liability insurance that provides coverage for liability for products and completed operations, including, without limitation, excess or umbrella policies, as defined in subsection 6 of NRS 687B.145, with coverage that has limits of liability not less than:*

*~~[(a)]~~ (1) If the Board places on the license a limit on contracting or bidding to contract in an amount less than $1,000,000, $300,000 in the aggregate and $100,000 for each occurrence;*

*~~[(b)]~~ (2) If the Board places on the license a limit on contracting or bidding to contract in an amount $1,000,000 or greater but less than $10,000,000, $2,000,000 in the aggregate and $1,000,000 for each occurrence; and*

*~~[(c)]~~ (3) If the Board places on the license a limit on contracting or bidding to contract in an amount that is $10,000,000 or greater or is unlimited, $3,000,000 in the aggregate and $3,000,000 for each occurrence ~~[.]~~ ; or*

*(b) Self-insure by establishing to the satisfaction of the Board that the licensee or applicant has sufficient financial resources to satisfy the requirements set forth in subparagraphs (1), (2) and (3) of paragraph (a). For the purposes of this paragraph, a licensee or an applicant for a contractor's license has sufficient financial resources if he provides to the Board a statement of tangible net worth, prepared by an independent certified public accountant, which evidences that the contractor or applicant has a tangible net worth of:*

(1) If the Board places on the license a limit on contracting or bidding to contract in an amount less than $1,000,000, $300,000;

(2) If the Board places on the license a limit on contracting or bidding to contract in an amount $1,000,000 or greater but less than $10,000,000, $2,000,000; and

(3) If the Board places on the license a limit on contracting or bidding to contract in an amount that is $10,000,000 or greater or is unlimited, $3,000,000.

3. If a licensee applies to the Board for a temporary increase in the limit on contracting or bidding to contract which the Board has placed on his license, the Board shall require the licensee to submit proof of insurance with coverage that has limits of liability or a statement of tangible net worth as provided in subsection 2 that correspond to the temporary limit on contracting or bidding to contract. The insurance required pursuant to this subsection may be contingent upon approval by the Board of the temporary increase in the limit on contracting or bidding to contract.

4. A licensee shall maintain the insurance or self-insurance required pursuant to this section at all times during which he holds his license ~~[.]~~ on active status.

5. The books and records of a licensee who is self-insured must be open to inspection by the Board or its auditor or agent to determine any information necessary for the administration of this section.

6. The requirements of subsections 1, 2 and 5 do not apply to a licensee whose license is on inactive status.

7. The Board may impose an administrative fine against a licensee in an amount not greater than $10,000, in addition to any other penalty authorized by this chapter, if the licensee:

(a) ~~[Causes]~~ Has been determined by a court of competent jurisdiction to have caused injury to persons or damage to property which ~~[arises]~~ arose from or in connection with ~~[work]~~ products and completed operations that ~~[is]~~ are subject to regulation pursuant to this chapter supplied, provided or performed by the licensee or his agents, representatives, employees or subcontractors; and

(b) Has failed to comply with the requirements of subsection 2 or 3.

8. The Board shall adopt regulations for the verification of insurance required to be obtained and maintained by licensees and applicants for contractor's licenses by this section.

9. Each insurer that has executed a contract of insurance for a policy of liability insurance which may be used to meet the requirements of this section shall provide the Board with a record of each such policy issued, amended or terminated in the previous month and the date the event occurred. The record provided pursuant to this subsection must be submitted in a form approved by the Board and may include, without limitation, magnetic tape or any other electronic medium deemed acceptable by the Board. The Board shall notify the Commissioner of Insurance if an insurer:

*(a) Fails to comply with this subsection; or*

*(b) In complying with this subsection, provides to the Board information that is false, incomplete or misleading.*

*10. For the purposes of this section:*

*(a) "Self-insure" or "self-insurance" means to establish, or the establishment, to the satisfaction of the Board that a licensee or applicant for a contractor's license has the capability to assume the responsibility for the payment of claims for injury to persons or damage to property which arises from or in connection with products and completed operations that are subject to regulation pursuant to this chapter supplied, provided or performed by the licensee or his agents, representatives, employees or subcontractors.*

*(b) "Tangible net worth" means the value of all the assets, minus the value of all the liabilities, of a licensee or an applicant for a contractor's license except:*

*(1) Goodwill or excess cost over the fair market value of assets.*

*(2) Any other items listed in the assets that are deemed unacceptable by the Board because they cannot be justified or because they do not directly support the ability of the licensee or the applicant to pay a claim for injury to persons or damage to property which arises from or in connection with products and completed operations that are subject to regulation pursuant to this chapter supplied, provided or performed by the licensee or his agents, representatives, employees or subcontractors.*

*Sec. 1.2. NRS 624.110 is hereby amended to read as follows:*

624.110 1. The Board may maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter, but it shall maintain one office in which there must be at all times open to public inspection a complete record of applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses.

2. Except as otherwise required in NRS 239.0115 and 624.327, credit reports, references, financial information and data pertaining to ~~[a licensee's]~~ *the* net worth *and tangible net worth of a licensee or an applicant for a contractor's license* are confidential and not open to public inspection.

Sec. 1.3. NRS 624.220 is hereby amended to read as follows:

624.220 1. The Board shall adopt regulations necessary to effect the classification and subclassification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage as defined by NRS 624.215 and the regulations of the Board.

2. The Board shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and the limit must be the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client. The Board may take any other action

designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit must be determined after consideration of the factors set forth in NRS 624.260 to 624.265, inclusive ~~[.]~~ *, and section 1 of this act.*

3. A licensed contractor may request that the Board increase the monetary limit on his license, either on a permanent basis or for a single construction project. A request submitted to the Board pursuant to this subsection must be in writing on a form prescribed by the Board and accompanied by such supporting documentation as the Board may require. If a request submitted pursuant to this section is for a single construction project, the request must be submitted to the Board at least 2 working days before the date on which the licensed contractor intends to submit his bid for the project.

4. Subject to the provisions of regulations adopted pursuant to subsection 5, nothing contained in this section prohibits a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

5. The Board shall adopt regulations establishing a specific limit on the amount of asbestos that a licensed contractor with a license that is not classified for the abatement or removal of asbestos may abate or remove pursuant to subsection 4.

Sec. 1.5. (Deleted by amendment.)

Sec. 1.7. NRS 624.3013 is hereby amended to read as follows:

624.3013 The following acts, among others, constitute cause for disciplinary action pursuant to NRS 624.300:

1. Failure to keep records showing all contracts, documents, receipts and disbursements by a licensee of all of his transactions as a contractor and to keep them open for inspection by the Board or Executive Officer for a period of not less than 3 years after the completion of any construction project or operation to which the records refer.

2. Misrepresentation of a material fact by an applicant or licensee in connection with any information or evidence furnished the Board in connection with official matters of the Board.

3. Failure to establish financial responsibility pursuant to NRS 624.220 and 624.260 to 624.265, inclusive, *and section 1 of this act* at the time of renewal of the license or at any other time when required by the Board.

4. Failure to keep in force the bond or cash deposit pursuant to NRS 624.270 for the full period required by the Board.

5. Failure in any material respect to comply with the provisions of this chapter or the regulations of the Board.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)
Sec. 6. (Deleted by amendment.)
Sec. 7. (Deleted by amendment.)
Sec. 8. (Deleted by amendment.)
Sec. 9. (Deleted by amendment.)
Sec. 10. (Deleted by amendment.)
Sec. 11. (Deleted by amendment.)
Sec. 12. (Deleted by amendment.)
Sec. 13. (Deleted by amendment.)

Sec. 14. This act applies to licenses issued or renewed pursuant to chapter 624 of NRS *on or* after October 1, 2009.

Senator Carlton moved the adoption of the amendment.

Conflict of interest declared by Senator Hardy.

Remarks by Senators Carlton and Lee.

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

SENATOR CARLTON:

Amendment No. 767 to Assembly Bill No. 215 requires a licensed contractor to have and maintain liability insurance against claims that may arise in connection with his work and the work of his agents, representatives, employees and subcontractors. It allows contractors to self-insure by providing proof of tangible net assets with a value equal to the required limits of liability specified in the bill. If the licensee causes personal injury or property damage and the required insurance is not in effect, the State Contractors Board may assess an administrative fine in addition to any other penalties.

The amendment also authorizes the State Contractors Board to adopt regulations to allow for coverage verification and inspection of the books and records of self-insured licensees and applicants for contractors' licenses. There were some concerns as to whether the State Contractors Board could handle this. They are a sophisticated Board. They have significant resources. We did not find any instance where the State Contractors Board either gave testimony or sent in anything that was in opposition to the bill.

SENATOR LEE:

The State Contractors Board is a licensing board. That is what it does. It verifies your abilities, your talents to run a business. They obtain a small amount of financial information to make certain you can stay in business for a period of time until you either make it in business or you do not. It is not based upon a large audit. This is asking for something that the Division of Insurance would be more apt to do and would do a better job at. This is a specialty of the Insurance Division. They inspect, audit and have CPAs to do this kind of investigation. The State Contractors Board has limited resources. They do not have CPAs. They are not sophisticated enough to do this. It is not their job to read the contracts. They are there to license us. The State Contractors Board members do not want to do this. It was given to them through this bill. We do not want to have to raise our fees just to do this audit. I think this is something that should go to the Insurance Division. The resources are dwindling at the State Contractors Board. We are self-funded. I ask you to vote "no" on this amendment.

Senator Lee disclosed that he is a licensed contractor in the State of Nevada.

Amendment adopted.

The following amendment was proposed by Senator Care:

Amendment No. 817.

"SUMMARY— ~~[Requires a contractor or an applicant for an original or a renewal of a contractor's license to obtain and maintain certain liability insurance.]~~ *Makes various changes relating to construction.* (BDR 54-893)"

"AN ACT relating to ~~[contractors;]~~ *construction;* requiring licensed contractors and applicants for issuance or renewal of a contractor's license to obtain and provide proof of liability insurance; *revising the statutes of repose relating to certain actions concerning constructional defects; making various changes relating to constructional defects;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill requires a contractor licensed pursuant to chapter 624 of NRS or an applicant for an original or renewal license under that chapter to obtain, maintain and provide proof of insurance, with coverage having specified limits of liability for claims for injury to persons or damage to property which may arise from or in connection with the work of the contractor or applicant or his agents, representatives, employees or subcontractors.

*Existing law generally authorizes an action for damages for injury to property or a person or for wrongful death caused by a defect in construction of improvements to real property to be commenced at any time after substantial completion of the improvement if the defect is a result of willful misconduct or was fraudulently concealed. (NRS 11.202)*

*Section 14.5 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a known defect in construction of improvements to real property from being commenced more than 3 years after substantial completion of the improvement rather than more than 10 years after substantial completion of the improvement. Section 15 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a latent defect, a defect that is not apparent by reasonable inspection, in construction of improvements to real property from being commenced more than 4 years after substantial completion of the improvement rather than more than 8 years after substantial completion of the improvement. Section 16 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a patent defect, a defect that is apparent by reasonable inspection, in construction of improvements to real property from being commenced more than 3 years after substantial completion of the improvement rather than more than 6 years after substantial completion of the improvement.*

*Sections 14.5-16 of this bill also eliminate the provisions that authorize an action for damages for such injury or wrongful death caused by a defect in construction of improvements to real property to be commenced within 2 years after the date of such an injury which occurs: (1) in the 10th year after the substantial completion of such an improvement for a known defect; (2) in the 8th year after the substantial completion of such an improvement* *for a latent defect; and (3) in the 6th year after the substantial completion of such an improvement for a patent defect. Section 21 of this bill provides that the decreased periods for bringing an action as set forth in sections 14.5-16 may apply retroactively under certain circumstances. Section 21 also provides a 1-year grace period for persons to commence an action pursuant to NRS 11.203, 11.204 or 11.205 if the action accrued before October 1, 2009.*

*Section 17 of this bill amends the existing definition of "constructional defect" to provide that a constructional defect is a defect: (1) which presents an unreasonable risk of injury to a person or property; or (2) which violates the law, unless the workmanship exceeds the standards set forth in any applicable codes and ordinances, which causes physical damages and which is not completed in a good and workmanlike manner.*

*Section 18 of this bill removes from existing law the provision that allows a claimant to recover reasonable attorney's fees for a claim for a constructional defect.*

*Section 19 of this bill provides that an attorney must obtain from a claimant a signed affidavit stating that the claimant has been notified of certain provisions relating to constructional defects. If the claimant is a representative of a homeowners' association, section 19 requires that the affidavit also attest that the claimant has notified the units' owners on whose behalf the claim is brought of the provisions of this section. Section 19 also provides that in a subsequent action, the attorney must file the affidavit with the court or the action will be dismissed.*

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

Section 1. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Before granting an original or renewal of a contractor's license to an applicant, the Board shall require that the applicant submit to the Board proof of insurance against claims for injury to persons or damage to property which may arise from or in connection with work that is subject to regulation pursuant to this chapter performed by the applicant or his agents, representatives, employees or subcontractors in an amount not less than the amount set forth in subsection 2.*

*2. To satisfy the requirements of this section, a licensee or an applicant for a contractor's license shall obtain and provide proof of insurance with coverage that has limits of liability not less than:*

*(a) If the Board places on the license a limit on contracting or bidding to contract in an amount less than $1,000,000, $300,000 in the aggregate and $100,000 for each occurrence;*

*(b) If the Board places on the license a limit on contracting or bidding to contract in an amount $1,000,000 or greater but less than $10,000,000, $2,000,000 in the aggregate and $1,000,000 for each occurrence; and*

*(c) If the Board places on the license a limit on contracting or bidding to contract in an amount that is $10,000,000 or greater or is unlimited, $3,000,000 in the aggregate and $3,000,000 for each occurrence.*

*3. If a licensee applies to the Board for a temporary increase in the limit on contracting or bidding to contract which the Board has placed on his license, the Board shall require the licensee to submit proof of insurance with coverage that has limits of liability as provided in subsection 2 that correspond to the temporary limit on contracting or bidding to contract. The insurance required pursuant to this subsection may be contingent upon approval by the Board of the temporary increase in the limit on contracting or bidding to contract.*

*4. A licensee shall maintain the insurance required pursuant to this section at all times during which he holds his license.*

*5. The Board may impose an administrative fine against a licensee in an amount not greater than $10,000, in addition to any other penalty authorized by this chapter, if the licensee:*

*(a) Causes injury to persons or damage to property which arises from or in connection with work that is subject to regulation pursuant to this chapter performed by the licensee or his agents, representatives, employees or subcontractors; and*

*(b) Has failed to comply with the requirements of subsection 2 or 3.*

Sec. 1.3. NRS 624.220 is hereby amended to read as follows:

624.220 1. The Board shall adopt regulations necessary to effect the classification and subclassification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage as defined by NRS 624.215 and the regulations of the Board.

2. The Board shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and the limit must be the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client. The Board may take any other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit must be determined after consideration of the factors set forth in NRS 624.260 to 624.265, inclusive ~~[.]~~ *, and section 1 of this act.*

3. A licensed contractor may request that the Board increase the monetary limit on his license, either on a permanent basis or for a single construction project. A request submitted to the Board pursuant to this subsection must be in writing on a form prescribed by the Board and accompanied by such supporting documentation as the Board may require. If a request submitted pursuant to this section is for a single construction project, the request must be submitted to the Board at least 2 working days

before the date on which the licensed contractor intends to submit his bid for the project.

4. Subject to the provisions of regulations adopted pursuant to subsection 5, nothing contained in this section prohibits a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

5. The Board shall adopt regulations establishing a specific limit on the amount of asbestos that a licensed contractor with a license that is not classified
for the abatement or removal of asbestos may abate or remove pursuant to subsection 4.

Sec. 1.5. (Deleted by amendment.)

Sec. 1.7. NRS 624.3013 is hereby amended to read as follows:

624.3013 The following acts, among others, constitute cause for disciplinary action pursuant to NRS 624.300:

1. Failure to keep records showing all contracts, documents, receipts and disbursements by a licensee of all of his transactions as a contractor and to keep them open for inspection by the Board or Executive Officer for a period of not less than 3 years after the completion of any construction project or operation to which the records refer.

2. Misrepresentation of a material fact by an applicant or licensee in connection with any information or evidence furnished the Board in connection with official matters of the Board.

3. Failure to establish financial responsibility pursuant to NRS 624.220 and 624.260 to 624.265, inclusive, *and section 1 of this act* at the time of renewal of the license or at any other time when required by the Board.

4. Failure to keep in force the bond or cash deposit pursuant to NRS 624.270 for the full period required by the Board.

5. Failure in any material respect to comply with the provisions of this chapter or the regulations of the Board.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

*Sec. 14.5. NRS 11.203 is hereby amended to read as follows:*

11.203 1. Except as otherwise provided in NRS 11.202 *, 11.204* and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~[10]~~ *3* years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement which is known or through the use of reasonable diligence should have been known to him;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the 10th year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 12 years after the substantial completion of the improvement.~~

~~3.]~~ The provisions of this section do not apply to a claim for indemnity or contribution.

*Sec. 15. NRS 11.204 is hereby amended to read as follows:*

11.204 1. Except as otherwise provided in NRS 11.202 ~~[, 11.203]~~ and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction, of an improvement to real property more than ~~[8]~~ *4* years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any latent deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the eighth year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 10 years after the substantial completion of the improvement.~~

~~3.]~~ The provisions of this section do not apply to a claim for indemnity or contribution.

~~[4.]~~ *3.* For the purposes of this section, "latent deficiency" means a deficiency which is not apparent by reasonable inspection.

*Sec. 16. NRS 11.205 is hereby amended to read as follows:*

11.205 1. Except as otherwise provided in NRS 11.202 ~~[, 11.203]~~ and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~[6]~~ *3* years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any patent deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the sixth year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 8 years after the substantial completion of the improvement.~~

~~3.]~~ The provisions of this section do not apply to a claim for indemnity or contribution.

~~[4.]~~ *3.* For the purposes of this section, "patent deficiency" means a deficiency which is apparent by reasonable inspection.

*Sec. 17. NRS 40.615 is hereby amended to read as follows:*

40.615 "Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance ~~[:]~~ *, which presents an unreasonable risk of injury to a person or property or:*

1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances ~~[;]~~ *, unless the workmanship of the design, construction, manufacture, repair or landscaping exceeds the standards set forth in any applicable codes and ordinances;*

2. Which proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed; *and*

3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping *.* ~~[; or~~

~~4. Which presents an unreasonable risk of injury to a person or property.]~~

*Sec. 18. NRS 40.655 is hereby amended to read as follows:*

40.655 1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) ~~[Any reasonable attorney's fees;~~

~~(b)]~~ The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;

~~[(c)]~~ *(b)* The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

~~[(d)]~~ *(c)* The loss of the use of all or any part of the residence;

~~[(e)]~~ *(d)* The reasonable value of any other property damaged by the constructional defect;

~~[(f)]~~ *(e)* Any additional costs reasonably incurred by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;

(2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

(3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and

~~[(g)]~~ *(f)* Any interest provided by statute.

2. ~~[The amount of any attorney's fees awarded pursuant to this section must be approved by the court.~~

~~3.]~~ If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, anything other than that which is provided pursuant to NRS 40.600 to 40.695, inclusive.

~~[4.]~~ *3.* This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

~~[5.]~~ *4.* As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

*Sec. 19. NRS 40.688 is hereby amended to read as follows:*

40.688 1. If a claimant attempts to sell a residence that is or has been the subject of a claim governed by NRS 40.600 to 40.695, inclusive, he shall disclose, in writing, to any prospective purchaser of the residence, not less than 30 days before the close of escrow for the sale of the residence or, if escrow is to close less than 30 days after the execution of the sales agreement, then immediately upon the execution of the sales agreement or, if a claim is initiated less than 30 days before the close of escrow, within

24 hours after giving written notice to the contractor pursuant to NRS 40.645:

(a) All notices given by the claimant to the contractor pursuant to NRS 40.600 to 40.695, inclusive, that are related to the residence;

(b) All opinions the claimant has obtained from experts regarding a constructional defect that is or has been the subject of the claim;

(c) The terms of any settlement, order or judgment relating to the claim; and

(d) A detailed report of all repairs made to the residence by or on behalf of the claimant as a result of a constructional defect that is or has been the subject of the claim.

2. Before taking any action on a claim pursuant to NRS 40.600 to 40.695, inclusive, the attorney for a claimant shall ~~[notify]~~ *obtain a signed affidavit from* the claimant ~~[in writing]~~ *stating that the claimant has been notified* of the provisions of this section. *If the claimant is a representative of a homeowners' association, the affidavit must attest that the claimant has notified the units' owners on whose behalf the claim is brought of the provisions of this section. At the time of commencing an action or amending a complaint to add a cause of action for a constructional defect, the attorney shall file the affidavit with the court. The court shall dismiss the action or cause of action if the attorney fails to file the required affidavit.*

~~[Sec. 14.]~~ *Sec. 20.* ~~[This]~~ *Sections 1 to 1.7, inclusive, of this* act ~~[applies]~~ *apply* to licenses issued or renewed pursuant to chapter 624 of NRS after October 1, 2009.

*Sec. 21. 1. Except as otherwise provided in subsection 2, the period of limitations on actions set forth in NRS 11.203, 11.204 and 11.205, as amended by sections 14.5, 15 and 16 of this act, respectively, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2009.*

*2. The provisions of subsection 1 do not limit an action:*

*(a) That accrued before October 1, 2009, and was commenced before October 1, 2010; or*

*(b) If doing so would constitute an impairment of the obligation of contracts under the Constitution of the United States or the Constitution of the State of Nevada.*

*Sec. 22. The amendatory provisions of sections 17, 18 and 19 of this act apply to any claim that arises on or after October 1, 2009.*

Senator Care moved the adoption of the amendment.

Remarks by Senators Care, Carlton, McGinness and Amodei.

Senator Lee disclosed that he is a licensed contractor.

Conflict of interest declared by Senator Hardy.

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

SENATOR CARE:

The amendment adopts into the bill two bills previously discussed at length by the Judiciary Committee. They were Senate Bill No. 337, which dealt with statutes of repose, known defects, latent defects, patent defects under chapter 11 of construction defect lawsuits and the limitation of actions, and chapter 40, which came from Senate Bill No. 349, the redefinition of a construction defect. There was language in there about attorneys' fees. Those two bills came from this House with a vote of 19 in favor and 1 against with 1 abstention. In the Assembly, they were never scheduled for hearings. My recommendation is to adopt the amendment and add them to this bill. I hope they will concur because there have been extensive hearings on this bill.

SENATOR CARLTON:

I voted "no" on one of the construction defect bills. In conversations with the sponsor of this bill, he does not view these as friendly amendments. I will oppose the amendment.

SENATOR MCGINNESS:

Is the liability issue included in this measure?

SENATOR CARE:

There was no liability issue. Senate Bill No. 349 did three things. There was a redefinition of construction defect. We did not change existing language. We put the articles into the conjunctive as opposed to the "or," and grouped them all together. We narrowed the circumstances in which attorneys' fees would be available. We added a requirement that any construction-defect complaint could not be filed without an affidavit from the homeowner understanding that by doing this he has acknowledged that, at some point, when it comes time to sell the house to someone else, he would have to disclose that it had been the subject of a construction-defect lawsuit. As to the other bill, Senate Bill No. 337 it dealt with statutes of repose.

SENATOR AMODEI:

In defense of the process, everything that was sent over to the Judiciary Committee was given a hearing and called into work session. If they hated the bill, they failed to demonstrate to the sponsor of the bill that there were no votes in the Committee.

When it does not get a hearing, for the benefit of the process at all, that is not a practice that is engaged in by anyone in this House that chairs a committee during this Session or in previous sessions. That is the nature of the process. Like the result or not, it requires an open hearing. Call the bill for a work session. If there is silence on the issue, fine. The sponsor of the bill then knows that no one cared enough to make a motion. That did not happen with this bill. If the bill had gotten the full benefit of hearings, I would support you and would say that we do not stuff amendments in like that. However, this never got a hearing, never was scheduled, and that is not what this process should be.

Amendments adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 535.

Bill read second time.

The following amendment was proposed by the Committee on Legislative Operations and Elections:

Amendment No. 707.

"SUMMARY—Makes various changes relating to the Legislature and the Legislative Counsel Bureau. (BDR 17-957)"

"AN ACT relating to the Legislature; making various changes relating to the Legislature and the Legislative Counsel Bureau; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill provides that reports made to the Legislature or the Legislative Counsel Bureau may be submitted electronically. Sections 2 and 3 of this bill allow a Legislator to purchase and use letterhead and business cards after leaving office if the letterhead or business card clearly identifies the person as a former Legislator or retired Legislator. Sections 4, 5, 7, 8, 12, 13 and 14 of this bill revise certain statutes concerning a Legislator who does not seek reelection or who is defeated for reelection. Such a Legislator continues to serve on legislative committees after the general election until the next regular or special session of the Legislature convenes. Sections 9.5 and 10 of this bill revise the statutes concerning the membership of the Legislative Commission and the Interim Finance Committee to provide that the membership of a Legislator who does not seek reelection or who is defeated for reelection terminates on the day after the general election. Sections 5 and 6 of this bill expand the membership of the Legislative Committee on Public Lands and authorize the Legislative Commission to appoint alternate members. Section 11 of this bill revises the description of the Administrative Division of the Legislative Counsel Bureau to reflect its duties more accurately. *Sections 11.2, 11.4 and 11.6 of this bill expand the authority of the Legislative Counsel to represent the Legislature's official interests in various actions and proceedings. Section 13.5 of this bill repeals the prospective expiration of provisions that require the prefiling of measures proposed by certain nonlegislative requesters and that make various other changes relating to bill draft requests.*

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

Section 1. Chapter 218 of NRS is hereby amended by adding thereto a new section to read as follows:

*If a law or resolution requires or directs that a report be made to the Legislature, the Legislative Counsel Bureau, or any person or entity within the Legislature or the Legislative Counsel Bureau, submitting the report in electronic format satisfies the law or resolution.*

Sec. 2. NRS 218.048 is hereby amended to read as follows:

218.048 1. After he leaves office and a successor has been elected or appointed, it is unlawful for any Legislator to:

(a) Use any official stationery or business card acquired pursuant to NRS 218.225 ~~[;]~~ *unless the stationery or business card clearly identifies the person as a former Legislator or retired Legislator;*

(b) Maintain deliberately a listing in any directory, published after that date, which in any manner indicates that he is presently a Legislator; or

(c) Except as otherwise provided in a special act, use on his vehicle a special legislative license plate furnished pursuant to NRS 482.374.

2. Any person who violates any of the provisions of subsection 1 is guilty of a misdemeanor.

Sec. 3. NRS 218.225 is hereby amended to read as follows:

218.225 1. At each regular session of the Legislature, each Legislator is entitled to receive at the expense of the Legislative Fund:

(a) Not to exceed 2,000 letterheads, 8 1/2 inches x 11 inches, and 2,000 half size, or 4,000 of either variety;

(b) Not to exceed 2,000 No. 10 envelopes and 2,000 No. 6 3/4 envelopes, or 4,000 of either variety; and

(c) Not to exceed 2,000 business cards and 1,000 memorandum sheets, 500 each of the small and large type or 1,000 of either type.

2. Each female member of the Assembly is entitled to have the word "Assemblywoman" precede the inscription of her name on her official stationery and business cards.

3. All orders for the printing specified in subsection 1 must be placed by Legislators with the Director of the Legislative Counsel Bureau, who shall approve those claims which comply with the provisions of this section and shall pay the claims from the Legislative Fund.

4. A Legislator may purchase official stationery, cards and other material appropriate to his official duties in excess of that specified in subsection 1 at his own expense ~~[.]~~ *and may purchase stationery, cards or other material for use after he leaves office if the stationery, cards or other material clearly identifies the person as a former Legislator or retired Legislator.*

Sec. 4. NRS 218.5352 is hereby amended to read as follows:

218.5352 1. The Legislative Committee on Education, consisting of eight legislative members, is hereby created. The membership of the Committee consists of:

(a) Four members appointed by the Majority Leader of the Senate, at least one of whom must be a member of the minority political party.

(b) Four members appointed by the Speaker of the Assembly, at least one of whom must be a member of the minority political party.

2. After the initial selection, the Legislative Commission shall select the Chairman and Vice Chairman of the Committee from among the members of the Committee. After the initial selection of those officers, each of those officers holds the position for a term of 2 years commencing on July 1 of each odd-numbered year. The Chairmanship of the Committee must alternate each biennium between the houses of the Legislature. If a vacancy occurs in the Chairmanship or Vice Chairmanship, the vacancy must be filled in the same manner as the original selection for the remainder of the unexpired term.

3. A member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve *after the general election* until the ~~[convening of the]~~ next regular *or special* session of the Legislature ~~[.]~~ *convenes.*

4. A vacancy on the Committee must be filled in the same manner as the original appointment.

Sec. 5. NRS 218.5363 is hereby amended to read as follows:

218.5363 1. There is hereby established a Legislative Committee on Public Lands consisting of ~~[three]~~ *four* members of the Senate, ~~[three]~~ *four* members of the Assembly and one elected officer representing the governing body of a local political subdivision, appointed by the Legislative Commission with appropriate regard for their experience with and knowledge of matters relating to public lands. The members who are State Legislators must be appointed to provide representation from the various geographical regions of the State.

2. The members of the Committee shall select a Chairman from one House of the Legislature and a Vice Chairman from the other. After the initial selection of a Chairman and a Vice Chairman, each such officer shall hold office for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the Chairmanship or Vice hairmanship, the members of the Committee shall select a replacement for the remainder of the unexpired term.

3. Any member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve *after the general election* until the ~~[convening of the]~~ next *regular or special* session of the Legislature ~~[.]~~ *convenes.*

4. *The Legislative Commission may appoint alternates for members of the Committee.* Vacancies on the Committee must be filled in the same manner as original appointments. *The Chairman of the Committee may designate an alternate appointed by the Legislative Commission to serve in place of a regular member who is unable to attend a meeting. The Chairman shall appoint an alternate who is a member of the same House and political party as the regular member to serve in place of the regular member if one is available.*

Sec. 6. NRS 218.5365 is hereby amended to read as follows:

218.5365 1. The members of the Committee shall meet throughout each year at the times and places specified by a call of the Chairman or a majority of the Committee. The Research Director of the Legislative Counsel Bureau or a person he has designated shall act as the nonvoting recording Secretary. The Committee shall prescribe regulations for its own management and government. ~~[Four]~~ *Five* members of the Committee constitute a quorum, and a quorum may exercise all the power and authority conferred on the Committee.

2. Except during a regular or special session of the Legislature, the members of the Committee who are State Legislators are entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding session, the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207 for each day of attendance at a meeting of the Committee and while engaged in the business of the Committee.

Per diem allowances, compensation and travel expenses of the legislative members of the Committee must be paid from the Legislative Fund.

3. The member of the Committee who represents a local political subdivision is entitled to receive the subsistence allowances and travel expenses provided by law for his position for each day of attendance at a meeting of the Committee and while engaged in the business of the Committee, to be paid by his local political subdivision.

Sec. 7. NRS 218.5382 is hereby amended to read as follows:

218.5382 1. If:

(a) The Legislature, by concurrent resolution, during a regular legislative session; or

(b) The Interim Finance Committee, by resolution, while the Legislature is not in regular session,

➥ determines that the performance of a fundamental review of the base budget of a particular agency is necessary, the Interim Finance Committee shall create a legislative committee for the fundamental review of the base budgets of state agencies. The Interim Finance Committee may create more than one such committee if the number of agencies designated for review warrants additional committees. If more than one such committee is created, the Interim Finance Committee shall determine which agencies are to be reviewed by the respective committees.

2. Each such committee must consist of an equal number of members of the Senate and the Assembly. The Interim Finance Committee shall appoint the members of a committee. At least a majority of the members of a committee must be members of the Interim Finance Committee. The Interim Finance Committee shall designate the chairman of a committee.

3. Any member of a committee who is not a candidate for reelection or who is defeated for reelection continues to serve *after the general election* until the next *regular or special* session of the Legislature ~~[is convened.]~~ *convenes.*

4. Vacancies on a committee must be filled in the same manner as original appointments.

5. A majority of the members appointed to a committee constitutes a quorum.

6. The Director of the Legislative Counsel Bureau shall assign employees of the Legislative Counsel Bureau to provide such technical, clerical and operational assistance to a committee as the functions and operations of the committee may require.

Sec. 8. NRS 218.53871 is hereby amended to read as follows:

218.53871 1. There is hereby created the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System consisting of three members of the Senate and three members of the Assembly, appointed by the Legislative Commission with appropriate regard for their experience with and knowledge of matters relating to the management of natural resources. The members must be appointed to provide representation from the various geographical regions of the State.

2. The members of the Committee shall elect a Chairman from one house of the Legislature and a Vice Chairman from the other house. Each Chairman and Vice Chairman holds office for a term of 2 years commencing on July 1 of each odd-numbered year.

3. Any member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve *after the general election* until the next *regular or special* session of the Legislature convenes.

4. Vacancies on the Committee must be filled in the same manner as original appointments.

5. The Committee shall report annually to the Legislative Commission concerning its activities and any recommendations.

Sec. 9. NRS 218.610 is hereby amended to read as follows:

218.610 As used in NRS 218.610 to 218.735, inclusive, *and section 1 of this act*, "agency of the State" includes all offices, departments, boards, commissions and institutions of the State.

Sec. 9.5. NRS 218.660 is hereby amended to read as follows:

218.660 1. There is hereby created in the Legislative Counsel Bureau a Legislative Commission consisting of 12 members.

2. At each regular session of the Legislature held in odd-numbered years, the Senate shall, by resolution, designate six Senators as regular members of the Legislative Commission and six Senators as alternates, and the Assembly shall, by resolution, designate six Assemblymen as regular members of the Legislative Commission and six Assemblymen as alternates.

3. The Legislature shall determine by joint rule at each regular session of the Legislature in odd-numbered years:

(a) The method of determining the majority party and the minority party regular and alternate membership on the Legislative Commission.

(b) The method of filling vacancies on the Legislative Commission.

(c) ~~[The terms of office of members.~~

~~(d)]~~ The method of selecting the Chairman.

~~[(e)]~~ *(d)* The term of office of the Chairman.

*4. The members of the Legislative Commission serve until their successors are appointed by resolution as provided in this section, except that the membership of any member who does not become a candidate for reelection or who is defeated for reelection terminates on the day next after the election and the vacancy must be filled as provided by the joint rule adopted pursuant to subsection 3.*

Sec. 10. NRS 218.6825 is hereby amended to read as follows:

218.6825 1. There is hereby created in the Legislative Counsel Bureau an Interim Finance Committee . *Except as otherwise provided in this section, the Interim Finance Committee is* composed of the members of the Assembly Standing Committee on Ways and Means and the Senate Standing

Committee on Finance during the current or immediately preceding session of the Legislature. ~~[The]~~

*2. Except as otherwise provided in this subsection, the* immediate past Chairman of the Senate Standing Committee on Finance is the Chairman of the Interim Finance Committee for the period ending with the convening of each even-numbered regular session of the Legislature. The immediate past Chairman of the Assembly Standing Committee on Ways and Means is the Chairman of the Interim Finance Committee during the next legislative interim, and the chairmanship alternates between the houses of the Legislature according to this pattern.

~~[2.]~~ *The term of the Chairman of the Interim Finance Committee terminates if a new Chairman of the Assembly Standing Committee on Ways and Means or the Senate Standing Committee on Finance, as the case may be, is designated for the next regular session of the Legislature, in which case that person so designated serves as the Chairman of the Committee until the convening of that regular session.*

*3.* If any regular member of the *Interim Finance* Committee informs the Secretary that he will be unable to attend a particular meeting, the Secretary shall notify the Speaker of the Assembly or the Majority Leader of the Senate, as the case may be, to appoint an alternate for that meeting from the same house and political party as the absent member.

~~[3.]~~ *4. Except as otherwise provided in subsection 5, the term of a member of the Interim Finance Committee expires upon the convening of the next regular session of the Legislature unless the member is replaced by the appointing authority. If the Speaker designate of the Assembly or the Majority Leader designate of the Senate designates members of the Assembly Standing Committee on Ways and Means or the Senate Standing Committee on Finance, as applicable, for the next ensuing regular session of the Legislature, the designated members become members of the Interim Finance Committee. A member may be reappointed.*

*5.* The membership of any member who does not become a candidate for reelection or who is defeated for reelection ~~[continues until the next session of the Legislature is convened.~~

~~4.]~~ *terminates on the day next after the general election. The Speaker designate of the Assembly or the Majority Leader designate of the Senate, as the case may be, shall appoint an alternate to fill the vacancy on the Interim Finance Committee. Except as otherwise provided in this subsection, each alternate serves on the Committee:*

*(a) If he is a member of the Assembly, until the Speaker designate of the Assembly designates the members of the Assembly Standing Committee on Ways and Means for the next ensuing regular session of the Legislature or appoints a different alternate.*

*(b) If he is a member of the Senate, until the Majority Leader designate of the Senate designates the members of the Senate Standing Committee on*

*Finance for the next ensuing regular session of the Legislature or appoints a different alternate.*

*6.* The Director of the Legislative Counsel Bureau shall act as the Secretary of the Interim Finance Committee.

~~[5.]~~ *7.* A majority of the members of the Assembly Standing Committee on Ways and Means and a majority of the members of the Senate Standing Committee on Finance, jointly, may call a meeting of the Interim Finance Committee if the Chairman does not do so.

~~[6.]~~ *8.* In all matters requiring action by the Interim Finance Committee, the vote of the Assembly and Senate members must be taken separately. No action may be taken unless it receives the affirmative vote of a majority of the Assembly members and a majority of the Senate members.

~~[7.]~~ *9.* Except during a regular or special session of the Legislature, each member of the Interim Finance Committee and appointed alternate is entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session for each day or portion of a day during which he attends a Committee meeting or is otherwise engaged in Committee work plus the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207. All such compensation must be paid from the Contingency Fund in the State Treasury.

Sec. 11. NRS 218.6851 is hereby amended to read as follows:

218.6851 1. The Administrative Division consists of the Chief of the Division and such staff as he may require.

2. The Administrative Division is responsible for:

(a) Accounting ~~[;]~~ *and human resources;*

(b) *Audio and video services;*

*(c)* Communication equipment;

~~[(c)]~~ *(d)* Control of inventory;

~~[(d)]~~ *(e) Information technology services;*

*(f)* Janitorial services;

~~[(e)]~~ *(g)* Maintenance of buildings, grounds and vehicles;

~~[(f)]~~ *(h)* Purchasing;

~~[(g)]~~ *(i)* Security;

~~[(h)]~~ *(j)* Shipping and receiving;

~~[(i)]~~ *(k)* Utilities;

~~[(j)]~~ *and*

*(l)* Warehousing operations . ~~[;~~

~~(k) Data processing; and~~

~~(l) Reproduction of documents.]~~

3. The Legislative Commission may assign any other appropriate function to the Administrative Division.

*Sec. 11.2.* *NRS 218.697 is hereby amended to read as follows:*

218.697 1. When deemed necessary or advisable to protect the official interests of the Legislature *, one or more houses of the Legislature* or one or more ~~[legislative committees,]~~ *agencies, members, officers or employees of the Legislature, the Legislative Counsel Bureau or the Legislative Department of State Government,* the Legislative Commission, or the Chairman of the Legislative Commission in cases where action is required before a meeting of the Legislative Commission is scheduled to be held, may direct the Legislative Counsel and his staff to appear in, commence, prosecute, defend or intervene in any action ~~[, suit, matter, cause]~~ or proceeding ~~[in]~~ *before* any court ~~[or]~~ , agency *or officer* of ~~[this State or of]~~ the United States ~~[.]~~ , *this State or any other jurisdiction, or any political subdivision thereof. In any such action or proceeding, the Legislature, the houses of the Legislature and the agencies, members, officers and employees of the Legislature, the Legislative Counsel Bureau and the Legislative Department of State Government may not be assessed or held liable for:*

*(a) Any filing or other court fees; or*

*(b) The attorney's fees or other fees, costs or expenses of any other parties.*

*2. If a party to any action or proceeding before any court, agency or officer:*

*(a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or*

*(b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that the law, resolution, initiative, referendum or other legislative or constitutional measure is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional,*

➥ *the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading, brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.*

*3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to intervene in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.*

*4. The provisions of this section do not make the Legislature a necessary or indispensable party to any action or proceeding unless the Legislature intervenes in the action or proceeding, and no party to any action or proceeding may name the Legislature as a party or move to join the Legislature as a party based on the provisions of this section.*

~~[2.]~~ *5.* The Legislative Commission may authorize payment of the expenses and costs incurred pursuant to this section from the Legislative Fund.

*6. As used in this section:*

*(a) "Action or proceeding" means any action, suit, matter, cause, hearing, appeal or proceeding.*

*(b) "Agency" means any agency, office, department, division, board, commission, authority, committee, subcommittee or other similar body or entity, including, without limitation, any body or entity created by an interstate, cooperative, joint or interlocal agreement or compact.*

*Sec. 11.4. NRS 12.130 is hereby amended to read as follows:*

12.130 1. *Except as otherwise provided in subsection 2:*

*(a)* Before the trial, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.

~~[2.]~~ *(b)* An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

~~[3.]~~ *(c)* Intervention is made as provided by the Nevada Rules of Civil Procedure.

~~[4.]~~ *(d)* The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

*2. The provisions of this section do not apply to intervention in an action or proceeding by the Legislature pursuant to NRS 218.697.*

*Sec. 11.6. NRS 65.030 is hereby amended to read as follows:*

65.030 1. *Except as otherwise provided in subsection 2:*

*(a)* Before the trial, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.

~~[2.]~~ *(b)* An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant; and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

~~[3.]~~ *(c)* The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained he shall pay all costs incurred by the intervention.

*2. The provisions of this section do not apply to intervention in an action or proceeding by the Legislature pursuant to NRS 218.697.*

Sec. 12. NRS 417.230 is hereby amended to read as follows:

417.230 1. There are hereby created the Advisory Committee for a Veterans' Cemetery in Northern Nevada and the Advisory Committee for a Veterans' Cemetery in Southern Nevada, each consisting of seven members as follows:

(a) One member of the Senate, appointed by the Majority Leader of the Senate.

(b) One member of the Assembly, appointed by the Speaker of the Assembly.

(c) Five members of veterans' organizations in this State, appointed by the Governor.

2. The members of the Committees shall serve terms of 2 years.

3. Each Committee shall annually elect a Chairman and a Vice Chairman from among its members.

4. Each Committee shall meet at least 4 times a year.

5. Any legislative member of a Committee who is not a candidate for reelection or who is defeated for reelection continues to serve *after the general election* until the ~~[convening of the]~~ next *regular or special* session of the Legislature ~~[.]~~ *convenes.*

6. While engaged in the work of the Committee, each member of each Committee is entitled to receive the per diem allowances and travel expenses provided for state officers and employees generally.

7. The Executive Director shall consult with each Committee regarding the establishment, maintenance and operation of the veterans' cemetery for which the Committee was created.

Sec. 13. NRS 439B.200 is hereby amended to read as follows:

439B.200 1. There is hereby established a Legislative Committee on Health Care consisting of three members of the Senate and three members of the Assembly, appointed by the Legislative Commission. The members must be appointed with appropriate regard for their experience with and knowledge of matters relating to health care.

2. No member of the Committee may:

(a) Have a financial interest in a health facility in this State;

(b) Be a member of a board of directors or trustees of a health facility in this State;

(c) Hold a position with a health facility in this State in which the Legislator exercises control over any policies established for the health facility; or

(d) Receive a salary or other compensation from a health facility in this State.

3. The provisions of subsection 2 do not:

(a) Prohibit a member of the Committee from selling goods which are not unique to the provision of health care to a health facility if the member primarily sells such goods to persons who are not involved in the provision of health care.

(b) Prohibit a member of the Legislature from serving as a member of the Committee if:

(1) The financial interest, membership on the board of directors or trustees, position held with the health facility or salary or other compensation received would not materially affect the independence of judgment of a reasonable person; and

(2) Serving on the Committee would not materially affect any financial interest he has in a health facility in a manner greater than that accruing to any other person who has a similar interest.

4. The Legislative Commission shall select the Chairman and Vice Chairman of the Committee from among the members of the Committee. Each such officer shall hold office for a term of 2 years commencing on July 1 of each odd-numbered year. The chairmanship of the Committee must alternate each biennium between the houses of the Legislature.

5. Any member of the Committee who does not ~~[return to the Legislature]~~ *become a candidate for reelection or who is defeated for reelection* continues to serve *after the general election* until the next *regular or special* session of the Legislature convenes.

6. Vacancies on the Committee must be filled in the same manner as original appointments.

7. The Committee shall report annually to the Legislative Commission concerning its activities and any recommendations.

*Sec. 13.5. Section 16 of chapter 524, Statutes of Nevada 2007, at page 3170, is hereby amended to read as follows:*

> Sec. 16. ~~[1.]~~ This act becomes effective upon passage and approval.
>
> ~~[2. Sections 3 to 10, inclusive, and 15 of this act expire by limitation on June 30, 2011.]~~

Sec. 14. Section 56 of chapter 531, Statutes of Nevada 2007, at page 3302, is hereby amended to read as follows:

> Sec. 56. 1. There is hereby created the Legislative Committee to Oversee the Western Regional Water Commission created pursuant to section 23 of this act. The Committee must:
>
> (a) Consist of six Legislators as follows:
>
> (1) One member of the Senate appointed by the Chairman of the Senate Committee on Natural Resources;

(2) One member of the Assembly appointed by the Chairman of the Assembly Committee on Natural Resources, Agriculture, and Mining;

(3) One member of the Senate appointed by the Majority Leader of the Senate;

(4) One member of the Senate appointed by the Minority Leader of the Senate;

(5) One member of the Assembly appointed by the Speaker of the Assembly; and

(6) One member of the Assembly appointed by the Minority Leader of the Assembly.

(b) Insofar as practicable, represent the various areas within the planning area.

(c) Elect a Chairman and a Vice Chairman from among its members. The Chairman must be elected from one House of the Legislature and the Vice Chairman from the other House. After the initial selection of a Chairman and a Vice Chairman, each of those officers holds office for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the chairmanship or vice chairmanship, the members of the Committee shall select a replacement for the remainder of the unexpired term.

2. Any member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve *after the general election* until the next *regular or special* session of the Legislature convenes.

3. Vacancies on the Committee must be filled in the same manner as original appointments.

4. The members of the Committee shall meet throughout each year at the times and places specified by a call of the Chairman or a majority of the Committee.

5. The Director of the Legislative Counsel Bureau or his designee shall act as the nonvoting recording Secretary.

6. The Committee shall prescribe regulations for its own management and government.

7. Except as otherwise provided in subsection 8, four members of the Committee constitute a quorum, and a quorum may exercise all the powers conferred on the Committee.

8. Any recommended legislation proposed by the Committee must be approved by a majority of the members of the Senate and by a majority of the members of the Assembly appointed to the Committee.

9. Except during a regular or special session of the Legislature, the members of the Committee are entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session,

the per diem allowance provided for state officers and employees generally and the travel expenses provided pursuant to NRS 218.2207 for each day or portion of a day of attendance at a meeting of the Committee and while engaged in the business of the Committee. The salaries and expenses paid pursuant to this subsection and the expenses of the Committee must be paid from the Legislative Fund.

10. The Committee shall review the programs and activities of the Western Regional Water Commission. The review must include an analysis of potential consolidation of the retail distribution systems and facilities of all public purveyors in the planning area, which is described in section 22 of this act.

11. The Committee may:

(a) Conduct investigations and hold hearings in connection with its powers pursuant to this section.

(b) Direct the Legislative Counsel Bureau to assist in the study of issues related to oversight of the Western Regional Water Commission.

12. In conducting the investigations and hearings of the Committee:

(a) The Secretary of the Committee or, in his absence, any member of the Committee may administer oaths.

(b) The Secretary or Chairman of the Committee may cause the deposition of witnesses, residing either within or outside of the State, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.

(c) The Chairman of the Committee may issue subpoenas to compel the attendance of witnesses and the production of books and papers.

13. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena issued pursuant to this section, the Chairman of the Committee may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the Committee pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the Committee which is named in the subpoena, or has refused to answer questions propounded to him,

➥ and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the Committee.

14. Upon a petition pursuant to subsection 13, the court shall enter an order directing the witness to appear before the court at a time and

place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and to show cause why he has not attended or testified or produced the books or papers before the Committee. A certified copy of the order must be served upon the witness.

15. If it appears to the court that the subpoena was regularly issued by the Committee, the court shall enter an order that the witness appear before the Committee at the time and place fixed in the order and testify or produce the required books or papers. Failure to obey the order constitutes contempt of court.

16. Each witness who appears before the Committee by its order, except a state officer or employee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of record of this State. The fees and mileage must be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the Secretary and Chairman of the Committee.

17. On or before January 15 of each odd-numbered year, the Committee shall submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the review conducted pursuant to subsection 10 and any recommendations for legislation.

Sec. 15. 1. This ~~[act becomes]~~ *section and sections 11.2, 11.4, 11.6 and 13.5 of this act become effective upon passage and approval.*

*2. Sections 1 to 11, inclusive, and 12, 13 and 14 of this act become* effective on July 1, 2009.

~~[2.]~~ *3.* Section 14 of this act expires by limitation on July 1, 2013.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senators Woodhouse and Townsend.

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

SENATOR WOODHOUSE:

Amendment No. 707 to Assembly Bill No. 535 clarifies the Legislature's standing in certain court cases and makes permanent various changes relating to bill draft requests, including prefiling requirements for bill draft requests by state agencies and other nonlegislative bodies.

Specifically, the amendment expands the authority of the Legislative Counsel Bureau to represent the Legislature's official interests in various actions and proceedings and repeals the sunset on provisions that require the prefiling of measures proposed by certain nonlegislative requesters and various other changes relating to bill draft requests adopted pursuant to S.B. 490 of the 2007 Legislative Session.

SENATOR TOWNSEND:

Could we have an explanation of the provision in regard to removing the sunsets and how that affects those who are not Legislators.

SENATOR WOODHOUSE:

Our understanding, during the hearing, was that this was a request by the Legislative Counsel Bureau and the intent in removing the sunset was that we liked the process this year of the prefiling of bills and that those measures were ready as we came in allowing the Legislature to get started much faster.

SENATOR TOWNSEND:

I believe it says that those restrictions we put on those groups who are not Legislators to get bills has had the sunset extended. Where we have narrowed it for district attorneys, school districts and counties, those will stay in place. That was something we worked out to help the Legislative Counsel Bureau manage the process. It would be helpful to have the answer by tomorrow.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Joint Resolution No. 5.

Resolution read second time.

The following amendment was proposed by the Committee on Legislative Operations and Elections:

Amendment No. 757.

"SUMMARY—Proposes to amend the Nevada Constitution to ~~[authorize the Legislature to convene]~~ *revise provisions governing the convening and conduct of* special sessions ~~[of the Legislature under certain circumstances.]~~ *and the duration and adjournment of regular and special sessions.* (BDR C-139)"

"ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to limit the duration of special sessions of the Legislature to 20 *consecutive calendar* days ~~[, limit matters]~~ *with the exception of impeachment, removal and expulsion proceedings, to limit the types of bills* which may be *introduced,* considered *or passed* during a special session ~~[and]~~ *, to* provide that a special session may be convened by a petition signed by two-thirds of the Legislators of each ~~[house.]~~ *House and to provide that regular and special sessions must be adjourned on the final calendar day not later than midnight Pacific time based on the actual measure of time used and observed by the general population of Nevada."*

Legislative Counsel's Digest:

Under the Nevada Constitution, only the Governor ~~[may]~~ *is granted express power to* convene a special session of the ~~[Nevada Legislature.]~~ *Legislature on extraordinary occasions.* (Nev. Const. Art. 5, § 9) *The Nevada Constitution does not grant the Legislature express power to convene a special session on extraordinary occasions, such as when it is necessary to: (1) hold impeachment or removal proceedings against the Governor, Supreme Court Justices or other state and judicial officers who have committed misconduct in office; (2) hold expulsion proceedings against Legislators who have committed misconduct in office; (3) enact bills or appropriations to address unexpected conditions or emergency situations; or (4) reconsider bills vetoed by the Governor after the adjournment of a regular session. (Nev. Const. Art. 4, §§ 1, 6, 16-23, 35; Nev. Const. Art. 7, §§ 1-3)*

This resolution proposes to amend the Nevada Constitution to authorize the Legislature *, on extraordinary occasions,* to convene a special session ~~[by signed petition of]~~ *upon a petition signed by* two-thirds of the members of each House of the Legislature. ~~[The]~~ *This* resolution also provides that the *only* bills ~~[introduced during the]~~ *the Legislature may introduce, consider or pass at any* special session ~~[must relate to the purpose of]~~ *are bills related to the business for which* the *special* session ~~[, except that]~~ *is convened and* bills necessary to provide for the expenses of the session *.* ~~[may also be introduced. Finally, the]~~

*In addition, this* resolution limits the duration of any special session ~~[of the Legislature]~~ to 20 *consecutive* calendar days ~~[.]~~ *, unless the special session is convened to conduct proceedings for: (1) impeachment or removal from office of the Governor, Supreme Court Justices or other state and judicial officers pursuant to Article 7 of the Nevada Constitution; or (2) expulsion from office of a Legislator pursuant to Section 6 of Article 4 of the Nevada Constitution. The exceptions for impeachment, removal and expulsion proceedings are necessary to ensure that such proceedings comport with the concepts of due process, substantial justice and fundamental fairness. (U.S. Const. Amend. XIV, § 1; Nev. Const. Art. 1, § 8)*

*Finally, the Nevada Constitution provides that regular sessions must be adjourned on the final calendar day not later than "midnight Pacific standard time." (Nev. Const. Art. 4, § 2) The Nevada Supreme Court has held that when the State is observing daylight saving time on the final calendar day of a session, the Legislature is not required to adjourn the session when the clock strikes midnight for the general population of Nevada but may continue the session until 1:00 a.m. Pacific daylight saving time because such time is equivalent to "midnight Pacific standard time." (Nevada Mining Ass'n v. Erdoes, 117 Nev. 531 (2001))*

*This resolution proposes to amend the Nevada Constitution to provide that regular and special sessions must be adjourned on the final calendar day not later than "midnight Pacific time," which must be determined based on the actual measure of time that is being used and observed by the general population of Nevada within the Pacific time zone or, in other words, the time on the clock. The resolution also provides that the Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores the time on the clock for the purpose of extending the duration of the session.*

If this ~~[proposed]~~ resolution is passed by the 2009 Legislature, it must also be passed by the next Legislature and then approved and ratified by the people in an election, before the proposed amendments to the Nevada Constitution become effective.

WHEREAS *The Nevada Constitution does not grant the Nevada Legislature express power to convene a special session on extraordinary occasions; and*

WHEREAS*, There are extraordinary occasions when it is imperative for the Legislature to have express power to convene a special session, such as when it is necessary to hold impeachment or removal proceedings pursuant to Article 7 of the Nevada Constitution against the Governor, Supreme Court Justices or other state and judicial officers who have committed misconduct in office, or when it is necessary to hold expulsion proceedings pursuant to Section 6 of Article 4 of the Nevada Constitution against Legislators who have committed misconduct in office; and*

WHEREAS*, There are other extraordinary occasions when it is imperative for the Legislature to have express power to convene a special session, such as when it is necessary to enact bills or appropriations to address unexpected conditions or emergency situations, or when it is necessary to reconsider bills vetoed by the Governor after the adjournment of a regular session; and*

WHEREAS, There are currently 32 state legislatures *in the nation* that have ~~[the ability]~~ *express power* to call a special ~~[legislative]~~ session when ~~[deemed necessary;]~~ *there are extraordinary occasions;* and

WHEREAS, The Nevada Legislature is ~~[1]~~ *part of a group* of only 18 state ~~[legislative bodies in the nation that may]~~ *legislatures that do* not *have express power to* call a special session, and ~~[1]~~ *part of a group* of only 11 ~~[Legislatures]~~ *state 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]~~ *coequal* branches of State Government, with the ultimate authority and responsibility to enact necessary legislation being vested in the Legislative Branch, subject to final approval by the Governor; and

WHEREAS, Nevada's current constitutional language, which ~~[allows only]~~ *grants* the Governor *express power* to call the Legislature into special session ~~[, impedes and is contrary to]~~ *but which does not grant such express power to the Legislature, diminishes* the constitutional ~~[provision that vests the legislative authority of the State of Nevada in its]~~ *separation of powers by impeding the authority of this State's* elected Legislature ~~[;]~~ *to perform its constitutional functions of enacting necessary legislation and conducting impeachment, removal and expulsion proceedings on extraordinary occasions;* and

WHEREAS, The Nevada Legislature should be authorized to operate with a reasonable degree of independence from the Executive and Judicial Branches as is consistent with the separation of powers principle, and should be empowered to identify those ~~[topics]~~ *extraordinary occasions* 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 a petition signed by two-thirds of the members ~~[of]~~ elected to 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,]~~ At a special session convened pursuant to this section, the Legislature shall not introduce, consider or pass any bills except those related to the business specified in the petition and those necessary to provide for the expenses of the session . ~~[, 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]~~ convened by the Governor pursuant to Section 9 of Article 5 of this Constitution, unless otherwise provided in the petition ~~[calling for]~~ convening the special session ~~[.]~~ pursuant to this section.*

*4. The Legislature may provide by law for the procedure for convening a special session pursuant to this section.*

*5. ~~[The]~~ Except as otherwise provided in this subsection, the Legislature shall adjourn sine die a special session convened pursuant to this section not later than midnight Pacific ~~[standard time of]~~ time at the end of the 20th consecutive calendar day of that session ~~[.]~~ , inclusive of the day on which that session commences. Any legislative action taken after midnight Pacific ~~[standard time on]~~ time at the end of the 20th consecutive calendar day of that session is void. This subsection does not apply to a special session that is convened to conduct proceedings for:*

*(a) Impeachment or removal from office of the Governor and other state and judicial officers pursuant to Article 7 of this Constitution; or*

*(b) Expulsion from office of a member of the Legislature pursuant to Section 6 of Article 4 of this Constitution.*

*6. For the purposes of this section, "midnight Pacific time" must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The Legislature and its members, officers and employees shall not employ* *any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the session.*

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.]~~ *time at the end of the 120th consecutive calendar day of that session, inclusive of the day on which that session commences.* Any legislative action taken after midnight Pacific ~~[standard time on]~~ *time at the end of* the 120th *consecutive* calendar day *of that session* 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.

*4. For the purposes of this section, "midnight Pacific time" must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the 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]~~ *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]~~ *business* for which they have been *specially* 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,]~~ At a special session convened pursuant to this section, the Legislature shall not introduce, consider or pass any bills except those related to the ~~[purpose]~~* business *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]~~ Except as otherwise provided in this subsection, the Legislature shall adjourn sine die a special session convened pursuant to this section not later than midnight Pacific ~~[standard time of]~~ time at the end of the 20th consecutive calendar day of that session ~~[.]~~ , inclusive of the day on which that session commences. Any legislative action taken after midnight Pacific ~~[standard time on]~~ time at the end of the 20th consecutive calendar day of that session is void. This subsection does not apply to a special session that is convened to conduct proceedings for:*

*(a) Impeachment or removal from office of the Governor and other state and judicial officers pursuant to Article 7 of this Constitution; or*

*(b) Expulsion from office of a member of the Legislature pursuant to Section 6 of Article 4 of this Constitution.*

*4. For the purposes of this section, "midnight Pacific time" must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The*

*Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the session.*

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

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

Amendment No. 757 makes certain technical changes to Assembly Joint Resolution No. 5 to explain legislative intent concerning the resolution, to specify occasions when the Legislature might need to call itself into a special session and to clarify sine die provisions for special sessions.

Specifically, the amendment provides additional information about the need for the Legislature to call itself into special session for extraordinary occasions, such as impeachment or removal proceedings against the Governor, Supreme Court Justices or certain other state and judicial officers who have committed misconduct in office; for expulsion procedures against Legislators who have committed misconduct in office; for unexpected conditions and financial emergencies; or for reconsideration of vetoed measures after the adjournment of a legislative session.

Although the resolution currently specifies a 20-day limit for most of these special sessions, the amendment provides an exception to the 20-day limit if it is called for the purpose of impeachment, removal and expulsion procedures in order to allow for sufficient time for due-process considerations.

Finally, the resolution is amended to clarify that a special session convened under the act must be adjourned prior to "midnight on the clock," linked to the actual measure of time being used and observed by the general population of Nevada during that special session.

Amendment adopted.

Resolution ordered reprinted, engrossed and to the General File.

Assembly Joint Resolution No. 6.

Resolution read second time.

The following amendment was proposed by the Committee on Legislative Operations and Elections:

Amendment No. 756.

"SUMMARY—Proposes to amend the Nevada Constitution to revise provisions concerning legislative sessions. (BDR C-67)"

"ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for annual legislative sessions ~~[and]~~ *of not more than 120 consecutive calendar days in odd-numbered years and 60 consecutive calendar days in even-numbered years,* to provide for compensation for serving during each *day of such* regular legislative ~~[session.]~~ *sessions, to revise the payment of certain allowances to Legislators during legislative sessions and to provide that regular legislative sessions must be adjourned on the final calendar day not later than midnight Pacific time based on the actual measure of time used and observed by the general population of Nevada."*

Legislative Counsel's Digest:

~~[Existing provisions of the]~~ *The* Nevada Constitution ~~[provide]~~ *provides* for biennial legislative sessions ~~[of 120 days and authorize members of the~~

~~Legislature to receive compensation for the first 60 days of each regular session.]~~ *of not more than 120 consecutive calendar days in each odd-numbered year.* This resolution proposes to amend the Nevada Constitution to provide for annual legislative sessions of *not more than* 120 *consecutive calendar* days in each odd-numbered year and of *not more than* 60 *consecutive calendar* days in each even-numbered year. (Nev. Const. Art. 4, § 2) ~~[The resolution further]~~

*The Nevada Constitution provides that regular sessions must be adjourned on the final calendar day not later than "midnight Pacific standard time." (Nev. Const. Art. 4, § 2) The Nevada Supreme Court has held that when the State is observing daylight saving time on the final calendar day of a session, the Legislature is not required to adjourn the session when the clock strikes midnight for the general population of Nevada but may continue the session until 1:00 a.m. Pacific daylight saving time because such time is equivalent to "midnight Pacific standard time." (Nevada Mining Ass'n v. Erdoes, 117 Nev. 531 (2001))*

*This resolution proposes to amend the Nevada Constitution to provide that regular sessions must be adjourned on the final calendar day not later than "midnight Pacific time," which must be determined based on the actual measure of time that is being used and observed by the general population of Nevada within the Pacific time zone or, in other words, the time on the clock. This resolution also provides that the Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores the time on the clock for the purpose of extending the duration of the session.*

*The Nevada Constitution authorizes Legislators to receive compensation for the first 60 days of each regular session and the first 20 days of any special session. This resolution* proposes to amend the Nevada Constitution to ~~[provide compensation for]~~ *authorize* Legislators *to receive compensation for not more than 120 days of each regular session in an odd-numbered year and for not more than* 60 days ~~[during regular sessions.]~~ *of each regular session in an even-numbered year.* (Nev. Const. Art. 4, § 33)

*The Nevada Constitution provides for the payment of the expenses of each Legislator for postage, express charges, newspapers and stationery of not more than $60 per session, and it also provides for the payment of an additional allowance of $2 per day to the presiding officers of each House. This resolution proposes to amend the Nevada Constitution to eliminate the additional allowance for the presiding officers and to authorize an increase in the payment for postage, express charges, newspapers and stationery. (Nev. Const. Art. 4, § 33)*

*If this resolution is passed by the 2009 Legislature, it must also be passed by the next Legislature and then approved and ratified by the people in an election, before the proposed amendments to the Nevada Constitution become effective.*

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, 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,]~~ *annual,* and shall commence on the 1st Monday of February , ~~[following the election of members of the Assembly,]~~ unless the Governor of the State shall, in the interim, convene the Legislature by proclamation.

2. The Legislature shall adjourn sine die each regular session *held in an odd-numbered year* not later than midnight Pacific ~~[standard time 120 calendar days following its commencement.]~~ *time at the end of the 120th consecutive calendar day of that session, inclusive of the day on which that session commences.* Any legislative action taken after midnight Pacific ~~[standard time on]~~ *time at the end of* the 120th *consecutive* calendar day *of that session* is void, unless the legislative action is conducted during a special session convened by the Governor.

3. *The Legislature shall adjourn sine die each regular session held in an even-numbered year not later than midnight Pacific ~~[standard time 60 calendar days following its commencement.]~~ time at the end of the 60th consecutive calendar day of that session, inclusive of the day on which that session commences. Any legislative action taken after midnight Pacific ~~[standard time on]~~ time at the end of the 60th consecutive calendar day of that session is void, unless the legislative action is conducted during a special session convened by the Governor.*

*4.* The Governor shall submit *:*

*(a) In odd-numbered years,* the proposed executive budget *; and*

*(b) In even-numbered years, any proposed appropriations or proposed revisions to the executive budget,*

➥ to the Legislature not later than 14 calendar days before the commencement of each regular session.

*5. For the purposes of this section, "midnight Pacific time" must be determined based on the actual measure of time that, on the final calendar day of the session, is being used and observed by the general population as the uniform time for the portion of Nevada which lies within the Pacific time zone, or any legal successor to the Pacific time zone, and which includes the seat of government of this State as designated by Section 1 of Article 15 of this Constitution. The Legislature and its members, officers and employees shall not employ any device, pretense or fiction that adjusts, evades or ignores this measure of time for the purpose of extending the duration of the 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]~~ *120* days during any regular session of the ~~[legislature]~~ *Legislature conducted during an odd-numbered year, not to exceed 60 days during any regular session of the Legislature conducted during an even-numbered year,* and not to exceed 20 days during any special session convened by the ~~[governor;]~~ *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 6 of Article 11 of the Nevada Constitution be amended to read as follows:*

Section 6. 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 ~~[,]~~ *in an odd-numbered year,* 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 an odd-numbered year* 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.

And be it further

RESOLVED, That Section 12 of Article 17 of the Nevada Constitution be amended to read as follows:

Sec. 12. The first regular session of the Legislature shall commence on the second Monday of December A.D. Eighteen hundred and Sixty Four, and the second regular session of the same shall commence on the first Monday of January A.D. Eighteen hundred and Sixty Six; and the third regular session of the Legislature shall be the first of the biennial sessions, and shall commence on the first Monday of January A.D. Eighteen hundred and Sixty Seven; and the regular sessions of the Legislature shall be held thereafter . ~~[biennially.]~~

And be it further

RESOLVED, That Section 2 of Article 19 of the Nevada Constitution be amended to read as follows:

Sec. 2. 1. Notwithstanding the provisions of Section 1 of Article 4 of this Constitution, but subject to the limitations of Section 6 of this Article, 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.

2. An initiative petition shall be in the form required by Section 3 of this Article and shall be proposed 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 in not less than 75 percent of the counties in the State, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire State at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than ~~[January 1 of the year preceding the year in which a regular session of the Legislature is held.]~~ *1 year before the date on which the Legislature to which the petition will be transmitted commences its regular session.* After its circulation, it shall be filed with the Secretary of State not less than 30 days prior to any regular session of the Legislature. The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The Secretary of State shall transmit such petition to the Legislature as soon as the Legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the Legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the Legislature and approved by the Governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in Section 1 of this Article. If the statute or amendment to a statute is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the Supreme Court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding

general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law. If at the session of the Legislature to which an initiative petition proposing an amendment to a statute is presented which the Legislature rejects or upon which it takes no action, the Legislature amends the statute which the petition proposes to amend in a respect which does not conflict in substance with the proposed amendment, the Secretary of State in submitting the statute to the voters for approval or disapproval of the proposed amendment shall include the amendment made by the Legislature.

4. If the initiative petition proposes an amendment to the Constitution, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than September 1 of the year before the year in which the election is to be held. After its circulation it shall be filed with the Secretary of State not less than 90 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire State. The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The Secretary of State shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the State, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the Secretary of State shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall, unless precluded by subsection 5 or 6, become a part of this Constitution upon completion of the canvass of votes by the Supreme Court.

5. If two or more measures which affect the same section of a statute or of the Constitution are finally approved pursuant to this Section, or an amendment to the Constitution is finally so approved and an amendment proposed by the Legislature is ratified which affect the same section, by the voters at the same election:

(a) If all can be given effect without contradiction in substance, each shall be given effect.

(b) If one or more contradict in substance the other or others, the measure which received the largest favorable vote, and any other approved measure compatible with it, shall be given effect. If the one or more measures that contradict in substance the other or others receive the same number of favorable votes, none of the measures that contradict another shall be given effect.

6. If, at the same election as the first approval of a constitutional amendment pursuant to this Section, another amendment is finally approved pursuant to this Section, or an amendment proposed by the Legislature is ratified, which affects the same section of the Constitution but is compatible with the amendment given first approval, the Secretary of State shall publish and resubmit at the next general election the amendment given first approval as a further amendment to the section as amended by the amendment given final approval or ratified. If the amendment finally approved or ratified contradicts in substance the amendment given first approval, the Secretary of State shall not submit the amendment given first approval to the voters again.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse

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

Amendment No. 756 makes technical changes to Assembly Joint Resolution No. 6 to align it with certain provisions of Assembly Joint Resolution No. 5, as amended, revises certain allowances and expands the number of days Legislators may receive pay.

Specifically, the amendment revises provisions of the Nevada Constitution to provide that Legislators be paid for each day of service during the 120- and 60-day sessions.

It deletes provisions concerning the $60 per legislator limit for the postage appropriation authorized in the Nevada Constitution and provisions concerning the additional allowance for certain officers of $2 per day, and it clarifies that a regular legislative session convened under the act must be adjourned prior to "midnight on the clock" linked to the actual measure of time being used and observed by the general population of Nevada during the session.

Senator Horsford moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 11:31 p.m.

## SENATE IN SESSION

At 11:32 p.m.

President Krolicki presiding.

Quorum present.

### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that Assembly Joint Resolution No. 6 be taken from the General File and placed on the General File for the next legislative day on the last agenda.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 358.

Bill read third time.

The following amendment was proposed by Senator Horsford:

Amendment No. 894.

"SUMMARY—Revises provisions related to energy. (BDR 58-1146)"

"AN ACT relating to energy; creating the Renewable Energy and Energy Efficiency Authority; establishing the position of the Nevada Energy Commissioner; revising provisions related to energy and state and residential property; revising provisions related to public utility rates; revising provisions related to capacity and incentives in certain renewable energy programs; requiring the Public Utilities Commission of Nevada to adopt regulations authorizing electric utilities to recover certain costs; authorizing local governing bodies to establish improvement districts for the construction and installation of certain renewable energy projects *,* ~~[and]~~ energy efficiency projects ~~[;]~~ *and public safety projects;* abolishing the Task Force for Renewable Energy and Energy Conservation; transferring authority for the administration of the Trust Fund for Renewable Energy and Energy Conservation from the Task Force to the Authority; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1.19 of this bill creates the Renewable Energy and Energy Efficiency Authority. Sections 1.73 and 1.75 of this bill set forth certain duties of the Authority. Section 1.73 transfers the authority for administration of the Trust Fund for Renewable Energy and Energy Conservation from the Task Force for Renewable Energy and Energy Conservation to the Authority.

Section 1.21 of this bill creates the position of the Nevada Energy Commissioner. The Commissioner is the head of the Authority. Sections 1.21-1.25, 1.55-1.59, 1.63 ~~[,]~~ *and* 1.67-1.71 ~~[, 1.77 and 1.79]~~ of this bill set forth the powers and duties of the Commissioner and transfer certain duties from the Director of the Office of Energy to the Commissioner.

Section 1.27 of this bill creates the State and Local Government Panel on Renewable and Efficient Energy, which will advise the Commissioner and the Authority on issues relating to the viability and progress of energy efficiency and renewable energy retrofit projects at public buildings and schools. Section 1.35 of this bill creates the New Energy Industry Task Force, which will advise the Commissioner and the Authority on measures to promote the development of renewable energy and energy efficiency projects in this State.

Sections 1.47-1.53 and 1.61 of this bill revise the powers and duties of the Director of the Office of Energy.

Section 11.7 of this bill reduces the amount of the mill tax which is available for the use of the Public Utilities Commission of Nevada and authorizes the levying and assessment of a portion of the mill tax against electric *and natural gas* utilities for the use of the Authority and the Office of

Energy, in amounts determined by the Legislature, or the Interim Finance Committee if the Legislature is not in session. Section 20.7 of this bill requires the Commissioner and the Director of the Office of Energy to apply for and accept any money available pursuant to the American Recovery and Reinvestment Act of 2009.

Sections 1.83-9 and 20 of this bill revise provisions related to the administration of and the capacity and incentives in the Solar Energy Systems Incentive Program, the Wind Energy Systems Demonstration Program and the Waterpower Energy Systems Demonstration Program. (NRS 701B.200, 701B.260, 701B.590, 701B.620, 701B.840, 701B.850)

*Sections 1.89, 1.9, 1.91 and 1.97-3 of this bill revise provisions governing the Solar Energy Systems Incentive Program.* Section 3 of this bill provides that for each program year for the period beginning July 1, 2010, and ending on June 30, 2021, the total capacity of the Solar Energy Systems Incentive Program increases by 9 percent per program year, which additional amount of capacity must be approved for distributed generation systems. Section 2 of this bill requires the Commission to adopt regulations authorizing a utility to recover the reasonable costs incurred in carrying out and administering the installation of such distributed generation systems. Section 20.1 of this bill requires the Commission to make certain reports to the Legislature concerning the Solar Program.

*Sections 1.92, 1.93 and 4.3-5.5 of this bill revise provisions governing the Wind Energy Systems Demonstration Program. Section 5 requires the Commission to adopt regulations to carry out the Wind Demonstration Program in a manner designed to meet the goal of the Legislature of the installation of not less than 5 megawatts of wind energy systems in this State by 2012.*

*Sections 1.95 and 7.1-9 of this bill revise provisions governing the Waterpower Energy Systems Demonstration Program. Section 8 requires the Commission to carry out the Waterpower Demonstration Program in a manner designed to meet the goal of the Legislature of the installation of not less than 500 kilowatts of waterpower energy systems in this State by 2012.*

*Section 20 of this bill requires the Commission to adopt regulations to carry out the renewable energy programs consistent with the provisions of chapter 701B of NRS as amended by this bill. Section 20 also provides that the incentives offered to participants in each of the programs on July 1, 2008, must continue to be offered to participants in the program until the Commission establishes different incentives. Section 20 further requires that any capacity from previous program years which was authorized for the Solar Energy Systems Incentive Program and which remains unallocated on July 1, 2009, be allocated as soon as practicable to qualified applicants who were placed on the prioritized waiting list established pursuant to the former provisions of NRS 701B.260 before July 1, 2009.*

Section 11 of this bill revises provisions governing the allocation of certain money for a program to improve energy conservation and energy efficiency in certain residential properties. (NRS 702.275)

Section 11.1 of this bill authorizes the Commission, within the limits of Legislative authorization, to fix the salaries of certain professional, technical and operational personnel.

Section 11.25 of this bill requires the Commission to adopt regulations requiring electric utilities to provide certain information to retail customers concerning the safe disposal and recycling of electronic waste, electrical systems and other waste, including, without limitation, compact fluorescent light bulbs.

Section 11.3 of this bill requires the Commission to adopt regulations authorizing an electric utility to recover ~~[a portion of its lost revenues]~~ *an amount* that is attributable to ~~[decreases in customer consumption and loads that are]~~ *the measurable and verifiable effects* associated with the implementation by the electric utility of energy efficiency and conservation programs approved by the Commission.

Section 12 of this bill amends provisions related to rates of public utilities. (NRS 704.110)

Sections 18.1-18.9 of this bill authorize the governing body of a county, city or town to establish an improvement district for the construction and installation of a renewable energy project*,* ~~[or]~~ an energy efficiency project ~~[.]~~ *or a public safety project.*

Section 19 of this bill amends provisions related to tracking the use of energy in buildings owned by the State or occupied by a state agency. (NRS 331.095)

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

Section 1. (Deleted by amendment.)

Sec. 1.11. Chapter 701 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.13 to 1.41, inclusive, of this act.

Sec. 1.13. *"Authority" means the Renewable Energy and Energy Efficiency Authority created by section 1.19 of this act.*

Sec. 1.15. *"Commissioner" means the Nevada Energy Commissioner appointed pursuant to section 1.21 of this act.*

Sec. 1.17. *"Panel" means the State and Local Government Panel on Renewable and Efficient Energy created by section 1.27 of this act.*

Sec. 1.19. *1. The Renewable Energy and Energy Efficiency Authority is hereby created. The Commissioner is the head of the Authority.*

*2. The Authority may request assistance from the Public Utilities Commission of Nevada regarding the use of any resources of the Commission in general.*

Sec. 1.21. *1. The Governor shall appoint the Nevada Energy Commissioner as the head of the Authority, subject to confirmation by the*

*Legislature, or the Legislative Commission if the Legislature is not in session.*

*2. The Commissioner:*

*(a) Is in the unclassified service of the State;*

*(b) Serves at the pleasure of the Governor; and*

*(c) Must have experience and demonstrated expertise in one or more of the following fields:*

*(1) Financing of energy projects;*

*(2) Energy generation projects;*

*(3) Energy transmission projects;*

*(4) Professional engineering related to energy efficiency; or*

*(5) Renewable energy.*

*3. The Commissioner may, within the limits of legislative appropriations or authorizations:*

*(a) Employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of his duties and the operation of the Authority may require;*

*(b) Employ, or retain on a contract basis, legal counsel who shall:*

*(1) Be counsel and attorney for the Commissioner and the Authority in all actions, proceedings and hearings; and*

*(2) Generally aid the Authority in the performance of its duties; and*

*(c) Employ such additional personnel as may be required to carry out the duties of the Authority, who must be in the classified service of the State.*

*4. A person employed by the Commissioner pursuant to this section must be qualified by training and experience to perform the duties of his employment.*

*5. The Commissioner and the persons employed by the Commissioner shall not have any conflict of interest relating to the performance of their duties.*

Sec. 1.23. *The Commissioner shall:*

*1. Utilize all available public and private means to:*

*(a) Provide information to the public about issues relating to energy and to explain how conservation of energy and its sources may be accomplished; and*

*(b) Work with educational and research institutions, trade associations and any other public and private entities in this State to create a database for information on technological development, financing opportunities and federal and state policy developments regarding renewable energy and energy efficiency.*

*2. Encourage the development of any sources of renewable energy and any energy projects which will benefit the State and any measures which conserve or reduce the demand for energy or which result in more efficient use of energy, including, without limitation, by:*

*(a) Identifying appropriate areas in this State for the development of sources of renewable energy, based on:*

*(1) Assessments of solar, wind and geothermal potential;*

*(2) Evaluations of natural resource constraints;*

*(3) Current electric transmission infrastructure and capacity; and*

*(4) The feasibility of the construction of new electric transmission lines;*

*(b) Working with renewable energy developers to locate their projects within appropriate areas of this State, including, without limitation, assisting the developers to interact with the Bureau of Land Management, the Department of Defense and other federal agencies in:*

*(1) Expediting land leases;*

*(2) Resolving site issues; and*

*(3) Receiving permits for projects on public lands within the appropriate areas of this State;*

*(c) Coordinating the planning of renewable energy projects in appropriate areas of this State to establish a mix of solar, wind and geothermal renewable energy systems that create a reliable source of energy and maximize the use of current or future transmission lines and infrastructure; and*

*(d) Developing proposals for the financing of future electric transmission projects for renewable energy if no such financing proposals exist.*

*3. Review jointly with the Nevada System of Higher Education the policies of this State relating to the research and development of the geothermal energy resources in this State and make recommendations to the appropriate state and federal agencies concerning methods for the development of those resources.*

*4. If the Commissioner determines that it is feasible and cost-effective, enter into contracts with researchers from the Nevada System of Higher Education:*

*(a) To conduct environmental studies relating to the identification of appropriate areas in this State for the development of renewable energy resources, including, without limitation, hydrologic studies, solar resource mapping studies and wind power modeling studies; and*

*(b) For the development of technologies that will facilitate the energy efficiency of the electricity grid for this State, including, without limitation, meters that facilitate energy efficiency for consumers of electricity.*

*5. Cooperate with the Director:*

*(a) To promote energy projects that enhance the economic development of the State;*

*(b) To promote the use of renewable energy in this State;*

*(c) To promote the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy;*

*(d) To develop a comprehensive program for retrofitting public buildings in this State with energy efficiency measures; and*

*(e) If the Commissioner determines that it is feasible and cost-effective, to enter into contracts with researchers from the Nevada System of Higher Education for the design of energy efficiency and retrofit projects to carry*

*out the comprehensive program for retrofitting public buildings in this State developed pursuant to paragraph (d).*

*6. Coordinate the activities and programs of the Authority with the activities and programs of the Office of Energy, the Consumer's Advocate and the Public Utilities Commission of Nevada, and with other federal, state and local officers and agencies that promote, fund, administer or operate activities and programs related to the use of renewable energy and the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy.*

*7. Carry out all other directives concerning energy that are prescribed by the Legislature.*

Sec. 1.25. *The Commissioner may:*

*1. Administer any gifts or grants which the Authority is authorized to accept.*

*2. To the extent not inconsistent with the terms or conditions of a gift, grant, appropriation or authorization, expend money received from those gifts or grants or from any money received through legislative appropriations or authorizations to contract with qualified persons or institutions for research in the production and efficient use of energy resources.*

*3. Enter into any cooperative agreement with any federal or state agency or political subdivision.*

*4. Participate in any program established by the Federal Government relating to sources of energy and adopt regulations to carry out such a program.*

*5. Assist developers of renewable energy systems in preparing and making requests to obtain money for development through the issuance of industrial development revenue bonds pursuant to NRS 349.400 to 349.670, inclusive.*

*6. Adopt any regulations that the Commissioner determines are necessary to carry out the duties of the Commissioner or the Authority.*

*7. Within the limits of legislative appropriations and other money authorized for expenditure for such purposes, negotiate and execute agreements with public or private entities which are necessary to the exercise of the powers and duties of the Commissioner or the Authority.*

Sec. 1.27. *1. The State and Local Government Panel on Renewable and Efficient Energy is hereby created.*

*2. The Panel consists of the Commissioner and the following seven members appointed by the Commissioner:*

*(a) A representative of the State Public Works Board;*

*(b) A representative of the Housing Division of the Department of Business and Industry;*

*(c) A representative of the Buildings and Grounds Division of the Department of Administration;*

*(d) A representative of the Department of Wildlife;*

*(e) A representative of the Nevada Association of Counties or its successor organization;*

*(f) A representative of the Nevada League of Cities or its successor organization; and*

*(g) A representative of the Nevada Association of School Boards or its successor organization.*

Sec. 1.29. *1. The Commissioner is the Chairman of the Panel.*

*2. The members of the Panel shall meet at the call of the Commissioner. The Panel shall prescribe regulations for its management and government.*

*3. A majority of the members of the Panel constitutes a quorum, and a quorum may exercise all the powers conferred on the Panel.*

*4. The members of the Panel serve at the pleasure of the Commissioner.*

*5. The members of the Panel serve without compensation.*

*6. The members of the Panel who are state employees:*

*(a) Must be relieved from their duties without loss of their regular compensation to perform their duties relating to the Panel in the most timely manner practicable; and*

*(b) May not be required to make up the time they are absent from work to fulfill their obligations as members of the Panel or to take annual leave or compensatory time for the absence.*

Sec. 1.31. *The Panel:*

*1. Shall advise the Commissioner and the Authority on the viability and progress of energy efficiency and renewable energy retrofit projects at public buildings and schools; and*

*2. May apply for any available grants and accept any gifts, grants or donations to assist the Panel in carrying out its duties pursuant to this section.*

Sec. 1.33. *The Authority shall provide the personnel, facilities, equipment and supplies required by the Panel to carry out the provisions of sections 1.27 to 1.33, inclusive, of this act.*

Sec. 1.35. *1. The New Energy Industry Task Force is hereby created.*

*2. The Task Force consists of the Commissioner and the following eight members who must be appointed by the ~~[Commissioner:]~~ Commissioner subject to the review and approval of the appointments by the Legislature, or the Legislative Commission if the Legislature is not in session:*

*(a) A representative of the large-scale solar energy industry in this State;*

*(b) A representative of the geothermal energy industry in this State;*

*(c) A representative of the wind energy industry in this State;*

*(d) A representative of the distributed generation industry, energy efficiency equipment and installation industry or manufacturers of equipment for renewable energy power plants in this State;*

*(e) A representative of an electric utility in this State;*

*(f) A representative of an organization in this State that advocates on behalf of environmental or public lands issues who has expertise in or knowledge of environmental or public lands issues;*

*(g) A representative of a labor organization in this State; and*

*(h) A representative of an organization that represents contractors in this State.*

Sec. 1.37. *1. The Commissioner is the Chairman of the Task Force.*

*2. The members of the Task Force shall meet at the call of the Commissioner. The Task Force shall prescribe regulations for its management and government.*

*3. A majority of the members of the Task Force constitutes a quorum, and a quorum may exercise all the powers conferred on the Task Force.*

*4. The members of the Task Force serve at the pleasure of the Commissioner.*

*5. The members of the Task Force serve without compensation.*

Sec. 1.39. *The Task Force:*

*1. Shall advise the Commissioner and the Authority on measures to promote the development of renewable energy and energy efficiency projects in this State; and*

*2. May apply for any available grants and accept any gifts, grants or donations to assist the Task Force in carrying out its duties pursuant to this section.*

Sec. 1.41. *The Authority shall provide the personnel, facilities, equipment and supplies required by the Task Force to carry out the provisions of sections 1.35 to 1.41, inclusive, of this act.*

Sec. 1.43. NRS 701.020 is hereby amended to read as follows:

701.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 701.030 to 701.090, inclusive, *and sections 1.13, 1.15 and 1.17 of this act* have the meanings ascribed to them in those sections.

Sec. 1.45. NRS 701.090 is hereby amended to read as follows:

701.090 "Task Force" means the *New Energy Industry* Task Force ~~[for Renewable Energy and Energy Conservation]~~ created by ~~[NRS 701.350.]~~ *section 1.35 of this act.*

Sec. 1.47. NRS 701.160 is hereby amended to read as follows:

701.160 The Director shall prepare a report concerning the status of energy in the State of Nevada and submit it to:

1. The Governor *and the Commissioner* on or before ~~[January 30]~~ *July 1* of each year; and

2. The *Director of the Legislative Counsel Bureau for transmittal to the next regular session of the* Legislature on or before ~~[January 30]~~ *July 1* of each ~~[odd-numbered]~~ *even-numbered* year.

Sec. 1.49. NRS 701.170 is hereby amended to read as follows:

701.170 The Director may:

1. Administer any gifts or grants which the Office of Energy is authorized to accept for the purposes of this chapter.

2. ~~[Expend]~~ *To the extent not inconsistent with the terms or conditions of a gift, grant or appropriation, expend* money received from those gifts or grants or from legislative appropriations to contract with qualified persons or institutions for research in the production and efficient use of energy resources.

3. Enter into any cooperative agreement with any federal or state agency or political subdivision.

4. ~~[Participate in any program established by the Federal Government relating to sources of energy and adopt regulations appropriate to that program.~~

~~5. Assist developers of renewable energy generation projects in preparing and making requests to obtain money for development through the issuance of industrial development revenue bonds pursuant to NRS 349.400 to 349.670, inclusive.~~

~~6.]~~ Adopt any regulations that the Director determines are necessary to carry out the duties of the Office of Energy pursuant to this chapter.

~~[7.]~~ *5.* Within the limits of legislative appropriations and other money authorized for expenditure for such purposes, promote, participate in the operation of, and create or cause to be created, any nonprofit corporation, pursuant to chapter 82 of NRS, which he determines is necessary or convenient for the exercise of the powers and duties of the Office of Energy. The purposes, powers and operation of the corporation must be consistent with the purposes, powers and duties of the Office of Energy.

~~[8.]~~ *6.* Within the limits of legislative appropriations and other money authorized for expenditure for such purposes, negotiate and execute agreements with public or private entities which are necessary to the exercise of the powers and duties of the Director or the Office of Energy.

Sec. 1.51. NRS 701.180 is hereby amended to read as follows:

701.180 The Director shall:

1. Acquire and analyze information relating to energy and to the supply, demand and conservation of its sources ~~[.]~~ *, including, without limitation:*

*(a) Information relating to the Solar Energy Systems Incentive Program created pursuant to NRS 701B.240 and the Wind Energy Systems Demonstration Program created pursuant to 701B.580, including, without limitation, information relating to:*

*(1) The development of distributed generation systems in this State pursuant to participation in the Solar Energy Systems Incentive Program;*

*(2) The use of carbon-based energy in residential and commercial applications due to participation in the Programs; and*

*(3) The average cost of generation on a kilowatt-hour basis for residential and commercial applications due to participation in the Programs; and*

*(b) Information relating to any money distributed pursuant to NRS 702.270.*

2. ~~[Utilize all available public and private means to provide information to the public about problems relating to energy and to explain how conservation of energy and its sources may be accomplished.~~

~~3.]~~ Review and evaluate information which identifies trends and permits forecasting of the energy available to the State. Such forecasts must include estimates on:

(a) The level of demand for energy in the State for 5-, 10- and 20-year periods;

(b) The amount of energy available to meet each level of demand;

(c) The probable implications of the forecast on the demand and supply of energy; and

(d) The sources of renewable energy and other alternative sources of energy which are available and their possible effects.

~~[4.]~~ *3.* Study means of reducing wasteful, inefficient, unnecessary or uneconomical uses of energy and encourage the maximum utilization of existing sources of energy in the State.

~~[5. Encourage the development of:~~

~~(a) Any sources of renewable energy and any other energy projects which will benefit the State; and~~

~~(b) Any measures which conserve or reduce the demand for energy or which result in more efficient use of energy.~~

~~6. In conjunction with the Desert Research Institute, review policies relating to the research and development of the State's geothermal resources and make recommendations to the appropriate state and federal agencies for establishing methods of developing the geothermal resources within the State.~~

~~7.]~~ *4.* Solicit and serve as the point of contact for grants and other money from the Federal Government , *including, without limitation, any grants and other money available pursuant to any program administered by the United States Department of Energy,* and other sources to ~~[promote:]~~ *cooperate with the Commissioner and the Authority:*

(a) ~~[Energy]~~ *To promote energy* projects that enhance the economic development of the State;

(b) ~~[The]~~ *To promote the* use of renewable energy ~~[; and]~~ *in this State;*

(c) ~~[The]~~ *To promote the* use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy ~~[.~~

~~8.]~~ *;*

*(d) To develop a comprehensive program for retrofitting public buildings in this State with energy efficiency measures; and*

*(e) If the Commissioner determines that it is feasible and cost-effective, to enter into contracts with researchers from the Nevada System of Higher Education for the design of energy efficiency and retrofit projects to carry*

*out the comprehensive program for retrofitting public buildings in this State developed pursuant to paragraph (d).*

*5.* Coordinate the activities and programs of the Office of Energy with the activities and programs of the ~~[Task Force,]~~ *Authority,* the Consumer's Advocate and the Public Utilities Commission of Nevada , and *with* other federal, state and local officers and agencies that promote, fund, administer or operate activities and programs related to the use of renewable energy and the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

~~[9.]~~ *6.* Carry out all other directives concerning energy that are prescribed by the Governor.

Sec. 1.53. NRS 701.180 is hereby amended to read as follows:

701.180 The Director shall:

1. Acquire and analyze information relating to energy and to the supply, demand and conservation of its sources, including, without limitation:

(a) Information relating to the Solar Energy Systems Incentive Program created pursuant to NRS 701B.240 ~~[and the Wind Energy Systems Demonstration Program created pursuant to 701B.580,]~~ including, without limitation, information relating to:

(1) The development of distributed generation systems in this State pursuant to participation in the Solar Energy Systems Incentive Program;

(2) The use of carbon-based energy in residential and commercial applications due to participation in the ~~[Programs;]~~ *Program;* and

(3) The average cost of generation on a kilowatt-hour basis for residential and commercial applications due to participation in the ~~[Programs;]~~ *Program;* and

(b) Information relating to any money distributed pursuant to NRS 702.270.

2. Review and evaluate information which identifies trends and permits forecasting of the energy available to the State. Such forecasts must include estimates on:

(a) The level of demand for energy in the State for 5-, 10- and 20-year periods;

(b) The amount of energy available to meet each level of demand;

(c) The probable implications of the forecast on the demand and supply of energy; and

(d) The sources of renewable energy and other alternative sources of energy which are available and their possible effects.

3. Study means of reducing wasteful, inefficient, unnecessary or uneconomical uses of energy and encourage the maximum utilization of existing sources of energy in the State.

4. Solicit and serve as the point of contact for grants and other money from the Federal Government, including, without limitation, any grants and other money available pursuant to any program administered by the United

States Department of Energy, and other sources to cooperate with the Commissioner and the Authority:

(a) To promote energy projects that enhance the economic development of the State;

(b) To promote the use of renewable energy in this State;

(c) To promote the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy;

(d) To develop a comprehensive program for retrofitting public buildings in this State with energy efficiency measures; and

(e) If the Commissioner determines that it is feasible and cost-effective, to enter into contracts with researchers from the Nevada System of Higher Education for the design of energy efficiency and retrofit projects to carry out the comprehensive program for retrofitting public buildings in this State developed pursuant to paragraph (d).

5. Coordinate the activities and programs of the Office of Energy with the activities and programs of the Authority, the Consumer's Advocate and the Public Utilities Commission of Nevada, and with other federal, state and local officers and agencies that promote, fund, administer or operate activities and programs related to the use of renewable energy and the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

6. Carry out all other directives concerning energy that are prescribed by the Governor.

Sec. 1.55. NRS 701.190 is hereby amended to read as follows:

701.190 1. The ~~[Director]~~ *Commissioner* shall prepare a comprehensive state energy plan which provides for the promotion of:

(a) Energy projects that enhance the economic development of the State;

(b) The use of renewable energy; ~~[and]~~

(c) The use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy ~~[.]~~ *; and*

*(d) A program for the safe disposal and recycling of electronic waste, electrical equipment and other waste, including, without limitation, a program for the safe disposal and recycling of compact fluorescent light bulbs.*

2. The comprehensive state energy plan must include provisions for:

(a) The assessment of the potential benefits of proposed energy projects on the economic development of the State.

(b) The education of persons and entities concerning renewable energy and measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

(c) The creation of incentives for investment in and the use of renewable energy and measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

(d) Grants and other money to establish programs and conduct activities which promote:

(1) Energy projects that enhance the economic development of the State;

(2) The use of renewable energy; ~~[and]~~

(3) The use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy ~~[.]~~ *; and*

*(4) The recycling of electronic waste, electrical equipment and other waste, including, without limitation, a program for the safe disposal and recycling of compact fluorescent light bulbs.*

(e) The development or incorporation by reference of model and uniform building and energy codes and standards which are written in language that is easy to understand and which include performance standards for conservation of energy and efficient use of energy.

(f) *The promotion of the development in this State of a curriculum for a program of renewable energy education and recycling education in kindergarten through grade 12.*

*(g) The promotion of the development by institutions of higher education in this State of research and educational programs relating to renewable energy.*

*(h)* Oversight and accountability with respect to all programs and activities described in this subsection.

~~[(g)]~~ *(i)* Any other matter that the ~~[Task Force]~~ *Commissioner* determines to be relevant to the issues of energy resources, energy use, energy conservation and energy efficiency.

Sec. 1.57. NRS 701.200 is hereby amended to read as follows:

701.200 1. The ~~[Director]~~ *Commissioner* may recommend to state agencies, local governments and appropriate private persons and entities, standards for conservation of energy and its sources and for carrying out the comprehensive state energy plan.

2. In recommending such standards, the ~~[Director]~~ *Commissioner* shall consider the usage of energy and its sources in the State and the methods available for conservation of those sources.

Sec. 1.59. NRS 701.210 is hereby amended to read as follows:

701.210 The ~~[Director]~~ *Commissioner* shall:

1. Prepare, subject to the approval of the Governor, petroleum allocation and rationing plans for possible energy contingencies. The plans shall be carried out only by executive order of the Governor.

2. Carry out and administer any federal programs which authorize state participation in fuel allocation programs.

Sec. 1.61. NRS 701.215 is hereby amended to read as follows:

701.215 *1.* The Director shall prepare a state energy reduction plan which requires state agencies, departments and other entities in the Executive Branch to reduce grid-based energy purchases for state-owned buildings by 20 percent by 2015.

*2. In accordance with, and out of any money received pursuant to, the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the*

*Interim Finance Committee may determine an amount of money to be used by the Director to fulfill the requirements of subsection 1.*

*3. The Director:*

*(a) Shall use any amount of money provided pursuant to subsection 2 to fulfill the requirements of subsection 1;*

*(b) May fulfill the requirements of subsection 1 by contracting with one or more qualified independent consultants; and*

*(c) Shall biannually file reports with the Legislative Commission that:*

*(1) Indicate the general progress of energy reduction in state buildings; and*

*(2) Identify any state agency that fails to cooperate with the Director in the design or implementation of the plan prepared pursuant to subsection 1.*

Sec. 1.63. NRS 701.220 is hereby amended to read as follows:

701.220 1. The ~~[Director]~~ *Commissioner* shall adopt regulations for the conservation of energy in buildings, including manufactured homes. Such regulations must include the adoption of the most recent version of the International Energy Conservation Code, issued by the International Code Council, and any amendments to the Code that will not materially lessen the effective energy savings requirements of the Code and are deemed necessary to support effective compliance and enforcement of the Code, and must establish the minimum standards for:

(a) The construction of floors, walls, ceilings and roofs;

(b) The equipment and systems for heating, ventilation and air-conditioning;

(c) Electrical equipment and systems;

(d) Insulation; and

(e) Other factors which affect the use of energy in a building.

➥ The regulations must provide for the adoption of the most recent version of the International Energy Conservation Code, and any amendments thereto, every third year.

2. The ~~[Director]~~ *Commissioner* may exempt a building from a standard if he determines that application of the standard to the building would not accomplish the purpose of the regulations.

3. The regulations must authorize allowances in design and construction for sources of renewable energy used to supply all or a part of the energy required in a building.

4. The standards adopted by the ~~[Director]~~ *Commissioner* are the minimum standards for the conservation of energy and energy efficiency which apply only to areas in which the governing body of the local government has not adopted standards for the conservation of energy and energy efficiency in buildings. Such governing bodies shall assist the ~~[Director]~~ *Commissioner* in the enforcement of the regulations adopted pursuant to this section.

5. The ~~[Director]~~ *Commissioner* shall solicit comments regarding the adoption of regulations pursuant to this section from:

(a) Persons in the business of constructing and selling homes;
(b) Contractors;
(c) Public utilities;
(d) Local building officials; and
(e) The general public,
➥ before adopting any regulations. The ~~[Director]~~ *Commissioner* must conduct at least three hearings in different locations in the State, after giving 30 days' notice of each hearing, before he may adopt any regulations pursuant to this section.

Sec. 1.65. NRS 701.230 is hereby amended to read as follows:

701.230 1. In a county whose population is 100,000 or more, a building whose construction began on or after October 1, 1983, must not contain a system using electric resistance for heating spaces unless:

(a) The system is merely supplementary to another means of heating;

(b) Under the particular circumstances no other primary means of heating the spaces is a feasible or economical alternative to heating by electric resistance; or

(c) The ~~[Office of Energy]~~ *Authority* determines that the present or future availability of other sources of energy is so limited as to justify the use of such a system.

2. This section does not prohibit the use of incandescent or fluorescent lighting.

Sec. 1.67. NRS 701.240 is hereby amended to read as follows:

701.240 1. The ~~[Director]~~ *Commissioner* shall develop a program to distribute money, within the limits of legislative appropriation, in the form of grants, incentives or rebates to persons to pay or defray, in whole or in part, the costs for those persons to acquire, install or improve net metering systems, if the ~~[Director]~~ *Commissioner* determines that the distribution of money to a person for that purpose will encourage, promote or stimulate:

(a) The development or use of sources of renewable energy in the State or the development of industries or technologies that use sources of renewable energy in the State;

(b) The conservation of energy in the State, the diversification of the types of energy used in the State or any reduction in the dependence of the State on foreign sources of energy;

(c) The protection of the natural resources of the State or the improvement of the environment;

(d) The enhancement of existing utility facilities or any other infrastructure in the State or the development of new utility facilities or any other infrastructure in the State; or

(e) The investment of capital or the expansion of business opportunities in the State or any growth in the economy of the State.

2. The ~~[Director]~~ *Commissioner* may adopt any regulations that are necessary to carry out the provisions of this section.

3. The ~~[Director]~~ *Commissioner* shall not distribute money to any person pursuant to this section unless:

(a) The person complies with any requirements that the ~~[Director]~~ *Commissioner* adopts by regulation; and

(b) The distribution of the money is consistent with one or more of the public purposes set forth in paragraphs (a) to (e), inclusive, of subsection 1.

4. As used in this section, "person" includes, without limitation, any state or local governmental agency or entity.

Sec. 1.69. NRS 701.250 is hereby amended to read as follows:

701.250 1. The ~~[Director]~~ *Commissioner* shall adopt regulations establishing a program for evaluating the energy consumption of residential property in this State.

2. The regulations must include, without limitation:

(a) Standards for evaluating the energy consumption of residential property; and

(b) Provisions prescribing a form to be used pursuant to NRS 113.115, including, without limitation, provisions that require a portion of the form to provide information on programs created pursuant to NRS 702.275 and other programs of improving energy conservation and energy efficiency in residential property.

3. As used in this section:

(a) "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.

(b) "Residential property" means any land in this State to which is affixed not less than one or more than four dwelling units.

Sec. 1.71. NRS 701.260 is hereby amended to read as follows:

701.260 1. Between January 1, 2012, and December 31, 2015, inclusive, no general purpose light may be sold in this State unless it produces at least 25 lumens per watt of electricity consumed.

2. On and after January 1, 2016, no general purpose light may be sold in this State unless it meets or exceeds the minimum standard of energy efficiency established by the ~~[Director]~~ *Commissioner* pursuant to subsection 3 for lumens per watt of electricity consumed.

3. The ~~[Director]~~ *Commissioner* shall adopt regulations to carry out the provisions of this section. The regulations must, without limitation:

(a) Establish a minimum standard of energy efficiency for lumens per watt of electricity consumed that must be produced by general purpose lights sold in this State on and after January 1, 2016. The minimum standard of energy efficiency established by the ~~[Director]~~ *Commissioner* must exceed 25 lumens per watt of electricity consumed.

(b) Attempt to minimize the overall cost to consumers for general purpose lighting, considering the needs of consumers relating to lighting, technological feasibility and anticipated product availability and performance.

4. As used in this section, "general purpose light" means lamps, bulbs, tubes or other devices that provide functional illumination for indoor or outdoor use. The term does not include "specialty lighting" or "lighting necessary to provide illumination for persons with special needs," as defined by the ~~[Director]~~ *Commissioner* by regulation.

Sec. 1.73. NRS 701.370 is hereby amended to read as follows:

701.370 1. The Trust Fund for Renewable Energy and Energy Conservation is hereby created in the State Treasury.

2. The ~~[Task Force]~~ *Authority* shall administer the Fund. As administrator of the Fund, the ~~[Task Force:]~~ *Authority:*

(a) Shall maintain the financial records of the Fund;

(b) Shall invest the money in the Fund as the money in other state funds is invested;

(c) Shall manage any account associated with the Fund;

(d) Shall maintain any instruments that evidence investments made with the money in the Fund;

(e) May contract with vendors for any good or service that is necessary to carry out the provisions of this section; and

(f) May perform any other duties that are necessary to administer the Fund.

3. The interest and income earned on the money in the Fund must, after deducting any applicable charges, be credited to the Fund. All claims against the Fund must be paid as other claims against the State are paid.

4. Not more than 2 percent of the money in the Fund may be used to pay the costs of administering the Fund.

5. The money in the Fund remains in the Fund and does not revert to the State General Fund at the end of any fiscal year.

6. All money that is deposited or paid into the Fund may only be expended pursuant to an allocation made by the ~~[Task Force.]~~ *Authority.* Money expended from the Fund must not be used to supplant existing methods of funding that are available to public agencies.

Sec. 1.75. NRS 701.380 is hereby amended to read as follows:

701.380 1. The ~~[Task Force]~~ *Authority* shall:

(a) ~~[Advise the Office of Energy in:~~

~~(1) The development and periodic review of the comprehensive state energy plan with regard to the use of renewable energy and the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy.~~

~~(2) The distribution of money to persons pursuant to NRS 701.240 to pay or defray, in whole or in part, the costs for those persons to acquire, install or improve net metering systems.~~

~~(b)]~~ Coordinate its activities and programs with the activities and programs of the Office of Energy, the Consumer's Advocate and the Public

Utilities Commission of Nevada , and *with* other federal, state and local officers and agencies that promote, fund, administer or operate activities and programs related to the use of renewable energy and the use of measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

~~[(c)]~~ *(b)* Spend the money in the Trust Fund for Renewable Energy and Energy Conservation to:

(1) Educate persons and entities concerning renewable energy and measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

(2) Create incentives for investment in and the use of renewable energy and measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

(3) Distribute grants and other money to establish programs and projects which incorporate the use of renewable energy and measures which conserve or reduce the demand for energy or which result in more efficient use of energy.

(4) Conduct feasibility studies, including, without limitation, any feasibility studies concerning the establishment or expansion of any grants, incentives, rebates or other programs to enable or assist persons to reduce the cost of purchasing *distributed generation systems and* on-site generation systems ~~[,]~~ *and* net metering systems ~~[and distributed generation systems]~~ that use renewable energy.

~~[(d)]~~ *(c)* Take any other actions that the ~~[Task Force]~~ *Authority* deems necessary to carry out its duties, including, without limitation, contracting with consultants, if necessary, for the purposes of program design or to assist the ~~[Task Force]~~ *Authority* in carrying out its duties.

2. The ~~[Task Force]~~ *Authority* shall prepare an annual report concerning its activities and programs and submit the report to the Legislative Commission and the Governor on or before January 30 of each year. The annual report must include, without limitation:

(a) A description of the objectives of each activity and program;

(b) An analysis of the effectiveness and efficiency of each activity and program in meeting the objectives of the activity or program;

(c) The amount of money distributed for each activity and program from the Trust Fund for Renewable Energy and Energy Conservation and a detailed description of the use of that money for each activity and program;

(d) An analysis of the coordination between the ~~[Task Force]~~ *Authority* and other officers and agencies; and

(e) Any changes planned for each activity and program.

3. As used in this section ~~[, "distributed]~~ *:*

*(a) "Distributed* generation system" means a facility or system for the generation of electricity that is in close proximity to the place where the electricity is consumed ~~[.]~~ *:*

*(1) That uses renewable energy as defined in NRS 704.7811 to generate electricity;*

*(2) That is located on the property of a customer of an electric utility;*

*(3) That is connected on the customer's side of the electricity meter;*

*(4) That provides electricity primarily to offset customer load on that property; and*

*(5) The excess generation from which is periodically exported to the grid in accordance with the provisions governing net metering systems used by customer-generators pursuant to NRS 704.766 to 704.775, inclusive.*

*(b) "Electric utility" has the meaning ascribed to it in NRS 704.7571.*

Sec. 1.77. ~~[NRS 701A.100 is hereby amended to read as follows:~~

~~701A.100 1. The [Director of the Office of Energy] *Nevada Energy Commissioner* shall adopt a Green Building Rating System for the purposes of determining the eligibility of a building or other structure for a tax abatement pursuant to NRS 701A.110.~~

~~2. The Green Building Rating System must include standards and ratings equivalent to the standards and ratings provided pursuant to the Leadership in Energy and Environmental Design Green Building Rating System, except that the standards adopted by the [Director:] *Commissioner:*~~

~~(a) Except as otherwise provided in paragraphs (b) and (c), must not include:~~

~~(1) Any standard that has not been included in the Leadership in Energy and Environmental Design Green Building Rating System for at least 2 years; or~~

~~(2) Standards for homes;~~

~~(b) Must provide reasonable exceptions based on the size of the area occupied by the building or other structure; and~~

~~(c) Must require a building or other structure to obtain:~~

~~(1) At least 3 points of credit for energy conservation to meet the equivalent of the silver level;~~

~~(2) At least 5 points of credit for energy conservation to meet the equivalent of the gold level; and~~

~~(3) At least 8 points of credit for energy conservation to meet the equivalent of the platinum level.~~

~~3. As used in this section, "home" means a building or other structure for which the principal use is as a residential dwelling for not more than four families.]~~ *(Deleted by amendment.)*

Sec. 1.79. ~~[NRS 701A.110 is hereby amended to read as follows:~~

~~701A.110 1. Except as otherwise provided in this section, the [Director] *Commissioner* shall grant a partial abatement from the portion of the taxes imposed pursuant to chapter 361 of NRS, other than any taxes imposed for public education, on a building or other structure that is determined to meet the equivalent of the silver level or higher by an independent contractor authorized to make that determination in accordance~~

~~with the Green Building Rating System adopted by the [Director] *Commissioner* pursuant to NRS 701A.100, if:~~

~~(a) No funding is provided by any governmental entity in this State for the acquisition, design or construction of the building or other structure or for the acquisition of any land therefor. For the purposes of this paragraph:~~

~~(1) Private activity bonds must not be considered funding provided by a governmental entity.~~

~~(2) The term "private activity bond" has the meaning ascribed to it in 26 U.S.C. § 141.~~

~~(b) The owner of the property:~~

~~(1) Submits an application for the partial abatement to the [Director.] *Commissioner*. If such an application is submitted for a project that has not been completed on the date of that submission and there is a significant change in the scope of the project after that date, the application must be amended to include the change or changes.~~

~~(2) Except as otherwise provided in this subparagraph, provides to the [Director,] *Commissioner*, within 48 months after applying for the partial abatement, proof that the building or other structure meets the equivalent of the silver level or higher, as determined by an independent contractor authorized to make that determination in accordance with the Green Building Rating System adopted by the [Director] *Commissioner* pursuant to NRS 701A.100. The [Director] *Commissioner* may, for good cause shown, extend the period for providing such proof.~~

~~2. As soon as practicable after the [Director] *Commissioner* receives:~~

~~(a) The application required by subsection 1, the [Director] *Commissioner* shall forward a copy of that application to the:~~

~~(1) Chief of the Budget Division of the Department of Administration;~~

~~(2) Department of Taxation;~~

~~(3) County assessor;~~

~~(4) County treasurer; and~~

~~(5) Commission on Economic Development.~~

~~(b) The application and proof required by subsection 1, the [Director] *Commissioner* shall determine whether the building or other structure is eligible for the abatement and, if so, forward a certificate of eligibility for the abatement to the:~~

~~(1) Department of Taxation;~~

~~(2) County assessor;~~

~~(3) County treasurer; and~~

~~(4) Commission on Economic Development.~~

~~3. As soon as practicable after receiving a copy of:~~

~~(a) An application pursuant to paragraph (a) of subsection 2:~~

~~(1) The Chief of the Budget Division shall publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on the State; and~~

~~(2) The Department of Taxation shall publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on each affected local government, and forward a copy of the fiscal note to each affected local government.~~

~~(b) A certificate of eligibility pursuant to paragraph (b) of subsection 2, the Department of Taxation shall forward a copy of the certificate to each affected local government.~~

~~4. The partial abatement:~~

~~(a) Must be for a duration of not more than 10 years and in an annual amount that equals, for a building or other structure that meets the equivalent of:~~

~~(1) The silver level, 25 percent of the portion of the taxes imposed pursuant to chapter 361 of NRS, other than any taxes imposed for public education, that would otherwise be payable for the building or other structure, excluding the associated land;~~

~~(2) The gold level, 30 percent of the portion of the taxes imposed pursuant to chapter 361 of NRS, other than any taxes imposed for public education, that would otherwise be payable for the building or other structure, excluding the associated land; or~~

~~(3) The platinum level, 35 percent of the portion of the taxes imposed pursuant to chapter 361 of NRS, other than any taxes imposed for public education, that would otherwise be payable for the building or other structure, excluding the associated land.~~

~~(b) Does not apply during any period in which the owner of the building or other structure is receiving another abatement or exemption pursuant to this chapter or NRS 361.045 to 361.159, inclusive, from the taxes imposed pursuant to chapter 361 of NRS.~~

~~(c) Terminates upon any determination by the [Director] *Commissioner* that the building or other structure has ceased to meet the equivalent of the silver level or higher. The [Director] *Commissioner* shall provide notice and a reasonable opportunity to cure any noncompliance issues before making a determination that the building or other structure has ceased to meet that standard. The [Director] *Commissioner* shall immediately provide notice of each determination of termination to the:~~

~~(1) Department of Taxation, who shall immediately notify each affected local government of the determination;~~

~~(2) County assessor;~~

~~(3) County treasurer; and~~

~~(4) Commission on Economic Development.~~

~~5. The [Director] *Commissioner* shall adopt regulations:~~

~~(a) Establishing the qualifications and methods to determine eligibility for the abatement;~~

~~(b) Prescribing such forms as will ensure that all information and other documentation necessary to make an appropriate determination is filed with the [Director;] *Commissioner;* and~~

~~(c) Prescribing the criteria for determining when there is a significant change in the scope of a project for the purposes of subparagraph (1) of paragraph (b) of subsection 1,~~

~~➥ and the Department of Taxation shall adopt such additional regulations as it determines to be appropriate to carry out the provisions of this section.~~

~~6. As used in this section:~~

~~(a) "Building or other structure" does not include any building or other structure for which the principal use is as a residential dwelling for not more than four families.~~

~~(b) ["Director"] *"Commissioner"* means the [Director of the Office of Energy] *Nevada Energy Commissioner* appointed pursuant to [NRS 701.150.] *section 1.21 of this act.*~~

~~(c) "Taxes imposed for public education" means:~~

~~(1) Any ad valorem tax authorized or required by chapter 387 of NRS;~~

~~(2) Any ad valorem tax authorized or required by chapter 350 of NRS for the obligations of a school district, including, without limitation, any ad valorem tax necessary to carry out the provisions of subsection 5 of NRS 350.020; and~~

~~(3) Any other ad valorem tax for which the proceeds thereof are dedicated to the public education of pupils in kindergarten through grade 12.]~~ *<u>(Deleted by amendment.)</u>*

Sec. 1.81. Chapter 701B of NRS is hereby amended by adding thereto the provisions set forth as sections 1.83 to 1.95, inclusive, of this act.

Sec. 1.83. ~~*["Authority" means the Renewable Energy and Energy Efficiency Authority created by section 1.19 of this act.]*~~ *<u>(Deleted by amendment.)</u>*

Sec. 1.85. ~~*["Authority" means the Renewable Energy and Energy Efficiency Authority created by section 1.19 of this act.]*~~ *<u>(Deleted by amendment.)</u>*

Sec. 1.87. ~~*["Authority" means the Renewable Energy and Energy Efficiency Authority created by section 1.19 of this act.]*~~ *<u>(Deleted by amendment.)</u>*

Sec. 1.89. *"Distributed generation system" means a system or facility for the generation of electricity:*

*1. That uses solar energy to generate electricity;*

*2. That is located on the property of a customer of an electric utility;*

*3. That is connected on the customer's side of the electricity meter;*

*4. That provides electricity primarily to offset customer load on that property; and*

*5. The excess generation from which is periodically exported to the grid in accordance with the provisions governing net metering systems used by customer-generators pursuant to NRS 704.766 to 704.775, inclusive.*

*Sec. 1.9. <u>1. The installation of a solar energy system on property owned or occupied by a public body pursuant to this section and NRS 701B.010 to 701B.290, inclusive, and sections 1.89 and 1.91 of this act</u>*

*shall be deemed to be a public work for the purposes of chapters 338 and 341 of NRS, regardless of whether the installation of the solar energy system is financed in whole or in part by public money.*

*2. The amount of any incentive issued by a utility relating to the installation of a solar energy system on property owned or occupied by a public body may not be used to reduce the cost of the project to an amount which would exempt the project from the requirements of NRS 338.020 to 338.090, inclusive.*

*3. As used in this section, "public body" means the State or a county, city, town, school district or any public agency of this State or its political subdivisions.*

Sec. 1.91. *1. After reviewing an application submitted pursuant to NRS 701B.250 and ensuring that the applicant meets the qualifications and requirements to be eligible to participate in the Solar Program, a utility may select the applicant for participation in the Solar Program.*

*2. Not later than 30 days after the date on which the utility selects an applicant, the utility shall provide written notice of the selection to the applicant.*

*3. After the utility selects an applicant to participate in the Solar Program, the utility may approve the solar energy system proposed by the applicant. Upon the utility's approval of the solar energy system:*

*(a) The utility shall provide to the applicant notice of the approval and the amount of incentive for which the solar energy system is eligible; and*

*(b) The applicant may install and energize the solar energy system.*

*4. Upon the completion of the installation and energizing of the solar energy system, the participant must submit to the utility an incentive claim form and any supporting information, including, without limitation, a verification of the cost of the project and a calculation of the expected system output.*

*5. Upon receipt of the incentive claim form and verification that the solar energy system is properly connected, the utility shall issue an incentive payment to the participant.*

*6. The amount of the incentive for which an applicant is eligible must be determined on the date on which the applicant is selected for participation in the Solar Program, except that an applicant forfeits his eligibility for that amount of incentive if the applicant withdraws from participation in the Solar Program or does not complete the installation of his solar energy system within 12 months after the date on which the applicant is selected for participation in the Solar Program. An applicant who forfeits his eligibility for the incentive for which the applicant was originally determined to be eligible may become eligible for an incentive only on the date on which the applicant completes the installation of his solar energy system, and the amount of the incentive for which such an applicant is eligible must be determined on the date on which the applicant completes the installation of his solar energy system.*

*Sec. 1.92. 1. The installation of a wind energy system on property owned or occupied by a public body pursuant to this section and NRS 701B.400 to 701B.650, inclusive, and section 1.93 of this act shall be deemed to be a public work for the purposes of chapters 338 and 341 of NRS, regardless of whether the installation of the wind energy system is financed in whole or in part by public money.*

*2. The amount of any incentive issued by a utility relating to the installation of a wind energy system on property owned or occupied by a public body may not be used to reduce the cost of the project to an amount which would exempt the project from the requirements of NRS 338.020 to 338.090, inclusive.*

*3. As used in this section, "public body" means the State or a county, city, town, school district or any public agency of this State or its political subdivisions.*

Sec. 1.93. *1. An applicant who wishes to participate in the Wind Demonstration Program must submit an application to a utility.*

*2. After reviewing an application submitted pursuant to subsection 1 and ensuring that the applicant meets the qualifications and requirements to be eligible to participate in the Program, a utility may select the applicant for participation in the Program.*

*3. Not later than 30 days after the date on which the utility selects an applicant, the utility shall provide written notice of the selection to the applicant.*

*4. After the utility selects an applicant to participate in the Program, the utility may approve the wind energy system proposed by the applicant. Upon the utility's approval of the wind energy system:*

*(a) The utility shall provide to the applicant notice of the approval and the amount of incentive for which the wind energy system is eligible; and*

*(b) The applicant may install and energize the wind energy system.*

*5. Upon the completion of the installation and energizing of the wind energy system, the participant must submit to the utility an incentive claim form and any supporting information, including, without limitation, a verification of the cost of the project and a calculation of the expected system output.*

*6. Upon receipt of the incentive claim form and verification that the wind energy system is properly connected, the utility shall issue an incentive payment to the participant.*

*7. The amount of the incentive for which an applicant is eligible must be determined on the date on which the applicant is selected for participation in the Wind Demonstration Program, except that an applicant forfeits his eligibility for that amount of incentive if the applicant withdraws from participation in the Program or does not complete the installation of his wind energy system within 12 months after the date on which the applicant is selected for participation in the Program. An applicant who forfeits his eligibility for the incentive for which the applicant was originally determined* *to be eligible may become eligible for an incentive only on the date on which the applicant completes the installation of his wind energy system, and the amount of the incentive for which such an applicant is eligible must be determined on the date on which the applicant completes the installation of his wind energy system.*

Sec. 1.95. *1. An applicant who wishes to participate in the Waterpower Demonstration Program must submit an application to a utility.*

*2. After reviewing an application submitted pursuant to subsection 1 and ensuring that the applicant meets the qualifications and requirements to be eligible to participate in the Program, a utility may select the applicant for participation in the Program.*

*3. Not later than 30 days after the date on which the utility selects an applicant, the utility shall provide written notice of the selection to the applicant.*

*4. After the utility selects an applicant to participate in the Program, the utility may approve the waterpower energy system proposed by the applicant. Upon the utility's approval of the waterpower energy system:*

*(a) The utility shall provide to the applicant notice of the approval and the amount of incentive for which the waterpower energy system is eligible; and*

*(b) The applicant may construct the waterpower energy system.*

*5. Upon the completion of the construction of a waterpower energy system, the participant must submit to the utility an incentive claim form and any supporting information, including, without limitation, a verification of the cost of the project and a calculation of the expected system output.*

*6. Upon receipt of the incentive claim form and verification that the waterpower energy system is properly connected, the utility shall issue an incentive payment to the participant.*

*7. The amount of the incentive for which an applicant is eligible must be determined on the date on which the applicant is selected for participation in the Waterpower Demonstration Program, except that an applicant forfeits his eligibility for that amount of incentive if the applicant withdraws from participation in the Program or does not complete the construction of his waterpower energy system within 12 months after the date on which the applicant is selected for participation in the Program. An applicant who forfeits his eligibility for the incentive for which the applicant was originally determined to be eligible may become eligible for an incentive only on the date on which the applicant completes the construction of his waterpower energy system, and the amount of the incentive for which such an applicant is eligible must be determined on the date on which the applicant completes the construction of his waterpower energy system.*

Sec. 1.97. NRS 701B.020 is hereby amended to read as follows:

701B.020 As used in NRS 701B.010 to 701B.290, inclusive, *and sections 1.83, 1.89 , 1.9 and 1.91 of this act,* unless the context otherwise requires, the words and terms defined in NRS 701B.030 to 701B.180, inclusive*, and sections 1.83 and 1.89 of this act* have the meanings ascribed to them in those sections.

Sec. 1.99. NRS 701B.080 is hereby amended to read as follows:

701B.080 "Participant" means a person who has been selected by ~~[the]~~ ~~[Task Force]~~ ~~*[Commission]*~~ *a utility* to participate in the Solar Program.

Sec. 2. NRS 701B.200 is hereby amended to read as follows:

701B.200 The Commission shall adopt regulations necessary to carry out the provisions of NRS 701B.010 to 701B.290, inclusive*, and sections 1.83, 1.89 , 1.9 and 1.91 of this act,* including, without limitation, regulations that *:* ~~[establish:]~~

1. ~~[The]~~ *Establish the* type of incentives available to participants in the Solar Program and the level or amount of those incentives ~~[;]~~ *, except that the level or amount of an incentive available in a particular program year must not be based upon whether the incentive is for unused capacity reallocated from a past program year pursuant to paragraph* ~~*[(c)]*~~ *(b) of subsection 2 of NRS 701B.260. The regulations must provide that the level or amount of the incentives must decline over time as the cost of solar energy systems and distributed generation systems decline.*

2. ~~[The]~~ *Establish the* requirements for a utility's annual plan for carrying out and administering the Solar Program. A utility's annual plan must include, without limitation:

(a) A detailed plan for advertising the Solar Program;

(b) A detailed budget and schedule for carrying out and administering the Solar Program;

(c) A detailed account of administrative processes and forms that will be used to carry out and administer the Solar Program, including, without limitation, a description of the application process and copies of all applications and any other forms that are necessary to apply for and participate in the Solar Program;

(d) A detailed account of the procedures that will be used for inspection and verification of a participant's solar energy system and compliance with the Solar Program;

(e) A detailed account of training and educational activities that will be used to carry out and administer the Solar Program; and

(f) Any other information required by the Commission.

*3. Authorize a utility to recover the reasonable costs incurred in carrying out and administering the installation of distributed generation systems pursuant to paragraph (b) of subsection 1 of NRS 701B.260.*

Sec. 2.3. NRS 701B.210 is hereby amended to read as follows:

701B.210 The Commission shall adopt regulations that establish:

1. The qualifications and requirements an applicant must meet to be eligible to participate in each applicable category of:

(a) School property;

(b) Public and other property; and

(c) Private residential property and small business property; and

2. The form and content of the master application. ~~[which] [a utility] *[the Authority* must submit to the] [Task Force] *[Commission* pursuant to NRS 701B.250.]~~

Sec. 2.5. NRS 701B.240 is hereby amended to read as follows:

701B.240 1. The Solar Energy Systems Incentive Program is hereby created.

2. The Solar Program must have three categories as follows:

(a) School property;

(b) Public and other property; and

(c) Private residential property and small business property.

3. To be eligible to participate in the Solar Program, a person must:

(a) Meet the qualifications established by the Commission pursuant to NRS 701B.210;

(b) Submit an application to a utility ~~*[the Authority]*~~ and be selected by the ~~[Task Force]~~ *Commission* for inclusion in the Solar Program pursuant to NRS 701B.250 and 701B.260;

(c) When installing the solar energy system, use an installer who has been issued a classification C-2 license with the appropriate subclassification by the State Contractors' Board pursuant to the regulations adopted by the Board; and

(d) If the person will be participating in the Solar Program in the category of school property or public and other property, provide for the public display of the solar energy system, including, without limitation, providing for public demonstrations of the solar energy system and for hands-on experience of the solar energy system by the public.

Sec. 2.7. NRS 701B.250 is hereby amended to read as follows:

701B.250 1. If an applicant desires to participate in the Solar Program, ~~[for a program year,]~~ the applicant must submit an application to a utility. ~~*[the Authority*. If an applicant desires to participate in the category of school property or public and other property, the applicant may submit an application for multiple program years, not to exceed 5 years.~~

~~2. Each year on or before the date established by the Commission, *the Authority shall submit to* a]~~

*2. A* utility shall ~~*[for]*~~ review each application submitted pursuant to subsection 1 to ensure that the applicant meets the qualifications and requirements to be eligible to participate in the Solar Program . ~~[and]~~

~~*[3. Each year on or before the date established by the Commission, a utility shall submit its recommendations to the Authority for each application submitted for its review pursuant to subsection 2.*~~

~~*4. Upon receipt of the recommendations of the utility pursuant to subsection 3, the Authority shall* submit to the]~~ [Task Force:] ~~*[Commission:*~~

~~(a) *The Authority's recommendations as to which applications should be approved for participation in the Solar Program;*~~

~~*(b)* The utility's recommendations as to which applications should be approved for participation in the Solar Program; and]~~

~~[(b)]~~ ~~*[(c)* A master application containing all the applications recommended by the utility.]~~

~~[3.]~~ ~~*[5.* At any time after submitting an application to]~~ ~~[a utility,]~~ ~~*[the Authority*, an applicant may install or energize his solar energy system if the solar energy system meets all applicable building codes and all applicable requirements of the utility as approved by the Commission. An applicant who installs or energizes his solar energy system under such circumstances remains eligible to participate in the Solar Program, and the installation or energizing of the solar energy system does not alter the applicant's status on the list of participants or the prioritized waiting list pursuant to NRS 701B.260.]~~

Sec. 3. NRS 701B.260 is hereby amended to read as follows:

701B.260 1. Except as otherwise provided in this section, the Commission may approve, for ~~[a]~~ *:*

*(a) The* program year ~~[,]~~ *beginning July 1, 2009,* solar energy systems:

~~[(a)]~~ *(1)* Totaling 2,000 kilowatts of capacity for school property;

~~[(b)]~~ *(2)* Totaling 760 kilowatts of capacity for public and other property; and

~~[(c)]~~ *(3)* Totaling 1,000 kilowatts of capacity for private residential property and small business property ~~[.]~~ *; and*

*(b) Each program year for the period beginning July 1, 2010, and ending on June 30, 2021, an additional 9 percent of the sum of the total allocated capacities of all the categories described in paragraph (a) which must be approved for distributed generation systems.*

2. If the capacity allocated to any category for a program year is not fully subscribed by participants in that category, the Commission may, in any combination it deems appropriate:

(a) ~~[Allow a utility to submit additional applications to the]~~ ~~[Task Force]~~ ~~*[Authority* from applicants who want to participate in that category;]~~ [or]

~~[(b)]~~ Reallocate any of the unused capacity in that category to any of the other categories ~~[,]~~ *; or*

~~*[(c)]*~~ *(b) Reallocate any of the unused capacity in that category to future program years within the same category.*

~~[➥ but in no case may the sum of the allocated total capacities of all the categories be greater than 3,760 kilowatts, which is the sum of the approvable total capacities of all the categories as described in subsection 1.]~~

3. To promote the installation of solar energy systems on as many school properties as possible, the Commission may not approve for use in the Solar Program a solar energy system having a generating capacity of more than 50 kilowatts if the solar energy system is or will be installed on school property on or after July 1, 2007, unless the Commission determines that approval of a solar energy system with a greater generating capacity is more practicable for a particular school property.

4. ~~[After reviewing the master application submitted by]~~ ~~[a utility]~~ ~~*[the Authority* pursuant to NRS 701B.250 and ensuring that each applicant meets~~

~~the qualifications and requirements to be eligible to participate in the Solar Program, the]~~ ~~[Task Force]~~ ~~*[Commission* shall:~~

~~(a) Within the limits of the capacity allocated to each category, select applicants to be participants in the Solar Program and place those applicants on a list of participants; and~~

~~(b) Select applicants to be placed on a prioritized waiting list to become participants in the Solar Program if any capacity within a category becomes available.~~

~~5. Not later than 30 days after the date on which the]~~ ~~[Task Force]~~ ~~*[Commission* selects an applicant to be on the list of participants or the prioritized waiting list,]~~ ~~[the utility which submitted the application to the Task Force on behalf of the applicant]~~ ~~*[the Authority* shall provide written notice of the selection to the applicant.~~

~~6. After the]~~ ~~[Task Force]~~ ~~*[Commission* selects an applicant to be on the list of participants, the]~~ ~~[utility which submitted the application to the Task Force on behalf of the applicant]~~ ~~*[Authority* may approve the solar energy system proposed by the applicant. Except as otherwise provided in subsection]~~ ~~[3]~~ ~~*[5* of NRS 701B.250, immediately upon the]~~ ~~[utility's]~~ ~~*[Authority's* approval of the solar energy system, the applicant may install and energize the solar energy system.~~

~~*7.]*~~ *The Commission shall not authorize the payment of an incentive for the installation of a* <u>*solar energy system or*</u> *distributed generation system* ~~*[pursuant to paragraph (b) of subsection 1]*~~ *if:*

*(a) For the period beginning July 1, 2010, and ending June 30, 2013, inclusive, the payment of the incentive would cause the total amount of incentives paid* <u>*by a utility*</u> *for the installation of* <u>*solar energy systems and*</u> *distributed generation systems* ~~*[pursuant to paragraph (b) of subsection 1]*~~ *to exceed $78,260,000; and*

*(b) For the period beginning July 1, 2010, and ending June 30, 2021, the payment of the incentive would cause the total amount of incentives paid* <u>*by a utility*</u> *for the installation of* <u>*solar energy systems and*</u> *distributed generation systems* ~~*[pursuant to paragraph (b) of subsection 1]*~~ *to exceed $255,270,000.*

Sec. 4. (Deleted by amendment.)

Sec. 4.3. NRS 701B.410 is hereby amended to read as follows:

701B.410 As used in NRS 701B.400 to 701B.650, inclusive, *and sections 1.85* <u>*, 1.92*</u> *and 1.93 of this act*, unless the context otherwise requires, the words and terms defined in NRS 701B.420 to 701B.560, inclusive, *and section 1.85 of this act* have the ~~[meaning]~~ *meanings* ascribed to them in those sections.

Sec. 4.5. NRS 701B.470 is hereby amended to read as follows:

701B.470 "Participant" means a person who has been selected by ~~[the]~~ ~~[Task Force]~~ ~~*[Commission* pursuant to NRS 701B.620]~~ <u>*a utility*</u> to participate in the Wind Demonstration Program.

Sec. 4.7. NRS 701B.580 is hereby amended to read as follows:

701B.580 1. The Wind Energy Systems Demonstration Program is hereby created.

2. The Program must have four categories as follows:

(a) School property;

(b) Other public property;

(c) Private residential property and small business property; and

(d) Agricultural property.

3. To be eligible to participate in the Program, a person must:

(a) Meet the qualifications established by the Commission pursuant to NRS 701B.590;

(b) ~~[Submit an application to]~~ ~~[a utility]~~ ~~*[the Authority* and be selected by the]~~ ~~[Task Force]~~ ~~*[Commission* for inclusion in the Program pursuant to NRS 701B.610 and 701B.620;~~

~~(c)]~~ When installing the wind energy system, use an installer who has been issued a classification C-2 license with the appropriate subclassification by the State Contractors' Board pursuant to the regulations adopted by the Board; and

~~[(d)]~~ *(c)* If the person will be participating in the Program in the category of school property or other public property, provide for the public display of the wind energy system, including, without limitation, providing for public demonstrations of the wind energy system and for hands-on experience of the wind energy system by the public.

Sec. 5. NRS 701B.590 is hereby amended to read as follows:

701B.590 The Commission shall adopt regulations necessary to carry out the provisions of the Wind Energy Systems Demonstration Program Act, including, without limitation, regulations that establish:

1. The ~~[qualifications and requirements an applicant must meet to be eligible to participate in the Program in each particular category of:~~

~~(a) School property;~~

~~(b) Other public property;~~

~~(c) Private residential property and small business property; and~~

~~(d) Agricultural property.~~

~~2. The type of incentives available to participants in the Program and the level or amount of those incentives]~~ ~~[.]~~ ~~*[, except that the level or amount of an incentive available in a particular program year must be not be based upon whether the incentive is for unused capacity reallocated from a past program year pursuant to paragraph (c) of subsection 3 of NRS 701B.620.*~~

~~3. The requirements for a utility's annual plan for carrying out and administering the Program. A utility's annual plan must include, without limitation:~~

~~(a) A detailed plan for advertising the Program;~~

~~(b) A detailed budget and schedule for carrying out and administering the Program;~~

~~(c) A detailed account of administrative processes and forms that will be used to carry out and administer the Program, including, without limitation, a~~

~~description of the application process and copies of all applications and any other forms that are necessary to apply for and participate in the Program;~~

~~(d) A detailed account of the procedures that will be used for inspection and verification of a participant's wind energy system and compliance with the Program;~~

~~(e) A detailed account of training and educational activities that will be used to carry out and administer the Program; and~~

~~(f) Any other information required by the Commission.]~~
*capacity goals for the Program, which must be designed to meet the goal of the Legislature of the installation of not less than 5 megawatts of wind energy systems in this State by 2012 and the goals for each category of the Program.*

*2. A system of incentives that are based on rebates that decline as the capacity goals for the Program and the goals for each category of the Program are met. The rebates must be based on predicted energy savings.*

*3. The procedure for claiming incentives, including, without limitation, the form and content of the incentive claim form.*

Sec. 5.5. NRS 701B.610 is hereby amended to read as follows:

701B.610 1. On or before February 1, 2008, and on or before February 1 of each year thereafter, each utility shall file with the Commission its annual plan for carrying out and administering the Wind Demonstration Program within its service area for the following program year.

2. On or before July 1, 2008, and on or before July 1 of each year thereafter, the Commission shall:

(a) Review the annual plan filed by each utility for compliance with the requirements established by regulation; and

(b) Approve the annual plan with such modifications and upon such terms and conditions as the Commission finds necessary or appropriate to facilitate the Program.

~~[*3. Each year on or before the date established by the Commission, the Authority shall submit to a utility for review each application submitted to the Authority pursuant to NRS 701B.580.*~~

~~*4. Each year on or before the date established by the Commission, a utility shall submit its recommendations to the Authority for each application submitted for its review pursuant to subsection 3.*~~

~~*5.* On or before November 1, 2008, and on or before November 1 of each year thereafter,]~~ [each utility] ~~*[the Authority* shall submit to the]~~ ~~[Task Force]~~ ~~*[Commission* the]~~ [utility's] ~~[recommendations *of the Authority and each utility* as to which applications received by the]~~ [utility] ~~*[Authority* should be approved for participation in the Program. The]~~ ~~[Task Force]~~ ~~*[Commission* shall review the applications to ensure that each applicant meets the qualifications and requirements to be eligible to participate in the Program.]~~

[4.] ~~*[6.* Except as otherwise provided in NRS 701B.620, the]~~ ~~[Task Force]~~ ~~*[Commission* may approve, from among the applications~~

~~recommended by *the Authority and* each utility, wind energy systems totaling:~~

~~(a) For the program year beginning July 1, 2008:~~

~~(1) *Not more than* 500 kilowatts of capacity for school property;~~

~~(2) *Not more than* 500 kilowatts of capacity for other public property;~~

~~(3) *Not more than* 700 kilowatts of capacity for private residential property and small business property; and~~

~~(4) *Not more than* 700 kilowatts of capacity for agricultural property.~~

~~(b) For the program year beginning July 1, 2009:~~

~~(1) An additional 250 kilowatts of capacity for school property;~~

~~(2) An additional 250 kilowatts of capacity for other public property;~~

~~(3) An additional 350 kilowatts of capacity for private residential property and small business property; and~~

~~(4) An additional 350 kilowatts of capacity for agricultural property.~~

~~(c) For the program year beginning July 1, 2010:~~

~~(1) An additional 250 kilowatts of capacity for school property;~~

~~(2) An additional 250 kilowatts of capacity for other public property;~~

~~(3) An additional 350 kilowatts of capacity for private residential property and small business property; and~~

~~(4) An additional 350 kilowatts of capacity for agricultural property.]~~

Sec. 6. ~~[NRS 701B.620 is hereby amended to read as follows:~~

~~701B.620 1. Based on the applications submitted by~~ [each utility] ~~*the Authority* for a program year, the~~ [Task Force] ~~*Commission* shall:~~

~~(a) Within the limits of the capacity allocated to each category, select applicants to be participants in the Wind Demonstration Program and place those applicants on a list of participants; and~~

~~(b) Select applicants to be placed on a prioritized waiting list to become participants in the Program if any capacity within a category becomes available.~~

~~2. Not later than 30 days after the date on which the~~ [Task Force] ~~*Commission* selects an applicant to be on the list of participants or the prioritized waiting list, the~~ [utility which submitted the application to the Task Force on behalf of the applicant] ~~*Authority* shall provide written notice of the selection to the applicant.~~

~~3. If the capacity allocated to any category for a program year is not fully subscribed by participants in that category, the~~ [Task Force] ~~*Commission* may, in any combination it deems appropriate:~~

~~(a) Allow~~ [a utility] ~~*the Authority* to submit additional applications from applicants who want to participate in that category;~~ [or]

~~(b) Reallocate any of the unused capacity in that category to any of the other categories~~ [.] ~~*; or*~~

~~*(c) Reallocate any of the unused capacity in that category to future program years within the same category.*~~

~~4. At any time after submitting an application to participate in the Program to~~ [a utility,] ~~*the Authority*, an applicant may energize his wind~~

~~energy system if the wind energy system meets all applicable building codes and all applicable requirements of the utility as approved by the Commission. An applicant who energizes his wind energy system under such circumstances remains eligible to participate in the Program, and the energizing of the wind energy system does not alter the applicant's status on the list of participants or the prioritized waiting list.]~~ *(Deleted by amendment.)*

Sec. 7. (Deleted by amendment.)

Sec. 7.1. NRS 701B.700 is hereby amended to read as follows:

701B.700 NRS 701B.700 to ~~[701B.890,]~~ *701B.880,* inclusive, *and sections 1.87 and 1.95 of this act* may be cited as the Waterpower Energy Systems Demonstration Program Act.

Sec. 7.3. NRS 701B.710 is hereby amended to read as follows:

701B.710 As used in NRS 701B.700 to ~~[701B.890,]~~ *701B.880,* inclusive, *and sections 1.87 and 1.95 of this act,* unless the context otherwise requires, the words and terms defined in NRS 701B.720 to 701B.810, inclusive, *and section 1.87 of this act* have the meanings ascribed to them in those sections.

*Sec. 7.4. NRS 701B.740 is hereby amended to read as follows:*

701B.740 "Participant" means a person who has been selected by ~~[the Commission]~~ *a utility* to participate in the Waterpower Demonstration Program.

Sec. 7.5. NRS 701B.820 is hereby amended to read as follows:

701B.820 1. The Waterpower Energy Systems Demonstration Program is hereby created.

2. The Waterpower Demonstration Program is created for agricultural uses.

3. To be eligible to participate in the Waterpower Demonstration Program, a person must meet the qualifications established pursuant to subsection 4 , ~~[and]~~ apply to ~~*[the Authority]*~~ *a utility* and be selected by the ~~[Task Force]~~ ~~*[Commission]*~~ *utility* for inclusion in the Waterpower Demonstration Program.

4. The Commission shall adopt regulations providing for the qualifications an applicant must meet to qualify to participate in the Waterpower Demonstration Program.

Sec. 7.7. NRS 701B.830 is hereby amended to read as follows:

701B.830 ~~[The Task Force]~~ *Each utility* is responsible for the administration and delivery of the Waterpower Demonstration Program as approved by the Commission.

Sec. 8. NRS 701B.840 is hereby amended to read as follows:

701B.840 The Commission shall adopt regulations that establish:

1. The ~~[level, amount and type of incentives available for participants in the Waterpower Demonstration Program]~~ ~~[.]~~ ~~*[, except that the level or amount of an incentive available in a particular program year must be not be based upon whether the incentive is for unused capacity reallocated from a past program year pursuant to subsection 7 of NRS 701B.850.*~~

~~2. The requirements for an annual plan for the administration and delivery of the Waterpower Demonstration Program. The requirements for an annual plan must include, without limitation:~~

~~(a) An advertising plan;~~

~~(b) A detailed budget;~~

~~(c) A schedule;~~

~~(d) Administrative processes, including, without limitation, a copy of the application and process for accepting applications;~~

~~(e) An inspection and verification process;~~

~~(f) Proposed training and educational activities; and~~

~~(g) Any other information required by the Commission.]~~
*capacity goals for the Program, which must be designed to meet the goal of the Legislature of the installation of not less than 500 kilowatts of waterpower energy systems in this State by 2012 and the goals for each category of the Program.*

*2. A system of incentives that are based on rebates that decline as the capacity goals for the Program and the goals for each category of the Program are met. The rebates must be based on predicted energy savings.*

*3. The procedure for claiming incentives, including, without limitation, the form and content of the incentive claim form.*

Sec. 9. NRS 701B.850 is hereby amended to read as follows:

701B.850 1. On or before February 21, 2008, and on or before February 1 of each subsequent year, each utility shall file with the Commission for approval an annual plan for the administration and delivery of the Waterpower Demonstration Program for the program year beginning July 1, 2008, and each subsequent year thereafter.

2. On or before July 1, 2008, and on or before each July 1 of each subsequent year, the Commission shall review the annual plan for compliance with the requirements set forth by regulation of the Commission.

~~[3. *Each year on or before the date established by the Commission, the Authority shall submit to a utility for review each application submitted to the Authority pursuant to NRS 701B.820.*~~

~~*4. Each year on or before the date established by the Commission, a utility shall submit its recommendations to the Authority for each application submitted for its review pursuant to subsection 3.*~~

~~*5.* On or before November 1, 2008, and on or before November 1 of each subsequent year,]~~ [each utility] ~~*[the Authority* shall submit to the]~~ [Task Force a recommendation] ~~*[Commission the recommendations* of *the Authority and each utility as to* which applications received *by the Authority* should be accepted into the program. The]~~ [Task Force] ~~*[Commission* shall review the applications to ensure that the applicant meets the requirements adopted pursuant to subsection 4 of NRS 701B.820.]~~

[4.] ~~*[6.* The]~~ [Task Force] ~~*[Commission* may approve, from among the applications recommended by *the Authority and* each utility, waterpower energy systems totaling:~~

~~(a) For the program year beginning July 1, 2008, 200 kilowatts of capacity;~~

~~(b) For the program year beginning July 1, 2009, an additional 100 kilowatts of capacity; and~~

~~(c) For the program year beginning July 1, 2010, an additional 100 kilowatts of capacity.~~

~~*7. If the capacity allocated for a program year is not fully subscribed by participants, the Commission may reallocate any of the unused capacity to future program years.]*~~

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 702.275 is hereby amended to read as follows:

702.275 1. ~~[At the beginning of a]~~ *Before the end of each* fiscal year, *the Division of Welfare and Supportive Services shall submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means during a regular or special session of the Legislature, or the Interim Finance Committee when the Legislature is not in session, which specifies the amount of all money in the Fund which was allocated to the Division of Welfare and Supportive Services during all preceding fiscal years pursuant to NRS 702.260 and which remains unspent and unencumbered.*

*2. Based upon the report submitted pursuant to subsection 1 and any other information available, the Senate Standing Committee on Finance or the Assembly Standing Committee on Ways and Means during a regular or special session of the Legislature, or the Interim Finance Committee when the Legislature is not in session, may require the Division of Welfare and Supportive Services to distribute not more than* 30 percent of *all* the money in the Fund which was allocated to the Division of Welfare and Supportive Services during ~~[the]~~ *all* preceding fiscal ~~[year]~~ *years* pursuant to NRS 702.260 and which remains unspent and unencumbered ~~[must be distributed]~~ to the Housing Division for ~~[a program of improving energy conservation and energy efficiency in residential property.]~~ *the programs authorized by NRS 702.270.* The Housing Division may use not more than 6 percent of the money distributed pursuant to this section for its administrative expenses.

~~[2. Except as otherwise provided in NRS 702.150, after deduction for its administrative expenses, the Housing Division may use the money distributed pursuant to this section only to provide a qualified purchaser of residential property which has received a deficient evaluation on the energy consumption of the residential property pursuant to the program established in NRS 701.250 with a grant to pay for improvements designed to increase the energy conservation and energy efficiency of the residential property or to assist an eligible household in acquiring such improvements.~~

~~3. To be eligible to receive assistance from the Housing Division pursuant to this section:~~

~~(a) The purchaser of the residential property must have a household income that is not more than 80 percent of the median gross family income for the county in which the property is located, based upon the estimates of the United States Department of Housing and Urban Development of the most current median gross family income for that county; and~~

~~(b) The residential property must not meet the standards for energy consumption established pursuant to NRS 701.250.~~

~~4. The Housing Division shall adopt regulations to carry out and enforce the provisions of this section.~~

~~5. In carrying out the provisions of this section, the Housing Division shall:~~

~~(a) Solicit advice from the Division of Welfare and Supportive Services and from other knowledgeable persons;~~

~~(b) Identify and implement appropriate delivery systems to distribute money from the Fund and to provide other assistance pursuant to this section;~~

~~(c) Coordinate with other federal, state and local agencies that provide energy assistance or conservation services to low-income persons and, to the extent allowed by federal law and to the extent practicable, use the same simplified application forms as those other agencies;~~

~~(d) Encourage other persons to provide resources and services, including, to the extent practicable, schools and programs that provide training in the building trades and apprenticeship programs;~~

~~(e) Establish a process for evaluating the program conducted pursuant to this section;~~

~~(f) Develop a process for making changes to the program; and~~

~~(g) Engage in annual planning and evaluation processes with the Division of Welfare and Supportive Services as required by NRS 702.280.]~~

Sec. 11.1. NRS 703.130 is hereby amended to read as follows:

703.130 1. The Commission shall appoint a Deputy Commissioner who shall serve in the unclassified service of the State.

2. The Commission shall appoint a Secretary who shall perform such administrative and other duties as are prescribed by the Commission. The Commission shall also appoint an Assistant Secretary.

3. *The Commission shall, within the limits of legislative appropriations or authorizations, employ and fix the salaries of or contract for the services of such professional, technical and operational personnel and consultants as the execution of its duties and the operation of the Commission may require.*

*4.* The Commission may employ such other clerks, experts or engineers as may be necessary.

~~[4.]~~ *5.* Except as otherwise provided in subsection ~~[5,]~~ *6,* the Commission:

(a) May appoint one or more hearing officers for a period specified by the Commission to conduct proceedings or hearings that may be conducted by the Commission pursuant to NRS 702.160 and 702.170 and chapters 704, 704A, 704B, 705, 708 and 711 of NRS.

(b) Shall prescribe by regulation the procedure for appealing a decision of a hearing officer to the Commission.

~~[5.]~~ *6.* The Commission shall not appoint a hearing officer to conduct proceedings or hearings:

(a) In any matter pending before the Commission pursuant to NRS 704.7561 to 704.7595, inclusive; or

(b) In any matter pending before the Commission pursuant to NRS 704.061 to 704.110, inclusive, in which an electric utility has filed a general rate application or an annual deferred energy accounting adjustment application.

~~[6.]~~ *7.* As used in this section, "electric utility" has the meaning ascribed to it in NRS 704.187.

Sec. 11.2. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 11.25 and 11.3 of this act.

Sec. 11.25. *1. The Commission shall adopt regulations requiring each electric utility to disclose to its retail customers information about the safe disposal and recycling of electronic waste, electrical systems and other waste, including, without limitation, compact fluorescent light bulbs, in accordance with the comprehensive state energy plan established by the Nevada Energy Commissioner pursuant to NRS 701.190. The disclosure must:*

*(a) Be in a standard, uniform format established by the Commission by regulation; and*

*(b) Be included:*

*(1) At least two times each calendar year, as an insert in the bills that the electric utility sends to its retail customers; and*

*(2) If the electric utility maintains a website on the Internet or any successor to the Internet, on that website.*

*2. As used in this section, "electric utility" has the meaning ascribed to it in NRS 704.187.*

Sec. 11.3. *1. The Commission shall adopt regulations authorizing an electric utility to recover* *an amount based on* *the* ~~*[net revenues differential that is attributable to decreases in customer consumption and loads that are associated with]*~~ *measurable and verifiable effects of* *the implementation by the electric utility of energy efficiency and conservation programs approved by the Commission* ~~*[.*~~

~~*2. The regulations adopted pursuant to subsection 1:*~~

~~*(a) Must provide for timely cost recovery and timely earnings opportunity associated with verifiable energy efficiency savings in a manner which ensures that the earnings opportunity associated with the implementation of energy efficiency and conservation programs is not less than the earnings opportunity associated with other investments and measures to serve increased customer consumption and loads;*~~

~~*(b) Must not affect]*~~ *, which:*

*(a) Must include:*

*(1) The costs reasonably incurred by the electric utility in implementing and administering the energy efficiency and conservation programs; and*

*(2) Any financial disincentives relating to other supply alternatives caused or created by the reasonable implementation of the energy efficiency and conservation programs; and*

*(b) May include any financial incentives to support the promotion of the participation of the customers of the electric utility in the energy efficiency and conservation programs.*

*2. When considering whether to approve an energy efficiency or conservation program proposed by an electric utility as part of a plan filed pursuant to NRS 704.741, the Commission shall consider the effect of any recovery by the electric utility pursuant to this section on the rates of the customers of the electric utility.*

*3. The regulations adopted pursuant to this section must not:*

*(a) Affect the electric utility's incentives and allowed returns in areas not affected by the implementation of energy efficiency and conservation programs; [*

~~*(c) Must not discourage advanced pricing methodologies that encourage energy conservation by customers of the electric utility;*~~

~~*(d) Must provide that the effect to the customers of the electric utility must be apportioned fairly among all customers who receive energy from the transmission and distribution facilities of the electric utility;*~~

~~*(e) Must authorize the electric utility to recover its costs and net revenues differential through a rate that is adjusted annually; and*~~

~~*(f) May provide for additional incentives for the electric utility to encourage customers to participate in energy efficiency and conservation programs approved by the Commission.*~~

~~*3.]*~~ *or*

*(b) Authorize the electric utility to earn more than the rate of return authorized by the Commission in the most recently completed rate case of the electric utility.*

*4. As used in this section, "electric utility" has the meaning ascribed to it in NRS 704.187.*

Sec. 11.5. NRS 704.021 is hereby amended to read as follows:

704.021 "Public utility" or "utility" does not include:

1. Persons engaged in the production and sale of natural gas, other than sales to the public, or engaged in the transmission of natural gas other than as a common carrier transmission or distribution line or system.

2. Persons engaged in the business of furnishing, for compensation, water or services for the disposal of sewage, or both, to persons within this State if:

(a) They serve 25 persons or less; and

(b) Their gross sales for water or services for the disposal of sewage, or both, amounted to $25,000 or less during the immediately preceding 12 months.

3. Persons not otherwise engaged in the business of furnishing, producing or selling water or services for the disposal of sewage, or both, but who sell or furnish water or services for the disposal of sewage, or both, as an accommodation in an area where water or services for the disposal of sewage, or both, are not available from a public utility, cooperative corporations and associations or political subdivisions engaged in the business of furnishing water or services for the disposal of sewage, or both, for compensation, to persons within the political subdivision.

4. Persons who are engaged in the production and sale of energy, including electricity, to public utilities, cities, counties or other entities which are reselling the energy to the public.

5. Persons who are subject to the provisions of NRS 590.465 to 590.645, inclusive.

6. Persons who are engaged in the sale or use of special fuel as defined in NRS 366.060.

7. Persons who provide water from water storage, transmission and treatment facilities if those facilities are for the storage, transmission or treatment of water from mining operations.

8. Persons who are video service providers, as defined in NRS 711.151, except for those operations of the video service provider which consist of providing a telecommunication service to the public, in which case the video service provider is a public utility only with regard to those operations of the video service provider which consist of providing a telecommunication service to the public.

*9. Persons who for compensation own or operate individual systems which use renewable energy to generate electricity and sell the electricity generated from those systems to not more than one customer of the public utility per individual system if each individual system is:*

*(a) Located on the premises of another person;*

*(b) Used to produce not more than 150 percent of that other person's requirements for electricity on an annual basis for the premises on which the individual system is located; and*

*(c) Not part of a larger system that aggregates electricity generated from renewable energy for resale or use on premises other than the premises on which the individual system is located.*

➥ *As used in this subsection, "renewable energy" has the meaning ascribed to it in NRS 704.7811.*

Sec. 11.7. NRS 704.033 is hereby amended to read as follows:

704.033 1. Except as otherwise provided in subsection 6, the Commission shall levy and collect an annual assessment from all public utilities, providers of discretionary natural gas service and alternative sellers subject to the jurisdiction of the Commission.

2. Except as otherwise provided in subsections 3 and 4, the annual assessment must be:

(a) For the use of the Commission, not more than ~~[3.50]~~ *2.50* mills; ~~[and]~~

(b) For the use of the Consumer's Advocate, not more than 0.75 mills ~~[,]~~ *;*

*(c) For the use of the Renewable Energy and Energy Efficiency Authority, not more 0.925 mills; and*

*(d) For the use of the Office of Energy, not more than 0.075 mills,*

➥ on each dollar of gross operating revenue derived from the intrastate operations of such utilities, providers of discretionary natural gas service and alternative sellers in the State of Nevada. The total annual assessment must be not more than 4.25 mills.

3. The levy ~~[for]~~ *:*

*(a) For* the use of the Consumer's Advocate must not be assessed against railroads ~~[.]~~ *;*

*(b) For the use of the Renewable Energy and Energy Efficiency Authority must be assessed only against ~~[electric utilities;]~~ utilities that provide electricity or natural gas in this State; and*

*(c) For the use of the Office of Energy must be assessed only against ~~[electric utilities.]~~ utilities that provide electricity or natural gas in this State.*

4. The minimum assessment in any 1 year must be $100.

5. The gross operating revenue of the utilities must be determined for the preceding calendar year. In the case of:

(a) Telecommunication providers, except as provided in paragraph (c), the revenue shall be deemed to be all intrastate revenues.

(b) Railroads, the revenue shall be deemed to be the revenue received only from freight and passenger intrastate movements.

(c) All public utilities, providers of discretionary natural gas service and alternative sellers, the revenue does not include the proceeds of any commodity, energy or service furnished to another public utility, provider of discretionary natural gas service or alternative seller for resale.

6. Providers of commercial mobile radio service are not subject to the annual assessment and, in lieu thereof, shall pay to the Commission an annual licensing fee of $200.

*7. The amount of the annual assessment which the Commission must levy and collect for the use of the Renewable Energy and Energy Efficiency Authority pursuant to paragraph (c) of subsection 2 and the Office of Energy pursuant to paragraph (d) of subsection 2 must be determined by:*

*(a) The Legislature if the Legislature is in session; or*

*(b) The Interim Finance Committee if the Legislature is not in session.*

~~[ *8. As used in this section, "electric utility" has the meaning ascribed to it in NRS 704.187.]*~~

Sec. 12. NRS 704.110 is hereby amended to read as follows:

704.110 Except as otherwise provided in NRS 704.075 and 704.68861 to 704.68887, inclusive, or as may otherwise be provided by the Commission pursuant to NRS 704.095 or 704.097:

1. If a public utility files with the Commission an application to make changes in any schedule, including, without limitation, changes that will result in a discontinuance, modification or restriction of service, the

Commission shall investigate the propriety of the proposed changes to determine whether to approve or disapprove the proposed changes. If an electric utility files such an application and the application is a general rate application or an annual deferred energy accounting adjustment application, the Consumer's Advocate shall be deemed a party of record.

2. Except as otherwise provided in subsection 3, if a public utility files with the Commission an application to make changes in any schedule, the Commission shall, not later than 210 days after the date on which the application is filed, issue a written order approving or disapproving, in whole or in part, the proposed changes.

3. If a public utility files with the Commission a general rate application, the public utility shall submit with its application a statement showing the recorded results of revenues, expenses, investments and costs of capital for its most recent 12 months for which data were available when the application was prepared. Except as otherwise provided in subsection 4, in determining whether to approve or disapprove any increased rates, the Commission shall consider evidence in support of the increased rates based upon actual recorded results of operations for the same 12 months, adjusted for increased revenues, any increased investment in facilities, increased expenses for depreciation, certain other operating expenses as approved by the Commission and changes in the costs of securities which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within 6 months after the last month of those 12 months, but the public utility shall not place into effect any increased rates until the changes have been experienced and certified by the public utility to the Commission and the Commission has approved the increased rates. The Commission shall also consider evidence supporting expenses for depreciation, calculated on an annual basis, applicable to major components of the public utility's plant placed into service during the recorded test period or the period for certification as set forth in the application. Adjustments to revenues, operating expenses and costs of securities must be calculated on an annual basis. Within 90 days after the date on which the certification required by this subsection is filed with the Commission, or within the period set forth in subsection 2, whichever time is longer, the Commission shall make such order in reference to the increased rates as is required by this chapter. The following public utilities shall each file a general rate application pursuant to this subsection based on the following schedule:

(a) An electric utility that primarily serves less densely populated counties shall file a general rate application not later than 5 p.m. on or before the first Monday in December 2007, and at least once every 36 months thereafter.

(b) An electric utility that primarily serves densely populated counties shall file a general rate application not later than 5 p.m. on or before the first Monday in December 2008, and at least once every 36 months thereafter.

(c) A public utility that furnishes water for municipal, industrial or domestic purposes or services for the disposal of sewage, or both, which had an annual gross operating revenue of $500,000 or more for at least 1 year during the immediately preceding 3 years and which had not filed a general rate application with the Commission on or after July 1, 2005, shall file a general rate application on or before June 30, 2008, and at least once every 36 months thereafter unless waived by the Commission pursuant to standards adopted by regulation of the Commission.

(d) A public utility that furnishes water for municipal, industrial or domestic purposes or services for the disposal of sewage, or both, which had an annual gross operating revenue of $500,000 or more for at least 1 year during the immediately preceding 3 years and which had filed a general rate application with the Commission on or after July 1, 2005, shall file a general rate application on or before June 30, 2009, and at least once every 36 months thereafter unless waived by the Commission pursuant to standards adopted by regulation of the Commission.

➥ The Commission shall adopt regulations setting forth standards for waivers pursuant to paragraphs (c) and (d) and for including the costs incurred by the public utility in preparing and presenting the general rate application before the effective date of any change in rates.

4. In addition to submitting the statement required pursuant to subsection 3, a public utility may submit with its general rate application a statement showing the effects, on an annualized basis, of all expected changes in circumstances. If such a statement is filed, it must include all increases and decreases in revenue and expenses which may occur within 210 days after the date on which its general rate application is filed with the Commission if such expected changes in circumstances are reasonably known and are measurable with reasonable accuracy. If a public utility submits such a statement, the public utility has the burden of proving that the expected changes in circumstances set forth in the statement are reasonably known and are measurable with reasonable accuracy. The Commission shall consider expected changes in circumstances to be reasonably known and measurable with reasonable accuracy if the expected changes in circumstances consist of specific and identifiable events or programs rather than general trends, patterns or developments, have an objectively high probability of occurring to the degree, in the amount and at the time expected, are primarily measurable by recorded or verifiable revenues and expenses and are easily and objectively calculated, with the calculation of the expected changes relying only secondarily on estimates, forecasts, projections or budgets. If the Commission determines that the public utility has met its burden of proof:

(a) The Commission shall consider the statement submitted pursuant to this subsection and evidence relevant to the statement, including all reasonable projected or forecasted offsets in revenue and expenses that are directly attributable to or associated with the expected changes in circumstances under consideration, in addition to the statement required pursuant to subsection 3 as evidence in establishing just and reasonable rates for the public utility; and

(b) The public utility is not required to file with the Commission the certification that would otherwise be required pursuant to subsection 3.

5. If a public utility files with the Commission an application to make changes in any schedule and the Commission does not issue a final written order regarding the proposed changes within the time required by this section, the proposed changes shall be deemed to be approved by the Commission.

6. If a public utility files with the Commission a general rate application, the public utility shall not file with the Commission another general rate application until all pending general rate applications filed by that public utility have been decided by the Commission unless, after application and hearing, the Commission determines that a substantial financial emergency would exist if the public utility is not permitted to file another general rate application sooner. The provisions of this subsection do not prohibit the public utility from filing with the Commission, while a general rate application is pending, an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale pursuant to subsection 7, a quarterly rate adjustment pursuant to subsection 8 or 9, any information relating to deferred accounting requirements pursuant to NRS 704.185 or an annual deferred energy accounting adjustment application pursuant to NRS 704.187, if the public utility is otherwise authorized to so file by those provisions.

7. A public utility may file an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale once every 30 days. The provisions of this subsection do not apply to:

(a) An electric utility which is required to adjust its rates on a quarterly basis pursuant to subsection 9; or

(b) A public utility which purchases natural gas for resale and which adjusts its rates on a quarterly basis between annual rate adjustment applications pursuant to subsection 8.

8. A public utility which purchases natural gas for resale must request approval from the Commission to adjust its rates on a quarterly basis between annual rate adjustment applications based on changes in the public utility's recorded costs of natural gas purchased for resale. If the Commission approves such a request:

(a) The public utility shall file written notice with the Commission before the public utility makes a quarterly rate adjustment between annual rate adjustment applications. A quarterly rate adjustment is not subject to the requirements for notice and a hearing pursuant to NRS 703.320 or the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

(b) The public utility shall provide written notice of each quarterly rate adjustment to its customers by including the written notice with a customer's regular monthly bill. The public utility shall begin providing such written notice to its customers not later than 30 days after the date on which the public utility files its written notice with the Commission pursuant to paragraph (a). The written notice that is included with a customer's regular monthly bill:

(1) Must be printed separately on fluorescent-colored paper and must not be attached to the pages of the bill; and

(2) Must include the following:

(I) The total amount of the increase or decrease in the public utility's revenues from the rate adjustment, stated in dollars and as a percentage;

(II) The amount of the monthly increase or decrease in charges for each class of customer or class of service, stated in dollars and as a percentage;

(III) A statement that customers may send written comments or protests regarding the rate adjustment to the Commission; and

(IV) Any other information required by the Commission.

(c) The public utility shall file an annual rate adjustment application with the Commission. The annual rate adjustment application is subject to the requirements for notice and a hearing pursuant to NRS 703.320 and the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

(d) The proceeding regarding the annual rate adjustment application must include a review of each quarterly rate adjustment and a review of the transactions and recorded costs of natural gas included in each quarterly rate adjustment and the annual rate adjustment application. There is no presumption of reasonableness or prudence for any quarterly rate adjustment or for any transactions or recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application, and the public utility has the burden of proving reasonableness and prudence in the proceeding.

(e) The Commission shall not allow the public utility to recover any recorded costs of natural gas which were the result of any practice or transaction that was unreasonable or was undertaken, managed or performed imprudently by the public utility, and the Commission shall order the public utility to adjust its rates if the Commission determines that any recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application were not reasonable or prudent.

9. An electric utility shall adjust its rates on a quarterly basis based on changes in the public utility's recorded costs of purchased fuel or purchased power in the following manner:

(a) An electric utility shall file written notice with the Commission on or before August 15, 2007, and every quarter thereafter of the quarterly rate adjustment to be made by the electric utility for the following quarter. The first quarterly rate adjustment by the electric utility will take effect on October 1, 2007, and each subsequent quarterly rate adjustment will take effect every quarter thereafter. A quarterly rate adjustment is not subject to the requirements for notice and a hearing pursuant to NRS 703.320 or the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

(b) Each electric utility shall provide written notice of each quarterly rate adjustment to its customers by including the written notice with a customer's regular monthly bill. The electric utility shall begin providing such written notice to its customers not later than 30 days after the date on which the electric utility files a written notice with the Commission pursuant to paragraph (a). The written notice that is included with a customer's regular monthly bill:

(1) Must be printed separately on fluorescent-colored paper and must not be attached to the pages of the bill; and

(2) Must include the following:

(I) The total amount of the increase or decrease in the electric utility's revenues from the rate adjustment, stated in dollars and as a percentage;

(II) The amount of the monthly increase or decrease in charges for each class of customer or class of service, stated in dollars and as a percentage;

(III) A statement that customers may send written comments or protests regarding the rate adjustment to the Commission; and

(IV) Any other information required by the Commission.

(c) An electric utility shall file an annual deferred energy accounting adjustment application pursuant to NRS 704.187 with the Commission. The annual deferred energy accounting adjustment application is subject to the requirements for notice and a hearing pursuant to NRS 703.320 and the requirements for a consumer session pursuant to subsection 1 of NRS 704.069.

(d) The proceeding regarding the annual deferred energy accounting adjustment application must include a review of each quarterly rate adjustment and a review of the transactions and recorded costs of purchased fuel and purchased power included in each quarterly rate adjustment and the annual deferred energy accounting adjustment application. There is no presumption of reasonableness or prudence for any quarterly rate adjustment or for any transactions or recorded costs of purchased fuel and purchased power included in any quarterly rate adjustment or the annual deferred energy accounting adjustment application, and the electric utility has the burden of proving reasonableness and prudence in the proceeding.

(e) The Commission shall not allow the electric utility to recover any recorded costs of purchased fuel and purchased power which were the result of any practice or transaction that was unreasonable or was undertaken, managed or performed imprudently by the electric utility, and the Commission shall order the electric utility to adjust its rates if the Commission determines that any recorded costs of purchased fuel and purchased power included in any quarterly rate adjustment or the annual deferred energy accounting adjustment application were not reasonable or prudent.

10. If an electric utility files an annual deferred energy accounting adjustment application pursuant to subsection 9 and NRS 704.187 while a general rate application is pending, the electric utility shall:

(a) Submit with its annual deferred energy accounting adjustment application information relating to the cost of service and rate design; and

(b) Supplement its general rate application with the same information, if such information was not submitted with the general rate application.

11. A utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 and accepted by the Commission for acquisition or construction pursuant to NRS 704.751 and the regulations adopted pursuant thereto shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing such a facility.

12. *In regard to any rate or schedule approved or disapproved pursuant to this section, the Commission may, after a hearing:*

*(a) Upon the request of the utility, approve a new rate but delay the implementation of that new rate:*

*(1) Until a date determined by the Commission; and*

*(2) Under conditions as determined by the Commission, including, without limitation, a requirement that interest charges be included in the collection of the new rate; and*

*(b) Authorize a utility to implement a reduced rate for low-income residential customers.*

*13.* As used in this section:

(a) "Electric utility" has the meaning ascribed to it in NRS 704.187.

(b) "Electric utility that primarily serves densely populated counties" means an electric utility that, with regard to the provision of electric service, derives more of its annual gross operating revenue in this State from customers located in counties whose population is 400,000 or more than it does from customers located in counties whose population is less than 400,000.

(c) "Electric utility that primarily serves less densely populated counties" means an electric utility that, with regard to the provision of electric service, derives more of its annual gross operating revenue in this State from customers located in counties whose population is less than 400,000 than it does from customers located in counties whose population is 400,000 or more.

Sec. 13. (Deleted by amendment.)

Sec. 13.3. NRS 704.7815 is hereby amended to read as follows:

704.7815 "Renewable energy system" means:

1. A facility or energy system that ~~[:~~

~~(a) Uses]~~ *uses* renewable energy or energy from a qualified energy recovery process to generate electricity ~~[;]~~ and *:*

*(a) Uses the electricity that it generates from renewable energy or energy from a qualified energy recovery process in this State; or*

(b) Transmits or distributes the electricity that it generates from renewable energy or energy from a qualified energy recovery process ~~[via:~~

~~(1) A power line which is dedicated to the transmission or distribution of electricity generated from renewable energy or energy from a qualified energy recovery process and which is connected to a facility or system owned, operated or controlled by a provider of electric service; or~~

~~(2) A power line which is shared with not more than one facility or energy system generating electricity from nonrenewable energy and which is connected to a facility or system owned, operated or controlled by a provider of electric service.]~~ *to a provider of electric service for delivery into and use in this State.*

2. A solar energy system that reduces the consumption of electricity or any fossil fuel.

3. A net metering system used by a customer-generator pursuant to NRS 704.766 to 704.775, inclusive.

Sec. 13.5. NRS 704.7821 is hereby amended to read as follows:

704.7821 1. For each provider of electric service, the Commission shall establish a portfolio standard. The portfolio standard must require each provider to generate, acquire or save electricity from portfolio energy systems or efficiency measures in an amount that is:

(a) For calendar years 2005 and 2006, not less than 6 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.

(b) For calendar years 2007 and 2008, not less than 9 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.

(c) For calendar years 2009 and 2010, not less than 12 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.

(d) For calendar years 2011 and 2012, not less than 15 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.

(e) For calendar years 2013 and 2014, not less than 18 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.

(f) For calendar ~~[year]~~ *years* 2015 ~~[and for each calendar year thereafter,]~~ *to 2019, inclusive,* not less than 20 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.

*(g) For calendar years 2020 to 2024, inclusive, not less than 22 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.*

*(h) For calendar year 2025 and for each calendar year thereafter, not less than 25 percent of the total amount of electricity sold by the provider to its retail customers in this State during that calendar year.*

2. Except as otherwise provided in subsection 3, in addition to the requirements set forth in subsection 1, the portfolio standard for each provider must require that:

(a) Of the total amount of electricity that the provider is required to generate, acquire or save from portfolio energy systems or efficiency measures during each calendar year, not less than ~~[5]~~ *:*

*(1) Five* percent of that amount must be generated or acquired from solar renewable energy systems ~~[.]~~ *for each calendar year up to and including 2015; and*

*(2) Six percent of that amount must be generated or acquired from solar renewable energy systems for calendar year 2016 and for each calendar year thereafter.*

(b) Of the total amount of electricity that the provider is required to generate, acquire or save from portfolio energy systems or efficiency measures during each calendar year, not more than 25 percent of that amount may be based on energy efficiency measures. If the provider intends to use energy efficiency measures to comply with its portfolio standard during any calendar year, of the total amount of electricity saved from energy efficiency measures for which the provider seeks to obtain portfolio energy credits pursuant to this paragraph, at least 50 percent of that amount must be saved from energy efficiency measures installed at service locations of residential customers of the provider, unless a different percentage is approved by the Commission.

(c) If the provider acquires or saves electricity from a portfolio energy system or efficiency measure pursuant to a renewable energy contract or energy efficiency contract with another party:

(1) The term of the contract must be not less than 10 years, unless the other party agrees to a contract with a shorter term; and

(2) The terms and conditions of the contract must be just and reasonable, as determined by the Commission. If the provider is a utility provider and the Commission approves the terms and conditions of the contract between the utility provider and the other party, the contract and its terms and conditions shall be deemed to be a prudent investment and the utility provider may recover all just and reasonable costs associated with the contract.

3. The provisions of paragraphs (b) and (c) of subsection 2 do not apply to a provider of new electric resources pursuant to chapter 704B of NRS with respect to its use of an energy efficiency measure that is financed by a customer, or which is a geothermal energy system for the provision of heated water to one or more customers and which reduces the consumption of electricity or any fossil fuel, except that, of the total amount of electricity that the provider is required to generate, acquire or save from portfolio energy

systems or efficiency measures during each calendar year, not more than 25 percent of that amount may be based on energy efficiency measures.

4. If, for the benefit of one or more retail customers in this State, the provider, or the customer of a provider of new electric resources pursuant to chapter 704B of NRS, has paid for or directly reimbursed, in whole or in part, the costs of the acquisition or installation of a solar energy system which qualifies as a renewable energy system and which reduces the consumption of electricity, the total reduction in the consumption of electricity during each calendar year that results from the solar energy system shall be deemed to be electricity that the provider generated or acquired from a renewable energy system for the purposes of complying with its portfolio standard.

5. The Commission shall adopt regulations that establish a system of portfolio energy credits that may be used by a provider to comply with its portfolio standard.

6. Except as otherwise provided in subsection 7, each provider shall comply with its portfolio standard during each calendar year.

7. If, for any calendar year, a provider is unable to comply with its portfolio standard through the generation of electricity from its own renewable energy systems or, if applicable, through the use of portfolio energy credits, the provider shall take actions to acquire or save electricity pursuant to one or more renewable energy contracts or energy efficiency contracts. If the Commission determines that, for a calendar year, there is not or will not be a sufficient supply of electricity or a sufficient amount of energy savings made available to the provider pursuant to renewable energy contracts and energy efficiency contracts with just and reasonable terms and conditions, the Commission shall exempt the provider, for that calendar year, from the remaining requirements of its portfolio standard or from any appropriate portion thereof, as determined by the Commission.

8. The Commission shall adopt regulations that establish:

(a) Standards for the determination of just and reasonable terms and conditions for the renewable energy contracts and energy efficiency contracts that a provider must enter into to comply with its portfolio standard.

(b) Methods to classify the financial impact of each long-term renewable energy contract and energy efficiency contract as an additional imputed debt of a utility provider. The regulations must allow the utility provider to propose an amount to be added to the cost of the contract, at the time the contract is approved by the Commission, equal to a compensating component in the capital structure of the utility provider. In evaluating any proposal made by a utility provider pursuant to this paragraph, the Commission shall consider the effect that the proposal will have on the rates paid by the retail customers of the utility provider.

9. As used in this section:

(a) "Energy efficiency contract" means a contract to attain energy savings from one or more energy efficiency measures owned, operated or controlled by other parties.

(b) "Renewable energy contract" means a contract to acquire electricity from one or more renewable energy systems owned, operated or controlled by other parties.

(c) "Terms and conditions" includes, without limitation, the price that a provider must pay to acquire electricity pursuant to a renewable energy contract or to attain energy savings pursuant to an energy efficiency contract.

Sec. 13.7. NRS 113.115 is hereby amended to read as follows:

113.115 1. Except as otherwise provided in subsection 3, the seller shall have the energy consumption of the residential property evaluated pursuant to the program established in NRS 701.250.

2. Except as otherwise provided in subsection 4, before closing a transaction for the conveyance of residential property, the seller shall serve the purchaser with the completed evaluation required pursuant to subsection 1, if any, on a form to be provided by the ~~[Director of the Office of Energy,]~~ *Nevada Energy Commissioner*, as prescribed in regulations adopted pursuant to NRS 701.250.

3. Subsection 1 does not apply to a sale or intended sale of residential property:

(a) By foreclosure pursuant to chapter 107 of NRS.

(b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.

(c) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.

(d) If the seller and purchaser agree to waive the requirements of subsection 1.

4. If an evaluation of a residential property was completed not more than 5 years before the seller and purchaser entered into the agreement to purchase the residential property, the seller may serve the purchaser with that evaluation.

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 16.5. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 18.1. Chapter 271 of NRS is hereby amended by adding thereto the provisions set forth as sections 18.2 to 18.5, inclusive, of this act.

Sec. 18.2. *"Energy efficiency improvement" means a modification of real property that is designed to reduce the energy consumption of the real property.*

Sec. 18.3. *"Energy efficiency improvement project" means the modification of real property or the facilities or equipment on the real property that is designed to reduce the energy consumption of the real property.*

Sec. 18.4. *"Renewable energy" has the meaning ascribed to it in NRS 704.7811.*

Sec. 18.5. *"Renewable energy project" means real property, facilities and equipment used to generate electricity from renewable energy to offset customer load in whole or in part* ~~*[for]*~~ on *the* ~~*[real property]*~~ premises, *and all appurtenances and incidentals necessary, useful or desirable for any such real property, facilities and equipment.*

Sec. 18.7. NRS 271.030 is hereby amended to read as follows:

271.030 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 271.035 to 271.250, inclusive, *and sections 18.2 to 18.5, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 18.9. NRS 271.265 is hereby amended to read as follows:

271.265 1. The governing body of a county, city or town, upon behalf of the municipality and in its name, without any election, may from time to time acquire, improve, equip, operate and maintain, within or without the municipality, or both within and without the municipality:

(a) A commercial area vitalization project;

(b) A curb and gutter project;

(c) A drainage project;

(d) *An energy efficiency improvement project;*

*(e)* An off-street parking project;

~~[(e)]~~ *(f)* An overpass project;

~~[(f)]~~ *(g)* A park project;

*(h)* A public safety project;

*(i) A renewable energy project;*

~~[(g)]~~ ~~*[(i)]*~~ *(j)* A sanitary sewer project;

~~[(h)]~~ ~~*[(j)]*~~ *(k)* A security wall;

~~[(i)]~~ ~~*[(k)]*~~ *(l)* A sidewalk project;

~~[(j)]~~ ~~*[(l)]*~~ *(m)* A storm sewer project;

~~[(k)]~~ ~~*[(m)]*~~ *(n)* A street project;

~~[(l)]~~ ~~*[(n)]*~~ *(o)* A street beautification project;

~~[(m)]~~ ~~*[(o)]*~~ *(p)* A transportation project;

~~[(n)]~~ ~~*[(p)]*~~ *(q)* An underpass project;

~~[(o)]~~ ~~*[(q)]*~~ *(r)* A water project; and

~~[(p)]~~ ~~*[(r)]*~~ *(s)* Any combination of such projects.

2. In addition to the power specified in subsection 1, the governing body of a city having a commission form of government as defined in NRS 267.010, upon behalf of the municipality and in its name, without any election, may from time to time acquire, improve, equip, operate and

maintain, within or without the municipality, or both within and without the municipality:

(a) An electrical project;

(b) A telephone project;

(c) A combination of an electrical project and a telephone project;

(d) A combination of an electrical project or a telephone project with any of the projects, or any combination thereof, specified in subsection 1; and

(e) A combination of an electrical project and a telephone project with any of the projects, or any combination thereof, specified in subsection 1.

3. In addition to the power specified in subsections 1 and 2, the governing body of a municipality, on behalf of the municipality and in its name, without an election, may finance an underground conversion project with the approval of each service provider that owns the overhead service facilities to be converted.

4. In addition to the power specified in subsections 1, 2 and 3, if the governing body of a municipality in a county whose population is less than 400,000 complies with the provisions of NRS 271.650, the governing body of the municipality, on behalf of the municipality and in its name, without any election, may from time to time acquire, improve, equip, operate and maintain, within or without the municipality, or both within and without the municipality:

(a) An art project; and

(b) A tourism and entertainment project.

Sec. 19. NRS 331.095 is hereby amended to read as follows:

331.095 1. The Chief shall establish a program to track the use of energy in buildings owned by the State and ~~[may establish such a program, where appropriate, for]~~ *in* other buildings *which are* occupied by a state agency ~~[.]~~ *and whose owners comply with the program pursuant to subsection 6.*

2. The program established pursuant to this section must:

(a) Record utility bills for each building for each month and preserve those records indefinitely;

(b) Allow for the comparison of utility bills for a building from month to month and year to year;

(c) Allow for the comparison of utility bills between buildings, including comparisons between similar buildings or types of buildings;

(d) Allow for adjustments to the information based upon variations in weather conditions, the length of the billing period and other changes in relevant conditions;

(e) Facilitate identification of errors in utility bills and meter readings;

(f) Allow for the projection of costs for energy for a building; and

(g) Identify energy and cost savings associated with efforts to conserve energy.

3. The Chief may apply for any available grants and accept any gifts, grants or donations to assist in establishing and carrying out the program.

4. *In accordance with, and out of any money received pursuant to, the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the Interim Finance Committee may determine an amount of money to be used by the Chief to fulfill the requirements of subsection 1.*

*5.* To the extent that there is not sufficient money available for the support of the program, each state agency that occupies a building in which the use of energy is tracked pursuant to the program shall reimburse the Buildings and Grounds Division for the agency's proportionate share of the unfunded portion of the cost of the program. The reimbursement must be based upon the energy consumption of the respective state agencies that occupy buildings in which the use of energy is tracked.

*6. Notwithstanding any other provision of law, an owner of a building who enters into a contract with a state agency for occupancy in his building:*

*(a) If the contract is entered into before the effective date of this act, may comply with the program; and*

*(b) If the contract is entered into on or after the effective date of this act, shall, to the extent practicable as determined by the Chief, comply with the program.*

➥ *If an owner chooses not to comply with the program pursuant to paragraph (a), a state or local agency shall not, after the effective date of this act, enter into a contract for occupancy of a building owned by the owner, except that the Chief may authorize a state or local agency to enter into a contract for the occupancy of a building owned by an owner who does not comply with the program if the Chief determines that it is impracticable for the owner to comply with the program.*

Sec. 19.1. NRS 332.430 is hereby amended to read as follows:

332.430 A qualified service company shall provide to the ~~[Office of Energy within the Office of the Governor]~~ *Renewable Energy and Energy Efficiency Authority* information concerning each performance contract which the qualified service company enters into pursuant to NRS 332.300 to 332.440, inclusive, including, without limitation, the name of the project, the local government for which the project is being carried out and the expected operating cost savings. The ~~[Office of Energy]~~ *Renewable Energy and Energy Efficiency Authority* may report any energy savings realized as a result of such performance contracts to the United States Department of Energy pursuant to 42 U.S.C. § 13385.

Sec. 19.2. NRS 333A.080 is hereby amended to read as follows:

333A.080 1. The State Public Works Board shall determine those companies that satisfy the requirements of qualified service companies for the purposes of this chapter. In making such a determination, the State Public Works Board shall enlist the assistance of the staffs of the ~~[Office of Energy within the Office of the Governor,]~~ *the Renewable Energy and Energy Efficiency Authority,* the Buildings and Grounds Division of the Department of Administration and the Purchasing Division of the Department of Administration. The State Public Works Board shall prepare and issue a request for qualifications to not less than three potential qualified service companies.

2. In sending out a request for qualifications, the State Public Works Board:

(a) Shall attempt to identify at least one potential qualified service company located within this State; and

(b) May consider whether and to what extent the companies to which the request for qualifications will be sent will use local contractors.

3. The State Public Works Board shall adopt, by regulation, criteria to determine those companies that satisfy the requirements of qualified service companies. The criteria for evaluation must include, without limitation, the following areas as substantive factors to assess the capability of such companies:

(a) Design;

(b) Engineering;

(c) Installation;

(d) Maintenance and repairs associated with performance contracts;

(e) Experience in conversions to different sources of energy or fuel and other services related to operating cost-savings measures provided that is done in association with a comprehensive energy, water or waste disposal cost-savings retrofit;

(f) Monitoring projects after the projects are installed;

(g) Data collection and reporting of savings;

(h) Overall project experience and qualifications;

(i) Management capability;

(j) Ability to access long-term financing;

(k) Experience with projects of similar size and scope; and

(l) Such other factors determined by the State Public Works Board to be relevant and appropriate to the ability of a company to perform the projects.

➥ In determining whether a company satisfies the requirements of a qualified service company, the State Public Works Board shall also consider whether the company holds the appropriate licenses required for the design, engineering and construction which would be completed pursuant to a performance contract.

4. The State Public Works Board shall compile a list of those companies that it determines satisfy the requirements of qualified service companies.

Sec. 19.3. NRS 333A.140 is hereby amended to read as follows:

333A.140 A qualified service company shall provide to the ~~[Office of Energy within the Office of the Governor]~~ *Renewable Energy and Energy Efficiency Authority* information concerning each performance contract which the qualified service company enters into pursuant to this chapter, including, without limitation, the name of the project, the using agency for which the project is being carried out and the expected operating cost savings. The ~~[Office of Energy]~~ *Renewable Energy and Energy Efficiency Authority* may report any energy savings realized as a result of such performance contracts to the United States Department of Energy pursuant to 42 U.S.C. § 13385.

Sec. 19.4. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The governing body of each local government shall, within 60 days after the effective date of this section, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:*

*(a) Be developed with input from one or more energy retrofit coordinators designated pursuant to NRS 338.1907, if any.*

*(b) Include a list of specific projects. The projects must be prioritized and selected on the basis of the following criteria:*

*(1) The length of time necessary to commence the project.*

*(2) The number of workers estimated to be employed on the project.*

*(3) The effectiveness of the project in reducing energy consumption.*

*(4) The estimated cost of the project.*

*(5) Whether the project is able to be powered by or otherwise use sources of renewable energy.*

*(6) Whether the project has qualified for participation in one or more of the following programs:*

*(I) The Solar Energy Systems Incentive Program created by NRS 701B.240;*

*(II) The Renewable Energy School Pilot Program created by NRS 701B.350;*

*(III) The Wind Energy Systems Demonstration Program created by NRS 701B.580; or*

*(IV) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820.*

*(c) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private sources.*

*2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Nevada Energy Commissioner and to any other entity designated for that purpose by the Legislature.*

*3. As used in this section:*

*(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in subsection 11 of NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.*

*(b) "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:*

*(1) Biomass;*
*(2) Fuel cells;*
*(3) Geothermal energy;*
*(4) Solar energy;*
*(5) Waterpower; and*
*(6) Wind.*

➥ *The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.*

*(c) "Retrofit" means to alter, improve, modify, remodel or renovate a building, facility or structure to make that building, facility or structure more energy-efficient.*

Sec. 19.5. Chapter 396 of NRS is hereby amended by adding thereto the provisions set forth as sections 19.6 and 19.7 of this act.

Sec. 19.6. *To the extent money is available, the Nevada Renewable Energy Integration and Development Consortium of the Nevada System of Higher Education or its successor organization shall:*

*1. Serve as a resource of information concerning research that is conducted relating to renewable energy and energy efficiency in this State.*

*2. Work with the Nevada Institute for Renewable Energy Commercialization or its successor organization to establish a mechanism for transferring technology to the marketplace, including, without limitation, within the limits of available grant money, establishing support for start-up energy technology businesses and ensuring the appropriate protection of intellectual property.*

*3. Provide information concerning renewable energy and energy efficiency to the Office of Energy and the Renewable Energy and Energy Efficiency Authority.*

Sec. 19.7. *To the extent money is available, the Board of Regents shall establish within the fields of science, engineering, business administration and political science within the System programs designed to improve the ability of students in those fields to serve the renewable energy industry in this State.*

Sec. 19.8. Section 19.4 of this act is hereby amended to read as follows:

> Sec. 19.4. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:
>
> 1. The governing body of each local government shall, within 60 days after the effective date of this section, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:
>
> (a) Be developed with input from one or more energy retrofit coordinators designated pursuant to NRS 338.1907, if any.
>
> (b) Include a list of specific projects. The projects must be prioritized and selected on the basis of the following criteria:

(1) The length of time necessary to commence the project.

(2) The number of workers estimated to be employed on the project.

(3) The effectiveness of the project in reducing energy consumption.

(4) The estimated cost of the project.

(5) Whether the project is able to be powered by or otherwise use sources of renewable energy.

(6) Whether the project has qualified for participation in one or more of the following programs:

(I) The Solar Energy Systems Incentive Program created by NRS 701B.240; *or*

(II) The Renewable Energy School Pilot Program created by NRS 701B.350 . ~~[;~~

~~(III) The Wind Energy Systems Demonstration Program created by NRS 701B.580; or~~

~~(IV) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820.]~~

(c) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private sources.

2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Nevada Energy Commissioner and to any other entity designated for that purpose by the Legislature.

3. As used in this section:

(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in subsection 11 of NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

(b) "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:

(1) Biomass;

(2) Fuel cells;

(3) Geothermal energy;

(4) Solar energy;

(5) Waterpower; and

(6) Wind.

➥ The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

(c) "Retrofit" means to alter, improve, modify, remodel or renovate a building, facility or structure to make that building, facility or structure more energy-efficient.

Sec. 19.9. NRS 701.350, 701.360, 701B.170, 701B.270, 701B.530, *701B.620,* 701B.630, 701B.770 and 701B.890 are hereby repealed.

Sec. 20. *1. On or before February 1, 2010, the Public Utilities Commission of Nevada shall adopt the regulations to carry out:*

*(a) The provisions of NRS 701B.010 to 701B.290, inclusive, as amended by this act, and sections 1.89, 1.9 and 1.91 of this act;*

*(b) The provisions of NRS 701B.400 to 701B.650, inclusive, as amended by this act, and sections 1.92 and 1.93 of this act; and*

*(c) The provisions of NRS 701B.700 to 701B.880, inclusive, as amended by this act, and section 1.95 of this act.*

*2. The incentives offered to participants in the Solar Energy Systems Incentive Program on July 1, 2008, must remain in effect until the Commission establishes different incentives pursuant to the regulations adopted pursuant paragraph (a) of subsection 1.*

*3. Any capacity from previous program years which was authorized for the Solar Energy Systems Incentive Program pursuant to NRS 701B.260 and any regulations adopted pursuant thereto and which remains unallocated on July 1, 2009, must be allocated to qualified applicants who were placed on the prioritized waiting list established pursuant to NRS 701B.260 and any regulations adopted pursuant thereto before July 1, 2009, and those applicants must be offered the incentives which were offered to participants in the Solar Program on July 1, 2008.*

*4. The incentives offered to participants in the Wind Energy Systems Demonstration Program on July 1, 2008, must remain in effect until the Commission establishes different incentives pursuant to the regulations adopted pursuant to paragraph (b) of subsection 1.*

*5. The incentives offered to participants in the Waterpower Energy Systems Demonstration Program on July 1, 2008, must remain in effect until the Commission establishes different incentives pursuant to the regulations adopted pursuant to paragraph (c) of subsection 1.*

*6.* Any kilowatts of capacity that have been unused from the inceptions of the Solar Energy Systems Incentive Program, Wind Energy Systems Demonstration Program and Waterpower Energy Systems Demonstration Program pursuant to NRS 701B.260, 701B.620 and 701B.850 until the effective date of this section may be allocated pursuant to the amendatory provisions of ~~[sections 3, 6 and 9 of]~~ this act.

Sec. 20.1. On or before February 1, 2013, and on or before February 1, 2017, the Public Utilities Commission of Nevada shall submit to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a report concerning the Solar Energy Systems Incentive Program created by NRS 701B.240, including, without limitation, information concerning:

1. For each category of participants in the Solar Program, the number of solar energy systems installed;

2. The amount of funding provided by utilities for the installation of distributed generation systems pursuant to paragraph (b) of subsection 1 of NRS 701B.260;

3. Any other information relating to participation in, funding of and administration of the Solar Program which the Commission determines is relevant; and

4. Any recommendations concerning the continuation of the Solar Program and the levels of funding provided by utilities.

Sec. 20.3. ~~[The Public Utilities Commission of Nevada shall, on or before July 1, 2010, adopt such regulations as are necessary to carry out the amendatory provisions of section 3 of this act.]~~ *(Deleted by amendment.)*

Sec. 20.5. (Deleted by amendment.)

Sec. 20.7. 1. The Director of the Office of Energy shall apply for and accept any grant, appropriation, allocation or other money available pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, to assist the Director in carrying out his duties and the duties of the Office of Energy.

2. The Nevada Energy Commissioner shall apply for and accept any grant, appropriation, allocation or other money available pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5, to assist the Commissioner in carrying out his duties and the duties of the Renewable Energy and Energy Efficiency Authority.

Sec. 20.8. For the period beginning July 1, 2009, and ending June 30, 2010, the Public Utilities Commission of Nevada shall levy and collect from ~~[electric]~~ utilities *that provide electricity or natural gas in this State* the annual assessment described in NRS 704.033, as amended by section 11.7 of this act, that must be:

1. For the use of the Renewable Energy and Energy Efficiency Authority, 0.21 mills; and

2. For the use of the Office of Energy, 0.07 mills,

➥ unless the Legislature or the Interim Finance Committee establishes a different amount on or before June 15, 2009.

Sec. 20.9. ~~[1.]~~ Any regulation adopted by the Director of the Office of Energy before the effective date of this section, the responsibility for which has been transferred pursuant to the provisions of this act to the Nevada Energy Commissioner:

~~[(a)]~~ *1.* Remains in force until repealed or replaced by the Commissioner; and

~~[(b)]~~ *2.* May be enforced by the Commissioner.

~~[2. The Green Building Rating System adopted by the Director of the Office of Energy pursuant to NRS 701A.100 before the effective date of this section:~~

~~(a) Remains in force until repealed or replaced by the Nevada Energy Commissioner; and~~

~~(b) May be enforced by the Commissioner.]~~

Sec. 21. 1. This section and sections 1 to 1.51, inclusive, 1.55 to 19.7, inclusive, and 19.9 to 20.9, inclusive, of this act become effective upon passage and approval.

2. Sections 1.51, 1.85, 1.87, *1.92,* 1.93, 1.95, 4.3 to 9, inclusive, and 19.4 of this act expire by limitation on June 30, 2011.

3. Sections 1.53 and 19.8 of this act become effective on July 1, 2011.

LEADLINES OF REPEALED SECTIONS

701.350 Creation; appointment of members; qualifications for members; terms of members; vacancies; requirements and restrictions concerning members who are public officers or employees.

701.360 Selection and terms of Chairman and Vice Chairman; vacancies; quorum; meetings; members serve without compensation; per diem and travel expenses; Consumer's Advocate to provide support and assistance.

701B.170 "Task Force" defined.

701B.270 Withdrawal of participant for noncompliance; forfeiture of incentives.

701B.530 "Task Force" defined. [Effective through June 30, 2011.]

*701B.620 Procedure for selection and notification of participants; reallocation of capacity; authorization to install or energize solar energy system while application is pending. [Effective through June 30, 2011.]*

701B.630 Withdrawal of participant for noncompliance; forfeiture of incentives. [Effective through June 30, 2011.]

701B.770 "Task Force" defined. [Effective through June 30, 2011.]

701B.890 Withdrawal of participant for noncompliance. [Effective through June 30, 2011.]

Senator Horsford moved the adoption of the amendment.

Remarks by Senators Horsford, Schneider and Carlton.

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

SENATOR HORSFORD:

I would like to thank the Chair of Energy, Infrastructure and Transportation Committee for his work this Session with key energy policy bills and to thank the members of the Committee who worked hard on these policies. I would also like to thank our colleague from Washoe District 4 for his earlier presentation on Senate Bill No. 358.

This amendment brings forth some technical changes that came to our attention after the bill was processed.

Section 1.35 provides that the appointments of the members of the New Energy Industry Task Force are subject to the review and approval of the Legislature or the Legislative Commission if the Legislature is not in session. This ensures that the members of this task force appointed by the Energy Commissioner are committed to our legislative goal of establishing Nevada as the leader in the West in attracting and building renewable plants.

This amendment deletes section 1.77 and section 1.79 of the Committee's amendment, which transferred the authority to adopt a green-buildings' rating system and to approve tax abatements for green buildings from the Director of the Office of Energy to the Nevada Energy

Commissioner. This is necessary because the Energy Office has already been established as the lead agency in administering the Green Buildings' Program and its standards.

Section 11.3 revises the provisions requiring the Public Utilities Commission of Nevada (PUC) to adopt regulations authorizing an electric utility to recover certain verifiable and measurable impacts of the implementation of energy efficiency and conservation programs. The Commission must consider the effect this recovery would have on the rates of the customers of the utility, but the regulation must not do two things. It must not affect the public utilities' incentives and allowed returns in areas not affected by the implementation of energy-efficiency and conservation programs. It must not allow the utility to earn more than the rate of return authorized by the Commission in the utility's most recently completed rate case.

This part of the amendment begins the process of delinking utility profits from energy sales, encouraging conservation while providing consumer protections in terms of limiting what the utility can recover and its costs related to energy efficiency measures.

I would like to thank my colleague from Clark District 2 who made certain the language was specific enough that it protected the ratepayers.

Section 11.7 includes natural gas utilities in the portion of the Mill Assessment, which may be allocated for the use of the Renewable Energy and Energy Efficiency Authority and the Office of Energy. This ensures that the activities of the Energy Authority can be funded by natural-gas utilities to the extent natural gas is used in renewable-energy plant process.

Section 18.9 includes authority for local governing bodies to establish improvement districts for public safety projects, which can incorporate renewable energy or energy-efficiency measures.

Section 1.9, inclusive of section 7.1, deals with the Solar Energy Systems Incentive Program. There was language that needed to be clarified that revised the provisions governing the Solar Energy Systems' Incentive Program and adopted the changes that were proposed in Assembly Bill No. 448, considered by the Committee. It further revises the provisions governing the Wind Energy Systems' Demonstration Program and the Water Power Energy Systems' Demonstration Program. We wanted to improve the way these programs work based on the new solar-generation provisions included in Senate Bill No. 358.

SENATOR SCHNEIDER:

Thank you, Mr. President. This bill is the culmination of the energy bills for this Session. I testified in the Assembly today on Senate Bill No. 188 on solar-water heating. We have been in contact with a businessman in northern California who has been watching our work on renewable energy during this Session. He is prepared to move a company here to manufacture solar hot-water systems. He will employ several hundred people. I know the Nation is watching what we are doing here. These are not little bills. They are good for the economy of this State as we move to get off petroleum as our energy product. I recommend approval of this amendment.

SENATOR CARLTON:

We have done several energy bills this Session. It is important to remember that this is still a new industry. I caution that we not become frustrated or anxious in the years to come if things are not on line and producing results in 18 months. It will take time. These are complicated projects. I would rather see the PUC move slowly and do well than to rush through them creating problems that will have to be solved during the next Legislative Session. I urge support of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 428.

Bill read third time.

Roll call on Senate Bill No. 428:

YEAS—21.

NAYS—None.

Senate Bill No. 428 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 430.

Bill read third time.

Remarks by Senators Amodei and Horsford.

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

SENATOR AMODEI:

Are these sums being transferred to meet budget requirements for the coming biennium or are they backfilled provisions for the biennium we are in?

SENATOR HORSFORD:

This is a measure that implements the process from an action we took from an earlier special session.

Roll call on Senate Bill No. 430:

YEAS—21.

NAYS—None.

Senate Bill No. 430 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senator Horsford moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 11:44 p.m.

SENATE IN SESSION

At 11:49 p.m.

President Krolicki presiding.

Quorum present.

Senate Bill No. 431.

Bill read third time.

Remarks by Senator Coffin.

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

This is the Authorization Act for the budget where we authorize our Executive Branch to receive funds such as the Highway Funds, the federal funds, fees and grants. This is not the most controversial bill of the series of bills we will handle, but it is an important bill.

Roll call on Senate Bill No. 431:

YEAS—21.

NAYS—None.

Senate Bill No. 431 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 22.
Bill read third time.
Roll call on Assembly Bill No. 22:
YEAS—18.
NAYS—Amodei, Cegavske, Mathews—3.

Assembly Bill No. 22 having received a two-thirds majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 54.
Bill read third time.
Roll call on Assembly Bill No. 54:
YEAS—21.
NAYS—None.

Assembly Bill No. 54 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 80.
Bill read third time.
Roll call on Assembly Bill No. 80:
YEAS—21.
NAYS—None.

Assembly Bill No. 80 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 130.
Bill read third time.
The following amendment was proposed by Senator Lee:
Amendment No. 898.
"SUMMARY—Revises provisions governing metropolitan police departments. (BDR 22-632)"
"AN ACT relating to police departments; revising provisions governing the membership of a metropolitan police committee on fiscal affairs; revising provisions governing negotiations between metropolitan police departments and their employees; and providing other matters properly relating thereto."
Legislative Counsel's Digest:
Existing law requires that each representative of a political subdivision that participates on a metropolitan police committee on fiscal affairs must be a member of the governing body of the political subdivision and serves at the pleasure of the governing body making the appointment. (NRS 280.130) Section 2 of this bill provides instead that each member of the committee serves for a term of 2 years and may be removed at any time for cause by the governing body which appointed the member. Section 2 also increases the

compensation of the general public member of the committee from $40 for each day of service to $80 for each day of service.

Existing law requires that in negotiations arising under chapter 288 of NRS between a metropolitan police department and its employees, the department must be represented by a metropolitan police committee on fiscal affairs or two persons designated by the committee and by the sheriff or a person designated by him. (NRS 280.320) Section 3 of this bill provides instead that the department must be represented solely by the sheriff or ~~[a person]~~ *one or more persons* designated by him, ~~[and]~~ *but requires the committee to designate one representative from each participating political subdivision to monitor the negotiations. Section 3 also* requires the sheriff to submit any *tentative* agreement reached in the negotiations to the committee for its approval.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 280.130 is hereby amended to read as follows:

280.130 1. The committee consists of two representatives from each participating political subdivision.

2. Representatives of the participating political subdivisions are not entitled to receive any additional compensation or be reimbursed by the department for any expenses incurred while serving on the committee.

3. Each representative of a participating political subdivision must be a member of its governing body . ~~[and serves at the pleasure of the governing body making the appointment.]~~ *Except as otherwise provided in subsection 4, the term of each member of the committee is 2 years. The governing body that appointed a member may remove the member at any time for cause.*

4. The members of the committee shall, by *a* majority vote, select an additional member of the committee from the general public from a list consisting of three persons nominated by each participating political subdivision and three persons nominated by the sheriff. That person:

(a) Must reside in the area served by the department.

(b) Shall serve until August 1 next succeeding and until his successor is selected.

(c) May succeed himself.

(d) Is entitled to receive as compensation ~~[$40]~~ *$80* for each day of service.

(e) Is entitled to reimbursement for his necessary travel and per diem expenses in the manner provided by the committee for the reimbursement of officers and employees of the department.

5. If the members of the committee fail to agree on the additional member to be selected pursuant to subsection 4 within 30 days after their initial meeting following the merger or by August 1 of any year thereafter, the additional member of the committee must be appointed by the Governor

without regard to the lists submitted. The person so appointed must reside in the area served by the department.

6. At its first meeting and in August of each year thereafter, the committee shall select one of its members to act as chairman.

Sec. 3. NRS 280.320 is hereby amended to read as follows:

280.320 1. A department is a local government employer for the purpose of the Local Government Employee-Management Relations Act and a public employer for the purpose of the Public Employees' Retirement Act.

2. In negotiations arising under the provisions of chapter 288 of NRS:

(a) The committee ~~[or two or more persons designated by it; and]~~ *shall designate one representative from each participating political subdivision to monitor the negotiations;*

(b) The sheriff or ~~[a person]~~ *one or more persons* designated by him ~~[, ➥]~~ shall represent the department ~~[.]~~ *; and*

~~[(b)]~~ *(c) The sheriff shall submit any tentative agreement reached in the negotiations to the committee for its approval.*

3. In negotiations arising under the provisions of chapter 288 of NRS, a school police unit must be considered a separate bargaining unit.

Sec. 4. This act becomes effective on July 1, 2009.

Senator Lee moved the adoption of the amendment.

Remarks by Senators Lee, Townsend and Raggio.

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

SENATOR LEE:

This provides that the sheriff may designate one or more persons to represent the Metropolitan Police Department in certain employee negotiations. The provision would allow the sheriff to designate as many people representing any interested party or parties including the city or county, as he deems necessary. It specifies that the Metropolitan Police Committee on Fiscal Affairs shall designate one representative from the city and one from the county to monitor the employee negotiations. This means that the local government bodies can be in the room during all or a portion of the negotiations. It clarifies that the sheriff shall submit any tentative agreement reached in a negotiation to the Committee for final approval.

SENATOR TOWNSEND:

I rise in opposition to this bill and the amendment, which up-ends 28 years of successful negotiation between Metro and the county, the city and the sheriff. The success years has not indicated there is a need for a change. I would worry that we are breaking a ground that does not need to be broken. I object to this.

SENATOR LEE:

On line 41, it says, "The sheriff may designate one or more persons … shall represent the department." The sheriff has the ability to nominate someone from the city and someone from the county to be in the negotiations with them. There can be two more people there to monitor what is going on. The sheriff has the ability to nominate who he wants to be in that room providing he gets along well with the city and the county. He would put them in the room to discuss fiscal concerns.

SENATOR RAGGIO:

When we heard this bill, we were led to believe that the Sheriff was supportive. I have received second-hand information that the Sheriff is in opposition to this bill. Is that the case?

SENATOR LEE:
I have not talked to the Sheriff personally. His representative has stated that the Sheriff is not supportive of this but has been involved with the writing of the amendment. I cannot tell you if this will satisfy the problems. The Sheriff has not notified me.

Motion failed.

Roll call on Assembly Bill No. 130:
YEAS—10.
NAYS—Cegavske, Coffin, Hardy, McGinness, Nolan, Parks, Raggio, Rhoads, Schneider, Townsend, Washington—11.

Assembly Bill No. 130 having failed to receive a constitutional majority, Mr. President declared it lost.

Assembly Bill No. 162.
Bill read third time.
Senator Carlton moved that Assembly Bill No. 162 be taken from the General File and placed at the bottom on the General File on the third agenda.
Motion carried.

Assembly Bill No. 238.
Bill read third time.
Roll call on Assembly Bill No. 238:
YEAS—21.
NAYS—None.

Assembly Bill No. 238 having received a constitutional majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 294.
Bill read third time.
Roll call on Assembly Bill No. 294:
YEAS—21.
NAYS—None.

Assembly Bill No. 294 having received a constitutional majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 378.
Bill read third time.
The following amendment was proposed by the Committee on Taxation:
Amendment No. 888.
"SUMMARY—Revises provisions governing distributors of intoxicating liquor. (BDR 32-894)"
"AN ACT relating to liquor; authorizing a wholesale dealer to receive original packages of a brand of liquor from an affiliate of the wholesale dealer located outside this State under certain circumstances; prohibiting a

supplier from unreasonably withholding or delaying its approval of certain decisions relating to a franchise with a wholesaler under certain circumstances; imposing other prohibitions on a supplier; providing a remedy for violations; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law sets forth the circumstances under which intoxicating liquor may be imported and sold in this State. (Chapter 369 of NRS) Section 1 of this bill provides that a wholesale dealer of liquor who is a designated importer for a supplier may receive original packages of liquor from an affiliate of the wholesale dealer located outside this State if certain conditions are met. Section 1 also provides that such an affiliate is not a supplier when the affiliate ships liquor to the wholesale dealer.

Existing law sets forth various requirements concerning a franchise between a supplier and a wholesaler of malt beverages, distilled spirits and wines. (NRS 597.120-597.180) Section 3 of this bill prohibits a supplier from unreasonably withholding or delaying its approval of certain sales, assignments or transfers of an interest in a wholesaler's assets or of the substitution of a person under a franchise. Section 3 provides for the liability of the supplier to a wholesaler if the supplier unreasonably withholds its consent in violation of section 3. Section 4 prohibits a supplier from taking various other actions against a wholesaler.

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

Section 1. Chapter 369 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. If a supplier designates a wholesale dealer as the designated importer of a brand of liquor pursuant to NRS 369.386, the wholesale dealer may, without any additional designation or further consent from the supplier, receive original packages of that brand of liquor from an affiliate of the wholesale dealer located outside of this State if:*

*(a) The affiliate operates a warehouse outside this State from which the affiliate ships the liquor;*

*(b) The affiliate is licensed as a wholesaler for the liquor in the state from which the affiliate ships the liquor;*

*(c) The wholesale dealer registers the name and address of the affiliate's warehouse with the Department on a form prescribed by the Department;* ~~*[and]*~~

*(d) Within 10 days after the affiliate ships the liquor to the wholesale dealer, the affiliate submits to the Department, with documentation, a report stating:*

*(1) The name and address of the wholesale dealer to whom the liquor was shipped;*

*(2) The name and address of the person from whom the affiliate purchased the liquor;*

*(3) The brand of liquor shipped;*

*(4) The quantity of liquor shipped in gallons, rounded to the nearest one-hundredth; and*

*(5) The percentage of alcohol by volume; and*

*(e) As soon as practicable after receiving the liquor, the wholesale dealer reports the receipt of the liquor to the Department. ~~[and pays]~~ The wholesale dealer shall pay all applicable excise taxes ~~[thereon pursuant to NRS 369.330.]~~ imposed by this chapter on that liquor on or before the 20th day of the month following the month in which the liquor was received by the wholesale dealer.*

*2. A wholesale dealer may not receive more than 15 percent of the total amount of any brand of liquor imported into this State during a calendar year pursuant to this section. Any liquor received by the wholesale dealer from an affiliate pursuant to this section must be purchased in accordance with the terms and conditions of the wholesaler's franchise with the supplier.*

*3. A transfer of liquor pursuant to this section is not a purchase or sale of that liquor.*

*4. An affiliate of a wholesale dealer located outside this State who ships liquor pursuant to this section is not engaged in business as a supplier for the purposes of this chapter and chapter 597 of NRS. The provisions of this subsection do not authorize a wholesale dealer to receive liquor from an affiliate who is a supplier, as defined in NRS 597.140, or the holder of a certificate of compliance issued pursuant to NRS 369.430.*

*5. As used in this section:*

*(a) "Affiliate" means a wholesale dealer or a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a wholesale dealer. As used in this paragraph, "control" means not less than 50 percent control, directly or indirectly, through one or more intermediaries.*

*(b) "Franchise" has the meaning ascribed to it in NRS 597.130.*

Sec. 2. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. *1. A supplier shall not unreasonably withhold or delay his approval of any assignment, sale or transfer of the stock of a wholesaler or of all or any portion of a wholesaler's assets, a wholesaler's voting stock, the voting stock of any parent corporation or the beneficial ownership or control of any other entity owning or controlling the wholesaler, including the wholesaler's rights and obligations under the terms of a franchise, whenever a person to be substituted under the terms of the franchise meets reasonable standards imposed upon the wholesaler and any other wholesaler of the supplier of the same general class, after consideration of the size and location of the marketing area of the wholesaler.*

*2. Upon the death of a partner of a partnership that operates the business of a wholesaler, a supplier shall not unreasonably withhold or delay* *his approval of maintaining the franchise between the supplier and each surviving partner.*

*3. Upon the death of any owner, controlling shareholder or operator of a wholesaler, a supplier shall not deny approval of any transfer of ownership to a surviving spouse, child or grandchild of the owner who has reached the age of majority at the time of death, controlling shareholder or operator. Any subsequent transfer of ownership by the spouse, child, grandchild, controlling shareholder or operator is subject to the provisions of subsection 1.*

*4. In addition to the provisions of NRS 597.170, a supplier who unreasonably delays or withholds his consent or unreasonably denies approval of a sale, transfer or assignment of any ownership interest in a wholesaler is liable to the wholesaler for the laid-in costs of inventory of each affected brand of liquor and any diminution in the fair market value of the business of the wholesaler in relation to each affected brand. The damages recoverable pursuant to this section include, without limitation, all reasonable costs of bringing the action and attorney's fees. For the purpose of this subsection, the fair market value of a business of a wholesaler includes, without limitation, the good will of the business and its value as a going concern, if any.*

*5. The provisions of this section may not be modified by agreement. Any provision in an agreement is void if the provision includes such a modification.*

Sec. 4. *A supplier shall not:*

*1. Prohibit a wholesaler from selling an alcoholic beverage of any other supplier;*

*2. Fix or maintain the price at which a wholesaler may resell an alcoholic beverage purchased from the supplier;*

*3. Require a wholesaler to pay to the supplier all or any portion of the difference in the suggested retail price of an alcoholic beverage and the actual price at which the wholesaler sells the alcoholic beverage;*

*4. Require a wholesaler to accept delivery of any alcoholic beverage or any other item that is not voluntarily ordered by the wholesaler or otherwise not required under the franchise between the supplier and wholesaler or is in violation of any levels of inventory that are mutually agreed upon in writing by the supplier and wholesaler;*

*5. Prohibit or restrain, directly or indirectly, a wholesaler from participating in an organization that represents the interests of wholesalers for any lawful purpose; or*

*6. Require a wholesaler to participate in or contribute to any advertising fund or promotional activity that:*

*(a) Is not used for advertising or a promotional activity in the marketing area of the wholesaler; or*

*(b) Requires a contribution by the wholesaler that exceeds any amount specified for that purpose in the franchise.*

Sec. 5. NRS 597.120 is hereby amended to read as follows:

597.120 As used in NRS 597.120 to 597.180, inclusive, *and sections 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 597.125 to 597.150, inclusive, have the meanings ascribed to them in those sections.

Sec. 6. NRS 597.170 is hereby amended to read as follows:

597.170 1. Any wholesaler may bring an action in a court of competent jurisdiction against a supplier for violation of NRS 597.120 to 597.180, inclusive, and *sections 3 and 4 of this act and* may recover the damages sustained by him, together with such costs of the action and reasonable attorney's fees as are authorized under NRS 18.110.

2. The remedies provided in NRS 597.120 to 597.180, inclusive, *and sections 3 and 4 of this act* are independent of and supplemental to any other remedy or remedies available to the wholesaler in law or equity.

Sec. 7. NRS 597.180 is hereby amended to read as follows:

597.180 In any action brought by a wholesaler against a supplier for termination or noncontinuance of, or causing to resign from a franchise in violation of NRS 597.120 to 597.180, inclusive, *and sections 3 and 4 of this act,* the supplier has the burden of establishing that he acted for good cause and that the wholesaler did not act in good faith. It is a complete defense for the supplier to prove that the termination, noncontinuance or causing to resign was done in good faith and for good cause.

Sec. 8. NRS 597.262 is hereby amended to read as follows:

597.262 1. Except as otherwise provided in this section and NRS 228.380, the Attorney General has primary jurisdiction to enforce the provisions of NRS 597.120 to 597.260, inclusive, and *sections 3 and 4 of this act and* shall cause appropriate legal action to be taken to enforce those provisions.

2. The Attorney General has concurrent jurisdiction with the district attorneys of this State to enforce the provisions of NRS 597.225 and 597.245.

3. This section does not prohibit:

(a) A wholesaler from bringing an action against a supplier pursuant to NRS 597.170 ~~[.]~~ *or section 3 of this act.*

(b) A customer, supplier or wholesaler from bringing an action against a retailer pursuant to NRS 597.260.

Senator Coffin moved the adoption of the amendment.

Remarks by Senator Coffin.

Conflict of interest declared by Senator Raggio.

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

Last week, it was brought to our attention that a fiscal note had come directly from the Department of Taxation for the amount of $57,000. It had not been initiated by the Legislative Counsel Bureau's Fiscal Division. Along with the fiscal note came language from the Director of the Department of Transportation indicating that while he had a duty to report a fiscal note, he had a simple method of disposing of the fiscal note by setting up the language on page 3 that enables the Department to do desk audits, which are sufficient for this. The fiscal note is noticed, and we have it solved with this language.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 474.

Bill read third time.

The following amendment was proposed by Senator Parks:

Amendment No. 903.

"SUMMARY—Revises parole eligibility for certain offenders. (BDR 16-1127)"

"AN ACT relating to parole; *providing for the aggregation of consecutive sentences for the purposes of determining parole eligibility for certain prisoners under certain circumstances;* requiring mandatory parole for certain prisoners who were under the age of 16 years when the offense was committed and who meet certain requirements; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

*Existing law provides that a prisoner may be sentenced to consecutive sentences of imprisonment and may be paroled from a current term of imprisonment to a subsequent term of imprisonment. (NRS 176.035) Section 2.5 of this bill provides that eligibility for parole of a prisoner sentenced to two or more consecutive sentences of life imprisonment with the possibility of parole: (1) for offenses committed on or after July 1, 2009, must be based upon the aggregation of the minimum sentences for those offenses; and (2) for offenses committed before July 1, 2009, may, at the option of the prisoner, be based upon the aggregation of the minimum sentences for such offenses, provided that the prisoner has not previously been considered for parole.*

Existing law provides for the mandatory release on parole of certain prisoners 12 months before the expiration of their maximum term if they have not previously been released on parole and are not otherwise ineligible for parole. (NRS 213.1215) ~~[This]~~ *Section 3 of this* bill requires mandatory parole of prisoners who were sentenced to life imprisonment with the possibility of parole and who were less than 16 years of age at the time of the offense if they have: (1) served the minimum term of their sentence; (2) completed a program of general education or an industrial or vocational training program; (3) not been identified by the Department of Corrections as a member of a group posing a security threat; and (4) not committed a major violation of the regulations of the Department of Corrections and not been housed in disciplinary segregation within the immediately preceding 24 months.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

*Sec. 2.5. NRS 213.1213 is hereby amended to read as follows:*

213.1213 1. If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

*2. Notwithstanding any other provision of law, if a prisoner is sentenced pursuant to NRS 176.035 to serve two or more consecutive sentences of life imprisonment with the possibility of parole:*

*(a) For offenses committed on or after July 1, 2009:*

*(1) All minimum sentences for such offenses must be aggregated;*

*(2) The prisoner shall be deemed to be eligible for parole from all such sentences after serving the minimum aggregate sentence; and*

*(3) The Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate sentence.*

*(b) For offenses committed before July 1, 2009, in cases in which the prisoner has not previously been considered for parole for any such offenses:*

*(1) The prisoner may, by submitting a written request to the Director of the Department of Corrections, make an irrevocable election to have the minimum sentences for such offenses aggregated; and*

*(2) If the prisoner makes such an irrevocable election to have the minimum sentences for such offenses aggregated, the Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate sentence.*

Sec. 3. NRS 213.1215 is hereby amended to read as follows:

213.1215 1. Except as otherwise provided in ~~[subsections 3, 4 and 5]~~ *this section* and in cases where a consecutive sentence is still to be served, if a prisoner sentenced to imprisonment for a term of 3 years or more:

(a) Has not been released on parole previously for that sentence; and

(b) Is not otherwise ineligible for parole,

➥ he must be released on parole 12 months before the end of his maximum term, as reduced by any credits he has earned to reduce his sentence pursuant to chapter 209 of NRS.

*2. Except as otherwise provided in this section, a prisoner who was sentenced to life imprisonment with the possibility of parole and who was less than 16 years of age at the time that he committed the offense for which he was imprisoned must, if the prisoner still has a consecutive sentence to be served, be granted parole from his current term of imprisonment to his subsequent term of imprisonment or must, if the prisoner does not still have a consecutive sentence to be served, be released on parole, if:*

*(a) The prisoner has served the minimum term of imprisonment imposed by the court;*

*(b) The prisoner has completed a program of general education or an industrial or vocational training program;*

*(c) The prisoner has not been identified as a member of a group that poses a security threat pursuant to the procedures for identifying security threats established by the Department of Corrections; and*

*(d) The prisoner has not, within the immediately preceding 24 months:*

*(1) Committed a major violation of the regulations of the Department of Corrections; or*

*(2) Been housed in disciplinary segregation.*

*3.* The Board shall prescribe any conditions necessary for the orderly conduct of the parolee upon his release.

~~[2.]~~ *4.* Each parolee so released must be supervised closely by the Division, in accordance with the plan for supervision developed by the Chief pursuant to NRS 213.122.

~~[3.]~~ *5.* If the Board finds, at least 2 months before a prisoner would otherwise be paroled pursuant to subsection 1 ~~[,]~~ *or 2* that there is a reasonable probability that the prisoner will be a danger to public safety while on parole, the Board may require the prisoner to serve the balance of his sentence and not grant the parole provided for in subsection 1 ~~[.]~~ *or 2.* If, pursuant to this subsection, the Board does not grant the parole provided for in subsection 1 ~~[,]~~ *or 2,* the Board shall provide to the prisoner a written statement of its reasons for denying parole.

~~[4.]~~ *6.* If the prisoner is the subject of a lawful request from another law enforcement agency that he be held or detained for release to that agency, the prisoner must not be released on parole, but released to that agency.

~~[5.]~~ *7.* If the Division has not completed its establishment of a program for the prisoner's activities during his parole pursuant to this section, the prisoner must be released on parole as soon as practicable after the prisoner's program is established.

~~[6.]~~ *8.* For the purposes of this section, the determination of the 12-month period before the end of a prisoner's term must be calculated without consideration of any credits he may have earned to reduce his sentence had he not been paroled.

*Sec. 4.* *1. This section and section 2.5 of this act become effective on July 1, 2009.*

*2. Section 3 of this act becomes effective on October 1, 2009.*

Senator Parks moved the adoption of the amendment.

Remarks by Senators Parks and Carlton.

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

SENATOR PARKS:

The amendment applies to the eligibility of parole for prisoners serving two or more consecutive life sentences with the possibility of parole. Prospectively, if the offense was committed on or after July 1, 2009, the prisoner's parole eligibility must be based on the aggregation of the minimum sentences for his offenses. In this case, the Board of Parole Commissioners is not required to consider parole until the minimum aggregate sentence has been served. Retrospectively, if the offense was committed prior to July 1, 2009, and if the prisoner has not previously been considered for parole, he may elect to have his parole eligibility based on the minimum aggregate sentence. If this option is chosen by the prisoner, the Board of Parole Commissioners is not required to consider parole until the minimum aggregate sentence has been served.

This helps when a victim is notified of a parole hearing, especially if it is a serious crime where there are several consecutive sentences. We often find that there is an unnecessary parole hearing shortly after the inmate begins his sentence, and it is for a much lesser crime. This would save money for the State and save anguish for the victim.

SENATOR CARLTON:

I understand the issue with the notifications on the meetings. I am concerned that working prospectively this could be addressed. You would be starting from the beginning. Retrospectively, I do not know if there are the resources and the time for a burdened parole system to figure out who should be notified and who should not.

SENATOR PARKS:

This would be done automatically through the notice system which is a software system employed by the Department of Corrections. They do the tracking on this information.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 478.

Bill read third time.

The following amendment was proposed by Senator Horsford:

Amendment No. 882.

"SUMMARY—Revises provisions relating to certain housing authorities. (BDR 25-1237)"

"AN ACT relating to governmental administration; revising provisions relating to certain housing authorities; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law sets forth the Housing Authorities Law of 1947. (NRS 315.140-315.780) In relevant part, under the provisions of this Law, each county, city and town of the State has a housing authority which is a municipal corporation and which is presided over by five commissioners. (NRS 315.320, 315.370) The housing authorities governed by this Law exist primarily to ensure that veterans and persons of low income are able to find safe and sanitary housing at affordable prices. (NRS 315.330, 315.340, 315.440, 315.460, 315.510)

This bill, in a county whose population is 400,000 or more (currently Clark County), allows two or more (housing) authorities to form a regional (housing) authority. Such a regional authority is created by a resolution agreed to between or among, as applicable, the governing bodies of the local governments that desire to participate in the regional authority. A regional authority has the same powers and duties as a regular authority, except on an expanded geographic scale. Upon the formation of a regional authority, the individual authorities of the county and the cities participating in the regional authority must begin the process of dissolution.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 315 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *"Regional authority" means an authority formed pursuant to section 3 of this act.*

Sec. 3. *1. In a county whose population is 400,000 or more, any two or more authorities may form a regional authority.*

*2. To form a regional authority as described in subsection 1, the governing body of the county and the governing body of each city and town located within the county that desires to participate in the regional authority shall adopt a resolution setting forth:*

*(a) The intent to regionalize some or all of their powers;*

*(b) A reference to the development of a plan for transitioning to a regional authority;*

*(c) The geographic scope of the regional authority; and*

*(d) Such other matters as the governing bodies determine to be necessary or advisable.*

*3. If the formation of a regional authority pursuant to this section involves fiscal matters, the ownership of real property or the consolidation of functions, the governing bodies who form the regional authority shall, in consultation with the United States Department of Housing and Urban Development, resolve such matters by written contract, agreement or other arrangement entered into by those governing bodies.*

Sec. 3.5. *Upon the adoption of a resolution pursuant to section 3 of this act forming a regional authority, the dissolution of any individual authorities of the local governments who form the regional authority must be begun.*

Sec. 4. *1. Upon the adoption of a resolution pursuant to section 3 of this act forming a regional authority, nine persons must be appointed to serve as commissioners of the authority as follows:*

*(a) The governing body of the county shall appoint two persons to serve as commissioners of the authority;*

*(b) The governing body of the largest city in the county shall appoint two persons to serve as commissioners of the authority;*

*(c) The governing body of the second largest city in the county shall appoint two persons to serve as commissioners of the authority;*

*(d) The governing body of the third largest city in the county shall appoint two persons to serve as commissioners of the authority; and*

*(e) One commissioner who serves on behalf of tenants must be selected as described in subsection 3.*

➥ *<u>None of the persons appointed to serve as commissioners of the authority may be elected officials of any governmental entity.</u>*

*2. Six of the commissioners who are first appointed pursuant to subsection 1 must be designated to serve for terms of 1, 2 and 3 years, respectively, from the date of their appointment, and three must be designated to serve for terms of 4 years from the date of their appointment,* *but thereafter commissioners must be appointed for a term of office of 4 years. The persons appointed initially to serve as commissioners pursuant to subsection 1 shall determine by lot whether they are designated pursuant to this subsection to serve for a term of 1 year, 2 years, 3 years or 4 years.*

*3. The commissioner who serves on behalf of tenants must be a current recipient of assistance from the authority who was selected from a list of at least five eligible nominees submitted for this purpose by an organization which represents tenants of housing projects. If no such organization exists, the commissioner must be selected from a list of nominees submitted for this purpose from persons who currently receive assistance from the authority. Thereafter, at least one commissioner must be such a recipient who was nominated and appointed in the same manner. If, during his term, the commissioner ceases to be a recipient of assistance, he must be replaced in the manner set forth in this subsection by a person who is a recipient of assistance.*

*4. In making the appointments described in subsection 1, the relevant local governments shall seek recommendations for appointment from a diverse background of interests with a view toward:*

*(a) Balancing gender and ethnicity; and*

*(b) Soliciting appointees who have experience in fields such as, without limitation:*

*(1) Real estate;*

*(2) Financial planning;*

*(3) Legal aid;*

*(4) Education;*

*(5) Public safety;*

*(6) The provision of public services; and*

*(7) The assistance of persons of low income.*

*5. All vacancies must be filled for the unexpired term.*

Sec. 5. *A regional authority may, in addition to exercising the powers set forth in NRS 315.440 and 315.460 and any other relevant provisions of this chapter:*

*1. Jointly, or with another authority, exercise any powers, privileges and rights that are exercised or capable of being exercised by a local housing agency of this State; and*

*2. Exercise such other powers as the governing bodies of the local governments that formed the regional authority may agree upon.*

Sec. 6. *A regional authority may not request a reservation or nomination of land from the Bureau of Land Management unless the governing body of the jurisdiction within which the applicable land of the Bureau is located adopts a resolution of approval.*

Sec. 7. NRS 315.021 is hereby amended to read as follows:

315.021 As used in NRS 315.021 to 315.071, inclusive, unless the context otherwise requires:

1. "Housing authority" means a housing authority created pursuant to this chapter. *The term includes a regional authority formed pursuant to section 3 of this act.*

2. "Landlord" means a person who owns or manages any premises that he rents or leases to a tenant pursuant to a contract with a housing authority.

3. "Premises" means a particular apartment or other residential unit of public housing occupied by a tenant, or a residential unit that is occupied by a tenant pursuant to a federally assisted housing program administered by a housing authority.

4. "Public housing" means the residential accommodations operated by a housing authority or a landlord.

Sec. 8. NRS 315.140 is hereby amended to read as follows:

315.140 NRS 315.140 to 315.780, inclusive, *and sections 2 to 6, inclusive, of this act* may be referred to as the Housing Authorities Law of 1947.

Sec. 9. NRS 315.150 is hereby amended to read as follows:

315.150 Unless the context otherwise requires, the definitions contained in NRS 315.160 to 315.300, inclusive, *and section 2 of this act* govern the construction of NRS 315.140 to 315.780, inclusive ~~[.]~~ *, and sections 2 to 6, inclusive, of this act.*

Sec. 10. NRS 315.160 is hereby amended to read as follows:

315.160 1. In the case of an authority of a city or town, "area of operation" shall include such city or town and the area within 5 miles of the territorial boundaries thereof; but the area of operation of an authority of any city or town shall not include any area which lies within the territorial boundaries of some other city or town as herein defined, unless a resolution shall have been adopted by the governing body of such other city or town (and by any authority which shall have been theretofore established and authorized to exercise its powers in such city or town) declaring that there is a need for such authority to exercise its powers within that city or town.

2. In the case of an authority of a county, "area of operation" shall include all of the county for which it is created; but a county authority shall not undertake any housing project or projects within the boundaries of any city or town, as herein defined, unless a resolution shall have been adopted by the governing body of such city or town (and by any authority which shall have been theretofore established and authorized to exercise its powers in such city or town) declaring that there is a need for the county authority to exercise its powers within such city or town.

*3. In the case of a regional authority, "area of operation" shall include:*

*(a) All of the territory within the geographic scope of the regional authority, as referred to in paragraph (c) of subsection 2 of section 3 of this act; and*

*(b) Any other territory regarding which the regional authority and another authority agree to exercise joint power or control.*

Sec. 11. NRS 315.170 is hereby amended to read as follows:

315.170 "Authority" means any of the public corporations created or authorized to be created by NRS 315.140 to 315.780, inclusive, *and sections 2 to 6, inclusive, of this act* and any housing authority established and operating prior to July 1, 1975, under the provisions of the Housing Authorities Law of 1943 or the Housing Law of 1951. *The term includes a regional authority.*

Sec. 12. NRS 315.380 is hereby amended to read as follows:

315.380 *1.* An authority shall select a chairman and a vice chairman from its commissioners.

*2. For the purpose of managing a regional authority, the commissioners of the regional authority shall initially select an executive director by way of a competitive, open and public process. Thereafter, the selection of an executive director must be made as determined by the commissioners of the regional authority to be in the best interests of the authority.*

Sec. 13. NRS 315.435 is hereby amended to read as follows:

315.435 Except as otherwise provided in NRS 315.9835, a housing authority shall not operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein. *For the purposes of this section, the formation of a regional authority pursuant to section 3 of this act shall be deemed to constitute consent by resolution of the authority of any participating local governmental entity.*

Sec. 14. NRS 315.440 is hereby amended to read as follows:

315.440 Within its area of operation, an authority may:

1. Prepare, carry out and operate housing projects and provide for the construction, reconstruction, improvement, extension, alteration, or repair of any such project or any part thereof.

2. Determine where there is unsafe, insanitary or overcrowded housing.

3. Make studies and recommendations relating to the problem of eliminating unsafe, insanitary or overcrowded housing.

4. Cooperate with the city, the county, the State, or any political subdivision thereof in action taken in connection with such problems.

*5. If it is a regional authority, work cooperatively with the relevant local jurisdictions concerning new developments or housing projects, or both. The relevant local jurisdictions with which a regional authority works cooperatively concerning new developments or housing projects, or both, shall provide to the regional authority such support and assistance as the regional authority may require.*

Sec. 15. As soon as practicable after July 1, 2009, and after the adoption of a resolution pursuant to section 3 of this act, the governing bodies of Clark County, the City of Las Vegas, the City of Henderson and the City of North Las Vegas shall appoint the commissioners described in section 4 of this act.

Sec. 15.5. If the governing bodies of Clark County, the City of Las Vegas, the City of Henderson and the City of North Las Vegas adopt a resolution pursuant to section 3 of this act, the dissolution required to be begun pursuant to section 3.5 of this act must be completed not later than January 1, 2010.

Sec. 16. 1. This section and sections 1 to 11, inclusive, and 13 to 15.5, inclusive, of this act become effective upon passage and approval.

2. Section 12 of this act becomes effective on January 1, 2010.

Senator Horsford moved the adoption of the amendment.

Remarks by Senator Horsford.

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

The amendment restores the language as originally proposed in the bill by the proponents of the bill which prohibit elected officials from being among those appointed as representatives on the Southern Nevada Regional Housing Authority.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Assembly Bill No. 497.

Bill read third time.

Roll call on Assembly Bill No. 497:

YEAS—21.

NAYS—None.

Assembly Bill No. 497 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 513.

Bill read third time.

Roll call on Assembly Bill No. 513:

YEAS—21.

NAYS—None.

Assembly Bill No. 513 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 534.

Bill read third time.

Roll call on Assembly Bill No. 534:

YEAS—21.

NAYS—None.

Assembly Bill No. 534 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 549.

Bill read third time.

Roll call on Assembly Bill No. 549:

YEAS—21.

NAYS—None.

Assembly Bill No. 549 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 552.

Bill read third time.

Remarks by Senators Cegavske and Horsford.

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

SENATOR CEGAVSKE:

I would like an explanation of this bill.

SENATOR HORSFORD:

Assembly Bill No. 552 deals with the tax-collection portions of the retail-collection rates that would be allowed for the State to use to help us fund the budget.

Senator Horsford moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 12:14 a.m.

SENATE IN SESSION

At 12:16 p.m.

President Krolicki presiding.

Quorum present.

Roll call on Assembly Bill No. 552:

YEAS—21.

NAYS—None.

Assembly Bill No. 552 having received a two-thirds majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senator Washington moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 12:19 a.m.

SENATE IN SESSION

At 12:21 p.m.

President Krolicki presiding.

Quorum present.

Assembly Bill No. 556.

Bill read third time.

Roll call on Assembly Bill No. 556:
YEAS—21.
NAYS—None.

Assembly Bill No. 556 having received a constitutional majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 557.
Bill read third time.
Roll call on Assembly Bill No. 557:
YEAS—21.
NAYS—None.

Assembly Bill No. 557 having received a constitutional majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS
CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 305.
The following Assembly amendment was read:
Amendment No. 804.
"SUMMARY—Makes various changes concerning dispensing a medication and providing a prescription for the sexual partner of a person diagnosed with a sexually transmitted disease. (BDR 40-845)"
"AN ACT relating to communicable diseases; making various changes concerning dispensing a medication and providing a prescription for the sexual partner of a person diagnosed with a sexually transmitted disease; and providing other matters properly relating thereto."
Legislative Counsel's Digest:
This bill authorizes ~~[a provider of health care or, under the direction of a local health officer,]~~ an employee of a board of health *, under the direction of the local health officer,* to *: (1) if the board of health has on its premises a pharmacy,* dispense a medication *for the treatment of the sexual partner of a person who has been diagnosed with a sexually transmitted disease without examining the partner;* or *(2) if the board of health does not have on its premises a pharmacy,* issue a prescription for the treatment of the sexual partner of a person who has been diagnosed with a sexually transmitted disease without examining the partner. This bill further allows the ~~[provider of health care or]~~ employee of a board of health to exclude from the prescription the name or other identifying information of the partner if the prescription specifies the purpose for the prescription. *This bill also authorizes an employee of a board of health, under the direction of the local health officer, or a practitioner in a federally qualified health center to dispense such a medication or issue such a prescription if the sexual partner of a patient provides the employee or practitioner with a written diagnosis from a provider of health care indicating that the patient has been diagnosed*

*with a sexually transmitted disease.* This bill ~~[also]~~ *further* requires the State Board of Health to adopt regulations relating to dispensing a medication or providing a prescription pursuant to the provisions of this bill.

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

Section 1. Chapter 441A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in this section or a regulation adopted pursuant thereto and notwithstanding any other provision of law, ~~[a provider of health care or, under the direction of the local health officer,]~~ an employee of a board of health, under the direction of the local health officer, who diagnoses a patient with a sexually transmitted disease may ~~[dispense]~~ :*

*(a) If the board of health has on its premises a pharmacy, dispense a medication for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner; or ~~[provide]~~*

*(b) If the board of health does not have on its premises a pharmacy, provide a prescription for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner, and may exclude from the prescription the name or other identifying information about the sexual partner if the prescription specifies the purpose for the prescription.*

*2. A provider of health care who diagnoses a patient with a sexually transmitted disease may provide the patient with a written description of the diagnosis. Except as otherwise provided in this section or a regulation adopted pursuant thereto and notwithstanding any other provision of law, if the sexual partner of a patient provides an employee of a board of health or a practitioner in a federally qualified health center with the written diagnosis provided to the patient pursuant to this subsection, the employee of the board of health, under the direction of the local health officer, or the practitioner may:*

*(a) If the board of health or health center has on its premises a pharmacy, dispense a medication for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner; or*

*(b) If the board of health or health center does not have on its premises a pharmacy, provide a prescription for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner, and may exclude from the prescription the name or other identifying information about the sexual partner if the prescription specifies the purpose for the prescription.*

*~~[2.]~~ 3. The Board shall adopt regulations for dispensing a medication and providing a prescription for treatment of a sexually transmitted disease for the sexual partner of a patient pursuant to this section, including, without limitation, regulations:*

*(a) For the reporting of such diseases pursuant to NRS 441A.150 and any regulation adopted pursuant to the provisions of chapter 441A of NRS relating to the reporting of communicable diseases;*

*(b) Prescribing the types of sexually transmitted diseases for which a medication may be dispensed or a prescription may be provided for treatment of a sexually transmitted disease for the sexual partner of a patient without examining the partner; and*

*(c) Prescribing the protocols for dispensing a medication and providing a prescription for treatment of the sexually transmitted disease for the sexual partner of a patient without examining the partner.*

~~*[3.]*~~ *4. A person may not dispense a medication or provide a prescription for treatment of a sexually transmitted disease for the sexual partner of a patient without examining the partner if dispensing the medication or providing the prescription is in violation of an ethical requirement or standard of practice which applies to the professional practice of the person.*

~~*[4.]*~~ *5. As used in this section:*

*(a) "Board of health" means a city, county or district board of health.*

*(b) "Local health officer" means a city health officer appointed pursuant to NRS 439.430, a county health officer appointed pursuant to 439.290 or a district health officer appointed pursuant to NRS 439.368 or 439.400.*

Senator Wiener moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 305.

Motion carried.

Bill ordered transmitted to the Assembly.

Senate Bill No. 389.

The following Assembly amendment was read:

Amendment No. 760.

"SUMMARY—Revises provisions governing accountability in public schools. (BDR 34-807)"

"AN ACT relating to education; revising provisions governing public schools that are designated as demonstrating need for improvement; revising other provisions related to the accountability of public schools; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Under existing law, a "Title I school" is a public school that receives money pursuant to the No Child Left Behind Act of 2001, 20 U.S.C. §§ 6301 et seq., and is obligated to comply with the provisions of that federal law. (NRS 385.3746) Existing law requires each public school to be designated annually as demonstrating exemplary achievement, high achievement, adequate achievement or need for improvement. (NRS 385.3263, 385.3266) Under existing law, if a school is designated as demonstrating need for improvement for 2 or more consecutive years, increasingly progressive actions must be taken to improve the achievement of pupils enrolled at the school. (NRS 385.3455-385.391)

Under existing law, if a school is designated as demonstrating need for improvement for 3 or more consecutive years, a support team must be established for the school. (NRS 385.3721, 385.3745) This bill eliminates the requirement for the Department of Education to establish a support team for a school, and section 6 of this bill authorizes the Department, if deemed necessary, to establish a support team for such a school. (NRS 385.361)

Section 10 of this bill requires the board of trustees of a school district or the governing body of a charter school to conduct a comprehensive audit for a school that is designated as demonstrating need for improvement for 3 consecutive years, including an audit of the curriculum implemented at the school. (NRS 385.3721)

Section 16 of this bill eliminates the requirement that the Department develop and carry out a new curriculum for certain schools that have demonstrated need for improvement for 3 consecutive years. (NRS 385.3744)

Section 18 of this bill requires the development of a turnaround plan for each school that is not a Title I school that has demonstrated need for improvement for 4 consecutive years. (NRS 385.3745)

Section 19 of this bill maintains the requirement that a restructuring plan must be developed if a Title 1 school has demonstrated need for improvement for 4 consecutive years and prescribes the requirements for such plans. (NRS 385.3746)

Sections 2 and 3 of this bill require the implementation of the turnaround plan for each school that is not a Title I school if the school demonstrates need for improvement 5 or more consecutive years and requires the Department to monitor the implementation of that plan.

Section 3.5 of this bill requires the implementation of a restructuring plan for each Title I school if the school demonstrates need for improvement for 5 or more consecutive years.

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

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 3.5 of this act.

Sec. 2. *1. If a public school that is not a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 5 or more consecutive years for failure to make adequate yearly progress:*

*(a) The board of trustees of the school district shall:*

*(1) Except as otherwise provided in subsection 3 of section 3 of this act, repeal the plan to improve the academic achievement of pupils developed pursuant to NRS 385.357 and*<u>, not later than September 30,</u> *implement the turnaround plan to improve the academic achievement of pupils enrolled in the school developed pursuant to NRS 385.3745;*

*(2) Provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382; and*

*(3) Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.*

*(b) The State Board shall prescribe by regulation the actions which the Department may take to monitor the implementation of any corrective action at the school.*

*2. If a charter school that is not a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 5 or more consecutive years for failure to make adequate yearly progress:*

*(a) The governing body of the charter school shall:*

*(1) Except as otherwise provided in subsection 3 of section 3 of this act, repeal the plan to improve the academic achievement of pupils developed pursuant to NRS 385.357 and, not later than September 30, implement the turnaround plan to improve the academic achievement of pupils enrolled in the school developed pursuant to NRS 385.3745.*

*(2) Provide notice of the designation to the parents and guardians of pupils enrolled in the charter school on a form prescribed by the Department pursuant to NRS 385.382.*

*(b) For a charter school sponsored by the board of trustees of a school district, the board of trustees shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.*

*(c) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.*

*(d) The State Board shall prescribe by regulation the actions which the Department may take to monitor the implementation of any corrective action at the charter school.*

Sec. 3. *1. Except as otherwise provided in subsection 3, if a public school that is not a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 5 or more consecutive years for failure to make adequate yearly progress:*

*(a) The Department may, for a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, take corrective action as set forth in NRS 385.3744 or proceed with consequences or sanctions, or both, as prescribed by the State Board pursuant to NRS 385.361.*

*(b) The board of trustees of a school district may, for a school of the school district or a charter school sponsored by the board of trustees, take*

*corrective action as set forth in NRS 385.3744 or proceed with consequences or sanctions, or both, as prescribed by the State Board pursuant to NRS 385.361.*

*2. The Department shall monitor the implementation of the turnaround plan for the school developed pursuant to NRS 385.3745.*

*3. The Department or the board of trustees of a school district, as applicable, shall grant a delay from the imposition of corrective action, consequences or sanctions pursuant to this section for a school, including, without limitation, the development and implementation of a turnaround plan, for a period not to exceed 1 year if the school qualifies for a delay in the manner set forth in 20 U.S.C. § 6316(b)(7)(D). If the school fails to make adequate yearly progress during the period of the delay, the Department or the board of trustees, as applicable, may proceed with corrective action or with consequences or sanctions, or both, for the school, as appropriate, as if the delay never occurred.*

*4. Before the board of trustees or the Department proceeds with consequences or sanctions, the board of trustees or the Department, as applicable, shall provide to the administrators, teachers and other educational personnel employed at that school, and parents and guardians of pupils enrolled in the school:*

*(a) Notice that the board of trustees or the Department, as applicable, will proceed with consequences or sanctions for the school;*

*(b) An opportunity to comment before the consequences or sanctions are carried out; and*

*(c) An opportunity to participate in the development of the consequences or sanctions.*

Sec. 3.5. *1. If a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 5 or more consecutive years:*

*(a) Except as otherwise provided in paragraph (b), the board of trustees of the school district shall:*

*(1) Except as otherwise provided in subsection 2, repeal the plan to improve the academic achievement of pupils developed pursuant to NRS 385.357 and , not later than September 30, implement the plan for restructuring the school developed pursuant to NRS 385.3746 if required by 20 U.S.C § 6316(b)(8) and the regulations adopted pursuant thereto;*

*(2) Provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382;*

*(3) Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto;*

*(4) Provide school choice to the parents and guardians of pupils enrolled in the school in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto; and*

*(5) Provide supplemental educational services in accordance with 20 U.S.C. § 6316(e) and the regulations adopted pursuant thereto from a provider approved pursuant to NRS 385.384, unless a waiver is granted pursuant to that provision of federal law.*

*(b) If the school is a charter school:*

*(1) Sponsored by the board of trustees of a school district, the board of trustees shall:*

*(I) Except as otherwise provided in subsection 3, repeal the plan to improve the academic achievement of pupils developed pursuant to NRS 385.357 and , not later than September 30, implement the plan for restructuring the charter school developed pursuant to NRS 385.3746 if required by 20 U.S.C § 6316(b)(8) and the regulations adopted pursuant thereto;*

*(II) Provide notice of the designation to the parents and guardians of pupils enrolled in the charter school on the form prescribed by the Department pursuant to NRS 385.382;*

*(III) Ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto; and*

*(IV) Provide school choice to the parents and guardians of pupils enrolled in the charter school in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto.*

*(2) Sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall:*

*(I) Except as otherwise provided in subsection 3, repeal the plan to improve the academic achievement of pupils developed pursuant to NRS 385.357 and, not later than September 30, implement the plan for restructuring the charter school developed pursuant to NRS 385.3746 if required by 20 U.S.C § 6316(b)(8) and the regulations adopted pursuant thereto;*

*(II) Provide notice of the designation to the parents and guardians of pupils enrolled in the charter school on the form prescribed by the Department pursuant to NRS 385.382;*

*(III) Ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto; and*

*(IV) Work cooperatively with the board of trustees of the school district in which the charter school is located to provide school choice to the parents and guardians of pupils enrolled in the school in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto.*

*(3) Regardless of the sponsor, the governing body of the charter school shall provide supplemental educational services in accordance with 20 U.S.C. § 6316(e) and the regulations adopted pursuant thereto from a provider approved pursuant to NRS 385.384, unless a waiver is granted pursuant to that provision of federal law.*

*(c) The State Board shall prescribe by regulation the actions which the Department may take to monitor the implementation of any corrective action at the school or charter school.*

*2. The board of trustees of a school district shall grant a delay from the imposition of a plan for restructuring for a school, including, without limitation, the development and implementation of a plan for restructuring, for a period not to exceed 1 year if the school qualifies for a delay pursuant to 20 U.S.C. § 6316(b)(7)(D). If the school fails to make adequate yearly progress during the period of delay, the board of trustees shall proceed with a plan for restructuring the school as if the delay never occurred.*

*3. The sponsor of a charter school shall grant a delay from the imposition of a plan for restructuring for a school, including, without limitation, the development and implementation of a plan for restructuring, for a period not to exceed 1 year if the school qualifies for a delay pursuant to 20 U.S.C. § 6316(b)(7)(D). If the charter school fails to make adequate yearly progress during the period of delay, the Department shall proceed with a plan for restructuring the charter school as if the delay never occurred.*

*4. Before the board of trustees of a school district or the Department proceeds with a plan for restructuring, the board of trustees or the Department, as applicable, shall provide to the administrators, teachers and other educational personnel employed at that school, and parents and guardians of pupils enrolled in the school:*

*(a) Notice that the board of trustees or the Department, as applicable, will develop a plan for restructuring the school;*

*(b) An opportunity to comment before the plan to restructure is developed; and*

*(c) An opportunity to participate in the development of the plan to restructure.*

Sec. 4. NRS 385.3455 is hereby amended to read as follows:

385.3455 As used in NRS 385.3455 to 385.391, inclusive, *and sections 2, 3 and 3.5 of this act,* unless the context otherwise requires, the words and terms defined in NRS 385.346 to 385.34675, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 385.3468 is hereby amended to read as follows:

385.3468 The provisions of NRS 385.3455 to 385.391, inclusive, *and sections 2, 3 and 3.5 of this act* do not supersede, negate or otherwise limit the effect or application of the provisions of chapters 288 and 391 of NRS or the rights, remedies and procedures afforded to employees of a school district under the terms of collective bargaining agreements, memoranda of understanding or other such agreements between employees and their employers.

Sec. 5.5. NRS 385.357 is hereby amended to read as follows:

385.357 1. ~~[The]~~ *Except as otherwise provided in sections 2 and 3.5 of this act, the* principal of each school, including, without limitation, each charter school, shall, in consultation with the employees of the school, prepare a plan to improve the achievement of the pupils enrolled in the school.

2. The plan developed pursuant to subsection 1 must include:

(a) A review and analysis of the data pertaining to the school upon which the report required pursuant to subsection 2 of NRS 385.347 is based and a review and analysis of any data that is more recent than the data upon which the report is based.

(b) The identification of any problems or factors at the school that are revealed by the review and analysis.

(c) Strategies based upon scientifically based research, as defined in 20 U.S.C. § 7801(37), that will strengthen the core academic subjects, as defined in NRS 389.018.

(d) Policies and practices concerning the core academic subjects which have the greatest likelihood of ensuring that each group of pupils identified in paragraph (b) of subsection 1 of NRS 385.361 who are enrolled in the school will make adequate yearly progress and meet the minimum level of proficiency prescribed by the State Board.

(e) Annual measurable objectives, consistent with the annual measurable objectives established by the State Board pursuant to NRS 385.361, for the continuous and substantial progress by each group of pupils identified in paragraph (b) of subsection 1 of that section who are enrolled in the school to ensure that each group will make adequate yearly progress and meet the level of proficiency prescribed by the State Board.

(f) Strategies, consistent with the policy adopted pursuant to NRS 392.457 by the board of trustees of the school district in which the school is located, to promote effective involvement by parents and families of pupils enrolled in the school in the education of their children.

(g) As appropriate, programs of remedial education or tutoring to be offered before and after school, during the summer, or between sessions if the school operates on a year-round calendar for pupils enrolled in the school who need additional instructional time to pass or to reach a level considered proficient.

(h) Strategies to improve the academic achievement of pupils enrolled in the school, including, without limitation, strategies to:

(1) Instruct pupils who are not achieving to their fullest potential, including, without limitation:

(I) The curriculum appropriate to improve achievement;

(II) The manner by which the instruction will improve the achievement and proficiency of pupils on the examinations administered pursuant to NRS 389.015 and 389.550; and

(III) An identification of the instruction and curriculum that is specifically designed to improve the achievement and proficiency of pupils in each group identified in paragraph (b) of subsection 1 of NRS 385.361;

(2) Increase the rate of attendance of pupils and reduce the number of pupils who drop out of school;

(3) Integrate technology into the instructional and administrative programs of the school;

(4) Manage effectively the discipline of pupils; and

(5) Enhance the professional development offered for the teachers and administrators employed at the school to include the activities set forth in 20 U.S.C. § 7801(34) and to address the specific needs of pupils enrolled in the school, as deemed appropriate by the principal.

(i) An identification, by category, of the employees of the school who are responsible for ensuring that the plan is carried out effectively.

(j) In consultation with the school district or governing body, as applicable, an identification, by category, of the employees of the school district or governing body, if any, who are responsible for ensuring that the plan is carried out effectively or for overseeing and monitoring whether the plan is carried out effectively.

(k) In consultation with the Department, an identification, by category, of the employees of the Department, if any, who are responsible for overseeing and monitoring whether the plan is carried out effectively.

(l) For each provision of the plan, a timeline for carrying out that provision, including, without limitation, a timeline for monitoring whether the provision is carried out effectively.

(m) For each provision of the plan, measurable criteria for determining whether the provision has contributed toward improving the academic achievement of pupils, increasing the rate of attendance of pupils and reducing the number of pupils who drop out of school.

(n) The resources available to the school to carry out the plan. If this State has a financial analysis program that is designed to track educational expenditures and revenues to individual schools, each school shall use that statewide program in complying with this paragraph. If a statewide program is not available, each school shall use the financial analysis program used by the school district in which the school is located in complying with this paragraph.

(o) A summary of the effectiveness of appropriations made by the Legislature that are available to the school to improve the academic achievement of pupils and programs approved by the Legislature to improve the academic achievement of pupils.

(p) A budget of the overall cost for carrying out the plan.

3. In addition to the requirements of subsection 2, if a school has been designated as demonstrating need for improvement pursuant to NRS 385.3623, the plan must comply with 20 U.S.C. § 6316(b)(3) and the regulations adopted pursuant thereto.

4. Except as otherwise provided in subsection 5, the principal of each school shall, in consultation with the employees of the school:

(a) Review the plan prepared pursuant to this section annually to evaluate the effectiveness of the plan; and

(b) Based upon the evaluation of the plan, make revisions, as necessary, to ensure that the plan is designed to improve the academic achievement of pupils enrolled in the school.

5. If a school has been designated as demonstrating need for improvement pursuant to NRS 385.3623 and a support team has been established for the school, the support team shall review the plan and make revisions to the most recent plan for improvement of the school pursuant to NRS 385.3741. If the school is a Title I school that has been designated as demonstrating need for improvement, the support team established for the school shall, in making revisions to the plan, work in consultation with parents and guardians of pupils enrolled in the school and, to the extent deemed appropriate by the entity responsible for creating the support team, outside experts.

6. On or before November 1 of each year, the principal of each school or the support team established for the school, as applicable, shall submit the plan or the revised plan, as applicable, to:

(a) If the school is a public school of the school district, the superintendent of schools of the school district.

(b) If the school is a charter school, the governing body of the charter school.

7. If a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623, the superintendent of schools of the school district or the governing body, as applicable, shall carry out a process for peer review of the plan or the revised plan, as applicable, in accordance with 20 U.S.C. § 6316(b)(3)(E) and the regulations adopted pursuant thereto. Not later than 45 days after receipt of the plan, the superintendent of schools of the school district or the governing body, as applicable, shall approve the plan or the revised plan, as applicable, if it meets the requirements of 20 U.S.C. § 6316(b)(3) and the regulations adopted pursuant thereto and the requirements of this section. The superintendent of schools of the school district or the governing body, as applicable, may condition approval of the plan or the revised plan, as applicable, in the manner set forth in 20 U.S.C. § 6316(b)(3)(B) and the regulations adopted pursuant thereto. The State Board shall prescribe the requirements for the process of peer review, including, without limitation, the qualifications of persons who may serve as peer reviewers.

8. If a school is designated as demonstrating exemplary achievement, high achievement or adequate achievement, or if a school that is not a Title I school is designated as demonstrating need for improvement, not later than 45 days after receipt of the plan or the revised plan, as applicable, the superintendent of schools of the school district or the governing body, as applicable, shall approve the plan or the revised plan if it meets the requirements of this section.

9. On or before December 15 of each year, the principal of each school or the support team established for the school, as applicable, shall submit the final plan or the final revised plan, as applicable, to the:

(a) Superintendent of Public Instruction;

(b) Governor;

(c) State Board;

(d) Department;

(e) Committee;

(f) Bureau; and

(g) Board of trustees of the school district in which the school is located.

10. A plan for the improvement of a school must be carried out expeditiously, but not later than January 1 after approval of the plan pursuant to subsection 7 or 8, as applicable.

Sec. 5.7. NRS 385.359 is hereby amended to read as follows:

385.359 1. The Bureau shall contract with a person or entity to:

(a) Review and analyze, in accordance with the standards prescribed by the Committee pursuant to subsection 2 of NRS 218.5354, the:

(1) Annual report of accountability prepared by:

(I) The State Board pursuant to NRS 385.3469; and

(II) The board of trustees of each school district pursuant to NRS 385.347.

(2) Plan to improve the achievement of pupils prepared by:

(I) The State Board pursuant to NRS 385.34691;

(II) The board of trustees of each school district pursuant to NRS 385.348; and

(III) Each school pursuant to NRS 385.357 identified by the Bureau for review, if any ~~[.]~~ *, or if such a plan has not been prepared, the turnaround plan for the schools identified by the Bureau, if any, implemented pursuant to section 2 of this act or the plan for restructuring the school implemented pursuant to section 3.5 of this act, as applicable.*

(b) Submit a written report to and consult with the State Board and the Department regarding any methods by which the State Board may improve the accuracy of the report of accountability required pursuant to NRS 385.3469 and the plan to improve the achievement of pupils required pursuant to NRS 385.34691, and the purposes for which the report and plan to improve are used.

(c) Submit a written report to and consult with each school district regarding any methods by which the district may improve the accuracy of the report required pursuant to subsection 2 of NRS 385.347 and the plan to improve the achievement of pupils required pursuant to NRS 385.348, and the purposes for which the report and plan to improve are used.

(d) If requested by the Bureau, submit a written report to and consult with individual schools identified by the Bureau regarding any methods by which the school may improve the accuracy of the information required to be reported for the school pursuant to subsection 2 of NRS 385.347 and the ~~[plan]~~ *:*

*(1) Plan* to improve the achievement of pupils required pursuant to NRS 385.357 ~~[.]~~ *;*

*(2) Turnaround plan for the school implemented pursuant to section 2 of this act; or*

*(3) Plan for restructuring the school implemented pursuant to section 3.5 of this act,*

➥ *whichever is applicable for the school.*

(e) Submit written reports and any recommendations to the Committee and the Bureau concerning:

(1) The effectiveness of the provisions of NRS 385.3455 to 385.391, inclusive, in improving the accountability of the schools of this State;

(2) The status of each school district that is designated as demonstrating need for improvement pursuant to NRS 385.377 and each school that is designated as demonstrating need for improvement pursuant to NRS 385.3623; and

(3) Any other matter related to the accountability of the public schools of this State, as deemed necessary by the Bureau.

2. The consultant with whom the Bureau contracts to perform the duties required pursuant to subsection 1 must possess the experience and knowledge necessary to perform those duties, as determined by the Committee.

Sec. 6. NRS 385.361 is hereby amended to read as follows:

385.361 1. The State Board shall define the measurement for determining whether each public school, each school district and this State are making adequate yearly progress. The definition of adequate yearly progress must:

(a) Comply with 20 U.S.C. § 6311(b)(2) and the regulations adopted pursuant thereto;

(b) Be designed to ensure that all pupils will meet or exceed the minimum level of proficiency set by the State Board, including, without limitation:

(1) Pupils who are economically disadvantaged, as defined by the State Board;

(2) Pupils from major racial and ethnic groups, as defined by the State Board;

(3) Pupils with disabilities; and

(4) Pupils who are limited English proficient;

(c) Be based primarily upon the measurement of progress of pupils on the examinations administered pursuant to NRS 389.550 or the high school proficiency examination, as applicable;

(d) Include annual measurable objectives established pursuant to 20 U.S.C. § 6311(b)(2)(G) and the regulations adopted pursuant thereto;

(e) For high schools, include the rate of graduation; and

(f) For elementary schools, junior high schools and middle schools, include the rate of attendance.

2. The examination in science must not be included in the definition of adequate yearly progress.

3. The State Board shall prescribe, by regulation, the *differentiated corrective actions, the* consequences or *the* sanctions, or ~~[both,]~~ *any combination thereof, based upon the identified needs of the public school, including, without limitation,* ~~*[a disproportionate number]*~~ *the educational needs of English language learners , *~~*[or]*~~ *pupils* ~~*[receiving special education services or other educational needs of the public school,]*~~ *with disabilities or other groups of pupils identified in paragraph (b) of subsection 1,* that apply to a public school ~~[that is not a Title I school and]~~ that has been designated as demonstrating need for improvement for 4 consecutive years or more ~~[.]~~ *, including, without limitation, the establishment of a support team for a school if deemed necessary by the Department in accordance with the regulations of the State Board.* In no event may the consequences or sanctions be more strict than the restructuring that applies to Title I schools.

Sec. 7. NRS 385.3661 is hereby amended to read as follows:

385.3661 1. Except as otherwise provided in subsection 2, if a public school is designated as demonstrating need for improvement pursuant to NRS 385.3623 and the provisions of NRS 385.3693, 385.3721 , ~~[or]~~ 385.3745 *or 385.3746 or section 2 or 3.5 of this act* do not apply, the board of trustees of the school district shall:

(a) Provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382; and

(b) Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

2. If a charter school is designated as demonstrating need for improvement pursuant to NRS 385.3623 and the provisions of NRS 385.3693, 385.3721 , ~~[or]~~ 385.3745 *or* ~~*[385.3745]*~~ *385.3746 or* ~~*[and]*~~ *section 2 or 3.5 of this act* do not apply:

(a) The governing body of the charter school shall provide notice of the designation to the parents and guardians of pupils enrolled in the charter school on the form prescribed by the Department pursuant to NRS 385.382.

(b) For a charter school sponsored by the board of trustees of a school district, the board of trustees shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(c) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

3. In addition to the requirements of subsection 1 or 2, as applicable, if a Title I school is designated as demonstrating need for improvement pursuant

to NRS 385.3623 and the provisions of NRS 385.3693, 385.3721 , ~~[or]~~ 385.3745 *or 385.3746 or section 2 or 3.5 of this act* do not apply:

(a) Except as otherwise provided in paragraph (b), the board of trustees of the school district shall provide school choice to the parents and guardians of pupils enrolled in the school, including, without limitation, a charter school sponsored by the school district, in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto.

(b) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall work cooperatively with the board of trustees of the school district in which the charter school is located to provide school choice to the parents and guardians of pupils enrolled in the charter school in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto.

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 385.3721 is hereby amended to read as follows:

385.3721 1. ~~[If a public school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 3 consecutive years, the support team established for the school pursuant to this section shall carry out the requirements of NRS 385.3741 and 385.3742.~~

~~2.]~~ Except as otherwise provided in subsection ~~[3,]~~ *2,* if a public school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 3 consecutive years:

(a) The board of trustees of the school district shall:

(1) Provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382; and

(2) Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(b) The Department shall ~~[establish a support team for the school, with the membership prescribed pursuant to NRS 385.374.~~

~~3.]~~ *require the board of trustees of the school district to conduct a comprehensive audit of the school which must include an audit of the curriculum, including, without limitation, methods of instruction and assessments, implemented by the school.*

*2.* If a charter school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 3 consecutive years:

(a) The governing body of the charter school shall provide notice of the designation to the parents and guardians of pupils enrolled in the charter school on the form prescribed by the Department pursuant to NRS 385.382.

(b) For a charter school sponsored by the board of trustees of a school district, the board of trustees shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(c) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(d) The Department shall ~~[establish a support team for the school, with the membership prescribed pursuant to NRS 385.374.]~~ *require the governing body of the charter school to conduct a comprehensive audit of the charter school which must include an audit of the curriculum, including, without limitation, methods of instruction and assessments, implemented by the charter school.*

Sec. 11. NRS 385.374 is hereby amended to read as follows:

385.374 1. The membership of each support team established pursuant to NRS ~~[385.3721]~~ *385.3745* must consist of, without limitation:

(a) Teachers and principals who are considered highly qualified and who are not employees of the public school for which the support team is established;

(b) One member appointed in accordance with subsection 3, who must serve as the team leader of the support team;

(c) Except for a charter school, at least one administrator at the district level who is employed by the board of trustees of the school district;

(d) At least one parent or guardian of a pupil who is enrolled in the public school for which the support team is established; and

(e) In addition to the requirements of paragraphs (a) to (d), inclusive, for a charter school:

(1) At least one member of the governing body of the charter school, regardless of the sponsor of the charter school; and

(2) If the charter school is sponsored by the board of trustees of a school district, at least one employee of the school district, which may include an administrator.

2. The membership of each support team established pursuant to NRS ~~[385.3721]~~ *385.3745* may consist of, without limitation:

(a) Except for a charter school, one or more members of the board of trustees of the school district in which the school is located;

(b) Representatives of institutions of higher education;

(c) Representatives of regional educational laboratories;

(d) Representatives of outside consultant groups;

(e) Representatives of the regional training program for the professional development of teachers and administrators created by NRS 391.512 that provides services to the school district in which the school is located;

(f) The Bureau; and

(g) Other persons who the Department determines are appropriate.

3. The member appointed pursuant to paragraph (b) of subsection 1 must:

(a) Be employed by the Department; or

(b) If he is not employed by the Department, have the training and experience required by the Department.

Sec. 12. NRS 385.374 is hereby amended to read as follows:

385.374 1. ~~[The]~~ *If a school support team is established in accordance with the regulations adopted by the State Board pursuant to NRS 385.361, the* membership of ~~[each]~~ *the* support team ~~[established pursuant to NRS 385.3745]~~ must consist of, without limitation:

(a) Teachers and principals who are considered highly qualified and who are not employees of the public school for which the support team is established;

(b) One member appointed in accordance with subsection 3, who must serve as the team leader of the support team;

(c) Except for a charter school, at least one administrator at the district level who is employed by the board of trustees of the school district;

(d) At least one parent or guardian of a pupil who is enrolled in the public school for which the support team is established; and

(e) In addition to the requirements of paragraphs (a) to (d), inclusive, for a charter school:

(1) At least one member of the governing body of the charter school, regardless of the sponsor of the charter school; and

(2) If the charter school is sponsored by the board of trustees of a school district, at least one employee of the school district, which may include an administrator.

2. ~~[The]~~ *If a school support team is established in accordance with the regulations adopted by the State Board pursuant to NRS 385.361, the* membership of ~~[each]~~ *the* support team ~~[established pursuant to NRS 385.3745]~~ may consist of, without limitation:

(a) Except for a charter school, one or more members of the board of trustees of the school district in which the school is located;

(b) Representatives of institutions of higher education;

(c) Representatives of regional educational laboratories;

(d) Representatives of outside consultant groups;

(e) Representatives of the regional training program for the professional development of teachers and administrators created by NRS 391.512 that provides services to the school district in which the school is located;

(f) The Bureau; and

(g) Other persons who the Department determines are appropriate.

3. The member appointed pursuant to paragraph (b) of subsection 1 must:

(a) Be employed by the Department; or

(b) If he is not employed by the Department, have the training and experience required by the Department.

Sec. 13. NRS 385.3741 is hereby amended to read as follows:

385.3741 1. Each support team established for a public school pursuant to NRS ~~[385.3721]~~ *385.3745* shall:

(a) Review and analyze the operation of the school, including, without limitation, the design and operation of the instructional program of the school.

(b) Review and analyze the data pertaining to the school upon which the report required pursuant to subsection 2 of NRS 385.347 is based and review and analyze any data that is more recent than the data upon which the report is based.

(c) Review the most recent plan to improve the achievement of the school's pupils.

(d) Review the information concerning the educational involvement accords provided to the support team pursuant to NRS 392.4575 and the information concerning the reports provided to the support team pursuant to NRS 392.456.

(e) Identify and investigate the problems and factors at the school that contributed to the designation of the school as demonstrating need for improvement.

(f) Assist the school in developing recommendations for improving the performance of pupils who are enrolled in the school.

(g) Except as otherwise provided in this paragraph, make recommendations to the board of trustees of the school district, the State Board and the Department concerning additional assistance for the school in carrying out the plan for improvement of the school. For a charter school sponsored by the State Board, the support team shall make the recommendations to the State Board and the Department. For a charter school sponsored by a college or university within the Nevada System of Higher Education, the support team shall make the recommendations to the sponsor, the State Board and the Department.

(h) In accordance with its findings pursuant to this section and NRS 385.3742, submit, on or before November 1, written revisions to the most recent plan to improve the achievement of the school's pupils for approval pursuant to NRS 385.357. The written revisions must:

(1) Comply with NRS 385.357;

(2) If the school is a Title I school, be developed in consultation with parents and guardians of pupils enrolled in the school and, to the extent deemed appropriate by the entity that created the support team, outside experts;

(3) Include the data and findings of the support team that provide support for the revisions;

(4) Set forth goals, objectives, tasks and measures for the school that are:

(I) Designed to improve the achievement of the school's pupils;

(II) Specific;

(III) Measurable; and

(IV) Conducive to reliable evaluation;

(5) Set forth a timeline to carry out the revisions;

(6) Set forth priorities for the school in carrying out the revisions; and

(7) Set forth the name and duties of each person who is responsible for carrying out the revisions.

(i) Except as otherwise provided in this paragraph, work cooperatively with the board of trustees of the school district in which the school is located, the employees of the school, and the parents and guardians of pupils enrolled in the school to carry out and monitor the plan for improvement of the school. If a charter school is sponsored by the State Board, the Department shall assist the school with carrying out and monitoring the plan for improvement of the school. If a charter school is sponsored by a college or university within the Nevada System of Higher Education, that institution shall assist the school with carrying out and monitoring the plan for improvement of the school.

(j) Prepare a quarterly progress report in the format prescribed by the Department and:

(1) Submit the progress report to the Department.

(2) Distribute copies of the progress report to each employee of the school for review.

(k) In addition to the requirements of this section, if the support team is established for a Title I school, carry out the requirements of 20 U.S.C. § 6317(a)(5).

2. A school support team may require the school for which the support team was established to submit plans, strategies, tasks and measures that, in the determination of the support team, will assist the school in improving the achievement and proficiency of pupils enrolled in the school.

3. The Department shall prescribe a concise quarterly progress report for use by each support team in accordance with paragraph (j) of subsection 1.

Sec. 14. NRS 385.3741 is hereby amended to read as follows:

385.3741 1. ~~[Each]~~ *If a school support team is established pursuant to the regulations adopted by the State Board pursuant to NRS 385.361, the* support team ~~[established for a public school pursuant to NRS 385.3745]~~ shall:

(a) Review and analyze the operation of the school, including, without limitation, the design and operation of the instructional program of the school.

(b) Review and analyze the data pertaining to the school upon which the report required pursuant to subsection 2 of NRS 385.347 is based and review and analyze any data that is more recent than the data upon which the report is based.

(c) Review the most recent plan to improve the achievement of the school's pupils.

(d) Review the information concerning the educational involvement accords provided to the support team pursuant to NRS 392.4575 and the information concerning the reports provided to the support team pursuant to NRS 392.456.

(e) Identify and investigate the problems and factors at the school that contributed to the designation of the school as demonstrating need for improvement.

(f) Assist the school in developing recommendations for improving the performance of pupils who are enrolled in the school.

(g) Except as otherwise provided in this paragraph, make recommendations to the board of trustees of the school district, the State Board and the Department concerning additional assistance for the school in carrying out the plan for improvement of the school ~~[.]~~ *, the turnaround plan for the school or the plan for restructuring the school, whichever is applicable for the school.* For a charter school sponsored by the State Board, the support team shall make the recommendations to the State Board and the Department. For a charter school sponsored by a college or university within the Nevada System of Higher Education, the support team shall make the recommendations to the sponsor, the State Board and the Department.

(h) In accordance with its findings pursuant to this section and NRS 385.3742, submit, on or before November 1, written revisions to the most recent plan to improve the achievement of the school's pupils for approval pursuant to NRS 385.357 ~~[.]~~ *, or submit, on or before May 1, written recommendations for revisions to the turnaround plan for the school implemented pursuant to section 2 of this act or the plan for restructuring the school implemented pursuant to section 3.5 of this act, whichever is applicable for the school.* The written revisions *or recommendations, as applicable,* must:

(1) Comply with NRS 385.357 ~~[;]~~ *if the school has demonstrated need for improvement for less than 5 years or with section 2 or 3.5 of this act, as applicable, if the school has demonstrated need for improvement for 5 or more consecutive years;*

(2) If the school is a Title I school, be developed in consultation with parents and guardians of pupils enrolled in the school and, to the extent deemed appropriate by the entity that created the support team, outside experts;

(3) Include the data and findings of the support team that provide support for the revisions;

(4) Set forth goals, objectives, tasks and measures for the school that are:

(I) Designed to improve the achievement of the school's pupils;

(II) Specific;

(III) Measurable; and

(IV) Conducive to reliable evaluation;

(5) Set forth a timeline to carry out the revisions;

(6) Set forth priorities for the school in carrying out the revisions; and

(7) Set forth the name and duties of each person who is responsible for carrying out the revisions.

(i) Except as otherwise provided in this paragraph, work cooperatively with the board of trustees of the school district in which the school is located, the employees of the school, and the parents and guardians of pupils enrolled in the school to carry out and monitor the plan for improvement of the school. If a charter school is sponsored by the State Board, the Department shall assist the school with carrying out and monitoring the plan for improvement of the school. If a charter school is sponsored by a college or university within the Nevada System of Higher Education, that institution shall assist the school with carrying out and monitoring the plan for improvement of the school.

(j) Prepare a quarterly progress report in the format prescribed by the Department and:

(1) Submit the progress report to the Department.

(2) Distribute copies of the progress report to each employee of the school for review.

(k) In addition to the requirements of this section, if the support team is established for a Title I school, carry out the requirements of 20 U.S.C. § 6317(a)(5).

2. A school support team may require the school for which the support team was established to submit plans, strategies, tasks and measures that, in the determination of the support team, will assist the school in improving the achievement and proficiency of pupils enrolled in the school.

3. The Department shall prescribe a concise quarterly progress report for use by each support team in accordance with paragraph (j) of subsection 1.

*Sec. 14.5.* *NRS 385.3742 is hereby amended to read as follows:*

385.3742 1. In addition to the duties prescribed in NRS 385.3741, a support team established for a school shall prepare an annual written report that includes:

(a) Information concerning the most recent plan to improve the achievement of the school's pupils, *the turnaround plan for the school or the plan for restructuring the school, whichever is applicable for the school,* including, without limitation, an evaluation of:

(1) The appropriateness of the plan for the school; and

(2) Whether the school has achieved the goals and objectives set forth in the plan;

(b) The written revisions to the plan to improve the achievement of the school's pupils *or written recommendations for revisions to the turnaround plan for the school or the plan for restructuring the school, whichever is applicable for the school,* submitted by the support team pursuant to NRS 385.3741;

(c) A summary of each program for remediation, if any, purchased for the school with money that is available from the Federal Government, this state and the school district in which the school is located, including, without limitation:

(1) The name of the program;

(2) The date on which the program was purchased and the date on which the program was carried out by the school;

(3) The percentage of personnel at the school who were trained regarding the use of the program;

(4) The satisfaction of the personnel at the school with the program; and

(5) An evaluation of whether the program has improved the academic achievement of the pupils enrolled in the school who participated in the program;

(d) An analysis of the problems and factors at the school which contributed to the designation of the school as demonstrating need for improvement, including, without limitation, issues relating to:

(1) The financial resources of the school;

(2) The administrative and educational personnel of the school;

(3) The curriculum of the school;

(4) The facilities available at the school, including the availability and accessibility of educational technology; and

(5) Any other factors that the support team believes contributed to the designation of the school as demonstrating need for improvement; and

(e) Other information concerning the school, including, without limitation:

(1) The results of the pupils who are enrolled in the school on the examinations that are administered pursuant to NRS 389.550 or the high school proficiency examination, as applicable;

(2) Records of the attendance and truancy of pupils who are enrolled in the school;

(3) The transiency rate of pupils who are enrolled in the school;

(4) A description of the number of years that each teacher has provided instruction at the school and the rate of turnover of teachers and other educational personnel employed at the school;

(5) A description of the participation of parents and legal guardians in the educational process and other activities relating to the school;

(6) A description of each source of money for the remediation of pupils who are enrolled in the school; and

(7) A description of the disciplinary problems of the pupils who are enrolled in the school, including, without limitation, the information contained in paragraphs (k) to (n), inclusive, of subsection 2 of NRS 385.347.

2. On or before November 1, the support team shall submit a copy of the final written report to the:

(a) Principal of the school;

(b) Board of trustees of the school district in which the school is located;

(c) Superintendent of schools of the school district in which the school is located;

(d) Department; and

(e) Bureau.

➥ The support team shall make the written report available, upon request, to each parent or legal guardian of a pupil who is enrolled in the school.

Sec. 15. (Deleted by amendment.)

Sec. 16. NRS 385.3744 is hereby amended to read as follows:

385.3744 1. Except as otherwise provided in subsection ~~[3,]~~ *2,* if a public school that is not a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 3 consecutive years for failing to make adequate yearly progress, ~~[the support team established for the school shall consider whether corrective action is appropriate for the school. If the support team determines that corrective action is appropriate, the support team shall make a recommendation for corrective action for the school, including, without limitation, the type of corrective action that is recommended from the list of corrective actions authorized pursuant to subsection 2. The recommendation must be submitted to:~~

~~(a) For a school of the school district or a charter school sponsored by the board of trustees of the school district, the board of trustees.~~

~~(b) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department.~~

~~2. Regardless of whether a support team recommends corrective action for a school, the]~~ *the* Department may, for a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, and the board of trustees of a school district may, for a school of the school district or a charter school sponsored by the board of trustees, take one or more of the following corrective actions for the school:

(a) ~~[Develop and carry out a new curriculum at the school, including the provision of appropriate professional development relating to the new curriculum.~~

~~(b)]~~ Significantly decrease the managerial authority of the employees at the school.

~~[(c)]~~ *(b)* Extend the school year or the school day.

~~[3.]~~ *2.* The Department or the board of trustees of a school district, as applicable, shall grant a delay from the imposition of corrective action for a school for a period not to exceed 1 year if the school qualifies for a delay in the manner set forth in 20 U.S.C. § 6316(b)(7)(D). If the school fails to make adequate yearly progress during the period of the delay, the Department or the board of trustees, as applicable, may proceed with corrective action as if the delay never occurred.

Sec. 17. NRS 385.3745 is hereby amended to read as follows:

385.3745 1. If a public school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 or more consecutive years, the support team established for the school pursuant to ~~[NRS 385.3721]~~ *this section* shall carry out the requirements of NRS 385.3741 ~~[,]~~ *and* 385.3742 . ~~[and 385.3744, as applicable.]~~

2. Except as otherwise provided in subsection 3, if a public school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 or more consecutive years:

(a) The board of trustees of the school district shall:

(1) Provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382; and

(2) Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(b) The Department shall ~~[continue]~~ *establish* a support team for the school ~~[.]~~ *, with the membership prescribed pursuant to NRS 385.374.*

3. If a charter school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 or more consecutive years:

(a) The governing body of the charter school shall provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382.

(b) For a charter school sponsored by the board of trustees of a school district, the board of trustees shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(c) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall, in conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(d) The Department shall ~~[continue]~~ *establish* a support team for the charter school ~~[.]~~ *, with the membership prescribed pursuant to NRS 385.374.*

Sec. 18. NRS 385.3745 is hereby amended to read as follows:

385.3745 1. ~~[If a public school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 or more consecutive years, the support team established for the school pursuant to this section shall carry out the requirements of NRS 385.3741 and 385.3742.~~

~~2.]~~ Except as otherwise provided in subsection ~~[3,]~~ *2,* if a public school *that is not a Title I school* is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 ~~[or more]~~ consecutive years:

(a) The board of trustees of the school district shall:

(1) *Except as otherwise provided in subsection 3, develop a turnaround plan to improve the academic achievement of pupils enrolled in the school which meets the requirements prescribed by the State Board pursuant to paragraph (b).*

*(2)* Provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382; and

~~[(2)]~~ *(3)* Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(b) The ~~[Department]~~ *State Board* shall ~~[establish a support team for the school, with the membership prescribed pursuant to NRS 385.374.~~

~~3.]~~ *prescribe by regulation:*

*(1) The requirements for a turnaround plan which must include, without limitation:*

*(I) A requirement that the plan is based on the results of the comprehensive audit conducted pursuant to NRS 385.3721;*

*(II) Measurable goals and objectives for obtaining adequate yearly progress;*

*(III) Specified steps or actions for obtaining adequate yearly progress; and*

*(IV) A timeline for the completion of the turnaround plan* ~~*[;]*~~ *, which must provide for implementation of the plan in accordance with section 2 of this act if the school is designated as needing improvement for 5 years; and*

*(2) The actions the Department may take to monitor the development of the turnaround plan developed pursuant to this section and the implementation of any corrective action at the school.*

*2.* If a charter school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 ~~[or more]~~ consecutive years:

(a) The governing body of the charter school shall provide notice of the designation to the parents and guardians of pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382.

(b) For a charter school sponsored by the board of trustees of a school district, the board of trustees shall, in conjunction with the governing body of the charter school ~~[, ensure]~~ *:*

*(1) Except as otherwise provided in subsection 3, develop a turnaround plan to improve the academic achievement of pupils enrolled in the school which meets the requirements prescribed by the State Board pursuant to paragraph (d).*

*(2) Ensure* that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(c) For a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall, in conjunction with the governing body of the charter school ~~[, ensure]~~ *:*

*(1) Except as otherwise provided in subsection 3, develop a turnaround plan to improve the academic achievement of pupils enrolled in the school which meets the requirements prescribed by the State Board pursuant to paragraph (d).*

*(2) Ensure* that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto.

(d) The ~~[Department shall establish a support team for the charter school, with the membership prescribed pursuant to NRS 385.374.]~~ *State Board shall prescribe by regulation:*

*(1) The requirements for a turnaround plan which must include, without limitation:*

*(I) A requirement that the plan is based on the results of the comprehensive audit conducted pursuant to NRS 385.3721;*

*(II) Measurable goals and objectives for obtaining adequate yearly progress;*

*(III) Specified steps or actions for obtaining adequate yearly progress; and*

*(IV) A timeline for the completion of the turnaround plan ~~[;]~~ , which must provide for implementation of the plan in accordance with section 2 of this act if the school is designated as needing improvement for 5 years; and*

*(2) The actions the Department may take to monitor the implementation of the turnaround plan developed pursuant to this section and the implementation of any corrective action at the charter school.*

*3. If a public school is granted a delay from the development of a turnaround plan pursuant to subsection 2 of NRS 385.376 and the school fails to make adequate yearly progress during the period of the delay, a turnaround plan must be immediately developed and implemented for the school in accordance with this section as if the delay never occurred.*

*4. ~~[A]~~ On or before June 30, a turnaround plan developed for a school must be submitted to the:*

*(a) Superintendent of Public Instruction;*

*(b) Department;*

*(c) Bureau; ~~[and]~~*

*(d) Board of trustees of the school district in which the school is located ~~[.]~~ ; and*

*(e) Principal of the school.*

Sec. 19. NRS 385.3746 is hereby amended to read as follows:

385.3746 1. ~~[In addition to the requirements of NRS 385.3745, if]~~ *If* a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 ~~[or more]~~ consecutive years:

(a) Except as otherwise provided in paragraph (b), the board of trustees of the school district shall:

(1) *Provide notice of the designation to the parents and guardians of the pupils enrolled in the school on the form prescribed by the Department pursuant to NRS 385.382;*

*(2) Ensure that the school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto;*

*(3)* Provide school choice to the parents and guardians of pupils enrolled in the school in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto;

~~[(2)]~~ *(4)* Provide supplemental educational services in accordance with 20 U.S.C. § 6316(e) and the regulations adopted pursuant thereto from a provider approved pursuant to NRS 385.384, unless a waiver is granted pursuant to that provision of federal law; and

~~[(3)]~~ *(5)* Except as otherwise provided in subsection ~~[2, proceed with]~~ *3, develop* a plan for restructuring the school if required by 20 U.S.C. § 6316(b)(8) and the regulations adopted pursuant thereto.

(b) *The governing body of the charter school shall provide notice of the designation to the parents and guardians of the pupils enrolled in the charter school on the form prescribed by the Department pursuant to NRS 385.382.* If the school is a charter school:

(1) Sponsored by the board of trustees of a school district, the board of trustees shall:

(I) *In conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto;*

*(II)* Provide school choice to the parents and guardians of pupils enrolled in the charter school in accordance with 20 U.S.C. § 6316(b)(1); and

~~[(II)]~~ *(III)* Except as otherwise provided in subsection ~~[3, proceed with]~~ *4, develop* a plan for restructuring the school if required by 20 U.S.C. § 6316(b)(8) and the regulations adopted pursuant thereto.

(2) Sponsored by the State Board or by a college or university within the Nevada System of Higher Education, the Department shall:

(I) *In conjunction with the governing body of the charter school, ensure that the charter school receives technical assistance in the manner set forth in 20 U.S.C. § 6316(b)(4) and the regulations adopted pursuant thereto;*

*(II)* Work cooperatively with the board of trustees of the school district in which the charter school is located to provide school choice to the parents and guardians of pupils enrolled in the school in accordance with 20 U.S.C. § 6316(b)(1) and the regulations adopted pursuant thereto; and

~~[(II)]~~ *(III)* Except as otherwise provided in subsection ~~[3, proceed with]~~ *4, develop* a plan for restructuring the school if required by 20 U.S.C. § 6316(b)(8) and the regulations adopted pursuant thereto.

(3) Regardless of the sponsor, the governing body of the charter school shall provide supplemental educational services in accordance with 20 U.S.C. § 6316(e) and the regulations adopted pursuant thereto from a provider approved pursuant to NRS 385.384, unless a waiver is granted pursuant to that provision of federal law.

2. *A plan for restructuring the school developed pursuant to this section must include, without limitation:*

*(a) A requirement that the plan is based on the results of the comprehensive audit conducted pursuant to NRS 385.3721;*

*(b) Measurable goals and objectives for obtaining adequate yearly progress;*

*(c) Specified steps or actions for obtaining adequate yearly progress; and*

*(d) A timeline for the completion of the plan for restructuring the school* ~~*[.]*~~ *, which must provide for implementation of the plan in accordance with section 3.5 of this act if the school is designated as needing improvement for 5 years.*

*3.* The board of trustees of a school district shall grant a delay from the ~~[imposition]~~ *development* of a plan for restructuring for a school for a period not to exceed 1 year if the school qualifies for a delay pursuant to 20 U.S.C. § 6316(b)(7)(D). If the school fails to make adequate yearly progress during the period of the delay, the board of trustees shall *immediately develop and* proceed with ~~[a]~~ *the implementation of the* plan for restructuring the school as if the delay never occurred.

~~[3.]~~ *4.* The sponsor of a charter school shall grant a delay from the ~~[imposition]~~ *development* of a plan for restructuring for the charter school for a period not to exceed 1 year if the charter school qualifies for a delay pursuant to 20 U.S.C. § 6316(b)(7)(D). If the charter school fails to make adequate yearly progress during the period of the delay, *a plan for restructuring must be immediately developed for the school in accordance with this section and* the Department shall proceed with ~~[a]~~ *the implementation of the* plan for restructuring the charter school as if the delay never occurred.

~~[4. Before the board of trustees of a school district or the Department proceeds with a plan for restructuring, the board of trustees or the Department, as applicable, shall provide to the administrators, teachers and other educational personnel employed at that school, and parents and guardians of pupils enrolled in the school:~~

~~(a) Notice that the board of trustees or the Department, as applicable, will develop a plan for restructuring the school;~~

~~(b) An opportunity to comment before the plan to restructure is developed; and~~

~~(c) An opportunity to participate in the development of the plan to restructure.]~~

*5.* ~~*[A]*~~ *On or before June 30, a plan for restructuring developed pursuant to this section must be submitted to the:*

*(a) Superintendent of Public Instruction;*

*(b) Department;*

*(c) Bureau;* ~~*[and]*~~

*(d) Board of trustees of the school district in which the school is located* ~~*[.]*~~ *; and*

*(e) Principal of the school.*

Sec. 20. NRS 385.376 is hereby amended to read as follows:

385.376 1. Except as otherwise provided in subsection ~~[3,]~~ *2,* if a public school that is not a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 or more consecutive years for failure to make adequate yearly progress, ~~[the support team for the school shall:~~

~~(a) If corrective action was not taken against the school pursuant to NRS 385.3744, consider whether corrective action is appropriate for the school.~~

~~(b) If corrective action was taken against the school pursuant to NRS 385.3744, consider whether further corrective action is appropriate or whether consequences or sanctions, or both, are appropriate for the school.~~

~~2. Regardless of whether a support team recommends corrective action or consequences or sanctions for a school,]~~ the Department may, for a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, and the board of trustees of a school district may, for a school of the school district or a charter school sponsored by the board of trustees, take corrective action as set forth in NRS 385.3744 or proceed with *differentiated corrective actions,* consequences or sanctions, or ~~[both,]~~ *any combination thereof,* as prescribed by the State Board pursuant to NRS 385.361.

~~[3.]~~ *2.* The Department or the board of trustees of a school district, as applicable, shall grant a delay from the imposition of corrective action *, consequences* or ~~[restructuring]~~ *sanctions, or any combination thereof,* pursuant to this section for a school for a period not to exceed 1 year if the school qualifies for a delay in the manner set forth in 20 U.S.C. § 6316(b)(7)(D). If the school fails to make adequate yearly progress during the period of the delay, the Department or the board of trustees, as applicable, may proceed with corrective action *,* ~~[or with]~~ consequences or sanctions, or ~~[both,]~~ *any combination thereof,* for the school, as appropriate, as if the delay never occurred.

~~[4.]~~ *3.* Before the board of trustees or the Department proceeds with consequences or sanctions, the board of trustees or the Department, as applicable, shall provide to the administrators, teachers and other educational personnel employed at that school, and parents and guardians of pupils enrolled in the school:

(a) Notice that the board of trustees or the Department, as applicable, will proceed with consequences or sanctions for the school;

(b) An opportunity to comment before the consequences or sanctions are carried out; and

(c) An opportunity to participate in the development of the consequences or sanctions.

Sec. 21. NRS 385.376 is hereby amended to read as follows:

385.376 1. Except as otherwise provided in subsection 2, if a public school that is not a Title I school is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 4 ~~[or more]~~ consecutive years for failure to make adequate yearly progress, the Department may, for a charter school sponsored by the State Board or by a college or university within the Nevada System of Higher Education, and the board of trustees of a school district may, for a school of the school district or a charter school sponsored by the board of trustees, take corrective action as set forth in NRS 385.3744 or proceed with differentiated correction actions, consequences or sanctions, or any combination thereof, as prescribed by the State Board pursuant to NRS 385.361.

2. The Department or the board of trustees of a school district, as applicable, shall grant a delay from the imposition of corrective action, consequences or sanctions, or any combination thereof, pursuant to this section for a school for a period not to exceed 1 year if the school qualifies for a delay in the manner set forth in 20 U.S.C. § 6316(b)(7)(D). If the school fails to make adequate yearly progress during the period of the delay, the Department or the board of trustees, as applicable, may proceed with corrective action, consequences or sanctions, or any combination thereof, for the school, as appropriate, *pursuant to the provisions of section 2 of this act* as if the delay never occurred.

3. Before the board of trustees or the Department proceeds with consequences or sanctions, the board of trustees or the Department, as applicable, shall provide to the administrators, teachers and other educational personnel employed at that school, and parents and guardians of pupils enrolled in the school:

(a) Notice that the board of trustees or the Department, as applicable, will proceed with consequences or sanctions for the school;

(b) An opportunity to comment before the consequences or sanctions are carried out; and

(c) An opportunity to participate in the development of the consequences or sanctions.

Sec. 21.3. NRS 385.3785 is hereby amended to read as follows:

385.3785 1. The Commission shall:

(a) Establish a program of educational excellence designed exclusively for pupils enrolled in kindergarten through grade 6 in public schools in this State based upon:

(1) The plan to improve the achievement of pupils prepared by the State Board pursuant to NRS 385.34691;

(2) The plan to improve the achievement of pupils prepared by the board of trustees of each school district pursuant to NRS 385.348;

(3) The plan to improve the achievement of pupils prepared by the principal of each school pursuant to NRS 385.357, which may include a program of innovation [~~;~~] *, the turnaround plan for the school implemented pursuant to section 2 of this act or the plan for restructuring the school implemented pursuant to section 3.5 of this act, whichever is applicable for the school;* and

(4) Any other information that the Commission considers relevant to the development of the program of educational excellence.

(b) Identify programs, practices and strategies that have proven effective in improving the academic achievement and proficiency of pupils.

(c) Develop a concise application and simple procedures for the submission of applications by public schools and consortiums of public schools, including, without limitation, charter schools, for participation in a program of educational excellence and for grants of money from the Account. Grants of money must be made for programs designed for the achievement of pupils that are linked to the plan to improve the achievement of pupils or for innovative programs, or both ~~[.]~~ *, or that are linked to the turnaround plan for the school or the plan for restructuring the school, if applicable, or for innovative programs, or both.* The Commission shall not award a grant of money from the Account for a program to provide full-day kindergarten. All public schools and consortiums of public schools, including, without limitation, charter schools, are eligible to submit such an application, regardless of whether the schools have made adequate yearly progress or failed to make adequate yearly progress. A public school or a consortium of public schools selected for participation may be approved by the Commission for participation for a period not to exceed 2 years, but may reapply.

(d) Prescribe a long-range timeline for the review, approval and evaluation of applications received from public schools and consortiums of public schools that desire to participate in the program.

(e) Establish guidelines for the review, evaluation and approval of applications for grants of money from the Account, including, without limitation, consideration of the list of priorities of public schools provided by the Department pursuant to subsection 5. To ensure consistency in the review, evaluation and approval of applications, if the guidelines authorize the review and evaluation of applications by less than the entire membership of the Commission, money must not be allocated from the Account for a grant until the entire membership of the Commission has reviewed and approved the application for the grant.

(f) Prescribe accountability measures to be carried out by a public school that participates in the program if that public school does not meet the annual measurable objectives established by the State Board pursuant to NRS 385.361, including, without limitation:

(1) The specific levels of achievement expected of schools that participate; and

(2) Conditions for schools that do not meet the grant criteria but desire to continue participation in the program and receive money from the Account, including, without limitation, a review of the leadership at the school and recommendations regarding changes to the appropriate body.

(g) Determine the amount of money that is available from the Account for those public schools and consortiums of public schools that are selected to participate in the program.

(h) Allocate money to public schools and consortiums of public schools from the Account. Allocations must be distributed not later than August 15 of each year.

(i) Establish criteria for public schools and consortiums of public schools that participate in the program and receive an allocation of money from the Account to evaluate the effectiveness of the allocation in improving the achievement of pupils, including, without limitation, a detailed analysis of:

(1) The achievement of pupils enrolled at each school that received money from the allocation based upon measurable criteria identified in , *as applicable*, the ~~[plan]~~ *:*

*(I) Plan* to improve the achievement of pupils for the school prepared pursuant to NRS 385.357;

*(II) Turnaround plan for the school implemented pursuant to section 2 of this act; or*

*(III) Plan for restructuring the school implemented pursuant to section 3.5 of this act;*

(2) If applicable, the effectiveness of the program of innovation on the achievement of pupils and the overall effectiveness for pupils and staff;

(3) The implementation of the applicable plans for improvement, including, without limitation, an analysis of whether the school is meeting the measurable objectives identified in the plan; and

(4) The attainment of measurable progress on the annual list of adequate yearly progress of school districts and schools.

2. To the extent money is available, the Commission shall make allocations of money to public schools and consortiums of public schools for effective programs for grades 7 through 12 that are designed to improve the achievement of pupils and effective programs of innovation for pupils. In making such allocations, the Commission shall comply with the requirements of subsection 1.

3. The Commission shall ensure, to the extent practicable, that grants of money provided pursuant to this section reflect the economic and geographic diversity of this State.

4. If a public school or consortium that receives money pursuant to subsection 1 or 2:

(a) Does not meet the criteria for effectiveness as prescribed in paragraph (i) of subsection 1;

(b) Does not, as a result of the program for which the grant of money was awarded, show improvement in the achievement of pupils, as determined in an evaluation conducted pursuant to subsection 3 of NRS 385.379; or

(c) Does not implement the program for which the money was received, as determined in an evaluation conducted pursuant to subsection 3 of NRS 385.379,

➥ over a 2-year period, the Commission may consider not awarding future allocations of money to that public school or consortium of public schools.

5. On or before July 1 of each year, the Department shall provide a list of priorities of public schools that indicates:

(a) The adequate yearly progress status of schools in the immediately preceding year; and

(b) The public schools that are considered Title I eligible by the Department based upon the poverty level of the pupils enrolled in a school in comparison to the poverty level of the pupils in the school district as a whole,

➥ for consideration by the Commission in its development of procedures for the applications.

6. A public school, including, without limitation, a charter school, or a consortium of public schools may request assistance from the school district in which the school is located in preparing an application for a grant of money pursuant to this section. A school district shall assist each public school or consortium of public schools that requests assistance pursuant to this subsection to ensure that the application of the school:

(a) Is based directly upon *, as applicable,* the ~~[plan]~~ *:*

*(1) Plan* to improve the achievement of pupils prepared for the school pursuant to NRS 385.357;

*(2) Turnaround plan for the school implemented pursuant to section 2 of this act; or*

*(3) Plan for restructuring the school implemented pursuant to section 3.5 of this act;*

(b) Is developed in accordance with the criteria established by the Commission; and

(c) Is complete and complies with all technical requirements for the submission of an application.

➥ A school district may make recommendations to the individual schools and consortiums of public schools. Such schools and consortiums of public schools are not required to follow the recommendations of a school district.

7. In carrying out the requirements of this section, the Commission shall review and consider the programs of remedial study adopted by the Department pursuant to NRS 385.389, the list of approved providers of supplemental services maintained by the Department pursuant to NRS 385.384 and the recommendations submitted by the Committee pursuant to NRS 218.5354 concerning programs, practices and strategies that have proven effective in improving the academic achievement and proficiency of pupils.

8. If a consortium of public schools is formed for the purpose of submitting an application pursuant to this section, the public schools within the consortium do not need to be located within the same school district.

Sec. 21.7. NRS 386.605 is hereby amended to read as follows:

386.605 1. On or before July 15 of each year, the governing body of a charter school shall submit the information concerning the charter school that is required pursuant to subsection 2 of NRS 385.347 to the board of trustees of the school district in which the charter school is located for inclusion in the report of the school district pursuant to that section. The information must be submitted by the charter school in a format prescribed by the board of trustees.

2. The Legislative Bureau of Educational Accountability and Program Evaluation created pursuant to NRS 218.5356 may authorize a person or entity with whom it contracts pursuant to NRS 385.359 to review and analyze information submitted by charter schools pursuant to this section and *pursuant to* NRS 385.357 ~~[,]~~ *or section 2 or 3.5 of this act, whichever is applicable for the school,* consult with the governing bodies of charter schools and submit written reports concerning charter schools pursuant to NRS 385.359.

Sec. 22. NRS 386.730 is hereby amended to read as follows:

386.730 1. Except as otherwise provided in subsection 2, the principal of a public school within a school district that participates in the Program of Empowerment Schools who wishes to convert to an empowerment school shall:

(a) Establish an empowerment team for the school; and

(b) Develop an empowerment plan for the school in consultation with:

(1) The empowerment team; and

(2) The school support team, if a school support team has been established for the school pursuant to NRS ~~[385.3721.]~~ *385.3745.*

2. The principal of a public school located in a county whose population is less than 100,000 may develop an empowerment plan for the school without establishing or consulting with an empowerment team. If a school support team has been established for the school, the principal shall develop the empowerment plan in consultation with the school support team. If an empowerment team has not been established pursuant to the exception provided in this subsection, the principal of the school shall carry out the responsibilities and duties otherwise assigned to an empowerment team pursuant to NRS 386.700 to 386.780, inclusive.

3. An empowerment team for a school must consist of the following persons:

(a) The principal of the school;

(b) At least two but not more than four teachers and other licensed educational personnel who are employed at the school, selected by a recognized employee organization that represents licensed educational personnel within the school district;

(c) At least two but not more than four employees, other than teachers and other licensed educational personnel, who are employed at the school, selected by an organization that represents those employees;

(d) At least two but not more than four parents and legal guardians of pupils enrolled in the school, selected by an association of parents established for the school;

(e) At least two but not more than four representatives of the community or businesses within the community;

(f) The facilitator of the school support team, if a school support team has been established for the school pursuant to NRS ~~[385.3721;]~~ *385.3745;* and

(g) Such other persons as may be necessary to meet the requirements set forth in subsection 4.

4. Of the total number of members on an empowerment team for a school:

(a) At least one member must have 5 years or more of experience in school finance;

(b) At least one member must have 5 years or more of experience in school administration or human resources;

(c) At least one member must have 5 years or more of experience in overseeing the academic programs and curriculum for a public school; and

(d) At least one member must have 5 years or more of experience in the collection and analysis of data.

➥ The provisions of this subsection do not require the appointment of four persons if one, two or three such persons satisfy the qualifications.

5. A charter school that wishes to participate in the Program of Empowerment Schools shall comply with the provisions of NRS 386.700 to 386.780, inclusive. If a charter school is approved as an empowerment school, the charter school does not forfeit its status as a charter school.

Sec. 23. NRS 386.730 is hereby amended to read as follows:

386.730 1. Except as otherwise provided in subsection 2, the principal of a public school within a school district that participates in the Program of Empowerment Schools who wishes to convert to an empowerment school shall:

(a) Establish an empowerment team for the school; and

(b) Develop an empowerment plan for the school in consultation with:

(1) The empowerment team; and

(2) The school support team, if a school support team has been established for the school *in accordance with the regulations of the State Board adopted* pursuant to NRS ~~[385.3745.]~~ *385.361*.

2. The principal of a public school located in a county whose population is less than 100,000 may develop an empowerment plan for the school without establishing or consulting with an empowerment team. If a school support team has been established for the school, the principal shall develop the empowerment plan in consultation with the school support team. If an empowerment team has not been established pursuant to the exception provided in this subsection, the principal of the school shall carry out the responsibilities and duties otherwise assigned to an empowerment team pursuant to NRS 386.700 to 386.780, inclusive.

3. An empowerment team for a school must consist of the following persons:

(a) The principal of the school;

(b) At least two but not more than four teachers and other licensed educational personnel who are employed at the school, selected by a recognized employee organization that represents licensed educational personnel within the school district;

(c) At least two but not more than four employees, other than teachers and other licensed educational personnel, who are employed at the school, selected by an organization that represents those employees;

(d) At least two but not more than four parents and legal guardians of pupils enrolled in the school, selected by an association of parents established for the school;

(e) At least two but not more than four representatives of the community or businesses within the community;

(f) The facilitator of the school support team, if a school support team has been established for the school pursuant to *regulations adopted by the State Board pursuant to* NRS ~~[385.3745;]~~ *385.361;* and

(g) Such other persons as may be necessary to meet the requirements set forth in subsection 4.

4. Of the total number of members on an empowerment team for a school:

(a) At least one member must have 5 years or more of experience in school finance;

(b) At least one member must have 5 years or more of experience in school administration or human resources;

(c) At least one member must have 5 years or more of experience in overseeing the academic programs and curriculum for a public school; and

(d) At least one member must have 5 years or more of experience in the collection and analysis of data.

➥ The provisions of this subsection do not require the appointment of four persons if one, two or three such persons satisfy the qualifications.

5. A charter school that wishes to participate in the Program of Empowerment Schools shall comply with the provisions of NRS 386.700 to 386.780, inclusive. If a charter school is approved as an empowerment school, the charter school does not forfeit its status as a charter school.

Sec. 24. NRS 386.740 is hereby amended to read as follows:

386.740 1. Each empowerment plan for a school must:

(a) Set forth the manner by which the school will be governed;

(b) Set forth the proposed budget for the school, including, without limitation, the cost of carrying out the empowerment plan, and the manner by which the money apportioned to the school will be administered;

(c) If a school support team has been established for the school pursuant to NRS ~~[385.3721,]~~ *385.3745,* require the principal and the empowerment team for the school to work in consultation with the school support team;

(d) Prescribe the academic plan for the school, including, without limitation, the manner by which courses of study will be provided to the pupils enrolled in the school and any special programs that will be offered for pupils;

(e) Prescribe the manner by which the achievement of pupils will be measured and reported for the school, including, without limitation, the results of the pupils on the examinations administered pursuant to NRS 389.015 and 389.550;

(f) Prescribe the manner by which teachers and other licensed educational personnel will be selected and hired for the school, which must be determined and negotiated pursuant to chapter 288 of NRS;

(g) Prescribe the manner by which all other staff for the school will be selected and hired, which must be determined and negotiated pursuant to chapter 288 of NRS;

(h) Indicate whether the empowerment plan will offer an incentive pay structure for staff and a description of that pay structure, if applicable;

(i) Indicate the intended ratio of pupils to teachers at the school, designated by grade level, which must comply with NRS 388.700 or 388.720, as applicable;

(j) Provide a description of the professional development that will be offered to the teachers and other licensed educational personnel employed at the school;

(k) Prescribe the manner by which the empowerment plan will increase the involvement of parents and legal guardians of pupils enrolled in the school;

(l) Comply with the plan to improve the achievement of the pupils enrolled in the school prepared pursuant to NRS 385.357;

(m) Address the specific educational needs and concerns of the pupils who are enrolled in the school; and

(n) Set forth the calendar and schedule for the school.

2. If the empowerment plan includes an incentive pay structure, that pay structure must:

(a) Provide an incentive for all staff employed at the school;

(b) Set forth the standards that must be achieved by the pupils enrolled in the school and any other measurable objectives that must be met to be eligible for incentive pay; and

(c) Be in addition to the salary or hourly rate of pay negotiated pursuant to chapter 288 of NRS that is otherwise payable to the employee.

3. An empowerment plan may:

(a) Request a waiver from a statute contained in this title or a regulation of the State Board or the Department.

(b) Identify the services of the school district which the school wishes to receive, including, without limitation, professional development, transportation, food services and discretionary services. Upon approval of the empowerment plan, the school district may deduct from the total apportionment to the empowerment school the costs of such services.

4. For purposes of determining the budget pursuant to paragraph (b) of subsection 1, if a public school which converts to an empowerment school is a:

(a) Charter school, the amount of the budget is the amount equal to the apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, and its proportionate share of any other money available from federal, state or local sources that the school or the pupils enrolled in the school are eligible to receive.

(b) Public school, other than a charter school, the empowerment team for the school shall have discretion of 90 percent of the amount of money from the state financial aid and local funds that the school district apportions for the school, without regard to any line-item specifications or specific uses determined advisable by the school district, unless the empowerment team determines that a lesser amount is necessary to carry out the empowerment plan.

Sec. 25. NRS 386.740 is hereby amended to read as follows:

386.740 1. Each empowerment plan for a school must:

(a) Set forth the manner by which the school will be governed;

(b) Set forth the proposed budget for the school, including, without limitation, the cost of carrying out the empowerment plan, and the manner by which the money apportioned to the school will be administered;

(c) If a school support team has been established for the school *in accordance with the regulations of the State Board adopted* pursuant to NRS ~~[385.3745,]~~ *385.361,* require the principal and the empowerment team for the school to work in consultation with the school support team;

(d) Prescribe the academic plan for the school, including, without limitation, the manner by which courses of study will be provided to the pupils enrolled in the school and any special programs that will be offered for pupils;

(e) Prescribe the manner by which the achievement of pupils will be measured and reported for the school, including, without limitation, the results of the pupils on the examinations administered pursuant to NRS 389.015 and 389.550;

(f) Prescribe the manner by which teachers and other licensed educational personnel will be selected and hired for the school, which must be determined and negotiated pursuant to chapter 288 of NRS;

(g) Prescribe the manner by which all other staff for the school will be selected and hired, which must be determined and negotiated pursuant to chapter 288 of NRS;

(h) Indicate whether the empowerment plan will offer an incentive pay structure for staff and a description of that pay structure, if applicable;

(i) Indicate the intended ratio of pupils to teachers at the school, designated by grade level, which must comply with NRS 388.700 or 388.720, as applicable;

(j) Provide a description of the professional development that will be offered to the teachers and other licensed educational personnel employed at the school;

(k) Prescribe the manner by which the empowerment plan will increase the involvement of parents and legal guardians of pupils enrolled in the school;

(l) Comply with the plan to improve the achievement of the pupils enrolled in the school prepared pursuant to NRS 385.357 ~~[;]~~ *, the turnaround plan for the school implemented pursuant to section 2 of this act or the plan for restructuring the school implemented pursuant to section 3.5 of this act, whichever is applicable for the school;*

(m) Address the specific educational needs and concerns of the pupils who are enrolled in the school; and

(n) Set forth the calendar and schedule for the school.

2. If the empowerment plan includes an incentive pay structure, that pay structure must:

(a) Provide an incentive for all staff employed at the school;

(b) Set forth the standards that must be achieved by the pupils enrolled in the school and any other measurable objectives that must be met to be eligible for incentive pay; and

(c) Be in addition to the salary or hourly rate of pay negotiated pursuant to chapter 288 of NRS that is otherwise payable to the employee.

3. An empowerment plan may:

(a) Request a waiver from a statute contained in this title or a regulation of the State Board or the Department.

(b) Identify the services of the school district which the school wishes to receive, including, without limitation, professional development, transportation, food services and discretionary services. Upon approval of the empowerment plan, the school district may deduct from the total apportionment to the empowerment school the costs of such services.

4. For purposes of determining the budget pursuant to paragraph (b) of subsection 1, if a public school which converts to an empowerment school is a:

(a) Charter school, the amount of the budget is the amount equal to the apportionments and allowances from the State Distributive School Account pursuant to NRS 387.121 to 387.126, inclusive, and its proportionate share of any other money available from federal, state or local sources that the school or the pupils enrolled in the school are eligible to receive.

(b) Public school, other than a charter school, the empowerment team for the school shall have discretion of 90 percent of the amount of money from the state financial aid and local funds that the school district apportions for the school, without regard to any line-item specifications or specific uses determined advisable by the school district, unless the empowerment team determines that a lesser amount is necessary to carry out the empowerment plan.

Sec. 25.3. NRS 391.298 is hereby amended to read as follows:

391.298 If the board of trustees of a school district or the superintendent of schools of a school district schedules a day or days for the professional development of teachers or administrators employed by the school district:

1. The primary focus of that scheduled professional development must be to improve the achievement of the pupils enrolled in the school district, as set forth in the ~~[plan]~~ *:*

*(a) Plan* to improve the achievement of pupils *enrolled in the school district* prepared pursuant to NRS 385.348 ~~[or]~~ *;*

*(b) Plan to improve the achievement of pupils prepared pursuant to NRS* 385.357 ~~[,]~~ *;*

*(c) Turnaround plan for the school implemented pursuant to section 2 of this act; or*

*(d) Plan for restructuring the school implemented pursuant to section 3.5 of this act,*

➥ as applicable.

2. The scheduled professional development must be structured so that teachers attend professional development that is designed for the specific subject areas or grades taught by those teachers.

Sec. 25.7. NRS 391.540 is hereby amended to read as follows:

391.540 1. The governing body of each regional training program shall:

(a) Adopt a training model, taking into consideration other model programs, including, without limitation, the program used by the Geographic Alliance in Nevada.

(b) Assess the training needs of teachers and administrators who are employed by the school districts within the primary jurisdiction of the regional training program and adopt priorities of training for the program based upon the assessment of needs. The board of trustees of each such school district may submit recommendations to the appropriate governing body for the types of training that should be offered by the regional training program.

(c) In making the assessment required by paragraph (b), review the plans to improve the achievement of pupils prepared pursuant to NRS 385.348 by the school districts within the primary jurisdiction of the regional training program and, as deemed necessary by the governing body, review the ~~[plans]~~ *:*

*(1) Plans* to improve the achievement of pupils prepared pursuant to NRS 385.357 *;*

*(2) Turnaround plans for schools implemented pursuant to section 2 of this act; and*

*(3) Plans for restructuring schools implemented pursuant to section 3.5 of this act,*

➥ for individual schools within the primary jurisdiction of the regional training program.

(d) Prepare a 5-year plan for the regional training program, which includes, without limitation:

(1) An assessment of the training needs of teachers and administrators who are employed by the school districts within the primary jurisdiction of the regional training program; and

(2) Specific details of the training that will be offered by the regional training program for the first 2 years covered by the plan.

(e) Review the 5-year plan on an annual basis and make revisions to the plan as are necessary to serve the training needs of teachers and administrators employed by the school districts within the primary jurisdiction of the regional training program.

2. The Department, the Nevada System of Higher Education and the board of trustees of a school district may request the governing body of the regional training program that serves the school district to provide training, participate in a program or otherwise perform a service that is in addition to the duties of the regional training program that are set forth in the plan adopted pursuant to this section or otherwise required by statute. An entity may not represent that a regional training program will perform certain duties or otherwise obligate the regional training program as part of an application by that entity for a grant unless the entity has first obtained the written confirmation of the governing body of the regional training program to perform those duties or obligations. The governing body of a regional training program may, but is not required to, grant a request pursuant to this subsection.

Sec. 26. NRS 392.456 is hereby amended to read as follows:

392.456 1. The Department shall:

(a) Prescribe a form for use by teachers in elementary schools to provide reports to parents and legal guardians of pupils pursuant to this section;

(b) Work in consultation with the Legislative Bureau of Educational Accountability and Program Evaluation, the Nevada Association of School Boards, the Nevada Association of School Administrators, the Nevada State Education Association and the Nevada Parent Teacher Association in the development of the form; and

(c) Make the form available in electronic format for use by school districts and charter schools and, upon request, in any other manner deemed reasonable by the Department.

2. The form must include, without limitation:

(a) A notice to parents and legal guardians that parental involvement is important in ensuring the success of the academic achievement of pupils;

(b) A checklist indicating whether:

(1) The pupil completes his homework assignments in a timely manner;

(2) The pupil is present in the classroom when school begins each day and is present for the entire school day unless his absence is approved in accordance with NRS 392.130;

(3) The parent or legal guardian and the pupil abide by any applicable rules and policies of the school and the school district; and

(4) The pupil complies with the dress code for the school, if applicable; and

(c) A list of the resources and services available within the community to assist parents and legal guardians in addressing any issues identified on the checklist.

3. In addition to the requirements of subsection 2, the Department may prescribe additional information for inclusion on the form, including, without limitation:

(a) A report of the participation of the parent or legal guardian, including, without limitation, whether the parent or legal guardian:

(1) Completes forms and other documents that are required by the school or school district in a timely manner;

(2) Assists in carrying out a plan to improve the pupil's academic achievement, if applicable;

(3) Attends conferences between the teacher and the parent or legal guardian, if applicable; and

(4) Attends school activities.

(b) A report of whether the parent or legal guardian ensures the health and safety of the pupil, including, without limitation, whether:

(1) Current information is on file with the school that designates each person whom the school should contact if an emergency involving the pupil occurs; and

(2) Current information is on file with the school regarding the health and safety of the pupil, such as immunization records, if applicable, and any special medical needs of the pupil.

4. A teacher at an elementary school may provide the form prescribed by the Department, including the additional information prescribed pursuant to subsection 3 if the Department has prescribed such information on the form, to a parent or legal guardian of a pupil if the teacher determines that the provision of such a report would assist in improving the academic achievement of the pupil.

5. A report provided to a parent or legal guardian pursuant to this section must not be used in a manner that:

(a) Interferes unreasonably with the personal privacy of the parent or legal guardian or the pupil;

(b) Reprimands the parent or legal guardian; or

(c) Affects the grade or report of progress given to a pupil based upon the information contained in the report.

6. The principal of each elementary school at which a teacher provides reports pursuant to this section shall provide to the support team established for the school pursuant to NRS ~~[385.3721,]~~ *385.3745*, if applicable, the information contained in the completed reports for consideration by the

support team. The information must be provided in an aggregated format and must not disclose the identity of an individual parent, legal guardian or pupil.

Sec. 27. NRS 392.456 is hereby amended to read as follows:

392.456 1. The Department shall:

(a) Prescribe a form for use by teachers in elementary schools to provide reports to parents and legal guardians of pupils pursuant to this section;

(b) Work in consultation with the Legislative Bureau of Educational Accountability and Program Evaluation, the Nevada Association of School Boards, the Nevada Association of School Administrators, the Nevada State Education Association and the Nevada Parent Teacher Association in the development of the form; and

(c) Make the form available in electronic format for use by school districts and charter schools and, upon request, in any other manner deemed reasonable by the Department.

2. The form must include, without limitation:

(a) A notice to parents and legal guardians that parental involvement is important in ensuring the success of the academic achievement of pupils;

(b) A checklist indicating whether:

(1) The pupil completes his homework assignments in a timely manner;

(2) The pupil is present in the classroom when school begins each day and is present for the entire school day unless his absence is approved in accordance with NRS 392.130;

(3) The parent or legal guardian and the pupil abide by any applicable rules and policies of the school and the school district; and

(4) The pupil complies with the dress code for the school, if applicable; and

(c) A list of the resources and services available within the community to assist parents and legal guardians in addressing any issues identified on the checklist.

3. In addition to the requirements of subsection 2, the Department may prescribe additional information for inclusion on the form, including, without limitation:

(a) A report of the participation of the parent or legal guardian, including, without limitation, whether the parent or legal guardian:

(1) Completes forms and other documents that are required by the school or school district in a timely manner;

(2) Assists in carrying out a plan to improve the pupil's academic achievement, if applicable;

(3) Attends conferences between the teacher and the parent or legal guardian, if applicable; and

(4) Attends school activities.

(b) A report of whether the parent or legal guardian ensures the health and safety of the pupil, including, without limitation, whether:

(1) Current information is on file with the school that designates each person whom the school should contact if an emergency involving the pupil occurs; and

(2) Current information is on file with the school regarding the health and safety of the pupil, such as immunization records, if applicable, and any special medical needs of the pupil.

4. A teacher at an elementary school may provide the form prescribed by the Department, including the additional information prescribed pursuant to subsection 3 if the Department has prescribed such information on the form, to a parent or legal guardian of a pupil if the teacher determines that the provision of such a report would assist in improving the academic achievement of the pupil.

5. A report provided to a parent or legal guardian pursuant to this section must not be used in a manner that:

(a) Interferes unreasonably with the personal privacy of the parent or legal guardian or the pupil;

(b) Reprimands the parent or legal guardian; or

(c) Affects the grade or report of progress given to a pupil based upon the information contained in the report.

6. The principal of each elementary school at which a teacher provides reports pursuant to this section shall provide to the support team established for the school *in accordance with the regulations of the State Board adopted* pursuant to NRS ~~[385.3745,]~~ *385.361*, if applicable, the information contained in the completed reports for consideration by the support team. The information must be provided in an aggregated format and must not disclose the identity of an individual parent, legal guardian or pupil.

Sec. 28. NRS 392.4575 is hereby amended to read as follows:

392.4575 1. The Department shall prescribe a form for educational involvement accords to be used by all public schools in this State. The educational involvement accord must comply with the parental involvement policy:

(a) Required by the federal No Child Left Behind Act of 2001, as set forth in 20 U.S.C. § 6318.

(b) Adopted by the State Board pursuant to NRS 392.457.

2. Each educational involvement accord must include, without limitation:

(a) A description of how the parent or legal guardian will be involved in the education of the pupil, including, without limitation:

(1) Reading to the pupil, as applicable for the grade or reading level of the pupil;

(2) Reviewing and checking the pupil's homework; and

(3) Contributing 5 hours of time each school year, including, without limitation, by attending school-related activities, parent-teacher association meetings, parent-teacher conferences, volunteering at the school and chaperoning school-sponsored activities.

(b) The responsibilities of a pupil in a public school, including, without limitation:

(1) Reading each day before or after school, as applicable for the grade or reading level of the pupil;

(2) Using all school equipment and property appropriately and safely;

(3) Following the directions of any adult member of the staff of the school;

(4) Completing and submitting homework in a timely manner; and

(5) Respecting himself, others and all property.

(c) The responsibilities of a public school and the administrators, teachers and other personnel employed at a school, including, without limitation:

(1) Ensuring that each pupil is provided proper instruction, supervision and interaction;

(2) Maximizing the educational and social experience of each pupil;

(3) Carrying out the professional responsibility of educators to seek the best interest of each pupil; and

(4) Making staff available to the parents and legal guardians of pupils to discuss the concerns of parents and legal guardians regarding the pupils.

3. Each educational involvement accord must be accompanied by, without limitation:

(a) Information describing how the parent or legal guardian may contact the pupil's teacher and the principal of the school in which the pupil is enrolled;

(b) The curriculum of the course or standards for the grade in which the pupil is enrolled, as applicable, including, without limitation, a calendar that indicates the dates of major examinations and the due dates of significant projects, if those dates are known by the teacher at the time that the information is distributed;

(c) The homework and grading policies of the pupil's teacher or school;

(d) Directions for finding resource materials for the course or grade in which the pupil is enrolled, as applicable;

(e) Suggestions for parents and legal guardians to assist pupils in their schoolwork at home;

(f) The dates of scheduled conferences between teachers or administrators and the parents or legal guardians of the pupil;

(g) The manner in which reports of the pupil's progress will be delivered to the parent or legal guardian and how a parent or legal guardian may request a report of progress;

(h) The classroom rules and policies;

(i) The dress code of the school, if any;

(j) The availability of assistance to parents who have limited proficiency in the English language;

(k) Information describing the availability of free and reduced-price meals, including, without limitation, information regarding school breakfast, school lunch and summer meal programs;

(l) Opportunities for parents and legal guardians to become involved in the education of their children and to volunteer for the school or class; and

(m) The code of honor relating to cheating prescribed pursuant to NRS 392.461.

4. The board of trustees of each school district shall adopt a policy providing for the development and distribution of the educational involvement accord. The policy adopted by a board of trustees must require each classroom teacher to:

(a) Distribute the educational involvement accord to the parent or legal guardian of each pupil in his class at the beginning of each school year or upon a pupil's enrollment in the class, as applicable; and

(b) Provide the parent or legal guardian with a reasonable opportunity to sign the educational involvement accord.

5. Except as otherwise provided in this subsection, the board of trustees of each school district shall ensure that the form prescribed by the Department is used for the educational involvement accord of each public school in the school district. The board of trustees of a school district may authorize the use of an expanded form that contains additions to the form prescribed by the Department if the basic information contained in the expanded form complies with the form prescribed by the Department.

6. The Department and the board of trustees of each school district shall, at least once each year, review and amend their respective educational involvement accords.

7. If *a school support team is established for* an elementary school *,* ~~[is designated as demonstrating need for improvement pursuant to NRS 385.3623 for 3 consecutive years or more,]~~ the principal of the school shall provide to the support team established for the school pursuant to NRS ~~[385.3721]~~ *385.3745* information concerning the distribution of the educational involvement accord and the number of accords which were signed and returned by parents and legal guardians. The information must be provided in an aggregated format and must not disclose the identity of an individual parent, legal guardian or pupil.

Sec. 29. NRS 392.4575 is hereby amended to read as follows:

392.4575 1. The Department shall prescribe a form for educational involvement accords to be used by all public schools in this State. The educational involvement accord must comply with the parental involvement policy:

(a) Required by the federal No Child Left Behind Act of 2001, as set forth in 20 U.S.C. § 6318.

(b) Adopted by the State Board pursuant to NRS 392.457.

2. Each educational involvement accord must include, without limitation:

(a) A description of how the parent or legal guardian will be involved in the education of the pupil, including, without limitation:

(1) Reading to the pupil, as applicable for the grade or reading level of the pupil;

(2) Reviewing and checking the pupil's homework; and

(3) Contributing 5 hours of time each school year, including, without limitation, by attending school-related activities, parent-teacher association meetings, parent-teacher conferences, volunteering at the school and chaperoning school-sponsored activities.

(b) The responsibilities of a pupil in a public school, including, without limitation:

(1) Reading each day before or after school, as applicable for the grade or reading level of the pupil;

(2) Using all school equipment and property appropriately and safely;

(3) Following the directions of any adult member of the staff of the school;

(4) Completing and submitting homework in a timely manner; and

(5) Respecting himself, others and all property.

(c) The responsibilities of a public school and the administrators, teachers and other personnel employed at a school, including, without limitation:

(1) Ensuring that each pupil is provided proper instruction, supervision and interaction;

(2) Maximizing the educational and social experience of each pupil;

(3) Carrying out the professional responsibility of educators to seek the best interest of each pupil; and

(4) Making staff available to the parents and legal guardians of pupils to discuss the concerns of parents and legal guardians regarding the pupils.

3. Each educational involvement accord must be accompanied by, without limitation:

(a) Information describing how the parent or legal guardian may contact the pupil's teacher and the principal of the school in which the pupil is enrolled;

(b) The curriculum of the course or standards for the grade in which the pupil is enrolled, as applicable, including, without limitation, a calendar that indicates the dates of major examinations and the due dates of significant projects, if those dates are known by the teacher at the time that the information is distributed;

(c) The homework and grading policies of the pupil's teacher or school;

(d) Directions for finding resource materials for the course or grade in which the pupil is enrolled, as applicable;

(e) Suggestions for parents and legal guardians to assist pupils in their schoolwork at home;

(f) The dates of scheduled conferences between teachers or administrators and the parents or legal guardians of the pupil;

(g) The manner in which reports of the pupil's progress will be delivered to the parent or legal guardian and how a parent or legal guardian may request a report of progress;

(h) The classroom rules and policies;

(i) The dress code of the school, if any;

(j) The availability of assistance to parents who have limited proficiency in the English language;

(k) Information describing the availability of free and reduced-price meals, including, without limitation, information regarding school breakfast, school lunch and summer meal programs;

(l) Opportunities for parents and legal guardians to become involved in the education of their children and to volunteer for the school or class; and

(m) The code of honor relating to cheating prescribed pursuant to NRS 392.461.

4. The board of trustees of each school district shall adopt a policy providing for the development and distribution of the educational involvement accord. The policy adopted by a board of trustees must require each classroom teacher to:

(a) Distribute the educational involvement accord to the parent or legal guardian of each pupil in his class at the beginning of each school year or upon a pupil's enrollment in the class, as applicable; and

(b) Provide the parent or legal guardian with a reasonable opportunity to sign the educational involvement accord.

5. Except as otherwise provided in this subsection, the board of trustees of each school district shall ensure that the form prescribed by the Department is used for the educational involvement accord of each public school in the school district. The board of trustees of a school district may authorize the use of an expanded form that contains additions to the form prescribed by the Department if the basic information contained in the expanded form complies with the form prescribed by the Department.

6. The Department and the board of trustees of each school district shall, at least once each year, review and amend their respective educational involvement accords.

7. If a school support team is established *in accordance with the regulations of the State Board adopted pursuant to NRS 385.361* for an elementary school, the principal of the school shall provide to the support team ~~[established for the school pursuant to NRS 385.3745]~~ information concerning the distribution of the educational involvement accord and the number of accords which were signed and returned by parents and legal guardians. The information must be provided in an aggregated format and must not disclose the identity of an individual parent, legal guardian or pupil.

Sec. 30. On or before January 1, 2010, the State Board of Education shall adopt the regulations required pursuant to sections 2 and 3.5 of this act, NRS 385.361, as amended by section 6 of this act, and NRS 385.3475, as amended by section 18 of this act.

Sec. 31. 1. This section and sections 6, 9, 10, 11, 13, 15, 16, 17, 20, 22, 24, 26, 28 and 30 of this act become effective on July 1, 2009.

2. Sections 1, 2, 3.5 and 18 of this act become effective on July 1, 2009, for the purpose of adopting regulations and on July 1, 2010, for all other purposes.

3. Sections 3, 4 to 5.7, inclusive, 7, 8, 12, 14, *14.5,* 19, 21, 21.3, 21.7, 23, 25, 25.3, 25.7, 27 and 29 of this act become effective on July 1, 2010.
4. Sections 23 and 25 of this act expire by limitation on June 30, 2011.

Senator Wiener moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 389.

Motion carried.

Bill ordered transmitted to the Assembly.

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

Senate in recess at 12:26 a.m.

## SENATE IN SESSION

At 2:07 a.m.

President Krolicki presiding.

Quorum present.

### MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved that vetoed Assembly Bills Nos. 122, 257 and 480 of the 75th Session be made a Special Order of Business for Friday, May 22, 2009, at 1 p.m.

Motion carried.

Senator Schneider moved to reconsider Assembly Bill No. 130 which was hereby lost.

Motion passed on a division of the house.

### SECOND READING AND AMENDMENT

Assembly Bill No. 381.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 764.

"SUMMARY—Revises various provisions relating to arbitration. (BDR 52-931)"

"AN ACT relating to trade practices; making provisions in certain contracts that require arbitration void and unenforceable under certain circumstances; requiring certain disclosures by arbitral organizations; requiring certain disclosures in agreements to arbitrate; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Sections 5 and 17 of this bill make unenforceable, to the extent allowed by federal law, a consumer contract that mandates arbitration of disputes involving subjects of the contract arising after formation of the contract.

Section 6 of this bill mandates the inclusion of certain disclosures relating to the costs of arbitration in consumer contracts.

Section 10 of this bill mandates certain disclosures by certain arbitral organizations.

Sections 11 and 13 of this bill prohibit the conduct of consumer arbitration proceedings by arbitral organizations under certain circumstances.

Section 12 of this bill provides for waiver of arbitration fees that would otherwise be charged or assessed against a consumer under certain circumstances.

Section 14 of this bill provides for injunctive relief and other remedies for certain violations by arbitral organizations.

Sections 18 and 19 of this bill revise provisions establishing the circumstances under which remedies may be awarded by a court or arbitrator. (NRS 38.222, 38.238)

~~[ Section 20 of this bill makes unenforceable, to the extent allowed by federal law, a consumer contract of insurance that mandates arbitration of disputes involving insurance arising after formation of the contract.~~

~~Sections 21-24 of this bill eliminate provisions in contracts of insurance for health care that mandate arbitration of disputes involving the results of independent evaluations, providing for second independent evaluations. (NRS 689A.0403, 689B.270, 695B.182, 695C.265)~~

~~Section 25 of this bill repeals NRS 690B.155, which requires a provision of mandatory arbitration in a contract of insurance for home protection.]~~

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

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *As used in sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Consumer" means a person who either:*

*1. Uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes; or*

*2. Is an employee of or seeks employment with the other party to the agreement.*

Sec. 4. *"Consumer arbitration agreement" means a standardized contract where one party drafts a provision that requires disputes arising after the signing of the contract to be submitted to binding arbitration and the other party is a consumer. Such an agreement does not include a public or private sector collective bargaining agreement.*

Sec. 5. *A consumer arbitration agreement is void and unenforceable except to the extent federal law provides for its enforceability.*

Sec. 6. *1. A person drafting a consumer arbitration agreement shall clearly and conspicuously disclose in regard to any arbitration:*

*(a) The filing fee;*

*(b) The average daily cost for an arbitrator and hearing room if the consumer elects to appear in person;*

*(c) Other charges that the arbitrator or arbitration service provider will assess in conjunction with an arbitration where the consumer appears in person; and*

*(d) The proportion of these costs which each party bears in the event that the consumer prevails and in the event that the consumer does not prevail.*

*2. The costs specified in subsection 1 need not include attorney's fees and, to the extent that, with regard to the disclosures required by subsection 1, precise amounts of the fees, costs and charges are not known, the disclosures may be based on reasonable, good faith estimates. A person providing a reasonable, good faith estimate is not liable in any manner for the fact that the actual fees, costs and charges of a particular arbitration vary from the estimate provided.*

*3. Failure to comply with this section is not grounds to refuse to enforce a consumer arbitration agreement. However, the information provided in the disclosure can be considered in a determination of whether a consumer arbitration agreement is unconscionable or otherwise not enforceable under other law.*

*4. Whenever this section is violated, any affected person or entity, including the Attorney General, may request a court to enjoin the drafting party from violating this section as to agreements the drafting party enters in the future. The drafting party is liable to the person or entity requesting the injunction for the reasonable attorney's fees and costs of the person requesting the injunction where the court issues an injunction or where, after the action is commenced, the drafting party voluntarily complies with this section.*

Sec. 7. Chapter 38 of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 14, inclusive, of this act.

Sec. 8. *"Consumer" means a person who has a dispute relating to that person's status as:*

*1. A user of, purchaser of or person who attempts to use or purchase any real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes;*

*2. An enrollee, subscriber or insured under a health care plan or health care insurance, or a person with a medical malpractice claim; or*

*3. An employee or applicant for employment, except where an arbitration is pursuant to the terms of a public or private sector collective bargaining agreement.*

Sec. 9. *"Consumer arbitration" means a binding arbitration where one party is a consumer.*

Sec. 10. *1. Any arbitral organization that administers or is otherwise involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which must be accessible on the Internet website of the arbitral* *organization, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding 5 years:*

*(a) The name of any corporation or other business entity that is a party to the arbitration;*

*(b) The type of dispute involved, including, without limitation, goods, banking, insurance, health care, debt collection, employment and, if the dispute involves employment, the amount of the employee's annual wage divided into the following ranges:*

*(1) Less than one hundred thousand dollars;*

*(2) One hundred thousand dollars or more but not more than two hundred fifty thousand dollars; and*

*(3) More than two hundred fifty thousand dollars;*

*(c) Whether the consumer was the prevailing party;*

*(d) On how many occasions, if any, a business entity that is a party to an arbitration has previously been a party in an arbitration or mediation administered by the arbitral organization;*

*(e) Whether the consumer was represented by an attorney;*

*(f) The date the arbitral organization received the demand for arbitration, the date the arbitrator was appointed and the date of disposition by the arbitrator or arbitral organization;*

*(g) The type of disposition of the dispute, if known, including, without limitation, withdrawal, abandonment, settlement, award after hearing, award without hearing, default or dismissal without hearing;*

*(h) The amount of the claim, the amount of the award and any other relief granted; and*

*(i) The name of the arbitrator, his total fee for the case and the percentage of the arbitrator's fee allocated to each party.*

*2. If the information that is required pursuant to subsection 1 is provided by the arbitral organization in a computer-searchable format on the company's Internet website and may be downloaded without any fee, the arbitral organization may charge the actual cost of copying to any person who requests the information on paper. If the information required is not accessible on the Internet, the arbitral organization shall provide that information without charge to any person who requests the information on paper.*

*3. An arbitral organization that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subsection 1 semiannually, provide the information only on paper and charge the actual cost of copying.*

*4. No arbitral organization has any liability for collecting, publishing or distributing the information in compliance with this section.*

Sec. 11. *No arbitral organization may administer a consumer arbitration to be conducted in this State or provide any other services related to that consumer arbitration, if:*

*1. The arbitral organization has, or within the preceding year has had, a financial interest in any party or attorney for a party to the arbitration; or*

*2. Any party or attorney for a party to the arbitration has, or within the preceding year has had, any type of financial interest in the arbitral organization.*

Sec. 12. *1. All fees and costs charged to or assessed in this State upon a consumer by an arbitral organization in a consumer arbitration must be waived for any person having a gross monthly income that is less than 300 percent of the federal poverty guidelines.*

*2. Nothing in this section affects the ability of an arbitral organization to shift fees that would otherwise be charged or assessed upon a consumer to another party.*

*3. Prior to requesting or obtaining any fee, an arbitral organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, without limitation, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules or code of procedure.*

*4. Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the arbitral organization indicating the monthly income of the consumer and the number of persons living in the household of the consumer. No arbitral organization may require a consumer to provide any further statement or evidence of indigency.*

*5. Any information obtained by an arbitral organization about a consumer's identity, financial condition, income, wealth or fee waiver request must be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except that an arbitral organization may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.*

Sec. 13. *A neutral arbitrator or an arbitral organization shall not administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, without limitation, the fees and costs of the arbitrator, arbitral organization, attorney or witnesses.*

Sec. 14. *Whenever a provision of sections 10 to 14, inclusive, of this act is violated, any affected person or entity, including the Attorney General, may request a court to enjoin the arbitral organization from violating the applicable provision of sections 10 to 14, inclusive, of this act and order such restitution as appropriate. The arbitral organization is liable for the reasonable attorney's fees and costs of that person or entity where that person or entity prevails or where, after the action is commenced, the arbitral organization voluntarily complies with the provisions of sections 10 to 14, inclusive, of this act.*

Sec. 15. NRS 38.207 is hereby amended to read as follows:

38.207 As used in NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act*, the words and terms defined in NRS 38.208 to 38.213, inclusive, *and sections 8 and 9 of this act* have the meanings ascribed to them in those sections.

Sec. 16. NRS 38.216 is hereby amended to read as follows:

38.216 1. NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act* govern an agreement to arbitrate made on or after October 1, 2001.

2. NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act* govern an agreement to arbitrate made before October 1, 2001, if all the parties to the agreement or to the arbitral proceeding so agree in a record.

3. On or after October 1, 2003, NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act* govern an agreement to arbitrate whenever made.

Sec. 17. NRS 38.219 is hereby amended to read as follows:

38.219 1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except *:* ~~[upon]~~

*(a) As provided in ~~[sections]~~ section 5 ~~[and 20]~~ of this act; or*

*(b) Upon* a ground that exists at law or in equity for the revocation of a contract.

2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitral proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Sec. 18. NRS 38.222 is hereby amended to read as follows:

38.222 1. *Except as otherwise provided in section 13 of this act:*

*(a)* Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitral proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitral proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

~~[2.]~~ *(b)* After an arbitrator is appointed and is authorized and able to act:

~~[(a)]~~ *(1)* The arbitrator may issue such orders for provisional remedies, including interim awards, as he finds necessary to protect the effectiveness of the arbitral proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

~~[(b)]~~ *(2)* A party to an arbitral proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

~~[3.]~~ *2.* A party does not waive a right of arbitration by making a motion under subsection 1 . ~~[or 2.]~~

Sec. 19. NRS 38.238 is hereby amended to read as follows:

38.238 *Except as otherwise provided in section 13 of this act:*

1. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitral proceeding.

2. As to all remedies other than those authorized by subsection 1, an arbitrator may order such remedies as he considers just and appropriate under the circumstances of the arbitral proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under NRS 38.239 or for vacating an award under NRS 38.241.

3. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

Sec. 20. ~~[Chapter 687B of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~*1. Any provisions in any contract of insurance that require a consumer to submit a controversy relating to insurance thereafter arising to arbitration are contrary to the established public policy of this State.*~~

~~*2. A contract of insurance with a consumer that requires the submission to arbitration of any controversy related to the insurance transaction thereafter arising between the parties is hereby prohibited and any such arbitration provision is hereby declared invalid, unenforceable and void. Any such arbitration provision shall be considered severable and other provisions of the contract for insurance will remain in effect and given full force.*~~

~~*3. If a written agreement that involves both insurance and any other services, goods, property or credit includes a mandatory arbitration provision, there must be a clear and conspicuous disclosure that the mandatory arbitration provision does not apply to any dispute related to insurance.*~~

~~*4. A person violating this section is liable to the consumer in an amount equal to the sum of any actual damage sustained by the consumer as a result of the violation plus $100, even if no actual damage is proved, plus costs of the action, together with a reasonable attorney's fee. Any provision in a contract of insurance that requires an action to enforce this section to be submitted to arbitration is void and unenforceable unless the consumer agrees to arbitration after filing suit or after otherwise notifying the other party of the violation.*~~

~~*5. For the purposes of this section, "consumer" means a person who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished insurance for personal, family or household purposes.]*~~ *(Deleted by amendment.)*

Sec. 21. ~~[NRS 689A.0403 is hereby amended to read as follows:~~

~~689A.0403 1. [Each policy of health insurance must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association.~~

~~2.] If an insurer, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is covered under the terms of the contract of insurance, only a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.~~

~~[3.] 2. The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.~~

~~*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer [pursuant to the procedure for binding arbitration set forth in the policy of insurance] within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor [.] *and obtain a second independent evaluation in compliance with the provisions of subsections 1 and 2.*~~

~~4. The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is [in arbitration,] *being appealed,* except that, if the insurer prevails in the [arbitration,] *appeal,* the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection [3] 2 concerning the appeal of the insured person.]~~ *(Deleted by amendment.)*

Sec. 22. ~~[NRS 689B.270 is hereby amended to read as follows:~~

~~689B.270 1. [Each policy of group or blanket health insurance must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association.~~

~~2.] If an insurer, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is covered under the terms of a policy of group or blanket health insurance, only a physician or chiropractor who is certified to~~

~~practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.~~

~~[3.] *2.* The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.~~

~~*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer [pursuant to the procedure for binding arbitration set forth in the policy of insurance] within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor [.] *and obtain a second independent evaluation in compliance with the provisions of subsections 1 and 2.*~~

~~4. The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is [in arbitration,] *being appealed*, except that, if the insurer prevails in the [arbitration,] *appeal*, the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection [3] *2* concerning the appeal of the insured person.]~~ *(Deleted by amendment.)*

Sec. 23. ~~[NRS 695B.182 is hereby amended to read as follows:~~

~~695B.182 1. [Each contract for hospital or medical services must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association.~~

~~2.] If a corporation subject to the provisions of this chapter, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is covered under a contract for hospital or medical services, only a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.~~

~~[3.] *2.* The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.~~

~~*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer [pursuant to the procedure for binding arbitration set forth in the contract for services] within 30 days after he~~

~~receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor~~ [.] ~~*and obtain a second independent medical evaluation in compliance with the provisions of subsections 1 and 2.*~~

~~4. The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is in arbitration, except that, if the insurer prevails in the arbitration, the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection~~ [3] ~~*2* concerning the appeal of the insured person.]~~ *(Deleted by amendment.)*

Sec. 24. ~~[NRS 695C.265 is hereby amended to read as follows:~~

~~695C.265 1. If a health maintenance organization, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is provided under the evidence of coverage~~ [:

(a) The evidence of coverage must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association; and

(b) Only] ~~, *only* a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.~~

~~2. The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.~~

~~*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer~~ [pursuant to the procedure for binding arbitration set forth in the evidence of coverage] ~~within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor~~ [.] ~~*and obtain a second independent medical evaluation in compliance with the provisions of subsections 1 and 2.*~~

[3.] ~~*4.* The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is~~ [in arbitration,] ~~*being appealed,* except that, if the insurer prevails in the~~ [arbitration,] ~~*appeal,* the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection~~ [2] ~~*3* concerning the appeal of the insured person.]~~ *(Deleted by amendment.)*

Sec. 25. ~~[NRS 690B.155 is hereby repealed.]~~ *(Deleted by amendment.)*

TEXT OF REPEALED SECTION

~~690B.155 Provision requiring binding arbitration authorized; procedures for arbitration.~~

~~1. Subject to the approval of the Commissioner, a contract of insurance for home protection may include a provision which requires the parties to the contract to submit for binding arbitration any dispute between the parties concerning any matter directly or indirectly related to, or associated with, the contract.~~

~~2. Except as otherwise provided in subsection 3, the arbitration must be conducted pursuant to the rules for commercial arbitration established by the American Arbitration Association. The insurer is responsible for any administrative fees and expenses relating to the arbitration, except that the insurer is not responsible for attorney's fees and fees for expert witnesses unless those fees are awarded by the arbitrator.~~

~~3. If a provision described in subsection 1 is included in a contract of insurance for home protection, the provision shall not be deemed unenforceable as an unreasonable contract of adhesion if the provision is included in compliance with the provisions of subsection 1.]~~

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

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

Thank you, Mr. President. The amendment eliminates section 20 of the bill that was a concern heard in the committee. The next amendment will deal with the real property issue.

Amendment adopted.

The following amendment was proposed by Senator Carlton:

Amendment No. 915.

"SUMMARY—Revises various provisions relating to arbitration. (BDR 52-931)"

"AN ACT relating to trade practices; ~~[making provisions in certain contracts that require arbitration void and unenforceable under certain circumstances;]~~ requiring certain disclosures by arbitral organizations; requiring certain disclosures in agreements to arbitrate; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

~~[ Sections 5 and 17 of this bill make unenforceable, to the extent allowed by federal law, a consumer contract that mandates arbitration of disputes involving subjects of the contract arising after formation of the contract.]~~

Section 6 of this bill mandates the inclusion of certain disclosures relating to the costs of arbitration in consumer contracts.

Section 10 of this bill mandates certain disclosures by certain arbitral organizations.

Sections 11 and 13 of this bill prohibit the conduct of consumer arbitration proceedings by arbitral organizations under certain circumstances.

Section 12 of this bill provides for waiver of arbitration fees that would otherwise be charged or assessed against a consumer under certain circumstances.

Section 14 of this bill provides for injunctive relief and other remedies for certain violations by arbitral organizations.

Sections 18 and 19 of this bill revise provisions establishing the circumstances under which remedies may be awarded by a court or arbitrator. (NRS 38.222, 38.238)

~~[ Section 20 of this bill makes unenforceable, to the extent allowed by federal law, a consumer contract of insurance that mandates arbitration of disputes involving insurance arising after formation of the contract.]~~

Sections 21-24 of this bill eliminate provisions in contracts of insurance for health care that mandate arbitration of disputes involving the results of independent evaluations, providing for second independent evaluations. (NRS 689A.0403, 689B.270, 695B.182, 695C.265)

Section 25 of this bill repeals NRS 690B.155, which requires a provision of mandatory arbitration in a contract of insurance for home protection.

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

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *As used in sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Consumer" means a person who ~~[either:~~*

*~~1. Uses,]~~ uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any ~~[real or]~~ personal property, tangible or intangible goods, services or credit for personal, family or household purposes . ~~[; or~~*

*~~2. Is an employee of or seeks employment with the other party to the agreement.]~~*

Sec. 4. *"Consumer arbitration agreement" means a standardized contract where one party drafts a provision that requires disputes arising after the signing of the contract to be submitted to binding arbitration and the other party is a consumer. Such an agreement does not include a public or private sector collective bargaining agreement.*

Sec. 5. *~~[A consumer arbitration agreement is void and unenforceable except to the extent federal law provides for its enforceability.]~~ (Deleted by amendment.)*

Sec. 6. *1. A person drafting a consumer arbitration agreement shall clearly and conspicuously disclose in regard to any arbitration:*

*(a) The filing fee;*

*(b) The average daily cost for an arbitrator and hearing room if the consumer elects to appear in person;*

*(c) Other charges that the arbitrator or arbitration service provider will assess in conjunction with an arbitration where the consumer appears in person; and*

*(d) The proportion of these costs which each party bears in the event that the consumer prevails and in the event that the consumer does not prevail.*

*2. The costs specified in subsection 1 need not include attorney's fees and, to the extent that, with regard to the disclosures required by subsection 1, precise amounts of the fees, costs and charges are not known, the disclosures may be based on reasonable, good faith estimates. A person providing a reasonable, good faith estimate is not liable in any manner for the fact that the actual fees, costs and charges of a particular arbitration vary from the estimate provided.*

*3. Failure to comply with this section is not grounds to refuse to enforce a consumer arbitration agreement. However, the information provided in the disclosure can be considered in a determination of whether a consumer arbitration agreement is unconscionable or otherwise not enforceable under other law.*

*4. Whenever this section is violated, any affected person or entity, including the Attorney General, may request a court to enjoin the drafting party from violating this section as to agreements the drafting party enters in the future. The drafting party is liable to the person or entity requesting the injunction for the reasonable attorney's fees and costs of the person requesting the injunction where the court issues an injunction or where, after the action is commenced, the drafting party voluntarily complies with this section.*

Sec. 7. Chapter 38 of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 14, inclusive, of this act.

Sec. 8. *"Consumer" means a person who has a dispute relating to that person's status as:*

*1. A user of, purchaser of or person who attempts to use or purchase any* ~~[real or]~~ *personal property, tangible or intangible goods, services or credit for personal, family or household purposes;*

*2. An enrollee, subscriber or insured under a health care plan or health care insurance, or a person with a medical malpractice claim; or*

*3. An employee or applicant for employment, except where an arbitration is pursuant to the terms of a public or private sector collective bargaining agreement.*

Sec. 9. *"Consumer arbitration" means a binding arbitration where one party is a consumer.*

Sec. 10. *1. Any arbitral organization that administers or is otherwise involved in 50 or more consumer arbitrations a year shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which must be accessible on the Internet website of the arbitral organization, if any, and on paper upon request, all of the following* *information regarding each consumer arbitration within the preceding 5 years:*

*(a) The name of any corporation or other business entity that is a party to the arbitration;*

*(b) The type of dispute involved, including, without limitation, goods, banking, insurance, health care, debt collection, employment and, if the dispute involves employment, the amount of the employee's annual wage divided into the following ranges:*

*(1) Less than one hundred thousand dollars;*

*(2) One hundred thousand dollars or more but not more than two hundred fifty thousand dollars; and*

*(3) More than two hundred fifty thousand dollars;*

*(c) Whether the consumer was the prevailing party;*

*(d) On how many occasions, if any, a business entity that is a party to an arbitration has previously been a party in an arbitration or mediation administered by the arbitral organization;*

*(e) Whether the consumer was represented by an attorney;*

*(f) The date the arbitral organization received the demand for arbitration, the date the arbitrator was appointed and the date of disposition by the arbitrator or arbitral organization;*

*(g) The type of disposition of the dispute, if known, including, without limitation, withdrawal, abandonment, settlement, award after hearing, award without hearing, default or dismissal without hearing;*

*(h) The amount of the claim, the amount of the award and any other relief granted; and*

*(i) The name of the arbitrator, his total fee for the case and the percentage of the arbitrator's fee allocated to each party.*

*2. If the information that is required pursuant to subsection 1 is provided by the arbitral organization in a computer-searchable format on the company's Internet website and may be downloaded without any fee, the arbitral organization may charge the actual cost of copying to any person who requests the information on paper. If the information required is not accessible on the Internet, the arbitral organization shall provide that information without charge to any person who requests the information on paper.*

*3. An arbitral organization that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subsection 1 semiannually, provide the information only on paper and charge the actual cost of copying.*

*4. No arbitral organization has any liability for collecting, publishing or distributing the information in compliance with this section.*

Sec. 11. *No arbitral organization may administer a consumer arbitration to be conducted in this State or provide any other services related to that consumer arbitration, if:*

*1. The arbitral organization has, or within the preceding year has had, a financial interest in any party or attorney for a party to the arbitration; or*

*2. Any party or attorney for a party to the arbitration has, or within the preceding year has had, any type of financial interest in the arbitral organization.*

Sec. 12. *1. All fees and costs charged to or assessed in this State upon a consumer by an arbitral organization in a consumer arbitration must be waived for any person having a gross monthly income that is less than 300 percent of the federal poverty guidelines.*

*2. Nothing in this section affects the ability of an arbitral organization to shift fees that would otherwise be charged or assessed upon a consumer to another party.*

*3. Prior to requesting or obtaining any fee, an arbitral organization shall provide written notice of the right to obtain a waiver of fees in a manner calculated to bring the matter to the attention of a reasonable consumer, including, without limitation, prominently placing a notice in its first written communication to a consumer and in any invoice, bill, submission form, fee schedule, rules or code of procedure.*

*4. Any consumer requesting a waiver of fees or costs may establish eligibility by making a declaration under oath on a form provided by the arbitral organization indicating the monthly income of the consumer and the number of persons living in the household of the consumer. No arbitral organization may require a consumer to provide any further statement or evidence of indigency.*

*5. Any information obtained by an arbitral organization about a consumer's identity, financial condition, income, wealth or fee waiver request must be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except that an arbitral organization may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.*

Sec. 13. *A neutral arbitrator or an arbitral organization shall not administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, without limitation, the fees and costs of the arbitrator, arbitral organization, attorney or witnesses.*

Sec. 14. *Whenever a provision of sections 10 to 14, inclusive, of this act is violated, any affected person or entity, including the Attorney General, may request a court to enjoin the arbitral organization from violating the applicable provision of sections 10 to 14, inclusive, of this act and order such restitution as appropriate. The arbitral organization is liable for the reasonable attorney's fees and costs of that person or entity where that person or entity prevails or where, after the action is commenced, the arbitral organization voluntarily complies with the provisions of sections 10 to 14, inclusive, of this act.*

Sec. 15. NRS 38.207 is hereby amended to read as follows:

38.207 As used in NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act*, the words and terms defined in NRS 38.208 to 38.213, inclusive, *and sections 8 and 9 of this act* have the meanings ascribed to them in those sections.

Sec. 16. NRS 38.216 is hereby amended to read as follows:

38.216 1. NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act* govern an agreement to arbitrate made on or after October 1, 2001.

2. NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act* govern an agreement to arbitrate made before October 1, 2001, if all the parties to the agreement or to the arbitral proceeding so agree in a record.

3. On or after October 1, 2003, NRS 38.206 to 38.248, inclusive, *and sections 8 to 14, inclusive, of this act* govern an agreement to arbitrate whenever made.

Sec. 17. ~~[NRS 38.219 is hereby amended to read as follows:~~

~~38.219 1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except : [upon]~~

~~*(a) As provided in sections 5 and 20 of this act; or*~~

~~*(b) Upon* a ground that exists at law or in equity for the revocation of a contract.~~

~~2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.~~

~~3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.~~

~~4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitral proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.]~~ *(Deleted by amendment.)*

Sec. 18. NRS 38.222 is hereby amended to read as follows:

38.222 1. *Except as otherwise provided in section 13 of this act:*

*(a)* Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitral proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitral proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

~~[2.]~~ *(b)* After an arbitrator is appointed and is authorized and able to act:

~~[(a)]~~ *(1)* The arbitrator may issue such orders for provisional remedies, including interim awards, as he finds necessary to protect the effectiveness of the arbitral proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

~~[(b)]~~ *(2)* A party to an arbitral proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

~~[3.]~~ *2.* A party does not waive a right of arbitration by making a motion under subsection 1 . ~~[or 2.]~~

Sec. 19. NRS 38.238 is hereby amended to read as follows:

38.238 *Except as otherwise provided in section 13 of this act:*

1. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitral proceeding.

2. As to all remedies other than those authorized by subsection 1, an arbitrator may order such remedies as he considers just and appropriate under the circumstances of the arbitral proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under NRS 38.239 or for vacating an award under NRS 38.241.

3. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

Sec. 20. ~~[Chapter 687B of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~*1. Any provisions in any contract of insurance that require a consumer to submit a controversy relating to insurance thereafter arising to arbitration are contrary to the established public policy of this State.*~~

~~*2. A contract of insurance with a consumer that requires the submission to arbitration of any controversy related to the insurance transaction thereafter arising between the parties is hereby prohibited and any such arbitration provision is hereby declared invalid, unenforceable and void. Any such arbitration provision shall be considered severable and other provisions of the contract for insurance will remain in effect and given full force.*~~

~~*3. If a written agreement that involves both insurance and any other services, goods, property or credit includes a mandatory arbitration provision, there must be a clear and conspicuous disclosure that the mandatory arbitration provision does not apply to any dispute related to insurance.*~~

~~*4. A person violating this section is liable to the consumer in an amount equal to the sum of any actual damage sustained by the consumer as a result of the violation plus $100, even if no actual damage is proved, plus costs of the action, together with a reasonable attorney's fee. Any provision in a contract of insurance that requires an action to enforce this section to be submitted to arbitration is void and unenforceable unless the consumer agrees to arbitration after filing suit or after otherwise notifying the other party of the violation.*~~

~~*5. For the purposes of this section, "consumer" means a person who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished insurance for personal, family or household purposes.]*~~ *(Deleted by amendment.)*

Sec. 21. NRS 689A.0403 is hereby amended to read as follows:

689A.0403 1. ~~[Each policy of health insurance must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association.~~

~~2.]~~ If an insurer, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is covered under the terms of the contract of insurance, only a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.

~~[3.]~~ *2.* The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.

*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer ~~[pursuant to the procedure for binding arbitration set forth in the policy of insurance]~~ within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor ~~[.]~~ *and obtain a second independent evaluation in compliance with the provisions of subsections 1 and 2.*

4. The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is ~~[in arbitration,]~~ *being appealed,* except that, if the insurer prevails in the ~~[arbitration,]~~ *appeal,* the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection ~~[3]~~ *2* concerning the appeal of the insured person.

Sec. 22. NRS 689B.270 is hereby amended to read as follows:

689B.270 1. ~~[Each policy of group or blanket health insurance must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association.~~

~~2.]~~ If an insurer, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is covered under the terms of a policy of group or blanket health insurance, only a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.

~~[3.]~~ *2.* The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.

*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer ~~[pursuant to the procedure for binding arbitration set forth in the policy of insurance]~~ within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor ~~[.]~~ *and obtain a second independent evaluation in compliance with the provisions of subsections 1 and 2.*

4. The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is ~~[in arbitration,]~~ *being appealed,* except that, if the insurer prevails in the ~~[arbitration,]~~ *appeal,* the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection ~~[3]~~ *2* concerning the appeal of the insured person.

Sec. 23. NRS 695B.182 is hereby amended to read as follows:

695B.182 1. ~~[Each contract for hospital or medical services must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association.~~

~~2.]~~ If a corporation subject to the provisions of this chapter, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is covered under a contract for hospital or medical services, only a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.

~~[3.]~~ *2.* The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.

*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer ~~[pursuant to the procedure for binding arbitration set forth in the contract for services]~~ within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor ~~[.]~~ *and obtain a second independent medical evaluation in compliance with the provisions of subsections 1 and 2.*

4. The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is in arbitration, except that, if the insurer prevails in the arbitration, the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection ~~[3]~~ *2* concerning the appeal of the insured person.

Sec. 24. NRS 695C.265 is hereby amended to read as follows:

695C.265 1. If a health maintenance organization, for any final determination of benefits or care, requires an independent evaluation of the medical or chiropractic care of any person for whom such care is provided under the evidence of coverage ~~[:~~

~~(a) The evidence of coverage must include a procedure for binding arbitration to resolve disputes concerning independent medical evaluations pursuant to the rules of the American Arbitration Association; and~~

~~(b) Only]~~ , *only* a physician or chiropractor who is certified to practice in the same field of practice as the primary treating physician or chiropractor or who is formally educated in that field may conduct the independent evaluation.

2. The independent evaluation must include a physical examination of the patient, unless he is deceased, and a personal review of all X rays and reports prepared by the primary treating physician or chiropractor. A certified copy of all reports of findings must be sent to the primary treating physician or chiropractor and the insured person within 10 working days after the evaluation.

*3.* If the insured person disagrees with the finding of the evaluation, he must submit an appeal to the insurer ~~[pursuant to the procedure for binding arbitration set forth in the evidence of coverage]~~ within 30 days after he receives the finding of the evaluation. Upon its receipt of an appeal, the insurer shall so notify in writing the primary treating physician or chiropractor ~~[.]~~ *and obtain a second independent medical evaluation in compliance with the provisions of subsections 1 and 2.*

~~[3.]~~ *4.* The insurer shall not limit or deny coverage for care related to a disputed claim while the dispute is ~~[in arbitration,]~~ *being appealed,* except that, if the insurer prevails in the ~~[arbitration,]~~ *appeal,* the primary treating physician or chiropractor may not recover any payment from either the insurer, insured person or the patient for services that he provided to the patient after receiving written notice from the insurer pursuant to subsection ~~[2]~~ *3* concerning the appeal of the insured person.

Sec. 25. NRS 690B.155 is hereby repealed.

TEXT OF REPEALED SECTION

690B.155 Provision requiring binding arbitration authorized; procedures for arbitration.

1. Subject to the approval of the Commissioner, a contract of insurance for home protection may include a provision which requires the parties to the contract to submit for binding arbitration any dispute between the parties concerning any matter directly or indirectly related to, or associated with, the contract.

2. Except as otherwise provided in subsection 3, the arbitration must be conducted pursuant to the rules for commercial arbitration established by the American Arbitration Association. The insurer is responsible for any administrative fees and expenses relating to the arbitration, except that the insurer is not responsible for attorney's fees and fees for expert witnesses unless those fees are awarded by the arbitrator.

3. If a provision described in subsection 1 is included in a contract of insurance for home protection, the provision shall not be deemed unenforceable as an unreasonable contract of adhesion if the provision is included in compliance with the provisions of subsection 1.

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

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

Thank you, Mr. President. After the bill had passed out of committee with the committee amendments, some other concerns arose with the issue of real property and the consumer-arbitration agreements also dealing with the employment issues. One of our lobbyists caught it at the last minute so this is the amendment to address their concerns.

Amendments adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 543.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 880.

"SUMMARY—Temporarily redirects a portion of the taxes ad valorem levied in Clark and Washoe Counties to the State General Fund and ~~[authorizes]~~ *revises the provisions governing* the imposition *and use* of a supplemental governmental services tax in certain counties. (BDR 31-1187)"

"AN ACT relating to taxation; temporarily redirecting a portion of the taxes ad valorem levied in Clark and Washoe Counties to the State General Fund; ~~[authorizing]~~ *revising the provisions governing* the imposition *and use* of a supplemental governmental services tax in certain counties; *temporarily redirecting a portion of certain taxes imposed in Clark County to the county general fund;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law authorizes a county to impose an ad valorem tax for capital projects in the amount of 5 cents per $100 of the assessed valuation of the county. (NRS 354.59815) Section 1 of this bill requires the deposit into the State General Fund of a portion of the proceeds of any such tax imposed during the next 2 fiscal years in a county whose population is 100,000 or more (currently Clark and Washoe Counties).

Existing law authorizes a board of county commissioners, after receiving the approval of the voters, to impose a supplemental governmental services tax of 1 cent on each $1 valuation of a vehicle. (NRS 371.045) Section 4 of this bill authorizes the board of a county whose population is 100,000 or more but less than 400,000 (currently Washoe County) to impose such a tax without voter approval ~~[.]~~ *and expands the purposes for which such a county may expend the proceeds thereof. Section 5 of this bill expands the purposes for which a county whose population is 400,000 or more (currently Clark County) may expend the proceeds of such a tax.*

Section 8 of this bill requires the deposit into the State General Fund of the portion of the property taxes levied for the next 2 fiscal years for operating purposes by Clark and Washoe Counties at the rate of 4 cents per $100 of assessed valuation.

*Section 9 of this bill requires the transfer to the general fund for Clark County of certain proceeds for the next 2 fiscal years of taxes imposed in the County on revenues from the rental of transient lodging, on the privilege of new residential, commercial, industrial and other development, and on the privilege of operating a vehicle on the public streets, roads and highways.*

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

Section 1. NRS 354.59815 is hereby amended to read as follows:

354.59815 1. In addition to the allowed revenue from taxes ad valorem determined pursuant to NRS 354.59811, the board of county commissioners may levy a tax ad valorem on all taxable property in the county at a rate not to exceed 5 cents per $100 of the assessed valuation of the county.

2. If a tax is levied pursuant to subsection 1 in:

(a) A county whose population is less than 100,000, the board of county commissioners shall direct the county treasurer to distribute quarterly the proceeds of the tax among the county and the cities and towns within that county in the proportion that the supplemental city-county relief tax distribution factor of each of those local governments for the 1990-1991 Fiscal Year bears to the sum of the supplemental city-county relief tax distribution factors of all of the local governments in the county for the 1990-1991 Fiscal Year.

(b) A county whose population is 100,000 or more, the board of county commissioners shall direct the county treasurer to distribute quarterly, from the proceeds of the tax for:

(1) The fiscal year beginning on July 1, 2008:

(I) Eighty-eight percent of those proceeds among the county and the cities and towns within that county in the proportion that the supplemental city-county relief tax distribution factor of each of those local governments for the 1990-1991 Fiscal Year bears to the sum of the supplemental city-county relief tax distribution factors of all the local governments in the county for the 1990-1991 Fiscal Year; and

(II) Twelve percent of those proceeds to the State Treasurer for deposit in the State Highway Fund for administration pursuant to subsection 7 of NRS 408.235.

(2) The fiscal year beginning on July 1, 2009:

(I) Seventy-six percent of those proceeds ~~[among the county and the cities and towns within that county in the proportion that the supplemental city-county relief tax distribution factor of each of those local governments for the 1990-1991 Fiscal Year bears to the sum of the supplemental city-county relief tax distribution factors of all the local governments in the county for the 1990-1991 Fiscal Year;]~~ *to the State Treasurer for deposit in the State General Fund;* and

(II) Twenty-four percent of those proceeds to the State Treasurer for deposit in the State Highway Fund for administration pursuant to subsection 7 of NRS 408.235.

(3) The fiscal year beginning on July 1, 2010:

(I) Sixty-four percent of those proceeds ~~[among the county and the cities and towns within that county in the proportion that the supplemental city-county relief tax distribution factor of each of those local governments for the 1990-1991 Fiscal Year bears to the sum of the supplemental city-county relief tax distribution factors of all the local governments in the county for the 1990-1991 Fiscal Year;]~~ *to the State Treasurer for deposit in the State General Fund;* and

(II) Thirty-six percent of those proceeds to the State Treasurer for deposit in the State Highway Fund for administration pursuant to subsection 7 of NRS 408.235.

(4) The fiscal year beginning on July 1, 2011:

(I) Fifty-two percent of those proceeds among the county and the cities and towns within that county in the proportion that the supplemental city-county relief tax distribution factor of each of those local governments for the 1990-1991 Fiscal Year bears to the sum of the supplemental city-county relief tax distribution factors of all the local governments in the county for the 1990-1991 Fiscal Year; and

(II) Forty-eight percent of those proceeds to the State Treasurer for deposit in the State Highway Fund for administration pursuant to subsection 7 of NRS 408.235.

(5) Each fiscal year beginning on or after July 1, 2012:

(I) Forty percent of those proceeds among the county and the cities and towns within that county in the proportion that the supplemental city-county relief tax distribution factor of each of those local governments for the 1990-1991 Fiscal Year bears to the sum of the supplemental city-county relief tax distribution factors of all the local governments in the county for the 1990-1991 Fiscal Year; and

(II) Sixty percent of those proceeds to the State Treasurer for deposit in the State Highway Fund for administration pursuant to subsection 7 of NRS 408.235.

3. The board of county commissioners shall not reduce the rate of any tax levied pursuant to the provisions of subsection 1 without the approval of the State Board of Finance and each of the local governments that receives a portion of the tax, except that, if a local government declines to receive its portion of the tax in a particular year the levy may be reduced by the amount that local government would have received.

Sec. 2. NRS 244.33516 is hereby amended to read as follows:

244.33516 A board of county commissioners which, after ~~[March 25, 1991,]~~ *July 1, 2009,* imposes a tax pursuant to NRS 244.3351, 278.710, 365.203, 371.045, 373.030 or 377A.020 ~~[,]~~ *or section 4 of this act,* shall, by January 1, ~~[2001,]~~ *2011,* and every 10 years thereafter:

1. Prepare a comprehensive report which includes:

(a) A statement of the proposed uses during the following 10 years of the revenues to be collected from each tax imposed; and

(b) A projection of the principal amount of any general or special obligation bonds or other securities proposed to be issued during the following 10 years to fund projects described in paragraph (a) of subsection 2 of NRS 244.33512;

2. Hold a public hearing to consider and solicit comments on the report; and

3. Provide a copy of the report to the next regular session of the Legislature.

Sec. 3. NRS 244A.256 is hereby amended to read as follows:

244A.256 1. A county may pledge any money received from the proceeds of taxes imposed pursuant to paragraph (a) of subsection 1 of NRS 244.3351 or paragraph (a) of subsection 1 of NRS 278.710 or pursuant to NRS 371.045 *or section 4 of this act* or, with the consent of the regional transportation commission, received from the proceeds of the tax imposed pursuant to NRS 377A.020, or any combination of money from those sources with revenue derived from the project financed with the proceeds of the obligations for whose payment those taxes are pledged, including any existing or future extensions or enlargements thereof, for the payment of general or special obligations issued for projects described in paragraph (a) of subsection 2 of NRS 244.33512, if the project for which the securities are issued could be directly funded with the taxes whose proceeds are pledged for the payment of the securities.

2. A county may pledge any money received from the proceeds of taxes imposed pursuant to paragraph (b) of subsection 1 of NRS 244.3351 or paragraph (b) of subsection 1 of NRS 278.710, or any combination of money from those taxes with revenue derived from the project financed with the proceeds of the obligations for whose payment those taxes are pledged, including any existing or future extensions or enlargements thereof, for the

payment of general or special obligations issued for projects described in subsection 1 of NRS 244.33514, if the project for which the securities are issued could be directly funded with the taxes whose proceeds are pledged for the payment of the securities.

3. Any money pledged by the county pursuant to subsection 1 or 2 may be treated as pledged revenues of the project for the purposes of subsection 3 of NRS 350.020.

Sec. 4. Chapter 371 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A board of county commissioners of a county whose population is 100,000 or more but less than 400,000 may by ordinance, but not as in a case of emergency, impose a supplemental governmental services tax of not more than 1 cent on each $1 of valuation of the vehicle for the privilege of operating upon the public streets, roads and highways of the county on each vehicle based in the county except:*

*(a) A vehicle exempt from the governmental services tax pursuant to this chapter; or*

*(b) A vehicle subject to NRS 706.011 to 706.861, inclusive, which is engaged in interstate or intercounty operations.*

*2. Collection of the tax imposed pursuant to this section must not commence earlier than the first day of the second calendar month after adoption of the ordinance imposing the tax.*

*3. Except as otherwise provided in subsection 4 and NRS 371.047, the county shall use the proceeds of the tax to pay the cost of:*

*(a) Projects related to the construction and maintenance of sidewalks, streets, avenues, boulevards, highways and other public rights-of-way used primarily for vehicular traffic, including, without limitation, overpass projects, street projects or underpass projects, as defined in NRS 244A.037, 244A.053 and 244A.055, respectively:*

*(1) Within the boundaries of the county;*

*(2) Within 1 mile outside the boundaries of the county if the board of county commissioners finds that such projects outside the boundaries of the county will facilitate transportation within the county; or*

*(3) Within 30 miles outside the boundaries of the county and the boundaries of this State, where those boundaries are coterminous, if:*

*(I) The projects consist of improvements to a highway which is located wholly or partially outside the boundaries of this State and which connects this State to an interstate highway; and*

*(II) The board of county commissioners finds that such projects will provide a significant economic benefit to the county;*

*(b) Payment of principal and interest on notes, bonds or other obligations incurred to fund projects described in paragraph (a); or*

*(c) Any combination of those uses.*

*4. The county may expend ~~[the]~~ :*

*(a) Any proceeds of the supplemental governmental services tax authorized by this section, or any borrowing in anticipation of that tax, pursuant to an interlocal agreement between the county and the regional transportation commission of the county with respect to* ~~*[the]*~~ *any projects to be financed with the proceeds of the tax.*

*(b) Any proceeds of the supplemental governmental services tax authorized by this section to pay the operating costs of the county and any other costs to carry out the governmental functions of the county.*

*5. As used in this section, "based" has the meaning ascribed to it in NRS 482.011.*

Sec. 5. NRS 371.045 is hereby amended to read as follows:

371.045 1. A board of county commissioners *of a county whose population is less than 100,000 or is 400,000 or more* may by ordinance, but not as in a case of emergency, after receiving the approval of a majority of the registered voters voting on the question at a primary, general or special election, impose a supplemental governmental services tax of not more than 1 cent on each $1 of valuation of the vehicle for the privilege of operating upon the public streets, roads and highways of the county on each vehicle based in the county except:

(a) A vehicle exempt from the governmental services tax pursuant to this chapter; or

(b) A vehicle subject to NRS 706.011 to 706.861, inclusive, which is engaged in interstate or intercounty operations.

2. A county may combine this question with questions submitted pursuant to NRS 244.3351, 278.710 or 377A.020, or any combination thereof.

3. A special election may be held only if the board of county commissioners determines, by a unanimous vote, that an emergency exists. The determination made by the board is conclusive unless it is shown that the board acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the board must be commenced within 15 days after the board's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the board of county commissioners to prevent or mitigate a substantial financial loss to the county or to enable the board to provide an essential service to the residents of the county.

4. Collection of the tax imposed pursuant to this section must not commence earlier than the first day of the second calendar month after adoption of the ordinance imposing the tax.

5. Except as otherwise provided in subsection 6 and NRS 371.047, the county shall use the proceeds of the tax to pay the cost of:

(a) Projects related to the construction and maintenance of sidewalks, streets, avenues, boulevards, highways and other public rights-of-way used primarily for vehicular traffic, including, without limitation, overpass projects, street projects or underpass projects, as defined in NRS 244A.037, 244A.053 and 244A.055, respectively:

(1) Within the boundaries of the county;

(2) Within 1 mile outside the boundaries of the county if the board of county commissioners finds that such projects outside the boundaries of the county will facilitate transportation within the county; or

(3) Within 30 miles outside the boundaries of the county and the boundaries of this State, where those boundaries are coterminous, if:

(I) The projects consist of improvements to a highway which is located wholly or partially outside the boundaries of this State and which connects this State to an interstate highway; and

(II) The board of county commissioners finds that such projects will provide a significant economic benefit to the county;

(b) Payment of principal and interest on notes, bonds or other obligations incurred to fund projects described in paragraph (a); or

(c) Any combination of those uses.

6. The county may ~~[expend the]~~ *:*

*(a) Expend any* proceeds of the supplemental governmental services tax authorized by this section , ~~[and NRS 371.047,]~~ or any borrowing in anticipation of that tax, pursuant to an interlocal agreement between the county and the regional transportation commission of the county with respect to ~~[the]~~ *any* projects to be financed with the proceeds of the tax.

*(b) If the population of the county is 400,000 or more, expend any proceeds of the supplemental governmental services tax authorized by this section to pay the operating costs of the county and any other costs to carry out the governmental functions of the county.*

7. As used in this section, "based" has the meaning ascribed to it in NRS 482.011.

Sec. 6. NRS 371.047 is hereby amended to read as follows:

371.047 1. A county may use the proceeds of the tax imposed pursuant to NRS 371.045 ~~[,]~~ *or section 4 of this act,* or of bonds, notes or other obligations incurred to which the proceeds of those taxes are pledged to finance a project related to the construction of a highway with limited access, to:

(a) Purchase residential real property which shares a boundary with a highway with limited access or a project related to the construction of a highway with limited access, and which is adversely affected by the highway. Not more than 1 percent of the proceeds of the tax or of any bonds to which the proceeds of the tax are pledged may be used for this purpose.

(b) Pay for the cost of moving persons whose primary residences are condemned for a right-of-way for a highway with limited access and who qualify for such payments. The board of county commissioners shall, by ordinance, establish the qualifications for receiving payments for the cost of moving pursuant to this paragraph.

2. A county may, in accordance with NRS 244.265 to 244.296, inclusive, dispose of any residential real property purchased pursuant to this section, and may reserve and except easements, rights or interests related thereto, including, but not limited to:

(a) Abutter's rights of light, view or air.

(b) Easements of access to and from abutting land.

(c) Covenants prohibiting the use of signs, structures or devices advertising activities not conducted, services not rendered or goods not produced or available on the real property.

3. Proceeds from the sale or lease of residential real property acquired pursuant to this section must be used for the purposes set forth in this section and in NRS 371.045 ~~[.]~~ *or section 4 of this act, as applicable.*

4. For the purposes of this section, residential real property is adversely affected by a highway with limited access if the construction or proposed use of the highway:

(a) Constitutes a taking of all or any part of the property, or interest therein;

(b) Lowers the value of the property; or

(c) Constitutes a nuisance.

5. As used in this section:

(a) "Highway with limited access" means a divided highway for through traffic with full control of access and with grade separations at intersections.

(b) "Primary residence" means a dwelling, whether owned or rented by the occupant, which is the sole principal place of residence of that occupant.

(c) "Residential real property" means a lot or parcel of not more than 1.5 acres upon which a single-family or multifamily dwelling is located.

Sec. 7. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection 5, after deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180, the Department shall certify monthly to the State Board of Examiners the amount of the basic and supplemental governmental services taxes collected for each county by the Department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental governmental services tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.045 and 371.047 ~~[.]~~ *and section 4 of this act.*

3. The distribution of the basic governmental services tax received or collected for each county must be made to the county school district within each county before any distribution is made to a local government, special district or enterprise district. For the purpose of calculating the amount of the basic governmental services tax to be distributed to the county school district, the taxes levied by each local government, special district and enterprise district are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to

NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. After making the distributions set forth in subsection 3, the remaining money received or collected for each county must be deposited in the Local Government Tax Distribution Account created by NRS 360.660 for distribution to local governments, special districts and enterprise districts within each county pursuant to the provisions of NRS 360.680 and 360.690.

5. An amount equal to any basic governmental services tax distributed to a redevelopment agency in the Fiscal Year 1987-1988 must continue to be distributed to that agency as long as it exists but must not be increased.

6. The Department shall make distributions of the basic governmental services tax directly to county school districts.

7. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in NRS 360.620.

(b) "Local government" has the meaning ascribed to it in NRS 360.640.

(c) "Received or collected for each county" means:

(1) For the basic governmental services tax collected on vehicles subject to the provisions of chapter 706 of NRS, the amount determined for each county based on the following percentages:

| | | | |
|---|---|---|---|
| Carson City | 1.07 percent | Lincoln | 3.12 percent |
| Churchill | 5.21 percent | Lyon | 2.90 percent |
| Clark | 22.54 percent | Mineral | 2.40 percent |
| Douglas | 2.52 percent | Nye | 4.09 percent |
| Elko | 13.31 percent | Pershing | 7.00 percent |
| Esmeralda | 2.52 percent | Storey | .19 percent |
| Eureka | 3.10 percent | Washoe | 12.24 percent |
| Humboldt | 8.25 percent | White Pine | 5.66 percent |
| Lander | 3.88 percent | | |

(2) For all other basic and supplemental governmental services tax received or collected by the Department, the amount attributable to each county based on the county of registration of the vehicle for which the tax was paid.

(d) "Special district" has the meaning ascribed to it in NRS 360.650.

Sec. 8. 1. Notwithstanding any other statutory provision to the contrary, the County Treasurer of Clark County shall distribute quarterly to the State Treasurer for deposit in the State General Fund, from the proceeds of the taxes ad valorem levied by that County for the operating expenses of the County during the fiscal years beginning on July 1, 2009, and July 1, 2010, the amount of those proceeds attributable to the levy of those taxes on all taxable property in the County at the rate of 4 cents per $100 of assessed valuation. For the purposes of NRS 354.59811, the amount of the proceeds distributed to the State Treasurer pursuant to this subsection shall be deemed to constitute revenue received by Clark County from taxes ad valorem.

2. Notwithstanding any other statutory provision to the contrary, the County Treasurer of Washoe County shall distribute quarterly to the State Treasurer for deposit in the State General Fund, from the proceeds of the taxes ad valorem levied by that County for the operating expenses of the County during the fiscal years beginning on July 1, 2009, and July 1, 2010, the amount of those proceeds attributable to the levy of those taxes on all taxable property in the County at the rate of 4 cents per $100 of assessed valuation. For the purposes of NRS 354.59811, the amount of the proceeds distributed to the State Treasurer pursuant to this subsection shall be deemed to constitute revenue received by Washoe County from taxes ad valorem.

*Sec. 9.* *Notwithstanding any other statutory provision to the contrary:*

*1. The Chief Financial Officer of Clark County shall:*

*(a) Determine the amount of:*

*(1) Any revenue for the fiscal years beginning on July 1 2009, and July 1, 2010, which is retained by the County pursuant to paragraph (b) of subsection 1 of NRS 244.33512;*

*(2) Any revenue for the fiscal years beginning on July 1 2009, and July 1, 2010, from any tax imposed in the County pursuant to NRS 278.710; and*

*(3) Any revenue for the fiscal years beginning on July 1 2009, and July 1, 2010, from any tax imposed in the County pursuant to NRS 371.045,*

*➥ which is not needed for debt service on any bonds or other securities which are payable from or secured by any of that revenue, or for any reserves therefor or any other expenses related to those bonds or other securities, or for any other existing contractual obligations, and which may be available, under the terms of any bonds or other securities to which all or any combination of such revenue has been pledged, for distribution pursuant to paragraph (b); and*

*(b) Transfer to the county general fund such a portion of the amount determined pursuant to paragraph (a) as the Board of County Commissioners of Clark County determines to be appropriate based upon any financial needs for existing contractual obligations, for bonds anticipated to be issued in the future, for anticipated future debt service on outstanding bonds and bonds anticipated to be issued in the future, and for any reserves therefor.*

*2. Any money transferred to the county general fund pursuant to subsection 1 may be expended to pay the operating costs of the county and any other costs to carry out the governmental functions of the county.*

~~[Sec. 9.]~~ *Sec. 10.* The amendatory provisions of section 1 of this act must not be applied to modify, directly or indirectly, any taxes levied or revenues pledged in such a manner as to impair adversely any outstanding obligations of any county, city or town, including, without limitation, bonds, medium-term financing, letters of credit and any other financial obligation, until all such obligations have been discharged in full or provision for their payment and redemption has been fully made.

~~[Sec. 10.]~~ *Sec. 11.* This act becomes effective on July 1, 2009.

Senator Mathews moved the adoption of the amendment.

Remarks by Senator Mathews.

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

Thank you, Mr. President. This bill temporarily redirects a portion of the ad valorem taxes levied in Clark and Washoe Counties to the State General Fund and revises the provisions governing the imposition and use of a Supplemental Governmental Services Tax.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 358.

Bill read third time.

Roll call on Senate Bill No. 358:

YEAS—20.

NAYS—Washington.

Senate Bill No. 358 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 102.

Bill read third time.

Roll call on Assembly Bill No. 102:

YEAS—21.

NAYS—None.

Assembly Bill No. 102 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 147.

Bill read third time.

Remarks by Senator McGinness.

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

Thank you Mr. President. I voted against this bill in Committee. I am a proponent of giving the local person the bid, but what you are doing when you are using public funds is spending 5 or 10 percent too much for the goods and services. I think we need to take a close look at this.

Roll call on Assembly Bill No. 147:

YEAS—15.

NAYS—Cegavske, Coffin, Hardy, McGinness, Nolan, Rhoads—6.

Assembly Bill No. 147 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 246.
Bill read third time.
Roll call on Assembly Bill No. 246:
YEAS—21.
NAYS—None.

Assembly Bill No. 246 having received a two-thirds majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 281.
Bill read third time.
Roll call on Assembly Bill No. 281:
YEAS—21.
NAYS—None.

Assembly Bill No. 281 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 309.
Bill read third time.
Roll call on Assembly Bill No. 309:
YEAS—21.
NAYS—None.

Assembly Bill No. 309 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 314.
Bill read third time.
Senator Carlton moved that Assembly Bill No. 314 be taken from the General File and placed on the General File for the next legislative day.
Motion carried.

Assembly Bill No. 320.
Bill read third time.
Roll call on Assembly Bill No. 320:
YEAS—21.
NAYS—None.

Assembly Bill No. 320 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Assembly Bill No. 454.
Bill read third time.
Roll call on Assembly Bill No. 454:
YEAS—21.
NAYS—None.

Assembly Bill No. 454 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 162.

Bill read third time.

The following amendment was proposed by Senator Carlton:

Amendment No. 908.

"SUMMARY—Requires certain policies of health insurance and health care plans to provide coverage for screening for and treatment of autism. (BDR 57-44)"

"AN ACT relating to insurance; requiring certain policies of health insurance and health care plans to provide an option of coverage for screening for and treatment of autism; authorizing the Board of Psychological Examiners to license behavior analysts and assistant behavior analysts and to certify autism behavior interventionists; increasing the size of the Board of Psychological Examiners from five members to seven members; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law requires certain public and private health care plans and policies of insurance to provide coverage for certain procedures, including colorectal cancer screenings, cytological screening tests and mammograms, in certain circumstances. (NRS 287.027, 287.04335, 689A.04042, 689A.0405, 689B.0367, 689B.0374, 695B.1907, 695B.1912, 695C.1731, 695C.1735, 695G.168) Existing law also requires employers to provide certain benefits to employees, including coverage for the procedures required to be covered by insurers, if the employer provides health benefits for its employees. (NRS 608.1555) Sections 1- ~~[8.5]~~ *10.5* of this bill require certain health care plans and policies of insurance to also provide an option or a requirement, as applicable, of coverage for the screening for, including the diagnosis of, and the treatment of autism spectrum disorders in certain circumstances.

Sections 12-12.4 and 12.7-14.5 of this bill provide for the licensure of behavior analysts and assistant behavior analysts and the certification of autism behavior interventionists by the Board of Psychological Examiners.

Sections 12.5 and 12.6 of this bill increase the size of the Board of Psychological Examiners from five members to seven members, adding one member who is a licensed behavior analyst and one member who represents the interests of persons or agencies that regularly provide health care to patients who are indigent, uninsured or unable to afford health care.

The provisions of this bill apply prospectively to any policy of insurance or health care plan issued or renewed on or after January 1, 2011 ~~[.]~~ *, or July 1, 2011, as applicable.*

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

Section 1. Chapter 689A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A health benefit plan must provide an option of coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders for persons covered by the policy under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*2. Optional coverage provided pursuant to this section must be subject to:*

*(a) A maximum benefit of not less than $36,000 per year for applied behavior analysis treatment; and*

*(b) Copayment, deductible and coinsurance provisions and any other general exclusions or limitations of a policy of health insurance to the same extent as other medical services or prescription drugs covered by the policy.*

*3. A health benefit plan that offers or issues a policy of health insurance which provides coverage for outpatient care shall not:*

*(a) Require an insured to pay a higher deductible, copayment or coinsurance or require a longer waiting period for optional coverage for outpatient care related to autism spectrum disorders than is required for other outpatient care covered by the policy; or*

*(b) Refuse to issue a policy of health insurance or cancel a policy of health insurance solely because the person applying for or covered by the policy uses or may use in the future any of the services listed in subsection 1.*

*4. Except as provided in subsections 1 and 2, an insurer who offers optional coverage pursuant to subsection 1 shall not limit the number of visits an insured may make to any person, entity or group for treatment of autism spectrum disorders.*

*5. Treatment of autism spectrum disorders must be identified in a treatment plan and may include medically necessary habilitative or rehabilitative care, prescription care, psychiatric care, psychological care, behavior therapy or therapeutic care that is:*

*(a) Prescribed for a person diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist; and*

*(b) Provided for a person diagnosed with an autism spectrum disorder by a licensed physician, licensed psychologist, licensed behavior analyst or other provider that is supervised by the licensed physician, psychologist or behavior analyst.*

➥ *An insurer may request a copy of and review a treatment plan created pursuant to this subsection.*

*6. Nothing in this section shall be construed as requiring an insurer to provide reimbursement to an early intervention agency or school for services delivered through early intervention or school services.*

*7. As used in this section:*

*(a) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human*

*behavior, including, without limitation, the use of direct observation, measurement and functional analysis of the relations between environment and behavior.*

*(b) "Autism spectrum disorders" means a neurobiological medical condition including, without limitation, autistic disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified.*

*(c) "Behavioral therapy" means any interactive therapy derived from evidence-based research, including, without limitation, discrete trial training, early intensive behavioral intervention, intensive intervention programs, pivotal response training and verbal behavior provided by a licensed psychologist, licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

*(d) "Certified autism behavior interventionist" means a person who is certified as an autism behavior interventionist by the Board of Psychological Examiners and who provides behavior therapy under the supervision of:*

*(1) A licensed psychologist;*

*(2) A licensed behavior analyst; or*

*(3) A licensed assistant behavior analyst.*

*(e) "Evidence-based research" means research that applies rigorous, systematic and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.*

*(f) "Habilitative or rehabilitative care" means counseling, guidance and professional services and treatment programs, including, without limitation, applied behavior analysis, that are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of a person.*

*(g) "Licensed assistant behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, who is licensed as an assistant behavior analyst by the Board of Psychological Examiners and who provides behavioral therapy under the supervision of a licensed behavior analyst or psychologist.*

*(h) "Licensed behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified behavior analyst or a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, and who is licensed as a behavior analyst by the Board of Psychological Examiners.*

*(i) "Prescription care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.*

*(j) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.*

*(k) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.*

*(l) "Screening for autism spectrum disorders" means medically necessary assessments, evaluations or tests to screen and diagnose whether a person has an autism spectrum disorder.*

*(m) "Therapeutic care" means services provided by licensed or certified speech pathologists, occupational therapists and physical therapists.*

*(n) "Treatment plan" means a plan to treat an autism spectrum disorder that is prescribed by a licensed physician or licensed psychologist and may be developed pursuant to a comprehensive evaluation in coordination with a licensed behavior analyst.*

Sec. 2. NRS 689A.330 is hereby amended to read as follows:

689A.330 If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public officer of that other state has informed the Commissioner that the policy is not subject to approval or disapproval by that officer, the Commissioner may by ruling require that the policy meet the standards set forth in NRS 689A.030 to 689A.320, inclusive ~~[.]~~ *, and section 1 of this act.*

Sec. 3. Chapter 689B of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A health benefit plan must provide coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders to persons covered by the policy of group health insurance under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*2. Coverage provided under this section is subject to:*

*(a) A maximum benefit of $36,000 per year for applied behavior analysis treatment; and*

*(b) Copayment, deductible and coinsurance provisions and any other general exclusion or limitation of a policy of group health insurance to the same extent as other medical services or prescription drugs covered by the policy.*

*3. A health benefit plan that offers or issues a policy of group health insurance which provides coverage for outpatient care shall not:*

*(a) Require an insured to pay a higher deductible, copayment or coinsurance or require a longer waiting period for coverage for outpatient care related to autism spectrum disorders than is required for other outpatient care covered by the policy; or*

*(b) Refuse to issue a policy of group health insurance or cancel a policy of group health insurance solely because the person applying for or covered by the policy uses or may use in the future any of the services listed in subsection 1.*

*4. Except as provided in subsections 1 and 2, an insurer shall not limit the number of visits an insured may make to any person, entity or group for treatment of autism spectrum disorders.*

*5. Treatment of autism spectrum disorders must be identified in a treatment plan and may include medically necessary habilitative or rehabilitative care, prescription care, psychiatric care, psychological care, behavior therapy or therapeutic care that is:*

*(a) Prescribed for a person diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist; and*

*(b) Provided for a person diagnosed with an autism spectrum disorder by a licensed physician, licensed psychologist, licensed behavior analyst or other provider that is supervised by the licensed physician, psychologist or behavior analyst.*

➥ *An insurer may request a copy of and review a treatment plan created pursuant to this subsection.*

*6. A policy subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after January 1, 2011, has the legal effect of including the coverage required by subsection 1, and any provision of the policy or the renewal which is in conflict with subsections 1 or 2 is void.*

*7. Nothing in this section shall be construed as requiring an insurer to provide reimbursement to an early intervention agency or school for services delivered through early intervention or school services.*

*8. As used in this section:*

*(a) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including, without limitation, the use of direct observation, measurement and functional analysis of the relations between environment and behavior.*

*(b) "Autism spectrum disorders" means a neurobiological medical condition including, without limitation, autistic disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified.*

*(c) "Behavioral therapy" means any interactive therapy derived from evidence-based research, including, without limitation, discrete trial training, early intensive behavioral intervention, intensive intervention programs, pivotal response training and verbal behavior provided by a licensed psychologist, licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

*(d) "Certified autism behavior interventionist" means a person who is certified as an autism behavior interventionist by the Board of Psychological Examiners and who provides behavior therapy under the supervision of:*

*(1) A licensed psychologist;*

*(2) A licensed behavior analyst; or*

*(3) A licensed assistant behavior analyst.*

*(e) "Evidence-based research" means research that applies rigorous, systematic and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.*

*(f) "Habilitative or rehabilitative care" means counseling, guidance and professional services and treatment programs, including, without limitation, applied behavior analysis, that are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of a person.*

*(g) "Licensed assistant behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, who is licensed as an assistant behavior analyst by the Board of Psychological Examiners and who provides behavioral therapy under the supervision of a licensed behavior analyst or psychologist.*

*(h) "Licensed behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified behavior analyst or a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization and who is licensed as a behavior analyst by the Board of Psychological Examiners.*

*(i) "Prescription care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.*

*(j) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.*

*(k) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.*

*(l) "Screening for autism spectrum disorders" means medically necessary assessments, evaluations or tests to screen and diagnose whether a person has an autism spectrum disorder.*

*(m) "Therapeutic care" means services provided by licensed or certified speech pathologists, occupational therapists and physical therapists.*

*(n) "Treatment plan" means a plan to treat an autism spectrum disorder that is prescribed by a licensed physician or licensed psychologist and may be developed pursuant to a comprehensive evaluation in coordination with a licensed behavior analyst.*

Sec. 3.5. Chapter 689C of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A health benefit plan must provide coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders to persons covered by the health benefit plan under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*2. Coverage provided under this section is subject to:*

*(a) A maximum benefit of $36,000 per year for applied behavior analysis treatment; and*

*(b) Copayment, deductible and coinsurance provisions and any other general exclusion or limitation of a health benefit plan to the same extent as other medical services or prescription drugs covered by the plan.*

*3. A health benefit plan that offers or issues a policy of group health insurance which provides coverage for outpatient care shall not:*

*(a) Require an insured to pay a higher deductible, copayment or coinsurance or require a longer waiting period for coverage for outpatient care related to autism spectrum disorders than is required for other outpatient care covered by the plan; or*

*(b) Refuse to issue a health benefit plan or cancel a health benefit plan solely because the person applying for or covered by the plan uses or may use in the future any of the services listed in subsection 1.*

*4. Except as provided in subsections 1 and 2, a carrier shall not limit the number of visits an insured may make to any person, entity or group for treatment of autism spectrum disorders.*

*5. Treatment of autism spectrum disorders must be identified in a treatment plan and may include medically necessary habilitative or rehabilitative care, prescription care, psychiatric care, psychological care, behavior therapy or therapeutic care that is:*

*(a) Prescribed for a person diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist; and*

*(b) Provided for a person diagnosed with an autism spectrum disorder by a licensed physician, licensed psychologist, licensed behavior analyst or other provider that is supervised by the licensed physician, psychologist or behavior analyst.*

➥ *A carrier may request a copy of and review a treatment plan created pursuant to this subsection.*

*6. A health benefit plan subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after January 1, 2011, has the legal effect of including the coverage required by subsection 1, and any provision of the plan or the renewal which is in conflict with subsections 1 or 2 is void.*

*7. Nothing in this section shall be construed as requiring a carrier to provide reimbursement to an early intervention agency or school for services delivered through early intervention or school services.*

*8. As used in this section:*

*(a) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including, without limitation, the use of direct observation, measurement and functional analysis of the relations between environment and behavior.*

*(b) "Autism spectrum disorders" means a neurobiological medical condition including, without limitation, autistic disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified.*

*(c) "Behavioral therapy" means any interactive therapy derived from evidence-based research, including, without limitation, discrete trial training, early intensive behavioral intervention, intensive intervention*

*programs, pivotal response training and verbal behavior provided by a licensed psychologist, licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

*(d) "Certified autism behavior interventionist" means a person who is certified as an autism behavior interventionist by the Board of Psychological Examiners and who provides behavior therapy under the supervision of:*

*(1) A licensed psychologist;*

*(2) A licensed behavior analyst; or*

*(3) A licensed assistant behavior analyst.*

*(e) "Evidence-based research" means research that applies rigorous, systematic and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.*

*(f) "Habilitative or rehabilitative care" means counseling, guidance and professional services and treatment programs, including, without limitation, applied behavior analysis, that are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of a person.*

*(g) "Licensed assistant behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, who is licensed as an assistant behavior analyst by the Board of Psychological Examiners and who provides behavioral therapy under the supervision of a licensed behavior analyst or psychologist.*

*(h) "Licensed behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified behavior analyst or a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization and who is licensed as a behavior analyst by the Board of Psychological Examiners.*

*(i) "Prescription care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.*

*(j) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.*

*(k) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.*

*(l) "Screening for autism spectrum disorders" means medically necessary assessments, evaluations or tests to screen and diagnose whether a person has an autism spectrum disorder.*

*(m) "Therapeutic care" means services provided by licensed or certified speech pathologists, occupational therapists and physical therapists.*

*(n) "Treatment plan" means a plan to treat an autism spectrum disorder that is prescribed by a licensed physician or licensed psychologist and may be developed pursuant to a comprehensive evaluation in coordination with a licensed behavior analyst.*

Sec. 4. (Deleted by amendment.)

Sec. 5. Chapter 695C of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A health care plan issued by a health maintenance organization must provide coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders to persons covered by the health care plan under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*2. Coverage provided under this section is subject to:*

*(a) A maximum benefit of $36,000 per year for applied behavior analysis treatment; and*

*(b) Copayment, deductible and coinsurance provisions and any other general exclusion or limitation of a health care plan to the same extent as other medical services or prescription drugs covered by the plan.*

*3. A health care plan issued by a health maintenance organization that provides coverage for outpatient care shall not:*

*(a) Require an enrollee to pay a higher deductible, copayment or coinsurance or require a longer waiting period for coverage for outpatient care related to autism spectrum disorders than is required for other outpatient care covered by the plan; or*

*(b) Refuse to issue a health care plan or cancel a health care plan solely because the person applying for or covered by the plan uses or may use in the future any of the services listed in subsection 1.*

*4. Except as provided in subsections 1 and 2, a health maintenance organization shall not limit the number of visits an enrollee may make to any person, entity or group for treatment of autism spectrum disorders.*

*5. Treatment of autism spectrum disorders must be identified in a treatment plan and may include medically necessary habilitative or rehabilitative care, prescription care, psychiatric care, psychological care, behavior therapy or therapeutic care that is:*

*(a) Prescribed for a person diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist; and*

*(b) Provided for a person diagnosed with an autism spectrum disorder by a licensed physician, licensed psychologist, licensed behavior analyst or other provider that is supervised by the licensed physician, psychologist or behavior analyst.*

➥ *A health maintenance organization may request a copy of and review a treatment plan created pursuant to this subsection.*

*6. Evidence of coverage subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after January 1, 2011, has the legal effect of including the coverage required by subsection 1, and any provision of the evidence of coverage or the renewal which is in conflict with subsections 1 or 2 is void.*

*7. Nothing in this section shall be construed as requiring a health maintenance organization to provide reimbursement to an early intervention* *agency or school for services delivered through early intervention or school services.*

*8. As used in this section:*

*(a) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including, without limitation, the use of direct observation, measurement and functional analysis of the relations between environment and behavior.*

*(b) "Autism spectrum disorders" means a neurobiological medical condition including, without limitation, autistic disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified.*

*(c) "Behavioral therapy" means any interactive therapy derived from evidence-based research, including, without limitation, discrete trial training, early intensive behavioral intervention, intensive intervention programs, pivotal response training and verbal behavior provided by a licensed psychologist, licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

*(d) "Certified autism behavior interventionist" means a person who is certified as an autism behavior interventionist by the Board of Psychological Examiners and who provides behavior therapy under the supervision of:*

*(1) A licensed psychologist;*

*(2) A licensed behavior analyst; or*

*(3) A licensed assistant behavior analyst.*

*(e) "Evidence-based research" means research that applies rigorous, systematic and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.*

*(f) "Habilitative or rehabilitative care" means counseling, guidance and professional services and treatment programs, including, without limitation, applied behavior analysis, that are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of a person.*

*(g) "Licensed assistant behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, who is licensed as an assistant behavior analyst by the Board of Psychological Examiners and who provides behavioral therapy under the supervision of a licensed behavior analyst or psychologist.*

*(h) "Licensed behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified behavior analyst or a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization and who is licensed as a behavior analyst by the Board of Psychological Examiners.*

*(i) "Prescription care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.*

*(j) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.*

*(k) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.*

*(l) "Screening for autism spectrum disorders" means medically necessary assessments, evaluations or tests to screen and diagnose whether a person has an autism spectrum disorder.*

*(m) "Therapeutic care" means services provided by licensed or certified speech pathologists, occupational therapists and physical therapists.*

*(n) "Treatment plan" means a plan to treat an autism spectrum disorder that is prescribed by a licensed physician or licensed psychologist and may be developed pursuant to a comprehensive evaluation in coordination with a licensed behavior analyst.*

Sec. 6. NRS 695C.050 is hereby amended to read as follows:

695C.050 1. Except as otherwise provided in this chapter or in specific provisions of this title, the provisions of this title are not applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision does not apply to an insurer licensed and regulated pursuant to this title except with respect to its activities as a health maintenance organization authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, must not be construed to violate any provision of law relating to solicitation or advertising by practitioners of a healing art.

3. Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and is exempt from the provisions of chapter 630 of NRS.

4. The provisions of NRS 695C.110, 695C.125, 695C.1691, 695C.1693, 695C.170 to 695C.200, inclusive, *and section 5 of this act,* 695C.250 and 695C.265 do not apply to a health maintenance organization that provides health care services through managed care to recipients of Medicaid under the State Plan for Medicaid or insurance pursuant to the Children's Health Insurance Program pursuant to a contract with the Division of Health Care Financing and Policy of the Department of Health and Human Services. This subsection does not exempt a health maintenance organization from any provision of this chapter for services provided pursuant to any other contract.

5. The provisions of NRS 695C.1694, 695C.1695 and 695C.1731 apply to a health maintenance organization that provides health care services through managed care to recipients of Medicaid under the State Plan for Medicaid.

Sec. 7. NRS 695C.330 is hereby amended to read as follows:

695C.330 1. The Commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization pursuant to the provisions of this chapter if he finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organizational document, its health care plan or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to NRS 695C.060, 695C.070 and 695C.140, unless any amendments to those submissions have been filed with and approved by the Commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of NRS 695C.1691 to 695C.200, inclusive, *and section 5 of this act,* or 695C.207;

(c) The health care plan does not furnish comprehensive health care services as provided for in NRS 695C.060;

(d) The State Board of Health certifies to the Commissioner that the health maintenance organization:

(1) Does not meet the requirements of subsection 2 of NRS 695C.080; or

(2) Is unable to fulfill its obligations to furnish health care services as required under its health care plan;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization has failed to put into effect a mechanism affording the enrollees an opportunity to participate in matters relating to the content of programs pursuant to NRS 695C.110;

(g) The health maintenance organization has failed to put into effect the system required by NRS 695C.260 for:

(1) Resolving complaints in a manner reasonably to dispose of valid complaints; and

(2) Conducting external reviews of final adverse determinations that comply with the provisions of NRS 695G.241 to 695G.310, inclusive;

(h) The health maintenance organization or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(j) The health maintenance organization fails to provide the coverage required by NRS 695C.1691; or

(k) The health maintenance organization has otherwise failed to comply substantially with the provisions of this chapter.

2. A certificate of authority must be suspended or revoked only after compliance with the requirements of NRS 695C.340.

3. If the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of that suspension, enroll any additional groups or new individual contracts, unless those groups or persons were contracted for before the date of suspension.

4. If the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation of any kind. The Commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees to the end that enrollees are afforded the greatest practical opportunity to obtain continuing coverage for health care.

Sec. 8. Chapter 695G of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A health care plan issued by a managed care organization for group coverage must provide coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders to persons covered by the health care plan under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*2. A health care plan issued by a managed care organization for individual coverage must provide an option for coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders to persons covered by the health care plan under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*3. Coverage provided under this section is subject to:*

*(a) A maximum benefit of $36,000 per year for applied behavior analysis treatment; and*

*(b) Copayment, deductible and coinsurance provisions and any other general exclusion or limitation of a health care plan to the same extent as other medical services or prescription drugs covered by the plan.*

*4. A managed care organization that offers or issues a health care plan which provides coverage for outpatient care shall not:*

*(a) Require an insured to pay a higher deductible, copayment or coinsurance or require a longer waiting period for coverage for outpatient care related to autism spectrum disorders than is required for other outpatient care covered by the plan; or*

*(b) Refuse to issue a health care plan or cancel a health care plan solely because the person applying for or covered by the plan uses or may use in the future any of the services listed in subsection 1.*

*5. Except as provided in subsections 1, 2 and 3, a managed care organization shall not limit the number of visits an insured may make to any person, entity or group for treatment of autism spectrum disorders.*

*6. Treatment of autism spectrum disorders must be identified in a treatment plan and may include medically necessary habilitative or rehabilitative care, prescription care, psychiatric care, psychological care, behavior therapy or therapeutic care that is:*

*(a) Prescribed for a person diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist; and*

*(b) Provided for a person diagnosed with an autism spectrum disorder by a licensed physician, licensed psychologist, licensed behavior analyst or other provider that is supervised by the licensed physician, psychologist or behavior analyst.*

➥ *A managed care organization may request a copy of and review a treatment plan created pursuant to this subsection.*

*7. An evidence of coverage subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after January 1, 2011, has the legal effect of including the coverage required by subsection 1, and any provision of the evidence of coverage or the renewal which is in conflict with subsections 1 or 3 is void.*

*8. Nothing in this section shall be construed as requiring a managed care organization to provide reimbursement to an early intervention agency or school for services delivered through early intervention or school services.*

*9. As used in this section:*

*(a) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including, without limitation, the use of direct observation, measurement and functional analysis of the relations between environment and behavior.*

*(b) "Autism spectrum disorders" means a neurobiological medical condition including, without limitation, autistic disorder, Asperger's Disorder and Pervasive Developmental Disorder Not Otherwise Specified.*

*(c) "Behavioral therapy" means any interactive therapy derived from evidence-based research, including, without limitation, discrete trial training, early intensive behavioral intervention, intensive intervention programs, pivotal response training and verbal behavior provided by a licensed psychologist, licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

*(d) "Certified autism behavior interventionist" means a person who is certified as an autism behavior interventionist by the Board of Psychological Examiners and who provides behavior therapy under the supervision of:*

*(1) A licensed psychologist;*

*(2) A licensed behavior analyst; or*

*(3) A licensed assistant behavior analyst.*

*(e) "Evidence-based research" means research that applies rigorous, systematic and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.*

*(f) "Habilitative or rehabilitative care" means counseling, guidance and professional services and treatment programs, including, without limitation, applied behavior analysis, that are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of a person.*

*(g) "Licensed assistant behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, who is licensed as an assistant behavior analyst by the Board of Psychological Examiners and who provides behavioral therapy under the supervision of a licensed behavior analyst or psychologist.*

*(h) "Licensed behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified behavior analyst or a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization and who is licensed as a behavior analyst by the Board of Psychological Examiners.*

*(i) "Prescription care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.*

*(j) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.*

*(k) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.*

*(l) "Screening for autism spectrum disorders" means medically necessary assessments, evaluations or tests to screen and diagnose whether a person has an autism spectrum disorder.*

*(m) "Therapeutic care" means services provided by licensed or certified speech pathologists, occupational therapists and physical therapists.*

*(n) "Treatment plan" means a plan to treat an autism spectrum disorder that is prescribed by a licensed physician or licensed psychologist and may be developed pursuant to a comprehensive evaluation in coordination with a licensed behavior analyst.*

Sec. 8.5. NRS 695G.090 is hereby amended to read as follows:

695G.090 1. Except as otherwise provided in subsection 3, the provisions of this chapter apply to each organization and insurer that operates as a managed care organization and may include, without limitation, an insurer that issues a policy of health insurance, an insurer that issues a policy of individual or group health insurance, a carrier serving small employers, a fraternal benefit society, a hospital or medical service corporation and a health maintenance organization.

2. In addition to the provisions of this chapter, each managed care organization shall comply with:

(a) The provisions of chapter 686A of NRS, including all obligations and remedies set forth therein; and

(b) Any other applicable provision of this title.

3. The provisions of NRS 695G.164, 695G.200 to 695G.230, inclusive, ~~[and]~~ 695G.430 *and section 8 of this act* do not apply to a managed care organization that provides health care services to recipients of Medicaid under the State Plan for Medicaid or insurance pursuant to the Children's Health Insurance Program pursuant to a contract with the Division of Health Care Financing and Policy of the Department of Health and Human Services. This subsection does not exempt a managed care organization from any provision of this chapter for services provided pursuant to any other contract.

Sec. 9. (Deleted by amendment.)

*Sec. 9.5. Chapter 287 of NRS is hereby amended by adding thereto a new section to read as follows:*

*1. The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada that provides health insurance through a plan of self-insurance must provide coverage for screening for and diagnosis of autism spectrum disorders and for treatment of autism spectrum disorders to persons covered by the plan of self-insurance under the age of 18 or, if enrolled in high school, until the person reaches the age of 22.*

*2. Coverage provided under this section is subject to:*

*(a) A maximum benefit of $36,000 per year for applied behavior analysis treatment; and*

*(b) Copayment, deductible and coinsurance provisions and any other general exclusion or limitation of a plan of self-insurance to the same extent as other medical services or prescription drugs covered by the policy.*

*3. A governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada that provides health insurance through a plan of self-insurance which provides coverage for outpatient care shall not:*

*(a) Require an insured to pay a higher deductible, copayment or coinsurance or require a longer waiting period for coverage for outpatient care related to autism spectrum disorders than is required for other outpatient care covered by the plan of self-insurance; or*

*(b) Refuse to issue a plan of self-insurance or cancel a plan of self-insurance solely because the person applying for or covered by the plan of self-insurance uses or may use in the future any of the services listed in subsection 1.*

*4. Except as provided in subsections 1 and 2, a governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada that* *provides health insurance through a plan of self-insurance shall not limit the number of visits an insured may make to any person, entity or group for treatment of autism spectrum disorders.*

*5. Treatment of autism spectrum disorders must be identified in a treatment plan and may include medically necessary habilitative or rehabilitative care, prescription care, psychiatric care, psychological care, behavior therapy or therapeutic care that is:*

*(a) Prescribed for a person diagnosed with an autism spectrum disorder by a licensed physician or licensed psychologist; and*

*(b) Provided for a person diagnosed with an autism spectrum disorder by a licensed physician, licensed psychologist, licensed behavior analyst or other provider that is supervised by the licensed physician, psychologist or behavior analyst.*

➥ *A governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada that provides health insurance through a plan of self-insurance may request a copy of and review a treatment plan created pursuant to this subsection.*

*6. A plan of self-insurance subject to the provisions of this chapter that is delivered, issued for delivery or renewed on or after July 1, 2011, has the legal effect of including the coverage required by subsection 1, and any provision of the plan of self-insurance or the renewal which is in conflict with subsections 1 or 2 is void.*

*7. Nothing in this section shall be construed as requiring a governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada that provides health insurance through a plan of self-insurance to provide reimbursement to an early intervention agency or school for services delivered through early intervention or school services.*

*8. As used in this section:*

*(a) "Applied behavior analysis" means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including, without limitation, the use of direct observation, measurement and functional analysis of the relations between environment and behavior.*

*(b) "Autism spectrum disorders" means a neurobiological medical condition including, without limitation, autistic disorder, Asperger's Disorder and Pervasive Development Disorder Not Otherwise Specified.*

*(c) "Behavioral therapy" means any interactive therapy derived from evidence-based research, including, without limitation, discrete trial training, early intensive behavioral intervention, intensive intervention programs, pivotal response training and verbal behavior provided by a licensed psychologist, licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

*(d) "Certified autism behavior interventionist" means a person who is certified as an autism behavior interventionist by the Board of Psychological Examiners and who provides behavior therapy under the supervision of:*

*(1) A licensed psychologist;*

*(2) A licensed behavior analyst; or*

*(3) A licensed assistant behavior analyst.*

*(e) "Evidence-based research" means research that applies rigorous, systematic and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.*

*(f) "Habilitative or rehabilitative care" means counseling, guidance and professional services and treatment programs, including, without limitation, applied behavior analysis, that are necessary to develop, maintain and restore, to the maximum extent practicable, the functioning of a person.*

*(g) "Licensed assistant behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, who is licensed as an assistant behavior analyst by the Board of Psychological Examiners and who provides behavior therapy under the supervision of a licensed behavior analyst or psychologist.*

*(h) "Licensed behavior analyst" means a person who holds current certification or meets the standards to be certified as a board certified behavior analyst or a board certified assistant behavior analyst issued by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization and who is licensed as a behavior analyst by the Board of Psychological Examiners.*

*(i) "Prescription care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.*

*(j) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.*

*(k) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.*

*(l) "Screening for autism spectrum disorders" means all medically appropriate assessments, evaluations or tests to diagnose whether a person has an autism spectrum disorder.*

*(m) "Therapeutic care" means services provided by licensed or certified speech pathologists, occupational therapists and physical therapists.*

*(n) "Treatment plan" means a plan to treat an autism spectrum disorder that is prescribed by a licensed physician or licensed psychologist and may be developed pursuant to a comprehensive evaluation in coordination with a licensed behavior analyst.*

Sec. 10. (Deleted by amendment.)

*Sec. 10.5. NRS 287.04335 is hereby amended to read as follows:*

287.04335 If the Board provides health insurance through a plan of self-insurance, it shall comply with the provisions of NRS 689B.255, 695G.150, 695G.160, 695G.164, 695G.170, 695G.171, 695G.173, 695G.177, 695G.200 to 695G.230, inclusive, 695G.241 to 695G.310, inclusive, ~~[and]~~ 695G.405 ~~[,]~~ *and section 8 of this act* in the same manner as an insurer that is licensed pursuant to title 57 of NRS is required to comply with those provisions.

Sec. 11. (Deleted by amendment.)

Sec. 12. Chapter 641 of NRS is hereby amended by adding thereto the provisions set forth as sections 12.1, 12.2 and 12.3 of this act.

Sec. 12.1. *1. Each application for certification as an autism behavior interventionist must be accompanied by evidence satisfactory to the Board that the applicant:*

*(a) Is at least 18 years of age.*

*(b) Is of good moral character as determined by the Board.*

*(c) Is a citizen of the United States, or is lawfully entitled to remain and work in the United States.*

*(d) Has completed satisfactorily a written examination in Nevada law and ethical practice as administered by the Board.*

*2. Within 120 days after receiving an application and the accompanying evidence from an applicant, the Board shall:*

*(a) Evaluate the application and accompanying evidence and determine whether the applicant is qualified pursuant to this section for certification as an autism behavior interventionist; and*

*(b) Issue a written statement to the applicant of its determination.*

*3. If the Board determines that the qualifications of the applicant are insufficient for certification, the written statement issued to the applicant pursuant to subsection 2 must include a detailed explanation of the reasons for that determination.*

Sec. 12.2. *The Board shall adopt regulations that establish the grounds for disciplinary action for a licensed behavior analyst, licensed assistant behavior analyst or certified autism behavior interventionist.*

Sec. 12.3. *1. A licensed assistant behavior analyst shall not provide or supervise behavior therapy except under the supervision of:*

*(a) A licensed psychologist; or*

*(b) A licensed behavior analyst.*

*2. A certified autism behavior interventionist shall not provide behavior therapy except under the supervision of:*

*(a) A licensed psychologist;*

*(b) A licensed behavior analyst; or*

*(c) A licensed assistant behavior analyst.*

Sec. 12.4. NRS 641.020 is hereby amended to read as follows:

641.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in *section 1 of this act and* NRS 641.021 to 641.027, inclusive, have the meanings ascribed to them in those sections.

Sec. 12.5. NRS 641.030 is hereby amended to read as follows:

641.030 The Board of Psychological Examiners, consisting of ~~[five]~~ *seven* members appointed by the Governor, is hereby created.

Sec. 12.6. NRS 641.040 is hereby amended to read as follows:

641.040 1. The Governor shall appoint to the Board:

(a) Four members who are licensed psychologists in the State of Nevada with at least 5 years of experience in the practice of psychology after being licensed.

(b) *One member who is a licensed behavior analyst in the State of Nevada.*

*(c) One member who has resided in this State for at least 5 years and who represents the interests of persons or agencies that regularly provide health care to patients who are indigent, uninsured or unable to afford health care.*

*(d)* One member who is a representative of the general public.

2. A person is not eligible for appointment unless he is:

(a) A citizen of the United States; and

(b) A resident of the State of Nevada.

3. The member who is a representative of the general public:

(a) Shall not participate in preparing, conducting or grading any examination required by the Board.

(b) Must not be a psychologist, an applicant or former applicant for licensure as a psychologist, a member of a health profession, the spouse or the parent or child, by blood, marriage or adoption, of a psychologist, or a member of a household that includes a psychologist.

4. Board members must not have any conflicts of interest or the appearance of such conflicts in the performance of their duties as members of the Board.

Sec. 12.7. NRS 641.100 is hereby amended to read as follows:

641.100 The Board may make and promulgate rules and regulations not inconsistent with the provisions of this chapter governing its procedure, the examination , ~~[and]~~ licensure *and certification* of applicants, the granting, refusal, revocation or suspension of licenses ~~[,]~~ *and certificates* and the practice of psychology.

Sec. 12.8. NRS 641.110 is hereby amended to read as follows:

641.110 The Board may, under the provisions of this chapter:

1. Examine and pass upon the qualifications of the applicants for licensure ~~[.]~~ *and certification.*

2. License *and certify* qualified applicants.

3. Revoke or suspend licenses ~~[.]~~ *and certificates.*

4. Collect all fees and make disbursements pursuant to this chapter.

Sec. 13. NRS 641.170 is hereby amended to read as follows:

641.170 1. Each application *for licensure as a psychologist* must be accompanied by evidence satisfactory to the Board that the applicant:

(a) Is at least 21 years of age.

(b) Is of good moral character as determined by the Board.

(c) Is a citizen of the United States, or is lawfully entitled to remain and work in the United States.

(d) Has earned a doctorate in psychology from an accredited educational institution approved by the Board, or has other doctorate-level training from an accredited educational institution deemed equivalent by the Board in both subject matter and extent of training.

(e) Has at least 2 years of experience satisfactory to the Board, 1 year of which must be postdoctoral experience in accordance with the requirements established by regulations of the Board.

2. *Each application for licensure as a behavior analyst must be accompanied by evidence satisfactory to the Board that the applicant:*

*(a) Is at least 21 years of age.*

*(b) Is of good moral character as determined by the Board.*

*(c) Is a citizen of the United States, or is lawfully entitled to remain and work in the United States.*

*(d) Has earned a master's degree from an accredited college or university in a field of social science or special education approved by the Board.*

*(e) Has completed other education, training or experience in accordance with the requirements established by regulations of the Board.*

*(f) Has completed satisfactorily a written examination in Nevada law and ethical practice as administered by the Board.*

*3. Each application for licensure as an assistant behavior analyst must be accompanied by evidence satisfactory to the Board that the applicant:*

*(a) Is at least 21 years of age.*

*(b) Is of good moral character as determined by the Board.*

*(c) Is a citizen of the United States, or is lawfully entitled to remain and work in the United States.*

*(d) Has earned a bachelor's degree from an accredited college or university in a field of social science or special education approved by the Board.*

*(e) Has completed other education, training or experience in accordance with the requirements established by regulations of the Board.*

*(f) Has completed satisfactorily a written examination in Nevada law and ethical practice as administered by the Board.*

*4.* Within 120 days after receiving an application and the accompanying evidence from an applicant, the Board shall:

(a) Evaluate the application and accompanying evidence and determine whether the applicant is qualified pursuant to this section for licensure *;* ~~[as a psychologist;]~~ and

(b) Issue a written statement to the applicant of its determination.

~~[3.]~~ *5.* The written statement issued to the applicant pursuant to subsection ~~[2]~~ *4* must include:

(a) If the Board determines that the qualifications of the applicant are insufficient for licensure, a detailed explanation of the reasons for that determination.

(b) If the applicant *for licensure as a psychologist* has not earned a doctorate in psychology from an accredited educational institution approved by the Board and the Board determines that his doctorate-level training from an accredited educational institution is not equivalent in subject matter and extent of training, a detailed explanation of the reasons for that determination.

Sec. 14. NRS 641.180 is hereby amended to read as follows:

641.180 1. Except as otherwise provided in this section and NRS 641.190, each applicant for a license *as a psychologist* must pass the Examination for the Professional Practice of Psychology in the form administered by the Association of State and Provincial Psychology Boards and approved for use in this State by the Board. In addition to this written examination, the Board may require an oral examination in whatever applied or theoretical fields it deems appropriate.

2. The examination must be given at least once a year, and may be given more often if deemed necessary by the Board. The examination must be given at a time and place, and under such supervision, as the Board may determine.

3. The Board shall notify each applicant of the results of his written examination and supply him with a copy of all material information about those results provided to the Board by the Association of State and Provincial Psychology Boards.

4. If an applicant fails the examination, he may request in writing that the Board review his examination.

5. The Board may waive the requirement of a written examination for a person who:

(a) Is licensed in another state;

(b) Has 10 years experience; and

(c) Is a diplomate in the American Board of Professional Psychology or a fellow in the American Psychological Association, or who has other equivalent status as determined by the Board.

Sec. 14.5. NRS 641.370 is hereby amended to read as follows:

641.370 1. The Board shall charge and collect not more than the following fees respectively:

| | |
|---|---|
| For the written examination, in addition to the actual cost to the Board of the examination | $100 |
| For the special ~~[oral]~~ examination, in addition to the actual costs to the Board of the examination | 100 |
| For the issuance of an initial license *or certificate* | 25 |
| For the biennial renewal of a license *of a psychologist* | 500 |
| *For the biennial renewal of a license of a licensed behavior analyst* | *400* |
| *For the biennial renewal of a license of a licensed assistant behavior analyst* | *275* |

*For the biennial renewal of a certificate of a certified autism behavior interventionist*................................................*175*
For the restoration of a license suspended for the nonpayment of the biennial fee for the renewal of a license .......................................................................... 100
For the registration of a firm, partnership or corporation which engages in or offers to engage in the practice of psychology................................................................. 300
For the registration of a nonresident to practice as a consultant................................................................... 100

2. An applicant who passes the examination and is eligible for a license *or certificate* shall pay the biennial fee for the renewal of a license *or certificate* which must be prorated for the period from the date the license *or certificate* is issued to the end of the biennium.

3. In addition to the fees set forth in subsection 1, the Board may charge and collect a fee for the expedited processing of a request or for any other incidental service it provides. The fee must not exceed the cost to provide the service.

Sec. 15. The Board of Psychological Examiners shall begin licensing behavior analysts and assistant behavior analysts pursuant to section 13 of this act and certifying autism behavior interventionists pursuant to section 12.1 of this act no later than January 1, 2010.

*Sec. 15.3.* *Notwithstanding the provisions of subsection 7 of section 8 of this act, a plan of self-insurance governed by NRS 287.04335, as amended by section 10.5 of this act, shall not have the legal effect of including the coverage required pursuant to subsection 1 of section 8 of this act unless it is delivered, issued for delivery or renewed on or after July 1, 2011.*

*Sec. 15.5.* *The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.*

Sec. 16. *1.* This ~~[act becomes]~~ *section and sections 1 to 9, inclusive, 10 and 11 to 15, inclusive, of this act become* effective:

~~[1.]~~ *(a)* Upon passage and approval for the purpose of adopting regulations, licensing behavior analysts and assistant behavior analysts and certifying autism behavior interventionists; and

~~[2.]~~ *(b)* On January 1, 2011, for all other purposes.

*2. Sections 9.5, 10.5, 15.3 and 15.5 of this act become effective:*

*(a) Upon passage and approval for the purposes of adopting regulations; and*

*(b) On July 1, 2011, for all other purposes.*

Senator Carlton moved the adoption of the amendment.

Remarks by Senator Carlton.

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

Thank you, Mr. President. This amendment addresses the concerns that were expressed by my colleagues in committee and here on the Senate floor about this particular benefit only being applied to small businesses and the comment that if small businesses can afford it why cannot state and local governments afford it. I decided the policy I have tried to maintain during my time in this Legislature has been to treat people equally in processing legislation. I have fought for that in workers' compensation and other areas. This Session, we actually had a bill where we went back and gave benefits to the people that we left behind.

This amendment addresses giving these benefits to state and local employees, but realizing the lateness of this Session, the amount of money that it would take to do this, there is no way we can put this bill in the Senate Finance Committee, have it survive and move forward. These benefits will not be applicable until the year 2011. State and local governments can come to this Legislature next Session, sit before the Senate Finance Committee, and explain to us why they cannot provide these benefits to the children that they cover.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Schneider moved that Assembly Bill No. 130 be taken from the General File and placed on the General File for the next legislative day.

Motion carried.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 160.

The following Assembly amendment was read:

Amendment No. 675.

"SUMMARY—Makes various changes *relating* to ~~[comport with the constitutional doctrines of separation of powers and legislative privilege and immunity.]~~ *public officers and employees.* (BDR 3-1164)"

"AN ACT relating to ~~[the Legislative Department of State Government;]~~ *government;* implementing the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity; confirming that the constitutional doctrine of legislative privilege and immunity provides a testimonial privilege and an evidentiary privilege; revising provisions of the Nevada Ethics in Government Law *and other provisions relating to ethics in government; making various statutory changes* to comport with the constitutional doctrines of separation of powers and legislative privilege and immunity ~~[;]~~ *and with the constitutional provisions governing impeachment, expulsion and removal from office;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill provides that for any speech or debate in either House of the Legislature, a member of the Senate or Assembly shall not be questioned in any other place. The purpose and effect of section 1 is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

Under case law, the constitutional doctrine of legislative privilege and immunity provides a testimonial privilege and an evidentiary privilege which protect a Legislator from having to testify or disclose documents in administrative or judicial proceedings when such acts would intrude upon, interfere with or pry into the legislative process. (*Gravel v. United States*, 408 U.S. 606, 92 S.Ct. 2614 (1972); *United States v. Rayburn House Office Bldg.*, 497 F.3d 654 (D.C. Cir. 2007)). Section 2 of this bill amends the Nevada statute governing testimonial and evidentiary privileges to confirm that the constitutional doctrine of legislative privilege and immunity provides a testimonial privilege and an evidentiary privilege. (NRS 49.015)

Sections ~~[3-9]~~ *6, 7.4 and 9* of this bill amend provisions of the Nevada Ethics in Government Law *(Ethics Law)* to make those provisions comport with the constitutional doctrines of separation of powers and legislative privilege and immunity. (Chapter 281A of NRS) In particular, section 9 amends NRS 281A.420 to clarify that the responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government. However, other provisions of the ~~[Nevada Ethics in Government]~~ *Ethics* Law remain applicable to State Legislators so that, for example, State Legislators will continue to be required to file the same financial disclosure forms as other public officers and the provisions prohibiting misuse of office that are applicable to other public officers will continue to apply to State Legislators ~~[.]~~ *with regard to conduct that falls outside the scope of legitimate legislative activity.* Section 9 also clarifies that the provisions of NRS 281A.420 concerning disclosure, voting and abstention do not apply to State Legislators or allow the Commission on Ethics to exercise jurisdiction or authority over State Legislators with regard to disclosure, voting and abstention.

On December 22, 2008, the First Judicial District Court in and for Carson City held that the Commission on Ethics could not apply the provisions of NRS 281A.420 concerning disclosure, voting and abstention to State Legislators because under the constitutional doctrines of separation of powers and legislative privilege and immunity, the Legislator's own House is the only governmental entity that may sanction the Legislator for performing legislative actions, like voting, that fall within the sphere of legitimate legislative activity and are an essential part of the legislative function. (*Warren B. Hardy II v. Commission on Ethics*, Nev. First Jud. Dist. Ct. Case No. 08 OC 00381 1B (Dec. 22, 2008))

The decision of the district court was based on the Nevada Supreme Court's pronouncement that "[u]nder the separation of powers doctrine, individual legislators cannot, nor should they, be subject to fines or other penalties for voting in a particular way." (*Guinn v. Legislature*, 119 Nev. 460, at 472 (2003)) The decision of the district court was also based on a long line of cases from the United States Supreme Court which hold that under the constitutional doctrines of separation of powers and legislative privilege and immunity, Federal and State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government. (*Tenney v. Brandhove*, 341 U.S. 367, 71 S.Ct. 783 (1951); *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944 (1969); *Gravel v. United States*, 408 U.S. 606, 92 S.Ct. 2614 (1972); *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 100 S.Ct. 1967 (1980)) Given this well-established and long-standing precedent, the district court found that the constitutional doctrines of separation of powers and legislative privilege and immunity are intended to protect the independence of individual Legislators by giving them broad freedom of speech, debate, deliberation and action during the legislative process and by shielding them from executive and judicial oversight that realistically threatens to control their conduct as Legislators.

Thus, because of the constitutional doctrines of separation of powers and legislative privilege and immunity, the district court determined that any inquiry into the ethical propriety of legislative actions concerning disclosure, voting and abstention must be conducted by the Legislative Department and cannot be conducted by an administrative agency of the Executive Department, such as the Commission on Ethics. The district court also determined that because each House is given the exclusive constitutional power to determine the rules of its legislative proceedings and to punish its members for improper conduct related to those legislative proceedings, the Standing Rules adopted by each House concerning disclosure, voting and abstention take precedence over NRS 281A.420. Therefore, out of respect for the separation of powers under Section 1 of Article 3 of the Nevada Constitution and out of respect for the exclusive constitutional power of each House to determine its rules and punish its members under Section 6 of Article 4 of the Nevada Constitution, the district court held that the determination of whether a State Legislator has properly followed the Standing Rules concerning disclosure, voting and abstention is a matter reserved exclusively to the Legislator's own House.

Finally, the district court emphasized that its decision applied only to the provisions of NRS 281A.420 concerning disclosure, voting and abstention and that the constitutional doctrines of separation of powers and legislative privilege and immunity do not provide State Legislators with blanket protection from the Nevada Ethics in Government Law. Rather, State Legislators remain subject to the Ethics Law for conduct that falls outside the scope of legitimate legislative activity.

*Sections 3.4-5.4 and 7.2-8.23 of this bill clarify the meaning of terms used in the Ethics Law and codify long-standing interpretations of those terms.*

*Additionally, the definitions in sections 4 and 5 ensure that the Ethics Law accurately reflects the constitutional and legal differences between a "State Legislator" and a "member of a local legislative body." The definition of "investigatory panel" in section 8.1 recognizes that when the two-member panel is deciding whether there is just and sufficient cause to refer an ethics complaint to the Commission for a hearing, the panel is performing an investigatory function, not an adjudicatory function. Section 8.2 revises and clarifies the definition of "public officer" in the Ethics Law by employing terminology used in the definition of "public officer" in NRS 281.005 and by including members of boards of trustees of general improvement districts within the meaning of the term "public officer."*

*Sections 3.4, 3.6, 8.23 and 17.5 of this bill define the terms "intentionally," "knowingly," "willful violation" and "willfully" in the Ethics Law to conform with the legal meanings generally ascribed to those terms. A "willful" act is an act done intentionally and knowingly. (In re Fine, 116 Nev. 1001 (2000); Black's Law Dictionary 1593 (7th ed. 1999) (defining "willful")) A person acts "intentionally" when he acts voluntarily or deliberately, rather than accidentally or inadvertently. (Batt v. State, 111 Nev. 1127 (1995); In re Fine, 116 Nev. 1001 (2000); Nevada Service Employees Union v. Orr, 121 Nev. 675 (2005)) A person acts "knowingly" when he has knowledge of the facts which constitute the act or omission. (NRS 193.017, 624.024; State v. Rhodig, 101 Nev. 608 (1985); Garcia v. Sixth Jud. Dist. Ct., 117 Nev. 697 (2001))*

*Section 5.6 of this bill clarifies that public officers and employees cannot assert common-law privileges and immunities in proceedings under the Ethics Law but may assert constitutional or statutory privileges and immunities in such proceedings.*

*Section 5.8 of this bill moves the existing provisions of NRS 281.236 into the Ethics Law so that those provisions may be enforced by the Commission on Ethics. Under the existing provisions of NRS 281.236, certain regulated businesses and industries must observe a 1-year "cooling off" period before they may hire a former public officer or employee who had significant involvement in regulating the business or industry. Section 5.8 contains the same substantive provisions as NRS 281.236, except that the requirement to observe the 1-year "cooling off" period is imposed on the former public officer or employee instead of on the regulated business or industry.*

*Sections 8.25, 8.35 and 8.45 of this bill clarify existing provisions of the Ethics Law which prohibit members of the Commission on Ethics and the Commission's Executive Director and Counsel from performing certain lobbying activities on behalf of private parties. (NRS 281A.200, 281A.230, 281A.250) Section 8.35 also provides that the Executive Director must have experience in administration, investigations and law.*

*The Ethics Law imposes civil penalties for certain violations (NRS 281A.480), but it does not contain an express statute of limitations. When a law imposes civil penalties but does not contain an express statute of* *limitations, it is presumed that the Legislature intended for a generally applicable statute of limitations to apply to proceedings brought under the law. (DelCostello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 103 S.Ct. 2281 (1983); 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994); 51 Am. Jur. 2d Limitation of Actions § 129 (2000)) Because NRS 11.190 contains a generally applicable 2-year statute of limitations for actions brought upon a statute for a penalty or forfeiture, the 2-year period in NRS 11.190 is presumptively applicable to proceedings brought under the Ethics Law. (Community Cause v. Boatwright, 177 Cal. Rptr. 657 (Cal. Ct. App. 1981)) For purposes of clarity and certainty of application, sections 8.55 and 26 of this bill codify the existing 2-year statute of limitations expressly into the Ethics Law. (NRS 281A.280)*

*The Ethics Law places restrictions on certain public officers and employees with regard to representing or counseling a private person for compensation before various agencies. (NRS 281A.410) Section 8.7 of this bill clarifies those restrictions by replacing the terms "member of the executive branch" and "member of the legislative branch" with more specific, descriptive and accurate terms. Section 8.7 also clarifies the methods for filing the disclosure form certain public officers must file if they have represented or counseled a private person for compensation before certain agencies.*

*The Ethics Law requires public officers to disclose conflicts of interest and to abstain from voting because of certain types of conflicts. (NRS 281A.420) Because public officers must disclose conflicts before determining whether to abstain, section 9.5 of this bill rearranges the order of the existing disclosure and abstention provisions in the statute so that the disclosure provisions come before the abstention provisions. Section 9.5 also changes the abstention requirements which apply to members of certain county and city planning commissions so that those members are subject to the same abstention requirements which apply to other public officers under the statute.*

*Section 9.5 additionally requires the Commission to give appropriate weight and proper deference to the public policy of this State which favors the right of public officers to vote, provided they have properly disclosed all conflicts. Under this public policy, abstention is required only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the conflicts. This public policy demands proper disclosures of conflicts but prefers fewer instances of abstention because abstention disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs.*

*The Ethics Law allows public officers and employees to bid on or enter into contracts with governmental agencies when certain requirements are met, including that the contracting process is controlled by the rules of competitive bidding. (NRS 281A.430) Section 11 of this bill allows public* *officers and employees to enter into such contracts in situations where existing law exempts the contracts from the rules of competitive bidding because the contract is an emergency contract or because no responsible bids were received in response to a previous request for bids on the contract. (NRS 332.112, 332.148)*

*The Ethics Law contains procedures for investigating and adjudicating alleged ethical violations. (NRS 281A.440) Section 12 of this bill: (1) authorizes a public officer or employee who requested an advisory opinion regarding his own conduct to waive certain time limits; (2) provides a public officer or employee with 30 days to file an informational response to an ethics complaint and also provides that no objection or defense is waived by the failure to assert it in the informational response or during the investigatory stage of the proceedings; (3) grants the Executive Director an additional 10 days to complete his investigation of an ethics complaint and to present a recommendation regarding just and sufficient cause to the investigatory panel; and (4) grants the Commission a total of 60 days to hold a hearing and render an opinion if the investigatory panel finds just and sufficient cause, unless the public officer or employee waives the time limit.*

*The Ethics Law requires public officers to file a form acknowledging that they have received, read and understand the statutory ethical standards. (NRS 281A.500) Section 14 of this bill requires public officers to file the form at certain times while holding office and to acknowledge in the form that they have a responsibility to inform themselves of any amendments to the statutory ethical standards. Section 14 provides methods for public officers to obtain hard copies of the statutory ethical standards and also provides for Internet access to the statutory ethical standards. Section 14 additionally clarifies the methods for filing the form and provides that the willful refusal to execute and file the form constitutes a willful violation of the Ethics Law.*

*Finally, when the Nevada Constitution specifies a particular method for removing a public officer from office for misconduct, that constitutional method is exclusive, and the public officer may not be removed from office through statutory removal proceedings. Because certain elected and appointed state officers may be removed from office only through impeachment pursuant to Article 7 of the Nevada Constitution, they may not be removed from office through statutory removal proceedings. (Robison v. First Jud. Dist. Ct., 73 Nev. 169 (1957)) Similarly, because State Legislators may be removed from office only through expulsion by their own House pursuant to Section 6 of Article 4 of the Nevada Constitution, they may not be removed from office through impeachment or statutory removal proceedings. (Hiss v. Bartlett, 69 Mass. 468 (1855); State ex rel. Martin v. Gilmore, 20 Kan. 551 (1878); In re Speakership, 25 P. 707 (Colo. 1891); State ex rel. Haviland v. Beadle, 111 P. 720 (Mont. 1910); State ex rel. Ezzell v. Shumate, 113 S.W.2d 381 (Tenn. 1938); State ex rel. Danforth v. Hickey, 475 S.W.2d 617 (Mo. 1972)) Sections 13 and 18-24 of* *this bill conform existing statutory law with the constitutional provisions governing impeachment, expulsion and removal from office.*

WHEREAS, The doctrine of separation of powers is fundamental to our system of State Government; and

WHEREAS, The constitutional source of the doctrine of separation of powers is Section 1 of Article 3 of the Nevada Constitution, which establishes a tripartite system of State Government and which firmly fixes the principle of separation of powers in the organic law of this State; and

WHEREAS, Under the doctrine of separation of powers, when the Nevada Constitution expressly grants the Legislative Department an exclusive power, the other Departments of State Government may not usurp, exercise, infringe upon or interfere with that exclusive power out of respect for an equal and coordinate branch of government; and

WHEREAS, Under Section 6 of Article 4 of the Nevada Constitution, each House of the Legislature has the exclusive constitutional power to determine the rules of its legislative proceedings and to punish its members for improper conduct related to those legislative proceedings; and

WHEREAS, Because Section 6 of Article 4 of the Nevada Constitution creates an exclusive constitutional power in each House, neither the Legislature nor one of the Houses may delegate that exclusive constitutional power to another branch of government; and

WHEREAS, For centuries, freedom of speech, debate, deliberation and action in National and State Legislatures has been recognized as essential to protect the integrity of the legislative process by ensuring that individual Legislators may perform their core *or essential* legislative functions without harassment, intimidation or interference by the other branches of government; and

WHEREAS, Legislative privilege and immunity has its origins in the Parliamentary struggles of the 16th and 17th centuries when the English monarchs used civil and criminal proceedings to harass, intimidate and suppress members of Parliament who were critical of the Crown; and

WHEREAS, Legislative privilege and immunity was first codified in the English Bill of Rights of 1689, which provided "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament"; and

WHEREAS, Legislative privilege and immunity was extended to Legislators in the American Colonies where freedom of speech, debate, deliberation and action in the legislative process was taken as a matter of course by those who severed the American Colonies from the Crown and who became the Founders of our Nation; and

WHEREAS, The Founders of our Nation viewed legislative privilege and immunity as fundamental to the system of checks and balances and indispensable to the constitutional structure of separate, coequal and independent branches of government; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The Legislature hereby finds and declares that:*

*(a) The Framers of the Nevada Constitution created a system of checks and balances so that the constitutional powers separately vested in the Legislative, Executive and Judicial Departments of State Government may be exercised without intrusion from the other Departments.*

*(b) As part of the system of checks and balances, the constitutional doctrines of separation of powers and legislative privilege and immunity facilitate the autonomy of the Legislative Department by curtailing intrusions by the Executive or Judicial Department into the sphere of legitimate legislative activities.*

*(c) The constitutional doctrines of separation of powers and legislative privilege and immunity protect State Legislators from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.*

*(d) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be hindered or obstructed by executive or judicial oversight that realistically threatens to control their conduct as Legislators.*

*(e) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government.*

*(f) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be questioned or sanctioned by the other branches of government for their actions in carrying out their <u>core or</u> essential legislative functions.*

*(g) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, the only governmental entity that may question or sanction a State Legislator for any actions taken within the sphere of legitimate legislative activity is the Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.*

*(h) Therefore, the purpose and effect of this section is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.*

*2. For any speech or debate in either House, a State Legislator shall not be questioned in any other place.*

*3. In interpreting and applying the provisions of this section, the interpretation and application given to the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the Constitution of the United States must be considered to be persuasive authority.*

*4. The rights, privileges and immunities recognized by this section are in addition to any other rights, privileges and immunities recognized by law.*

*5. As used in this section, "State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.*

Sec. 2. NRS 49.015 is hereby amended to read as follows:

49.015 1. Except as otherwise required by the Constitution of the United States or of the State of Nevada, and except as *otherwise* provided in this title or title 14 of NRS, *or section 1 of this act,* no person has a privilege to:

(a) Refuse to be a witness;

(b) Refuse to disclose any matter;

(c) Refuse to produce any object or writing; or

(d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

2. This section does not:

(a) Impair any privilege created by title 14 of NRS or by the Nevada Rules of Civil Procedure which is limited to a particular stage of the proceeding; or

(b) Extend any such privilege to any other stage of a proceeding.

Sec. 3. Chapter 281A of NRS is hereby amended by adding thereto the provisions set forth as sections ~~[4 and 5]~~ *3.4 to 5.8, inclusive,* of this act.

*Sec. 3.4. "Intentionally" means voluntarily or deliberately, rather than accidentally or inadvertently. The term does not require proof of bad faith, ill will, evil intent or malice.*

*Sec. 3.6. "Knowingly" imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.*

Sec. 4. *"Member of a local legislative body" means a member of a board of county commissioners, a governing body of a city or a governing body of any other political subdivision who performs ~~[a legislative function.]~~ any function that involves introducing, voting upon or otherwise acting upon any matter of a permanent or general character which may reflect public policy and which is not typically restricted to identifiable persons or groups.*

*Sec. 4.4. "Opinion" includes, without limitation, the disposition of a request for an opinion by stipulation, agreed settlement, consent order or default as authorized by NRS 233B.121.*

*Sec. 4.6. "Political subdivision" means any county, city or other local government as defined in NRS 354.474.*

Sec. 5. *"State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.*

*Sec. 5.4. In applying the provisions of this chapter to an alleged violation by a former public officer or employee, the use of the term "public officer" or "public employee" in this chapter must be interpreted to include the former public officer or employee, unless the commencement of proceedings against the former public officer or employee concerning the alleged violation is time-barred by the statute of limitations pursuant to NRS 281A.280.*

*Sec. 5.6. 1. In any proceeding commenced against a public officer or employee pursuant to the authority of this chapter, including any judicial review thereof, the public officer or employee who is the subject of the proceeding may not assert, claim or raise any common-law privilege or immunity as an affirmative defense, for testimonial or evidentiary purposes or for any other purpose.*

*2. The provisions of this chapter are intended to abrogate common-law privileges and immunities only in a proceeding commenced pursuant to the authority of this chapter and only for the public officer or employee who is the subject of the proceeding. This abrogation of common-law privileges and immunities does not apply to or affect:*

*(a) Any privilege or immunity granted by the Constitution of the United States or of the State of Nevada or by section 1 of this act, chapter 49 of NRS or any other statute;*

*(b) Any person who is not the subject of the proceeding; or*

*(c) Any other proceeding that is not commenced pursuant to the authority of this chapter.*

*Sec. 5.8. 1. A former member of the Public Utilities Commission of Nevada shall not:*

*(a) Be employed by a public utility or parent organization or subsidiary of a public utility; or*

*(b) Appear before the Public Utilities Commission of Nevada to testify on behalf of a public utility or parent organization or subsidiary of a public utility,*

*➥ for 1 year after the termination of his service on the Public Utilities Commission of Nevada.*

*2. A former member of the State Gaming Control Board or the Nevada Gaming Commission shall not:*

*(a) Appear before the State Gaming Control Board or the Nevada Gaming Commission on behalf of a person who holds a license issued pursuant to chapter 463 or 464 of NRS or who is required to register with the Nevada Gaming Commission pursuant to chapter 463 of NRS; or*

*(b) Be employed by such a person,*

*➥ for 1 year after the termination of his service on the State Gaming Control Board or the Nevada Gaming Commission.*

*3. In addition to the prohibitions set forth in subsections 1 and 2, and except as otherwise provided in subsections 4 and 6, a former public officer or employee of a board, commission, department, division or other agency of the Executive Department of State Government, except a clerical employee, shall not solicit or accept employment from a business or industry whose activities are governed by regulations adopted by the board, commission, department, division or other agency for 1 year after the termination of his service or period of employment if:*

*(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;*

*(b) During the immediately preceding year, he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or*

*(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.*

*4. The provisions of subsection 3 do not apply to a former public officer who was a member of a board, commission or similar body of the State if:*

*(a) The former public officer is engaged in the profession, occupation or business regulated by the board, commission or similar body;*

*(b) The former public officer holds a license issued by the board, commission or similar body; and*

*(c) Holding a license issued by the board, commission or similar body is a requirement for membership on the board, commission or similar body.*

*5. Except as otherwise provided in subsection 6, a former public officer or employee of the State or a political subdivision, except a clerical employee, shall not solicit or accept employment from a person to whom a contract for supplies, materials, equipment or services was awarded by the State or political subdivision, as applicable, for 1 year after the termination of the officer's or employee's service or period of employment, if:*

*(a) The amount of the contract exceeded $25,000;*

*(b) The contract was awarded within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment; and*

*(c) The position held by the former public officer or employee at the time the contract was awarded allowed him to affect or influence the awarding of the contract.*

*6. A current or former public officer or employee may request that the Commission apply the relevant facts in his case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of subsection 3 or 5, as applicable, is not contrary to:*

*(a) The best interests of the public;*

*(b) The continued ethical integrity of the State Government or political subdivision, as applicable; and*

*(c) The provisions of this chapter,*

➥ *it may issue an opinion to that effect and grant such relief. The opinion of the Commission in such a case is final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the current or former public officer or employee.*

*7. Each request for an opinion that a current or former public officer or employee submits to the Commission pursuant to subsection 6, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the current or former public officer or employee who requested the opinion:*

*(a) Acts in contravention of the opinion, in which case the Commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;*

*(b) Discloses the request for the opinion, the contents of the opinion or any motion, evidence or record of a hearing related thereto; or*

*(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.*

*8. A meeting or hearing that the Commission or an investigatory panel holds to receive information or evidence concerning the propriety of the conduct of a current or former public officer or employee pursuant to this section and the deliberations of the Commission and the investigatory panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.*

*9. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038 and also includes regulations adopted by a board, commission, department, division or other agency of the Executive Department of State Government that is exempted from the requirements of chapter 233B of NRS.*

Sec. 6. NRS 281A.020 is hereby amended to read as follows:

281A.020 1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

2. The Legislature finds *and declares* that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) ~~[Members of the Legislature]~~ *In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators* serve as "citizen Legislators" who have other occupations and business interests ~~[. Each Legislator has]~~ *, who are expected to have* particular philosophies and perspectives that are necessarily influenced by the life experiences of ~~[that]~~ *the* Legislator, including, without limitation, professional, family and business experiences ~~[. Our system assumes that Legislators will]~~ *, and who are expected to* contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. ~~[The law concerning ethics in government is not intended to require a member of the Legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.]~~

*(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or section 1 of this act.*

Sec. 7. NRS 281A.030 is hereby amended to read as follows:

281A.030 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 281A.040 to 281A.170, inclusive, *and sections* ~~*[4 and]*~~ *3.4 to 5 , inclusive, of this act* have the meanings ascribed to them in those sections.

*Sec. 7.2. NRS 281A.040 is hereby amended to read as follows:*

281A.040 "Business entity" means ~~[any]~~ *an organization or enterprise operated for economic gain, including, without limitation, a* proprietorship, partnership, *firm, business, company, trust, joint venture, syndicate,* corporation or ~~[other enterprise doing business in the State of Nevada.]~~ *association.*

*Sec. 7.4. NRS 281A.080 is hereby amended to read as follows:*

281A.080 *1.* The making of a "decision" is the exercise of governmental power to adopt laws, regulations or standards, render quasi-judicial decisions, establish executive policy or determine questions involving substantial discretion.

*2.* The term does not include ~~[the]~~ *:*

*(a) The* functions of the judiciary.

*(b) The functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or section 1 of this act.*

Sec. 8. [NRS 281A.130 is hereby amended to read as follows:

281A.130 "Member of the legislative branch" means ~~[any]~~ ~~*a State Legislator or a*~~ member of ~~[the Legislature or any member of a board of county commissioners or governing body of a city or other political subdivision who performs a legislative function.]~~ ~~*a local legislative body.]*~~ *(Deleted by amendment.)*

*Sec. 8.1. NRS 281A.140 is hereby amended to read as follows:*

281A.140 ~~["Panel" means the]~~ *"Investigatory panel" or "panel" means an investigatory* panel appointed by the Commission pursuant to NRS 281A.220.

*Sec. 8.15. NRS 281A.150 is hereby amended to read as follows:*

281A.150 "Public employee" means any person who performs public duties under the direction and control of a public officer for compensation paid by the State ~~[, a county or an incorporated city.]~~ *or any county, city or other political subdivision.*

*Sec. 8.2. NRS 281A.160 is hereby amended to read as follows:*

281A.160 1. "Public officer" means a person elected or appointed to a position which ~~[is]~~ *:*

*(a) Is* established by the Constitution of the State of Nevada, a statute of this State or ~~[an]~~ *a charter or* ordinance of any ~~[of its counties or incorporated cities and which involves]~~ *county, city or other political subdivision; and*

*(b) Involves* the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

~~[(a)]~~ *(1)* Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

~~[(b)]~~ *(2)* The expenditure of public money; and

~~[(c)]~~ *(3)* The administration of laws and rules of the State ~~[, a county or a city.]~~ *or any county, city or other political subdivision.*

2. "Public officer" does not include:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a ~~[board of trustees for a general improvement district or]~~ special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

3. "Public office" does not include an office held by:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a ~~[board of trustees for a general improvement district or]~~ special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

*Sec. 8.23.* *NRS 281A.170 is hereby amended to read as follows:*

281A.170 "Willful violation" means *a violation where* the public officer or employee ~~[knew or reasonably should have known that his conduct violated]~~ *:*

*1. Acted intentionally and knowingly; or*

*2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by* this chapter.

*Sec. 8.25.* *NRS 281A.200 is hereby amended to read as follows:*

281A.200 1. The Commission on Ethics, consisting of eight members, is hereby created.

2. The Legislative Commission shall appoint to the Commission four residents of the State, at least two of whom are former public officers, and at least one of whom must be an attorney licensed to practice law in this State.

3. The Governor shall appoint to the Commission four residents of the State, at least two of whom must be former public officers or public employees, and at least one of whom must be an attorney licensed to practice law in this State.

4. Not more than four members of the Commission may be members of the same political party. Not more than four members may be residents of the same county.

5. None of the members of the Commission may ~~[:]~~ *, while he is serving on the Commission:*

(a) Hold another public office;

(b) Be actively involved in the work of any political party or political campaign; or

(c) Communicate directly with *a State Legislator or* a member of ~~[the legislative branch]~~ *a local legislative body* on behalf of someone other than himself or the Commission, for compensation, to influence ~~[legislative action,~~

~~➥ while he is serving on the Commission.]~~ *:*

*(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or*

*(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:*

*(I) The appropriation of public money;*

*(II) The issuance of a license or permit; or*

*(III) Any proposed subdivision of land or special exception or variance from zoning regulations.*

6. After the initial terms, the terms of the members are 4 years. Any vacancy in the membership must be filled by the appropriate appointing authority for the unexpired term. Each member may serve no more than two consecutive full terms.

*Sec. 8.3. NRS 281A.220 is hereby amended to read as follows:*

281A.220 1. The Chairman shall appoint one or more *investigatory* panels of two members of the Commission on a rotating basis to review the determinations of just and sufficient cause made by the Executive Director pursuant to NRS 281A.440 and make a final determination regarding whether *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion ~~[.]~~ *in a matter.*

2. The Chairman and Vice Chairman of the Commission may not serve together on ~~[a]~~ *an investigatory* panel.

3. The members of ~~[a]~~ *an investigatory* panel may not be members of the same political party.

4. If ~~[a]~~ *an investigatory* panel ~~[finds]~~ *determines that there is* just and sufficient cause for the Commission to render an opinion in a matter, the members of the *investigatory* panel shall not participate in any further proceedings of the Commission relating to that matter.

*Sec. 8.35. NRS 281A.230 is hereby amended to read as follows:*

281A.230 1. The Commission shall appoint, within the limits of legislative appropriation, an Executive Director who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the Commission.

2. The Executive Director must have experience in administration, ~~[law enforcement, investigations or]~~ *investigations and* law.

3. The Executive Director is in the unclassified service of the State.

4. The Executive Director shall devote his entire time and attention to the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of his duties.

5. The Executive Director may not:

(a) Be actively involved in the work of any political party or political campaign; or

(b) ~~[Communicate]~~ *Except in pursuit of the business of the Commission, communicate* directly or indirectly with *a State Legislator or* a member of ~~[the legislative branch]~~ *a local legislative body* on behalf of someone other than himself to influence ~~[legislative action, except in pursuit of the business of the Commission.]~~ *:*

*(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or*

*(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:*

*(I) The appropriation of public money;*

*(II) The issuance of a license or permit; or*

*(III) Any proposed subdivision of land or special exception or variance from zoning regulations.*

*Sec. 8.4. NRS 281A.240 is hereby amended to read as follows:*

281A.240 1. In addition to any other duties imposed upon him, the Executive Director shall:

(a) Maintain complete and accurate records of all transactions and proceedings of the Commission.

(b) Receive requests for opinions pursuant to NRS 281A.440.

(c) Gather information and conduct investigations regarding requests for opinions received by the Commission and submit recommendations to the *investigatory* panel appointed pursuant to NRS 281A.220 regarding whether there is just and sufficient cause to render an opinion in response to a particular request.

(d) Recommend to the Commission any regulations or legislation that he considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government.

(e) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations adopted by the Commission and previous opinions of the Commission. In any such training, the Executive Director shall emphasize that he is not a member of the Commission and that only the Commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances. The Commission may charge a reasonable fee to cover the costs of training provided by the Executive Director pursuant to this subsection.

(f) Perform such other duties, not inconsistent with law, as may be required by the Commission.

2. The Executive Director shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of his duties relating to:

(a) The administration of the affairs of the Commission;

(b) The review of statements of financial disclosure; and

(c) The investigation of matters under the jurisdiction of the Commission.

*Sec. 8.45. NRS 281A.250 is hereby amended to read as follows:*

281A.250 1. The Commission shall appoint, within the limits of legislative appropriation, a Commission Counsel who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the Commission.

2. The Commission Counsel must be an attorney who is licensed to practice law in this State.

3. The Commission Counsel is in the unclassified service of the State.

4. The Commission Counsel shall devote his entire time and attention to the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of his duties.

5. The Commission Counsel may not:

(a) Be actively involved in the work of any political party or political campaign; or

(b) ~~[Communicate]~~ *Except in pursuit of the business of the Commission, communicate* directly or indirectly with *a State Legislator or* a member of ~~[the legislative branch]~~ *a local legislative body* on behalf of someone other than himself to influence ~~[legislative action, except in pursuit of the business of the Commission.]~~ *:*

*(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or*

*(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:*

*(I) The appropriation of public money;*

*(II) The issuance of a license or permit; or*

*(III) Any proposed subdivision of land or special exception or variance from zoning regulations.*

*Sec. 8.5. NRS 281A.260 is hereby amended to read as follows:*

281A.260 1. The Commission Counsel is the legal adviser to the Commission. For each opinion of the Commission, the Commission Counsel shall prepare, at the direction of the Commission, the appropriate findings of fact and conclusions as to relevant standards and the propriety of particular conduct within the time set forth in subsection ~~[4]~~ *6* of NRS 281A.440. The Commission Counsel shall not issue written opinions concerning the applicability of the statutory ethical standards to a given set of facts and circumstances except as directed by the Commission.

2. The Commission may rely upon the legal advice of the Commission Counsel in conducting its daily operations.

3. If the Commission Counsel is prohibited from acting on a particular matter or is otherwise unable to act on a particular matter, the Commission may:

(a) Request that the Attorney General appoint a deputy to act in the place of the Commission Counsel; or

(b) Employ outside legal counsel.

*Sec. 8.55. NRS 281A.280 is hereby amended to read as follows:*

281A.280 1. The Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of this chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:

(a) The filing of a request for an opinion with the Commission; or

(b) The Commission on its own motion ~~[.~~

~~2. The provisions of subsection 1 apply to a public officer or employee who:~~

~~(a) Currently holds public office or is publicly employed at the commencement of proceedings against him.~~

~~(b) Resigns or otherwise leaves his public office or employment:~~

~~(1) After the commencement of proceedings against him; or~~

~~(2) Within 1 year]~~ ,

➥ *within 2 years* after the alleged violation or reasonable discovery of the alleged violation.

*2. For the purposes of this section, a proceeding is commenced:*

*(a) On the date on which a request for an opinion is filed in the proper form with the Commission in accordance with the regulations of the Commission; or*

*(b) If the proceeding is commenced by the Commission on its own motion, on the date on which the Commission serves the public officer or employee or former public officer or employee with notice of the proceeding in accordance with the regulations of the Commission.*

*Sec. 8.6. NRS 281A.300 is hereby amended to read as follows:*

281A.300 1. The Chairman and Vice Chairman of the Commission may administer oaths.

2. The Commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of books and papers. Upon the request of the Executive Director or the public officer or public employee who is the subject of a request for an opinion, the Chairman or, in his absence, the Vice Chairman, may issue a subpoena to compel the attendance of a witness and the production of books and papers.

3. Before issuing a subpoena to a public officer or public employee who is the subject of a request for an opinion, the Executive Director shall submit a written request to the public officer or public employee requesting:

(a) His appearance as a witness; or

(b) His production of any books and papers relating to the request for an opinion.

4. Each written request submitted by the Executive Director pursuant to subsection 3 must specify the time and place for the attendance of the public officer or public employee or the production of any books and papers, and designate with certainty the books and papers requested, if any. If the public officer or public employee fails or refuses to attend at the time and place specified or produce the books and papers requested by the Executive Director within 5 business days after receipt of the request, the Chairman may issue the subpoena. Failure of the public officer or public employee to comply with the written request of the Executive Director shall be deemed a waiver by the public officer or public employee of the time set forth in subsections ~~[3 and]~~ 4 *, 5 and 6* of NRS 281A.440.

5. If any witness refuses to attend, testify or produce any books and papers as required by the subpoena, the Chairman of the Commission may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the Commission pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the Commission, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the Commission.

6. Upon such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why he has not attended, testified or produced the books or papers before the Commission. A certified copy of the order must be served upon the witness.

7. If it appears to the court that the subpoena was regularly issued by the Commission, the court shall enter an order that the witness appear before the Commission, at the time and place fixed in the order, and testify or produce the required books and papers. Upon failure to obey the order, the witness must be dealt with as for contempt of court.

*Sec. 8.65. NRS 281A.400 is hereby amended to read as follows:*

281A.400 A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any ~~[private]~~ business *entity* in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. ~~[A]~~ *Except for State Legislators who are subject to the restrictions set forth in subsection 8, a* public officer or employee ~~[, other than a member of the Legislature,]~~ shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

➥ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A ~~[member of the Legislature]~~ *State Legislator* shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of his public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the Legislator or legislative employee to perform his official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

*Sec. 8.7.* *NRS 281A.410 is hereby amended to read as follows:*

281A.410 In addition to the requirements of the code of ethical standards:

1. ~~[A member of the executive branch or]~~ *If a* public *officer or* employee ~~[of the executive branch shall]~~ *serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:*

*(a) Shall* not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions ~~[. Any such]~~ *; and*

*(b) If the public* officer or employee ~~[who]~~ leaves the service of the agency , shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this ~~[subsection,]~~ *paragraph,* "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A *State Legislator or a* member of ~~[the legislative branch,]~~ *a local legislative body,* or a ~~[member of the executive branch or]~~ public *officer or* employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other ~~[member of the executive branch or]~~ public *officer or* employee shall not represent *or counsel* a ~~[client]~~ *private person* for compensation before any state agency of the Executive or Legislative ~~[Branch of Government.]~~ *Department.*

3. Not later than January 15 of each year, any *State* Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the

Executive ~~Branch]~~ *Department* shall disclose for each such representation or counseling during the previous calendar year:

(a) The name of the client;

(b) The nature of the representation; and

(c) The name of the state agency.

~~[➥]~~

*4.* The disclosure *required by subsection 3* must be made in writing and filed with the Commission ~~[,]~~ on a form prescribed by the Commission. *For the purposes of this subsection, the disclosure is timely filed if, on or before the last day for filing, the disclosure is filed in one of the following ways:*

*(a) Delivered in person to the principal office of the Commission in Carson City.*

*(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the disclosure with the United States Postal Service.*

*(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the disclosure with the third-party commercial carrier.*

*5.* The Commission shall retain a disclosure filed pursuant to ~~[this subsection]~~ *subsections 3 and 4* for 6 years after the date on which the disclosure was filed.

Sec. 9. NRS 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in ~~[subsection 2, 3 or 4,]~~ *this section,* a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. Except as otherwise provided in ~~[subsection 3,]~~ *this section,* in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

➥ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His direct pecuniary interest; or

(c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.

➥ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.

4. ~~[A]~~ *Except as otherwise provided in this section, a* public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

➥ without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. ~~[Except as otherwise provided in subsection 6, such]~~ *Such* a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.

5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

6. ~~[After a member of the Legislature makes a disclosure pursuant to subsection 4, he may file with the Director of the Legislative Counsel Bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a Legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the Legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the Legislative Counsel Bureau.~~

~~7.]~~ The provisions of this section do not, under any circumstances:

(a) Prohibit a member of ~~[the legislative branch]~~ *a local legislative body* from requesting or introducing a legislative measure; or

(b) Require a member of ~~[the legislative branch]~~ *a local legislative body* to take any particular action before or while requesting or introducing a legislative measure.

*7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government* ~~[.]~~ *pursuant to Section 6 of Article 4 of the Nevada Constitution.*

8. As used in this section ~~[, "commitment]~~ *:*

*(a) "Commitment* in a private capacity to the interests of others" means a commitment to a person:

~~[(a)]~~ *(1)* Who is a member of his household;

~~[(b)]~~ *(2)* Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

~~[(c)]~~ *(3)* Who employs him or a member of his household;

~~[(d)]~~ *(4)* With whom he has a substantial and continuing business relationship; or

~~[(e)]~~ *(5)* Any other commitment or relationship that is substantially similar to a commitment or relationship described in *subparagraphs (1) to (4), inclusive, of* this ~~[subsection.]~~ *paragraph.*

*(b) "Public officer" and "public employee" do not include a State Legislator.*

*Sec. 9.5. NRS 281A.420 is hereby amended to read as follows:*

281A.420 1. Except as otherwise provided in this section, a public officer ~~[may]~~ *or employee shall not approve, disapprove,* vote *, abstain from voting or otherwise act* upon a matter ~~[if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.~~

~~2.]~~ *:*

*(a) Regarding which he has accepted a gift or loan;*

*(b) In which he has a pecuniary interest; or*

*(c) Which would reasonably be affected by his commitment in a private capacity to the interest of others,*

*➥ without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected.*

*2. The provisions of subsection 1 do not require a public officer to disclose:*

*(a) Any campaign contributions that the public officer reported in a timely manner pursuant to NRS 294A.120 or 294A.125; or*

*(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 294A.286.*

*3.* Except as otherwise provided in this section, in addition to the requirements of ~~[the code of ethical standards,]~~ *subsection 1,* a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in ~~[his]~~ *the public officer's* situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

~~[➥]~~

*4. In interpreting and applying the provisions of subsection 3:*

*(a)* It must be presumed that the independence of judgment of a reasonable person *in the public officer's situation* would not be materially affected by his pecuniary interest or his commitment in a private capacity to

the interests of others where the resulting benefit or detriment accruing to him , or *if he has a commitment in a private capacity to the interests of others, accruing* to the other persons , ~~[whose interests to which the member is committed in a private capacity]~~ is not greater than that accruing to any other member of the general business, profession, occupation or group ~~[.]~~ *that is affected by the matter.* The presumption set forth in this ~~[subsection]~~ *paragraph* does not affect the applicability of the requirements set forth in subsection ~~[4]~~ *1* relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

*(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which he was elected or appointed and to vote or otherwise act upon a matter, provided he has properly disclosed his acceptance of a gift or loan, his pecuniary interest or his commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by his acceptance of a gift or loan, his pecuniary interest or his commitment in a private capacity to the interests of others.*

~~[ 3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:~~

~~(a) His acceptance of a gift or loan;~~

~~(b) His direct pecuniary interest; or~~

~~(c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.~~

~~➥ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.~~

~~4. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:~~

~~(a) Regarding which he has accepted a gift or loan;~~

~~(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or~~

~~(c) In which he has a pecuniary interest,~~

~~➥ without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.]~~

5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

6. The provisions of this section do not, under any circumstances:

(a) Prohibit a member of a local legislative body from requesting or introducing a legislative measure; or

(b) Require a member of a local legislative body to take any particular action before or while requesting or introducing a legislative measure.

7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to Section 6 of Article 4 of the Nevada Constitution.

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

(1) Who is a member of his household;

(2) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(3) Who employs him or a member of his household;

(4) With whom he has a substantial and continuing business relationship; or

(5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

(b) "Public officer" and "public employee" do not include a State Legislator.

Sec. 10. [This act becomes effective on January 1, 2009.] *(Deleted by amendment.)*

*Sec. 11. NRS 281A.430 is hereby amended to read as follows:*

281A.430 1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any ~~[private]~~ business *entity* in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board ~~[or commission,]~~ *, commission or body* may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than ~~[an]~~ *a public* officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if ~~[the]~~ *:*

*(a) The* contracting process is controlled by *the* rules of open competitive bidding ~~[, the]~~ *or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;*

*(b) The* sources of supply are limited ~~[, he]~~ *;*

*(c) He* has not taken part in developing the contract plans or specifications *;* and ~~[he]~~

*(d) He* will not be personally involved in opening, considering or accepting offers.

➥ If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281A.420, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

*Sec. 12. NRS 281A.440 is hereby amended to read as follows:*

281A.440 1. The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances ~~[as soon as practicable or]~~ within 45 days after receiving a request, ~~[whichever is sooner,]~~ on a form prescribed by the Commission, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee ~~[. He]~~ *, unless the public officer or employee waives the time limit. The public officer or employee* may also request the Commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the Commission is:

(a) Binding upon the requester as to his future conduct; and

(b) Final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the requester.

2. The Commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

(a) Upon request from a specialized or local ethics committee.

(b) Except as otherwise provided in this subsection, upon request from a person, if the requester submits:

(1) The request on a form prescribed by the Commission; and

(2) All related evidence deemed necessary by the Executive Director and the *investigatory* panel to make a determination of whether there is just and sufficient cause to render an opinion in the matter.

(c) Upon the Commission's own motion regarding the propriety of conduct by a public officer or employee. The Commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint.

➥ The Commission shall not render an opinion interpreting the statutory ethical standards or apply those standards to a given set of facts and circumstances if the request is submitted by a person who is incarcerated in a correctional facility in this State.

3. Upon receipt of a request for an opinion by the Commission or upon the motion of the Commission pursuant to subsection 2, the Executive Director shall investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. The *Executive Director shall notify the* public officer or employee ~~[that]~~ *who* is the subject of the request ~~[may]~~ *and provide the public officer or employee an opportunity to* submit to the Executive Director *a response to the allegations against him within 30 days after the date on which the public officer or employee received the notice of the request. The purpose of the response is to provide the Executive Director with* any information relevant to the request ~~[.]~~ *which the public officer or*

*employee believes may assist the Executive Director and the investigatory panel in conducting the investigation. The public officer or employee is not required in the response or in any proceeding before the investigatory panel to assert, claim or raise any objection or defense, in law or fact, to the allegations against him, and no objection or defense, in law or fact, is waived, abandoned or barred by the failure to assert, claim or raise it in the response or in any proceeding before the investigatory panel.*

*4.* The Executive Director shall complete ~~[an]~~ *the* investigation and present his recommendation relating to just and sufficient cause to the *investigatory* panel within ~~[60]~~ *70* days after the receipt of or the motion of the Commission for the request, unless the public officer or employee waives this time limit. If *, after the investigation,* the Executive Director determines ~~[after an investigation]~~ that *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific evidence that supports his recommendation. If, after ~~[an]~~ *the* investigation, the Executive Director ~~[does not determine]~~ *determines* that *there is not* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific reasons for his recommendation.

*5.* Within 15 days after the Executive Director has provided his recommendation in the matter to the *investigatory* panel, the *investigatory* panel shall make a final determination regarding whether *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion in the matter, unless the public officer or employee waives this time limit. The *investigatory* panel shall not determine that there is just and sufficient cause for the Commission to render an opinion *in the matter* unless the ~~[panel]~~ *Executive Director* has provided the public officer or employee an opportunity to respond to the allegations against him ~~[.]~~ *as required by subsection 3.* The *investigatory* panel shall cause a record of its proceedings in each matter to be kept, and such a record must remain confidential until the *investigatory* panel determines whether there is just and sufficient cause for the Commission to render an opinion in the matter.

~~[4.]~~ *6.* If the *investigatory* panel determines that *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion ~~[requested pursuant to this section,]~~ *in the matter,* the Commission shall hold a hearing and render an opinion in the matter within ~~[30]~~ *60* days after the determination of just and sufficient cause by the *investigatory* panel, unless the public officer or employee waives this time limit.

~~[5.]~~ *7.* Each request for an opinion that a public officer or employee submits to the Commission pursuant to subsection 1, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the Commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto; or

(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.

~~[6.]~~ *8.* Except as otherwise provided in this subsection, each document in the possession of the Commission or its staff that is related to a request for an opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to subsection 2, including, without limitation, the Commission's copy of the request and all materials and information gathered in an investigation of the request, is confidential until the *investigatory* panel determines whether there is just and sufficient cause to render an opinion in the matter. The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 may in writing authorize the Commission to make its files, material and information which are related to the request publicly available.

~~[7.]~~ *9.* Except as otherwise provided in paragraphs (a) and (b), the proceedings of ~~[a]~~ *the investigatory* panel are confidential until the *investigatory* panel determines whether there is just and sufficient cause to render an opinion ~~[.]~~ *in the matter.* A person who:

(a) Requests an opinion from the Commission pursuant to paragraph (b) of subsection 2 may:

(1) At any time, reveal to a third party the alleged conduct of a public officer or employee underlying the request that he filed with the Commission or the substance of testimony, if any, that he gave before the Commission.

(2) After the *investigatory* panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he requested an opinion from the Commission.

(b) Gives testimony before the Commission may:

(1) At any time, reveal to a third party the substance of testimony that he gave before the Commission.

(2) After the *investigatory* panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he gave testimony before the Commission.

~~[8.]~~ *10.* Whenever the Commission holds a hearing pursuant to this section, the Commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the Commission's hearing on the matter;

(b) Allow the person to be represented by counsel; and

(c) Allow the person to hear the evidence presented to the Commission and to respond and present evidence on his own behalf.

➥ The Commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

~~[9.]~~ *11.* If a person who is not a party to a hearing before the Commission, including, without limitation, a person who has requested an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of a witness at the hearing, the person must submit the question to the Executive Director in writing. The Executive Director may submit the question to the Commission if he deems the question relevant and appropriate. This subsection does not require the Commission to ask any question submitted by a person who is not a party to the proceeding.

~~[10.]~~ *12.* If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the Commission; and

(b) Declare by oath or affirmation that he will testify truthfully,

➥ the Commission may decline to render an opinion.

~~[11.]~~ *13.* For good cause shown, the Commission may take testimony from a person by telephone or video conference.

~~[12.]~~ *14.* For the purposes of NRS 41.032, the members of the Commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking an action related to the rendering of an opinion pursuant to this section.

~~[13.]~~ *15.* A meeting or hearing that the Commission or the *investigatory* panel holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the Commission and the *investigatory* panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.

*Sec. 13. NRS 281A.480 is hereby amended to read as follows:*

281A.480 1. In addition to any other ~~[penalty]~~ *penalties* provided by law, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

(a) Not to exceed $5,000 for a first willful violation of this chapter;

(b) Not to exceed $10,000 for a separate act or event that constitutes a second willful violation of this chapter; and

(c) Not to exceed $25,000 for a separate act or event that constitutes a third willful violation of this chapter.

2. In addition to *any* other penalties provided by law, the Commission may impose a civil penalty not to exceed $5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281A.440 against a person who prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

3. If the Commission finds that a violation of a provision of this chapter ~~[,]~~ by a public officer or employee or former public officer or employee has resulted in the realization of a financial benefit by the current or former

public officer or employee or another person, the Commission may, in addition to *any* other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

4. ~~[If the Commission finds]~~ *In addition to any other penalties provided by law, if a proceeding results in an opinion* that:

(a) ~~[A willful violation]~~ *One or more willful violations* of this chapter ~~[has]~~ *have* been committed by a ~~[public officer]~~ *State Legislator* removable from office ~~[by impeachment only, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.~~

~~(b) A willful violation of this chapter has been committed by a public officer removable from office pursuant to NRS 283.440, the Commission may file a proceeding in the appropriate court for removal of the officer.~~

~~(c) Three or more willful violations have been committed by a public officer removable from office pursuant to NRS 283.440, the Commission shall file a proceeding in the appropriate court for removal of the officer.]~~ *only through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution, the Commission shall:*

*(1) If the State Legislator is a member of the Senate, submit the opinion to the Majority Leader of the Senate or, if the Majority Leader of the Senate is the subject of the opinion or the person who the requested the opinion, to the President Pro Tempore of the Senate; or*

*(2) If the State Legislator is a member of the Assembly, submit the opinion to the Speaker of the Assembly or, if the Speaker of the Assembly is the subject of the opinion or the person who the requested the opinion, to the Speaker Pro Tempore of the Assembly.*

*(b) One or more willful violations of this chapter have been committed by a state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution, the Commission shall submit the opinion to the Speaker of the Assembly and the Majority Leader of the Senate or, if the Speaker of the Assembly or the Majority Leader of the Senate is the person who the requested the opinion, to the Speaker Pro Tempore of the Assembly or the President Pro Tempore of the Senate, as appropriate.*

*(c) One or more willful violations of this chapter have been committed by a public officer other than a public officer described in paragraphs (a) and (b), the willful violations shall be deemed to be malfeasance in office for the purposes of NRS 283.440 and the Commission:*

*(1) May file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed fewer than three willful violations of this chapter.*

*(2) Shall file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in*

*the opinion to have committed three or more willful violations of this chapter.*

➥ *This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation found in the opinion.*

5. An action taken by a public officer or employee or former public officer or employee relating to this chapter is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements:

(a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281A.290;

(b) He was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and

(c) He took action that was not contrary to a prior published opinion issued by the Commission.

6. In addition to *any* other penalties provided by law, a public employee who ~~[willfully violates a provision]~~ *commits a willful violation* of this chapter is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

7. The provisions of this chapter do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

8. The imposition of a civil penalty pursuant to subsection 1, 2 or 3 is a final decision for the purposes of judicial review ~~[.]~~ *pursuant to NRS 233B.130.*

9. A finding by the Commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

*Sec. 14. NRS 281A.500 is hereby amended to read as follows:*

281A.500 1. ~~[Every]~~ *Each* public officer shall acknowledge that he ~~[has]~~ *:*

*(a) Has* received, read and understands the statutory ethical standards ~~[.]~~ *; and*

*(b) Has a responsibility to inform himself of any amendments to the statutory ethical standards as soon as reasonably practicable after each session of the Legislature.*

*2.* The acknowledgment must be *executed* on a form prescribed by the Commission and must ~~[accompany the first statement of financial disclosure that the public officer is required to file]~~ *be filed* with the Commission ~~[pursuant to NRS 281A.600 or the Secretary of State pursuant to NRS 281A.610.~~

~~2.]~~ *:*

*(a) If the public officer is elected to office at the general election, on or before January 15 of the year following his election.*

*(b) If the public officer is elected to office at an election other than the general election or is appointed to office, on or before the 30th day following the date on which he takes office.*

*3. Except as otherwise provided in this subsection, a public officer shall execute and file the acknowledgment once for each term of office. If the public officer serves at the pleasure of the appointing authority and does not have a definite term of office, the public officer, in addition to executing and filing the acknowledgment after he takes office in accordance with subsection 2, shall execute and file the acknowledgment on or before January 15 of each even-numbered year while he holds that office.*

*4. For the purposes of this section, the acknowledgment is timely filed if, on or before the last day for filing, the acknowledgment is filed in one of the following ways:*

*(a) Delivered in person to the principal office of the Commission in Carson City.*

*(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the acknowledgment with the United States Postal Service.*

*(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the acknowledgment with the third-party commercial carrier.*

*5. The form for making the acknowledgment must contain:*

*(a) The address of the Internet website of the Commission where a public officer may view the statutory ethical standards and print a hard copy; and*

*(b) The telephone number and mailing address of the Commission where a public officer may make a request to obtain a hard copy of the statutory ethical standards from the Commission.*

*6. Whenever the Commission, or any public officer or employee as part of his official duties, provides a public officer with a hard copy of the form for making the acknowledgment, a hard copy of the statutory ethical standards must be included with the form.*

*7.* The Commission ~~[and the Secretary of State]~~ shall retain ~~[an]~~ *each* acknowledgment filed pursuant to this section for 6 years after the date on which the acknowledgment was filed.

~~[3.]~~ *8.* Willful refusal to execute and file the acknowledgment required by this section ~~[constitutes nonfeasance]~~ *shall be deemed to be:*

*(a) A willful violation of this chapter for the purposes of NRS 281A.480; and*

*(b) Nonfeasance* in office ~~[and is a ground for removal]~~ *for the purposes of NRS 283.440 and, if the public officer is removable from office* pursuant to NRS 283.440 ~~[.]~~ *, the Commission may file a complaint in the appropriate court for removal of the public officer pursuant to that section. This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation of this section.*

*9. As used in this section, "general election" has the meaning ascribed to it in NRS 293.060.*

*Sec. 15. NRS 281A.520 is hereby amended to read as follows:*

281A.520 1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

(a) A ballot question.

(b) A candidate.

2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:

(a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

(1) The public office held by the public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

(1) The public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

(1) A press release issued to the media by a governmental entity; or

(2) The official website of a governmental entity.

~~[(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.]~~

*Sec. 16. NRS 281A.540 is hereby amended to read as follows:*

281A.540 1. In addition to any other ~~[penalty]~~ *penalties* provided by law, a governmental grant, contract or lease entered into in violation of this chapter is voidable by the State, county, city or ~~[town.]~~ *political subdivision.* In a determination under this section of whether to void a grant, contract or lease, the interests of innocent third parties who could be damaged must be taken into account. The Attorney General, district attorney or city attorney must give notice of his intent to void a grant, contract or lease under this section no later than 30 days after the Commission has determined that there has been a related violation of this chapter.

2. In addition to any other ~~[penalty]~~ *penalties* provided by law, a contract prohibited by NRS 281.230 which is knowingly entered into by a person designated in subsection 1 of NRS 281.230 is void.

3. Any action taken by the State in violation of this chapter is voidable, except that the interests of innocent third parties in the nature of the violation must be taken into account. The Attorney General may also pursue any other available legal or equitable remedies.

4. In addition to any other ~~[penalty]~~ *penalties* provided by law, the Attorney General may recover any fee, compensation, gift or benefit received by a person as a result of a violation of this chapter by a public officer. An

action to recover pursuant to this section must be brought within 2 years after the *violation or reasonable* discovery of the violation.

*Sec. 17. NRS 281A.620 is hereby amended to read as follows:*

281A.620 1. Statements of financial disclosure, as approved pursuant to NRS 281A.470 or in such form as the Commission otherwise prescribes, must contain the following information concerning the candidate for public office or public officer:

(a) His length of residence in the State of Nevada and the district in which he is registered to vote.

(b) Each source of his income, or that of any member of his household who is 18 years of age or older. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as "professional services" must be disclosed.

(c) A list of the specific location and particular use of real estate, other than a personal residence:

(1) In which he or a member of his household has a legal or beneficial interest;

(2) Whose fair market value is $2,500 or more; and

(3) That is located in this State or an adjacent state.

(d) The name of each creditor to whom he or a member of his household owes $5,000 or more, except for:

(1) A debt secured by a mortgage or deed of trust of real property which is not required to be listed pursuant to paragraph (c); and

(2) A debt for which a security interest in a motor vehicle for personal use was retained by the seller.

(e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of $200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:

(1) A gift received from a person who is related to the candidate for public office or public officer within the third degree of consanguinity or affinity.

(2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the legislative, administrative or political action of the candidate for public office or public officer.

(f) A list of each business entity with which he or a member of his household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1 percent or more of the total outstanding stock or securities issued by the business entity.

(g) A list of all public offices presently held by him for which this statement of financial disclosure is required.

2. The Commission shall distribute or cause to be distributed the forms required for such a statement to each candidate for public office and public

officer who is required to file one. The Commission is not responsible for the costs of producing or distributing a form for filing statements of financial disclosure which is prescribed pursuant to subsection 1 of NRS 281A.470.

3. As used in this section ~~[:~~

~~(a) "Business entity" means an organization or enterprise operated for economic gain, including a proprietorship, partnership, firm, business, trust, joint venture, syndicate, corporation or association.~~

~~(b) "Household"]~~ *, "member of his household"* includes:

~~[(1)]~~ *(a)* The spouse of a candidate for public office or public officer;

~~[(2)]~~ *(b)* A person who does not live in the same home or dwelling, but who is dependent on and receiving substantial support from the candidate for public office or public officer; and

~~[(3)]~~ *(c)* A person who lived in the home or dwelling of the candidate for public office or public officer for 6 months or more in the year immediately preceding the year in which the candidate for public office or public officer files the statement of financial disclosure.

*Sec. 17.5. NRS 281A.660 is hereby amended to read as follows:*

281A.660 1. If the Secretary of State receives information that a candidate for public office or public officer willfully fails to file his statement of financial disclosure or willfully fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281A.600 or 281A.610, the Secretary of State may, after giving notice to that person or entity, cause the appropriate proceedings to be instituted in the First Judicial District Court.

2. Except as otherwise provided in this section, a candidate for public office or public officer who willfully fails to file his statement of financial disclosure or willfully fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281A.600 or 281A.610 is subject to a civil penalty and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer.

3. The amount of the civil penalty is:

(a) If the statement is filed not more than 10 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, $25.

(b) If the statement is filed more than 10 days but not more than 20 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, $50.

(c) If the statement is filed more than 20 days but not more than 30 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, $100.

(d) If the statement is filed more than 30 days but not more than 45 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, $250.

(e) If the statement is not filed or is filed more than 45 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, $2,000.

4. For good cause shown, the Secretary of State may waive a civil penalty that would otherwise be imposed pursuant to this section. If the Secretary of State waives a civil penalty pursuant to this subsection, the Secretary of State shall:

(a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and

(b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

5. As used in this section, "willfully" means ~~[deliberately,]~~ intentionally and knowingly.

*Sec. 18.* *NRS 283.040 is hereby amended to read as follows:*

283.040 1. Every office becomes vacant upon the occurring of any of the following events before the expiration of the term:

(a) The death or resignation of the incumbent.

(b) The removal of the incumbent from office.

(c) The confirmed insanity of the incumbent, found by a court of competent jurisdiction.

(d) A conviction of the incumbent of any felony or offense involving a violation of his official oath or bond or a violation of NRS 241.040, 293.1755 or 293C.200.

(e) A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in NRS 282.010, or, when a bond is required by law, his refusal or neglect to give the bond within the time prescribed by law.

(f) Except as otherwise provided in NRS 266.400, the ceasing of the incumbent to be an actual, as opposed to constructive, resident of the State, district, county, city, ward or other unit prescribed by law in which the duties of his office are to be exercised, or from which he was elected or appointed, or in which he was required to reside to be a candidate for office or appointed to office.

(g) The neglect or refusal of the incumbent to discharge the duties of his office for a period of 30 days, except when prevented by sickness or absence from the State or county, as provided by law. In a county whose population is less than 15,000, after an incumbent, other than a state officer, has been prevented by sickness from discharging the duties of his office for at least 6 months, the district attorney, either on his own volition or at the request of another person, may petition the district court to declare the office vacant. If the incumbent holds the office of district attorney, the Attorney General, either on his own volition or at the request of another person, may petition the district court to declare the office vacant. The district court shall hold a hearing to determine whether to declare the office vacant and, in making its determination, shall consider evidence relating to:

(1) The medical condition of the incumbent;

(2) The extent to which illness, disease or physical weakness has rendered the incumbent unable to manage independently and perform the duties of his office; and

(3) The extent to which the absence of the incumbent has had a detrimental effect on the applicable governmental entity.

(h) The decision of a competent tribunal declaring the election or appointment void or the office vacant.

(i) A determination pursuant to NRS 293.182 or 293C.186 that the incumbent fails to meet any qualification required for the office.

2. Upon the happening of any of the events described in subsection 1, if the incumbent fails or refuses to relinquish his office, the Attorney General shall, if the office is a state office or concerns more than one county, or the district attorney shall, if the office is a county office or concerns territory within one county, commence and prosecute, in a court of competent jurisdiction, any proceedings for judgment and decree declaring that office vacant.

*3. The provisions of this section do not apply to the extent that they conflict or are otherwise inconsistent with any provision of the Constitution of the State of Nevada regarding the power to judge of the qualifications, elections and returns of or to punish, impeach, expel or remove from office the Governor, other state and judicial officers or State Legislators.*

*Sec. 19. NRS 283.140 is hereby amended to read as follows:*

283.140 *1.* Any state officer ~~[, created by state law,]~~ shall be liable ~~[for]~~ *to* impeachment for ~~[any]~~ misdemeanor *or malfeasance* in office ~~[.]~~ *pursuant to Article 7 of the Nevada Constitution.*

*2. As used in NRS 283.140 to 283.290, inclusive, "state officer" means the Governor and other state and judicial officers, except:*

*(a) Justices of the peace; and*

*(b) State Legislators removable from office only through expulsion by their own House pursuant to Section 6 of Article 4 of the Nevada Constitution.*

*Sec. 20. NRS 283.160 is hereby amended to read as follows:*

283.160 When ~~[an officer of the State]~~ *a state officer* is impeached by the Assembly for ~~[a]~~ misdemeanor *or malfeasance* in office, the articles of impeachment shall be delivered to the President of the Senate.

*Sec. 21. NRS 283.300 is hereby amended to read as follows:*

283.300 *1.* An accusation in writing against any district, county, township or municipal officer ~~[, except a justice or judge of the court system,]~~ for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

*2. As used in this section, "district, county, township or municipal officer" does not include:*

*(a) A justice or judge of the court system;*

*(b) A state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution; or*

*(c) A State Legislator removable from office only through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution.*

*Sec. 22.* NRS 283.440 is hereby amended to read as follows:

283.440 1. Any person *who is* now holding or who shall hereafter hold any office in this State ~~[, except a justice or judge of the court system,]~~ *and* who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section ~~[.]~~ *, except that this section does not apply to:*

*(a) A justice or judge of the court system;*

*(b) A state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution; or*

*(c) A State Legislator removable from office only through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution.*

2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office;

(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office,

➥ the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.

3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The Governor or the board of county commissioners, as the case may be, shall appoint some person to fill the office until a successor shall be elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.

4. If the judgment of the district court is against the officer complained of and an appeal is taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of the appeal, but the office shall be filled as in case of a vacancy.

*Sec. 23.* NRS 283.450 is hereby amended to read as follows:

283.450 1. Any civil officer in this state who, during his term of office, becomes intoxicated or is under the influence of alcoholic, malt or vinous liquors, or becomes or is addicted to the use of controlled substances, so that he is not at all times in proper condition for the discharge of the duties of his office, is guilty of a gross misdemeanor ~~[, and,]~~ *and* if he is ~~[a]~~ *:*

*(a) A* state officer, *he* is subject to removal from office ~~[by impeachment, or if he is a]~~ *through impeachment pursuant to Article 7 of the Nevada Constitution;*

*(b) A State Legislator, he is subject to removal from office through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution; or*

*(c) A* county, city or township officer *,* he shall be removed from office by the judgment of the court in which the conviction is had, as a part of the penalty in such a conviction.

2. Upon receiving information from any person that the provisions of this section have been violated, sheriffs and their deputies, constables and their deputies, district attorneys, and all other peace officers in this state shall immediately institute proceedings in the proper court against the person complained of, and shall prosecute the same with reasonable diligence to final judgment.

3. If any person makes and files a complaint under oath charging the district attorney with a violation of this section, the Attorney General shall prosecute the district attorney pursuant to the terms of this section.

4. If any state officer is convicted pursuant to this section, the prosecuting officer obtaining the conviction shall file a certified copy of the judgment roll with the Secretary of State. The Secretary of State shall lay the certified copy of the judgment roll before the *appropriate House of the* Legislature at its next session.

5. The provisions of this section must be specially charged to the grand juries of the several counties by district judges.

*Sec. 24.* NRS 193.105 is hereby amended to read as follows:

193.105 1. If, during the course of his employment, an employee of the State or of any political subdivision of the State is convicted on or after October 1, 1989, of violating any federal or state law prohibiting the sale of any controlled substance, the employer upon discovery of the conviction shall terminate the employment of the employee.

2. If, during the course of his tenure in office, an officer of any county, city or township of the State is convicted on or after October 1, 1989, of violating any federal or state law prohibiting the sale of any controlled substance, the court as part of the penalty for such a conviction shall remove the officer from his office.

3. If, during the course of his tenure in office, an elected or appointed officer of the State is convicted on or after October 1, 1989, of violating any federal or state law prohibiting the sale of any controlled substance, the prosecuting officer who obtained the conviction shall file a certified copy of

the judgment roll with the Secretary of State. The Secretary of State shall lay the certified copy of the judgment roll before the ~~[Assembly]~~ *appropriate House of the Legislature* at its next session. ~~[for the preparation of articles of impeachment.]~~

4. This section does not apply to a justice or judge of the court system.

*Sec. 25. NRS 281.236, 281A.110, 281A.120 and 281A.130 are hereby repealed.*

*Sec. 26. The Legislature hereby finds and declares that:*

*1. NRS 11.190 contains a generally applicable 2-year statute of limitations for any action upon a statute for a penalty or forfeiture, where the action is given to a person or the State.*

*2. Because NRS 281A.480 authorizes the Commission on Ethics to impose civil penalties on a current or former public officer or employee for a violation of chapter 281A of NRS, the existing 2-year statute of limitations in NRS 11.190 is applicable to proceedings commenced against a current or former public officer or employee pursuant to chapter 281A of NRS.*

*3. By enacting the 2-year statute of limitations in NRS 281A.280, as amended by section 8.55 of this act, the Legislature is substituting in a continuing way the 2-year statute of limitations in NRS 281A.280 for the existing 2-year statute of limitations in NRS 11.190 with regard to violations of chapter 281A of NRS.*

*4. Therefore, the 2-year statute of limitations in NRS 281A.280, as amended by section 8.55 of this act, is applicable to any proceeding against a current or former public officer or employee for a violation of chapter 281A of NRS if the proceeding is commenced on or after the effective date of section 8.55 of this act, whether or not the violation occurred before that effective date.*

*Sec. 27. 1. This section and sections 1, 2, 3, 4, 5, 6, 7, 7.4 and 9 of this act become effective on January 1, 2009.*

*2. Sections 3.4, 3.6, 4.4, 4.6, 5.4, 5.6, 5.8, 7.2, 8 to 8.7, inclusive, and 9.5 to 26, inclusive, of this act become effective upon passage and approval.*

*LEADLINES OF REPEALED SECTIONS*

*281.236 Employment of certain former public officers and employees by regulated businesses prohibited; certain former public officers and employees prohibited from soliciting or accepting employment from certain persons contracting with State or local government; determination by Commission on Ethics.*

*281A.110 "Legislative function" defined.*

*281A.120 "Member of the executive branch" defined.*

*281A.130 "Member of the legislative branch" defined.*

Senator Care moved that the Senate concur in the Assembly amendment to Senate Bill No. 160.

Remarks by Senator Care.

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

Thank you, Mr. President. This is a bill that I believe left this body about the second week of the Session dealing with the constitutional doctrines of separation of powers and legislative privileges and immunity. The Assembly added provisions under chapter 281A relating to public officers and employees. The Judiciary Committee met at the bar and recommended concurrence.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 197.

The following Assembly amendment was read:

Amendment No. 780.

"SUMMARY—Revises provisions relating to the reissuance of certain prescription drugs. (BDR 39-804)"

"AN ACT relating to drugs; authorizing certain facilities to return certain prescription drugs for reissuance by nonprofit pharmacies; establishing procedures and requirements for the reissuance of certain prescription drugs transferred to nonprofit pharmacies; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law allows public and private mental health facilities, facilities for skilled nursing, facilities for intermediate care and correctional facilities to return to the dispensing pharmacy certain prescription drugs that are dispensed to a patient of the facility but not used by that patient and to reissue those drugs to other patients of the facility. (NRS 433.801, 449.2485, 639.2675) Sections 1, 2 and 6 of this bill authorize those facilities to return to the dispensing pharmacy such drugs for reissuance by a nonprofit pharmacy designated by the State Board of Pharmacy to reissue the drugs. Section 3 of this bill authorizes nonprofit pharmacies to reissue those drugs for other prescriptions in the pharmacy free of charge. Section 3 also provides that a person, pharmacy, facility or ~~[pharmaceutical]~~ manufacturer ~~[is immune from certain civil liability for damages sustained as a result of any act or omission in carrying out the provisions relating to the transfer and reissuance of those drugs.]~~ *of a drug who exercises reasonable care in the transfer, acceptance, distribution or dispensation of a drug is not subject to certain civil or criminal liability.* The Board is required to adopt regulations to carry out the provisions of this bill.

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

Section 1. NRS 433.801 is hereby amended to read as follows:

433.801 1. A public or private mental health facility may return a prescription drug that is dispensed to a patient of the facility, but will not be used by that patient, to the dispensing pharmacy for the purpose of reissuing the drug to fill other prescriptions for patients in that facility *or for the purpose of transferring the drug to a nonprofit pharmacy designated by the State Board of Pharmacy pursuant to section 3 of this act* if:

(a) The drug is not a ~~[schedule II drug specified in or pursuant to chapter 453 of NRS;]~~ *controlled substance;*

(b) The drug is dispensed in a unit dose, in individually sealed doses or in a bottle that is sealed by the manufacturer of the drug;

(c) The drug is returned unopened and sealed in the original manufacturer's packaging or bottle;

(d) The usefulness of the drug has not expired;

(e) The packaging or bottle contains the expiration date of the usefulness of the drug; and

(f) The name of the patient for whom the drug was originally prescribed, the prescription number and any other identifying marks are obliterated from the packaging or bottle before the return of the drug.

2. A dispensing pharmacy to which a drug is returned pursuant to this section may ~~[reissue]~~ *:*

*(a) Reissue* the drug to fill other prescriptions for patients in the same facility if the registered pharmacist of the pharmacy determines that the drug is suitable for that purpose in accordance with standards adopted by the State Board of Pharmacy pursuant to subsection 5 ~~[.]~~ *; or*

*(b) Transfer the drug to a nonprofit pharmacy designated by the State Board of Pharmacy pursuant to section 3 of this act.*

3. No drug that is returned to a dispensing pharmacy pursuant to this section may be used to fill other prescriptions more than one time.

4. A mental health facility shall adopt written procedures for returning drugs to a dispensing pharmacy pursuant to this section. The procedures must:

(a) Provide appropriate safeguards for ensuring that the drugs are not compromised or illegally diverted during their return.

(b) Require the maintenance and retention of such records relating to the return of such drugs as are required by the State Board of Pharmacy.

(c) Be approved by the State Board of Pharmacy.

5. The State Board of Pharmacy shall adopt such regulations as are necessary to carry out the provisions of this section, including, without limitation, requirements for:

(a) Returning and reissuing such drugs pursuant to the provisions of this section.

(b) *Transferring drugs to a nonprofit pharmacy pursuant to the provisions of this section and section 3 of this act.*

*(c)* Maintaining records relating to the return and the use of such drugs to fill other prescriptions.

Sec. 2. NRS 449.2485 is hereby amended to read as follows:

449.2485 1. A facility for skilled nursing or a facility for intermediate care may return a prescription drug that is dispensed to a patient of the facility, but will not be used by that patient, to the dispensing pharmacy for the purpose of reissuing the drug to fill other prescriptions for patients in that facility *or for the purpose of transferring the drug to a nonprofit pharmacy* *designated by the State Board of Pharmacy pursuant to section 3 of this act* if:

(a) The drug is not a ~~[schedule II drug specified in or pursuant to chapter 453 of NRS;]~~ *controlled substance;*

(b) The drug is dispensed in a unit dose, in individually sealed doses or in a bottle sealed by the manufacturer of the drug;

(c) The drug is returned unopened and sealed in the original manufacturer's packaging or bottle;

(d) The usefulness of the drug has not expired;

(e) The packaging or bottle contains the expiration date of the usefulness of the drug; and

(f) The name of the patient for whom the drug was originally prescribed, the prescription number and any other identifying marks are obliterated from the packaging or bottle before the return of the drug.

2. A dispensing pharmacy to which a drug is returned pursuant to this section may ~~[reissue]~~ *:*

*(a) Reissue* the drug to fill other prescriptions for patients in the same facility if the registered pharmacist of the pharmacy determines that the drug is suitable for that purpose in accordance with standards adopted by the State Board of Pharmacy pursuant to subsection 5 ~~[.]~~ *; or*

*(b) Transfer the drug to a nonprofit pharmacy designated by the* State *Board of Pharmacy pursuant to section 3 of this act.*

3. No drug that is returned to a dispensing pharmacy pursuant to this section may be used to fill other prescriptions more than one time.

4. A facility for skilled nursing or facility for intermediate care shall adopt written procedures for returning drugs to a dispensing pharmacy pursuant to this section. The procedures must:

(a) Provide appropriate safeguards for ensuring that the drugs are not compromised or illegally diverted during their return.

(b) Require the maintenance and retention of such records relating to the return of drugs to dispensing pharmacies as are required by the State Board of Pharmacy.

(c) Be approved by the State Board of Pharmacy.

5. The State Board of Pharmacy shall adopt such regulations as are necessary to carry out the provisions of this section, including, without limitation, requirements for:

(a) Returning and reissuing such drugs pursuant to the provisions of this section.

(b) *Transferring drugs to a nonprofit pharmacy pursuant to the provisions of this section and section 3 of this act.*

*(c)* Maintaining records relating to the return and the use of such drugs to fill other prescriptions.

Sec. 3. Chapter 639 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A nonprofit pharmacy designated by the Board in accordance with the regulations adopted pursuant to subsection ~~[5]~~ 6 to which a drug is transferred pursuant to NRS 433.801, 449.2485 or 639.2675 may reissue the drug to fill other prescriptions in the same pharmacy free of charge if the registered pharmacist of the nonprofit pharmacy determines that the drug is suitable for that purpose in accordance with the requirements adopted by the Board pursuant to subsection ~~[5]~~ 6 and if:*

*(a) The drug is not a controlled substance;*

*(b) The drug is dispensed in a unit dose, in individually sealed doses or in a bottle that is sealed by the manufacturer of the drug;*

*(c) The drug is unopened and sealed in the original manufacturer's packaging or bottle;*

*(d) The usefulness of the drug has not expired;*

*(e) The packaging or bottle contains the expiration date of the usefulness of the drug; and*

*(f) The name of the patient for whom the drug was originally prescribed, the prescription number and any other identifying marks are obliterated from the packaging or bottle before the reissuance of the drug.*

*2. A person, pharmacy ~~[,]~~ or facility ~~[or pharmaceutical manufacturer is immune from civil liability for damages sustained as a result of any act or omission in carrying out the provisions of this section if:~~*

*~~(a) That person, pharmacy, facility or pharmaceutical manufacturer complied with the procedures adopted pursuant to subsection 4 and the regulations adopted pursuant to subsection 5; and~~*

*~~(b) The act or omission does not amount to gross negligence or willful misconduct.~~*

*~~➥ Before receiving a drug pursuant to this section, a person or his guardian, if applicable, must sign a form acknowledging that he understands the provisions of this subsection.~~*

*~~3.]~~ who exercises reasonable care in the transfer, acceptance, distribution or dispensation of a drug in accordance with the provisions of this section and NRS 433.801, 449.2485 and 639.2675 and the regulations adopted pursuant thereto is not subject to any civil or criminal liability or disciplinary action by a professional licensing board for any loss, injury or death that results from the transfer, acceptance, distribution or dispensation of the drug.*

*3. A manufacturer of a drug is not subject to civil or criminal liability for any claim or injury arising from the transfer, acceptance, distribution or dispensation of the drug pursuant to this section and NRS 433.801, 449.2485 and 639.2675 and the regulations adopted pursuant thereto.*

*4. No drug that is transferred to a nonprofit pharmacy pursuant to this section may be used to fill other prescriptions more than one time.*

*~~[4.]~~ 5. A nonprofit pharmacy shall adopt written procedures for accepting and reissuing drugs pursuant to this section. The procedures must:*

*(a) Provide appropriate safeguards for ensuring that the drugs are not compromised or illegally diverted before being reissued.*

*(b) Require the maintenance and retention of records relating to the acceptance and use of the drugs and any other records as are required by the Board.*

*(c) Be approved by the Board.*

~~[5.]~~ *6. The Board shall adopt such regulations as are necessary to carry out the provisions of this section, including, without limitation:*

*(a) Requirements for reissuing drugs pursuant to this section.*

*(b) Requirements for accepting drugs transferred to a nonprofit pharmacy pursuant to the provisions of this section and NRS 433.801, 449.2485 and 639.2675.*

*(c) Requirements for maintaining records relating to the acceptance and use of drugs to fill other prescriptions pursuant to this section.*

*(d) The criteria and procedure for obtaining a designation as a nonprofit pharmacy for the purposes of this section, including, without limitation, provisions for a pharmacy, registered pharmacist or practitioner who is registered with the Board to be designated as a nonprofit pharmacy.*

Sec. 4. NRS 639.063 is hereby amended to read as follows:

639.063 1. The Board shall prepare an annual report concerning drugs that are returned or transferred to pharmacies pursuant to NRS 433.801, 449.2485 and 639.2675 *and section 3 of this act* and are reissued to fill other prescriptions. The report must include, without limitation:

(a) The number of drugs that are returned to dispensing pharmacies.

(b) *The number of drugs that are transferred to nonprofit pharmacies designated by the Board pursuant to section 3 of this act.*

*(c)* The number of drugs that are reissued to fill other prescriptions.

~~[(c)]~~ *(d)* An estimate of the amount of money saved by reissuing such drugs to fill other prescriptions.

~~[(d)]~~ *(e)* Any other information that the Board deems necessary.

2. The report must be:

(a) Available for public inspection during regular business hours at the office of the Board; and

(b) Posted on a website or other Internet site that is operated or administered by or on behalf of the Board.

Sec. 5. NRS 639.267 is hereby amended to read as follows:

639.267 1. As used in this section, "unit dose" means that quantity of a drug which is packaged as a single dose.

2. A pharmacist who provides a regimen of drugs in unit doses to a patient in a facility for skilled nursing or facility for intermediate care as defined in chapter 449 of NRS may credit the person or agency which paid for the drug for any unused doses. The pharmacist may return the drugs to the dispensing pharmacy, which may reissue the drugs to fill other prescriptions *or transfer the drugs* in accordance with the provisions of NRS 449.2485.

3. Except schedule II drugs specified in or pursuant to chapter 453 of NRS and except as otherwise provided in NRS 433.801, 449.2485 and 639.2675 ~~[,]~~ *and section 3 of this act*, unit doses packaged in ampules or vials which do not require refrigeration may be returned to the pharmacy which dispensed them. The Board shall, by regulation, authorize the return of any other type or brand of drug which is packaged in unit doses if the Food and Drug Administration has approved the packaging for that purpose.

Sec. 6. NRS 639.2675 is hereby amended to read as follows:

639.2675 1. A prescription drug that is dispensed by a pharmacy to an offender incarcerated in a correctional institution, but will not be used by that offender, may be returned to that dispensing pharmacy for the purpose of reissuing the drug to fill other prescriptions for offenders incarcerated in that correctional institution *or for the purposes of transferring the drug to a nonprofit pharmacy designated by the Board pursuant to section 3 of this act* if:

(a) The drug is not a ~~[schedule II drug specified in or pursuant to chapter 453 of NRS;]~~ *controlled substance;*

(b) The drug is dispensed in a unit dose, in individually sealed doses or in a bottle that is sealed by the manufacturer of the drug;

(c) The drug is returned unopened and sealed in the original manufacturer's packaging or bottle;

(d) The usefulness of the drug has not expired;

(e) The packaging or bottle contains the expiration date of the usefulness of the drug; and

(f) The name of the patient for whom the drug was originally prescribed, the prescription number and any other identifying marks are obliterated from the packaging or bottle before the return of the drug.

2. A pharmacy to which a drug is returned pursuant to this section may ~~[reissue]~~ *:*

*(a) Reissue* the drug to fill other prescriptions for offenders incarcerated in the same correctional institution if the registered pharmacist of the pharmacy determines that the drug is suitable for that purpose in accordance with standards adopted by the Board pursuant to subsection 5 ~~[.]~~ *; or*

*(b) Transfer the drug to a nonprofit pharmacy designated by the Board pursuant to section 3 of this act.*

3. No drug that is returned to a dispensing pharmacy pursuant to this section may be used to fill other prescriptions more than one time.

4. The director of a correctional institution shall adopt written procedures for returning drugs to a dispensing pharmacy pursuant to this section. The procedures must:

(a) Provide appropriate safeguards for ensuring that the drugs are not compromised or illegally diverted during their return.

(b) Require the maintenance and retention of such records relating to the return of such drugs as are required by the Board.

(c) Be approved by the Board.

5. The Board shall adopt such regulations as are necessary to carry out the provisions of this section including, without limitation, requirements for:

(a) Returning and reissuing such drugs pursuant to the provisions of this section.

(b) *Transferring drugs to a nonprofit pharmacy pursuant to the provisions of this section and section 3 of this act.*

*(c)* Maintaining records relating to the return and the use of such drugs to fill other prescriptions.

6. As used in this section, "correctional institution" means an institution or facility operated by the Department of Corrections.

Sec. 7. NRS 639.282 is hereby amended to read as follows:

639.282 1. Except as otherwise provided in NRS 433.801, 449.2485, 639.267 and 639.2675 ~~[,]~~ *and section 3 of this act,* it is unlawful for any person to have in his possession, or under his control, for the purpose of resale, or to sell or offer to sell or dispense or give away, any pharmaceutical preparation, drug or chemical which:

(a) Has been dispensed pursuant to a prescription or chart order and has left the control of a registered pharmacist or practitioner;

(b) Has been damaged or subjected to damage by heat, smoke, fire or water, or other cause which might reasonably render it unfit for human or animal use;

(c) Has been obtained through bankruptcy or foreclosure proceedings, or other court action, auction or other legal or administrative proceedings, except when the pharmaceutical preparation, drug or chemical is in the original sealed container;

(d) Is no longer safe or effective for use, as indicated by the expiration date appearing on its label; or

(e) Has not been properly stored or refrigerated as required by its label.

2. The provisions of subsection 1 do not apply if the person in whose possession the pharmaceutical preparation, drug or chemical is found also has in his possession a valid and acceptable certification of analysis attesting to the purity and strength of the pharmaceutical preparation, drug or chemical and attesting to the fact that it can be safely and effectively used by humans or animals. The preparation, drug or chemical must not be sold or otherwise disposed of until the certification required by this subsection has been presented to and approved by the Board.

3. In the absence of conclusive proof that the preparation, drug or chemical can be used safely and effectively by humans or animals, it must be destroyed under the direct supervision of a member or an inspector of the Board, or two persons designated as agents by the Board who include an inspector of a health care board, a licensed practitioner of a health care board or a peace officer of an agency that enforces the provisions of chapters 453 and 454 of NRS.

4. As used in this section, "health care board" includes the State Board of Pharmacy, the State Board of Nursing, the Board of Medical Examiners and the Nevada State Board of Veterinary Medical Examiners.

Sec. 8. 1. This section and sections 1, 2, 3 and 6 of this act become effective upon passage and approval for the purposes of adopting regulations and on October 1, 2009, for all other purposes.

2. Sections 4, 5 and 7 of this act become effective on October 1, 2009.

Senator Wiener moved that the Senate concur in the Assembly amendment to Senate Bill No. 197.

Motion carried by a constitutional majority.

Bill ordered enrolled.

Senate Bill No. 218.

The following Assembly amendments were read:

Amendment No. 742

"SUMMARY—Revises *certain* provisions governing ~~[certain]~~ fees charged ~~[by]~~ and ~~[certain]~~ duties performed by constables ~~[.]~~ *and revises certain provisions relating to motor vehicle registration.* (BDR 20-846)"

"AN ACT relating to ~~[constables;]~~ *motor vehicles;* specifically authorizing constables to issue citations for failure to register vehicles that are required to be registered in this State; increasing the fee to which constables are entitled for removing or causing the removal of abandoned vehicles from public property; *revising the penalties for failure to register certain motor vehicles;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill specifically authorizes constables to issue citations for the failure to register a vehicle that is required by existing law to be registered in this State and requires constables to charge and collect a fee from the person to whom the citation is issued. The citation is to be issued to the owner of the vehicle or the driver if the driver is not the owner but is the party responsible for registering the vehicle pursuant to existing law. (NRS 258.070) Sections 3 and 4 of this bill clarify that constables are entitled to demand and to view the certificate of registration and to request information to determine whether the vehicle is required to be registered in this State. (NRS 482.255, 482.385)

Section 2 of this bill increases the fee to which constables are entitled for their services of removing or causing the removal of an abandoned vehicle from public property from $50 to $100. Section 2 also increases the amount the constable may collect when collecting all sums on execution or writ charged against a defendant from 2 percent of the first $3,500 to 2 percent of the first $10,000. (NRS 258.125)

*Existing law requires a person, within 60 days of becoming a resident of this State or at the time he obtains his driver's license, to apply for registration for each vehicle he owns which is operated in this State. (NRS 482.385) Section 4 of this bill increases the fine for failing to comply* *with that requirement from a minimum of $250 and a maximum of $500 to a $1,000 fine, and provides that the fine may be reduced to not less than $200 if the person provides proof of registration of the vehicle in Nevada at the time of his hearing.*

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

Section 1. NRS 258.070 is hereby amended to read as follows:

258.070 1. Each constable shall:

(a) Be a peace officer in his township.

(b) Serve all mesne and final process issued by a court of competent jurisdiction.

(c) Execute the process, writs or warrants that he is authorized to receive pursuant to NRS 248.100.

(d) Discharge such other duties as are or may be prescribed by law.

2. *Pursuant to the procedures and subject to the limitations set forth in chapters 482 and 484 of NRS, a constable may issue a citation to an owner or driver, as appropriate, of a vehicle that is required to be registered in this State if the constable determines that the vehicle is not properly registered. The constable shall, upon the issuance of such citation, charge and collect a fee of $100 from the person to whom the citation is issued, which may be retained by the constable as compensation.*

*3.* If a sheriff or his deputy in any county in this State arrests a person charged with a criminal offense or in the commission of an offense, the sheriff or his deputy shall serve all process, whether mesne or final, and attend the court executing the order thereof in the prosecution of the person so arrested, whether in a justice court or a district court, to the conclusion, and whether the offense is an offense of which a justice of the peace has jurisdiction, or whether the proceeding is a preliminary examination or hearing. The sheriff or his deputy shall collect the same fees and in the same manner therefor as the constable of the township in which the justice court is held would receive for the same service.

Sec. 2. NRS 258.125 is hereby amended to read as follows:

258.125 1. Constables are entitled to the following fees for their services:

| | |
|---|---|
| For serving a summons or other process by which a suit is commenced in civil cases | $17 |
| For summoning a jury before a justice of the peace | 7 |
| For taking a bond or undertaking | 5 |
| For serving an attachment against the property of a defendant | 9 |
| For serving subpoenas, for each witness | 15 |
| For a copy of any writ, process or order or other paper, when demanded or required by law, per folio | 3 |

For drawing and executing every constable's deed, to be paid by the grantee, who must also pay for the acknowledgment thereof ............................................................... 20
For each certificate of sale of real property under execution ................ 5
For levying any writ of execution or writ of garnishment, or executing an order of arrest in civil cases, or order for delivery of personal property, with traveling fees as for summons ......................................................................................... 9
For serving one notice required by law before the commencement of a proceeding for any type of eviction ............ 26
For serving not fewer than 2 nor more than 10 such notices to the same location, each notice ................................................ $20
For serving not fewer than 11 nor more than 24 such notices to the same location, each notice ...................................... 17
For serving 25 or more such notices to the same location, each notice .................................................................................... 15
For mileage in serving such a notice, for each mile necessarily and actually traveled in going only ............................. 2
But if two or more notices are served at the same general location during the same period, mileage may only be charged for the service of one notice.
For each service in a summary eviction, except service of any notice required by law before commencement of the proceeding, and for serving notice of and executing a writ of restitution........................................................................ 21
For making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper............................................................. 9
For each warrant lawfully executed ................................................... 48
For mileage in serving summons, attachment, execution, order, venire, subpoena, notice, summary eviction, writ of restitution or other process in civil suits, for each mile necessarily and actually traveled, in going only .................... 2
But when two or more persons are served in the same suit, mileage may only be charged for the most distant, if they live in the same direction.
For mileage in making a diligent but unsuccessful effort to serve a summons, attachment, execution, order, venire, subpoena or other process in civil suits, for each mile necessarily and actually traveled, in going only ............................ 2
But mileage may not exceed $20 for any unsuccessful effort to serve such process.

2. A constable is also entitled to receive:

(a) For receiving and taking care of property on execution, attachment or order, his actual necessary expenses, to be allowed by the court which issued the writ or order, upon the affidavit of the constable that the charges are correct and the expenses necessarily incurred.

(b) For collecting all sums on execution or writ, to be charged against the defendant, on the first ~~[$3,500,]~~ *$10,000,* 2 percent thereof, and on all amounts over that sum, one-half of 1 percent.

(c) For service in criminal cases, except for execution of warrants, the same fees as are allowed sheriffs for like services, to be allowed, audited and paid as are other claims against the county.

(d) For removing or causing the removal of, pursuant to NRS 487.230, a vehicle that has been abandoned on public property, ~~[$50.]~~ *$100.*

3. Deputy sheriffs acting as constables are not entitled to retain for their own use any fees collected by them, but the fees must be paid into the county treasury on or before the fifth working day of the month next succeeding the month in which the fees were collected.

4. Constables shall, on or before the fifth working day of each month, account for and pay to the county treasurer all fees collected during the preceding month, except fees which may be retained as compensation.

Sec. 3. NRS 482.255 is hereby amended to read as follows:

482.255 1. Upon receipt of a certificate of registration, the owner shall place it or a legible copy in the vehicle for which it is issued and keep it in the vehicle. If the vehicle is a motorcycle, trailer or semitrailer, he shall carry the certificate in the tool bag or other convenient receptacle attached to the vehicle.

2. The owner or operator of a motor vehicle shall, upon demand, surrender the certificate of registration or the copy for examination to any peace officer, *including a constable, or a* justice of the peace or deputy of the Department.

3. No person charged with violating this section may be convicted if he produces in court a certificate of registration which was previously issued to him and was valid at the time of the demand.

Sec. 4. NRS 482.385 is hereby amended to read as follows:

482.385 1. Except as otherwise provided in subsection ~~[4]~~ *5* and NRS 482.390, a nonresident owner of a vehicle of a type subject to registration pursuant to the provisions of this chapter, owning any vehicle which has been registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in this State has displayed upon it the registration license plate issued for the vehicle in the place of residence of the owner, may operate or permit the operation of the vehicle within this State without its registration in this State pursuant to the provisions of this chapter and without the payment of any registration fees to this State.

2. This section does not:

(a) Prohibit the use of manufacturers', distributors' or dealers' license plates issued by any state or country by any nonresident in the operation of any vehicle on the public highways of this State.

(b) Require registration of vehicles of a type subject to registration pursuant to the provisions of this chapter operated by nonresident common motor carriers of persons or property, contract motor carriers of persons or property, or private motor carriers of property as stated in NRS 482.390.

(c) Require registration of a vehicle operated by a border state employee.

3. When a person, formerly a nonresident, becomes a resident of this State, he shall:

(a) Within 60 days after becoming a resident; or

(b) At the time he obtains his driver's license,

➥ whichever occurs earlier, apply for the registration of each vehicle he owns which is operated in this State. When a person, formerly a nonresident, applies for a driver's license in this State, the Department shall inform the person of the requirements imposed by this subsection and of the penalties that may be imposed for failure to comply with the provisions of this subsection. A citation may be issued pursuant to this subsection only if the violation is discovered when the vehicle is halted or its driver arrested for another alleged violation or offense. ~~[A person who violates the provisions of this subsection is guilty of a misdemeanor and shall be punished by a fine of not less than $250 nor more than $500 and such fine is in addition to any fine or penalty imposed for the other alleged violation or offense for which the vehicle was halted or its driver arrested. In addition, the]~~ *The* Department shall maintain or cause to be maintained a list or other record of persons who fail to comply with the provisions of this subsection and shall, at least once each month, provide a copy of that list or record to the Department of Public Safety.

4. *A person who violates the provisions of subsection 3 is guilty of a misdemeanor and, except as otherwise provided in this subsection, shall be punished by a fine of $1,000. The fine imposed pursuant to this subsection is in addition to any fine or penalty imposed for the other alleged violation or offense for which the vehicle was halted or its driver arrested pursuant to subsection 3. The fine imposed pursuant to this subsection may be reduced to not less than $200 if the person presents evidence at the time of his hearing that he has registered the vehicle pursuant to this chapter.*

*5.* Any resident operating upon a highway of this State a motor vehicle which is owned by a nonresident and which is furnished to the resident operator for his continuous use within this State, shall cause that vehicle to be registered within 60 days after beginning its operation within this State.

~~[5.]~~ *6.* A person registering a vehicle pursuant to the provisions of subsection 3, ~~[4]~~ *5* or ~~[6]~~ *7* or pursuant to NRS 482.390:

(a) Must be assessed the registration fees and governmental services tax, as required by the provisions of this chapter and chapter 371 of NRS; and

(b) Must not be allowed credit on those taxes and fees for the unused months of his previous registration.

~~[6.]~~ *7.* If a vehicle is used in this State for a gainful purpose, the owner shall immediately apply to the Department for registration, except as otherwise provided in NRS 482.390, 482.395 and 706.801 to 706.861, inclusive.

~~[7.]~~ *8.* An owner registering a vehicle pursuant to the provisions of this section shall surrender the existing nonresident license plates and registration certificates to the Department for cancellation.

~~[8.]~~ *9.* A vehicle may be cited for a violation of this section regardless of whether it is in operation or is parked on a highway, in a public parking lot or on private property which is open to the public if, after communicating with the owner or operator of the vehicle, the peace officer issuing the citation determines that:

(a) The owner of the vehicle is a resident of this State; or

(b) The vehicle is used in this State for a gainful purpose.

➥ *As used in this subsection, "peace officer" includes a constable.*

The following Assembly amendment was read:

Amendment No. 881.

"SUMMARY—Revises certain provisions governing fees charged and duties performed by constables and revises certain provisions relating to motor vehicle registration. (BDR 20-846)"

"AN ACT relating to motor vehicles; specifically authorizing constables to issue citations for failure to register vehicles that are required to be registered in this State; increasing the fee to which constables are entitled for removing or causing the removal of abandoned vehicles from public property; revising the penalties for failure to register certain motor vehicles; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill specifically authorizes constables to issue citations for the failure to register a vehicle that is required by existing law to be registered in this State and requires constables to charge and collect a fee from the person to whom the citation is issued. The citation is to be issued to the owner of the vehicle or the driver if the driver is not the owner but is the party responsible for registering the vehicle pursuant to existing law. (NRS 258.070) Sections 3 and 4 of this bill clarify that constables are entitled to demand and to view the certificate of registration and to request information to determine whether the vehicle is required to be registered in this State. (NRS 482.255, 482.385)

Section 2 of this bill increases the fee to which constables are entitled for their services of removing or causing the removal of an abandoned vehicle from public property from $50 to $100. ~~[Section 2 also increases the amount the constable may collect when collecting all sums on execution or writ charged against a defendant from 2 percent of the first $3,500 to 2 percent of the first $10,000.]~~ (NRS 258.125)

Existing law requires a person, within 60 days of becoming a resident of this State or at the time he obtains his driver's license, to apply for registration for each vehicle he owns which is operated in this State. (NRS 482.385) Section 4 of this bill increases the fine for failing to comply with that requirement from a minimum of $250 and a maximum of $500 to a $1,000 fine, and provides that the fine may be reduced to not less than $200 if the person provides proof of registration of the vehicle in Nevada at the time of his hearing.

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

Section 1. NRS 258.070 is hereby amended to read as follows:

258.070 1. Each constable shall:

(a) Be a peace officer in his township.

(b) Serve all mesne and final process issued by a court of competent jurisdiction.

(c) Execute the process, writs or warrants that he is authorized to receive pursuant to NRS 248.100.

(d) Discharge such other duties as are or may be prescribed by law.

2. *Pursuant to the procedures and subject to the limitations set forth in chapters 482 and 484 of NRS, a constable may issue a citation to an owner or driver, as appropriate, of a vehicle that is required to be registered in this State if the constable determines that the vehicle is not properly registered. The constable shall, upon the issuance of such citation, charge and collect a fee of $100 from the person to whom the citation is issued, which may be retained by the constable as compensation.*

*3.* If a sheriff or his deputy in any county in this State arrests a person charged with a criminal offense or in the commission of an offense, the sheriff or his deputy shall serve all process, whether mesne or final, and attend the court executing the order thereof in the prosecution of the person so arrested, whether in a justice court or a district court, to the conclusion, and whether the offense is an offense of which a justice of the peace has jurisdiction, or whether the proceeding is a preliminary examination or hearing. The sheriff or his deputy shall collect the same fees and in the same manner therefor as the constable of the township in which the justice court is held would receive for the same service.

Sec. 2. NRS 258.125 is hereby amended to read as follows:

258.125 1. Constables are entitled to the following fees for their services:

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| For serving a summons or other process by which a suit is commenced in civil cases | $17 |
| For summoning a jury before a justice of the peace | 7 |
| For taking a bond or undertaking | 5 |
| For serving an attachment against the property of a defendant | 9 |
| For serving subpoenas, for each witness | 15 |
| For a copy of any writ, process or order or other paper, when demanded or required by law, per folio | 3 |

For drawing and executing every constable's deed, to be paid by the grantee, who must also pay for the acknowledgment thereof .... 20
For each certificate of sale of real property under execution .... 5
For levying any writ of execution or writ of garnishment, or executing an order of arrest in civil cases, or order for delivery of personal property, with traveling fees as for summons .... 9
For serving one notice required by law before the commencement of a proceeding for any type of eviction .... 26
For serving not fewer than 2 nor more than 10 such notices to the same location, each notice .... 20
For serving not fewer than 11 nor more than 24 such notices to the same location, each notice .... $17
For serving 25 or more such notices to the same location, each notice .... 15
For mileage in serving such a notice, for each mile necessarily and actually traveled in going only .... 2

But if two or more notices are served at the same general location during the same period, mileage may only be charged for the service of one notice.

For each service in a summary eviction, except service of any notice required by law before commencement of the proceeding, and for serving notice of and executing a writ of restitution .... 21
For making and posting notices, and advertising property for sale on execution, not to include the cost of publication in a newspaper .... 9
For each warrant lawfully executed .... 48
For mileage in serving summons, attachment, execution, order, venire, subpoena, notice, summary eviction, writ of restitution or other process in civil suits, for each mile necessarily and actually traveled, in going only .... 2

But when two or more persons are served in the same suit, mileage may only be charged for the most distant, if they live in the same direction.

For mileage in making a diligent but unsuccessful effort to serve a summons, attachment, execution, order, venire, subpoena or other process in civil suits, for each mile necessarily and actually traveled, in going only .... 2

But mileage may not exceed $20 for any unsuccessful effort to serve such process.

2. A constable is also entitled to receive:

(a) For receiving and taking care of property on execution, attachment or order, his actual necessary expenses, to be allowed by the court which issued the writ or order, upon the affidavit of the constable that the charges are correct and the expenses necessarily incurred.

(b) For collecting all sums on execution or writ, to be charged against the defendant, on the first $3,500, ~~[$10,000,]~~ 2 percent thereof, and on all amounts over that sum, one-half of 1 percent.

(c) For service in criminal cases, except for execution of warrants, the same fees as are allowed sheriffs for like services, to be allowed, audited and paid as are other claims against the county.

(d) For removing or causing the removal of, pursuant to NRS 487.230, a vehicle that has been abandoned on public property, ~~[$50.]~~ *$100.*

3. Deputy sheriffs acting as constables are not entitled to retain for their own use any fees collected by them, but the fees must be paid into the county treasury on or before the fifth working day of the month next succeeding the month in which the fees were collected.

4. Constables shall, on or before the fifth working day of each month, account for and pay to the county treasurer all fees collected during the preceding month, except fees which may be retained as compensation.

Sec. 3. NRS 482.255 is hereby amended to read as follows:

482.255 1. Upon receipt of a certificate of registration, the owner shall place it or a legible copy in the vehicle for which it is issued and keep it in the vehicle. If the vehicle is a motorcycle, trailer or semitrailer, he shall carry the certificate in the tool bag or other convenient receptacle attached to the vehicle.

2. The owner or operator of a motor vehicle shall, upon demand, surrender the certificate of registration or the copy for examination to any peace officer, *including a constable, or a* justice of the peace or deputy of the Department.

3. No person charged with violating this section may be convicted if he produces in court a certificate of registration which was previously issued to him and was valid at the time of the demand.

Sec. 4. NRS 482.385 is hereby amended to read as follows:

482.385 1. Except as otherwise provided in subsection ~~[4]~~ *5* and NRS 482.390, a nonresident owner of a vehicle of a type subject to registration pursuant to the provisions of this chapter, owning any vehicle which has been registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in this State has displayed upon it the registration license plate issued for the vehicle in the place of residence of the owner, may operate or permit the operation of the vehicle within this State without its registration in this State pursuant to the provisions of this chapter and without the payment of any registration fees to this State.

2. This section does not:

(a) Prohibit the use of manufacturers', distributors' or dealers' license plates issued by any state or country by any nonresident in the operation of any vehicle on the public highways of this State.

(b) Require registration of vehicles of a type subject to registration pursuant to the provisions of this chapter operated by nonresident common motor carriers of persons or property, contract motor carriers of persons or property, or private motor carriers of property as stated in NRS 482.390.

(c) Require registration of a vehicle operated by a border state employee.

3. When a person, formerly a nonresident, becomes a resident of this State, he shall:

(a) Within 60 days after becoming a resident; or

(b) At the time he obtains his driver's license,

➥ whichever occurs earlier, apply for the registration of each vehicle he owns which is operated in this State. When a person, formerly a nonresident, applies for a driver's license in this State, the Department shall inform the person of the requirements imposed by this subsection and of the penalties that may be imposed for failure to comply with the provisions of this subsection. A citation may be issued pursuant to this subsection only if the violation is discovered when the vehicle is halted or its driver arrested for another alleged violation or offense. ~~[A person who violates the provisions of this subsection is guilty of a misdemeanor and shall be punished by a fine of not less than $250 nor more than $500 and such fine is in addition to any fine or penalty imposed for the other alleged violation or offense for which the vehicle was halted or its driver arrested. In addition, the]~~ *The* Department shall maintain or cause to be maintained a list or other record of persons who fail to comply with the provisions of this subsection and shall, at least once each month, provide a copy of that list or record to the Department of Public Safety.

4. *A person who violates the provisions of subsection 3 is guilty of a misdemeanor and, except as otherwise provided in this subsection, shall be punished by a fine of $1,000. The fine imposed pursuant to this subsection is in addition to any fine or penalty imposed for the other alleged violation or offense for which the vehicle was halted or its driver arrested pursuant to subsection 3. The fine imposed pursuant to this subsection may be reduced to not less than $200 if the person presents evidence at the time of his hearing that he has registered the vehicle pursuant to this chapter.*

*5.* Any resident operating upon a highway of this State a motor vehicle which is owned by a nonresident and which is furnished to the resident operator for his continuous use within this State, shall cause that vehicle to be registered within 60 days after beginning its operation within this State.

~~[5.]~~ *6.* A person registering a vehicle pursuant to the provisions of subsection 3, ~~[4]~~ *5* or ~~[6]~~ *7* or pursuant to NRS 482.390:

(a) Must be assessed the registration fees and governmental services tax, as required by the provisions of this chapter and chapter 371 of NRS; and

(b) Must not be allowed credit on those taxes and fees for the unused months of his previous registration.

~~[6.]~~ *7.* If a vehicle is used in this State for a gainful purpose, the owner shall immediately apply to the Department for registration, except as otherwise provided in NRS 482.390, 482.395 and 706.801 to 706.861, inclusive.

~~[7.]~~ *8.* An owner registering a vehicle pursuant to the provisions of this section shall surrender the existing nonresident license plates and registration certificates to the Department for cancellation.

~~[8.]~~ *9.* A vehicle may be cited for a violation of this section regardless of whether it is in operation or is parked on a highway, in a public parking lot or on private property which is open to the public if, after communicating with the owner or operator of the vehicle, the peace officer issuing the citation determines that:

(a) The owner of the vehicle is a resident of this State; or

(b) The vehicle is used in this State for a gainful purpose.

➥ *As used in this subsection, "peace officer" includes a constable.*

Senator Coffin moved that the Senate do not concur in the Assembly amendments to Senate Bill No. 218.

Remarks by Senator Coffin.

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

Thank you, Mr. President. One of the amendments is not so objectionable, but we need to reach some sort of agreement on how to proceed with the Assembly. The other amendment is disagreeable. We need to see if we can convince the Assembly members to recede from the amendment.

Motion carried.

Bill ordered transmitted to the Assembly.

REMARKS FROM THE FLOOR

Senator Coffin stated that he would like the record to reflect that he voted "no" on Senate Bill No. 160 and also voted "no" on Assembly amendment No. 675.

UNFINISHED BUSINESS

RECEDE FROM SENATE AMENDMENTS

Senator Woodhouse moved that the Senate do not recede from its action on Assembly Bill No. 463, that a conference be requested, and that Mr. President appoint a Conference Committee consisting of three members to meet with a like committee of the Assembly.

Remarks by Senator Woodhouse.

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

Thank you Mr. President. We need to work out some language differences with the Assembly. There was a misunderstanding, not in our House, but based on the emails I have been receiving, we need to sit down and work it out.

Motion carried.

Bill ordered transmitted to the Assembly.

APPOINTMENT OF CONFERENCE COMMITTEES

President Krolicki appointed Senators Wiener, Woodhouse and Hardy as a Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 463.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Horsford moved to hold Committee of the Whole on Friday, May 22, 2009, at 9 a.m.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 8, 100, 121, 165, 172, 186, 266, 268, 339, 340, 361, 362, 365, 377, 414; Senate Joint Resolution No. 1; ; Assembly Bills Nos. 16, 26, 56, 89, 100, 109, 129, 154, 165, 179, 191, 192, 193, 199, 204, 208, 220, 233, 251, 263, 267, 274, 307, 326, 333, 348, 402, 414, 446, 487, 493, 530, 531.

REMARKS FROM THE FLOOR

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

Last night, the Senate Committee on Taxation had its end-of-Session dinner. We enjoyed the few minutes we had, and it was a touching moment. I received many gifts, and we exchanged many gifts.

Then, something unusual happened last night. I was given a touching gift by my secretary, Linda Gentry. It was something she discovered at an estate sale. It was a baseball which was signed by all of the Senators in 1993, after we had won the softball game against the Assembly. We were curious, and as we gathered around looking at the signatures, I asked where she had gotten it. She told me that the ball came from Mavis Scarff's estate sale.

Mavis was our long-time secretary for the Committee on Taxation for Senator McGinness. She had also been the secretary for the Committee on Legislative Affairs and Operations which conducted the baseball game in 1993. We gave this ball to Mavis. I did not know she had passed away. It was a moment of sadness for me amidst all of the gladness. We will miss her smiling Mona Lisa face on our Senate Floor forever. When we adjourn this evening, I would like to do so in honor of Mavis Scarff.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Hardy, the privilege of the floor of the Senate Chamber for this day was extended to the following students and chaperones from the Hummel Elementary School: Sarahi Aguiar, Justin Antipuesto, Hannah Bertinetti, Chronica Cabral, Kiana Campbell, Alyssa Corso, Sarah Galera, Jalen Holmes, Samuel McCumby, Angelina Reyes, Dalia Robinson, Brian Romo, Bernard Sanchez, Maria Tafoya, McKenna Thueson, Zjazel Villegas, Kelsea Claveria, Billy Rossi, Devin Pelletier, Dominique Moorman, Alex Echeverria, Keoki Casey, Hunter Andrews, Elsie Evans, Kaitlin Huddle, Brandon Fuka, Gabriel Medina, Sinjin Allan, Matheus DaSilva, Troi Hollimon, Jeremy Turangan, Preston Warren, Sayanna Roy, Art-Kristian Barit; chaperones: Christina Eagar, Helen Antipuesto, Enid Corso, Teresa McCumby, Dian Campbell, Kimberly Welch, Anthony Davila, Diane Rossi, Everett Pelletier, Tonia Moorman, Wendy Rodriguez-Echeverria and Selin Babiain.

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to Andrea Lynch and Val Hart.

On request of Senator Woodhouse, the privilege of the floor of the Senate Chamber for this day was extended to the following students and chaperones from the Sandy Milller Elementary School: Lourdes Esquivel, Natalie Salgado, Brittany Mayo, Katherine Garrison, Sasha Palmer, Adrianna Amarillas, Elisa Alvarez, Vanelly Becera, Jordan Cosselman, Hannah Ariesen-Fry, Rhiannon Campbell, Cassandra Rodgers, India Rose Hill, Simone Reese, Gabriela Weiss, Liliana Marrero, Jasmine Rivera, Angelica Ayala, Jerrika Scott, Jessica Carter, Riley Kenerly, Ayla Gelsinger, Raven Thompson, Deja Davis, Virginia Virula, Paola Salazar, Cassandra Bueno, Marlene Bonilla, Ingrid Tobar, Natalie Mejia, Ralaysia White, Carmen Bushorn, Hope Young, Johanna Guerro, Genevieve Velez, Bailey Tower, Norma Tolentino, Dulce Maria Solian, Emily Solis-Diaz, Chloe Hartman, Brenda Peralta, Britni Perkins, Alexis Nehls, Paris Godfrey, Brittany Jackson, Alexis Robinson, Katy McBrayer, Carlos Orozco, Enrique DeLaCruz, Salvador Molina, Sawyer Pearson, Nick Stephenson, Sergio Rubio, Jalen Pitts, Victor Casillas, Alfredo Esquivel, Jesus Cepeda, Jorge Espinoza, Nevic Perkins, Adriel Roncal, Jeffrey Gonzalez, Ulises Cabrera, Rafael Gaucin, Leonardo Lopez, Carlos Hernandez, Helaman Song, Jaegar McDowell, James Larson, Jimmie Anderson, Juan Romero, Miguel Mireles, Jesus Murillo, Rigoberto Salazar, Kinnon McPeak, Kalvin Major, Spencer Leon, Thomas Sanders, Rene' Morales-Marenco, Marcos Donis, Juan Moreno, Raul Rodriguuez, Serjio Sacasas, Kevin Cobian, Andrew Olivares, Eber Basilio, Emmanuel Lozano, Alfred Morales; chaperones: Isela Esquivel, Evelyn Hernandez, Brenda Pearson, Maria Fausto, Raena McDowell, Helen McPeak, Monica Cosselman, Rosie Campbell, Gwendolyn Godfrey, Mona Robinson, Bridgett Scott, Kathy Kenerly, Philana Hooker, Maria Diaz-Ibarra, Melinda Sacasas, Isias Lozano Jr., Juan Moreno, Juan Roncal, Jorge Espinoza, Rene' Moralez-Perez, Michael Blackmon, Ventura Esquivel, Spencer Larson, Barbara Misday, Joe Barazza, Cydnie Jorgenson, Elizabeth Giles, Sharon Pearson, Theodore Small, Linda Arnone, Anne Downing and Sandy Miller.

Senator Horsford moved that the Senate adjourn until Friday, May 22, 2009, at 9 a.m. and that it do so in memory of former Senate Attaché, Mavis Scarff, as requested by Senator Coffin.

Motion carried.

Senate adjourned at 2:30 a.m.

Approved: BRIAN K. KROLICKI
*President of the Senate*

Attest: CLAIRE J. CLIFT
*Secretary of the Senate*