

MEMBERS PRESENT: Chairman Dini
Vice Chairman Schofield
Mr. Craddock
Mr. DuBois
Mr. Jeffrey
Mr. May
Mr. Mello
Mr. Nicholas
Mr. Polish
Mr. Prengaman
Mr. Redelsperger

MEMBERS ABSENT: None.

GUESTS: Please refer to the guest list attached to the minutes of this meeting.

Chairman Dini called the meeting to order at 8:00 A.M. The first bill to be considered is AB-169. Mr. Scott Miller, from the Nevada State Museum was the first speaker. He indicated that this bill was not requested by the department and he was sure it was not requested by Assistant Director Peter Morrows. The bill purportedly provides that the assistant director could seek other gainful employment other than his employment as assistant director. The provision of the statutes specifically relating to the appointment of assistant directors is NRS 232.055, rather than 232.139. NRS 232.139 pertains to assistants and deputies within the divisions of the departments. In my view, the summary of the bill is inconsistent with the bill as written with what it purportedly intends to do. It is not sponsored by the department.

No action was taken on AB-169.

The next bill was SB-100 and Mr. Scott Miller testified against the bill. He said that he does not understand what the bill really does accomplish except restate what already exists in the statute. What the state museum is attempting to do with the personnel of the Lost City Museum is to place all members of the staff in the classified system. NRS 381.280 presently states that they should all be in the unclassified system. When we inherited Lost City in 1979, two of the people on staff were at that time in the classified system. We felt for an agency that small, there was no reason why they should all be maintained in the unclassified as appointed people. So, we proceeded to start the process of placing them in the classified system. This bill essentially states again that they should stay in the unclassified system and we would like to stop that, if possible.

Mr. Mello asked if someone is concerned that they are going to lose their job.

Mr. Miller answered that that was not the problem. For about five years, the buildings and grounds division had placed two of the members in the classified system and no one caught it. We are attempting to place the curator's position in the classified system and this bill would maintain the existing statute as it is.

Mr. Jeffrey stated that at the present time, the law states that they are all in the classified service.

Mr. Miller answered that this is correct, but they are not as a point of fact.

Mr. Jeffrey said that if you want to place them in a classified service, and I agree they should be, then we need to change the law.

Mr. Miller stated that they had addressed a letter to the Senate committee dealing with this and indicating that we wanted NRS 381.280 either amended or deleted entirely and apparently that letter bore no weight. I was instructed to go to my local assemblyman and have a piece of legislation drafted and Mr. Glover indicated that he would look into the matter.

Mr. Glover testified that he wished to have the committee hold AB-169 for any further action, seeing how that position is now being deleted out of the budget. Mr. Mello moved for an indefinite postponement of AB-169. Seconded by Mr. Schofield. Motion carried.

The next bill to be discussed is AB-146. Mr. Dini reviewed the bill which put together a method whereby the legislative commission and the counsel bureau could review rules and regulations passed by the agencies for legislative intent. We have been fairly successful in getting the agencies to revise any regulation which we felt did not comply with legislative intent. This bill goes one step farther in being able to veto administrative rules or regulations. I think it is time that we restore the power of the legislature in being the absolute source of the laws under which this state operates and this is the next step in seeing an orderly process of the Legislature taking command again. He indicated that this does not deal with appointees.

Mr. Prengaman voiced his concern over more power being concentrated in the hands of the legislative commission. I don't believe in little legislatures. This is the big one, right here, and as time goes on, there is more and more power concentrated in their hands.

Mr. Dini stated that until you have annual sessions that is what you have to rely on some group within the Legislature to handle the day to day business. You may be right in that that and the interim finance are pretty powerful committees. I think you will find that there is quite an involvement by the legislature between sessions which they didn't have years ago. It is better for the legislature to have that involvement to keep everybody's hands in the process. I think it is working well. A few years ago, we were having extreme problems with some various agencies cranking them up by the carload and not following legislative intent and grabbing a lot of power away from the legislature, beyond what we had given them the power to do and we had no method of holding on to those except by repealing that rule and regulation at the next session of the legislature. Section 4 provides that the legislative commission may provide for its early review of a regulation after the agency has given notice of a hearing on a regulation, but before the hearing is held.

Mr. Dini then asked for some testimony against the bill.

Mr. Donald Klask, Chief Deputy for the Civil Division of the Attorney General's office testified in opposition to AB-146. His testimony is attached hereto as EXHIBIT A and made a part of these minutes.

Mr. Dini stated that when we passed 233B in 1967, I think we gave away a lot of our power to the administrative agencies. I think that the legislature must reestablish itself as the organization that does the law making. Presently, the Nevada executive branch and the judicial system are over-riding the legislative branch of government.

Mr. Klask stated that if that is the position you want to take, the way you do it is you abolish rule regulation and stop giving power to the branches to make regulations. But once you give them that power, it is an executive function and the whole purpose of the legislature is not to run the executive branch, but to legislate. That is our position.

Mr. Dini stated that the reason we passed 233B originally was because we wanted annual sessions and it was very convenient to allow the agencies to do this between sessions.

Mr. Klask said that the whole purpose of separation of powers and checks and balances is to set up this tension and you can't always get what you want or have complete agreement. Another point is that you don't make provision in the law for what happens when you sent it back to the agency and the agency doesn't revise it. If the legislative commission objects to

a regulation, the agency may revise it and return it to the director upon receipt of the revised regulation and the director shall circulate it and if there is no objection, then he files it; if there is an objection, then the commission may suspend it. But you don't provide for what happens if the agency says they are not going to revise it.

Mr. May asked if he had any specific recommendations on how we might change this and make it more powerful and more legal with regard to the separation of powers.

Mr. Klask said that we can live with the law the way it is because the legislative commission operates as an advisory body. That way it does not infringe upon the authority of the executive branch to actually promulgate regulations.

Mr. Jack Kenny, representing the Southern Nevada Home Builders testified in favor of the bill.

This concluded the testimony on AB-146.

The next bill to be discussed is SB-171.

Senator Jim Kosinski stated that he would like to use the bill as a vehicle to present to the committee the results of the legislative interim subcommittee which dealt with the Sunset Review Process. It was a subcommittee to deal with each of the three agencies that were sunsetted, the Real Estate Division, the Bureau of Community Health Services and the Racing Commission, as well as to deal with the sunset process itself. SB-171 revises the criteria to be used in the Sunset Review Process. SB-232, before the Senate Government Affairs Committee, selects the next group of agencies which might be chosen to be subjected to the Process. The Sunset Review Process basically is an action forcing effort by government to increase accountability on the part of the executive and the legislative branches of government through forced evaluation of existing agencies and programs within those agencies. A pilot performance audit of a portion of the Real Estate Division was conducted. The results are shown on Page 5 of the Sunset Report.

Senator Kosinski continued by saying that the Process could serve a need in an oversight process. The indepth review provides an opportunity for the legislators to educate themselves as to how the agencies and programs are being operated and also gives a unique opportunity for some of the agency directors to get involved in some of their programs, especially some of the newer directors. The subcommittee made fifty-eight recommendations dealing with individual agencies. We divided the criteria into

five groups dealing with questions of need, efficiency, effectiveness, regulation review and forms and reports review. The basic purpose of the review should be to insure that the regulation or programs of an agency are not duplicated by other branches of government or by the private sector. The subcommittee believed that the regulatory demands of government should be minimal to provide the minimal needs for protection of the public. We found that there were no expressions of legislative goals or objectives for an agency. Included is a question for the review of forms, reports and record keeping to see whether or not those forms and reports are necessary and to see if there is any duplication in the agency. I believe that there is no doubt that the Sunset Review Process makes agencies more sensitive to their own internal operation because they would know in that process that they are going to be reviewed and they know when. We have recommended that our Fiscal Analyst Division continue to be used if the legislature chooses to continue the Sunset Review Process and that a member of that staff be designated as the person to continue this particular process. The subcommittee did believe that our time might be better allocated doing after agencies like the Insurance Division and the financial regulatory agencies. However, we were concerned about the added amount of resources that would be required to go into those agencies and it might be better for the Process to begin going through the various vocational boards and commissions. In many cases, these vocational and commission boards have been on the books ten, twenty, thirty or more years without anyone doing a systematic review of their operation. We believe that the report should be available to the executive branches of government early in the year, the even-numbered year immediately preceding the legislative session. I might add, that many of the recommendations of the subcommittee were also picked up by the Warren-King Management Task Force Report in their review of the operation of the Real Estate Division. We believe further that in an effort for the subcommittee to make its report in a timely fashion, the report should be ready by July 1 of the even numbered year, starting it on July 1 after the close of the session. We also felt that the best time to cut down on the numbers of boards and commissions is not after they have been operating for ten, twenty or thirty years, but prior to the time that they are initially passed by the legislature. Presently, SB-144 is before your Health and Welfare Committee, which reinstates the Bureau of Community Health Services. SB-193 is presently before the Senate Commerce Committee that reinstates the Real Estate Division and Commission and I think it is SB-183 which reinstates the Racing Commission and is presently before the Judiciary Committee.

The full test and testimony by Senator Kosinski is attached hereto as EXHIBIT B and made a part of these minutes.

Mr. Melvin Brunetti, attorney for the Nevada State Board of Accountancy testified that his group endorses and approves of the Sunset legislation. However, the questions that arise that are causing problems is how is the Sunset legislation going to be applied and who applies it. Apparently, there is some philosophy on behalf of the Review that the people being reviewed are people who pay their own licensing and substantiate and support their own agencies, rather than a state agency using public funds. We are curious as to how the occupations are picked out. SB-232 does away not only with the board of accounts in the automatic termination in two years, but it does away with all references to accounts, reports, thereby at a stroke of a pen destroying in two years, twenty years' of standards which have been established under the Nevada Accountancy Act. We have a comprehensive amendment of the statute that is under draft right now and will be presented very shortly. As far as the criteria is concerned on SB-171, we wholeheartedly support it. In the case of accountancy which is a basis of all financial stability, instead of saying we hereby automatically terminate you, and have a negative approach as to accountancy professional standards, as to the financial soundness of state agencies and business, you should go through the criteria and determine whether the job is being done. Blanket destruction by what appears to be in SB-232 would create a negative approach to the review. We have been asked by various agencies to review their accounting functions and determine whether their accounting experience gained in that agency qualifies them for a CPA certificate, and we have a continuing on-going study to determine how we can upgrade them.

We agree with AB-171 and we think it is very sound. We disagree with automatic termination of SB-232 and the negative approach it puts on an agency such as the Board of Accountancy.

Mr. John Rhodes, president of the Nevada State Board of Accountancy testified that there were many sources of authoritative literature for his profession. For the state of Nevada, there are regulations which are issued which provide definitions, such as those you are referring to. The American Institute of Certified Public Accountants which provides the pivot position for our profession, nationally, has extensive literature with respect to municipal accounting. There is an ongoing attempt, not only with municipal accounting, but in all other areas to bring them into concert. That which appears to be best on a national basis to provide a uniformity amount our various states and other jurisdictions, may not be what the state of Nevada wishes any more than it may be what the state of Alaska

wishes, or any other state. With respect to the enterprise fund, I really thought we had a fairly clean definition of an enterprise fund within the state of Nevada. The state Board of Accountancy has no authority with respect to those regulations issued by the appropriate branches of the state government with respect to local government, audit reports, accounting methods, it simply does not have a standing other than members of our profession are provided to certain advisory committees.

Mr. Mello asked if his group set the standards or does your national association set the standards for qualification for the CPA certificates.

Mr. Rhodes answered that the State Board of Accountancy, State of Nevada, sets the standards for the state applicants.

Mr. Mello stated that it is very wise that we start looking at the regulations and rules that are set forth by certain boards, such as yours. It is my understanding that many of these boards have set such qualifications that many people who graduate today in one field cannot take the examination because they do not have the necessary hours set forth, let's say by your board. In many cases, the board is creating closed shops to where few people that graduate today can actually go into that profession because of the actions of boards such as yours.

Mr. Rhodes stated that the statute provides for the licensing for accountants and for several elements in order for them to be licensed. There are accountants who graduate from UNR or other accredited schools receiving a minor in either Arts or Sciences and a major in accounting. They cannot become certified public accountants until they do two things. They must pass the examination which is administered by a division of the American Institute. Secondly, the statute, not the State Board of Accountancy, requires two years of experience in public practice working for a certified public accountant or a public accountant. It provides additionally that those who do not work for public accountants or certified public accountants, but work in an accounting area, may be licensed with respect to that experience, if it can be shown the experience is equivalent.

Mr. May stated that he got the impression that because your's is such a precise profession and apparently very clean, both in its professional nature and public acceptance, that you should be exempt from the provisions of the Sunset Review. According to this report, you have processed 878 applications, certified 145, 81 by examination and 41 by reciprocity. This appears to be an extremely low figure.

Mr. Rhodes stated that we are in favor of the Sunset Review. We have absolutely no question in our mind that we are complying. Regarding the statistics, there have been no applicants who have passed the examination and have obtained their experience who have been denied licenses. The statistics are not within the control of the board. The number of persons moving from without the state and seeking a license by reciprocity dictate to us how many applications there will be. The number of persons who are successful in passing the examination, or completing their education at the University, or both, dictate the number of applicants we have.

Mr. Brunetti wanted to clear up the question about whether or not the board is for or against the Sunset Review. We are not against it. It was the application through SB-232B which is a whole different bill which you are not hearing today. The other thing that Mr. Mello brought up are the standards for certification. They are set by statute, not by the board and by regulation. The only thing the board does, as far as the test is concerned which is specified in the statute, together with education and time of experience, is to try to determine what experience is and experience is one of those things that has to be qualified. As far as the standards the legislature sets the standards of what it takes to be a CPA. The standards were set in 1960 by the legislature and they have never changed.

Mr. Rhodes indicated that the various segments of business and government insist that their accountants be certified. We have tried to reach something that is fair across the board. We have made studies with respect to our own profession, the gaming auditors, the legislative auditors, the internal revenue service agents' work. We have made parallels of these. In our process, we concluded that unless one had at least 500 hours, they could not have reached a point in anyone's experience of incharging a job. That is, having stem to stern responsibility for the examination of a set of financial statements for some enterprise, either commercial or municipal. And until one had reached that kind of level, one could not call them qualified to cross the threshold into licensure.

Mr. Mello asked what it was before the 500 hours.

Mr. Rhodes answered that it was, for all practical purposes, close to that, but we were relying upon sworn statements of licensees and when we found out through several instances that the licensees on sworn statements were not telling us the truth, we determined that we were going to have to add a layer to protect the public. We had instances of certifications as to the experience of persons when in fact they had even performed one hour of auditing and were in fact providing tax services. We believe that the board had the responsibility, statutorily, to react. The reaction led ultimately to this number of 500 hours which we believe will enable a person to cross the threshold. That does not shut out the person with a lesser amount

of hours. Any applicant can file his application and if he can show to us that he has achieved the threshold level with a lesser number of hours and can convince a majority of the board, he will get his license. There have been such instances. We are not out to cause grief for the College of Business. I had dialogue with every professor there and with the Dean of that college and know precisely where they stand. It is unfortunate that our state is not a manufacturing center where virtually every other business requires certified financial statements. The largest source in one area of certified audits rests with the requirement that the state levies upon its agencies and local governments. We have acted with great care and communicated with any and all who have come to us, but I will say candidly that we have a continuing impasse with a licensed tax practitioner who is a certified public accountant who has elected to operate a tax practice and wishes to hire persons and wants to license persons but provides them with no auditing experience because the statute doesn't provide that. I don't think that it is the intent of the legislature to extend the umbrella of the certified public accountant designation to people, such as employees of H & R Block, tax preparers, who work for about three or four months a year, or those who provide tax services like Sears, Montgomery Ward, or those whose best training would lead them to be bookkeepers, but identify themselves as tax preparers. He indicated that the Nevada State Board of Accountancy is in favor of SB-171. It does have a deficiency is that it does not provide an identity of those boards which are to be so reviewed. One important element must be identified early with respect to the selection of those agencies which need to be reviewed. We cannot see how the interfacing of the profession regulated by a board such as accountants is evaluated to determine what of attention should be paid to it, without an evaluation of the board. SB-232, if it should find the State Board of Accountancy deficient, failing to meet the criteria, provides for its demise, is not serving the public. What needs to be done is to remedy the board because the profession must be standing in place in order for all of these other functions to be properly attended to, and the public to be served.

Mr. Albert Cartledge, a certified public account from the firm of Cartledge, Shoolroy & Co. in Reno, testified that he hoped the committee would adopt SB-171. He said that the testimony of the last half hour cries out the need for Sunset Review. Our national organization, the American Institute of Certified Public Accountants quickly recognized the need for a review process, which I have with me. It is a Sunset Handbook published by the American Institute of Certified Public Accountants in 1978.

Ms. Esther Nicholson of the League of Women Voters testified that the League has supported the concept of the Sunset Review since 1977 when it first came before the legislature. We ended up opposing the bill because it was so comprehensive it seemed to us that it was absolutely beyond the realm of possibility that adequate review and evaluation could be done on the several hundred agencies that were numbered in that bill. In 1977, we opposed the bill that included 105 agencies, we supported Assemblywoman Wagner's bill of thirty agencies. We ended up supporting the pilot concept with only the three. We feel that the evaluation and the review of the three pilot agencies was very comprehensive and that it resulted in very well considered recommendations. We hope that your committee can give it a 'do pass'. We hope that you will come to the conclusion that the Sunset Process itself should be continued in a carefully delineated number of agencies for each of the next four interim sessions. Frankly, we do not understand why any of the agencies that will come before you for consideration in SB-232 which will be considered this afternoon in the Senate should be so afraid of the Sunset Process.

Mr. Jack Kenny, representing the Southern Nevada Home Builders, stated that there is nothing in the bill that talks about a time line within which an agency has to respond to the review board and as a builder who works under deadlines, I believe it should be covered. It is not specifically enumerated; perhaps your legal counsel can tell you. But it doesn't say in here that a agency is to respond back to you within a certain period of time. Line 28, Page 2, says "have the regulations of state and federal law". I don't know what the relationship to federal law has as a criteria for a lot of agencies that don't get federal money. I am a state's rights man and I would hate to see that go through in final form.

Mr. Dini asked if he thought the whole section should be taken out.

Mr. Kenny answered that you should have the regulations in the state but if you intermingle that with the federal right to keep changing, we have no control over it. You are opening a can of worm. Mr. Kenny did not think the whole section should come out.

Mr. Dini indicated that the testimony was concluded on SB-171.

The committee took a 5 minute recess.

The committee discussed SB 100 after returning from the 5 minute recess.

Mr. Daykin stated that this bill was a reviser's bill to resolve what was presently a conflict in the law whereby NRS 381.280 which is not in this bill provides that the curator of the Lost City

Museum is and two of his employees are in the unclassified service that I say is by virtue of 381.280. Then, as the law presently reads except for the director, which is the director of the state museum, and two assistants, all employees are in the classified service of the state and by your action last session the Lost City Museum was placed within the State Museum. In order to avoid that conflict, we propose to amend, except as provided in 381.280, all employees are, which would leave these people exactly where the 1979 session left them without any conflict in the statutes. If, as a matter of policy, you would like to put them in the classified service, then we would change this bill to leave 381.120 as it is and we would change 381.280. That is your choice. All I did was get rid of the conflict and the way I did it was based upon the action of the 1979 session. My deputy incidentally when we preparing the thing called Mr. Perkins and he said "the 1979 legislature turned down his request to be classified." I don't have any personal knowledge of that, I did not research.

Mr. Dini asked if they were classified.

Mr. Daykin indicated that they were unclassified according to law and I don't know how they are being treated. Law and the practice of the personnel division are sometimes different. Mr. Daykin indicated that he had found that to be so in the past.

Mr. Daykin indicated that if the committee wanted to change the action of the last session, of course you may do it by amendment of this bill. That is why I put these things in separately and not as a bulk reviser's bill.

Mr. Polish asked if this bill puts them in state classifications.

Mr. Daykin indicated that this bill keeps the curator of the Lost City Museum and two of his employees down there, confirms that they are in the unclassified service as 381.280 now provides. It just eliminates the conflict between two sections. If you want to change them, then we have to do something quite different.

Mr. Polish indicated that they had had this problem in the rural counties and other places outside Carson. Mr. Polish indicated that they had the highway department, the girls' school and a lot of others.

Mr. Daykin stated that he cannot explain to Mr. Polish why the 1979 session acted as it did, I am only giving full effect to what they did.

Mr. Prengaman asked if this was not a policy question, but just removes a conflict between two statutes.

Mr. Daykin indicated that that was correct.

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Mr. Dini indicated that the committee could make it a policy question.

Mr. Prengaman stated that he did not want to do that. He indicated that he just wanted to be clear.

Mr. Dini stated that with the indulgence of the committee he would hold SB 171 for a few days.

Mr. Dini indicated he would like to take action on SB 100.

Mr. Craddock moved for a DO PASS on SB 100 which was seconded by Mr. Schofield. The motion carried unanimously.

Mr. Dini then stated that he thought AB 146 could be amended.

Mr. Dini asked if the committee had any appetite to process AB 146?

Mr. Dini indicated that the committee would work on AB 146 for a few days.

Mr. Dini then indicated that the committee should review BDR 20-¹⁰⁹⁵~~195~~* for committee introduction. Mr. Dini stated that this eliminates the requirements to record certificates of birth. Mr. May moved for a committee introduction of BDR 20-195 which was seconded by Mr. Schofield. The motion carried unanimously.

Mr. Dini stated that he believed the discussion on SB 171 was good and that he personally had his own concept about sunset legislation.

Mr. Dini asked if the committee had any further comments.

There being no further business to come before the meeting, the meeting adjourned at 10:52 A.M.

Respectfully submitted,

Barbara Gomez
Barbara Gomez
Assembly Attache

* AB 290

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Date March 4, 1981

PLEASE PRINT

PLEASE PRINT YOUR NAME	PLEASE PRINT REPRESENTING:	I WISH TO SPEAK		BILL NO.
		FOR	AGAINST	
✓ DON KLAEK	ATTORNEY GENERAL		✓	AB 146
✓ MELVIN BRUNETTI	NEVADA STATE BOARD OF ACCOUNTANCY			SB 171
✓ SCOTT MILLER	Nevada State Museum		✓	SB 100
✓ JOHN RHODES	NEVADA STATE BOARD OF ACCOUNTANCY	✓		SB 171
PAUL CONER	HEALTH DIVISION	✓		SB 171
WILLIAM SEYER	NEV. STATE BOARD OF ACCOUNTANCY	✓		SB 171
WILLIAM SEYER	NEV. STATE BOARD OF ACCOUNTANCY			
✓ ALBERT CANTIDY	NEV. SOC OF CPAs	✓		SB 171

PLEASE PRINT

ASSEMBLY

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS.....
Wednesday
Date March 4, 1981..... Time 8:00 A.M..... Room 214.....

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 146	Provides for legislative veto of administrative regulations.	
AB 169	Permits deputy or chief assistant in department of conservation and natural resources to pursue certain additional employment.	
SB 100	Removes statutory conflict concerning classifications of personnel of Lost City museum.	
SB 171	Revises criteria used in legislative review of executive agencies.	

*Please do not ask for counsel unless necessary.



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RICHARD H. BRYAN
ATTORNEY GENERAL

LARRY D. STRUVE
CHIEF DEPUTY ATTORNEY GENERAL

February 24, 1981

The Honorable Joseph E. Dini, Jr.
Chairman, Assembly Committee on
Government Affairs
Legislative Building
Carson City, NV 89710

Re: AB 146

Dear Mr. Dini:

As you are no doubt aware, the present law in Chapter 233B of NRS pertaining to the promulgation of administrative rules and regulations provides that such regulations must be sent to the Legislative Commission for review. The law also provides that if the Legislative Commission finds such rules and regulations objectionable it may relay its objections to the executive agency promulgating the rules and regulations for its comment or change. However, if the executive agency declines to change the rules in line with the Legislative Commission's objection, the law provides that the Executive Director of the Legislative Commission must still file the proposed rules and regulations with the Secretary of State, at which time the regulations become effective. Later, of course, the rule or regulation that has been objected to is laid before the Legislature at its next session and the Legislature may take such action as it "may deem to be proper." Presumably, this means amending and clarifying the underlying law so as to effectively require the agency to later promulgate rules and regulations in line with the Legislature's intention as expressed in the later legislation.

However, AB 146 would amend this current law so as to provide that (1) if the Legislative Commission objects to a regulation the agency may revise it, but (2) if a member of the Legislative Commission objects to the revised regulation, the Commission may postpone the filing of the regulation until the next regular session of the Legislature. At that time, the Legislature may, by concurrent resolution, declare that the regulation shall not become effective and

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the Executive Director of the Legislative Commission shall notify the executive agency that the regulation will not be filed and must not be in force. Only if the Legislature does not act by a particular date shall the Executive Director file the regulation and thereby put it into effect.

Unlike the present law in which an agency of the Legislature merely acts as a review and advisory body, with the executive agency continuing to have the authority to promulgate the regulation, AB 146 would enable a legislative agency, i.e., the Legislative Commission, by action of only one of its members, to suspend a proposed rule promulgated by an executive agency and would also authorize the Legislature itself, at a later time, to actually veto the rule which is being proposed by the executive agency.

In the view of this office, AB 146, if enacted into law, would be in violation of Article 3, Section 1 of the Nevada Constitution, which provides as follows:

"The powers of the Government of the State of Nevada shall be divided into three separate departments, --the Legislative,-- the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted."

It should be noted that when the present law permitting the Legislative Commission to merely review proposed regulations was enacted in 1977, the original bill would have permitted the Commission to veto proposed regulations. At that time, then-Chief Deputy Attorney General James H. Thompson appeared before the Legislature to advise it that the proposed law would be unconstitutional as in violation of the separation of powers provision of Article 3, Section 1 of the Nevada Constitution. Because of his testimony, the proposed bill was redrafted into its present provisions and enacted in that form.

Except for the fact that AB 146 would now leave the actual vetoing of the proposed regulation in the hands of the Legislature itself, but nevertheless allowing the Legislative Commission, through the action of only one of its members, to suspend the operation of a proposed regulation, this proposed law has the same constitutional objections as the original proposal of the Legislature in 1977 to allow the Legislative Commission to veto proposed executive agency regulations. In the opinion of this office, AB 146 would

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violate the separation of powers provision of Article 3, Section 1 of the Nevada Constitution by allowing the Legislature to perform both executive and judicial functions.

Although the promulgation of rules and regulations by executive agencies partakes of a legislative nature, rule and regulation making is performed generally by independent regulatory agencies or by some department in the executive branch of government. It has been held that such a rule-making function represents the performance of a governmental duty exercised pursuant to a public law and, consequently, is an administrative function which can only be performed by persons in the executive branch of government. Cf. Buckley v. Valeo, 424 U.S. 1, 140-141 (1976). In other words, when the Legislature permits an executive agency to "flesh out" the terms of a law by rule or regulation making, the executive agency is performing an executive function. Rule or regulation making is an attribute of the administration and enforcement of a statute, which is a duty performed by the executive branch of government. Cf. Buckley v. Valeo, supra, at 141. In this regard, then, rule or regulation making by an executive agency is not performed in aid of legislative authority to legislate. Cf. Buckley v. Valeo, supra, at 141. Therefore, while the Legislature may legislate the enacting law permitting an executive agency to promulgate regulations, the Legislature, under the doctrine of separation of powers, does not have the authority to interfere with the executive function of an executive agency to actually promulgate rules and regulations to implement the legislation. To permit the Legislature to do so would be a violation of Article 3, Section 1 of the Nevada Constitution by permitting the legislative branch of government to exercise a function of the executive branch of government.

In addition, by giving the Legislature the authority to judge the validity and effectiveness of a proposed regulation and permitting the Legislature the authority to abrogate a proposed regulation by declaring it shall not become effective, it would appear that the Legislature is also infringing upon the judicial branch of government. It is the function of the judicial branch, under Article 6, Section 1 of the Nevada Constitution to adjudicate. This includes the power to interpret administrative regulations as to whether such regulations are in conformity with the law. By permitting the Legislature to make such interpretations and to invalidate the proposed executive agency regulations, AB 146 would appear to clearly infringe upon the judicial function of state government.

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For the above reasons, therefore, this office is of the view that AB 146 should not be enacted in its present form as its enactment, in the opinion of this office, would be contrary to the clear provisions of Article 3, Section 1 of the Nevada Constitution. As was stated by the Nevada Supreme Court when it interpreted Article 3, Section 1 in Galloway v. Truesdell, 83 Nev. 13, 18, 22, 422 P.2d 237 (1967), "The division of powers is probably the most important single principle of government declaring and guaranteeing the liberties of the people" and the departments of government should be constantly alert to prevent prohibited encroachments on the powers of each branch of government as even the slightest encroachment may be destructive to our government.

Sincerely,

RICHARD H. BRYAN
Attorney General

By



Donald Klasic
Deputy Attorney General

DK/sb

cc: The Honorable James W. Schofield
The Honorable Robert G. Craddock
The Honorable John E. Jeffrey
The Honorable Paul W. May
The Honorable Donald R. Mello
The Honorable John Polish
The Honorable John D. DuBois
The Honorable David D. Nicholas
The Honorable Paul Prengaman
The Honorable Kenneth K. Redelsperger

SUNSET REVIEW



Bulletin No. 81-21

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

December 1980

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REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 61ST SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Nevada Revised Statutes, Chapter 232B (Chapter 688, 1979), which directs the Legislative Commission to review certain state agencies scheduled for termination by the 60th session of the legislature. This legislation has been commonly referred to as Nevada's "Sunset Law." Agencies scheduled for termination on July 1, 1981, are the Real Estate Division of the Department of Commerce, the Nevada Racing Commission and the Bureau of Community Health Services, a part of the Health Division of the Department of Human Resources.

The Legislative Commission appointed a subcommittee chaired by Senator James N. Kosinski and including Senator William J. Raggio and Assemblymen John E. Jeffrey, John M. Vergiels and Sue Wagner to conduct the required reviews. Members of the subcommittee who have declared potential conflicts as a result of the specific agencies under review are Senator Kosinski and Assemblyman Jeffrey who are licensed real estate agents and Senator Raggio who represents a racing licensee. This report includes recommendations of the subcommittee on the three agencies designated as well as recommendations on the sunset process itself.

The subcommittee wishes to acknowledge the contribution of the management and staff of the Real Estate Division, the Real Estate Advisory Commission, the Department of Commerce, the Nevada Racing Commission, the Health Division, the Department of Human Resources, and also the participation and testimony of representatives of the real estate industry, racing organizations, public health groups and the general public.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
December 1980

* * * * *

LEGISLATIVE COMMISSION

Senator Keith Ashworth, Chairman
Senator Melvin D. Close, Vice Chairman

Senator Richard E. Blakemore
Senator Carl F. Dodge
Senator Lawrence E. Jacobsen
Senator Thomas R.C. Wilson

Assemblyman Robert R. Barengo
Assemblyman Joseph E. Dini, Jr.
Assemblyman Virgil M. Getto
Assemblyman Paul W. May
Assemblyman Robert F. Rusk
Assemblyman Darrell D. Tanner

SUMMARY OF RECOMMENDATIONS

Subcommittee Recommendations on the Sunset Process

Recommendation 1: The Legislature should continue the sunset process in Nevada but limit its application to licensing boards and regulatory laws of the state.

Recommendation 2: The review criteria required by sunset (A.B. 523) should be amended to provide for a more comprehensive review process (Appendix E, BDR 18-331).

Recommendation 3: The Legislative Commission should assign the task of staff review and analysis to the Fiscal Analysis Division.

Recommendation 4: The Legislature should include over four interim periods all regulatory laws of Nevada Revised Statutes Title 54 (Professions, Occupations and Businesses) in the sunset process.

Recommendation 5: Sunset reviews should be conducted only during the interim period between legislative sessions and the Legislative Commission should establish a reasonable time period to complete the reviews.

Recommendation 6: The agency termination feature of sunset should be retained, however, the Legislature should use this feature carefully.

Recommendation 7: Legislative standing committees should take up legislation proposing to continue agencies reviewed under sunset at the earliest possible time each session.

Recommendation 8: The Legislative Counsel Bureau should transmit all sunset recommendations to the appropriate standing committees at each subsequent legislative session so that those committees can determine what progress each agency has made in implementing the recommendations.

Recommendation 9: The Legislative Commission should appoint some members of the sunset subcommittee from the membership of standing committees that normally handle substantive legislation of the agencies designated for sunset.

Recommendation 10: Standing committees of the Legislature should consider using "Questions a Legislator Should Ask" as a guide when considering new requests for occupational licensing legislation.

Subcommittee Recommendations on the Real Estate
Division & Advisory Commission

Recommendation 1: The 1981 Legislature should repeal those provisions of chapter 688, 1979, that terminate the Real Estate Division, Real Estate Advisory Commission and sections of NRS 645 and 119 and continue to regulate real estate practices and certain land sales activities (Appendix F, BDR 54-116).

Recommendation 2: The Legislature consider restructuring the Real Estate Advisory Commission to include one public member (Appendix F, BDR 54-116).

Recommendation 3: The Legislature amend NRS 645.010 and 645.050 to delete the word advisory when applied to the Commission (Appendix F, BDR 54-116).

Recommendation 4: The Legislature amend NRS 645.050 to delete the provision that the Governor must consider a list of nominees from the Nevada Association of Realtors when making appointments to the Advisory Commission (Appendix F, BDR 54-116).

Recommendation 5: The Legislature amend NRS 645 to narrow the scope of duties of the Advisory Commission to promulgating regulations and conducting disciplinary hearings required by law. The Commission's responsibilities to approve who may sit for examinations and final approval of licensees should be given to the Division and the requirement for final Commission approval of education fund expenditures should be deleted. The Commission should maintain an advisory role only in education fund expenditures (Appendix F, BDR 54-116).

Recommendation 6: The Legislature should amend NRS 645.150 to delete specific date requirements for Commission meetings in the Eastern and Western Districts (Appendix F, BDR 54-116).

Recommendation 7: The Legislature should adopt a fee schedule that covers the cost of regulation based on the budget approved for the agency for the next biennium (Appendix F, BDR 54-116).

Recommendation 8: The Division should establish formal goals and objectives for their organization and develop an internal information system which has the capability of measuring program effectiveness.

Recommendation 9: The Division should discontinue depositing fees directly into the education and research account of the ERRF fund. All fees should be deposited in the recovery account and the balance over \$50,000 transferred to the education and research account at the end of the fiscal year pursuant to NRS 645.842.

Recommendation 10: The Division and Advisory Commission should expand the presentation of the Education and Research account in the Executive Budget to disclose the proposed actual uses of the funds for legislative review.

Recommendation 11: A portion of the Education Coordinator position should be funded from the ERRF fund corresponding to the amount of time spent on fund activities or programs (Appendix F, BDR 54-116).

Recommendation 12: The Legislature should amend NRS 645.847 to increase the interest rate required on repayments to the recovery fund as a condition for restitution of the suspended license (Appendix F, BDR 54-116).

Recommendation 13: The Division and Commission should consider refining the educational contract system to specify what courses are required and by inviting proposals on that basis in order to maximize the benefits of the ERRF educational dollars.

Recommendation 14: The Commission should adopt regulations required by NRS 645.575 covering claims of equivalent education and time extensions.

Recommendation 15: The Division should evaluate and recommend regulatory and statutory changes necessary to consolidate the application for examination and application for licensing procedures into a single process. Background investigations should be conducted only for those applicants who successfully pass the exam (Appendix F, BDR 54-116).

Recommendation 16: The Division should consider combining the applications and licensing staffs into one section and consolidating the application for examination and application for licensure forms.

Recommendation 17: The Legislature should enact enabling legislation to allow the Commission the discretion of accepting the successful completion of the uniform portion of the national uniform exam as partially satisfying examination requirements in Nevada (Appendix F, BDR 54-116).

Recommendation 18: The Legislature should enact a statutory requirement that all prospective licensees must have a fingerprint check performed (Appendix F, BDR 54-116).

Recommendation 19: The Legislature should amend NRS 645.410 and 645.420 to extend the time limit for approval or denial of an application for license and for payment of the license fee (Appendix F, BDR 54-116).

Recommendation 20: The Division should establish a written procedures manual for the compliance function.

Recommendation 21: The Division should evaluate the need for the current number of investigators taking into account cyclical trends.

Recommendation 22: The Division should establish an audit plan to insure that personnel are used effectively, develop and utilize an audit program in the performance of audits and prepare and retain audit workpapers for all audits performed.

Recommendation 23: The Division consider expanding the scope of the broker office survey.

Recommendation 24: The Division should expand the explanation on the Statement of Fact to better explain the Division's authority and to better inform the complaining public of the limitations of the Division's authority.

Recommendation 25: The Division should expand its public relations effort to inform the public of the role of the Division and provide information to the public through the complaint process about the recovery fund and how and when a claim may be ordered.

Recommendation 26: The Division should, after consulting with the Consumer Affairs Division, evaluate the need to place vacation licensing under the regulatory authority of NRS 119 and make appropriate recommendations to the 1981 Legislature.

Recommendation 27: The Advisory Commission should consider adopting a rule requiring all brokers to keep their trust fund records up to date.

Recommendation 28: NRS 645.310 should be amended to only require a separate checking account designated as a trust account for each broker that receives trust funds (Appendix F, BDR 54-116).

Recommendation 29: NRS 645.350 should be amended to change the requirement that salesmen must associate with a broker before licensing rather than before taking the examination (Appendix F, BDR 54-116).

Recommendation 30: NRS 645.360, which requires three letters of recommendation for prospective licensees, should be repealed (Appendix F, BDR 54-116).

Recommendation 31: Provisions of NRS 645 should be amended to provide that a written transcript of Commission hearings should only be required if requested by someone and the cost should be borne by the requester (Appendix F, BDR 54-116).

Recommendation 32: NRS 645.540, which requires that the Division prepare and deliver to each licensee a pocket card, be repealed (Appendix F, BDR 54-116).

Recommendation 33: Chapter 645 should be amended to provide that service of process and other required communications upon the Commission may be made at the Real Estate Division in Carson City (Appendix F, BDR 54-116).

Recommendation 34: NRS 645.844 should be amended to delete the requirement that a claimant against the recovery fund must post a bond to guarantee costs should the claim be denied (Appendix F, BDR 54-116).

Recommendation 35: NRS 645.660 should be amended to make it absolutely clear that "a broker has a duty to supervise" his salesmen (Appendix F, BDR 54-116).

Subcommittee Recommendations on the Racing Commission

Recommendation 1: The 1981 Legislature should repeal those provisions of chapter 688, Statutes of Nevada, 1979 (A.B. 523), that terminate the Nevada Racing Commission and NRS Chapter 466 and continue to regulate horse racing, greyhound racing and pari-mutuel wagering at these events (Appendix G, BDR 41-117).

Recommendation 2: The Legislature should update the statutory purpose of the Nevada Racing Act to include "the protection of the general public" and remove "to encourage agriculture" (Appendix G, BDR 41-117).

Recommendation 3: The Legislature should change the statutory qualifications for appointment to the Racing Commission and delete those requirements that serve no useful purpose (Appendix G, BDR 41-117).

Recommendation 4: The Legislature should amend NRS 466 to prohibit members of the Racing Commission from racing their own horses in any Nevada race regulated by the Commission (Appendix G, BDR 41-117).

Recommendation 5: The Legislature should amend NRS 466 to provide for a daily salary of \$40 for Commission members when on Commission business (Appendix G, BDR 41-117).

Recommendation 6: The Legislature should amend NRS 466 to require the Racing Commission to promulgate regulations for racing and pari-mutuel wagering at racing events (Appendix G, BDR 41-117).

Recommendation 7: The Legislature should amend NRS 466 to deposit all revenues received by the Commission in the General Fund and to appropriate sufficient moneys to meet the necessary expenses of the Racing Commission. The Commission should be given the authority to reimburse agricultural associations and to supplement breeders' purses through the budgetary process (Appendix G, BDR 41-117).

Recommendation 8: The Commission should obtain required bond coverage on contract employees handling state moneys and insure blanket state coverage on its own employees.

Recommendation 9: The Legislature should require that the Gaming Control Board provide the Racing Commission with a full report of each licensing investigation as well as a recommendation for approval or denial (Appendix G, BDR 41-117).

Recommendation 10: The Racing Commission should develop background information on occupational licensees and increase the reliability of that information through the National Association of Racing Commissioners' computerized data system or fingerprint checks or both. In addition, when adequate background verification is developed to insure licensing suitability in Nevada, the Commission should consider reciprocity for those licensed in other states with similar requirements.

Recommendation 11: The Commission should institute an audit or verification procedure to insure proper operation of the pari-mutuel and tax payments.

Recommendation 12: The Legislature should amend NRS chapter 466 to provide that all personnel of the Commission, except clerical positions, be in the unclassified state service (Appendix G, BDR 41-117).

Recommendation 13: The subcommittee recommends referring the issue of which agency, the Racing Commission or the Gaming Commission and Control Board, should regulate racing and racing pari-mutuels in Nevada to the Legislative Commission's Subcommittee on the Gaming Industry (S.C.R. 49).

Subcommittee Recommendations on the Bureau of
Community Health Services

Recommendation 1: The Legislature should repeal provisions of chapter 688, Statutes of Nevada, 1979 (A.B. 523), that terminate the Bureau of Community Health Services of the Health Division and prohibit the State Budget Director from including funds for Bureau programs in the Executive Budget in order to continue those services for citizens of the state.

Recommendation 2: The Legislature should adopt specific statutory language for NRS 450B (Emergency Medical Services) establishing public policy and the purpose for regulation of emergency medical services (Appendix H, BDR 40-118).

Recommendation 3: The Division should continue its investigation into fees for services performed for all types of Bureau services.

Recommendation 4: The Legislature should amend NRS 439 (Administration of Public Health) to provide authority for the State Board of Health to establish fees for programs or services of the Division (Appendix H, BDR 40-118).

Recommendation 5: The Health Division should monitor the "aid to counties" program for Clark and Washoe health districts and report to the 1981 Legislature the actual uses of the funds, whether additional federal funds were matched and if the funds caused local governments to exceed their spending limitations or to reduce property tax rates.

Recommendation 6: The Division should reimburse the General Fund for the cost of the physical therapists' services for health facility certification from federal funds for both the current biennium and in the future.

Recommendation 7: The Legislature should amend NRS 441.240 to place grant authority with the Department of Human Resources and Health Division rather than the Board of Health (Appendix H, BDR 40-118).

Recommendation 8: The Bureau should execute formal user agreements with each local agency or ambulance service to guarantee responsible maintenance of all locally assigned equipment purchased under the Fleischmann Foundation Grant for emergency communications.

Recommendation 9: The Bureau should consider changing its standard contract with the Community Colleges from lump sum to a payment of tuition for all noncredit enrollees up to a maximum dollar amount in order to insure maximum effectiveness of limited training dollars.

Recommendation 10: The Bureau should create a mechanical inspection checklist form to be completed every six months by a qualified mechanic for each ambulance licensed by the state.

REPORT OF THE LEGISLATIVE COMMISSION'S
SUBCOMMITTEE FOR SUNSET REVIEW

I. Introduction

The 60th session of the Nevada Legislature, through Assembly Bill No. 523, created a statutory process for the review of certain agencies, programs and laws of the State of Nevada. This process, which became Nevada Revised Statute 232B, is commonly known as "sunset."

Sunset as a concept, was born in Colorado and was developed and promoted by Common Cause. Common Cause defines Sunset "as an action-forcing mechanism designed to increase executive and legislative branch accountability through improved executive and legislative evaluation of programs and agencies."¹ The word sunset evolves from a unique feature of the concept which terminates specified agencies, programs or laws on a date certain unless affirmatively recreated by the Legislature. This feature forces the Legislature to carry out its oversight function and make a decision regarding continuation or termination of the subject agencies or programs. Failure to act changes the status quo and agencies or programs are terminated. Currently, more than 30 states have sunset laws covering varying numbers of agencies and programs.

Nevada's sunset law defines a specific process and sets forth specific criteria for the review of the statutes, agencies or programs set for repeal. This process includes the following major features.

- . The Legislative Commission and Legislative Counsel Bureau shall conduct a review of the need for and efficiency of each agency which is to be terminated.
- . The Legislative Commission shall transmit its review and recommendations to the Legislature at its next session.
- . The Legislative Commission shall conduct public hearings to obtain comments on the need and efficiency of an agency.

1. Common Cause, Making Government Work: A Common Cause Report on State Sunset Activity, December 1978, p. 3.

- . The Legislative Commission may require the Legislative Counsel Bureau to submit reports on the need and efficiency of an agency.
- . A one-year wind-up procedure is provided for agencies terminated by the process.
- . Authority for the Legislative Commission to appoint subcommittees to conduct the required reviews is provided.
- . Places the burden of proof of a continuing need on the agency to be terminated.
- . Requires the Legislative Commission to determine the need for an agency based on six specific criteria. If need is established, the Legislative Commission must determine efficiency based on eight additional criteria.
- . Terminates on July 1, 1981, unless reestablished by the 1981 Legislature, the Nevada Racing Commission, the Bureau of Community Health Services and the Real Estate Division and Advisory Commission.

The Nevada sunset process requires the examination of the agency or programs to consider six specific criteria concerning the need for continuation of the agency or programs. These criteria are:

1. Would the absence of regulation significantly harm the public health, safety or welfare?
2. Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare?
3. Is there another, less restrictive, method of regulation which could adequately protect the public?
4. Does regulation have the effect of directly or indirectly increasing the cost of any goods or services involved and, if so, to what degree?
5. Is the increase in cost, if any, more harmful to the public than the harm which could result from the absence of regulation?
6. Is the entire regulatory process designed solely for the purpose of, and does it have as its primary effect, the protection of the public?

If the Legislative Commission finds that the answers to the questions about need are generally affirmative, it must then determine if the agency is operating efficiently by applying the following criteria:

1. The agency has permitted qualified applicants to serve the public;
2. Requirements of state and federal law for affirmative action have been met by the agency and the industry or profession which it regulates;
3. The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters;
4. The agency has recommended changes to the statutes which would benefit the public rather than the persons it regulates;
5. The agency has required the persons whom it regulates to report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy and quality of service;
6. Persons regulated by the agency have been required to assess problems in the industry or profession which affect the public;
7. The agency has encouraged participation by the public in making its regulations, as opposed to encouraging participation only by the persons it regulates; and
8. The agency handles formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch.

This report contains, in sections IV, V and VI, subcommittee recommendations on the three agencies designated for sunset by the 1979 Legislature. These recommendations were developed by the subcommittee after following the procedural requirements of A.B. 523 and after consideration of the specific statutory criteria concerning the questions of the need and efficiency of the agencies set for termination.

Two major bills establishing a sunset process were introduced at the 1979 Legislative Session, one in the Senate (S.B. 318) and one in the Assembly (A.B. 523). S.B. 318

provided for the termination of 105 state agencies, boards or commissions over a period of eight years. This bill required performance audits on all terminated agencies and was estimated to eventually cost nearly \$500,000 annually for additional Legislative Counsel Bureau staff and resources. A.B. 523 provided for the termination of 30 agencies, boards and commissions over a period of six years. This bill created a joint review committee and specific criteria for the determination of need and efficiency and allowed for staff reviews of the effected agencies. Estimated costs were approximately \$250,000 annually for additional Legislative Counsel Bureau resources to implement A.B. 523.

In order to establish and test the sunset concept and also avoid creation of a large and costly staff within the Legislative Counsel Bureau, the 1979 Legislature approved A.B. 523 by substantially reducing its scope to three state agencies and essentially creating a pilot sunset project. No additional resources were budgeted for the Legislative Counsel Bureau for the review process. The Legislative Commission appointed a subcommittee, of five legislators to conduct the reviews and make recommendations and assigned the staff duties to the Fiscal Analysis Division.

In order for the results of the pilot project to be made available to the 1981 Legislature, this report contains, in addition to recommendations on the three selected agencies, a section on the findings of the subcommittee on the sunset review process, its costs and its benefits and recommendations for the future of sunset in Nevada (see Section III).

II. Sunset Process Methodology

The first issue of sunset to face the Legislative Commission's subcommittee was to determine the procedures to be followed in conducting the sunset reviews of the three terminated agencies. At its initial meeting in October 1979, the subcommittee decided that it would request Legislative Counsel Bureau staff reports on the three agencies. These reports, it was decided, would include findings and recommendations on the need for and efficiency of the three terminated agencies. After the reports were finalized, the subcommittee would consider the reports, agency testimony and public testimony in public hearings in Reno, Carson City and Las Vegas. The subcommittee established a tentative time schedule allowing approximately five months for the staff reviews to be completed.

In order for the subcommittee to assess different types of staff reviews, it requested and was granted 450 hours of Legislative Audit time from the Legislative Commission. The subcommittee then directed the Legislative Auditor to conduct a performance audit of as many of the eight sections of the Real Estate Division and Advisory Commission as possible within the allotted time. The Legislative Auditor completed a performance audit on the Real Estate Advisory Commission and the compliance section of the Real Estate Division using 404 hours of staff time. In addition, the Fiscal Analysis Division was requested to perform a sunset review of the Real Estate Division trying not to duplicate any of the work of the Legislative Auditor. The Fiscal Analysis Division was to specifically use the criteria established in A.B. 523 to conduct their review. This review included the administrative, applications, licensing, education, accounting, land sales and legal services sections as well as the Real Estate Advisory Commission. The Fiscal Analysis Division was also requested to conduct similar reviews of the Nevada Racing Commission and Bureau of Community Health Services.

After the performance audit and the three sunset reviews were completed the subcommittee held five public hearings to review the reports, obtain testimony from the agencies, regulated industries, interested groups and the general public. Public meetings were held on May 21, 1980, in Carson City, June 24, 1980, in Las Vegas, July 24 and 25, 1980, in Reno and Carson City, October 9, 1980, in Carson City and November 6, 1980, in Reno. The meetings of July 25, October 9 and November 6 were devoted primarily to subcommittee workshops.

The subcommittee received testimony from both the Legislative Auditor and the Fiscal Analysis Division comparing the specific approach and methodology of each type of review. The subcommittee devoted a substantial amount of time to examining the sunset process so that appropriate recommendations could be made to the 1981 Legislature concerning the continuation of sunset and improvements in the review process. These findings and recommendations are included in Section III.

III. Subcommittee Recommendations on the Sunset Process

The subcommittee, after carefully examining the sunset process makes the following recommendations:

Recommendation 1: The Legislature should continue the sunset process in Nevada but limit its application to licensing boards and regulatory laws of the state.

The subcommittee believes that the Legislature has a responsibility to the public to continually review the need for and the operation of agencies, programs and regulation within state government. The subcommittee feels that while interim study committees sometimes fulfill an oversight function, this approach has been neither systematic nor comprehensive. Furthermore, interim study committees usually focus on state agencies with high visibility and often controversial programs or administrations. Less controversial agencies and programs may not receive comprehensive reviews for extended periods of time, if ever. Sunset provides a process by which the Legislature can fulfill its oversight responsibilities. The subcommittee recognizes that the money committees are functioning in an oversight role but feels that the time available during session is too limiting and expanding the budget reviews to include questions raised by sunset would be too great a burden.

Nevada's first experience with sunset provides ample evidence that comprehensive and meaningful analysis of the purpose, need and efficiency of specified laws, programs or agencies can be attained. In-depth review by the Sunset Review Subcommittee, staff of the Legislative Counsel Bureau, the agencies involved and interested public have produced, in the case of the Real Estate Division, Racing Commission and the Bureau of Community Health Services, many recommendations that will increase the efficiency of these agencies, provide savings of tax dollars and increase agency accountability to the Legislature and the public in general. Administrators from all three agencies expressed strong support for sunset and testified before the subcommittee that the nature of the process required them to conduct an internal evaluation of their agency and programs that proved to be extremely beneficial to themselves as administrators and to their agency and the operation of its programs. This self-evaluation, the subcommittee feels, is a very important part of the sunset process. Subcommittee review of the Real Estate Division, Racing Commission and Bureau of Community Health Services resulted in fifty-eight recommendations for improvements in the operations of the agencies and the statutes under which they function. These recommendations are contained in Sections IV, V and VI of this report.

The subcommittee further recommends that for the immediate future sunset be limited to regulatory agencies and occupational licensing boards. The subcommittee feels that the existing structure and the review criteria of sunset are best suited for review of regulatory functions of state government. Many of the sunset criteria required by AB 523 do not apply to a service agency or program and this was borne out during the subcommittee review of the Bureau of Community Health

Services which proved to be less productive than the companion reviews of the Real Estate Division and the Racing Commission. The subcommittee believes that effective review of service agencies and programs, especially in the area of human resources, may require a different approach, as well as additional resources, to determine need, efficiency and effectiveness.

Recommendation 2: The review criteria required by sunset (A.B. 523) should be amended to provide for a more comprehensive review process (Appendix E, BDR 18-331).

Nevada's first sunset law (A.B. 523) borrowed existing review criteria from the states of Colorado and Florida. Colorado's criteria primarily dealt with the questions relating to the efficiency of an agency or program; and Florida's concerned the need for a function, agency or program (existing criteria can be found in section I). After working with these criteria during the pilot sunset project, the subcommittee believes that they could be improved by combining similar criteria where possible and by arranging the criteria into five groups including questions of need, efficiency, effectiveness, regulation review, and forms and reports review.

A basic purpose of any review should be to insure that the regulations or programs of an agency are not duplicated by other levels of government or the private sector and if such duplication exists, the justification for it. The subcommittee feels that regulatory burdens should be minimal. The subcommittee, therefore, recommends expanding the review criteria to include:

- . A question on whether the programs or functions of the agency are duplicated by any other governmental entity or by private enterprise.

The subcommittee found that the existing review criteria ask questions that involve both efficiency and effectiveness but none require a simple determination if the agency or programs are meeting their goals and objectives effectively. The subcommittee also found that statutory or written goals and objectives were lacking in one of the agencies reviewed this interim. For these reasons the subcommittee recommends expanding the review criteria to include:

- . A question on whether the statutes or the agency has established clear policy goals and objectives and whether the agency has achieved these goals.

The subcommittee found that at least in the case of the Real Estate Division, NRS 645 was not clearly constructed and contained instances of confusing or ambiguous law. NRS 645.842, for instance, places a limit of \$50,000 on the fund balance of the real estate recovery fund but also requires depositing all education and recovery fees in the recovery fund during the year regardless of fund balance. In another case, crimes for which a real estate license may be denied to an applicant are listed in chapter 645.330 and repeated in 645.440. The subcommittee feels that sunset provides a good opportunity to examine each regulatory statute for problems of construction, ambiguity and redundancy. They, therefore, recommend that Legislative Counsel assist future sunset subcommittees in this review and suggest an added criteria of:

- . A question on whether the regulatory statutes are well constructed and are free of ambiguity and redundancy.

Regulatory laws of the state are usually implemented by regulations of the agency administering the law. The subcommittee believes these regulations must be reviewed to determine if they meet legislative intent, do not exceed the authority of the agency and provide the least restrictive regulation suitable under the circumstances. The subcommittee noted that under current law the Legislative Counsel reviews proposed regulations of the various agencies to determine if they are within the law and also to conform them for codification. The subcommittee recommends that regulations of each agency included in the sunset process receive this examination by the Legislative Counsel in order to satisfy an additional review criteria of:

- . A review of existing regulations of the agency to see whether they meet the intent of the Legislature, whether they contain ambiguities or redundancies, and whether they are in the least restrictive form.

The subcommittee believes the elimination of unnecessary forms and the combining of like forms can effectively improve agency efficiency and lessen regulatory impact on the public. The subcommittee and staff analysis of the agencies in the current sunset process included a brief review but not a comprehensive study of agency forms since the Real Estate Division was in the process of reviewing its forms internally to coincide with computerization of its records. Additionally, the Racing Commission was revising its forms in conjunction with a complete rewrite of racing regulations and the Bureau of Community Health Services' were also in the process of

reviewing their forms. Nonetheless, the subcommittee believes that forms and recordkeeping review should be an integral part of the sunset process and recommends the expansion of the review criteria to include:

- . A question on whether forms, reports and recordkeeping requirements of the agency are necessary and/or duplicative.

The subcommittee, therefore, recommends revising the review criteria by consolidating existing criteria and adding the new criteria recommended above. The new criteria would be as follows:

A. NEED

1. Would the absence or reduction of regulation significantly harm or endanger the public health, safety or welfare and is there a reasonable relationship between the state's police power and protection of the public health, safety or welfare?
2. Is there another, less restrictive, method of regulation which could adequately protect the public?
3. Does regulation directly or indirectly increase the cost of goods or services involved? If so, is the increase justified by the public protection provided?
4. Are any of the agency's programs or objectives duplicated by programs or activities of other governmental units or by private enterprise?

B. EFFICIENCY

5. Has the agency operated in the public interest, and to what extent has its operations in the public interest been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters?
6. Has the agency required or requested the persons whom it regulates to report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy and quality of service.

7. Has the agency required or requested persons whom it regulates to assess problems in the industry or profession which effect the public?
8. Has the agency encouraged participation by the public in making regulations and carrying out its responsibilities?
9. Has the agency handled formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch?

C. EFFECTIVENESS

10. Has the agency permitted only qualified applicants to serve the public? Has the agency restricted the entry of qualified applicants?
11. Has the agency recommended changes to the statutes which would benefit the public rather than the persons it regulates?
12. Do the statutes provide or has the agency developed clear policy goals; has the agency effectively achieved these goals; and do these results reflect the intent of the law?
13. Have state and federal requirements for affirmative action been met by the agency and the profession it regulates or has the agency or industry initiated any affirmative action plans on their own?

D. STATUTE AND REGULATION REVIEW

14. Are the regulatory statutes well constructed and do they contain any ambiguities or redundancies?
15. Do the regulations of the agency accurately reflect the intent of the Legislature or do they contain any ambiguities or redundancies?
16. Are the regulations in the least restrictive form?

E. FORMS AND REPORTING REVIEW

17. Does the agency have or require the use of any unnecessary forms?
18. Does the agency have or require the use of any unnecessary reports or recordkeeping?

Recommendation 3: The Legislative Commission should assign the task of staff review and analysis to the Fiscal Analysis Division.

During the course of the current sunset process, the subcommittee has compared the approach and experiences of two separate staff analyses of the Real Estate Division. One by the Legislative Auditor (performance audit) was conducted under General Accounting Office standards and the other from the Fiscal Analysis Division was prepared under the review criteria required by A.B. 523. The subcommittee found that although the Legislative Auditor and the Fiscal Analysis Division expended approximately the same number of hours in their reviews, the performance audit covered only two sections of the Real Estate Division while the sunset review covered all sections of the Division. The following table illustrates the staff hours spent on all three agencies reviewed:

	<u>Audit Division</u>	<u>Fiscal Analysis Division</u>
Real Estate Division	404.5	420
Racing Commission		140
Community Health Services		398.5
Additional Overhead Hours*		688
	<u>404.5</u>	<u>1646.5</u>

*Overhead hours are those spent reviewing the sunset process itself, surveying the states, preparing for and attending subcommittee meetings and any other time that was not directly chargeable to any one of the three agencies under review.

The subcommittee recognizes that a full performance audit can develop a more detailed review of the operation of an agency with additional and more comprehensive data. The subcommittee believes, however, that the cost of complete performance audits for sunset are prohibitive at this time. The subcommittee believes that continued use of the audit staff would necessitate that the Legislative Auditor forego or postpone essential financial audits or, in the alternative, seek additional staff resources. On the other hand, the subcommittee feels that sunset reviews limited to the criteria in recommendation 2 and to the agencies and timetables outlined in recommendation 4 can be accomplished by the Fiscal Analysis Division without additional resources; provided that the Legislative Commission carefully controls the number of interim studies assigned to the Division; and provided that no additional statutory duties are created by the Legislature for this Division.

The subcommittee also feels that the reviews conducted by the Fiscal Analysis Division were comprehensive and adequately

answered the questions of need, efficiency and effectiveness. The subcommittee also feels that utilization of a single staff or division resource will develop experience and consistency within the sunset process. The following is the general review program followed by the Fiscal Analysis Division for each agency reviewed.

SUNSET REVIEW PROGRAM

- I. Initial Review
 - A. Review NRS including statutory history/establish statutory purpose.
 - B. Review background materials.
 - C. Prepare 5-year budget comparison/including staffing.
 - D. Review available literature.
 - E. Identify issues.
- II. Develop General Review Procedures
 - A. Determine scope of review.
 - B. Develop general plan around A.B. 523 criteria.
 - C. Select research methodology by criteria and issue.
- III. Data Collection Analysis and Recommendation
 - A. Develop agency questionnaire.
 - B. Survey other states.
 - C. Survey or contact agency public (industry and general public).
 - D. Visit and observe agency procedures.
 - E. Analyze data, comments and recommendations.
 - F. Draft preliminary report.
- IV. Agency Review
 - A. Provide preliminary report to agency.
 - B. Include agency response in final report.

V. Report Presentation

A. Present report to the subcommittee.

After the initial review, a more detailed review program was prepared for each agency using the criteria specified in A.B. 523. An example of the review procedures used for the Real Estate Division were:

General Review Procedures

1. Obtain statistics on number of examination applications, number examined, pass/fail ratios, licenses granted, active and inactive licenses, owner-developer registrations, escrow registrations, and cooperative certificates issued in the last five years.
2. Obtain statistics on the number of complaints received, number of investigations, audits conducted, hearings held, licenses revoked, licenses suspended and reprimands in last five years.
3. Obtain statistics on number of schools licensed, applications received, complaints received and investigations in the last five years.
4. Obtain statistics on the number of subdivisions reviewed, subdivisions approved, subdivisions disapproved, advertising approved, advertising disapproved, complaints filed against subdivisions or advertising claims and the dispositions of such complaints for the last five years.
5. Review regulatory authority and activities in selected other states.
6. Prepare a 5-year budget comparison including staffing for administrative, investigative, recovery and education accounts.

Specific Review Procedures

- I. Criteria: Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

1. Attempt to gauge the relative severity of the potential harm which could result from non-regulation.
 2. Cite the original regulatory purposes of the commission and agency.
 3. Cite the current regulatory purposes of the commission and agency.
 4. Review statutory and regulatory provisions in light of the stated purposes.
 5. Interview or survey Advisory Commission and trade associations.
 6. Survey sample of licensees.
 7. Survey sample of complainants.
- II. Criteria: Is there a reasonable relationship between the exercise of the state's police powers and the protection of the public health, safety or welfare?
1. Same review steps as previous criteria.
- III. Criteria: Is there another, less restrictive, method of regulation which could adequately protect the public?
1. Review selected other states' regulatory activities in relation to Nevada's.
 2. Does any other federal, state or local agency have any regulatory authority over the real estate trade or any similar industry?
 3. Are there any other realty or educational institutions that provide the same or similar regulations, programs or services provided by the agency?
- IV. Criteria: Does regulation have the effect of directly or indirectly increasing the cost of any goods or services involved? If so, to what degree?
1. Develop actual direct cost of regulation of realtors, schools and subdivisions.

2. Determine if these costs are passed directly or indirectly on to customers.
 3. Assess whether regulation indirectly increases the cost of services of real estate agents, schools and subdivisions.
- V. Criteria: Is the increase in cost, if any, more harmful to the public than the harm which could result from the absence of regulation?
1. Attempt to gauge the relative severity of the potential harm which could result from nonregulation.
 2. Survey industry associations, licensees and complainants.
- VI. Criteria: Is the entire regulatory process designed solely for the purpose of, and does it have as its primary effect, the protection of the public?
1. Cite the statutory purpose of the Commission or agency.
 2. Review statutory and regulatory provisions for consistency with that purpose and with protection of the public in general.
 3. Cite licensing and revocation statistics if possible.
 4. Review Commission minutes and administrative decisions for general public related issues.
- VII. Criteria: The agency has permitted qualified applicants to serve the public.
1. Review licensing statutes and regulations for qualification requirements or standards for brokers, salesmen, schools, subdivisions, escrow agents, etc.
 2. Review selected other states for similar criteria.
 3. Review testing availability, testing methods, grading procedures, test relevance, pass/fail rates, retesting procedures, application procedures and personal requirements.

4. Review educational and experience requirements.
5. Review reciprocity availability.
6. Are periodic inspections or audits conducted of brokers and salespersons?
7. Are character recommendations contacted for verification?

VIII. Criteria: Requirements of state and federal law for affirmative action have been met by the agency and the industry or profession which it regulates.

1. Determine which state and federal statutes are involved.
2. Review agency compliance internally and externally.
3. Does the agency have an affirmative action plan or goal?
4. Contact State Personnel for data on staff and requirements.
5. Have there been any complaints or grievances filed regarding discrimination? If so, disposition?

IX. Criteria: The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters.

1. Review composition and qualifications of the Real Estate Advisory Commission.
2. Review statutory qualifications of Division Administrator.
3. Review board minutes for type and disposition of public interest matters.
4. Review statutes and regulations which may hinder or impede public interests.
5. Review budget and personnel resources, prior budget requests, executive and legislative budget actions.
6. Review complaints and disposition of complaints.

- X. Criteria: The agency has recommended changes to the statutes which would benefit the public rather than the persons it regulates.
1. What statutory changes have been requested by the agency in the last four sessions?
 2. Who benefited from these proposals and what were their effect?
 3. Which proposals were enacted and in what form?
 4. Review legislative history for enacted statutory changes and their impact.
- XI. Criteria: The agency has required the persons whom it regulates to report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy or quality of service.
1. Has the agency requested any feedback from its licensees as to the effects of commission or agency decisions on the public?
 2. If so, how has this information been used?
- XII. Criteria: Persons regulated by the agency have been required to assess problems in the industry or profession which affect the public.
1. Has the agency or commission requested information on industry problems from licensees?
 2. If so, has the information been used in decision making?
- XIII. Criteria: The agency has encouraged participation by the public in making its regulations, as opposed to encouraging participation only by the persons it regulates.
1. What are the meeting notification procedures?
 2. Are meetings advertised publicly or only to requesters?
 3. Examine commission meeting attendance records for the last two years.

4. Are press releases distributed before the meeting?
After?
5. Is commission in compliance with the open meeting law (NRS 241) and the Administrations Procedures Act (NRS 233B)?
6. Are commission or agency regulations on file with the Secretary of State (NRS 233B.070)?

XIV. Criteria: The agency handles formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch.

1. Review complaint handling process.
2. Percent complaints resolved in favor of complainant; percent in favor of licensee.
3. Are there any follow-up procedures after resolution of complaint?
4. What resources are available to the agency to investigate or resolve complaints?
5. Follow a sampling of complaints--determine turn-around time.
6. Is there any complaint backlog?
7. Does the public know where to complain?

The general review procedures are specific to the agency being reviewed and would change according to the scope of review desired and the issues raised by the subcommittee.

Recommendation 4: The Legislature should include over four interim periods all regulatory laws of Nevada Revised Statutes - Title 54 (Professions, Occupations and Businesses) in the sunset process.

After considering the present sunset process, review criteria and resources available within the Fiscal Analysis Division, the subcommittee believes that Title 54 (Professions, Occupations and Businesses) can be segregated into four groups of statutes each of which could be included in sunset during the next four interim periods. This recommendation is consistent with the subcommittee's recommendation to limit sunset to regulatory functions of state government and to assign the staff responsibility to the Fiscal Analysis Division without recommending additional resources. The following are the recommended groupings from Title 54:

1st Interim

NRS 623 Architects
623A Landscape Architects
624 Contractors
625 Professional Engineers &
Surveyors
627 Construction Controls
628 Accountants
645B Mortgage Companies
648 Private Investigators
649 Collection Agencies

2nd Interim

NRS 629 Healing Arts Generally
630 Physicians & Assistants
631 Dentistry & Dental
Hygiene
632 Nursing
633 Osteopathic Medicine
634 Chiropractic
634A Oriental Medicine
635 Podiatry
636 Optometry
637 Dispensing Opticians

3rd Interim

NRS 637A Hearing Aid Specialists
637B Audiologists & Speech
Pathologists
638 Veterinarians
639 Pharmacists
640 Physical Therapists
641 Psychologists
641A Marriage & Family
Counseling
652 Medical Laboratories
654 Nursing Facility
Administrators

4th Interim

NRS 642 Funeral Directors
643 Barbers
644 Cosmetology
646 Pawnbrokers
647 Junk Dealers
650 Traveling Merchants
651 Public Accommodations
655 Locksmiths
656 Certified Shorthand
Reporters

Recommendation 5: Sunset reviews should be conducted only during the interim period between legislative sessions and the Legislative Commission should establish a reasonable time period to complete the reviews.

The subcommittee feels the general process followed during the current interim for reviewing the Real Estate Division, the Racing Commission and the Bureau of Community Health Services worked well.

That process included appointment of a Legislative Commission subcommittee, assignment of staff work to the Fiscal Analysis Division, staff reports using the A.B. 523 criteria with recommendations, public hearings and the subcommittee report to the Legislative Commission.

The subcommittee recognizes that the process is time-consuming and lengthy. However, sufficient time is necessary to allow staff an adequate opportunity to prepare their reports and to allow the agency and the general public

an adequate opportunity to respond to the issues raised. The subcommittee therefore recommends that the initial review process, including appointment of the review subcommittee, organization of the subcommittee and initial introduction to the agencies, begin no later than July 1 of each odd-numbered year. Current law requires the review to begin on July 1, but this process was delayed in 1979. The subcommittee also recommends completing the review process and finalization of subcommittee recommendations by July 1 of even-numbered years so that they may be used by the appropriate agencies during the budgetary process for the ensuing biennium. The subcommittee recognizes that the agencies recommended for sunset during the next few years do not formally submit their budgets to the Legislature. The subcommittee, however, believes the entire process should be institutionalized so that when larger regulatory agencies are reviewed, ample time will exist for budget changes as a result of sunset recommendations.

In addition, the subcommittee recommends that the sunset review remain an interim process rather than a full-time function of the Legislative Commission and the Legislative Counsel Bureau. To make the process continuous, the subcommittee believes would require additional resources and impinge on the limited time available during regular legislative sessions.

Recommendation 6: The agency termination feature of sunset should be retained, however, the Legislature should use this feature carefully.

Section 9, of A.B. 523, terminates the Real Estate Division, the Racing Commission and the Bureau of Community Health Services on July 1, 1981, unless the 1981 Legislature affirmatively recreates them. This feature is what makes sunset unique among legislative oversight processes that have been developed. This feature also makes sunset a very powerful tool in increasing agency and program accountability and lies at the very heart of the sunset process. The subcommittee feels that elimination of the termination provisions would reduce the effectiveness of sunset and not be in the best interests of the public. The subcommittee, however, recognizes that indiscriminate use of the sunset process could eliminate agencies or programs that serve a useful purpose and benefit the general public and therefore recommend that sunset and the potential termination of agencies and programs be used cautiously and constructively by the Legislature. The subcommittee is aware that in several other states vast numbers of agencies were slated for termination and there was concern that terminations could occur simply because the legislatures

did not have sufficient time to conduct reviews and make a determination as to need and efficiency. This did not occur, however, and there have been very few agencies actually terminated to date. The subcommittee firmly believes that the success of sunset cannot be measured in terms of the number of terminated agencies, but rather by the increased accountability, efficiency and effectiveness of those agencies.

Recommendation 7: Legislative standing committees should take up legislation proposing to continue agencies reviewed under sunset at the earliest possible time each session.

Legislation reinstating an agency reviewed under sunset will typically contain recommendations for statutory change that will affect the work of other segments of the Legislature. BDR 41-117 (Appendix E) for instance recommends that the Racing Commission become an appropriated state agency with all tax revenues earned going to the general fund. This recommendation, if approved by the appropriate standing committees and both houses of the legislature, must then go to the money committees for action. It seems imperative, therefore, that the standing committees considering such legislation complete their work early in the session if possible. The subcommittee feels that these committees could take advantage of the generally slower pace at the beginning of the session to process this legislation and facilitate a smooth reinstatement of terminated agencies.

Recommendation 8: The Legislative Counsel Bureau should transmit all sunset recommendations to the appropriate standing committees at each subsequent legislative session so that those committees can determine what progress each agency has made in implementing the recommendations.

The subcommittee is concerned that once a sunset review has been performed on an agency and recommendations approved that there will not be any opportunity to determine if those recommendations are ever implemented, particularly if the recommendations necessitate only administrative action. The subcommittee feels that responsible oversight requires that the Legislature make such a determination at sessions subsequent to the session where the agency was reinstated. The subcommittee recommends that the Legislative Counsel Bureau, unless instructed otherwise by the appropriate standing committees, transmit previous sunset recommendations on each agency reviewed to those standing committees that normally review that agency's substantive legislation for the purpose of determining whether the sunset recommendations have been implemented.

Recommendation 9: The Legislative Commission should appoint some members of the sunset subcommittee from the membership of standing committees that normally handle substantive legislation of the agencies designated for sunset.

The subcommittee recognizes that the sunset process calls for consideration of many areas of an agency's functions that are matters normally considered by certain standing committees during legislative sessions. For regulatory agencies these are usually the Assembly Commerce Committee and the Senate Commerce and Labor Committee. Members of these standing committees gain vast experience and expertise relating to the agencies and programs being reviewed by the sunset process. The subcommittee believes it would be advantageous to capitalize on that experience and expertise by appointing at least some of the sunset subcommittee members from the ranks of those standing committees.

Recommendation 10: Standing committees of the Legislature should consider using "Questions a Legislator Should Ask" as a guide when considering new requests for occupational licensing legislation.²

The subcommittee feels that the best time to determine whether occupational licensing or regulatory legislation is needed for an industry or profession is when legislation to do so is initially requested and considered. The subcommittee is concerned that regulatory laws and occupational licensing has proliferated in part because the Legislature was not prepared to examine the question of need thoroughly and no helpful tools existed to aid the Legislature in making this decision. The Council of State Governments (CSG) has printed a publication entitled "Occupational Licensing: Questions a Legislator Should Ask."³ This publication discusses the pros and cons of occupational licensing and provides a detailed list of questions that could be asked in order to determine whether licensing is needed or not and who would benefit from such legislation. The major questions recommended in the publication are reproduced here. It should be noted that each of the major questions has a series of follow-up or related questions which are included as Appendix I.

1. What is the problem?
2. Why should the occupational group be regulated?

2. The Council of State Governments, "Occupational Licensing: Questions a Legislator Should Ask", March 1978.
3. Ibid

3. What efforts have been made to address the problems?
4. Have alternatives to licensure been considered?
5. Will the public benefit from regulation of the occupation?
6. Will regulation be harmful to the public?
7. How will the regulatory activity be administered?
8. Who is sponsoring the regulatory program?
9. Why is regulation being sought?

The subcommittee noted that at the 1979 Session, legislation was approved which authorized licensing of audiologists and speech pathologists. The subcommittee made no determination as to the advisability of licensing these professionals, but did, however, find through a review of the minutes of the Senate Commerce and Labor Committee and the Assembly Commerce Committee that only a few of the questions suggested by the authors of this CSG publication were answered either in testimony or materials provided by the professional groups.

The subcommittee only suggests, therefore, that these standing committees consider the use of these questions as a guide to help them determine if future occupational licensing requests are justified.

IV. Real Estate Division and Advisory Commission

A.B. 523 terminates on July 1, 1981, the Real Estate Division, the Real Estate Advisory Commission, all provisions of NRS 645 (Real Estate Licensing Law) which relate to occupational licensing of real estate practitioners and all provisions of NRS 119 (Land Sales Act) that relate to the Real Estate Division.

Regulation of real estate brokers and salesmen is a joint responsibility of the Real Estate Division of the Department of Commerce and the Real Estate Advisory Commission. The Division also regulates certain subdividers, land sales and escrow agents. The Division investigates complaints, processes applications for licensure, conducts background checks, examines applicants and recommends licensees to the Advisory Commission. The Commission approves licensees, promulgates regulations, holds disciplinary hearings on violations of licensing laws and regulations and approves

certain education expenditures for licensees. Currently, over 10,000 persons are licensed in Nevada to practice real estate.

The Legislative Commission's Subcommittee on Sunset Review requested both a performance audit from the Legislative Auditor and a sunset review by the Fiscal Analysis Division of the Legislative Counsel Bureau on the Real Estate Division and Advisory Commission. The Legislative Auditor's report included findings and recommendations on the compliance section of the Division and the Advisory Commission. The Fiscal Analysis Division report dealt primarily with the other functional areas of real estate regulation, including administration, licensing, education, education expenditures and land sales. Many of the recommendations of the subcommittee originated with these reports. For an expanded discussion of each of these findings and recommendations a reference is given to the appropriate staff report which are included as appendices in this report. The staff's findings on the specific review criteria in A.B. 523 can be found in Appendix B, pages 34 to 40. The subcommittee accepts and incorporates these findings on the review criteria as a part of its report. In addition, the subcommittee reviewed and included several recommendations of the Real Estate Division and Advisory Commission. The following are the recommendations of the subcommittee:

Findings and Recommendations

Recommendation 1: The 1981 Legislature should repeal those provisions of chapter 688, 1979, that terminate the Real Estate Division, Real Estate Advisory Commission and sections of NRS 645 and 119 and continue to regulate real estate practices and certain land sales activities (Appendix F, BDR 54-116).

The subcommittee concluded, after review of the reports of the Legislative Auditor and Fiscal Analysis Division and hearing testimony of the Real Estate Division, Department of Commerce, members of the Advisory Commission, representatives of the industry and general public, that the absence of regulation would create a potential for substantial economic loss resulting from deceptive or fraudulent business practices and from unprofessional and incompetent real estate practitioners. The public depends on competent and expert brokers and salesmen to handle simple and complex real estate transactions and regulation is warranted to protect the public economic welfare.

The subcommittee also found that the provisions of the Real Estate Licensing Law (NRS 645), the Land Sales Act (NRS 119) and the activities of the Real Estate Division and Advisory Commission do act to protect the public from potential loss and help insure that only competent and professional persons are allowed to practice. In addition, the subcommittee found that the Division and the Advisory Commission have generally acted in the public interest and that the cost of regulation is not excessive considering the potential for loss in the absence of regulation.

The subcommittee did find many areas of the regulatory process, however, that require legislative or administrative action in order to increase the effectiveness and efficiency of the Division and Advisory Commission. These findings and recommendations are included here in the balance of this section.

Recommendation 2: The Legislature consider restructuring the Real Estate Advisory Commission to include one public member (Appendix F, BDR 54-116).

NRS 645 currently requires that all members of the Advisory Commission must have been actively engaged as a real estate broker in Nevada for at least three years in order to be eligible for appointment. The Legislative Auditor recommended and the subcommittee agreed that the Commission should include one member of the general public. The subcommittee found that the purpose of the Advisory Commission is to protect the public and that inclusion of a public member is entirely consistent with that purpose. In addition, the inclusion of a public member would bring new perspective to the Commission and help create public confidence in the real estate licensing process. The subcommittee noted that this recommendation was consistent with earlier efforts of the Legislature to place representatives of the general public on other boards and commissions (see Statutes of Nevada, Chapter 530, 1977). The subcommittee also recommended that the membership of the Commission be maintained at five and rejected a recommendation to add a real estate salesman to the Commission since responsibility to the client rests ultimately with the broker and the subcommittee is recommending that a statutory provision be created to place on the broker a "duty" to supervise his salesmen (see recommendation 35 and Appendix A, page 28.10).

Recommendation 3: The Legislature amend NRS 645.010 and 645.050 to delete the word advisory when applied to the Commission (Appendix F, BDR 54-116).

The subcommittee found that most of the duties of the Advisory Commission were in fact not "advisory." The Commission promulgates regulations, conducts disciplinary hearings, approves who can sit for examinations, approves real estate courses, approves licenses and approves certain education fund expenditures. The use of the word "advisory" does not properly describe the role of the Commission and may in fact be deceiving or misleading to the public as well as licensees (see Appendix A, page 28.11).

Recommendation 4: The Legislature amend NRS 645.050 to delete the provision that the Governor must consider a list of nominees from the Nevada Association of Realtors when making appointments to the Advisory Commission (Appendix F, BDR 54-116).

Although the Governor may want to consult the Nevada Association of Realtors when making appointments to the Advisory Commission, the subcommittee felt it was inappropriate to require such a procedure in statute. The subcommittee noted that the Association does not represent all licensees in Nevada and that all members of the current Advisory Commission are members of the Association, several had been state officers in that organization and one is currently a national officer. Although the statute does not require the Governor to appoint nominees of the Association, the procedure creates the appearance of control by the Association over the Commission and tends to narrow the choices for appointment to exclude those licensees who are not members of the Association.

Recommendation 5: The Legislature amend NRS 645 to narrow the scope of duties of the Advisory Commission to promulgating regulations and conducting disciplinary hearings required by law. The Commission's responsibilities to approve who may sit for examinations and final approval of licensees should be given to the Division and the requirement for final Commission approval of education fund expenditures should be deleted. The Commission should maintain an advisory role only in education fund expenditures (Appendix F, BDR 54-116).

The subcommittee found that Commission approval of who can sit for examinations and final approval of all licensees were routine matters frequently handled in telephone conference meetings. The Division currently performs all the licensing functions necessary under regulations of the Commission and procedures exist for potential licensees to appeal decisions of the Division to the Commission should that be necessary (see Appendix A, page 28.13).

The subcommittee also found that Commission approval of education fund expenditures presented a potential conflict since these moneys had gone exclusively to the Nevada Association of Realtors for educational classes up until fiscal year 1979-80 and all members of the Commission are members of the Association and were nominated for appointment by the Association. In fiscal year 1979-80, for instance, the Commission approved contracts with the Association in the amount of \$154,500. Actual payments under this contract totaled \$147,132 as of September 19, 1980, which included \$21,800 for Association consulting charges and \$29,258 for Association staff salaries, including the salary for the Executive Vice President of the Association. Payments also included charges for the actual cost of classes, such as, speaker fees, facility and equipment rental and class materials. The subcommittee feels that payment for consulting charges and Association staff time creates the appearance that the state is subsidizing the Association. The subcommittee feels that even the appearance of such a subsidy creates a potential conflict between the interests of the state and the interests of the Association. The subcommittee recognizes that the Division and the Advisory Commission have begun to implement a competitive proposal system for the letting of education contracts in fiscal year 1980-81, however, it still believes that the responsibility for education expenditures should be given solely to the Division and the Commission should only advise the Division on matters of curriculum.

Recommendation 6: The Legislature should amend NRS 645.150 to delete specific date requirements for Commission meetings in the Eastern and Western Districts (Appendix F, BDR 54-116).

NRS 645.150 requires that the Commission hold two regular meetings, one on the second Monday of January and the other on the second Monday of July, each year. One of these meetings must be held in the Eastern District and the other in the Western District. (The Eastern District includes Clark, Elko, Eureka, Lander, Lincoln, Nye and White Pine Counties.) The subcommittee feels that statutorily setting the dates of meetings places an unnecessary burden on the Commission and may even be inconvenient for Commission members, licensees and the general public. The subcommittee agrees, however, that the requirement that at least one meeting each year be held in the Eastern District and one in the Western District should be retained (see Appendix B, page 14).

Recommendation 7: The Legislature should adopt a fee schedule that covers the cost of regulation based on the budget approved for the agency for the next biennium (Appendix F, BDR 54-116).

The cost of regulation of real estate practitioners and land sales is supported by general fund appropriations. In turn, all real estate licensing fees and land sales fees are deposited in the general fund. The review prepared by the Fiscal Analysis Division revealed that fees collected by the agency were less than the cost of regulation paid from the state's general fund. During the 1978-79 biennium this deficit was \$104,000 and, based on the 1980-81 biennial budget and agency revenue estimates, this difference is anticipated to grow (see Appendix B, page 12).

The subcommittee feels that licensing and related fees should at all times cover the cost of regulation. The subcommittee noted that all other occupations regulated by the State of Nevada are self-supporting from fee revenue and that the real estate broker license fee in Nevada has not been increased since 1956 and the salesman license fee has not increased since 1963. When expenditures exceed revenues, the cost of regulation is shifted from the licensee and the buying and selling public to the general public.

The Subcommittee recognizes that the Division is in the process of preparing their biennial budget using the zero-based budgeting concept and that this exercise plus the implementation of a new computerized licensing system should streamline the regulatory process and produce savings. In addition, the subcommittee believes that certain recommendations of this report, such as, combining the applications and licensing sections, administering the examination first and background investigation last, funding a portion of the education coordinator position from the education fund, and the development of agency goals and objectives could increase the efficiency of agency operations and minimize the impact of any fee increase. Based on 10 percent yearly increments to the current Division budget, the subcommittee estimates that a \$25 per year increase in brokers, broker-salesman and salesman license fees will bring revenues in line with expenditures. This amounts to a \$50 increase in the actual license fee since it is for a 2-year period. The subcommittee also recommends that fees for penalties and branch offices be increased in line with the proposed license fee increase and that an initial continuing education course accreditation fee of \$50 and an annual renewal fee of \$10 be established. In addition, the subcommittee found that the fees derived from the regulation of subdivisions (NRS 119, Land Sales Act)

did not cover the cost of that activity and therefore recommends the establishment of a \$25 application fee that must be paid by all subdivision requests including those that are later determined to be exempt from regulation. The subcommittee recognizes that changes to the Division's budget that occur during the budgetary process may require adjustments to the proposed fees. The following table depicts the fee changes recommended by the subcommittee. The subcommittee recommends that all other existing fees in NRS 645 and 119 should remain the same.

<u>Fee</u>	<u>Existing</u>	<u>Proposed</u>
Original Broker License (2 years)	\$80	\$130
Original Salesman License (2 years)	50	100
Original Branch Office (2 years)	50	100
Penalty, Failure to File - Broker	40	65
Penalty, Failure to File - Salesman	25	50
Renewal, Brokers License	80	130
Renewal, Salesman License	50	100
Renewal, Branch Office	50	100
Penalty, Late Filing Broker	40	65
Penalty, Late Filing Salesman	25	50
Original Continuing Education Accreditation	-0-	50
Renewal, Continuing Education Accreditation	-0-	10
Subdivision Application Fee (NRS 119)	-0-	25

The subcommittee considered a recommendation to reduce the \$40 education, research and recovery fund fee to partially offset the recommended increase in license fees. The subcommittee noted that the Advisory Commission had been urged by the Nevada Association of Realtors to increase the level of research and education expenditures in order to deplete the large surplus that had accumulated in the fund and avoid any possibility that the Legislature might require reversion of these excess funds to the state's general fund (the education account fund balance for fiscal year 1979-80 was \$444,216). The subcommittee is not recommending reduction of this fee, however, since both the Division and the Association testified that the demands on that fund for real estate courses as a result of continuing education requirements were increasing. The Association also testified its membership opposes reduction of this fee.

Recommendation 8: The Division should establish formal goals and objectives for their organization and develop an internal information system which has the capability of measuring program effectiveness.

The Legislative Auditor reported that the Division has not established written goals and objectives and has not developed an information system that would allow management to determine if intended results were being achieved (see Appendix A, page 28.17). Because of this lack of stated goals and information, the Legislative Auditor was unable to fully evaluate the results of the Division's activities. The subcommittee feels that establishment of goals and objectives and the means to evaluate the Division's performance in meeting those goals is a basic principle of sound management and a necessary activity. The Division indicated that, during the course of the subcommittee hearings, goals and objectives and methods of measuring effectiveness would be developed.

Recommendation 9: The Division should discontinue depositing fees directly into the education and research account of the ERRF fund. All fees should be deposited in the recovery account and the balance over \$50,000 transferred to the education and research account at the end of the fiscal year pursuant to NRS 645.842.

NRS 645.842 states in part, " * * * any balance over \$50,000 at the end of any fiscal year shall be set aside and used by the administration, after approval of the Commission, for real estate education and research." The Division's current practice of maintaining a \$50,000 balance in the recovery account and depositing all fee receipts directly into the education account makes these moneys immediately available for obligation and expenditure for education and seems to be in violation of the law. In addition, obligation or expenditure of these funds prior to the end of the fiscal year for education reduces the resources available to pay court ordered recoveries and provides a lesser degree of public protection (see Appendix B, page 17).

The subcommittee recommends and the Division has agreed to discontinue the present practice and to begin holding all ERRF fees in the recovery account until year's end.

Recommendation 10: The Division and Advisory Commission should expand the presentation of the Education and Research account in the "Executive Budget" to disclose the proposed actual uses of the funds for legislative review.

The Executive Budget presentation of the education and research account simply lump all available resources into a proposed expenditure line-item of education. Actual expenditures from this fund have included out-of-state travel of

the Advisory Commission and legal staff to national conventions, travel of Division staff, and for the publication costs of a quarterly newsletter. These other expenditures were made without specific legislative review or approval.

The subcommittee believes that adequate legislative review of agency plans through the budget process depends on candid and complete descriptions of proposed expenditures. The subcommittee feels that an expanded Executive Budget presentation will provide sufficient legislative control over proposed expenditures and that more specific statutory language governing acceptable uses of these funds is not necessary (see Appendix B, page 17).

Recommendation 11: A portion of the Education Coordinator position should be funded from the ERRF fund corresponding to the amount of time spent on fund activities or programs (Appendix F, BDR 54-116).

The Education Coordinator position spends considerable time performing ERRF fund activities such as coordinating the educational program, preparing the quarterly newsletter and preparing recommendations on ERRF sponsored courses. This position is currently funded entirely from general fund resources (see Appendix B, page 17). The subcommittee feels the ERRF fund should share in the cost of this position based on the amount of time spent on fund programs. The general fund should only be responsible for time spent in the regulatory process. The subcommittee also recommends that NRS 645.842 be amended to include Division expenses in operating the education program as an authorized expenditure from the ERRF fund.

Recommendation 12: The Legislature should amend NRS 645.847 to increase the interest rate required on repayments to the recovery fund as a condition for restitution of the suspended license (Appendix F, BDR 54-116).

The law requires the automatic suspension of the license of any practitioner for whom the recovery fund is required by court order to pay a claim. In order to reinstate the license, the practitioner must repay the claim plus 6 percent interest. The subcommittee feels that 6 percent interest is too low and recommends establishing the rate as the same rate allowed on court ordered judgments when no other rate is specified (see Appendix B, page 18).

Recommendation 13: The Division and Commission should consider refining the educational contract system to specify what courses are required and by inviting proposals on that basis in order to maximize the benefits of the ERRF educational dollars.

During the last year the Division instituted a request for proposals (RFP) procedure to award contracts for educational offerings to be sponsored by the ERRF fund. Prior to this, all courses were offered exclusively by the Nevada Association of Realtors under contract to the fund. Under the new procedures, other entities such as private schools, the Community College System and the University System will have an opportunity to offer courses for real estate licensees. The first RFP (FY 1980-81) outlined broad ranges of courses on which schools could offer a proposal (see Appendix B, page 19).

The subcommittee recognizes the significant effort made by the Division in instituting these new procedures in order to allow other educational institutions an opportunity to compete. The subcommittee also suggests that the Division, with the advice of the Commission on curriculum matters, refine the RFP procedure to more specifically define the types of courses required. This procedure could increase competition among educational sources and maximize the benefits of available funds. The Division has indicated that it will review this and all other phases of the RFP procedure in order to maximize effectiveness and efficiency of the education contract process and continue to insure that all educational entities have an equal opportunity to compete.

Recommendation 14: The Commission should adopt regulations required by NRS 645.575 covering claims of equivalent education and time extensions.

NRS 645.575 requires the Commission to prescribe standards for the continuing education of licensees by adopting regulations. By law the regulations must include a procedure for evaluation of petitions based on claims of equivalent education and under what conditions time extensions may be granted. The Commission has not adopted regulations covering equivalent education and time extensions (see Appendix B, page 20).

The subcommittee recommends that the Commission comply with the requirements of NRS 645.575 by adopting regulations and the Division has indicated that they will prepare and propose such regulations to the Commission.

Recommendation 15: The Division should evaluate and recommend regulatory and statutory changes necessary to consolidate the application for examination and application for licensing procedures into a single process. Background investigations should be conducted only for those applicants who successfully pass the exam (Appendix F, BDR 54-116).

Current statutory procedures require two application processes in order to become licensed. One application is required to become eligible to take the examination and another is required to obtain the license if the applicant successfully completes the exam. All determinations as to an applicant's suitability to be licensed are conducted before being qualified to sit for the examination. The Fiscal Analysis Division found in their review, however, that only about half of all applicants successfully completed the examination. The current process requires a certain amount of duplication and unnecessary effort in reviewing qualifications of many applicants who will never be licensed (see Appendix B, page 24).

The subcommittee believes that revamping the application process to eliminate duplication and unnecessary tasks will serve to promote efficiency and budgetary savings within the Division and better service for the public. The subcommittee also recognizes that the statutory language should be added that makes it clear that taking the examination creates no vested rights for the applicant and that all other license requirements including education and the demonstration of suitability to practice real estate must be met before the license can be granted. The Division has concurred in this recommendation.

Recommendation 16: The Division should consider combining the applications and licensing staffs into one section and consolidating the application for examination and application for licensure forms.

The subcommittee feels that the Division could more effectively use available resources and produce budgetary savings if the licensing and applications sections were combined. Since these sections both deal with the same individuals and the same files, the adoption of the subcommittee's recommendation to consolidate the application process (see Recommendation 17) would seem to mandate the consolidation of the staff. The subcommittee also notes that a new computerized licensing system is being developed for the Division by Central Data Processing and that this would be the ideal time to consolidate staff as well as the separate application forms. In the process of computerization the Division and Central Data

Processing have undertaken an examination of all licensing forms in order to eliminate duplication and unnecessary data. The subcommittee anticipates that this process will result in additional savings to the Division (see Appendix B, page 24).

Recommendation 17: The Legislature should enact enabling legislation to allow the Commission the discretion of accepting the successful completion of the uniform portion of the national uniform exam as partially satisfying examination requirements in Nevada (Appendix F, BDR 54-116).

The Division contracts with a national testing service to administer the real estate examination in Nevada. The test consists of two parts: one is a national uniform portion; the other relates only to Nevada law (see Appendix B, page 25). Currently, 31 states allow either partial or full reciprocity with other states and 27 states are using the same national testing service. The subcommittee feels that the opportunity exists to grant reciprocity in certain instances and that this may act to reduce barriers to licensure and increase licensing efficiency. The subcommittee recognizes that the current examination section on Nevada law is necessary to insure competent licensees and recommends statutory changes only to allow the Commission the discretion to grant reciprocity under regulation for the uniform portion of the test.

Recommendation 18: The Legislature should enact a statutory requirement that all prospective licensees must have a fingerprint check performed (Appendix F, BDR 54-116).

The Division is unable to perform an adequate criminal background investigation of prospective licensees since fingerprint checks are not available from the Federal Bureau of Investigation. These fingerprint checks can be reinstated provided there is a statutory requirement for them. No statutory requirement presently exists. The subcommittee feels that the fingerprint check can reveal concealed criminal records and be a useful tool in determining an applicant's suitability for licensure (see Appendix B, page 26).

Recommendation 19: The Legislature should amend NRS 645.410 and 645.420 to extend the time limit for approval or denial of an application for license and for payment of the license fee (Appendix F, BDR 54-116).

Current law requires the Division to act on an application within 30 days of the examination and the applicant to pay the license fee within 30 days of notification of successful completion of the exam. If Recommendation 17 of this report is adopted, these time limits should be extended to allow the Division sufficient time to investigate the background of all applicants who successfully pass the examination. In addition, a longer time period for payment of the required license fee will provide a greater opportunity for salesmen to associate with a broker and avoid any penalty for late payment (see Appendix B, page 27). The Division has recommended that the time period for action on an application be extended to 60 days from the examination and the period for payment of the license fee be extended to 90 days from notification of successful completion of the exam.

Recommendation 20: The Division should establish a written procedures manual for the compliance function.

The Legislative Auditor reported that the Division has not established written procedures for the compliance function to effectively carry out the regulations as adopted by the Advisory Commission. The Legislative Auditor found that there is a lack of consistency in the manner in which complaints and investigations are initiated, conducted, documented and closed. The subcommittee feels that procedures manuals would help standardize procedures and ultimately result in more efficient utilization of staff time (see Appendix A, page 28.18).

Recommendation 21: The Division should evaluate the need for the current number of investigators taking into account cyclical trends.

Through analysis of the 1978-79 investigative caseloads the Legislative Auditor found an inequitable caseload distribution among the compliance staff. The analysis indicated that individual caseloads ranged from 14 to 27 open cases during the review period when 50 cases is considered maximum. The audit report also noted that agency auditors were performing investigations during this period when investigative caseloads were less than half of the maximum caseload. Although the Division disagrees with the audit report and maintains that the number of cases is not the only indicator of an efficient caseload distribution and staff requirement, the subcommittee feels that a thorough evaluation by the Division is in order and anticipates that budgetary savings may be possible (see Appendix A, page 28.20).

Recommendation 22: The Division should establish an audit plan to insure that personnel are used effectively, develop and utilize an audit program in the performance of audits and prepare and retain audit workpapers for all audits performed.

The Legislative Auditor found that the Division was performing audits of broker trust accounts without the use of a predetermined audit plan or audit programs. In addition, audit workpapers were not always prepared to document the audit work. An audit plan would help insure that audit staff is used in an efficient manner as well as insure that all audit requirements can be performed and assigned case-loads can be met. Audit programs are valuable as a planning tool and to document what steps have been performed for individual audits. Workpapers are necessary to document what work was performed on each audit and what findings were made. The subcommittee believes that an audit plan, audit programs and workpapers are a necessary part of any audit program and recommends that the Division take the necessary steps to develop them (see Appendix A, page 28.23).

Recommendation 23: The Division consider expanding the scope of the broker office survey.

The Division performs broker office surveys which are a spot check of broker records and compliance with Nevada Revised Statutes. These surveys require approximately 1 1/2 to 2 hours to complete. The Legislative Auditor has reviewed this survey procedure and recommends that additional time be allotted for each survey in order to conduct a more comprehensive review. The subcommittee noted that this survey is frequently the only contact the Division has with a broker for several years at a time and, therefore, its value as a compliance tool is contingent upon its thoroughness and completeness. The subcommittee, therefore, agrees that the Division should review these procedures and consider expanding their scope (see Appendix A, page 28.24).

Recommendation 24: The Division should expand the explanation on the Statement of Fact to better explain the Division's authority and to better inform the complaining public of the limitations of the Division's authority.

Many complaints are not within the authority of the Division to resolve since only licensing law violations and violations of Commission regulations can be investigated (see Appendix B, page 29). The subcommittee found that complainants may

become dissatisfied if their complaint falls outside the investigative jurisdictions of the Division. All complainants must complete a Statement of Fact form (complaint form). The form currently contains a brief statement concerning the limited authority of the Division. The subcommittee feels an expanded explanation on the complaint form may clarify the Division's legal position and minimize public dissatisfaction.

Recommendation 25: The Division should expand its public relations effort to inform the public of the role of the Division and provide information to the public through the complaint process about the recovery fund and how and when a claim may be ordered.

In their review, the Fiscal Analysis Division reported that the Education, Research and Recovery Fund (ERRF) was established in 1967 to provide some protection to the general public from unscrupulous licensees and to provide a resource for education of Nevada licensees (see Appendix B, page 29). Since the inception of the fund only \$44,730.22 has been paid out for recoveries against licensees and only seven claims have been paid in the last six years. The Fiscal report concluded this may be due in part to lack of knowledge of the fund and its purpose and recommends informing all complainants of the potential for recovery.

The subcommittee recognizes that the lack of claims may be due in part to a small number of suits filed against licensees but, after receiving testimony at four public hearings, feels that the problem may be broader in scope and that the public may not be aware of the role of the Division and the complaint process in general. The subcommittee believes that the Division should begin a public awareness program as a routine function to inform the public of the purpose and activities of real estate licensing.

Recommendation 26: The Division should, after consulting with the Consumer Affairs Division, evaluate the need to place vacation licensing under the regulatory authority of chapter 119 of NRS and make appropriate recommendations to the 1981 Legislature.

Recent marketing advances have resulted in the creation of "timesharing" and "vacation licensing" arrangements. "Timesharing" generally refers to a part interest in real property for a fixed period each year. If the interest is a real property interest, the project may be regulated by NRS 119 (Land Sales Act). "Vacation licenses", on the other hand, is a term used to describe a contractual relationship which

entitles the license to the use of some property at a specified time of year. The Nevada Supreme Court has ruled that "vacation licenses" do not meet the definitions of a subdivision pursuant to NRS 119. Potential problems can occur in marketing "vacation licenses" since they are not regulated and the public has no direct protection from unscrupulous sales practices. The Consumers Affairs Division of the Department of Commerce has received numerous complaints concerning these marketing practices (see Appendix B, page 32).

The subcommittee does not recommend the regulation of "vacation licenses" at this point, but feels that the subject should be brought before the full Legislature for consideration in 1981. The Division has indicated it will develop a legislative proposal and present it to the next Legislative Session.

Recommendation 27: The Advisory Commission should consider adopting a rule requiring all brokers to keep their trust fund records up to date.

When the Division conducts a broker office survey they give advance notice to the broker. The Legislative Auditor noted that this procedure reduces the effectiveness of the survey and provides the broker with an opportunity to correct any deficiencies in the records or to replace any shortages in the trust account. The Division maintains, however, that advance notice is necessary to insure that Division staff will find the broker or bookkeeper at the place of business and to avoid situations where the auditor must first balance the books before performing the audit. The subcommittee feels that it may be impractical to perform broker office surveys without advance notice, but that trust fund records must be kept current in order to properly protect the interest of the buying and selling public. The subcommittee, therefore, recommends that the Advisory Commission require timely bookkeeping and suggests that the Division publicize through the newsletter its intent to require compliance with that rule.

Recommendation 28: NRS 645.310 should be amended to only require a separate checking account designated as a trust account for each broker that receives trust funds (Appendix F, BDR 54-116).

NRS 645.310 currently requires that every broker maintain a separate checking account designated as a trust account for the purpose of holding trust funds that pass to the broker

during the course of a transaction. The subcommittee recognizes that not all brokers receive trust funds and the statute is overly broad and that the statute only need apply to those brokers who receive such funds.

Recommendation 29: NRS 645.350 should be amended to change the requirement that salesmen must associate with a broker before licensing rather than before taking the examination (Appendix F, BDR 54-116).

The 1979 Legislature made substantial "housekeeping" changes to chapter 645. Included was a provision that a salesman must obtain a verified statement from a broker that he intends to hire the salesman prior to taking the examination. Previously, such a statement was only required before licensing. Testimony before the subcommittee indicates that this change was inadvertent and not supported by either the Division, Commission or the industry. The subcommittee feels that it is inappropriate to require association of a salesman with a broker before the examination and no public purpose is served by such a requirement.

Recommendation 30: NRS 645.360, which requires three letters of recommendation for prospective licensees, should be repealed (Appendix F, BDR 54-116).

NRS 645.360 requires that each application for a license must be accompanied by three letters of recommendation attesting that the applicant has a good reputation for honesty, truthfulness, fair dealing and competency. This requirement emanated from an early licensing law and was nearly the sole requirement for licensure at that time. Today, little use is made of the recommendations and the Division has requested deleting the requirement since the letters bear little relationship to the qualifications of the applicant.

Recommendation 31: Provisions of NRS 645 should be amended to provide that a written transcript of Commission hearings should only be required if requested by someone and the cost should be borne by the requester (Appendix F, BDR 54-116).

NRS 645.440, 645.690 and 645.760 all provide that any party to proceedings held before the Commission appealing a decision of the Division is entitled to a written transcript of the hearing at a cost of 25 cents per folio. Transcripts

currently cost \$2.35 a page for originals and \$.75 a page for copies. NRS 645.760 also requires the Division to purchase a transcript whether or not anyone has requested it.

The subcommittee feels that transcripts should only be prepared when a need is demonstrated or when a party to the proceedings requests it provided that the tapes from which the transcripts are prepared are retained past all appeal deadlines. In addition, the subcommittee recommends that the cost of the transcript should be borne by the requester as long as those costs are reasonable and proper.

Recommendation 32: NRS 645.540, which requires that the Division prepare and deliver to each licensee a pocket card, be repealed (Appendix F, BDR 54-116).

In addition to the official license which must remain at the broker's office, each licensee is provided a pocket card which identifies the licensee and, in the case of a salesman, the broker with whom the licensee is associated. The Division has recommended and the subcommittee agrees, that this requirement should be deleted since the cards serve no useful purpose, duplicate the license itself, creates an unnecessary expense for the Division and are a bother both to the Division and the licensee.

The subcommittee believes that no additional protection is afforded the public by the pocket card and deletion of this requirement will eliminate unnecessary procedures and increase efficiency of the licensing process.

Recommendation 33: Chapter 645 should be amended to provide that service of process and other required communications upon the Commission may be made at the Real Estate Division in Carson City (Appendix F, BDR 54-116).

Chapter 645 does not include any instruction or provisions on how or where the Commission can be served or notified in those matters that require service of process or special communications. The Commission is an interim body without a permanent address and constitutes a public agency only when meeting. The subcommittee feels that for the convenience of the public such communications could be served at the Division office in Carson City.

Recommendation 34: NRS 645.844 should be amended to delete the requirement that a claimant against the recovery fund must post a bond to guarantee costs should the claim be denied (Appendix F, BDR 54-116).

Provisions of chapter 645 under which a claimant can petition the courts for payment from the recovery fund to satisfy a judgment against a licensee requires the posting of a bond in the amount of 10 percent of the claim to guarantee costs should the claim be denied. The Division has recommended that this provision be deleted since it places an additional burden on the claimant when there is little or no threat of abuse of the recovery fund procedures. The subcommittee believes unnecessary impediments to the recovery fund should be removed in the interest of public protection.

Recommendation 35: NRS 645.660 should be amended to make it absolutely clear that "a broker has a duty to supervise" his salesmen (Appendix F, BDR 54-116).

Under present law, a real estate broker can be held accountable for actions of his salesmen only if he has guilty knowledge of those actions. The subcommittee noted that the entire licensing relationship between a broker and salesman is based on the concept that the broker has a duty to supervise his employees and agents and that the broker is responsible for the actions of his subordinates. The subcommittee was concerned that Nevada law, however, does not specifically require the broker to accept responsibility for his employees or agents and that disciplinary actions had been frequently brought against salesmen, but not the associated broker. The Legislative Auditor found that of 29 cases brought before the Advisory Commission in the last two years, 10 involved actions against salesmen where no action was taken against the broker. The subcommittee, therefore, recommends that this "duty" be reaffirmed in the law.

V. Nevada Racing Commission

A.B. 523 terminates on July 1, 1981, the Nevada Racing Commission and the Nevada Racing Act (NRS 466) in its entirety.

Regulation of horse racing, greyhound racing and racing pari-mutuels is a responsibility of the Nevada Racing Commission. The Commission, composed of five members appointed by the Governor, promulgates regulations, licenses race meet operators, licenses certain occupations associated with racing, and enforces state law and regulations at licensed events. Currently, only limited horse racing events at Ely and Elko are licensed by the Commission, however, the industry in Nevada is about to undergo significant changes. The Racing Commission is considering an application to license a full-time commercial track in Henderson which will initially feature greyhound

racing and horse racing will be added within the statutory 1-year period. The 1979 Legislature authorized the employment of the first Executive Secretary and full-time staff for the Commission to regulate this new track. Revenues from the pari-mutuel tax are expected to exceed the cost of regulating track activities and become a revenue generating tax for the state's general fund.

The Legislative Commission's Subcommittee on Sunset Review requested that the Fiscal Analysis Division of the Legislative Counsel Bureau prepare a report reviewing the activities of the Racing Commission. The Fiscal Analysis Division report dealt with all activities of the Commission as well as regulation of racing and pari-mutuels and specifically the review criteria found in A.B. 523. Many of the recommendations of the subcommittee originated with the staff report. For an expanded discussion of each of those findings and recommendations a reference is given to the appropriate report which is included in the appendices of this report. The staff's findings on the specific review criteria in A.B. 523 can be found in Appendix C, pages 26 to 32. The subcommittee accepts and incorporates these findings on the review criteria as a part of its report. In addition, the subcommittee reviewed several recommendations of the Racing Commission and included one of them in this report. The following are the recommendations of the subcommittee which are based on the assumption that racing in Nevada is in transition and expanding and that regulatory activities will increase in the future and that racing pari-mutuels will become a revenue producing activity for the state's general fund.

FINDINGS AND RECOMMENDATIONS

Recommendation 1: The 1981 Legislature should repeal those provisions of Chapter 688, 1979 (A.B. 523), that terminate the Nevada Racing Commission and NRS Chapter 466 and continue to regulate horse racing, greyhound racing and pari-mutuel wagering at these events (Appendix G, BDR 41-117).

The subcommittee concluded after review of the report of the Fiscal Analysis Division (Appendix C) and hearing testimony of the Racing Commission, the Executive Secretary of the Racing Commission and the general public that the absence of regulation would create a potential for substantial economic loss to the public resulting from fraudulent pari-mutuel practices and fixed racing results. In addition, the subcommittee found that the reputation of gaming in general in Nevada is highly prized and the state makes significant efforts to preserve a good reputation. Lack of regulations of racing and pari-mutuel wagering creates a significant

danger to Nevada should the state's gaming reputation be damaged. The subcommittee believes that racing and pari-mutuel wagering must be strictly regulated in order to protect the welfare of the public and guarantee fair and impartial race results and wagering opportunities.

The subcommittee also found that the provisions of the Nevada Racing Act (NRS 466) and the activity of the Racing Commission are designed and generally do act to protect the public from potential loss and that the vigorous enforcement of the law and regulations of the Commission are essential to a sound racing industry. The subcommittee did find many areas of the regulatory process, however, that require legislative or administrative attention in order to increase the effectiveness of the Commission. These findings and recommendations are included here in the balance of this section.

Recommendation 2: The Legislature should update the statutory purpose of the Nevada Racing Act to include "the protection of the general public" and remove "to encourage agriculture" (Appendix G, BDR 41-117).

The Nevada Racing Act (NRS 466) includes the provision that "the purpose of the chapter is to encourage agriculture and the breeding of horses and greyhounds in this state and to produce an additional source of revenue for the state." The subcommittee feels the primary purpose for regulating racing should be the protection of the public and such language should be added. In addition, the subcommittee recommends removing "to encourage agriculture" from the statement of purpose since nothing in the law encourages agriculture. The subcommittee notes that agricultural associations receive special consideration in licensing and tax matters under NRS 466 and that consideration should remain intact, but that the purpose of the law does not include encouraging agriculture generally (see Appendix C, page 13).

Recommendation 3: The Legislature should change the statutory qualifications for appointment to the Racing Commission and delete those requirements that serve no useful purpose (Appendix G, BDR 41-117).

NRS 466.040 requires that each appointee to the Racing Commission must be a 5-year Nevada resident, a qualified elector, not less than 35 years old, cannot have any official relation or pecuniary interest in any association or corporation engaged in racing in Nevada and no more than three members of the five-member Commission may be of the same

political party (see Appendix C, page 15). The subcommittee believes that several of these requirements are either outdated or unnecessary and recommends the following qualifications patterned after the Gaming Commission requirements:

- a. Must be a United States Citizen.
- b. Must be a Nevada resident.
- c. Cannot have any official relation or pecuniary interest in any association or corporation engaged in racing in Nevada.
- d. Not more than three members may be of the same political party.

Recommendation 4: The Legislature should amend NRS 466 to prohibit members of the Racing Commission from racing their own horses in any Nevada race regulated by the Commission (Appendix G, BDR 41-117).

NRS 466.045 currently prohibits Commission members from owning or having a financial interest in any greyhound raced in a meet licensed by the Commission. In addition, the Commission on the Review of a National Policy Toward Gambling has recommended that members of racing commissions in all states be prohibited from having any financial interest in any regulated race track or any animal racing in the state (see Appendix C, page 15).

The subcommittee feels the purpose of this recommendation is to eliminate any possibility of a conflict or even the slightest appearance of a conflict between the private interests of the Commission members and their public duty to license and regulate race events and racing animals. In addition, the subcommittee feels that the law should be consistent concerning ownership of greyhounds and horses. The subcommittee noted that presently no members of the Commission race their own horses in Nevada.

Recommendation 5: The Legislature should amend NRS 466 to provide for a daily salary of \$40 for Commission members when on Commission business (Appendix G, BDR 41-117).

NRS 466.050 authorizes the members of the Commission to be paid per diem and travel expenses, but does not provide for a salary as is normally the case for boards and commissions in Nevada (see Appendix C, page 15).

The subcommittee recognizes the disparity of the situation and the personal burden placed on members of the Commission and recommends authorizing payment of a daily salary of \$40 which is the same rate of pay most other boards are allowed.

Recommendation 6: The Legislature should amend NRS 466 to require the Racing Commission to promulgate regulations for racing and pari-mutuel wagering at racing events (Appendix G, BDR 41-117).

NRS 466.030 provides that the Commission "may" adopt regulations governing the conduct of racing events in Nevada and 466.170 allows the Commission to adopt regulations governing pari-mutuel operations at tracks. At the time of the staff review the horse racing regulations were last published in 1964 and most of the regulations were older than that, there were no greyhound racing regulations, and no pari-mutuel regulations had ever been adopted (see Appendix C, page 16).

During the latter half of fiscal year 1979-80, the Commission, with the assistance of the newly hired Executive Secretary, developed and adopted regulations for horse and greyhound racing and pari-mutuels. Nonetheless, the subcommittee recommends that the permissive language of NRS 466.030 and 466.170 be changed to require the adoption of all necessary regulations.

Recommendation 7: The Legislature should amend NRS 466 to deposit all revenues received by the Commission in the general fund and to appropriate sufficient moneys to meet the necessary expenses of the Racing Commission. The Commission should be given the authority to reimburse agricultural associations and to supplement breeders' purses through the budgetary process (Appendix G, BDR 41-117).

The Racing Commission, in fiscal years 1978-79 and 1979-80, having experienced severe financial hardship, requested and received emergency authorizations from the Interim Finance Committee. The Racing Commission is currently supported from license revenues and 1 percent of the 3 percent pari-mutuel tax. These revenues have been insufficient in the face of rising expenditures for the last two fiscal years (see Appendix C, page 21).

The subcommittee recognizes the importance of strong and viable regulation of the racing industry especially with the advent of a full-time commercial track in Henderson. The subcommittee believes it is essential to respond to this additional responsibility by eliminating any financial problems of the Commission and guarantee resources sufficient for the task. The subcommittee finds also that Nevada's other similar regulatory agencies, Gaming and the Athletic Commission, have appropriated budgets and their revenues are deposited in the general fund. In addition, with the new track in Henderson, the pari-mutuel tax is

expected to exceed the cost of regulation and become an additional source of revenue for the general fund. The subcommittee believes that under these circumstances it is appropriate to fund the expenses of the Commission from general fund appropriations and to provide budgetary authority to reimburse agricultural associations and supplement breeders' purses as allowed under present law. The subcommittee makes no recommendation on the value of reimbursing agricultural associations and supplementing breeders' purses and noted that no Commission funds had been returned in recent years.

Recommendation 8: The Commission should obtain required bond coverage on contract employees handling state moneys and insure blanket state coverage on its own employees.

The Fiscal Analysis Division review found that the Commission had failed to obtain bond coverage required by NRS 466.065 on its State Steward for the last race of the 1979 season. The subcommittee recommends bond coverage be obtained on the Steward and all Commission staff as required. The Commission has indicated steps have been taken to rectify this oversight (see Appendix C, page 22).

Recommendation 9: The Legislature should require that the Gaming Control Board provide the Racing Commission with a full report of each licensing investigation as well as a recommendation for approval or denial (Appendix G, BDR 41-117).

In order to obtain a license to conduct pari-mutuel wagering, an applicant must submit to a background investigation conducted by the Gaming Control Board. The Gaming Control Board submits a report to the Racing Commission, but does not make any recommendations for approval or denial. In similar circumstances the Control Board makes a recommendation when investigating gaming applicants for the Gaming Commission. This two-tiered system has been developed through the years to insure adequate public protection and to provide the Gaming Commission with the opportunity to gain formal input from the Control Board based on its experience and expertise (see Appendix C, page 23).

The subcommittee believes that adequate regulation of racing in Nevada is of paramount importance in protecting the image of Nevada as well as the image of other forms of gaming. It is essential that regulation of racing equal or exceed that provided by the Gaming Commission or Control Board. The subcommittee, therefore, feels that the Racing Commission

should draw on the experience of the Gaming authorities and suggests that all licensing investigations include a recommendation of approval or denial just as is done with gaming applications.

Recommendation 10: The Racing Commission should develop background information on occupational licensees and increase the reliability of that information through the National Association of Racing Commissioners' computerized data system or fingerprint checks or both. In addition, when adequate background verification is developed to insure licensing suitability in Nevada, the Commission should consider reciprocity for those licensed in other states with similar requirements.

The Racing Commission, through the State Steward, licenses a number of racing event participants. Licensing generally takes place at the track shortly before the racing event and the Commission has not had the resources to conduct a thorough check of applicants. The Racing Commission has included in their budget for the current year funds to implement a computer hook-up with the National Association of Racing Commissioners to review the racing background of occupational licenses. In addition, the Commission is reviewing the possibility of requiring fingerprint checks for the more sensitive track positions. The Commission has also held discussions and plans to institute reciprocity arrangements with race participants successfully licensed in other states (see Appendix C, page 25).

The subcommittee feels that accurate regulatory procedures are necessary to adequately control racing events and pari-mutuel wagering in Nevada and supports Commission actions to strengthen the reliability of the background information of occupational licensees and to improve licensing efficiency through reciprocal practices with other states.

Recommendation 11: The Commission should institute an audit or verification procedure to insure proper operation of the pari-mutuel and tax payments.

To date, the licensed operator at each racing event has been responsible for the operations of the pari-mutuel. The Racing Commission has not audited or attempted to verify wagers, odds, pay-outs, unclaimed tickets or the state tax because of lack of resources available for this task (see Appendix C, page 25).

The subcommittee feels that adequate supervision of the pari-mutuel operations and tax payment requires that audit and verification procedures be established. The Racing Commission has recently completed regulations governing pari-mutuel wagering at racing events and has developed written procedures for the State's mutuel director which include verification duties. There will be a full-time mutuel director assigned to the pari-mutuel operation at the Henderson track and the Commission has expressed the intent of instituting similar procedures at the rural horse racing events in Ely and Elko.

Recommendation 12: The Legislature should amend Chapter 466 to provide that all personnel of the Commission, except clerical positions, be in the unclassified State service (Appendix G, BDR 41-117).

The Racing Commission has requested, and the subcommittee agrees, that provisions should be added to Chapter 466 making all employees, except clerical positions, unclassified and subject to immediate dismissal. The very nature of regulating racing events and pari-mutuels requires that the Commission be in a position to remove or replace employees when their activities or actions are contrary to law or regulations and not in the best interests of the state. The subcommittee noted that all employees of the Gaming Control Board, except clerical positions, are in the unclassified service and believes that the same management latitude should be extended to the Racing Commission.

Recommendation 13: The subcommittee recommends referring the issue of which agency, the Racing Commission or the Gaming Commission and Control Board, should regulate racing and racing pari-mutuels in Nevada to the Legislative Commission's Subcommittee on the Gaming Industry (S.C.R. 49).

The subcommittee recognizes that gaming in its many forms is the lifeblood of the Nevada economy and that regulation of gaming is of paramount importance for the protection and welfare of Nevadan's as well as gaming visitors. The subcommittee also recognizes that the nature of racing and pari-mutuels requires stringent and aggressive regulation in order to guarantee fair and impartial race results and wagering opportunities. The subcommittee believes that regulatory problems or a scandal in racing in this state could result in a loss of confidence in Nevada's casinos and loss of a market for the gaming industry in general and that this possibility demands that racing as well as other gaming forms be afforded the best and most comprehensive regulation possible.

The subcommittee, therefore, recommended that the interim Subcommittee on Gaming (S.C.R. 49) which was commissioned by the 1979 Legislature to examine the gaming industry, study the issue of which agency could best regulate racing and its pari-mutuels in Nevada. The subcommittee on Gaming has agreed to review this issue.

VI. BUREAU OF COMMUNITY HEALTH SERVICES

A.B. 523 terminates the Bureau of Community Health Services on July 1, 1981. In addition, the State Budget Director is prohibited from including any funds in the Executive Budget for the 1981-83 biennium for Community Health Services or its programs.

The Bureau of Community Health Services provides services primarily in the 15 rural counties of the state which include sexually transmitted disease control, tuberculosis control, immunization programs, public health nursing services, physical therapy services to underserved areas, and licensing and certification of ambulance services, ambulance attendants and emergency medical service personnel. The nursing staff provides many health services to numerous clientele groups in all rural counties of the state. The Clark and Washoe County Health Districts provide most of these same services to their own areas and are partly supported by state general funds distributed on a per capita basis.

The Legislative Commission's Subcommittee on Sunset Review requested that the Fiscal Analysis Division of the Legislative Counsel Bureau prepare a report reviewing the activities and programs of the Bureau of Community Health Services. The Fiscal Analysis Division report dealt with only those programs of the Bureau and did not address other programs or functions of the Health Division nor did it include any evaluations of the effectiveness of the medical services and procedures provided by the Bureau. The report used the review criteria of A.B. 523 as a basis for evaluation although those criteria do not specifically apply to service programs. The staff's findings on the specific review criteria contained in A.B. 523 can be found in Appendix D, pages 26 to 35. The subcommittee accepts and incorporates these findings on the review criteria as a part of its report. Many of the recommendations of the subcommittee originated with the staff report. For an expanded discussion of each of those findings and recommendations, a reference is given to the appropriate report which is included in the appendices of this report (Appendix D). In addition, the subcommittee reviewed several suggestions of the Health Division and included two of them in this report. The following are the recommendations of the subcommittee.

FINDINGS AND RECOMMENDATIONS

Recommendation 1: The Legislature should repeal provisions of Chapter 688, 1979 (A.B. 523) that terminate the Bureau of Community Health Services of the Health Division and prohibit the State Budget Director from including funds for Bureau programs in the Executive Budget in order to continue those services for citizens of the state.

The subcommittee concluded after review of the report of the Fiscal Analysis Division (see Appendix D) and hearing testimony of the Bureau staff, Health Division and the public, that the termination of the programs and services of the Bureau could adversely affect the health and welfare of the general public and create the potential for medical crises. The subcommittee found that the services of the Bureau are primarily directed toward prevention of medical problems and that the public depends on programs of communicable disease control and immunizations and the licensure and certification of ambulance attendants and emergency medical technicians to protect it from epidemic diseases and incompetent emergency care. The services of the public health nurse and physical therapist are provided to rural localities and rural school districts where other medical services are not always available or adequate and the subcommittee believes elimination of these services could severely impact health care availability in these areas. The subcommittee did note that in some rural areas the services of the public health nurse may have expanded beyond the normal scope of identifiable bureau programs creating potential interference with the practices of private care providers.

The subcommittee found that the activities of the Bureau of Community Health Services in delivering services, generally do act to protect the public health and help prevent medical crises. The subcommittee found several areas of Bureau activities, however, that require legislative or administrative attention in order to promote the efficient use of Bureau resources. These findings and recommendations are included here in the balance of this section.

Recommendation 2: The Legislature should adopt specific statutory language for NRS 450B (Emergency Medical Services) establishing public policy and the purpose for regulation of emergency medical services (Appendix H, BDR 40-118).

NRS 450B governs the licensing of ambulance attendants, the permitting of ambulance services and certification of emergency medical technicians. The statute does not specify the

purpose of regulation nor does it set forth legislative policy regarding the goals or objectives of regulating emergency services. The subcommittee believes that the lack of specific purposes and goals impedes the evaluation of the effectiveness of programs and the law itself by the public and the legislative and executive branches of government. A statutory purpose would set the standard against which Board of Health regulations and activities of the Bureau could be measured and evaluated to insure that legislative intent is met (see Appendix D, page 11).

Recommendation 3: The Division should continue its investigation into fees for services performed for all types of Bureau services.

The Fiscal Analysis Division reported to the subcommittee that the Division had been investigating the possibility of creating a fee schedule for some of their programs and services. The subcommittee noted that Clark and Washoe Health Districts charged fees for certain services and that the Division had established fees and eligibility criteria for the family planning program (see Appendix D, page 13).

The subcommittee feels that in certain instances, fees for services may be appropriate provided program clientele do not become discouraged or are not prevented from receiving services. The subcommittee suggests, therefore, that the Division expand its evaluation to all Bureau services. The Division has indicated it will complete the evaluation and report their findings to the 1981 Legislature.

Recommendation 4: The Legislature should amend NRS 439 (Administration of Public Health) to provide authority for the State Board of Health to establish fees for programs or services of the Division (Appendix H, BDR 40-118).

In addition to recommending that fees be created where appropriate, the subcommittee feels that authority to establish such fees should be given to the State Board of Health. The subcommittee believes that the Board of Health, with input from the Health Division through the public hearing process required in the Administrative Procedures Act, is in an informed position to determine fee requirements and eligibility criteria. The Board of Health is also better prepared to deal with adjustments in fees that may be required as a result of changed conditions or clientele (see Appendix D, page 13).

Recommendation 5: The Health Division should monitor the "aid to counties" program for Clark and Washoe health districts and report to the 1981 Legislature the actual uses of the funds, whether additional federal funds were matched and if the funds caused local governments to exceed their spending limitations or to reduce property tax rates.

Since fiscal year 1973-74, the state has provided general fund aid to the Clark and Washoe Health Districts in order to increase the district's ability to attract and match additional federal funds. These funds are distributed to the districts on a per capita basis by the Health Division. In 1979, the Legislature agreed to substantially increase these grants provided the additional funds didn't cause the local government to exceed its spending limitation or cause property tax relief beyond that granted by the Legislature (see Appendix D, page 14).

The subcommittee found that although the Health Division distributed these funds to the health districts, no mechanism or procedures existed to determine the effects of the state grants on local spending limits and tax rates or whether the funds were achieving their stated purpose of matching additional federal funds. The subcommittee, therefore, believes the Division should monitor these funds and report routinely to each legislature through the budget process. The Division has indicated it will obtain all required information and prepare a report for the 1981 Legislature.

Recommendation 6: The Division should reimburse the general fund for the cost of the physical therapists' services for health facility certification from federal funds for both the current biennium and in the future.

The Fiscal Analysis Division reported that the physical therapist often performed work for the Bureau of Health Facilities on federally funded health facility certifications, but that reimbursement from federal funds was not always made (see Appendix D, page 19). The subcommittee feels that the Division should attempt to maximize federal reimbursements for Bureau personnel when they work on federal projects or programs. The Division has indicated they will eliminate this problem by proposing, through the budgetary process, that the physical therapist position be transferred to the Bureau of Health Facilities where the position will become approximately 65 percent federally funded.

Recommendation 7: The Legislature should amend NRS 441.240 to place grant authority with the Department of Human Resources and Health Division rather than the Board of Health (Appendix H, BDR 40-118).

The Fiscal Analysis Division reported that NRS 441.240 still places authority to accept federal grants for venereal disease control with the Board of Health. The Department of Human Resources and Health Division have actually acted in this capacity in recent years and do so for all other federal aid programs. The subcommittee feels this is an administrative function and should be a responsibility of the Department and Division rather than the Board of Health whose primary purpose is to set health policies and promulgate regulations (see Appendix D, page 21).

Recommendation 8: The Bureau should execute formal user agreements with each local agency or ambulance service to guarantee responsible maintenance of all locally assigned equipment purchased under the Fleischmann Foundation Grant for emergency communications.

The state has purchased, with Fleischmann Foundation funds, components to implement a statewide radio system for emergency vehicles and hospital emergency rooms. Much of the equipment will be in public and private ambulances and hospitals throughout the state. The Bureau has obtained written commitments from these users to maintain the equipment. The subcommittee feels that this commitment should be affirmed in formal user agreements to insure maintenance responsibility (see Appendix D, page 24).

The subcommittee also feels that the cost of maintaining the system at the mountaintop state microwave sites should be borne by the state. The Division testified that the state had agreed in principle to this maintenance responsibility when it negotiated the grant with the Fleischmann Foundation.

Recommendation 9: The Bureau should consider changing its standard contract with the Community Colleges from lump sum to a payment of tuition for all noncredit enrollees up to a maximum dollar amount in order to insure maximum effectiveness of limited training dollars.

The Bureau currently contracts with the various Community Colleges to present emergency medical education programs. The Bureau pays a lump sum amount for each class and the Community College conducts the course free of charge for all enrollees unless the individual desires credit, in which

case the college charges tuition. The lump sum payment method offers no guarantee that the maximum number of students are being served from the Bureau's funds. The subcommittee, therefore, has suggested changing the method of payment to a per student basis and the Bureau has indicated this will be accomplished for the 1980-81 fiscal year (see Appendix D, page 24).

Recommendation 10: The Bureau should create a mechanical inspection checklist form to be completed every six months by a qualified mechanic for each ambulance licensed by the state.

Current Board of Health regulations require a statement from each ambulance service operator in the state every six months that each licensed ambulance is in good mechanical condition. The Fiscal Analysis Division report recommended the Bureau supplement this inspection by requiring that staff field representatives perform a minimal mechanical inspection when they inspect the emergency medical equipment required to be on board each ambulance. The Bureau proposed an alternate solution to insure proper mechanical condition by requiring the qualified mechanic who inspects each ambulance pursuant to existing regulation, to complete a formal inspection checklist to be filed and maintained by the Bureau. The Bureau would then have documentation that each ambulance serving the public in Nevada met minimum mechanical standards (see Appendix D, page 25).

The subcommittee agreed with the alternative proposal by the Bureau and the Bureau indicated it would develop such a checklist form.

Appendix A

Legislative Auditor's Operational Review
of the Real Estate Division &
Advisory Commission

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



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Legislative Commission
Legislative Building
Carson City, Nevada

We have completed a limited operational review of the State of Nevada, Real Estate Function of the Department of Commerce, as authorized by the Legislative Commission.

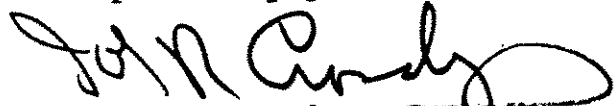
The purpose of the review was to assist the Legislative Commission in meeting the goals and objectives as outlined in Chapter 688, Statutes of Nevada, 1979. In addition, we hope that this report will serve as a tool in evaluating the role of expanded scope auditing in Nevada.

The accompanying report presents our findings and recommendations concerning the performance of the Real Estate Division and Real Estate Advisory Commission. During, and subsequent to our field work, the Division and Commission started to either review or implement some of the recommendations identified in this report. We have not had the opportunity to verify what recommendations have been implemented. The agency's replies are also incorporated as part of our report.

Legislative Commission
Page two

We wish to express our appreciation to the members of the Real Estate Advisory Commission, the Director of the Department of Commerce, the Administrator of the Real Estate Division, and his staff for the assistance they provided during our review.

Respectfully presented,



John R. Crossley, C.P.A.
Legislative Auditor

Wm. Gary Crews, C.P.A.
Audit Manager

November 20, 1979
Carson City, Nevada

STATE OF NEVADA
DEPARTMENT OF COMMERCE
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SCOPE OF REVIEW

The Audit Division was directed by the Legislative Commission to conduct an operational review of the Real Estate Division within a limited number of man hours. Consequently, we determined that we would perform an expanded scope audit, which includes the elements of economy, efficiency, and effectiveness. Because of the limited man hours that we could expend on the review, we decided to only review two functions of the Real Estate Division. The decision as to what functions would be reviewed was based on a preliminary survey. The review primarily addressed the activities of the Real Estate Advisory Commission and the Real Estate Division during 1978 and 1979.

The major function areas addressed in our preliminary survey were:

- Accounting
- Advisory Commission
- Applications
- Compliance
- Education
- Land Sales
- Legal
- Licensing

The survey included interviews of the key personnel in the Division, as well as the review of available data. Based on the survey, we were able to determine what functions would be the most productive if an operational review were performed.

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SCOPE OF REVIEW
(continued)

Consequently, as a result of the survey, our scope was narrowed to address the Advisory Commission and the compliance function. However, we feel that other functions in the Division are also in need of an operational review. We have set priorities to those functions as follows:

1. Applications
2. Land Sales
3. Legal
4. Education
5. Accounting
6. Licensing

Our review included, and our report is based upon:

Interviews of Commissioners

Interviews of Division Staff

Examining Commission Minutes

Attending a Commission Meeting

Examining Division Files, Records,
Documents, and Correspondence

Reviewing Appropriate Statutes

Interviews of Industry Representatives

Our examination was made in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, as developed by the United States General Accounting Office.

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BACKGROUND AND GENERAL

Chapter 339, Statutes of Nevada, 1963, created the Real Estate Division within the Department of Commerce.

The Division is responsible for the regulation of all Nevada real estate licenses and escrow companies as outlined by N.R.S. 645, as well as certain land subdividers under N.R.S. 119. The Division is functionally organized as follows:

- Accounting
- Applications
- Compliance
- Education
- Land Sales
- Legal
- Licensing

Another function which plays an important role in the Division's activities is that of the Real Estate Advisory Commission. The Commission consists of five real estate brokers licensed in Nevada, and appointed by the Governor. The Commission acts in an advisory capacity to the Real Estate Division, promulgates rules and regulations, approves or disapproves all applications for licenses and conducts disciplinary hearings of licensees.

As of November 1979, there were 10,085 licensees in the State, 7,536 of which were active.

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BACKGROUND AND GENERAL
(continued)

The Division is primarily supported by General Fund appropriation except for fees received from individuals taking the real estate salesman and broker examinations. Monies made available to the Division through the General Appropriation Act are as follows:

<u>Fiscal Year</u>	<u>Appropriation</u>
1975-76	\$566,254
1976-77	576,374
1977-78	640,447
1978-79	666,017
1979-80	697,661
1980-81	735,535

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FINDINGS AND RECOMMENDATIONS

THE REAL ESTATE ADVISORY COMMISSION IS COMPOSED OF FIVE REAL ESTATE BROKERS, AND HAS NO REPRESENTATIVES FROM THE PUBLIC WHICH IT HAS A RESPONSIBILITY TO PROTECT.

The Real Estate Advisory Commission consists of five real estate brokers appointed by the Governor. This composition is required by N.R.S. 645.050, which states in part "...The governor shall obtain and consider a list of nominees from the Nevada Association of Realtors."

The term "Advisory", as related to the Commission is misleading, by the fact that the Commission is responsible for promulgating rules and regulations to be carried out by the Division. Therefore, it becomes important that these rules and regulations promulgated by the Commission are aimed at regulating the industry in order to protect the public.

Another responsibility of the Commission is to conduct hearings of licensees brought before the Commission for infractions of N.R.S. and established regulations. The fact that the commissioners are active brokers makes the hearing function difficult because of the potential that commissioners could be called upon to pass judgement on either an acquaintance or a competitor.

There are approximately five times as many licensed salesmen as brokers actively engaged in real estate in Nevada. However,

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FINDINGS AND RECOMMENDATIONS
(continued)

there is no representation on the commission by licensed salesmen who are not brokers. This appears to be contrary to both the concept of self regulation, as well as representation.

Because of both the lack of representation and the apparent compromising position that the commissioners may be placed in, we feel that a restructuring of the Commission is needed. We recognize that brokers have traditionally been the leaders in the industry, and have much to contribute in terms of experience. In addition, we recognize that real estate transactions are often of a complex nature, and not easily comprehended by the average layman. Based upon these facts, the following recommendations are made.

RECOMMENDATIONS

Legislation be obtained:

1. To restructure the composition of the Real Estate Advisory Commission as follows:
 - a. Three real estate brokers with the qualifications as presently described by N.R.S. 645.090.
 - b. One real estate salesman with the same general qualifications as required of brokers in N.R.S. 645.090.

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FINDINGS AND RECOMMENDATIONS
(continued)

RECOMMENDATIONS (continued)

- c. One member of the general public who is actively involved in business and has a thorough understanding of real estate transactions.
2. To delete the word "Advisory", when applied to the Commission.

THE REAL ESTATE ADVISORY COMMISSION COULD OPERATE IN A MORE ECONOMICAL AND EFFICIENT MANNER.

Our review of the Real Estate Advisory Commission disclosed that the Commission:

1. Has become involved in the general business of the Real Estate Division.
2. Has approved large educational contracts without requesting competitive proposals.
3. Has conducted Commission meetings in such a manner as to result in the inefficient use of public funds.
4. Has used public funds for travel to the National Association of Real Estate License Law Officials meetings.

Each of these points are discussed below.

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FINDINGS AND RECOMMENDATIONS
(continued)

Real Estate Advisory Commission Involvement In Real Estate
Division

The Real Estate Advisory Commission has, in accordance with N.R.S. and their regulations, become involved in business that could be effectively performed by the Real Estate Division. The commission is currently:

1. Approving who can sit for real estate examinations.
2. Approving real estate courses.
3. Approving educational fund expenditures.
4. Approving real estate licenses upon passing of examination.
5. Conducting disciplinary hearings.

We feel that many of these functions can be performed by, and should be the responsibility of the Division. The Commission is charged with the responsibility of establishing regulations. If these regulations, which are effectively policy, are properly established, there would be little need for the Commission to get actively involved in the every day business of the Division.

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FINDINGS AND RECOMMENDATIONS
(continued)

Real Estate Advisory Commission Involvement in Real Estate
Division (continued)

RECOMMENDATION

Legislation be obtained that would reduce the duties
of the Commission to:

1. Promulgating regulations.
2. Conducting hearings.

Educational Contract

The Commission approved an educational contract for the fiscal year 1979-80 in the amount of \$148,000 with the Nevada Association of Realtors (NAR). All of the commissioners are members, and one was president, and two others had been either president or regional vice president in that organization.

The awarding of the contract to NAR has been for the most part a "rubber stamp approval" for several years, which would occur after the Division had recommended the contract to the Commission. The contract had been awarded in the past with little or no consideration given to requesting competitive proposals for the educational service contract. However, we did note during our review that measures were being taken towards implementing a competitive proposal process. We did not attempt to evaluate the quality or amount of services received in exchange for the contract. This could be a separate review.

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FINDINGS AND RECOMMENDATIONS
(continued)

Educational Contract (continued)

The monies for the educational contract are paid out of the Real Estate Education, Research, and Recovery Fund. N.R.S. 645.842 states in part "... Any balance over \$50,000 at the end of any fiscal year shall be set aside and used by the administrator, after approval of the Commission, for real estate education and research."

Because of the close association between the Advisory Commission and NAR, we feel that the Division should review and award the contracts after receiving competitive proposals.

RECOMMENDATION

1. The educational contracts be awarded based upon competitive proposals.
2. The Division make the decision as to the awarding of contracts.

Commission Meetings

Our review disclosed several instances where Commission meetings were called to order in the afternoon of one day, and adjourned mid morning of a subsequent day. These meetings not only require the presence of commissioners, but also several Division staff. The commissioners receive a salary of \$40 per day plus per diem and travel costs. The staff receives their regular salary plus per diem and travel. Consequently, these meetings become very

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FINDINGS AND RECOMMENDATIONS
(continued)

Commission Meetings (continued)

costly if not conducted in an economical and efficient manner. It would be much less costly if the Commission would first give consideration to the need of a meeting, and then try to schedule the meeting in such a manner as to accomplish the purpose in a shorter period of time.

RECOMMENDATION

More consideration be given to the scheduling of the Commission meetings.

National Association of Real Estate
License Law Officials Meetings

The Commission approved expenditures to be paid out of the Real Estate Education, Research, and Recovery Fund for the purpose of attending meetings in New Orleans, Louisiana and Jackson Hole, Wyoming. The meeting in New Orleans was attended by three commissioners, plus their legal counsel. The meeting in Jackson Hole was attended by four commissioners and their legal counsel. The total cost to the State for commissioners and legal counsel to attend these two meetings was in excess of \$4,000. We do not feel that it is necessary or in the best interest of the State for so many representatives of the State to attend these meetings. The information that is exchanged or made available at these meetings can just as easily be brought to Nevada by one commissioner.

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FINDINGS AND RECOMMENDATIONS
(continued)

Real Estate Conferences (continued)

RECOMMENDATION

Only one representative from the Advisory Commission attend the real estate meetings.

MANAGEMENT NEEDS TO PROVIDE THE NECESSARY DIRECTION TO EFFECTIVELY CONTROL THE OPERATIONS OF THE COMPLIANCE FUNCTION IN AN ECONOMICAL AND EFFICIENT MANNER.

The following points were disclosed during the course of our review.

1. The Division has not established written goals and objectives.
2. Documented procedures have not been established.

Goals and Objectives

Our review of the Real Estate Division disclosed the absence of stated goals and objectives. Without established goals and objectives it becomes increasingly difficult for the Division to discharge its statutory responsibility in an effective manner. Some of the problems that have developed as a result are as follows:

1. Management is not able to determine if a program is achieving desired results.

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(continued)

Goals and Objectives (continued)

2. Staff is not aware of what they are trying to accomplish. This often results in mis-directed efforts.
3. Management information systems have not been developed to measure desired results.

Because of the lack of both stated goals and management information systems in the Division, we were unable to evaluate if the Division is achieving a desirable result. This is discussed in more detail in our subsequent narrative.

RECOMMENDATION

1. The Division establish formal goals and objectives for their organization.
2. The Division establish formal goals and objectives for the compliance function.
3. The Division develop an information system that has the capability of measuring program effectiveness.

Documented Procedures

The Division has not developed written procedures for the compliance function to effectively carry out the regulations as adopted by the Advisory Commission.

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(continued)

Documented Procedures (continued)

The lack of documented procedures has resulted in inconsistent performance by staff. In addition, this can often result in the use of both uneconomical, as well as inefficient procedures. Some of these procedures are discussed in the subsequent sections of this report.

RECOMMENDATION

The Division establish a written procedures manual for the compliance function.

THE FUNCTIONS, STAFFING, AND PROCEDURES OF THE COMPLIANCE SECTION NEED TO BE RESTRUCTURED.

The compliance section is responsible for investigations, audits and surveys of real estate licensees. The Division employs both investigators and auditors to perform these functions.

Our review disclosed that these functions can not be accomplished in an economical and efficient manner under the present conditions. The following points help illustrate the need for restructuring.

1. The compliance section has not developed procedures or policy manuals.
2. There is little consistency in the preparation of investigative case files.

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FINDINGS AND RECOMMENDATIONS
(continued)

3. Caseloads, as reported, do not justify the current staffing patterns.
4. Absence of accumulated hours, periodic progress, and status reports on investigations to management.
5. No predetermined audit cycle for audits of trust accounts.
6. Audit workpapers are not prepared on all audits performed.
7. Auditors are performing investigations.
8. An audit program has not been established for the audit of trust accounts.
9. Advance notice is given to brokers when broker office surveys are going to be conducted.
10. Broker office surveys may not be as productive as is desirable.

Policy and Procedures Manuals

Our review disclosed that there is a lack of consistency in the manner in which investigations are initiated, conducted, documented, and subsequently closed. Procedures manuals would help standardize procedures, which should ultimately result in better utilized time. We recommended in the prior section of this report that procedures manuals be established.

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(continued)

Investigative Caseloads

An analysis of the 1978-79 investigative caseloads indicated that there was an inequitable caseload distribution among the compliance staff. Currently, we noted that auditors are performing investigations at a time when investigation caseloads are approximately one half of what would be considered a maximum caseload. A maximum caseload is approximately 50 open cases, however, our analysis indicated that investigative caseloads during the time of our review ranged from 14 to 27.

RECOMMENDATIONS

1. The Real Estate Division evaluate the need for the current number of investigators taking into account cyclical trends.
2. The Division allocate cases on a more equitable basis.
3. The Division fully utilize the skills of its audit staff by directing their efforts toward audits and surveys.

STATE OF NEVADA
DEPARTMENT OF COMMERCE
REAL ESTATE DIVISION
OPERATIONAL REVIEW

FINDINGS AND RECOMMENDATIONS
(continued)

Progress and Status Reports

The compliance section has not developed a management reporting system to provide for periodic progress and status reports. Such a system is necessary so that management can readily evaluate caseloads and make assignments accordingly. In addition, there is no provision for the accumulation of hours associated with investigations. It becomes extremely difficult for management to evaluate or monitor staff work performance without time records. Also, time keeping records would provide a basis for staffing patterns and provide valuable input for the budgetary process.

RECOMMENDATION

The Division develop a system to monitor the progress of investigative cases and accumulate man hours associated with each investigation.

Audit Plan, Program, and Workpapers

The Division is performing the audits of trust accounts without the use of a predetermined audit plan or an audit program. In addition, audit workpapers are not always prepared when an audit is performed.

STATE OF NEVADA
DEPARTMENT OF COMMERCE
REAL ESTATE DIVISION
OPERATIONAL REVIEW

FINDINGS AND RECOMMENDATIONS
(continued)

Audit Plan, Program, and Workpapers (continued)

As a result of not having an audit plan, Division personnel may not be utilized in an economical or efficient manner. An audit plan would be particularly helpful in determining staffing patterns and work loads. It also should be taken into consideration in establishing the agency's goals and objectives.

Currently, the Division does not utilize an audit program. An audit program is not only valuable as a planning tool, but is also necessary in order to document what audit steps have been performed.

Our review further disclosed that audit workpapers are not prepared for all audits performed. Generally, workpapers are only prepared if problems are disclosed as a result of audit tests. Workpapers are necessary to document what work is performed, and are also necessary for management to determine if all potential problems have been addressed. Without workpapers, management is unable to perform its responsibilities of evaluating staff performance, or if objectives are effectively being met.

STATE OF NEVADA
DEPARTMENT OF COMMERCE
REAL ESTATE DIVISION
OPERATIONAL REVIEW

FINDINGS AND RECOMMENDATIONS
(continued)

Audit Plan, Program, and Workpapers (continued)

RECOMMENDATION

1. The Division establish an audit plan to ensure that personnel are used effectively.
2. The Division develop and utilize an audit program in the performance of audits.
3. Workpapers be prepared and retained for all audits.

Broker Office Surveys

Our review of the broker office survey function within the compliance section indicated that there may be a need for expanding the scope of these surveys. The surveys are basically a spot check of broker records and compliance with Nevada Revised Statutes. The office surveys require approximately 1½ to 2 hours to perform. It appears that more than 2 hours would be required to conduct a thorough review.

The current practice for conducting office surveys includes prior notification to licensees. Prior notice could allow the licensee to bring his business into a condition where no exceptions

STATE OF NEVADA
DEPARTMENT OF COMMERCE
REAL ESTATE DIVISION
OPERATIONAL REVIEW

FINDINGS AND RECOMMENDATIONS
(continued)

Broker Office Survey (continued)

would probably be noted. As a result, the effectiveness of the survey function is questionable. Prior notice also prohibits flexibility by Division staff in scheduling their time, which lessens efficiency.

RECOMMENDATION

1. The Division consider expanding the scope of the broker office survey.
2. No advance notice of broker office surveys be given.



STATE OF NEVADA

DEPARTMENT OF COMMERCE

NYE BUILDING, ROOM 321

201 SOUTH FALL STREET

CARSON CITY, NEVADA 89710

(702) 885-4250

February 21, 1980

DIVISIONS

BANKING
CONSUMER AFFAIRS
CREDIT UNION
FIRE MARSHAL
HOUSING
INSURANCE
MOBILE HOME AGENCY
REAL ESTATE
SAVINGS AND LOAN

ROBERT LIST
GOVERNOR

JAMES L. WADHAMS
DIRECTOR

Mr. John R. Crosley, CPA
Legislative Auditor
Legislative Counsel Bureau
Carson City, Nevada 89710

Dear Mr. Crosley:

The preliminary audit report of the Department of Commerce, Real Estate Division has been reviewed by members of the Real Estate Advisory Commission, staff of the Real Estate Division and this office. The following comments reflect the position of this office in regards to the specific recommendations made in the audit report and to the general approach undertaken by your staff as reflected in that report.

Also attached for your information are the comments of the administrator of the Real Estate Division. In the few instances where there is conflict between the comments of the administrator and this office, the administrator is speaking on his own behalf and does not represent the views of the department.

1. The recommendation as to the restructuring of the Real Estate Advisory Commission so as to include one salesman and one member of the general public is cosmetic at best - their purpose is familiarity with the business not representation of interest groups. The finding that commissioners being active brokers makes the hearing function difficult is a misperception of basic human nature; a competitor would have no reluctance imposing sanctions on another competitor. Nevada Revised Statutes Chapter 645 is structured with the intent and with the result that the responsibility for the management of each real estate office and of its employees, including salesmen, rest upon the broker. Chapter 645 further provides that any salesman with two years experience who passes the examination for brokers is qualified to be licensed as a broker and until that time is not considered responsible enough to act on behalf of a member of the public in his professional capacity without the supervision of a broker who is liable for his acts. The placement of a person who by law is not responsible for his own conduct on the commission would serve no real function on the advisory commission other than a meaningless attempt at public relations.

The suggestion that a member of the general public be appointed to the Real Estate Advisory Commission is also largely cosmetic. The past performance of the Real Estate Advisory Commission has

never given any indication that the interests of the general public were less important than the interest of individual real estate brokers or of the real estate industry. The placement of a member of the "general public" on the Real Estate Advisory Commission would be a meaningless act without any function or result other than public relations. The recommendation (Page 11) to delete the word "advisory" when applied to the commission is well taken and will be proposed or supported by this office in the next legislature.

2. The recommendation (Page 13) to reduce the duties of the commission to promulgate regulations and conduct hearings is generally well taken. The Real Estate Division and the Real Estate Advisory Commission are currently revising the regulations promulgated under NRS Chapter 645 and their own internal procedures so as to restructure the interrelationship between the division and the commission so as to allow the commission to set policy by way of regulation and to allow the division to carry out such policy. Due to levels of funding for staff salaries in the Real Estate Division, it has not been possible to obtain division personnel with substantive knowledge of the material covered or which should be covered in real estate education courses. For this reason, the approval or disapproval of proposed real estate courses should be left with the real estate commission when such courses present subject matter more complex than reviews of Nevada Statutes.

3. The recommendation (Page 14) as to awarding educational contracts on competitive basis is concurred in and was implemented prior to this review.

4. The recommendation (Page 14) that the division make a decision as to the awarding of such contracts is not concurred in because the Education Research and Recovery Fund is a public fund held for a specific purpose and the commission can provide independent practical judgment as to the use of those funds.

5. As to the recommendation (Page 15) that more consideration be given to the schedule of commission meetings, there has been very little inefficiency in the use of daily salary or expense allowances allowed to commission members in the past.

The considerations of personal business schedules and airline schedules have at times required commission meetings to start other than at the start of a normal working day. Commission members have frequently in the past worked past midnight on commission business without any question of collecting overtime. Commission members have politely attempted to cover direct expenses incurred by their attendance at commission meetings within the limits set by the per diem allowance set by the State Administrative Manual.

Division personnel are paid their normal salaries and must be paid at time and one-half when required to go into travel status at 6:00 a.m. in order to make a 9:00 o'clock meeting at the opposite end of the state. The division and the real estate commission will continue to give due consideration to the scheduling of commission meetings.

6. The recommendation (Page 16) that only one representative of the Advisory Commission attend NARELLO meetings is disagreed with strongly. It is imperative to the functioning of the Real Estate Advisory Commission that its members develop and maintain familiarity with regulatory issues involving the real estate industry. It is of continuing benefit to the administration of the Real Estate Division and the effective enforcement of NRS Chapters 645 and 119 that each commission member be personally exposed to the larger issues of regulatory responsibility rather than merely as individual brokers who meet 12 to 15 days a year as "commissioners".

7. The recommendation (Page 17) is ill-advised. The division has clear formal goals in its responsibility for enforcing Chapters 645 and 119 of the Nevada Revised Statutes. Any restatement of those purposes would be a meaningless exercise in bureaucratic formality. The Real Estate Division does not have the excess of manpower which would allow it to pursue any but the most pressing responsibilities delegated to it under those chapters.

8. The recommendation (Page 17) that the division develop an information system is too vague to be of much assistance.

9. Regarding the recommendation that the division should have documented procedures is certainly valid, but connecting the lack thereof with inconsistent staff performance is a non sequitur.

Staff performance or production in an investigation area is not properly measured by the number of cases handled.

10. Finding number three (Page 18) is wholly without foundation and is unsupportable by any factual analysis.

11. Findings 4, 5 and 8 (Pages 18 and 19) are incorrect. Each investigator gives a monthly report of his hours and how they were spent. This report is summarized by month by the Chief Investigator and was made available to staff of the legislative auditor. Progress and status reports, both written and oral are given to management on an as needed basis. There is also a predetermined audit cycle for the audit of trust accounts which will allow each trust account to be reviewed on an average of every two and one-quarter years.

John R. Crosley
February 21, 1980
Page Four

12. Development of an audit work program and retention of audit work papers is a valid recommendation. The remaining recommendations are unobjectionable and either have been or are being implemented.

Sincerely,

A handwritten signature in cursive script that reads "James L. Wadhams". The signature is written in dark ink and is positioned above the typed name.

JAMES L. WADHAMS
Director

JLW:eb
Att.



ROBERT LIST
GOVERNOR
JAMES L. WADHAMS
DIRECTOR
DEPARTMENT OF COMMERCE

STATE OF NEVADA
CAPITOL COMPLEX
DEPARTMENT OF COMMERCE
REAL ESTATE DIVISION
201 S. FALL STREET
CARSON CITY, NEVADA 89710
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JAMES K. JONES
ADMINISTRATOR
REAL ESTATE DIVISION

February 21, 1980

Mr. John R. Crossley, C.P.A.
Legislative Auditor
Legislative Building, Capitol Complex
Carson City, Nevada 89710

Dear Mr. Crossley:

The reply to your Preliminary Audit Report of this Division is enclosed for your consideration. I trust you will find my comments of the findings of some value.

I wish to express my appreciation for the audit and the proper decorum of your staff conducting that audit.

Sincerely,


James K. Jones
Administrator

JKJ:mjs

cc: James L. Wadhams

Encl.

SCOPE OF REVIEW

The Administrator of the Real Estate Division agrees that the priority of your review was with the Advisory Commission and the compliance function. The other functions in the Division are ready for your review in the future.

BACKGROUND AND GENERAL

No comment necessary.

FINDINGS AND RECOMMENDATIONS

Real Estate Advisory Commission. .(Page.9) . . responsibility to protect.

Comment: Eliminate the need to have Governor consider nominees from Nevada Association of Realtors;

Comment: Term "Advisory" is misleading and delete.

Comment: Recommendations for legislation to be obtained;

(Page 10) 1. a. Yes, but consider my previous remarks.

b. Yes, but consider my previous remarks.

c. Yes and agree.

(Page 11) 2. Yes and agree.

The Real Estate Advisory Commission. efficient manner.

Comment: 1. Yes and agree.

(Page 11) 2. Yes and agree.

3. Yes and agree.

4. Yes and agree.

Real estate. . . . in Real Estate Division.

Comment: (Page 12) 1 through 5. Yes and agree.

Comment: (Page 13) Agree with both recommendations.

Educational Contract

Comment: (Page 14) Agree with both recommendations.

Commission Meetings

Comment: (Page 15) Scheduling of meetins is difficult and is dependent upon Division disciplinary hearing case load and business agenda items. I agreed morning (9:00 am) starts are economical.

NARELLO MEETINGS

Comment: (Page 15) Yes and agree with recommendation.

MANAGEMENT NEEDS . . . COMPLIANCE . . . EFFICIENT MANNER.

Comment: (Pages 16 through 24) Agree with all recommendations as listed.

Appendix B

Fiscal Analysis Division's Sunset Review
of the Real Estate Division &
Advisory Commission

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



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Arthur J. Palmer, *Director, Secretary*

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May 7, 1980

MEMORANDUM

TO: Legislative Commission's Subcommittee on Sunset
Reviews (A.B. 523)

FROM: Fiscal Analysis Division
Legislative Counsel Bureau

SUBJECT: Real Estate Division and Advisory Commission

We have completed our review of the Real Estate Division and Advisory Commission as requested by the Subcommittee on Sunset Reviews. Our review was conducted pursuant to the requirements of A.B. 523 (Chapter 688, 1979 Session).

This review focuses on the need for the Real Estate Division and Real Estate Advisory Commission and their efficiency in performing statutorily assigned tasks. The information contained in the report is a product of staff research, contacts with staff of the Real Estate Division and members of the Advisory Commission, contacts with real estate practitioners, consumers and selected other states. The information was compiled by the use of written questionnaires, interviews and an examination of agency files.

The scope of this review was limited by time and staff resources available to the Fiscal Analysis Division. The review concentrated on functional areas of the Real Estate Division and Advisory Commission not previously covered by the performance audit prepared by the Legislative Auditor.

We wish to acknowledge the cooperation and assistance of agency staff, Commission members, licensees, complainants and others that provided input for our review.

DM:ca

State of Nevada
Department of Commerce
Real Estate
Sunset Review

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INTRODUCTION

Assembly Bill 523 of the 1979 Legislative Session provides for the repeal of those statutes which regulate certain professions, occupations, state agencies and programs. The bill requires that the Legislative Commission make recommendations to the 1981 Legislature as to the termination or continuation of the subject statutes after conducting a review of the agency involved.

A.B. 523 sets forth specific criteria for the review of statutes set for repeal. These criteria require a determination as to whether the subject statutes are a legitimate exercise of state authority, the need for such statutes and, if need is determined, a review of the efficiency of their operation by the agency assigned responsibility for their execution.

This review concerns the Real Estate Brokers and Salesman Law, Chapter 645, Nevada Revised Statutes, and the Licensing and Regulation of Land Sales Law, Chapter 119, Nevada Revised Statutes. The licensing of real estate brokers and salesmen is a dual function of the Real Estate Division of the Department of Commerce and the Real Estate Advisory Commission. The regulation of land sales is a responsibility of the Real Estate Division only.

This report is organized with a summary, a separate section discussing the statutory review criteria and a section with specific recommendations for the various functional areas of the Real Estate Division and the Real Estate Advisory Commission.

SUMMARY

SUMMARY

Chapter 688 (1979 Session), provides for termination of the Real Estate Division and Advisory Commission on July 1, 1981, unless the statute is reenacted by the Sixty-First Legislature. The Legislative Commission is required to determine if there is a continuing need to regulate the real estate occupation and, if need is determined, to review the efficiency of the agency carrying out the regulatory function. Recommendations must be submitted to the full Legislature at the beginning of the next regular session. The law requires consideration of fourteen criteria relating to the need and efficiency of regulation. These criteria and specific findings and recommendations are included in this report. The following is a summary of the Fiscal Analysis Division's recommendations and conclusions.

Regulation of real estate brokers and salesmen is a joint responsibility of the Real Estate Division of the Department of Commerce and the Real Estate Advisory Commission. The Division also regulates certain subdividers, land sales and escrow agents. The Division investigates complaints, processes applications for licensure, conducts background checks, examines applicants and recommends licensees to the Advisory Commission. The Commission approves licenses, promulgates regulations and holds disciplinary hearings on violations of licensing laws and regulations. Currently, over 10,000 persons are licensed in Nevada to practice real estate.

The Fiscal Analysis Division concludes that the Real Estate Division and Real Estate Advisory Commission have generally operated in the public interest and that the absence of regulation could create a potential for economic loss and endanger the welfare of the public. Fiscal Analysis recommends that the Legislature reinstate the Real Estate Division and Advisory Commission. This report includes specific recommendations for statutory and administrative changes that would increase the effective use of agency resources and reduce the cost of regulation to the general public. It also includes findings and conclusions pertaining to the fourteen criteria for evaluation contained in Chapter 688 (1979 Session).

HISTORY OF REGULATION IN NEVADA

During the 1920's many states enacted legislation regulating persons selling real estate in order to eliminate fraudulent practices. Nevada was no exception, adopting in 1923 Senate Bill 62 (Chapter 139) which required licensing of all agents as real estate brokers or salesmen. S.B. 62 created a three member Real Estate Board to issue licenses "only to persons who bear a good reputation for honesty, truthfulness and fair dealing and are competent to transact the business of a real estate broker or a real estate salesman in such a manner as to safeguard the interests of the public."¹ This first law required the Board to review applications for licensure and the recommendations of two citizens before granting a broker or salesman's license. In addition, a fee of \$25 per year for a broker's license and \$15 for a salesman license were exacted to support the Real Estate Board. The Board had authority to suspend or revoke a license upon its own motion or upon a complaint for a number of offenses including misrepresentation, incompetence and improper, fraudulent or dishonest dealing. Any such revocation could occur only after a formal Board hearing and any revocation or suspension was subject to judicial review. This first law was only applicable in incorporated cities having a population of 2,500 or more.

1. Laws of Nevada, 1929, Chapter 139. p. 241.

In 1947, the Legislature expanded the Board to five members, made the State Controller an ex officio member, divided the state into a northern district and a southern district for purposes of making appointments to the Board and established an examination as a prerequisite to licensure.²

The 1963 Legislature made significant organizational changes to the regulatory function of real estate by creating the Real Estate Division in the Department of Commerce.³ This agency was to co-exist with the Real Estate Advisory Commission and was responsible for enforcement of state law and Commission regulations.

The Education, Research and Recovery Fund was established by the 1967 Legislature in order to provide some protection for people financially injured by a licensee in a real estate transaction.⁴ The creation of this fund eliminated the need for licensees to maintain surety bonds. The Commission was authorized to use any excess moneys in the fund for education of licensees and research.

The Land Sales Act (NRS 119) was passed in 1971 and required the Real Estate Division to register subdivisions and land developers in order to eliminate unscrupulous practices.⁵ This law was extensively rewritten and strengthened in 1973.⁶

-
2. Statutes of Nevada, 1947, Chapter 150, p. 484.
 3. Statutes of Nevada, 1963, Chapter 405, p. 1072.
 4. Statutes of Nevada, 1967, Chapter 378, p. 1043.
 5. Statutes of Nevada, 1971, Chapter 621, p. 1403.
 6. Statutes of Nevada, 1973, Chapter 792, p. 1751.

Since enactment of the first licensing law in 1923, many revisions and modifications to the basic law have occurred increasing the regulation of the profession by the state.

REGULATION IN THE VARIOUS STATES

Today, all states license real estate brokers and salesmen. All states require an examination for licensure, forty-four states have minimum education requirements and forty-seven states require some experience for a brokers license. Twenty-five states have recovery funds and twenty-one states have an education fund. Nevada has 11.9 licensees per 1,000 population compared to a national average of 9.86 per 1,000 population. Nevada has the tenth highest ratio of licensees per 1,000 population in the country.⁷

AGENCY ORGANIZATION

The Real Estate Advisory Commission is a five member board appointed by the Governor with statutory responsibilities to promulgate regulations dealing with licensure of the real estate profession, approve salesmen and broker licenses and act as a hearings board in disciplinary procedures. In addition, the Commission approves certain education expenditures from the Education, Research and Recovery Fund and accredits real estate courses for licensure and continuing education requirements.

7. Interstate Cooperation Committee, National Association of Real Estate License Law Officials (NARELLO), Annual Report, 1980.

The Real Estate Division, which is headed by an Administrator appointed by the Director of the Department of Commerce, reviews applications for examination, proposes regulations to the Advisory Commission, investigates applicants and complaints, prosecutes complaints before the Advisory Commission and handles the day to day functions of the agency. The Division contracts with a national testing service to administer the brokers and salesman exams. In addition, the Division regulates subdivisions and developers (NRS 119) and certain escrow agents (NRS 645A).

NRS 645.100 divides the state into an eastern district and a western district. At least two members of the Advisory Commission must reside in each district. The Division maintains a branch office in Las Vegas which is part of the eastern district.

The Division is organized functionally into eight sections. These include administration, applications, licensing, education, compliance, accounting, land sales and legal services. Legal services for the Division and the Advisory Commission are provided by the Attorney General. Applications, licensing and compliance staff are located both in Carson City and Las Vegas.

The Division currently has 32.50 full-time equivalent positions. Nine of these positions are located in the Las Vegas office (See Appendix A).

The agency is wholly supported by General Fund appropriations and real estate examination fees. All license fees, miscellaneous real estate fees, land sale fees and escrow agent fees are deposited to the credit of the General Fund. Real estate recovery fees are deposited to the Education, Research and Recovery Fund for court ordered recoveries against licensees and education and research projects on behalf of licensees.

FINDINGS AND RECOMMENDATIONS

ADMINISTRATION

NRS 645 governs the licensing of real estate salesmen and brokers. NRS 119 regulates subdivisions and land developers. NRS 645A regulates certain escrow agents not governed by other statutes. None of these statutes specify the purpose of regulation nor do they set forth legislative policy regarding licensing and the goals and objectives of regulation. The Division, in the case of NRS 119 and 645A, and the Advisory Commission, in the case of NRS 645, are charged with the responsibility of approving regulations to effectuate the purposes of the statutes, yet no specific policy exists to guide them in this responsibility. The lack of specific statutory purpose creates the potential for conflict between the interests of the public and those of individuals or the industry as a whole in the regulatory process. In addition, a specific statutory purpose would provide the means for the agency, the public and the Legislature to evaluate the effectiveness of agency programs and the law in meeting the stated objectives.

Recommendation 1: The Legislature should consider adopting specific statutory language for NRS 645, 645A and 119 detailing legislative policy and the purpose, goals and objectives of regulation.

The cost of regulation through the Real Estate Division and Advisory Commission is supported by direct General Fund appropriations. In turn, all license fees and unspent examination fees are deposited in the General Fund.

The following table illustrates the major categories of license fees in effect January 1, 1956, January 1, 1967 and January 1, 1980 in annual equivalents.

	<u>1956</u>	<u>1967</u>	<u>1980</u>
Broker	\$40	\$40	\$40
Salesman	\$20	\$25	\$25
Education and Recovery		\$10	\$20

Broker fees have not increased since January 1, 1956 and salesman fees increased only \$5 per year between 1956 and 1980.

Since the real estate license period is 24 months beginning on the first day of the month after the license is issued, we examined fee revenues for a biennial period.

The following table compares biennial 1977-79 revenues and expenditures of the real estate regulatory function. Revenues

have been adjusted by the estimated amount of credits and pay-backs that will occur during the 1979-81 biennium.⁸

<u>Revenues:</u>	<u>FY 1978</u>	<u>FY 1979</u>	<u>Biennial Total</u>
Land Sales Fees	\$ 32,565	\$ 21,240	\$ 53,805
Licensing Fees	802,863	287,355	1,090,218
Exam Fees	184,655	201,305	385,960
Subtotal	<u>\$1,020,083</u>	<u>\$509,900</u>	<u>\$1,529,983</u>
Refunds and Credits			(262,754)
Total			<u><u>\$1,267,229</u></u>
 <u>Expenditures:</u>			
Land Sales	\$ 43,932	\$ 45,204	\$ 89,136
Real Estate Regulation	631,944	650,241	1,282,185
Total	<u>\$ 675,876</u>	<u>\$695,445</u>	<u>\$1,371,321</u>

Legislative Bulletin No. 68, Study of General Fund Revenues of the State of Nevada, sets forth five canons for regulatory fee setting, one of which is "cost of administration of the fee program should be covered, neither more nor less."⁹ The State of Nevada licenses a number of other occupations and in each case the Board or Commission established is self-supporting from fee revenues.

In addition to biennial license fees, all practitioners are required to pay a \$40 fee to the Education, Research and Recovery Fund. These moneys are held to satisfy any court ordered recoveries against licensees and to fund certain educational

8. In 1977, the Legislature doubled license fees (Chapter 359). The 1979 Legislature returned the fee schedule to that in effect prior to 1977 and authorized credits and reimbursements to licensees that had paid the higher fee.

9. Legislative Commission, State of Nevada, Bulletin No. 68, Study of General Fund Revenues of the State of Nevada, December 1966, p. 48.

offerings. At the same time as the General Fund has been subsidizing real estate regulation a substantial surplus has developed in the Education, Research and Recovery Fund (See Appendix B, Table 2).

Recommendation 2: The Legislature consider increasing fees including Land Sales Act fees to cover the cost of regulation and consider decreasing education, research and recovery fees (See Recommendation 6).

REAL ESTATE ADVISORY COMMISSION

The Real Estate Advisory Commission is composed of five members appointed by the Governor. Members must be United States citizens, residents of Nevada and have been actively engaged in real estate in Nevada as a broker for a period of 3 years. At least two members must be from the Eastern District and two from the Western District. (The Eastern District includes Clark, Elko, Eureka, Lander, Lincoln, Nye and White Pine Counties). Members may not serve more than six consecutive years. The Commission must meet in January and July each year and may have such additional meetings as business shall require. The Deputy Attorney General assigned to the Director of the Department of Commerce provides legal services and advice to the Commission.

At the request of the subcommittee and the Legislative Commission, the Legislative Auditor conducted an operational review (performance audit) of the Real Estate agency and made recommendations

concerning changes in the membership and duties of the Advisory Commission.¹⁰

NRS 645.150 requires that the Commission hold two regular meetings, one on the second Monday of January and the other on the second Monday of July, each year. The law also specifies that one meeting be held in the Eastern District and one in the Western District. In fiscal year 1978-79, the Commission held thirteen meetings including the two statutory meetings, four special meetings primarily for hearings and appeals, and seven telephone conference meetings. Four of the telephone conference meetings were for the purposes of approving licenses for applicants successfully completing the required examination. The Commission routinely approves these licenses except those brought to their attention by the Division. The Division has the authority through NRS 645.440 to deny applications for a license and often does. Such denials are appealable to the Commission for resolution.

NRS 645.050 allows the Commission to delegate any of its authority to the Administrator pursuant to the regulations of the Commission. By delegating the authority to approve licenses under strict regulations, the Commission could eliminate most and possibly all telephone meetings. These meetings are both

10. Legislative Auditor, Real Estate Division Operational Review, 1979, p.28.11.

expensive and difficult to attend for the public. The mechanism already exists for the Division to deny applications with appeal rights to the Commission. A similar procedure could be implemented for final approval of the license after examination.

Recommendation 3: The Advisory Commission consider delegating to the Administrator the authority to approve real estate licenses.

Recommendation 4: That NRS 645.150 be amended to require the Commission to meet at least once each year in the Eastern District and once in the Western District, deleting the specific date requirements.

EDUCATION RESEARCH AND RECOVERY FUND (ERRF)

The Education, Research and Recovery Fund (ERRF) was established by the 1967 session of the Legislature. Funds were to be collected from each licensee to be held in trust by the Division and Advisory Commission to satisfy court ordered claims against licensed practitioners from the public. The purpose of the recovery fund was to eliminate the need for surety bond requirements which would have to be enforced by the Division and to provide some degree of protection for the general public from unscrupulous licensees. At the end of each year, any moneys in the fund in excess of \$50,000 may be used by the Commission for education or research projects. Currently, all licensees pay \$40 every two years to the ERRF fund. A total of \$44,730.22 has been paid from the fund in recoveries since its inception in 1967. Table 2, Appendix B depicts a financial history of the fund for the last five years and the budgets for FY 1979-80

and 1980-81 as approved by the Legislature. The unobligated fund balance has grown from approximately \$42,000 in fiscal 1974-75 to over \$321,000 in fiscal 1978-79. The Real Estate Division projects the fund balance will continue to grow even with increased demands for continuing education courses. At the same time the Education, Research and Recovery Fund is experiencing substantial surpluses, the cost of regulating the industry is not fully supported by license fees and requires General Fund support. The two year Education, Research and Recovery Fund fee could be reduced and substantial sums could still be maintained for recoveries and education. This reduced fee could be added to the regular license fee, thereby reducing the General Fund subsidy for regulatory purposes.

Recommendation 5: The Legislature consider reducing the Education, Research and Recovery Fund fee to help offset the recommended increase in the license fee.

The Education, Research and Recovery Fund is segregated into two separate budget accounts, one for education and research and one reserved for possible recoveries. NRS 645.842 states, in part, "Any balance over \$50,000 at the end of any fiscal year shall be set aside and used by the administrator, after approval of the commission, for real estate education and research." The Division has carried forward \$50,000 for recoveries, but makes current fee deposits to the education account. This practice appears to conflict with the specific requirements of the

law. In addition, the law seems to imply that the \$50,000 fund balance plus current year deposits would be available to satisfy claims from the public against licensed practitioners. Making current deposits directly to the education and research account makes these funds immediately available for obligation and expenditure and reduces the degree of public protection.

Statutory requirements for the use of the education and research moneys are not clear. The statutory language simply states "for real estate education and research." The presumed uses are for the education of licensees and research which would benefit the industry and indirectly the general public through a more professional and better informed industry. The Advisory Commission has used moneys from this fund for out-of-state travel of Commissioners and legal counsel to national conventions, travel of Division staff, and for the publication costs of the quarterly newsletter in addition to education courses for licensees. These other expenditures were made without specific Legislative review or approval. In the Executive Budget, budgeted sums are presented simply as education expenditures and the actual uses are not revealed.

The Legislative Auditor, in his performance audit of the Division and Commission, has pointed out potential conflicts between the authority of the Commission over the education and

research moneys and their membership in the Nevada Association of Realtors and has recommended the funds be placed under the supervision of the Administrator.¹¹

Recommendation 6: The Division discontinue depositing fees directly into the education and research account. Deposit all fees in the recovery account and at years end reduce the balance for recoveries to \$50,000, making the excess available for education and research pursuant to NRS 645.842.

Recommendation 7: The Legislature consider clarifying statutory language on the purpose and uses of the education and research moneys.

Recommendation 8: The Division and Advisory Commission expand the presentation of the Education and Research account in the Executive Budget disclosing the proposed actual uses of these funds for Legislative review.

More than 50 percent of the Division's education coordinator's efforts involve education, research and recovery fund matters. These include recommending accreditation of ERRF sponsored continuing education courses, coordinating educational offerings supported by the fund and preparation of the quarterly newsletter which is supported by the fund. The position of education coordinator, however, is currently General Fund supported.

Recommendation 9: That the education coordinator position and all attendant expenses be funded from the education and research account of the ERRF fund.

NRS 645.847 provides for the automatic suspension of the license of any practitioner for whom the recovery fund is required by court order to pay a claim. Any such license may be eventually

11. Legislative Auditor, Real Estate Division Operational Review, 1979, p. 28.14.

reinstated provided the amount of any such claim plus interest of 6 percent is repaid to the recovery fund. In today's money market 6 percent interest is extremely low. By way of contrast, the recovery fund has paid interest to claimants from the date of the court judgement until paid at the rate of 7 percent and interest earned on investments of the State General Fund as of April 4, 1980, is over 13 percent.

Recommendations 10: Amend NRS 645.847 to increase the interest rate required on repayments to the recovery fund as a condition to restitution of the suspended license.

Since the inception of the Education, Research and Recovery Fund, the Division, under the authority of the Commission, has contracted exclusively with the Nevada Association of Realtors (NAR) to provide educational courses to licensees. The contract with NAR for fiscal year 1979-80 amounts to \$148,500. In preparation for the education program for the 1980-81 fiscal year, the Division developed a "Request for Proposals" (RFP) and invited proposals from competing interests. Twelve entities, including the University of Nevada, the Community Colleges, private schools and the Nevada Association of Realtors submitted proposals. An advisory panel of licensees was selected to evaluate the proposals and make recommendations. Nineteen different courses offered by six different schools were approved by the Commission for fiscal 1980-81 for \$188,569. The Division's analysis of the proposals revealed there were vast differences

in cost between the various responding schools and organizations ranging from \$.45 to \$6.88 per student hour. The RFP allowed each school to propose courses within broad guidelines specified by the Division. More specifically designed course content criteria might result in multiple bids on similar classes for the same geographical areas resulting in greater competition and more offerings for licensees within available funds.

Recommendation 11: The Division and Commission consider refining its RFP procedure to specify exactly what courses are required and inviting bids on that basis to maximize the benefit of ERRF educational dollars.

EDUCATION

In addition to the responsibilities of the Division and Commission to administer the Education, Research and Recovery Fund, there are other statutory duties concerning education under NRS 645. The Commission has adopted regulations defining what constitutes acceptable courses of instruction for licensure as a broker or salesman and accreditation standards for schools providing real estate classes. The Division examines each school application for accreditation and makes a recommendation to the Commission which has final approval authority. The Commission is also responsible for regulations concerning standards of continuing education courses. Again, the Division reviews applications for continuing education classes and makes recommendations to the Commission.

Continuing education requirements for renewal of all real estate licenses was adopted by the Legislature in 1977. The purpose of the continuing education requirement is to insure that licensees keep abreast of current developments and practitioner competence is maintained. There is no evidence available, however, that continuing education will assure licensee competence. The Nevada experience in continuing education is just beginning, however, since only license renewals after December 31, 1980 must meet the new requirements.

NRS 645.575 requires the Advisory Commission to prescribe standards for the continuing education of licensees by adopting regulations. The regulations must include a procedure for evaluation of petitions based on claims of equivalent education (NRS 645.575, Section 1(d)) and conditions under which time extension may be granted (NRS 645.575, Section 1(f)). The regulations adopted by the Commission do not include any provisions for equivalent education and time extensions.

Recommendation 12: The Commission adopt regulations required by NRS 645.575 covering claims of equivalent education and time extensions.

Continuing education standards only include minimum attendance requirements. Schools are required to certify attendance to the Division. There is no requirement for examination or measurement of knowledge of these courses to insure that the

purpose of the education is being achieved. There is no means to determine if continuing education will benefit the public or not.

Recommendation 13: The Commission consider adopting regulations to require examination of attendees or other suitable certification of successful completion of all continuing education courses.

APPLICATIONS AND LICENSING

The applications and licensing sections of the Division are responsible for processing all applications for licenses and periodic renewals thereafter. In order to be licensed in Nevada as a salesman, an applicant must be a resident, meet minimum educational requirements, successfully pass an examination and demonstrate an acceptable background. Licensure as a broker requires additional education, successful completion of the brokers exam and two years of active experience. A person can be licensed as a broker-salesman while completing the experience requirements provided the broker education and examination requirements are satisfied.

The number of persons licensed to practice real estate in Nevada has increased dramatically in recent years. The following table illustrates this growth in the last five fiscal years.

<u>Year</u>	<u>Active</u>	<u>Inactive</u>	<u>Total</u>	<u>% Inc.</u>
1974-75	3,177	1,146	4,323	
1975-76	3,859	1,118	4,977	15%
1976-77	5,148	1,255	6,403	29%
1977-78	6,693	1,523	8,216	28%
1978-79	7,536	2,549	10,085	23%

The following table illustrates the licensed industry by type of license in fiscal year 1978-79.

	<u>Active</u>	<u>Inactive</u>	<u>Total</u>
Broker	1,517	243	1,760
Broker-Salesman	1,188	387	1,575
Salesman	4,819	1,919	6,738
Owner-Developer	12	0	12
	<u>7,536</u>	<u>2,549</u>	<u>10,085</u>

All applications for examination are submitted to the applications section which verifies education requirements and performs the background check on the applicant's character, business background, experience and financial responsibility.

A significant portion of the work is devoted to notifying applicants of missing or insufficient information. The background verification is completed before the applicant is certified to sit for the examination, yet not all applicants successfully pass the exam. The average passing rate for the last two years has been 60 percent for salesmen and 68.5 percent for brokers. In fiscal year 1978-79, 5,342 applications were received, verified and processed while only 4,273, or 80 percent, were actually tested and 2,635, or 49 percent, were ever licensed. If the full application and verification procedure were only required

of successful examinees, background checks and education certification may be reduced significantly and involve only those that may eventually be licensed. Such a procedural change may develop substantial savings in staff time within the Division.

Currently, the applications section performs the total review of the original application and schedules the examination. All successful examinees' applications are then transferred to the licensing section who collects a second application, license fees and issues the license. A prospective licensee must file a seven part application for examination and then another application for licensure if the exam is successfully completed. Much of the information on the two application forms is redundant. NRS 645.350, as amended in 1979, seems to require that all pertinent information be included on the application for examination form. These two forms could be consolidated. Although both sections are physically housed together, deal with the same prospective licensees and the same licensing forms and files, they do not perform each others functions. In addition, the applications section workload is not consistent over time since exams are administered every two months while the licensing section has been continually behind in issuing licenses, renewals and changes.

The 1979 Legislature appropriated \$75,000 to develop a dual computerized licensing system for the Real Estate Division and

the Insurance Division. Once this system is implemented (target date is January 1, 1981), the licensing and applications sections will be using the same information from the same computer files. Consolidation of the applications and the licensing functions, combining the examination and license application forms and cross training of the staff could increase efficiency of the Division, and together with computerization, offer substantial potential for savings in staff resources.

Recommendation 14: The Division evaluate and, if justified, recommend regulatory and statutory changes to permit applicant examination first and background verification last and evaluate possible staff reductions due to procedural changes and computerization and include them in their 1981-1983 biennial budget request.

Recommendation 15: The Division consider combining the applications and licensing sections and cross training the staff to more effectively use available resources and consider consolidating the application for examination and application for licensure forms.

NRS 645.330 provides that experience gained in another state may satisfy the two-year requirement for a brokers license, however, the broker's education requirement must be satisfied at courses accredited by the Advisory Commission and the examination must be successfully completed. Currently, thirty-one states allow either partial or full reciprocity with other states in licensing real estate practitioners in order to eliminate barriers to licensure and increase efficient licensing practices. Several states allow partial reciprocity for licensees from other states utilizing the same national testing

service. Twenty-seven states, including Nevada, currently use the national examination provided by Educational Testing Service (ETS). Use of the same national test provides opportunity to accept successful completion of the uniform portion of the test as satisfying Nevada's exam requirements. In such cases, the exam need only be limited to the Nevada law section.

Recommendation 16: The Legislature consider enacting enabling legislation to allow the Advisory Commission the discretion of accepting the successful completion of the uniform portion of the national ETS exam as partially satisfying examination requirements in Nevada.

The information required on the application form by regulations of the Commission include certain financial data, residence history, marital status, arrest and conviction records, education requirements, photographs and recommendations of three Nevada residents. Commission regulations require fingerprint checks of all applicants. Fingerprint checks are no longer available through the Federal Bureau of Investigation and no criminal background checks are made today unless the applicant reveals any criminal record on the application form. Division staff have indicated that past use of fingerprint checks were very fruitful in revealing concealed criminal records and was considered a valuable tool in determining an applicant's suitability for licensure.

Recommendation 17: The Division explore ways to reinstate the fingerprint check as a method of investigating the background of all applicants.

Pursuant to regulations of the Commission, applicants for a brokers license are required to file a financial statement. Licensure as a broker is contingent upon meeting certain "requirements of financial responsibility as determined by the Commission."¹² The regulations of the Commission contain no such financial standards, however, the Division does review all applications to determine responsibility.

Recommendation 18: The Commission should, by regulation, establish acceptable financial responsibility standards for the guidance of the Division and potential licensees.

NRS 645.410 requires that an applicant who successfully passes the examination must pay the license fee and Education, Research and Recovery fee within 30 days after notification of passing the test. Failure to pay within the 30 days results in a penalty of one-half the required fees. A salesman, therefore, must find a broker with which he can associate and pay the fees within the time limit. Many salesmen will associate with any broker in order to avoid the penalty fee, later transferring to a more suitable broker. Each transfer requires a license change. In fiscal year 1977-78 the Division processed over 3,300 license

12. Nevada Real Estate Advisory Commission, Rules and Regulations for Nevada Revised Statutes 645, Rule III, 12, p. 9.

changes, each one requiring the processing of a new license document, a Request For Change of License form, termination notice from the former broker and the physical handling by the Division of the license and pocket card. These transfers contribute to a heavy workload in the licensing section delaying actual issuance of the new license longer than a month. A longer period between meeting all licensing requirements and required payment of the fees may reduce initial salesman turnover following each exam, concurrently reducing licensing workload and increasing turn-around on license changes. If the Division changes its licensing procedures to examine applicants first and review their education and backgrounds afterwards, this time period will require extending (See Recommendation 15).

Recommendation 19: The Division consider reviewing the original licensing time limit to determine an appropriate time period and make recommendations to the Legislature to change NRS 645.410 accordingly.

COMPLIANCE

The Compliance Section of the Division investigates complaints and performs routine office inspections and complete audits of broker records. The section has a chief investigator, five investigators and two auditors. Complaints are investigated for factual information and evidence. Many complaints are not within the authority of the Division to resolve since only licensing law violations (NRS 645) and violations of the regulations of the

Commission can be investigated by the Division. The Division normally tries to administratively settle all complaints, even those that do not involve a violation of NRS 645. Only major, well documented complaints are prosecuted by the Division since Commission regulations require that there must be a "prima facie" case before any complaint can be taken to the Commission.

Although, dramatic increases have occurred in the last several years in the number of licensees, the number of complaints has not increased. The following table illustrates complaint statistics for the last five fiscal years.

<u>Year</u>	<u>No. of Complaints</u>	<u>Formal Hearings</u>	<u>Licenses Revoked</u>	<u>Licenses Suspended</u>	<u>Reprimands</u>
1974-75	308	13	0	3	1
1975-76	224	21	2	10	5
1976-77	263	17	3	5	0
1977-78	298	11	2	3	3
1978-79	258	32	10	19	2

Division information indicates that approximately 95 percent of all complaints are from the general public and they fall into the following general categories.

Misrepresentation and Fraud	40%
Failure to Disclose	18%
Negligence	17%
Failure to Account for Funds	8%
Other	17%

Since the Division can only investigate violations of the licensing law and regulations of the Commission, many complainants become dissatisfied if their complaint is outside the investigative

jurisdiction. All complainants are required to fill out a Statement of Fact (Complaint Form) which currently includes the statement "I understand the Nevada Real Estate Division does not represent private citizens seeking the return of their money or other personal remedies."

Recommendation 20: The Division consider expanding the explanation on the Statement of Fact to better explain the Division's authority and to better inform the complaining public of the limitations of the Division's authority.

The Real Estate Education, Research and Recovery Fund has only paid out \$44,730.22 since its inception in 1967 and only seven claims have been filed in the last six years. Although this fund was established to protect the public from unscrupulous real estate licensees, little use has been made of it. We suspect lack of knowledge of the recovery fund by the public may be part of the reason. The compliance section is often the Division's first contact with members of the public who might later have a claim against the recovery fund. Notification to complainants that the fund exists for their protection and the circumstances under which a claim can be ordered may increase public protection and confidence in real estate regulation.

Recommendation 21: The Division consider including in its contact with the public through the complainant process, an explanation as to existence of the recovery fund and how and when a claim may be ordered.

LAND SALES

NRS 119 requires the Division to regulate land sales of subdivided property. The concept of NRS 119 is to require full disclosure of relevant facts to prospective purchasers of subdivided land. The Division does not approve or recommend land for purchase, but attempts to create a situation where an informed buyer can make an informed decision. Certain subdivisions of land are exempt from regulation. These include, but are not limited to, single or isolated transactions, lots larger than 80 acres in size, sales to contractors, when a lot includes a residence, cemetery lots and land free and clear of all liens and encumbrances. Subdivision parcels between 40 and 80 acres in size are regulated as to sales practice and advertising only. Subdivisions wholly located in incorporated cities are exempt if provisions of NRS 278 (Subdivision Law) and certain other conditions have been complied with.

The Administrator has promulgated regulations pursuant to NRS 119 and the Division carries out its responsibilities by physically inspecting all subdivisions, completion of a property report which must be presented to each purchaser by the subdivider and review of sales and advertising practices. The Division issues Cease and Desist Orders and initiates court actions against subdividers who have violated the law. The following table illustrates Division activities under the Land Sales Act.

<u>Year</u>	<u>Subdivisions Reviewed</u>	<u>Advertising Reviewed</u>	<u>Complaints</u>	<u>Cease & Desist</u>	<u>Court Actions</u>
1974-75	35	510	9	6	1
1975-76	35	496	5	8	1
1976-77	27	349	8	2	2
1977-78	18	245	28	14	1
1978-79	22	352	8	1	1

Many subdivided parcels that are regulated pursuant to NRS 119 are purchased on an installment contract of sale. Under a contract of sale, title to the property does not go to the buyer until all payments are made. The buyer has no real protection from unscrupulous subdividers and the property may be sold to more than one purchaser. The Division is developing new regulations pursuant to NRS 119. One regulation under consideration is a requirement that subdividers be required to inform purchasers to record their contract of sale in order to protect their interests.

"Timesharing" and "vacation licenses" are terms which describe relatively new methods of marketing occupancy or possession of real property for a fixed period of time on a periodic basis. Timesharing generally refers to a part interest in real property for a fixed period each year. If the interest received by the purchaser is a property interest, the transaction may fall under regulations of NRS 119. Vacation licensing, on the other hand, is a term used to describe a contractual relationship which entitles the licensee to the use of some property at a specified

time of year. For example, a person may stay in a condominium unit in Las Vegas one year and another unit at Lake Tahoe the following year. Because the right to use is a contract right, not a property interest, the transaction is not subject to regulation under NRS 119 or NRS 645 and the licensee has no legal interest in any specific real property. The Nevada Supreme Court has ruled that "vacation licenses" are not leasehold interests as defined in NRS 645.020 and are not subdivisions as defined by NRS 119.110.¹³ Potential problems can occur in marketing "vacation licenses" including misleading advertising, misleading sales presentations and contract language that doesn't clearly reveal to the buyer that no property right has been purchased. The Consumer Affairs Division of the Department of Commerce has received numerous complaints concerning these marketing practices and has successfully filed court action in the past resolving complaints in favor of the consumer. The Consumer Affairs Division has authority to act only if the Deceptive Trade Practices Act (NRS 598) has been violated. The thrust of the regulatory practices employed by the Real Estate Division under NRS 119, on the other hand, is to require full disclosure to prospective buyers before purchase.

Recommendation 22: The Division consult with the Consumer Affairs Division and evaluate the need for placing vacation licenses under the regulatory authority of NRS 119 and make appropriate recommendations to the 1981 Legislature.

13. State of Nevada vs. Carriage House Associates, 94 Nev. 707, 585 p. 2d 1337 (1978)

Fees collected by the Division pursuant to NRS 119 are for less than the actual cost of the Land Sales Section of the Division (See Recommendation 2). Most subdivisions in Nevada are exempt from the provisions of NRS 119 and do not pay a fee. In fiscal year 1978-79, for instance, 291 subdivisions were exempt while only 21 were approved and regulated. All exempt subdivisions, however, must apply to the Division and be reviewed in order to obtain an exemption letter.

Recommendation 23: The Division evaluate the existing fee schedule for subdivisions, including exemptions and recommend a revised schedule that matches cost of regulation.

STATUTORY CRITERIA FOR EVALUATION

STATUTORY CRITERIA FOR EVALUATION

Section 6 of A.B. 523 (Chapter 688, 1979) requires that the Legislative Commission and the Legislative Counsel Bureau conduct a review of the need for and the efficiency of the Real Estate Division and Advisory Commission. This review must consider a number of factors. These factors and the staff's evaluation are as follows:

1. Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

The absence of regulation would create a potential for substantial economic loss resulting from deceptive or fraudulent business practices and from unprofessional and incompetent real estate practitioners. The public depends on competent and expert brokers and salesmen to handle simple and complex real estate transactions for convenience and out of necessity. Regulation is warranted to protect the public's economic welfare.

2. Is there a reasonable relationship between the exercise of the state's police powers and the protection of the public health, safety or welfare?

NRS Chapters 645 (Real Estate Brokers and Salesmen), 645A (Escrow Agents) and 119 (Land Sales) provide a reasonable means by which to reduce the potential harm to the economic welfare of the buying and selling public. Each chapter provides licensure requirements and a disciplinary process for deceptive, incompetent

or fraudulent practices. Although education, examination and experience requirements will not eliminate all incompetent practitioners, they do provide a degree of protection for the public.

3. Is there another, less restrictive, method of regulation which could adequately protect the public?

No less restrictive methods of regulation seem feasible. Regulation by local governments could prove duplicative and inconsistent between jurisdictions and regulatory expertise may become difficult to obtain in all areas of the state. Crowded court calendars and costly litigation will not provide public protection in a timely manner and cannot insure competency of real estate practitioners. Professional associations would have the appearance of an industry bias and all practitioners would still have to be required by law to be an association member, thereby, creating a regulatory agency in Nevada law.

4. Does regulation have the effect of directly or indirectly increasing the cost of any goods or services; if so, to what degree?

The cost of regulation does increase the cost of services provided these costs are shifted to the consuming public. We found no reason to believe that real estate commission fees might be lower, however, in the absence of regulation since

license fees are negligible per licensee. The cost to the general public, however, can be reduced by making license fees consistent with actual costs to regulate. The state General Fund has been subsidizing this regulatory function since costs exceed fee revenues. (See Recommendation #2).

5. Is the increase in cost, if any, more harmful to the public than the harm which could result from the absence of regulation?

The increased cost of services as a result of regulations is insignificant in relation to the potential harm of deregulation. If regulation were removed, the potential for economic loss is increased and the public would have no direct protection from incompetent or dishonest practitioners.

6. Is the entire regulatory process designed solely for the purpose of, and does it have as its primary effect, the protection of the public?

The thrust of the regulatory process is to insure competent and honest practitioners and to require full disclosure to the buying and selling public so that informed decisions can be made. There are facets of regulation which are not clearly in the public interest and neither Chapter 645, 645A, or 119 specifically state the purpose of regulation or the policy of the Legislature in enacting these laws. (See Recommendation #1).

7. The agency has permitted qualified applicants to serve the public.

Although no regulatory system can guarantee only qualified applicants will be licensed, the Division reviews educational and experience requirements and all applicants must pass the examination which includes a national uniform section and a section on Nevada law. In the last five years, with an average of 6,800 licensees, the Advisory Commission revoked, suspended or reprimanded only 58 licenses or .85 percent.

8. Requirements of state and federal law for affirmative action have been met by the agency and the industry or profession which it regulates.

The Administrator of the Division indicates there are no specific requirements for affirmative action in the licensing of the occupation. The Division does not collect or publish statistics which allow analysis of the make-up of the profession in Nevada. We found no charges of discrimination in recent complaints.

9. The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters.

The primary purpose of the Division and the Advisory Commission has been to protect the public's interest. The Division and Commission try to balance the interests of the industry, the

state and the public. This report recommends changes in procedures to improve operations and repeal or amendment of statutes or regulations that are not in the public interest.

10. The agency has recommended changes to the statutes which would benefit the public rather than persons it regulates.

In the last two legislative sessions the Division and the industry successfully proposed legislation to establish continuing education requirements for licensees, to develop a computerized licensing system for more efficient office operations and general housekeeping legislation which more closely aligns Nevada statutes with national industry model legislation. The Division and industry, however, also successfully proposed legislation which decreased license fees, required reimbursement of a portion of license fees collected in the last two years and perpetuated General Fund support of real estate occupational licensing. (See Recommendation #2).

11. The agency has required the persons whom it regulates to report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy or quality of services.

The Advisory Commission which promulgates the regulations and makes disciplinary decisions, does not require licensees to report effects of those regulations or decisions. The members of the Advisory Commission, however, are all licensed practitioners, Commission meetings are open to the public and are usually

attended by some licensees and representatives of the industry's association. In addition, the Division distributed a questionnaire to all licensees through the quarterly newsletter "Open House" in order to obtain feedback on the Division's activities from the regulated occupation.

12. Persons regulated by the agency have been required to assess problems in the industry or profession which effect the public.

Neither the Advisory Commission nor the Division require licensed practitioners to report problems in the industry that effect the public. The Division and the Commission, however, receive substantial input from the industry and the Commission does allow time on meeting agendas for petitions from any interested persons requesting the adoption, change or repeal of any regulation. (Rules and Regulations for Nevada Revised Statute 645, Section II, 3.)

13. The agency has encouraged participation by the public in making its regulations, as opposed to encouraging participation only by the persons it regulates.

Neither the Division nor the Advisory Commission actively encourage public participation in making regulations. Meetings of the Advisory Commission to consider regulations are governed by NRS 241 (Open Meeting Law) and NRS 233B (Administrative Procedures Act) and meeting notification requirements are followed.

Press releases announcing the meetings or the results of the meeting, however, are not routinely prepared and released. Examination of Advisory Commission meeting minutes for the last two years revealed attendance and participation primarily by members of the industry, prospective licensees and witnesses in complaint proceedings. (See Recommendation #5).

14. The agency handles formal complaints from the public concerning persons subject to its regulations efficiently and with dispatch.

All complaints are handled in one way or another. Complaints fall into three general categories: those over which the division has no jurisdiction, those that are settled administratively, and those prosecuted before the Advisory Commission. Some complaints take longer to resolve than others due to many factors. The Division does assign priority to complaints considered serious and those involving money. The Legislative Auditor's performance audit of the Real Estate Agency includes many recommendations to improve the handling of complaints.

APPENDICES

Appendix A Organizational Table

Appendix B Operating Budget Comparison

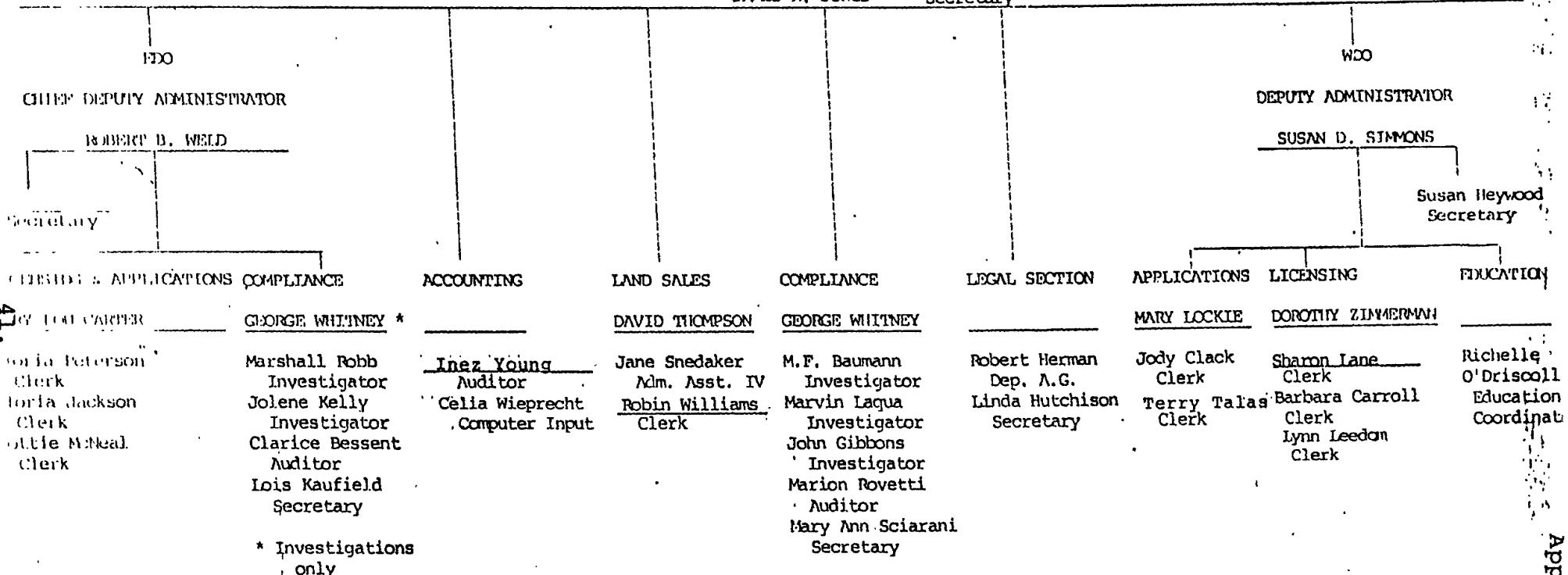
 Table 1 Administrative Accounts

 Table 2 Education, Research & Recovery Fund

Appendix C Agency Reply

NEVADA REAL ESTATE DIVISION

ADMINISTRATOR
 -----Jane Snedaker
 JAMES K. JONES Secretary



41
 MARY LOCKIE
 Clerk
 Clerk
 Clerk

GEORGE WHITNEY *
 Marshall Robb Investigator
 Jolene Kelly Investigator
 Clarice Bessent Auditor
 Lois Kaufield Secretary

* Investigations only

INEZ YOUNG
 Auditor
 Celia Wieprecht
 Computer Input

DAVID THOMPSON
 Jane Snedaker Adm. Asst. IV
 Robin Williams Clerk

GEORGE WHITNEY
 M.F. Baumann Investigator
 Marvin Laqua Investigator
 John Gibbons Investigator
 Marion Rovetti Auditor
 Mary Ann Sciarani Secretary

ROBERT HERMAN
 Dep. A.G.
 Linda Hutchison Secretary

MARY LOCKIE
 Clerk
 Clerk
 Clerk

DOROTHY ZIMMERMAN
 Sharon Lane Clerk
 Barbara Carroll Clerk
 Lynn Leedan Clerk

RICHELLE O'DRISCOLL
 Education Coordinator

REAL ESTATE DIVISION
Operating Budget Comparison
Administrative Accounts¹
1975-76 to 1980-81

Category	Actual Expenditures 1975-76	Actual Expenditures 1976-77	Actual Expenditures 1977-78	Actual ² Expenditures 1978-79	Budget 1979-80	Budget 1980-81
Revenue:						
Appropriations	\$566,254	\$576,374	\$640,447	\$666,017	\$697,661	\$ 735,535
Bal. from Old Year	6,298	10,857	27,131	27,804	28,000	28,500
Exam Fees	75,360	143,680	184,655	201,305	185,000	190,000
Investigative Fees	3,711	3,050	2,256	1,404	2,000	2,000
Publications Sales	-0-	-0-	-0-	-0-	20,000	20,000
Salary Adjustment	37,110	68,675	6,180	8,380	33,624	54,003 ⁵
Total Revenue	\$688,733	\$802,636	\$860,669	\$904,910	\$966,285	\$1,030,038⁵
Expenditures:						
Salary	\$443,674	\$492,982	\$462,296	\$480,534	\$553,421	\$ 590,520
Out-of-State Travel	2,487	3,031	2,583	2,810	-0-	-0-
In-State Travel	20,334	18,346	23,252	20,532	24,000	24,000
Operating	123,603	128,638	128,958	125,745	148,364	169,518
Equipment	2,870	-0-	2,702	1,521	500	500
Investigations ³	3,512	1,795	4,200	4,823	5,000	5,000
Examinations	14,168	33,476	51,702	59,044	211,000	216,500
Training	63	257	183	436	-0-	-0-
Publications ⁶	-0-	-0-	-0-	-0-	20,000	20,000
Investigations ⁴	4,152	2,976	1,983	1,654	4,000	4,000
Total Expenditures	\$614,863	\$681,501	\$677,859	\$697,099	\$966,285	\$1,030,038
Balance	\$ 10,857	\$ 27,131	\$ 27,804	\$207,811 ⁷	--- 7	--- 7
Reversions	63,013	94,004	155,006	---	--- 7	--- 7
Agency Staff (FTE)	34.50	34.50	32.50	32.50	32.50	32.50

Footnotes:

1. Included Real Estate Administration (101-3823) and Investigations (269-3832).
2. Actual expenditures as of 9/28/79.
3. Investigation expense (NRS 645.215)--Special investigations of advertising and sales of unimproved lands outside of incorporated cities.
4. Investigation expenses (NRS 119.150)--Investigations of subdivision licenses.
5. Estimated--based on salary adjustments of 8 percent (effective 1/1/79) and 6.5 percent (effective 1/1/80).
6. S.B. 443 (1979) requires that publication sales revenue be used to offset publication costs (NRS 645.140).
7. The difference between exam fees and actual exam costs will revert to the General Fund.

REAL ESTATE DIVISION
 Operating Budget Comparison
 Real Estate Recovery, Education and Research¹
 1975-76 to 1980-81

<u>Category</u>	<u>Actual Expenditures 1975-76</u>	<u>Actual Expenditures 1976-77</u>	<u>Actual Expenditures 1977-78</u>	<u>Actual² Expenditures 1978-79</u>	<u>Budget 1979-80</u>	<u>Budget 1980-81</u>
Revenue:						
Bal. from Old Year	\$ 92,825	\$ 98,264	\$137,507	\$350,022	\$350,000	\$350,000
License Fees	61,564	85,779	276,165	118,775	280,000	100,000
Total Revenue	<u>\$154,389</u>	<u>\$184,043</u>	<u>\$413,672</u>	<u>\$468,797</u>	<u>\$630,000</u>	<u>\$450,000</u>
Expenditures:						
Education	\$ 46,125	\$ 46,536	\$ 63,650	\$ 97,146	\$230,000	\$400,000
Recoveries	10,000	-0-	-0-	-0-	50,000	50,000
Total Expenditures	<u>\$ 56,125</u>	<u>\$ 46,536</u>	<u>\$ 63,650</u>	<u>\$ 97,146</u>	<u>\$280,000</u>	<u>\$450,000</u>
Balance for Recoveries	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	
Balance for Education	\$ 48,264	\$ 87,507	\$300,022	\$321,651	\$300,000	

Footnotes:

1. Includes Budget 216-3826 (Education and Research) and 216-3827 (Recoveries).
2. Actual expenditures recorded as of 9/28/79.
3. Actual expenditures in FY 1980-81 will be limited to available funds less required balance for recoveries (\$50,000) pursuant to NRS 645.842.



ROBERT LIST
GOVERNOR

JAMES L. WADHAMS
DIRECTOR

STATE OF NEVADA
DEPARTMENT OF COMMERCE

NYE BUILDING, ROOM 321
201 SOUTH FALL STREET
CARSON CITY, NEVADA 89710
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Appendix C

DIVISIONS
BANKING
CONSUMER AFFAIRS
CREDIT UNION
FIRE MARSHAL
HOUSING
INSURANCE
MANUFACTURED HOUSING
REAL ESTATE
SAVINGS AND LOAN

May 9, 1980

MEMORANDUM

TO: Keith Ashworth, Chairman, Legislative Commission
FROM: James L. Wadhams, Director
SUBJECT: Real Estate Sunset Review

We have reviewed the preliminary working draft of the Fiscal Analysis Division's sunset review of the Real Estate Division and Real Estate Advisory Commission.

For the most part, the report is unobjectionable. We do have some differing recommendations but feel those should be addressed to the appropriate committee rather than stated as a comment on this report. I have enclosed comments made by the Real Estate Division to specific recommendations which we feel are valid.

Should you have any further questions regarding this matter please contact me.

jc
encl.

COMMENTS BY DIVISION TO:

Recommendation #1 -

Lengthy narrative detailing legislative policy and the purpose, goals and objectives of regulation can be overbearing. We will comply if mandated by the legislature.

Recommendation #2 -

The costs involved in regulation do in fact exceed revenue and we will analyze our fee schedules.

Recommendation #3 -

The recommendation is agreeable with the Division.

Recommendation #4 -

The recommendation is agreeable with the Division.

Recommendation #5 -

The costs involved in regulation do in fact exceed revenue and we will analyze our fee schedules.

Recommendation #6 -

The recommendation is agreeable to the Division.

Recommendation #7 -

The Division will comply with mandate of legislature.

Recommendation #8 -

The Division is capable of providing proposed and actual uses of the funds for education and research.

Recommendation #9 -

The Division takes no posture on this recommendation. We will analyze all costs involved.

Recommendation #10 -

The recommendation is agreeable to the Division.

Recommendation #11 -

The recommendation is agreeable to the Division.

Recommendation #12 -

The Division will consider this recommendation.

Recommendation #13 -

The Division feels that the measurement of knowledge might make the cost of continuing education too high.

Recommendation #14 -

The Division supports vigorously this recommendation.

Recommendation #15 -

The Division supports vigorously this recommendation.

Recommendation #16 -

The Division takes no posture on this recommendation.

Recommendation #17 -

The Division vigorously supports this recommendation.

Recommendation #18 -

Unless the courts approve acceptable financial responsibility regarding limits and/or standards, the government should not be involved.

Recommendation #19 -

The Division vigorously supports this recommendation.

Recommendation #20 -

The Division vigorously supports this recommendation.

Recommendation #21 -

The Division takes no posture on this recommendation.

Recommendation #22 -

The Division is drafting legislation regarding this situation.

Recommendation #23 -

The Division will evaluate existing fee schedules for subdivisions.

Appendix C

Fiscal Analysis Division Sunset Review
of the Nevada Racing Commission

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

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June 6, 1980

MEMORANDUM

TO: Legislative Commission's Subcommittee on Sunset
Reviews (A.B. 523)

FROM: Fiscal Analysis Division
Legislative Counsel Bureau

SUBJECT: Racing Commission

We have completed our review of the Racing Commission as requested by the Subcommittee on Sunset Reviews. Our review was conducted pursuant to the requirements of A.B. 523 (1979 Session).

This review focuses on the need for and the efficiency of the Racing Commission in performing its statutorily assigned tasks. The information contained in the report is a product of staff research, contacts with members of the Racing Commission and its Executive Secretary, contacts with racing participants, and contacts with other state agencies. The information was compiled by the use of written questionnaires, interviews and an examination of agency records.

The scope of this review was limited by time and staff resources available to the Fiscal Analysis Division. The review concentrated on the criteria of A.B. 523, the regulatory functions performed and administration of the Commission.

We wish to acknowledge the cooperation and assistance of the Commission Chairman, Executive Director, Commission members, licensees and others that provided input for our review.

DM:ca

State of Nevada
Racing Commission
Sunset Review

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INTRODUCTION

Assembly Bill 523 of the 1979 Legislative Session provides for the repeal of those statutes which regulate certain professions, occupations, state agencies and programs. The bill requires that the Legislative Commission report to the 1981 Legislature recommending termination or continuation of the subject statutes after conducting a review of the agency involved.

A.B. 523 sets forth specific criteria for the review of the statutes set for repeal. These criteria require a determination as to whether the subject statutes are a legitimate exercise of state authority, the need for such statutes and, if need is determined, a review of the efficiency of their operation by the agency assigned responsibility for their execution.

This review concerns the Nevada Racing Act, Chapter 466, Nevada Revised Statutes. The regulation of horse and greyhound racing in Nevada is a responsibility of the Nevada Racing Commission.

This report is organized with a summary, a separate section discussing the statutory review criteria and specific recommendations concerning the administration of racing regulation in Nevada.

SUMMARY

SUMMARY

Chapter 688 (1979 Session), provides for the termination of the Nevada Racing Commission and NRS Chapter 466 (Nevada Racing Act) on July 1, 1981, unless reestablished by the Sixty-First Legislature. The Legislative Commission is required to determine if there is a continuing need to regulate racing in Nevada and, if need is determined, to review the efficiency of the agency carrying out the regulatory function. Recommendations must be submitted to the full Legislature at the beginning of the next regular session. The law requires consideration of fourteen criteria relating to the need and efficiency of regulation. These criteria and specific findings and recommendations are included in this report. The following is a summary of the Fiscal Analysis Division's recommendations and conclusions.

Regulation of horse and dog racing in Nevada is a responsibility of the Nevada Racing Commission. The Commission, composed of five members appointed by the Governor, promulgates regulations, licenses race meet operators, licenses certain occupations associated with racing and enforces state law and regulations at licensed events. Currently, only limited horse racing events at Ely and Elko are licensed by the Commission, however, the industry in Nevada is about to undergo significant changes. The Racing Commission is considering an application

to license a full-time commercial track in southern Nevada which will feature greyhound racing and later horse racing. The 1979 Legislature authorized the employment of staff and other operating expenditures to regulate this full-time track. There have also been inquiries concerning the establishment of a commercial track in northern Nevada.

The Nevada Gaming Commission and Control Board regulates all other forms of gambling in Nevada. The Gaming Commission promulgates gaming regulations and approves licenses and the Gaming Control Board investigates applications, makes recommendations for licensure, enforces state law and regulations, collects taxes and audits tax payments. The Gaming Commission and Control Board is a large, well staffed and experienced state agency and could regulate horse and dog racing in Nevada if given that responsibility.

The Fiscal Analysis Division concludes that racing events in Nevada and especially pari-mutuel wagering should be strictly regulated in order to protect the welfare of the public and guarantee fair and impartial race results and wagering opportunities. Fiscal Analysis recognizes that two separate state agencies exist in Nevada with similar responsibilities and that regulation of racing could be accomplished by either agency--the Nevada Racing Commission or the Gaming Commission

and Control Board. We make no recommendation as to which agency should provide regulation, but raise the issue only to alert the Legislature that the alternative exists.

This report includes specific recommendations for statutory and administrative changes that would increase the effectiveness of racing regulation should NRS 466 be reenacted and the Racing Commission reestablished. It also includes findings and conclusions pertaining to the fourteen criteria for evaluation contained in Chapter 688 (1979 Session).

History of Regulation in Nevada

The Nevada Racing Commission was established in 1915 as a three-member board with unlimited authority to regulate horse racing and pari-mutuel wagering at tracks.¹ Track operators and meet organizers licensed by the state were required to share the regulatory cost of the Racing Commission. In 1949, the Legislature made licensing of the pari-mutuels at tracks the responsibility of the Nevada Tax Commission.²

The 1951 Legislature repealed earlier laws and wrote the Nevada Racing Act which remains largely unchanged today. The Nevada Racing Act established a five-member Racing Commission, prohibited members from having any interest whatsoever in any corporation or association conducting racing, authorized the employment of staff to supervise racing, established a range of license fees, exempted certain agricultural associations and fairs from the fees and prohibited local governments from regulating racing.³ The Nevada Tax Commission continued licensing pari-mutuels and a tax rate of 2 percent of gross wagers with a maximum take-out for the pari-mutuel operator of 13 percent was established.⁴ In 1960, provisions were added to the Nevada Racing

-
1. Laws of Nevada, 1915, Chapter 26.
 2. Laws of Nevada, 1949, Chapter 195.
 3. Laws of Nevada, 1951, Chapter 321.
 4. Laws of Nevada, 1951, Chapter 295.

Act to distribute unexpended Racing Commission funds in excess of \$10,000 at the end of each year to the county fair and agricultural associations which had paid fees or taxes during that year.⁵

The 1965 Legislature reorganized the tax structure on pari-mutuels establishing a 1 percent gross tax for the support of the Racing Commission. The 2 percent tax and all license fees for racing events were to be deposited in the General Fund and the allowable take-out from the pari-mutuel pool was raised to 16.5 percent. In addition, legislative policy and the purpose of the Nevada Racing Act were formally established to "encourage agriculture and the breeding of horses" in Nevada.⁶

In 1973, the Nevada Racing Act was amended to allow greyhound racing in any incorporated city if it was authorized in the city charter. The Henderson City Charter was amended to create such authority. The Nevada Gaming Commission and Control Board were required to investigate the background of all pari-mutuel license applicants and the Racing Commission was prohibited from licensing applicants who received a recommendation of denial from the gaming authorities. The purpose of the Nevada Racing Act was expanded to "encourage greyhound breeding and to produce an additional source of revenue for the state." The tax rate structure

5. Laws of Nevada, 1960, Chapter 139.

6. Statutes of Nevada, 1965, Chapter 242.

was changed to a 3 percent tax on all pari-mutuels at horse races and 4 percent at greyhound races. One percent of the pari-mutuel tax was reserved for the expenses of the Racing Commission, 1 percent of the greyhound tax went to the city in which the track is located and 2 percent of the tax was for the State General Fund. The maximum take-out for the pari-mutuel operator was raised to 18 percent. The law also provided that any track that was licensed for greyhound racing must also have horse racing and that there could be no more than two greyhound racing days to every one horse racing day.⁷

In 1975, the Nevada Racing Act was amended authorizing the Racing Commission to approve any pari-mutuel license regardless of the outcome of the Gaming Control Board investigation or any recommendation made by the Board. The ratio of allowable greyhound racing days to horse racing days at the same track was also raised to three to one.⁸ The 1977 Legislature authorized counties to receive the 1 percent pari-mutuel tax on greyhound races at tracks located outside of incorporated cities and outlawed the use of live bait in greyhound races and training dogs by coursing.⁹

-
7. Statutes of Nevada, 1973, Chapter 366.
 8. Statutes of Nevada, 1975, Chapter 294.
 9. Statutes of Nevada, 1977, Chapter 505.

Regulation in the Various States

Thirty-two states allow pari-mutuel wagering at horse and greyhound racing events and each state has established a commission to regulate these activities. Promulgation of racing rules and establishing racing dates are important responsibilities of these Racing Commissions. Licensing responsibilities vary from state to state, but all states require that the track or meet operator be licensed and that certain occupations such as animal owner, jockey and trainer also be licensed. Licensing usually includes a background check for suitability, criminal records and disbarment at other tracks in the country. In comparison to racing events and pari-mutuel activity in other states, Nevada's racing industry must be considered miniscule. Nationally, in 1975, state revenues from on-track betting totaled \$581,640,000 for horse racing and \$85,080,000 for greyhound racing while Nevada's gross revenue from all races was only \$8,000.¹⁰

10. Gambling in America, Commission on the Review of the National Policy Toward Gambling, 1976, p. 109.

FINDINGS AND RECOMMENDATIONS

Commission Organization

The Nevada Racing Commission is a five-member board appointed by the Governor with statutory authority to promulgate regulations dealing with the licensure of all events where racing is permitted for any stake, purse or reward. In addition, all pari-mutuel operators at any racing events must be licensed by the Commission and certain occupations associated with racing may be licensed or otherwise regulated as the rules of the Commission may specify.

The Commission has operated without staff for a number of years and has contracted for the services of a state steward and veterinarian for the limited horse racing events currently held each year. The Commission serves without a salary and receives only travel and living expenses for meetings and racing events attended.

The 1979 Legislature approved budget authority for a staff of 10 positions for fiscal year 1979-80, including an Executive Secretary, in anticipation of the opening of Las Vegas Downs, a new track to be located in the City of Henderson which will feature greyhound racing. In addition, \$43,216 was appropriated to the Commission for fiscal year 1979-80 for necessary

expenses prior to the opening of the new track. The Henderson track will be the first full-time commercial greyhound track in Nevada and the only commercial racing track of any kind operating in the state.

Except for the start-up costs, the Commission is to be entirely supported from its share of the pari-mutuel tax. The current pari-mutuel tax and its distribution is:

	<u>Tax*</u>	<u>Distribution</u>		
		<u>Commission*</u>	<u>General Fund</u>	<u>Local Government</u>
Horse Racing	3%	1%	2%	
Greyhound Racing	4%	1%	2%	1%

* State fair associations, agricultural societies, county fair and recreation boards and county agricultural associations only pay the 1% tax for the support of the Commission.

In addition to the pari-mutuel tax, the Racing Commission is partially supported by occupational licensing fees charged to certain participants in racing events.

Racing in Nevada in recent years has been limited to two or three racing events per year. In fiscal year 1979-80, there were licensed events for races operated in Elko by the Elko County Fair and Livestock Show, in Ely by the Pony Express Association and at Logandale by the Lewis Ranch Racetrack. Greyhound racing was first authorized in Nevada by statute in 1973, however, to date there has been no licensed greyhound racing activity.

The Racing Commission is in the process of a dramatic transition going from a volunteer group meeting twice a year, licensing two or three events for six to twelve racing days annually, to regulation of a legitimate full-time commercial track. The Commission has an enormous amount of work to do in order to prepare for the opening of the Henderson track in the fall of 1980, including organization and hiring of agency staff and staff assignments and adoption of rules and regulations governing the conduct of greyhound racing. At this time the Commission has no history of regulation of a large scale racing and pari-mutuel operation and we are unable to predict whether the Commission can provide adequate regulation and enforcement to protect the public's interest in the future.

Nevada is nearly unique among the fifty states since it licenses other forms of gambling enterprises besides racing. All other forms of gambling in Nevada are regulated by the Gaming Commission and Gaming Control Board. The Gaming Control Board is a large, well staffed agency responsible for investigations of license applicants, enforcement of state gaming laws and regulations, auditing gaming licensees and tax collection. The functions of the Gaming Control Board are well established and the agency has vast experience in regulating gaming operations including pari-mutuel operations.¹¹

11. The Gaming Control Board regulates pari-mutuel operations at two jai alai frontons.

We recognize that the nature of racing and pari-mutuels requires stringent and aggressive regulation in order to guarantee fair and impartial race results and wagering opportunities for the racing industry and the general public. The Gaming Commission and Gaming Control Board are viable alternatives to the present form of racing regulation vested in the Racing Commission. All responsibilities of the Racing Commission could be assigned to the Gaming agencies, thereby, avoiding establishment of two separate full-time regulatory organizations. The Gaming Control Board would, however, have to employ additional staff and obtain racing expertise in order to adequately monitor the industry.

We offer no recommendation as to whether the Racing Commission or the Gaming Commission and Control Board should regulate racing events and pari-mutuel operations in Nevada. We raise the matter only to point out to the Legislature that the alternative exists and appears to be viable.

The balance of this report recommends changes in Chapter 466, Racing Commission regulations and procedures and assumes that the Racing Commission will remain intact and responsible for racing in Nevada.

Administration

Chapter 466, Nevada Revised Statutes, is the authority from which the Racing Commission regulates horse and greyhound racing in Nevada. NRS 466.015 establishes legislative policy and the purpose for Chapter 466 as follows:

"466.015 Purpose of Chapter. The purpose of this Chapter is to encourage agriculture and the breeding of horses and greyhounds in this state and to produce an additional source of revenue for the state."

NRS 466.030 authorizes the Commission to adopt regulations governing the conduct of horse and greyhound races and 466.170 allows the Commission to adopt regulations concerning pari-mutuel wagering on licensed races. Neither the statute describing the purpose of the Nevada Racing Act nor those providing regulation making authority specify protection of the wagering public as a policy or intended purpose of regulation of racing. State statutes regulating other forms of gaming, on the other hand, have a well defined policy and purpose which includes protection of the public and preservation of a competitive economy.

Recommendation 1: The Legislature consider expanding the purpose of NRS 466.015 to include "the protection of the general public" which would provide the Commission with a more explicit policy to follow in their regulatory mission.

NRS 466.040 and 466.045 establishes certain qualifications that each racing commissioner must meet in order to be eligible for appointment. They include:

- a. Five-year Nevada residency.
- b. Qualified elector.
- c. Not less than 35 years old.
- d. Not more than three members may be of the same political party.
- e. Cannot have any official relation or pecuniary interest in any association or corporation engaged in racing in Nevada.
- f. Expressly prohibited from owning any greyhound raced in Nevada.

These qualifications were established in 1951 and have not been changed since except for the prohibition against ownership of a greyhound which was added in 1973. There is no apparent public benefit to be gained from requiring Commissioners to be a qualified elector and 35 years old or older.

The law prohibits a Commissioner from owning a greyhound which is raced in Nevada, but does not prohibit ownership of a horse which is raced in the state. The Commission on the Review of the National Policy Toward Gambling has recommended that members of Racing Commissions in all states be prohibited from having any financial interest in any regulated race track or any animal racing in the state.¹² In addition, they have developed model legislation for states to consider in organizing their

12. Gambling In America, p. 123.

Racing Commissions.¹³ Prohibitions against financial interest in regulated tracks and animals by Commissioners is intended to eliminate any potential conflicts of interest.

Recommendation 2: The Legislature consider changing NRS 466.040 to eliminate Commission qualification requirements that serve no useful purpose.

Recommendation 3: The Legislature consider recommendations of the Commission on the Review of the National Policy Toward Gambling concerning the prohibitions against ownership or interest in horses or greyhounds raced within the state.

NRS 466.050 authorizes the members of the Commission to be paid per diem and travel expenses, but does not provide for a daily salary as is normally the case for boards and commissions in Nevada. For the last few years Racing Commission activities have been minimal. In 1977 and 1978 the Racing Commission met only twice in each year. With the advent of a full-time commercial track and the need for complete greyhound racing regulations, pari-mutuel regulations and updated horse racing regulations, the Racing Commission will undoubtedly become more active and require more frequent meetings. To serve on the Racing Commission without pay under these conditions appears unreasonable and may discourage potential Commission appointees.

Recommendation 4: The Legislature consider amending NRS 466.050 to include a daily salary for Commissioners when on Commission business at the same level as other boards and commissions are compensated.

13. Gambling In America, Appendix 1, p. 1117.

NRS 466.030 provides that the Commission may adopt regulations governing the conduct of racing events in Nevada and 466.170 allows the Commission to adopt regulations governing pari-mutuel operations at the tracks. Both sections establish only the authority rather than the mandatory requirement to promulgate regulations. Currently, there are no approved regulations governing greyhound racing. The new Executive Secretary and the Commission are, however, in the process of finalizing such regulations in anticipation of the opening of the Henderson track in late 1980. The existing horse racing regulations of the Commission were published in 1964 and many are older than that. The Commission plans to update these rules in the near future to reflect changes in the law, racing and racing conditions. Commission regulations controlling pari-mutuel operations deal mainly with which racing participants are prohibited from betting and do not deal with the many issues that can arise in a wagering operation. The Commission is, however, in the process of developing complete pari-mutuel regulations at this time.

Recommendation 5: The Legislature consider amending NRS 466.030 and 466.170 to require the promulgation of regulations by the Commission for both racing and pari-mutuels.

Recommendation 6: The commission complete its efforts to develop greyhound racing regulations, to update horse racing regulations and to develop a complete set of regulations governing pari-mutuel operations.

License Fees and Pari-Mutuel Tax

NRS 466.015 states that one purpose of licensing and regulating racing in Nevada is to produce an additional revenue for the state. This goal has not been met recently since no moneys have been deposited in the General Fund from the pari-mutuel tax on racing events for at least ten years. One reason for this failure is that NRS 466.125 exempts agricultural associations and fair boards from payment of all taxes and fees except the one percent tax that supports the Racing Commission and the only races run in recent years have been operated by such exempt organizations. The revenues available for the operation of the Commission itself have also declined. Commission receipts for the last four fiscal years including both pari-mutuel tax and license fees were:

<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79</u>
\$8,827	\$10,244	\$10,716	\$5,186

The sudden drop in revenues in fiscal year 1978-79 is attributed to conflicting race dates in neighboring states and lower purses offered in Nevada. The Racing Commission is planning to coordinate a racing circuit with neighboring states in order to eliminate date conflicts and enhance racing in Nevada.

Revenues available for the operation of the Commission for fiscal years 1978-79 and 1979-80 (as of January 1980) are:

	<u>FY 1978-79</u>	<u>FY 1979-80</u>
Occupational Licenses	\$2,605	\$4,316
Pari-mutuel Tax	2,626	3,163
Fines and Miscellaneous	(45)	1,038
Total	<u>\$5,186</u>	<u>\$8,517</u>

The Racing Commission expenses have exceeded funds available in fiscal 1978-79 by \$1,100 and \$2,507 thus far in fiscal 1979-80. On February 13, 1980, the State Board of Examiners approved a request from the Commission to seek financial aid from the Interim Finance Committee. On March 26, 1980 the Interim Finance Committee approved an allocation from the Contingency Fund for the amount of the unpaid bills for fiscal 1978-79 and 1979-80 and approved an additional allocation of \$43,216 for fiscal 1980-81 to fund start-up costs and staff salaries for the delayed opening of the Henderson track. The unexpended balance of the \$43,216 appropriated by the Legislature for fiscal 1979-80 will revert to the General Fund on June 30, 1980, and will not be available next fiscal year. The only funds available to the Commission for the balance of fiscal year 1979-80, therefore, are for the expenses of preparing for the opening of the Henderson Track. Other operating funds of the Commission are exhausted.

As demonstrated by the Commission's financial experience in fiscal 1978-79 and 1979-80, current revenues from occupational license fees and pari-mutuel taxes at the racing events held in Ely, Elko and Logandale cannot be expected to cover the actual costs of regulation of those events. These expenses normally include Commission meeting costs for approval of licenses and race dates, contract costs of the state steward and veterinarian and the cost of one or more members of the Commission to supervise the racing events. The Chairman of the Commission has indicated that they will seek legislation to increase fees and taxes to a point that is sufficient to support the necessary operating expenses of the Commission. NRS 466.151 limits the track operator's "take-out" to 18 percent of the total moneys wagered. From this 18 percent the operator must pay the state tax of 3 percent or 4 percent, purses and any other wagering overhead costs. Any increase in the tax rate could bring a request from licensees to increase the allowable "take-out." The Commission on the Review of the National Policy Towards Gambling, citing several analyses, suggests that the allowable "take-out" in most states is too high and that the optimal rate ranges between 13 to 15 percent of the total wagers in order to maximize revenues for the state, the racing industry and the betting public. The studies cited suggests the size of the "take-out" directly influences track

attendance and, therefore, the amount of wagers to be taxed. Increased taxes might, therefore, ultimately result in lower state revenues should the take-out prove to have a direct bearing on wagering.

In similar regulatory situations the Legislature has opted to authorize or appropriate the necessary funds to the agency and in turn deposit all revenues received to the credit of the State General Fund. The Gaming Control Board and Gaming Commission and the Athletic Commission are budgeted in this manner. In each case the agency's mission is regulatory, but the taxes imposed are revenue raising measures and exceed the cost of regulation. This procedure would provide for better budget control by the Executive and Legislative branches since higher than anticipated revenues would not automatically default to use of the Racing Commission. The Governor and the Legislature would be afforded the opportunity every two years of assessing the performance of racing revenues in comparison to Commission needs.

The Racing Commission testified before the Senate Finance Committee and the Ways and Means Committee at the 1979 Session that the anticipated handle by fiscal 1980-81 at the Henderson track will be in excess of \$37 million annually producing revenues for the state and Racing Commission (3% tax) of over \$1 million annually. The Commission also requested an operating

budget of approximately \$400,000 for fiscal 1980-81.¹⁵ If the projections of the Racing Commission prove out, substantially more revenue will be raised through the pari-mutuel tax than the cost of regulating racing at the Henderson Track.

Recommendation 7: The Legislature consider amending NRS 466 to return all revenues received to the credit of the General Fund and to authorize or appropriate sufficient moneys to meet the necessary expenses of the Racing Commission.

If the Legislature decides not to appropriate the funds necessary to operate the Racing Commission, consideration should be given to adjusting the revenue derived from the rural horse races to meet the actual cost of regulation. Adjustments could include increasing the occupational license fees, requiring a mandatory license fee in addition to the pari-mutuel tax for race meet licensees (NRS 466.120), eliminating the exemption of fair associations and agricultural societies from the race meet license fee (NRS 466.120), eliminating the annual distribution of unexpended Commission funds in excess of \$10,000 to agricultural associations (NRS 466.080), and eliminating the Nevada breeders award payable from the Racing Commission fund (NRS 466.085).

NRS 466.065 requires that the Commission provide fidelity bond coverage on any employees or Commissioners who handle state moneys unless coverage is provided by a blanket state bond.

15. Meeting Minutes, Senate Finance Committee, March 15, 1979, Attachment B.

The Commission currently, contracts for the services of a state steward whose responsibilities include licensing racing participants at the several events each year and collecting the required license fees. The Commission has maintained a bond for years in the name of the steward who had been under contract. At the Logandale races in November 1979, the Commission hired a different steward, but failed to provide fidelity bond coverage. The blanket state bond does not cover independent contractors of the state, but only employees.

Recommendation 8: The Commission obtain the required bond coverage on contract employees handling state moneys and insure blanket state coverage on its own employees when they are hired.

Licensing

The Racing Commission licenses all track or racing event operators and pari-mutuel operations and also licenses persons participating in racing events such as animal owners, trainers, stewards and jockeys. The license for each racing event is approved for certain racing dates in the year. Agricultural associations have a statutory priority in date selection.

In order to obtain a license to conduct wagering, an applicant must submit to a background investigation conducted by the Gaming Control Board pursuant to NRS 466.105. The investigation must be conducted in the same manner as those for gaming license

applications and the applicant must pay the cost of the investigation. This investigative provision was added to the law along with the authority to license greyhound racing in 1973. Originally, the law provided that if the Gaming Control Board recommended denial, the Racing Commission could not approve the license.¹⁶ But in 1975, the Legislature amended the law to allow the Racing Commission full authority to grant the license regardless of the Gaming report.¹⁷

In a parallel situation, NRS Chapter 463 requires the Gaming Control Board to investigate all other gaming license applicants and give a recommendation of approval or denial to the Gaming Commission who actually approves licenses. In the event that the Control Board recommends denial of a license, NRS 463.220 provides that the license can only be approved after a unanimous vote of the five-member Gaming Commission. The dual responsibilities of the Control Board and Gaming Commission have been developed over a number of years and are carefully designed to provide protection to the general public. As the Racing Commission moves from regulating occasional county fair events to a full-time commercial track, similar protections could be included in their law and regulations.

Recommendation 9: The Legislature consider requiring that the Gaming Control Board provide the Racing Commission with a full report of each investigation and a recommendation for approval or denial.

16. Statutes of Nevada, 1973, Chapter 366.

17. Statutes of Nevada, 1975, Chapter 294.

Recommendation 10: The Legislature consider amending NRS 466.105 to permit approval of a licensee after a recommendation of denial from the Gaming Control Board only after a unanimous vote of the Racing Commission.

The state steward is assigned the responsibility of licensing racing event participants. The state steward is an independent contractor under contract to the Racing Commission to perform this service and to enforce the law and regulations at the various racing events. Occupational licensing of racing participants is accomplished by the completion of the required application and payment of the appropriate fee. The application form requires a personal description, licensing history, criminal history and racing history. The information provided on the application is not verified or checked nor is a fingerprint check conducted, although it is authorized in NRS 466.170. Licensing generally takes place at the track shortly in advance of a racing event and the Commission has not had the resources to conduct a thorough check of applicants. It is unknown whether more rigid licensing standards at the rural horse race meets would benefit the industry and public or mean the demise of an already fragile racing industry. The Commission has indicated that as staff and financial resources become available they will institute a background check possibly using a national computerized data system available through the National Association of State Racing Commissioners to verify application information.

Recommendation 11: The Racing Commission pursue its plan to develop background verification on occupational licensees and to increase the reliability of the information through the National Association Computer System or fingerprint checks or both.

Occupational licensing procedures can be time consuming and repetitious to members of the racing industry since many participants travel from state to state. The Commission does not currently have any licensing reciprocity agreements with any other states.

Recommendation 12: When an adequate background verification system is developed to insure licensing suitability in Nevada, the Commission consider occupational licensing reciprocity for those licensed in other states with similar requirements.

At each racing event the licensed operator is responsible for the operations of the pari-mutuel. The operator maintains the tote board, calculates the odds and computes the state tax payable. The Racing Commission does not audit nor verify the total wager, the odds, pay-outs, unclaimed tickets or the state tax. The Racing Commission has not had sufficient resources to review the total operations of the pari-mutuel at licensed racing events.

Recommendation 13: The Commission institute a verification or audit procedure when resources become available to insure proper operation of the pari-mutuel and tax payments.

STATUTORY CRITERIA FOR EVALUATION

Statutory Criteria for Evaluation:

Section 6 of A.B. 523 (Chapter 688, 1979) requires that the Legislative Commission and the Legislative Counsel Bureau conduct a review of the need for and the efficiency of the Racing Commission. This review must consider a number of factors. These factors and the staff's evaluation are as follows:

1. Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

The absence of regulation would create a potential for substantial economic loss to the public resulting from fraudulent pari-mutuel practices and infiltration of the racing industry by criminal elements. Great opportunity exists in racing events and pari-mutuel wagering to manipulate the outcomes and the public must depend on stringent and aggressive regulation to protect its economic welfare. In Nevada, the reputation of the gaming industry in general is highly prized and the state makes efforts to preserve a good reputation. Lack of regulation of racing and associated pari-mutuels creates a potential for danger to Nevadan's should the state's gambling reputation be damaged.

2. Is there a reasonable relationship between the exercise of the State's police power and the protection of the public health, safety or welfare?

Because of the potential danger to the public, it is reasonable for the state to regulate the racing industry in Nevada. NRS Chapter 466 (Nevada Racing Act) provides a reasonable means by which to reduce the potential harm to the general public.

3. Is there another, less restrictive, method of regulation which could adequately protect the public?

Regulation by the state seems most feasible. All 32 states that allow racing regulate the sport and pari-mutuels at the state level. Regulation by local governments could prove duplicative and inconsistent between jurisdictions and regulatory expertise may become difficult to obtain in all areas of the state. Local regulation could lead to conflicting racing dates which could further damage an almost extinct industry in Nevada.

An alternative to regulation by the Racing Commission is, however, available. All other gaming enterprises in Nevada are regulated by the Gaming Control Board and the Gaming Commission. These enterprises include pari-mutuel gambling at jai alai frontons. The Gaming Control Board is a well staffed agency

with investigative, audit, licensing, tax collecting and intelligence sections. The Control Board and Gaming Commission operate under statutes and regulations that have been developed and refined over many years to establish creditable gaming regulation. The regulation of racing and racing pari-mutuels could be assumed by the Gaming Control Board and Commission with no significant problems.

4. Does regulation have the effect of directly or indirectly increasing the cost of any goods or services involved, if so, to what degree?

There are direct costs which occur as a result of regulation. This includes the portion of the permissible 18 percent take-out on pari-mutuel games attributable to regulation and the license fees. In 1979, there were only three racing events in three different areas of the state at different times of the year. The racing markets are so small and infrequent in Nevada no in-state competition currently exists and regulation has had no significant influence on the cost of racing events or wagering opportunities for the general public.

5. Is the increase in cost, if any, more harmful to the public than the harm which could result from the absence of regulation?

Since the absence of regulation creates a danger to the public welfare, the costs are acceptable. There is no way of knowing what the costs to the public might be if regulation were removed.

6. Is the entire regulatory process designed solely for the purpose of, and does it have as its primary effect, the protection of the public?

NRS 466.105 states only that the purpose of regulation is to encourage agriculture and breeding and to produce an additional source of income for the state. State law, however, does require investigation and licensing of racing meet operators and licensing of all participants in racing events and the regulation of pari-mutuel wagering. In addition, the Commission has promulgated regulations which govern horse racing and are working to complete regulations for greyhound racing. The Commission has not yet passed regulations governing pari-mutuel operations. The Commission has not had staff available to aid in the regulation process, but has instead contracted for a state steward and veterinarian to attend all meets and enforce Commission regulations and the law. Procedural requirements of the law and regulations do act to protect the public as well as operators and participants and within their limited resources, the Commission has acted to enforce those laws and regulations.

7. The agency has permitted qualified applicants to serve the public.

Licensing requirements for race meet operators include a background investigation by the Gaming Control Board and is the primary procedure used to determine fitness for licensing.

Licensing of racing participants, however, requires only an application and fee and amounts to little more than registration. There is no way to determine if only qualified applicants are allowed a license. In 1978, only one official complaint was filed with the Commission.

8. Requirements of state and federal law for affirmative action have been met by the agency and the industry or profession which it regulates.

The Racing Commission has no affirmative action plan for the racing industry and is not required to have one. The Commission staff will be under the Personnel Division's affirmative action program when hired. The Commission does not collect or publish statistics which would allow analysis of the make-up of the industry in Nevada.

9. The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters.

The primary purpose of the Commission has been to regulate racing events in rural communities of the state. Regulations promulgated by the Commission are intended to guarantee fair racing and protection of the wagering public. The Commission has been hampered by insufficient license fees and pari-mutuel tax in its efforts to control racing, and enforcement has been minimally maintained as a result.

10. The agency has recommended changes to the statutes which would benefit the public rather than the persons it regulates.

The Commission has not proposed any legislation at the last two sessions. They did successfully propose budget changes in 1979 to accommodate an Executive Director and staff to regulate the proposed race track in Henderson.

11. The agency has required the persons whom it regulates to report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy or quality of service.

The Commission, which promulgates regulations and makes licensing decisions, does not require licensees to report effects of those regulations and decisions. Commission meetings are, however, open to the general public as well as members of the industry and representatives of the racing industry usually attend these meetings and one or more Commission members generally attend each racing meet. Considering the size and frequency of racing in Nevada to date, anything more may not have been necessary.

12. Persons regulated by the agency have been required to assess problems in the industry or profession which effect the public.

The Commission does not require licensees to assess or report problems in the industry that effect the public. The Commission, however, receives substantial input from the industry

at meetings and membership on the Commission includes persons from all geographical areas that currently have racing.

13. The agency has encouraged participation by the public in making its regulations, as opposed to encouraging participation only by the persons it regulates.

The Commission has not promulgated any regulations concerning the conduct of races or pari-mutuels since 1964. They are in the process of doing this now as well as considering regulations for greyhound racing and pari-mutuel operations. Meetings of the Commission are open to the public, however, press releases or announcements are neither issued before or after meetings. Examination of the meeting minutes for the last two years revealed attendance and participation primarily by members of the industry and prospective licensees only.

14. The agency handles formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch.

We are unaware of any formal complaints from the public filed with the Commission for the last several years. The Commission did receive one formal complaint from a racing participant last year but it was settled informally. We have been unable to determine, therefore, whether complaints are handled efficiently.

APPENDICES

Appendix A Operating Budget Comparison
Appendix B Agency Reply

NEVADA RACING COMMISSION
Operating Budget Comparison¹
1975-76 to 1980-81

<u>Category</u>	<u>Actual Expenditures 1975-76</u>	<u>Actual Expenditures 1976-77</u>	<u>Actual Expenditures 1977-78</u>	<u>Actual Expenditures 1978-79²</u>	<u>Budget 1979-80</u>	<u>Budget 1980-81</u>
Revenue:						
Appropriation	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ 43,216	\$ -0-
Int. Finance Allocation	-0-	-0-	-0-	-0-	3,607	43,216
Bal. from Old Year	6,394	7,172	5,823	6,901	7	6,500
Commission Receipts	8,827	10,244	10,716	5,186	161,375	352,710
Fines	-0-	-0-	-0-	-0-	1,500	8,000
Total Revenue	<u>\$15,221</u>	<u>\$17,416</u>	<u>\$16,539</u>	<u>\$12,087</u>	<u>\$209,705</u>	<u>\$410,426</u>
Expenditures:						
Salary	\$ 111	\$ 88	\$ 87	\$ 94	\$111,412	\$190,753
Out-of-State Travel	-0-	-0-	-0-	364	5,400	6,000
In-State Travel	228	380	516	784	1,308	1,700
Operating	7,710	11,125	9,035	10,837	83,700	166,117
Equipment	-0-	-0-	-0-	-0-	7,885	1,780
Data Processing	-0-	-0-	-0-	-0-	-0-	4,904
General Fund Repayment	-0-	-0-	-0-	-0-	-0-	32,172
Reserve ³	-0-	-0-	-0-	-0-	-0-	7,000
Total Expenditures	<u>\$ 8,049</u>	<u>\$11,593</u>	<u>\$ 9,638</u>	<u>\$12,079</u>	<u>\$209,705</u>	<u>\$410,426</u>
Balance	<u>\$ 7,172</u>	<u>\$ 5,823</u>	<u>\$ 6,901</u>	<u>\$ 7</u>		
Agency Staff (FTE) ⁴	-0-	-0-	-0-	-0-	10	10

Footnotes:

1. Includes Budget 217-3880 and 217-3879 (Henderson Track).
2. Actual 1978-79 expenditures. Does not include expenditures funded by Interim Finance allocation made in FY 1979-80.
3. Reserve is a non-expense category used to accumulate excess funds for balance forward or distribution pursuant to NRS 466.080.
4. Although 10 positions are authorized in 1979-80 the budget is predicated on those positions being filled at varying times during the course of the year.

SHARON GREENE BRANDSNESS
COMMISSION CHAIRMAN
LAS VEGAS, NEVADA

ROXANNA JONES
COMMISSIONER
LAS VEGAS, NEVADA

PAUL PRICE
COMMISSIONER
LAS VEGAS, NEVADA

BOYD SYME
COMMISSIONER
MCGILL, NEVADA

ROY YOUNG
COMMISSIONER
ELKO, NEVADA



NEVADA RACING COMMISSION

3101 S. MARYLAND PARKWAY, SUITE 310

STATE MAIL COMPLEX

LAS VEGAS, NEVADA 89158

(702) 386-5283

June 13, 1980

MEMORANDUM

TO: Legislative Commission's Subcommittee on Sunset Reviews
(A.B. 523)

FROM: August J. Masciotra, Executive Secretary *AJM*
Nevada Racing Commission

SUBJECT: Sunset Review Re: Nevada Racing Commission

We have received our copy of the review for the Nevada Racing Commission as requested by the subcommittee on Sunset Reviews.

Herewithin submitted is the requested reply from this agency regarding the review.

We wish to express our appreciation to Mr. Dan Miles for his courteousness and cooperation in this matter. He was most helpful in pointing out the deficiencies of this agency which will provide goals to reach in the future.

The Nevada Racing Commission will be represented at the meeting on Tuesday, June 24, 1980 to testify before the subcommittee on Sunset Reviews.

AJM/pe
Attachment

cc: Sharon Brandsness, Chairman
Roxanna Jones, Commissioner
Paul Price, Commissioner
Boyd Syme, Commissioner
Roy Young, Commissioner
Robert Peccole, Chief Deputy Attorney General

Overview

The Nevada Racing Commission, established in 1915, has functioned on a minimal basis until March of 1980. At that time an executive secretary was hired as well as an office secretary and the commission began to function as an active agency for the State of Nevada.

Many things have happened since March. The commission has begun to meet on a monthly basis with meetings being tentatively set for the fourth Friday of each month.

These meetings have resulted in the adoption of regulations governing greyhound racing and regulations governing mutuel departments at horse and greyhound race meetings. These regulations were adopted on June 6, 1980 and should go before the Legislative Commission on June 20, 1980 for final approval before being submitted to the Secretary of State to become effective. Regulations governing horse racing are scheduled for commission adoption on June 27, 1980 and will then be forwarded to the Legislative Commission for their approval.

A racing laboratory has been designated as the official laboratory authorized by the commission to test urine, blood and saliva samples in order to regulate the medication aspect of racing in Nevada. The laboratory is located in Las Vegas and contractual negotiations will begin in the near future.

The commission has established written and oral examinations to be administered to trainers and assistant trainers involved in horse and greyhound racing. The purpose of these examinations is to certify the qualifications of prospective applicants in these

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key positions at racetracks. Those failing to demonstrate satisfactory qualification will not be issued a license to participate in Nevada racing.

As soon as racing begins on a full-time scale and funding becomes available, the commission will employ extensive background checks on all prospective applicants for occupational licenses. The background check will include fingerprinting and photographing of each applicant as well as verifying the racing history of each individual applicant through NASRIS (National Association of State Racing Information Systems). NASRIS will supply this commission with all the licensing history, rulings against and other pertinent information on each applicant. This is done on a nationwide basis.

New license application forms have been drafted for horse and greyhound racing occupational licenses. The many forms used in the past by this commission have been condensed into one form for greyhound racing and one form for horse racing. This was done to streamline the licensing process, to cut down on unnecessary paperwork and to make the process more efficient.

3-year occupational licenses have been instituted for greyhound and horse racing. This also streamlines the licensing process and gives the commission a longer period of control over licensees. A one-year occupational license for horse racing meets of less than 10 days will be issued to accommodate those individuals participating in horse racing on a temporary basis.

Occupational license fees have been increased to adequately

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cover the costs of processing the licenses. This in conjunction with the 3-year licenses will generate more revenue for the Racing Commission (or the State of Nevada depending upon future legislation) as well as to cut down on the paperwork and to elevate the level of licensing efficiency.

Provisions have been made by regulation to establish Nevada residents as greyhound breeders and to protect natives of Nevada from an influx of non-residents who might try to infringe on the people in Nevada already engaged in the greyhound raising, racing, training and breeding industry.

Basically, these are a few of the things that have been done by this commission since March in preparation of full-time racing in Nevada.

Recent developments with regard to racing in Nevada show that Las Vegas Downs will attempt to begin racing by the end of this year. An application for a commercial horse track has been submitted for the Reno area and an application for greyhound racing in the Reno area is set to be submitted in a very short time. Both are targeting their openings for the middle of 1981. This commission can begin to regulate these tracks on a very short notice pending sufficient allocation of funds and additional staff. Furthermore, it is the intent of this agency to better regulate the small horse tracks that have been operating in Nevada in the past after they have been properly evaluated which will be done this year. The new horse racing regulations will upgrade this regulatory process with different procedures to be implemented in

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the future. It is the belief that better regulation will enhance the racing and not lead to its demise.

Basic Comments Regarding the Review

It is of the utmost importance for the Racing Commission to regulate all aspects of racing in Nevada. Racing is a very difficult industry to regulate and with no agency overseeing it, the public will never be protected.

Although it appears to be a viable point to assume that the Gaming Commission and Gaming Control Board could absorb the functions of the Racing Commission, it does not appear that it would work. With full-time racing on the horizon and with the Racing Commission beginning to become functional, to change course in midstream would mean that the racing regulatory process would have to go back to step one and many things already accomplished would be for naught. There is also the possibility that with the size of gaming far exceeding racing, the regulation of racing could take a back seat if the duties of the Racing Commission were absorbed by the Gaming Commission and Control Board. Furthermore, the Gaming Commission and Control Board would have to employ additional staff and obtain racing expertise which the Racing Commission is already in the process of doing.

It is basically agreed that Chapter 466 of the Nevada Revised Statutes is weak in many areas. Recommendation 1 states:

"The Legislature consider expanding the purpose of NRS 466.015 to include 'the protection of the general public' which would provide the commission with a more explicit policy to follow in their regulatory mission."

Proposed legislation will be submitted to accommodate this recommendation to better provide the commission with an

explicit policy to regulate racing.

Recommendation 2 states:

"The Legislature consider changing NRS 466.040 to eliminate commission qualification requirements that serve no useful purpose."

This recommendation is agreed upon.

Recommendation 3 states:

"The Legislature consider recommendations of the commission on the Review of the National Policy Toward Gambling concerning the prohibitions against ownership or interest in horses or greyhounds raced within the state."

To avoid future accusations pertaining to conflicts of interest it is agreed that the legislature consider amending the statute to prohibit commission members from holding ownership or interest in horses or greyhounds raced within the state.

Recommendation 4 states:

"The Legislature consider amending NRS 466.050 to include a daily salary for commissioners when on commission business at the same level as other boards and commissions are compensated."

This recommendation is agreed upon. The recent increased activity of this agency has created a hardship on some commission members to serve without the daily salary.

Recommendation 5 states:

"The Legislature consider amending NRS 466.030 and 466.170 to require the promulgation of regulations by the commission for both racing and pari-mutuels."

This recommendation is agreed upon with the comment that these provisions be more explicit and better defined.

Recommendation 6 states:

"The Commission complete its efforts to develop greyhound racing regulations, to update horse racing regulations and to develop a complete set of regulations governing pari-mutuel operations."

This recommendation is 2/3 completed and the remaining 1/3 will be completed within a month. (Please refer to the overview section of this reply.)

Recommendation 7 states:

"The Legislature consider amending NRS 466 to return all revenues received to the credit of the General Fund and to authorize or appropriate sufficient moneys to meet the necessary expenses of the Racing Commission."

This recommendation appears to be feasible provided that:

- a. The Racing Commission is adequately funded to properly regulate the racing industry in Nevada. This regulation cannot properly be done on a miniscule operating budget.
- b. That NRS 466.120, NRS 466.080 and 466.085 be amended to enhance the small fair and agricultural racing associations and to further promote the breeding industry in the state.
- c. Provisions be made to allow for breeders awards in greyhound racing similar to what is established in horse racing.

Recommendation 8 states:

"The Commission obtain the required bond coverage on contract employees handling state moneys and insure blanket state coverage on its own employees when they are hired."

On May 19, 1980, the executive secretary of the Commission met with Mary Finnell, Risk Manager for the State of Nevada. The details for the fidelity bond coverage were discussed and this matter will be resolved prior to any future racing in Nevada.

Recommendation 9 states:

"The Legislature consider requiring that the Gaming Control Board provide the Racing Commission with a full report of each investigation and a recommendation for approval or denial."

This recommendation would be accepted if:

- a. The Gaming Control Board kept the Commission constantly informed as to the progress of the investigation.
- b. The Gaming Control Board considered input from the Racing Commission when making its recommendation for approval or denial.

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Recommendation 10 states:

"The Legislature consider amending NRS 466.105 to permit approval of a licensee after a recommendation of denial from the Gaming Control Board only after a unanimous vote of the Racing Commission."

This point would be agreed upon after certain details were worked out and procedures established.

Recommendation 11 states:

"The Racing Commission pursue its plan to develop background verification on occupational licensees and to increase the reliability of the information through the National Association Computer System or fingerprint checks, or both."

This recommendation will be implemented in its entirety as soon as adequate funding is available. (Please see comments regarding this matter in overview section.)

Recommendation 12 states:

"When an adequate background verification system is developed to insure licensing suitability in Nevada, the Commission consider occupational licensing reciprocity for those licensed in other states with similar requirements."

The N.A.S.R.C. committee of executive secretaries is at the present studying licensing reciprocity. This is in the early stages of planning and is being done on a nationwide basis. The new licensing procedures instituted here in Nevada are designed to streamline the licensing process. (Please see comments in overview.)

Recommendation 13 states:

"The Commission institute a verification or audit procedure when resources become available to insure proper operation of the pari-mutuel and tax payments."

A very detailed job description is on file at the Commission to adequately comply with this request. The position is included in the staffing pattern and racing expertise on the staff will maintain that these verification and audits will be done to insure proper operation of the pari-mutuel system. This item can be fully explained at the time the agency testifies before the subcommittee.

Comments on Statutory Criteria for Evaluation

Certain factors were used and questions asked and answered in the preparation of this review. The following are comments from

this agency regarding the criteria used in this review.

1. Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

We agree with the comments answering this question.

2. Is there a reasonable relationship between the exercise of the State's police power and the protection of the public health, safety or welfare?

We agree with the comments answering this question but would like to add that the Nevada Racing Act needs to be more stringent and explicit.

3. Is there another, less restrictive, method of regulation which could adequately protect the public?

We would agree with the comments in paragraph 1. We would take exception to comments regarding regulation of racing by the Gaming Control Board and Commission for reasons stated earlier in this reply.

4. Does regulation have the effect of directly or indirectly increasing the cost of any goods or services involved; if so, to what degree?

The more racing grows in this state, it will become necessary to expand the regulation which will in effect cost more money. However, the better the public is protected they will in turn show more confidence in the racing industry and thus will be inclined to wager more. This will generate more revenue to the State but the commitment must be made to allot adequate funds to properly regulate the industry.

5. Is the increase in cost, if any, more harmful to the public than the harm which could result from the absence of regulation?

We agree with this statement but would like to add that insufficient funding would also lead to penalizing the public by not adequately protecting them.

6. Is the entire regulatory process designed solely for the purpose of, and does it have as its primary effect, the protection of the public?

We agree with these comments but want to reiterate that the regulations are 2/3 complete.

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7. The agency has permitted qualified applicants to serve the public.

By virtue of the regulations being adopted by this agency, licensees in the mutuel department must meet certain qualifications, although minimal, before being allowed to work. Trainers and assistant trainers will be given written and oral examinations to determine their qualifications. Background checks will begin in the future. (Please see overview section with regard to licensing.)

8. Requirements of state and federal law for affirmative action have been met by the agency and the industry or profession which it regulates.

No comment.

9. The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters.

This point is totally agreed upon.

10. The agency has recommended changes to the statutes which would benefit the public rather than the persons it regulates.

A file is being put together in the Commission office for many proposed legislative changes.

11. The agency has required the persons whom it regulates to report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy or quality of service.

No comment.

12. Persons regulated by the agency have been required to assess problems in the industry or profession which effect the public.

No comment.

13. The agency has encouraged participation by the public in making its regulations, as opposed to encouraging participation only by the persons it regulates.

With regard to this comment, the Nevada Racing Commission:

- a. has put together a mailing list for notices of meetings and agendas;

-10-

- b. has fully complied with the Nevada open-meet law by posting notices in the required places; and
- c. the press has been in attendance at the last 3 or 4 meetings.

It is anticipated that attendance to meetings will increase as soon as racing begins on a full-time scale.

- 14. The agency handles formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch.

Forms are being drafted for the handling of complaints. All complaints will be handled by this agency and exact records of such complaints and disposition will be kept on file.

Conclusion

In concluding, this agency would like to thank the Subcommittee for allowing us to reply to the review as well as to testify at the meeting. The biggest item stressed by this agency is that money and staff must be expended in order to regulate the industry and this is a hard fact regardless of who is doing the regulating. Many things have been established through this review and it is hoped that better things are in store for the future.

Appendix D

Fiscal Analysis Division Sunset Review
of the Bureau of Community
Health Services

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



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Arthur J. Palmer, *Director, Secretary*
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May 7, 1980

MEMORANDUM

TO: Legislative Commission's Subcommittee on Sunset
Reviews (A.B. 523)

FROM: Fiscal Analysis Division
Legislative Counsel Bureau

SUBJECT: Community Health Services

We have completed our review of the Bureau of Community Health Services of the Division of Health of the Department of Human Resources as requested by the Subcommittee on Sunset Reviews. Our review was conducted pursuant to the requirements of A.B. 523 (Chapter 688, 1979 Session).

This review focuses on the need for the Bureau of Community Health Services and its efficiency in performing statutorily assigned tasks. The information contained in the report is a product of staff research, contacts with staff of the Health Division and members of the Board of Health, contacts with local school and health officials, and contacts with medical organizations and other state agencies. The information was compiled by the use of written questionnaires, interviews and an examination of agency records.

The scope of this review was limited by time and staff resources available to the Fiscal Analysis Division. The review concentrates on program areas of the Bureau of Community Health Services and does not address other programs or functions of the Health Division. The review does not include any evaluation of the efficacy of the medical services and procedures provided by the Bureau.

We wish to acknowledge the cooperation and assistance of agency staff, members of the Board of Health, local officials and others that provided input for our review.

DM:ca

State of Nevada
Department of Human Resources
Division of Health
Bureau of Community Health Services
Sunset Review

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Introduction

Assembly Bill 523 of the 1979 Legislative Session provides for the repeal of those statutes which regulate certain professions, occupations, state agencies and programs. The bill requires that the Legislative Commission report to the 1981 Legislature recommending termination or continuation of the subject statutes after conducting a review of the agency involved.

A.B. 523 sets forth specific criteria for the review of the statutes or agencies set for repeal. These criteria require a determination as to whether the subject statutes are a legitimate exercise of state authority, the need for such statutes and, if need is determined, a review of the efficiency of their operation by the agency assigned responsibility for their execution.

This review concerns the Bureau of Community Health Services of the Health Division, Department of Human Resources and Nevada Revised Statutes Chapters 439, Administration of Public Health; 441, Venereal Diseases; 443, Tuberculosis and Silicosis and 450B, Emergency Medical Services.

This report is organized with a summary, a section discussing the statutory review criteria and specific recommendations for the various program areas of the Bureau of Community Health Services.

SUMMARY

SUMMARY

Chapter 688 (1979 Session), provides for termination of the programs and services of the Bureau of Community Health Services on July 1, 1981, unless the Sixty-First Legislature re-establishes them. The Legislative Commission is required to determine if there is a continuing need for the programs and services of the Bureau of Community Health Services and, if need is established, to review the efficiency of the agency in carrying out those programs. Recommendations must be submitted to the full Legislature at the beginning of the next regular session. The law requires consideration of fourteen criteria relating to the need for and efficiency of the Bureau and its programs. These criteria and specific findings and recommendations are included in this report. The following is a summary of the Fiscal Analysis Division's recommendations.

The Bureau of Community Health Services is organized into four sections including Communicable Disease Control, Public Health Nursing, Physical Therapy and Emergency Medical Services. The Bureau provides services primarily in the rural counties of the state which include sexually transmitted disease control, tuberculosis control, immunization programs, public health nursing services, physical therapy services to underserved areas and licensing and certification of ambulance services,

ambulance attendants and emergency medical service personnel. The nursing staff provides many health services to numerous clientele groups in all rural counties of the state.

The Fiscal Analysis Division concludes that the programs and services of the Bureau of Community Health Services have provided health services and have operated in the public interest and the absence of these programs and services could adversely effect the health and welfare of the general public and create the potential for medical crises. Fiscal Analysis recommends that the Legislature reinstate the Bureau of Community Health Services and provide funds for the operation of Bureau programs for the 1981-83 biennium. This report includes specific findings and recommendations for statutory and administrative action to promote the efficient use of Bureau resources and reduce the overall costs of the programs to the state. It also includes findings and conclusions pertaining to the 14 criteria for evaluation contained in Chapter 688 (1979 Session).

History of Public Health in Nevada

The State Board of Health was created by the Legislature in 1893 consisting of three members to be appointed by the Governor. In this first law, the Board of Health was directed to "take cognizance of the interests of life and health among the inhabitants of the state" and was authorized up to \$1,000 annually for necessary expenses. The primary purposes of this act were to investigate diseases and prevent sources of mortality. The Board of Health was granted authority to promulgate regulations for "the better preservation of public health" and county sheriffs were required to enforce the law and regulations of the Board.¹

In 1939, the Legislature created the Department of Health and the position of State Health Officer. The Department was to consist of the following divisions:

1. Local Administration and Epidemiology
2. Vital Statistics
3. Public Health Engineering
4. Laboratories
5. Maternal and Child Health and Crippled Children
6. Venereal Disease Control

1. Chapter 62, Statutes of Nevada, 1893.

The State Board of Health was designated supreme in all health matters and was to provide general supervision over the Health Officer and Department of Health. In addition, the Board was authorized to promulgate rules and regulations to control communicable diseases and nuisances, regulate sanitation, protect water and food supplies, control sewage, define duties of the local health officials and to promote the public health generally.²

Chapter 230, Statutes of Nevada, 1947, reorganized the Department of Health to include the Division of Preventive Medical Services which was the forerunner of the Bureau of Community Health Services. The Board of Health was also granted the authority to create, abolish or reorganize divisions of the Department.³

In 1963, the Legislature moved the state's public health function into a new Department of Health and Welfare. This new Department included the Health Division, Alcoholism Division, Children's Home, Girls Training Center, State Hospital, Youth Training Center and Welfare Division.⁴

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2. Chapter 184, Statutes of Nevada, 1939.
 3. Chapter 230, Statutes of Nevada, 1947.
 4. Chapter 393, Statutes of Nevada, 1963.

The Division of Health became responsible for administration of all public health laws and the Board of Health was removed from the administration of the agency. The Board maintained its policy making role and authority to promulgate rules and regulations.

In 1967, the Legislature changed the name of the Department to the Department of Health, Welfare and Rehabilitation, adding the Rehabilitation Division.⁵ Again in 1973, the name was changed to the Department of Human Resources.⁶ The basic organization of the Health Division remained unchanged, however.

Currently, the Division of Health is organized into six Bureaus which include Laboratories and Research, Consumer Health Protection, Preventive Medical and Community Health, Dental Health, Children's Health and Health Facilities (See Appendix A). Each Bureau is primarily responsible for one or more health programs and in many cases has reciprocal responsibilities for other Division programs.

Bureau of Community Health Services

The Bureau of Community Health Services (Division refers to it as the Bureau of Community Health Services and Preventive

5. Chapter 291, Statutes of Nevada, 1967.

6. Chapter 715, Statutes of Nevada, 1973.

Medical Services) has a Bureau Chief and four separate sections which are responsible for specific Bureau programs. The sections and the current authorized positions are:

	<u>FTE</u>
Bureau Chief	3.0
Communicable Disease Control	5.0
Emergency Medical Services	5.0
Physical Therapy	1.0
Public Health Nursing	22.5
Total Bureau	<u>36.5</u>

The Bureau Chief is responsible for the various programs and reports to the State Health Officer. Communicable Disease Control includes sexually transmitted disease programs, tuberculosis control and the immunization program. Emergency Medical Services encompasses licensure of ambulance attendants, ambulance service permits, emergency medical technician certification, communication systems, training programs and rural ambulance purchase projects. The physical therapist provides evaluations and treatment plans in rural areas and assists the Bureau of Health Facilities with its licensure and certification functions. Public Health Nursing provides medical services in the rural communities through many health programs to a multitude of clientele groups. Washoe County and Clark County governments have established health districts pursuant to NRS 439 and are primarily responsible for community based health services in their areas. The Bureau of Community Health Services is primarily responsible for these services in the fifteen other counties.

The Bureau is currently funded from a combination of sources including state general fund moneys, federal funds, local funds and a private foundation grant for an emergency medical services communications system (See Appendix B).

The Health Division has established an internal management reporting system. Each program or service has clearly defined goals and objectives and output measures have been developed for each. Programs report quarterly to Division administration noting each objective, progress to date and remedial action plans should services fail to meet objectives. In addition, the Division prepares and uses an internal budget reporting system for each program or section which provides periodic review of individual budget status in greater detail than that available through the state's accounting system. The management reporting system and budget reporting provide the means by which the Division can identify potential and actual problem areas and develop solutions in a timely and effective manner.

The Bureau of Community Health Services has established a host of procedure manuals, medical protocol manuals and handbooks for each service or program. Numerous federal publications and guidelines are also used in Bureau activities. In addition, the Bureau has developed a complete policy and procedures manual for use in all program areas.

Findings and Recommendations

Administration

Activities and programs of the Bureau of Community Health Services are governed by four different chapters of the Nevada Revised Statutes. NRS 439 generally describes the administration of public health in Nevada and requires the Health Division to efficiently execute the laws in all parts of the state, supervise local health officials, investigate violations of the law and also provides broad powers to prevent the spread of disease and sickness and to enforce all health laws, rules and regulations. NRS 441 requires the Division to control, prevent and cure venereal diseases. Although Legislative policy concerning public health and the Division is not specifically stated in these two chapters, the responsibilities of the Division and, therefore, the Bureau are quite clear.

NRS 443 directs the State Health officer to find and investigate all known or suspected cases of tuberculosis and direct or provide treatment. NRS 443.170 states, "The Legislature declares that pulmonary tuberculosis is an infectious and communicable disease, dangerous to the public health, and that all proper activities that may be carried on pursuant to NRS 443.170 to 443.260, inclusive, are necessary for the protection and preservation of the public health, safety and welfare of the State of Nevada."

NRS 450B provides for the regulation of ambulances, ambulance services, ambulance attendants and emergency medical technicians. The Division is charged with the responsibility of enforcing the provisions of Chapter 450B and rules and regulations of the Board of Health. The law is silent, however, as to what the public purpose of regulating emergency medical services is and what the regulations must accomplish in order to protect the public. Lack of specific statutory objectives prohibits evaluation of whether licensing efforts are accomplishing desired results.

Recommendation 1: The Legislature should consider adopting specific statutory language for NRS 450B establishing public policy for the regulation of emergency medical services.

The chief administrative position of the Bureau of Community Health Services is a physician described in NRS 281.123 as Chief, Preventive Medical Services at an annual salary of \$49,069. The functions of the Bureau chief are primarily administrative in nature and there is no direct client contact. The State Health Officer has recommended to the Director of the Department of Human Resources a realignment of the physician positions within the Division in order to reduce the total number of physicians required. This can be accomplished by centralizing the physicians within the Division and eliminating specific positions in the various Bureaus including Community Health Services. Required physician services would

then be provided by either the Health Officer or the remaining physician positions. Reduction of physician positions may result in considerable cost savings.

Recommendation 2: The Health Division follow up on its recommendation to the Director of the Department of Human Resources to reduce physician positions and take appropriate action in their biennial budget requests, provided programs and services of the Bureau will not be adversely affected.

Many Bureau services are available in the rural counties through the public health nurse. These services are generally free and there are no financial eligibility requirements, that is, anyone is eligible for the service. Although the family planning program is not organizationally a part of the Bureau of Community Health Services, some of the services are performed by Bureau nursing staff. The Division has established a fee and eligibility schedule for family planning clients in order to offset the high cost of medical services, create a climate of self-help within the clientele and create more resources for expanded services. Fee income in the current fiscal year exceeds \$8,000 at the end of April 1980. Washoe and Clark District Health Departments have charged fees for certain community and clinical services for several years and currently collect substantial amounts from clients in order to help defray program costs. The Health Division has been investigating the feasibility of establishing fees for more of their services. The

Bureau has initiated reviews for the venereal disease program and emergency medical services licensing program. Initial results of these investigations have not been encouraging. In addition, the Division has requested that the Board of Health authorize staff to propose legislation that would place fee setting authority with the Board.

Recommendation 3: The Division continue its investigation into fees for services performed and expand it to all Bureau services.

Recommendation 4: The Legislature consider legislation giving the State Board of Health authority to establish fees for programs and services of the Division.

State aid for health programs in established health districts has been going on for many years. These aid funds began as a pass-through of federal moneys, primarily Public Health Service funds (PHS 314d). In 1973, with the potential prospect that federal 314d funds were to be reduced, the Legislature agreed to replace potential losses with general funds for Washoe and Clark Health Districts. The primary purpose then was to increase the Districts' ability to obtain more federal funds using state funds as match. The Executive Budget for the 1979-81 biennium again cites this purpose as justification for the general fund allocation. Allocation of the state's "Aid to Counties" money has been on a per capita basis and no categorical restrictions exist as to its use. Washoe and Clark

have been using the moneys in a variety of their programs including public health nursing and clinical services. Current funding is \$1.00 per capita for FY 1979-80 and \$1.10 for FY 1980-81. Revenues and distribution of these moneys for last biennium and the current biennium are as follows:

	<u>1977-78</u>	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>
General Fund	\$396,157	\$396,157	\$507,585	\$586,265
Federal Funds	120,000	120,000	117,360	117,360
Total	<u>\$516,157</u>	<u>\$516,157</u>	<u>\$624,945</u>	<u>\$704,625</u>
Washoe County	\$165,170	\$165,170	\$208,232	\$234,782
Clark County	350,987	350,987	416,713	469,843
Total	<u>\$516,157</u>	<u>\$516,157</u>	<u>\$624,945</u>	<u>\$704,625</u>

At the 1979 Legislative Session, the Senate Finance Committee and Ways and Means Committee increased "Aid to Counties" funding provided the funds were not used for additional property tax relief at the local level as a result of S.B. 204 (Chapter 593, 1979).⁷ The concern of the money committees was that additional funds would merely supplant available local funds.

Recommendation 5: The Health Division consider reviewing the use of "Aid to Counties" funds in Washoe and Clark Counties in the 1979-81 biennium and report to the 1981 Legislature the actual uses of the moneys, whether additional federal funds were matched and if the funds caused the local governments to exceed their spending limitations or if property tax rates were reduced as a result of the state grants.

The Health Division is partially funded by a federal grant from the Public Health Service commonly referred to as 314(d)

7. S.B. 204 limits local government expenditures and requires the reduction of local property tax rates if limits are exceeded.

funds. These moneys, which amount to \$363,200 in fiscal year 1979-80, are not included in the President's budget request for next fiscal year and will be eliminated unless restored by Congress. \$123,579 of the total grant is currently allocated to the Bureau of Community Health Services and \$94,440 to "Aid to Counties." If elimination of these funds takes place the Bureau will have several alternatives to consider in order to avoid a budget deficit. These include: (1) instituting cost saving organizational and procedural changes; (2) seeking greater financial support from local governments or by establishing fees for services; (3) an allocation from the Interim Finance Committee or (4) eliminating or reducing certain programs or services. Assembly Concurrent Resolution No. 33, 1979, requires the Bureau to use zero based budgeting techniques in developing their biennial budget request. These techniques include prioritizing Bureau programs and functions at varying levels of service. Should it become necessary to eliminate or reduce services as a result of federal budget action, the Bureau can use those zero based budget techniques to help identify programs or services to be reduced.

The Family Planning Program, which is part of the Bureau of Children's Health Services, provides services in all the rural

counties of the State. These services are provided primarily by the public health nursing staff of the Bureau of Community Health Services. The Division is considering reorganizing the Bureau of Community Health Services to include the Family Planning Program. We agree. Reorganization would place staff responsibility and program responsibility in the same Bureau and eliminate potential program conflicts and duplication of effort.

Public Health Nursing

The Public Health Nursing Section implements the primary medical service programs of the Bureau. The nursing section is currently authorized 22.5 positions which includes the section chief, a clerical position, a supervising nurse and 19.5 public health nurses situated in twelve of the small counties and one county nurse in Lincoln County.

In many rural counties, the State Public Health Nurse also provides nursing services to the local school district. The following table indicates the location of each nursing station and the staff available.

<u>County</u>	<u>Primary Location</u>	<u>Nursing Staff</u>
Carson City	---	3
Churchill	Fallon	2
Douglas	Minden	1
	Zephyr Cove	1/2
Elko ²	Elko	2
	Wells	1
Eureka	---	*
Esmeralda ²	---	**
Humboldt	Winnemucca	1
Lander	Battle Mountain	1
Lincoln ¹	Caliente ²	1
Lyon	Yerington	1
	Fernley	1
Mineral ²	Hawthorne	1
Nye ²	Tonopah	1
	Pahrump	1
Pershing ²	Lovelock	1
Storey	---	***
White Pine ²	Ely	2
		<u>20</u> 1/2

1. Nurse in Caliente is a Lincoln County employee.
2. Provides school nursing services

- * Coverage from Ely.
- ** Coverage from Tonopah
- *** Coverage from Carson City

The public health nurses are involved in providing multiple services to many clientele groups. Services include programs of the Bureau of Community Health Services as well as programs of other Bureaus of the Health Division and can be categorized as follows:

- Child Health Clinics
- Communicable Disease Control
- Immunization Clinics
- Crippled Childrens' Services
- Health Education
- Tuberculosis Control
- Family Planning Information and Service
- General Health Information
- Hypertension Screening

The public health nurse also refers clients to other health programs including mental health and mental retardation services and the Women's, Infants and Childrens Supplemental Food Progam (WIC). In fiscal 1978-79, the nursing section had 67,622 client contacts, an increase of 10.5% over the previous year. In addition to the community based services offered in the rural areas, the public health nurse doubles as a school nurse for some or all the schools in the following school districts: Elko, Esmeralda, Lincoln, Mineral, Nye, Pershing and White Pine. These services are provided under cooperative agreements which include provisions for state-local cost sharing.

Although the nursing staff is the largest section in the Bureau (22.5 positions), there is normally only one or two nurses at any location in the state. As a result, opportunities to reorganize the section in order to reduce staff or eliminate duplication are non-existent without severely impacting effectiveness of the Bureau to provide public health services to all parts of the state.

Physical Therapy

The Bureau of Community Health Services has provided physical therapy services to facilities and persons primarily in the rural areas since 1961. The Physical Therapy Section is

staffed by one person located in Carson City who travels to the rural areas where private therapy services are not generally available. The functions of the section include individual treatment programs, educational programs in schools and surveys of health facilities.

Individual client services consist of an initial evaluation, treatment plans, family training and follow-up. Periodic treatments are not normally performed on individual clients. The therapist also presents training courses for school teachers to aid in the screening of children for scoliosis and inspection services to the Bureau of Health Facilities as a part of their licensing and certification procedures under state regulations and provisions of the federal Medicare (Title XVIII) and Medicaid (Title XIX) programs. Federal funds from Title XVIII and XIX should be available to support the cost of the therapists' surveys when performed to satisfy federal certification requirements. In fiscal year 1978-79, 26 licensing surveys were completed, but only \$87.00 of travel expenses were reimbursed by the Bureau of Health Facilities.

Recommendation 6: The Division reimburse the cost of the physical therapists' services for health facility certifications from available federal funds and include these moneys as a source of funds for the Bureau of Community Health Services in the 1981-83 biennial budget and deposit these funds directly to the General Fund for the remainder of the current biennium.

Communicable Disease Section

The Communicable Disease Section administers the sexually transmitted disease control program (STD), immunization program and the tuberculosis control program (TB). The STD program is jointly funded by the state and federal grants, the immunization program is federally funded, and the TB program is wholly state supported.

The STD program utilizes clinics in Clark and Washoe Health Districts and Carson City and the public health nurse in rural areas to provide services which include screening, education and counseling, treatment authorized by a physician and investigation of client contacts. The immunization program provides vaccines to the Clark and Washoe Health Districts and to physicians who request them for indigent patients and conducts clinics in the rural areas. The nursing staff cooperates with local school officials to accomplish mandatory immunizations for all school children. The tuberculosis control program includes maintenance of a register of all cases, screenings for active or potential cases, medications for the afflicted, and hospitalization when recommended by a physician. The Communicable Disease Section includes five state staff positions and is supervised by a federal public health advisor permanently assigned to Nevada.

In 1963, the Legislature redefined the responsibilities of the Board of Health and the Health Division. The Health Division was assigned the responsibility of administering the health laws of the state, health programs and accepting federal grant funds (NRS 439.015). NRS 441.240, which dates to 1937, gives the Board of Health the authority to accept grants for venereal disease programs. The Health Division has actually acted in this capacity in recent years.

Recommendation 7: The Legislature consider legislation to amend NRS 441.240 to place grant authority with the Department of Human Resources and Health Division rather than the Board of Health.

NRS Chapter 443 declares that tuberculosis is an infectious and communicable disease dangerous to the public health and provides for mandatory investigation and treatment of all reported or suspected cases. In addition, NRS 443.105 provides that any person so infected shall be treated at state expense if that person is unable to pay for private treatment. The Bureau provides screenings to potential TB clients and provides treatment for active or suspected cases. The following caseload statistics describe the program activities:

	<u>1978-79</u>	<u>1977-78</u>	<u>1976-77</u>	<u>1975-76</u>	<u>1974-75</u>
Screenings	25,029	18,614	10,306	7,434	7,323
Out-patients treated	107	45	102	121	135
In-patients treated	3	3	1	6	2
Total Cost	\$221,143	\$157,802	\$160,982	\$148,638	\$133,727

High costs of treatment and increased population caused the Health Division to seek supplemental appropriations for the program of \$24,218 in fiscal 1976-77 and \$42,400 in fiscal 1978-79. In addition, the General Appropriations Act now provides that moneys appropriated to one year of the bien-nium may be used in both years in order to avoid a deficit in either year.⁸ The Health Division anticipates that a supplemental request will again have to be submitted to the 1981 legislature in order to meet the state's current responsibility.

Emergency Medical Services

The Emergency Medical Services section administers NRS Chapter 450B which regulates the permits of ambulance services, licensing of ambulance attendants and certification of advanced emergency medical technicians. In addition, the Section provides emergency medical training throughout the state and, in concert with the Office of Traffic Safety, helps fund ambulance purchases for rural ambulance services. In fiscal year 1978-79, the Division applied for and received a Max C. Fleischmann Foundation grant of \$1,312,733 to develop a statewide radio system for emergency medical communications for ambulances and hospital emergency rooms.

8. Chapter 695, Statutes of Nevada 1979, Section 58.

As required by NRS Chapter 450B, the Board of Health has issued regulations governing the permit, licensing and certification functions of the section. Applicants for an ambulance service permit must file background information, employ licensed attendants and meet minimal equipment requirements. Periodic equipment inspections are performed on all permitted ambulances. Ambulance attendant licensees must submit to a background check, meet minimum training requirements and be properly licensed by the Department of Motor Vehicles. An advanced emergency medical technician certificate may be issued upon meeting minimum education requirements and submittal of background information. Minimum educational standards includes successful completion of a state approved emergency medical examination.

The statewide radio system will utilize the state's mountaintop microwave system for radio frequencies allocated by the Federal Communications Commission for emergency medical use. The Fleischmann grant will fund the cost of system development and implementation and is scheduled to go on line in November 1980. Local governments, ambulance services and hospitals will be responsible for future maintenance of the equipment they receive through the grant and the state will be responsible for maintenance of the mountaintop microwave sites through the State Communications Board.

Recommendation 8: The EMS section has suggested, and we agree, that user agreements should be executed with each local agency or ambulance service to guarantee responsible maintenance of all locally assigned equipment.

Recommendation 9: The Bureau develop cost sharing agreements with local governments and users for the annual cost of maintaining the mountaintop microwave sites.

The Bureau provides emergency medical training to individuals and groups in many parts of the state. Trainees typically include ambulance attendants, firemen, policemen, park and forestry rangers, search and rescue teams and other emergency response personnel. The Bureau contracts with the various Community Colleges to present the education programs. The Bureau pays a negotiated amount for each class it sponsors and the Community College is obligated to conduct the course free of charge. If, however, the individual desires credit for the course, he is assessed the normal tuition. The Health Division reports that these additional funds generated from tuitions are used by the Community Colleges to develop more emergency medical courses. A complete audit of all contracts would be required to verify this fact.

Recommendation 10: The Bureau consider changing its standard contract with the Community Colleges from lump sum to payment of tuition for all non-credit enrollees up to a maximum dollar amount in order to insure maximum effectiveness of limited training funds.

EMS field representatives inspect each permitted ambulance at least once each year to insure that Board of Health regulations relating to required emergency equipment are being met. The Bureau is not authorized to inspect the mechanical condition of the vehicle, but instead, requires a statement of satisfactory condition from all ambulance service operators every six months. Although the field representatives are not qualified mechanics and reliance should not be placed solely on their inspection reports, a minimal mechanical inspection of each ambulance seems prudent to insure operational capability of the vehicle.

Recommendation 11: The Bureau consider requesting a change in Board of Health regulations to require minimal mechanical inspections at the time of the annual equipment inspection by licensing personnel. This requirement should be in addition to the certificate of satisfactory mechanical condition now required.

STATUTORY CRITERIA FOR EVALUATION

Statutory Criteria for Evaluation

Section 6 of A.B. 523 (Chapter 688, 1979) requires that the Legislative Commission and the Legislative Counsel Bureau conduct a review of the need for and the efficiency of the Bureau of Community Health Services. This review must consider a number of factors or criteria. These criteria are not all readily applicable to an agency such as the Bureau of Community Health Services which is primarily a service organization and not a regulatory agency. Where possible, however, we have reworded the applicable criteria to suit the functions of the Bureau. These criteria and the staff's evaluation are as follows:

1. Would the absence of services significantly harm or endanger the public health, safety or welfare?

The absence of Bureau services could adversely effect the health and welfare of the general public and create the potential for medical crises. The public depends on programs of communicable disease control and immunizations and the licensure and certification of ambulance attendants and emergency medical technicians to protect it from epidemic disease and incompetent emergency care. The services of the public health nurse and the physical therapist are provided primarily to rural localities and rural school districts where other medical services are not always adequate. Many rural school districts rely on the state's

public health nurse for nursing services and termination of this service could result in reduced preventive medical care for children. The average number of nurses per 1,000 population in the United States is 4.5. The ratio in Nevada is 3.7 and in rural Nevada, only 2.1. In addition, rural Nevada has a substantially lower ratio of primary care physicians per 1,000 population than either the state as a whole or the United States. Elimination of Bureau programs could severely impact health service availability in these rural areas.

2. Is there a reasonable relationship between the exercise of the state's powers and the protection of the public health, safety or welfare?

NRS Chapters 439 (Administration of Public Health), 441 (Venereal Disease), 443 (Tuberculosis) and 450B (Emergency Medical Services) provide a reasonable means by which to reduce the potential harm to the general health of the public. State law, Board of Health regulations and federal requirements provide the basis for the programs and services of the Bureau. The programs are primarily designed to be preventive in nature, to control the causes of disease and epidemics and to insure the capabilities of certain emergency medical service providers. Although these programs cannot address all health needs of the general public, they offer some protection in specific areas.

3. Is there another method of providing services which could adequately protect the public health?

The programs and services of the Bureau are the result of many years of development and of contributions by agency staff, the Board of Health, federal government and medical experts and are well accepted by the general public. The role of public health is long established in this country and no other methods of providing services seem feasible, particularly in controlling and investigating communicable diseases, licensing ambulances and attendants, and providing health services that are not otherwise available in some rural areas. Many other organizations and providers of care have programs and services that compliment the Bureau's or Division's programs, but none cover the spectrum of state programs.

4. Do Bureau services have the effect of directly or indirectly increasing the cost of any goods or services involved, if so, to what degree?

The major thrust of the Bureau programs is prevention rather than treatment and such services act to reduce the total cost of health care to Nevadans. Preventive services provided by the public health nursing staff such as health education, immunizations, child health screenings, family planning and crippled childrens' services are designed to eliminate disease and other health problems and reduce the effects of such diseases through early diagnosis and treatment. The immunization program, for instance, helps prevent the occurrence and

spread of communicable diseases such as diptheria, measles, polio, rubella and whooping cough. The cost of preventing or reducing the prevalence of these diseases is small compared to the cost of treatment for them or the cost of caring for a child damaged before birth as a result of a communicable disease of the mother. The venereal disease and tuberculosis programs provide broad screening capabilities for the public and treatment for those who otherwise could not afford it or would not seek it, thus helping to prevent the spread of these diseases and ultimately reducing health care costs. The physical therapy program provides rehabilitative care and programs where these services are not generally available, helping citizens of the state to return to a more productive life in their home and community. Emergency medical services helps insure that quality life saving services are available in all parts of the state. The value of adequate emergency care can be significant in reducing health care costs.

5. Is the higher cost, if any, more harmful to the public than the harm which could result from the absence of services?

It is difficult to contemplate the potential cost to the public if the major programs of the Bureau were terminated. The potential harm in the absence of such programs as communicable disease control, immunizations, public health nursing services and emergency medical services seems substantial.

6. Are all Community Health Services designed solely for the purpose of, and does it have as its primary effect, the protection and health of the public?

The primary purpose of all Bureau programs and services is the protection and health of the public. Statutory requirements, Board of Health regulations and the stated program goals and objectives are designed to increase public protection and enhance public health.

The Bureau has been serving increasing numbers of Nevada citizens every year and services have been initiated in all parts of the state as resources have become available. Each program of the Bureau has clearly stated goals and objectives and Division management has implemented steps where program activities can be monitored and controlled within the goals and objectives. The Bureau actively pursues community input and suggestions for program and service improvements through a periodic clientele questionnaire and local government program review. In fiscal year 1978-79 the public health nursing section had contacts with 67,622 clients, 137,900 immunizations were provided, 20,724 screenings were performed for sexually transmitted disease, 25,029 tuberculosis screenings were performed, 432 clients received physical therapy services, 42 ambulance services were permitted, 344 original ambulance attendant licenses were issued and 579 renewed and 553 original

EMT certificates were issued and 389 renewed. These statistics demonstrate substantial public impact and importance in protection of the public health.

7. The agency has permitted qualified applicants to serve the public.

Ambulance service permits, attendant licensing and emergency medical technician certification are the only occupational regulatory functions of the Bureau of Community Health Services. The Emergency Medical Services section reviews educational requirements which includes successful completion of an examination on emergency procedures. In addition, ambulance service equipment is inspected at least annually to insure operational adequacy and additional training is required to renew emergency certificates. Complaints against ambulance services are investigated and can result in license revocation or suspension. In the last five years the Bureau has permitted an average of 46 ambulance services annually and has suspended or revoked 2 permits.

8. Requirements of state and federal law for affirmative action have been met by the agency regarding staff and services provided to the public.

Since some Bureau programs are financed in whole or in part with federal moneys, stringent non-discrimination and affirmative action requirements are imposed under federal law and federal regulation for both employment in the programs and

program clientele. In addition, state law forbids the Bureau to refuse services to clients suffering from communicable diseases, venereal disease and tuberculosis and the agency has an affirmative action goal and plan for its hiring practices. The Health Division indicates it has not received any complaints involving discrimination in the last five years.

9. The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters.

The primary purpose of the programs has been to protect the public's health. It is in the public's interest to improve the general health of individuals and Nevadans in general through the various programs of the Bureau. There are budget circumstances arising that may limit or impact the Bureau's ability to provide the same level of service to the public. The Division anticipates exhausting available funds for tuberculosis control, forcing a reduction of services or a supplemental appropriation request and the federal government plans to eliminate grant funds that make up a substantial portion of the Bureau budget.

10. The agency has recommended changes to the statutes which would benefit the public by increasing general health.

In the last two Legislative Sessions the Health Division successfully proposed legislation to provide emergency medical service standards and strengthen the laws on immunization of children by placing the responsibility on the parents and requiring all children in schools and child care facilities to be properly immunized. Venereal disease control, tuberculosis control and regulation of emergency medical services are all mandated by specific chapters of Nevada Revised Statutes. Other programs and services of the Bureau are indirectly authorized under the general responsibilities of the Department of Human Resources and the Health Division and gain specific legislative approval through the biennial budget process. Specific statutes defining agency duties do not exist, therefore, for many Bureau programs.

11. The agency has allowed the general public and clients it serves to report the effect of the programs or services offered through the Bureau.

The Bureau has nursing and emergency medical services staff located in many communities throughout the 15 smaller counties creating continual public contacts. The nursing section periodically distributes an evaluation questionnaire to clients served and contacts in nursing services, communicable disease programs and emergency medical services are often made with local elected officials and health care organizations. In addition, all meetings of the Board of Health are open to the

public. The Division also publishes a bi-monthly newsletter entitled "Nevada Health" which describes programs and services of the Division and communicable disease statistics for the state and is available to the general public.

12. Persons regulated by the agency have been required to assess problems in the industry or profession which effect the public.

Licensing, permitting and certification of ambulance attendants and services and emergency medical technicians are the only real regulatory functions of the Bureau. There is no requirement that persons regulated by the Bureau assess and report problems in delivery of emergency medical services. The Bureau, however, does receive substantial input from private and volunteer ambulance services and the regional Emergency Medical Services Councils. In addition, the Bureau has organized and participated in three statewide conferences on Emergency Medical Services and Rural Health the last having been held in January, 1979.

13. The agency has encouraged or used public input in adopting programs and services to meet public needs.

The programs and services of the Bureau are primarily community based and the Division has actively sought public input through local government officials and an annual program review as well as nursing evaluation questionnaires and legislative input. The

Board of Health adopts regulations pertaining to Bureau programs and all Board meetings are open to the public and are held in compliance with the open meeting law. In addition, press releases on Board meetings are released before and after each meeting.

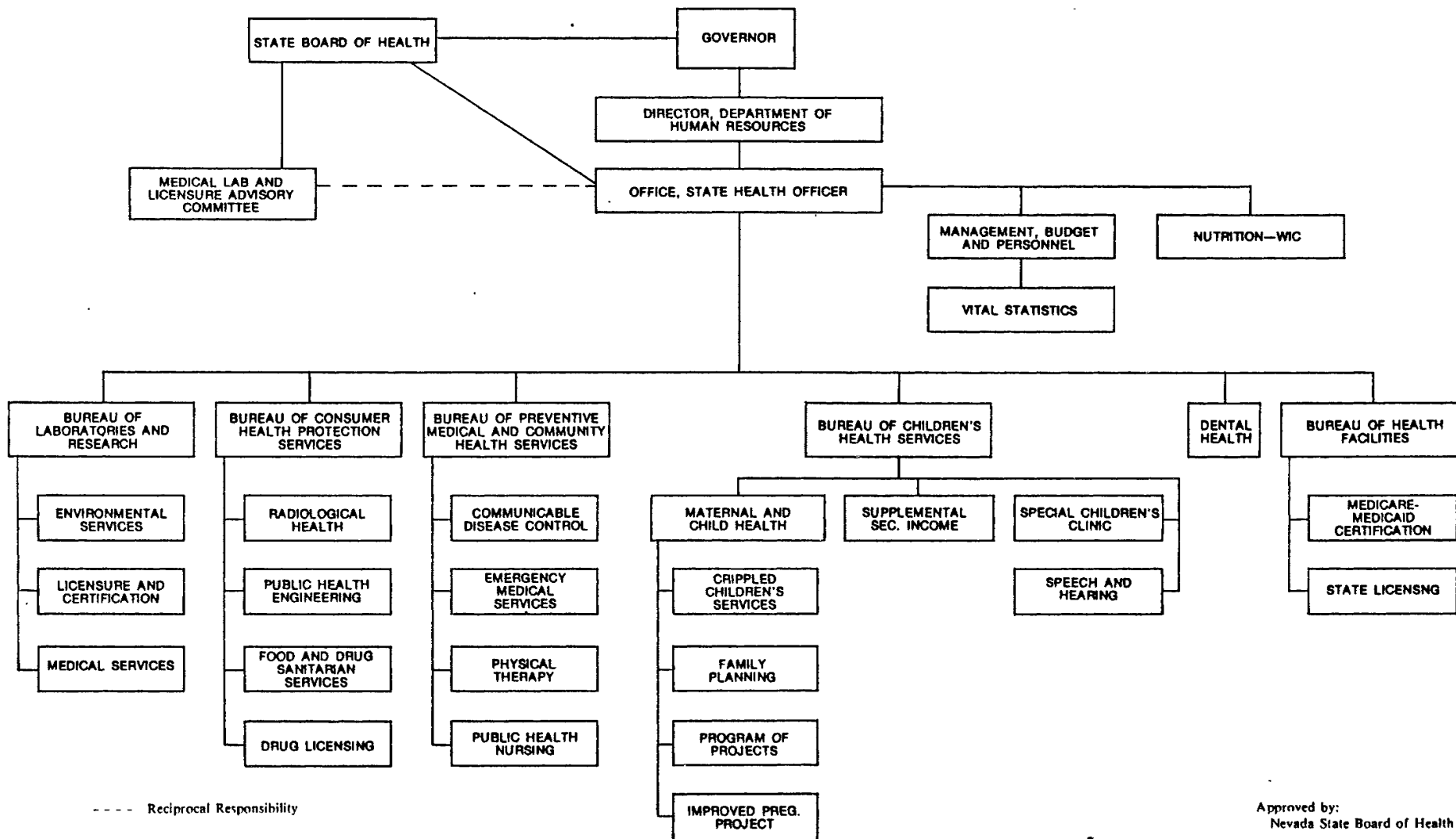
14. The agency handles formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch.

The Bureau of Community Health Services is primarily a service oriented agency rather than regulatory (except for the emergency medical services function) and does not normally receive and process many complaints. In the last five years there have been only five formal complaints received by the Bureau in all programs. Complaints on regulated ambulance services are investigated by the Bureau. The State Health Officer may, upon the evidence, deny a permit or license and the licensee is entitled to a hearing before the Board of Health. One ambulance service permit has been revoked and one has been suspended in the last five years.

APPENDICES

Appendix A Organizational Table
Appendix B Operating Budget Comparison
Appendix C Agency Reply

STATE OF NEVADA—DEPARTMENT OF HUMAN RESOURCES—DIVISION OF HEALTH
ORGANIZATIONAL CHART



----- Reciprocal Responsibility
 ————— Direct Responsibility

Approved by:
 Nevada State Board of Health
 Sept. 79

COMMUNITY HEALTH SERVICES
Operating Budget Comparison
All Accounts¹
1975-76 to 1980-81

Category	Actual Expenditures 1975-76	Actual Expenditures 1976-77	Actual Expenditures 1977-78	Actual Expenditures 1978-79	Budget 1979-80	Budget 1980-81
Revenue:						
Appropriations ²	\$ 633,954	\$ 579,482	\$ 574,243	\$ 545,439	\$ 907,204 ⁷	\$1,038,029 ⁷
Federal Funds ³	487,818	514,078	590,423	845,322	611,998	579,357
Other Funds ⁴	78,114	118,442	176,431	278,550	1,251,540	350,773
Total Revenue	<u>\$1,119,886</u>	<u>\$1,212,002</u>	<u>\$1,341,097</u>	<u>\$1,669,311</u>	<u>\$2,770,742</u>	<u>\$1,968,159</u>
Expenditures:						
Salary	\$ 667,998	\$ 656,334	\$ 653,747	\$ 688,954	\$ 728,513	\$ 754,053
Out-of-State Travel	2,372	2,549	3,732	2,402	2,900	3,070
In-State Travel	50,728	45,299	46,225	44,131	59,484	63,620
Operating ⁵	122,102	122,647	153,686	184,045	206,327	209,069
Equipment	28,074	2,010	5,738	3,962	4,790	62,763
Aid to Counties	117,561	187,345	301,543	349,853	382,213	334,336
Medical Care	76,569	91,027	93,269	151,034	153,450	199,165
Training ⁶	18,791	65,228	4,458	7,563	8,065	6,850
EMS-Communications Ambulances				48,375	1,000,000	132,733
Total Expenditures	<u>\$1,084,195</u>	<u>\$1,172,439</u>	<u>\$1,262,398</u>	<u>\$1,480,319</u>	<u>\$2,770,742</u>	<u>\$1,968,159</u>
Balance	\$ 74,585	\$ 22,809	\$ 72,061	\$ 133,987	\$ -0-	\$ -0-
Reversions	41,106	16,753	6,639	55,005	-0-	-0-
Agency Staff (FTE) ⁸	40.4	40.4	37.0	37.0	35.5	35.5

Footnotes:

1. Includes budgets for Community Health Services, Tuberculosis Control, Venereal Disease Control, Emergency Medical Services and Immunization.
2. Includes General Fund appropriations and salary adjustments.
3. Includes all federal funds MCH TITLE V, Indian Health, 314 (d), VD grant, immunization grant, welfare screening fees, traffic safety grants and emergency medical services grants.
4. Includes local funds and private grants or donations.
5. Includes medical supplies, drugs and medicines.
6. Includes emergency medical services training programs for volunteers.
7. Includes estimated General Fund salary adjustment funds.
8. Health Division transferred the Health Education and Nutrition programs out of the Bureau of Community Health Services.



STATE OF NEVADA
DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH
OFFICE OF STATE HEALTH OFFICER
505 EAST KING STREET
CARSON CITY, NEVADA 89710

Appendix C

PHONE (702) 885-4740

May 15, 1980

MEMORANDUM

TO: Dan Miles, Deputy Fiscal Analyst
Fiscal Analysis Division

FROM: Paul Cohen, Administrative
Health Services Officer

VIA: Ralph DiSibio, Ed.D., Director
Department of Human Resources

A handwritten signature in cursive script, likely belonging to Ralph DiSibio, the Director of Human Resources mentioned in the memorandum.

SUBJECT: SUNSET REVIEW - Community Health Services

Pursuant to your correspondence of May 7, 1980, regarding the Sunset Study draft, the Division appreciated the opportunity to review the Legislative Counsel Bureau's working copy. Comments from the Bureau Chief regarding same are as follows;

History of Public Health

1. Public Health Nursing provides "preventive health services" not "medical services." (Page 4, 7th line from bottom)

Findings and Recommendations

1. Public Health Nursing - The Table should indicate 3 nursing positions in Elko (one stationed in Wells) and indicate that Eureka does not provide school nursing.
2. Emergency Medical Services - Sharing with locals for mountain top maintenance will be difficult as sites have multiple users and pro rata schedule was rejected at the beginning of the project.

Statutory Criteria for Evaluation

1. Listed under question No. 6, "Are all Community Health Services designed...", it was indicated that "20,724 screenings were performed for sexually transmitted disease." This was for the rural areas only; the total for all the State including Clark

and Washoe Counties, which the State supports, is 103,622.

Other than the above changes, it is our opinion that the working copy was fair, objective, and accurately descriptive of the Bureau of Community Health Services.

PC/PF/bws

cc: Howard Barrett
John H. Carr, M.D.
William M. Edwards, M.D.

Appendix E
Suggested Legislation
Sunset

SUMMARY--Revises criteria used in legislative review of executive agencies. (BDR 18-331)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to the state executive department; revising the criteria used in legislative review of executive agencies; and providing other matters properly relating thereto.

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

Section 1. Chapter 232B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4, inclusive, of this act.

Sec. 2. In conducting its review of an agency, the legislative commission shall obtain, and consider in determining the need for the continued operation of the agency, answers to the following questions:

1. Is there a reasonable relationship between this exercise of the state's police power and the protection of the public health, safety or welfare? Would the absence or reduction of regulation by this agency significantly harm or endanger the public health, safety or welfare?

2. Is there another, less restrictive, method of regulation which could adequately protect the public?

3. Does regulation have the effect of directly or indirectly increasing the cost of any goods or services involved and, if so, is the increase justified by the protection provided to the public?

4. Are any of the agency's programs or objectives duplicated by other governmental agencies or by private enterprise?

Sec. 3. After the legislative commission considers the answers to questions about the need for the agency, the legislative commission shall:

1. Obtain, and consider in determining whether the agency is operating efficiently, answers to the following questions:

(a) Has the agency operated in the public interest? To what extent have the agency's operations in the public interest been impeded or aided by existing statutes and by other circumstances, including its budget and personnel?

(b) Has the agency handled formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch?

(c) Has the agency required or requested persons whom it regulates to assess problems which affect the public in the profession, business or occupation and to report the effect on the public of regulations and decisions of the agency, particularly regarding improvements in economy and quality of service?

(d) Has the agency encouraged participation by the public in making regulations and carrying out its responsibilities?

(e) Does the agency have or require the use of any unnecessary forms, reports or recordkeeping?

2. Obtain, and consider in determining whether the agency is operating effectively, answers to the following questions:

(a) Are the regulatory statutes well constructed and free from ambiguity and redundancy?

(b) Does the law provide clear objectives for the agency? Is the agency effectively achieving its statutory objectives and do the results reflect the intent of the law?

(c) Has the agency recommended changes to the law which would benefit the public rather than the persons it regulates?

(d) Do the regulations of the agency accurately reflect the intent of the legislature and are they in the least restrictive form?

(e) Has the agency restricted the entry of qualified applicants? Has it permitted only qualified applicants to serve the public?

(f) Have requirements of state and federal law for affirmative action been met by the agency and the profession, occupation or business it regulates? Has the agency, or that profession, occupation or business, initiated any plans for affirmative action?

Sec. 4. 1. Once the legislative commission has obtained answers to the questions concerning the public's need for an agency and the efficiency and effectiveness of its operation, the legislative

commission shall determine whether its recommendation to the legislature should be that the agency be terminated, consolidated with another agency or continued.

2. If the legislative commission determines to recommend the termination of the agency, its recommendation must include suggestions for appropriate direct legislative action, if any, which is made necessary or desirable by the termination of the agency or by the absence of regulation by any other administrative agency.

3. If the legislative commission determines to recommend the consolidation or continuation of the agency, its recommendation must include suggestions for appropriate direct legislative action, if any, which would make the operation of the agency or its successor more efficient or effective.

Sec. 5. NRS. 232B.040 is hereby amended to read as follows:

232B.040 1. The legislative commission shall conduct the reviews of agencies directed by the legislature [.] to determine whether each agency should be terminated, consolidated with another agency or continued. The legislative commission shall begin each review on July 1 of the second year preceding the scheduled date for terminating the agency.

2. The legislative commission shall determine the membership and method of appointment of committees or subcommittees appointed to carry out the reviews.

3. The legislative commission shall transmit its review and recommendations to the legislature at the beginning of its next regular session.

Sec. 6. NRS 232B.050 is hereby amended to read as follows:

232B.050 [1. The legislative commission and the legislative counsel bureau shall conduct a review of the need for and the efficiency of each agency which is to be terminated, beginning on July 1 of the second year preceding the scheduled date of termination.

2. The legislative commission shall conduct public hearings for the purpose of obtaining comments on, and may require the legislative counsel bureau to submit reports on, the need for the continued operation of an agency, and its efficiency.

3. In conducting its review of any agency, the legislative commission shall determine whether the agency is:

- (a) Complying with requirements for affirmative action.
- (b) Operating in the public interest.
- (c) Recommending statutory changes which will benefit the general public.
- (d) Requiring reports to show the effect of its operations on the general public regarding improvement, economy and availability of service.
- (e) Encouraging and permitting participation by the general public when it proposes regulations or adopts them.

(f) Disposing effectively with complaints filed with the agency.

4.] As part of the [consideration] review of each agency, the legislative commission shall [include] obtain and consider the agency's:

[(a)] 1. Statement of its objectives and programs.

[(b)] 2. Conclusion concerning the effectiveness of its objectives and programs.

[(c)] 3. Recommendations for statutory changes which are necessary for the agency to carry out its objectives and programs.

[(d)] 4. Evaluation of its objectives and programs for the ensuing fiscal year.

[5. In conducting its review of a regulatory agency, the legislative commission shall, after complying with the requirements of subsections 3 and 4, consider the need for the continued operation of the agency by obtaining answers to the following questions:

(a) Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare?

(c) Is there another, less restrictive, method of regulation which could adequately protect the public?

(d) Does regulation have the effect of directly or indirectly

increasing the cost of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost, if any, more harmful to the public than the harm which could result from the absence of regulation?

(f) Is the entire regulatory process designed solely for the purpose of, and does it have as its primary effect, the protection of the public?

6. If the legislative commission finds that the answers to questions about the need for the agency are generally affirmative, it shall determine whether the agency is operating efficiently by applying the following criteria:

(a) The agency has permitted qualified applicants to serve the public;

(b) Requirements of state and federal law for affirmative action have been met by the agency and the industry or profession which it regulates;

(c) The agency has operated in the public interest, and the extent to which its operation in the public interest has been impeded or aided by existing statutes and by other circumstances, including budget and personnel matters;

(d) The agency has recommended changes to the statutes which would benefit the public rather than the persons it regulates;

(e) The agency has required the persons whom it regulates to

report the effect of regulations and decisions of the agency on the public, particularly regarding improvements in economy and quality of service;

(f) Persons regulated by the agency have been required to assess problems in the industry or profession which affect the public;

(g) The agency has encouraged participation by the public in making its regulations, as opposed to encouraging participation only by the persons it regulates; and

(h) The agency handles formal complaints from the public concerning persons subject to its regulation efficiently and with dispatch.]

Sec. 7. NRS 232B.060 is hereby amended to read as follows:

232B.060 1. The legislative commission shall conduct public hearings for the purpose of obtaining comments on, and may require the legislative counsel bureau to submit reports on, the need for the continued operation of an agency, and its efficiency and effectiveness.

2. At any hearing held [to determine whether an agency should be terminated, consolidated with another agency or continued,] under this chapter, information may be presented by:

- (a) Members of the general public;
- (b) Any person who is regulated by the agency; and
- (c) Representatives of the agency.

[2.] 3. The legislative commission shall consider any report submitted to it by the legislative counsel bureau.

[3.] 4. An agency has the burden of proving that there is a public need for its continued existence or regulatory function.

Appendix F
Suggested Legislation
Real Estate

SUMMARY--Reestablishes real estate division of department of commerce, changes fees and duties of division and brokers.
(BDR 54-116)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial
Insurance: No.

AN ACT relating to real estate; providing for the reestablishment of the real estate division of the department of commerce; changing the name of the advisory commission; changing qualifications for commission members; consolidating and changing procedures for examination and licensing; extending time for payment of fees and action on applications; changing fees for transcripts and licenses; imposing a duty on brokers to supervise their associates; providing penalties; and providing other matters properly relating thereto.

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

Section 1. NRS 645.010 is hereby amended to read as follows:

645.010 As used in this chapter, "commission" means the [Nevada] real estate [advisory] commission.

Sec. 2. NRS 645.035 is hereby amended to read as follows:

645.035 1. Within the meaning of this chapter, a "real estate broker-salesman" is any person who holds a real estate broker's license, or who has passed the real estate broker's examination [pursuant to the provisions of NRS 645.475,] but who, as an employee or as an independent contractor, for compensation or otherwise, is associated with a licensed real estate broker in the capacity of a salesman, to do or to deal in any act, acts or transactions included within the definition of a real estate broker in NRS 645.030.

2. A real estate broker-salesman is an employee for the purposes of industrial insurance and occupational disease coverage, and shall submit proof of coverage under chapters 616 and 617 of NRS in order to obtain or renew a license.

3. In this chapter [wherever] the term "real estate salesman" [appears the same shall, when applicable, mean] includes "real estate broker-salesman [.]" when applicable.

Sec. 3. NRS 645.050 is hereby amended to read as follows:

645.050 1. The [Nevada] real estate [advisory] commission is hereby created. The commission consists of five members appointed by the governor. [The governor shall obtain and consider a list of nominees from the Nevada Association of Realtors.]

2. The commission shall act in an advisory capacity to the real estate division, adopt regulations [, approve or disapprove all applications for licenses,] and conduct hearings as provided in this chapter. The commission shall adopt regulations establishing standards for the operation of licensees' offices and for their business conduct and ethics.

3. The commission may by regulation delegate any authority conferred upon it by this chapter to the administrator to be exercised pursuant to the regulations of the commission.

4. Service of process and other communications upon the commission may be made at the principal office of the real estate division.

Sec. 4. NRS 645.090 is hereby amended to read as follows:

645.090 [Each member of the commission shall:

1. Be a citizen of the United States.
2. Have been a resident of the State of Nevada for not less than 5 years.
3. Have been actively engaged in business as a real estate broker within the State of Nevada for a period of at least 3 years next immediately preceding the date of his appointment.]

1. The governor shall appoint:

(a) Four members who have been actively engaged in business as real estate brokers within the State of Nevada for at least 3 years next immediately preceding the date of appointment.

(b) One member who is a representative of the general public.

2. A person is not eligible for appointment unless he:

(a) Is a citizen of the United States; and

(b) Is a resident of the State of Nevada.

Sec. 5. NRS 645.110 is hereby amended to read as follows:

645.110 The commission [shall meet at Carson City, Nevada, annually on the 2nd Monday in July and] , at the first meeting of each fiscal year, shall elect a president, a vice president and a secretary to serve for the ensuing year.

Sec. 6. NRS 645.150 is hereby amended to read as follows:

645.150 1. The commission shall hold [regular meetings on the 2nd Monday of January and July of each year,] at least two meetings, one of which [shall] must be held in the eastern district of the

state, and one of which [meetings shall] must be held in the western district of the state, at such place or places as [shall be designated by] the commission designates for that purpose.

2. [Special] Additional meetings of the commission [shall] may be held at the call of the president [whenever] when there is sufficient business to come before the commission to warrant such action, at any place [most] convenient to the commission, or upon written request of two members of the commission. Written notice of the time, place and purpose of all such meetings [shall] must be given to each [commission] member at least [5] 3 working days prior to the holding of [a special meeting.] each additional meeting.

Sec. 7. NRS 645.310 is hereby amended to read as follows:

645.310 1. All deposits accepted by every [person holding a real estate broker's license or] real estate broker or person registered as an owner-developer pursuant to this chapter, which [deposits] are retained by him pending consummation or termination of the transaction involved, must be accounted for in the full amount at the time of the consummation or termination.

2. Every real estate salesman who [received a deposit on any transaction in which he is engaged] receives any money on behalf of a broker or owner-developer shall pay over the [deposit] money to the real estate broker or owner-developer.

3. A real estate broker shall not commingle the money or other property of his principal with his own.

4. [Each broker shall maintain] If a broker receives money, as a broker, which belongs to others, he shall deposit the money in a separate checking account in a bank in this state which must be designated a trust account. All down payments, earnest money deposits, rents, or other [trust funds] money which he receives, on behalf of his principal or any other person, must be deposited in the account unless all persons who have any interest in the money have agreed otherwise in writing. A real estate broker in his discretion may pay to any seller or the seller's authorized agent the whole or any portion of such special deposit. [Such] The real estate broker is personally responsible and liable for such deposit at all times. A real estate broker shall not permit any advance payment of funds belonging to others to be deposited in the real estate broker's business or personal account or to be commingled with any money he may have on deposit.

5. Every real estate broker required to maintain a separate custodial or trust fund account shall keep records of all money deposited [therein, which] therein. 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. All such records and money are subject to inspection and audit by the division and its authorized representatives. All such separate custodial or trust fund accounts must designate the real estate broker

as trustee and provide for withdrawal of money without previous notice.

6. Each broker shall notify the division of the names of the banks in which he maintains trust accounts and specify the names of the accounts on forms provided by the division.

Sec. 8. NRS 645.330 is hereby amended to read as follows:

645.330 1. The division may approve an application [for examination] for a license for a person who [:] meets all the following requirements:

(a) Has a good reputation for honesty, trustworthiness, integrity and competence to transact the business of a broker, broker-salesman or salesman in a manner which safeguards the interest of the public, and who offers satisfactory proof of those qualifications to the board.

(b) Has not been convicted of, or entered a plea of guilty or nolo contendere to, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any crime involving moral turpitude in any court of competent jurisdiction in the United States or elsewhere. The untrustworthiness of an applicant and a conviction of a crime listed in this subsection may be sufficient ground for refusal of a license. The [board] division may, in its discretion, deny a license to any person who has been convicted of engaging in a real estate business without a license.

(c) Has not made a false statement of material fact on his application.

(d) Is competent to transact the business of a real estate broker, broker-salesman or salesman in a manner which will safeguard the interests of the public.

(e) Has satisfactorily passed the examination.

2. Suspension or revocation of a license pursuant to this chapter or any prior revocation or current suspension in this or any other state, district or territory of the United States or any foreign country within 1 year before the date of the application is grounds for refusal to grant a license.

3. A person [must] may not be licensed as a real estate broker unless he has been actively engaged as a full-time licensed real estate broker-salesman or salesman in this state, or actively engaged as a full-time licensed real estate broker, broker-salesman or salesman in another state or the District of Columbia, for at least 2 of the 4 years immediately preceding:

(a) The issuance of a broker's license; or

(b) The date of application for examination for a broker's license.

Sec. 9. NRS 645.340 is hereby amended to read as follows:

645.340 1. The division shall not approve an application for [examination for] a broker's or salesman's license of any person unless he is a bona fide resident of the State of Nevada.

2. The requirements of subsection 1 are applicable to each member of a copartnership or association and to each officer or director of a corporation who will actively engage in the real estate business.

Sec. 10. NRS 645.350 is hereby amended to read as follows:

645.350 1. Application [for examination] for license as a real estate broker, broker-salesman or salesman must be made in writing to the division upon blanks prepared or furnished by the division.

2. Every application for [examination for] a real estate broker's, broker-salesman's or salesman's license must set forth the following information:

(a) The name, age and address of the applicant. If the applicant is a copartnership or an association which is doing business as a real estate broker, the name and address of each member thereof. If the application is for a corporation which is doing business as a real estate broker, the name and address of each officer and director thereof.

(b) [The name, if known,] In the case of a broker, the name under which the business is to be conducted. The name is a fictitious name if it does not contain the name of the applicant or the names of the members of the applicant's firm, copartnership or association. A license [shall] must not be issued under a fictitious name which includes the name of a real estate salesman or broker-salesman. A license [shall] must not be issued under the

same fictitious name to more than one licensee within the state. All licensees doing business under a fictitious name shall comply with other pertinent statutory regulations regarding the use of fictitious names.

(c) [The] In the case of a broker, the place or places, including the street number, the city and county where the business is to be conducted . [, if known.]

(d) The business or occupation engaged in by the applicant for a period of at least 2 years immediately preceding the date of the application, and the location thereof; if a copartnership or an association is doing business as a real estate broker, by each member thereof, or if a corporation, by each officer thereof.

(e) The time and place of the applicant's previous experience in the real estate business as a broker or salesman.

(f) Whether the applicant has ever been convicted of or is under indictment for a felony or has entered a plea of guilty or nolo contendere to a charge of felony, and if so, the nature of the felony.

(g) Whether the applicant has been refused a real estate broker's, broker-salesman's or salesman's license in any state, or whether his license as a broker or salesman has been revoked or suspended by any other state.

(h) If the applicant is a member of a copartnership or association, or an officer of a corporation, the name and office address of the copartnership, association or corporation of which the applicant is a member or officer.

3. An applicant [for examination] for a license as a broker-salesman or salesman shall provide a verified statement from the broker with whom he will be associated [. The statement must be provided to the division and must contain:

(a) The information required in an application for a broker's license.

(b) The name and address of the applicant's last employer.

(c) The name and place of business of the person who employs the applicant or with whom he will be associated.

4. If the information required in paragraphs (b) and (c) of subsection 2 is not known at the time of the application, it must be furnished as an addendum to the application as soon as it becomes known to the applicant.

5.] , expressing the intent of that broker to associate the applicant with him and to be responsible for the applicant's activities as a licensee.

4. If a copartnership or association is [doing] to do business as a real estate broker, the application for a broker's license must be verified by at least two members thereof. If a corporation is [doing] to do business as a real estate broker, the application must be verified by the president and the secretary thereof.

Sec. 11. NRS 645.400 is hereby amended to read as follows:

645.400 1. In addition to the information required by this chapter, applications for brokers' or salesmen's [examinations

and] licenses must contain such other information pertaining to the applicants as the [commission] division may require.

2. The [commission] division may require such other proof through the application or otherwise, with due regard to the paramount interests of the public as to the honesty, truthfulness, integrity and competency of the applicant.

3. The commission may adopt regulations connected with the application for any examination and license.

Sec. 12. NRS 645.410 is hereby amended to read as follows:

645.410 Every application for examination for a license as real estate broker, broker-salesman or salesman under the provisions of this chapter must be accompanied by the examination fee prescribed by this chapter. The applicant shall pay the original license fee and the real estate education, research and recovery fund fee within [30] 90 days after he is notified in writing by the division that [he has passed the examination.] his application for a license has been approved. If an applicant fails to pay the prescribed fees within [30] 90 days after notification, no license may be issued to him except upon another original application, except that within 1 year of the due date a license may be issued upon payment of a fee one and one-half times the amount otherwise required for a license.

Sec. 13. NRS 645.420 is hereby amended to read as follows:

645.420 1. [Except as provided in subsection 2,] The division shall notify each applicant in writing whether he passed or failed the examination.

2. The division shall act upon all applications for licenses as real estate brokers, broker-salesmen or real estate salesmen [shall be acted upon by the real estate division] within [30] 60 days from the date of [the written examination, as provided and scheduled in NRS 645.450, next following the filing of applications therefor. No license may be issued by the real estate division until the application therefor has been approved by the commission.

2. All applications for licenses as real estate brokers where the applicant takes the written examination prior to meeting the experience requirements of subsection 3 of NRS 645.330 shall be acted upon by the real estate division within 30 days from the date the applicant furnishes proof satisfactory to the division that all the requirements of this chapter have been met.] receiving the completed application for a license.

3. If in the opinion of the real estate division additional investigation of the applicant appears necessary, the real estate division may extend the [30-day] 60-day period and may make such additional investigation as is necessary or desirable prior to acting on the applicant's application.

4. The burden of proof [shall] in every respect [be] is upon the applicant to establish to the satisfaction of the real estate division that he is qualified to receive a license.

5. [The division shall notify each applicant in writing of his passing or failing the examination.] Passing the examination creates no vested right in the applicant to hold a license pending his appeal of a denial of his licensing by the division.

Sec. 14. NRS 645.440 is hereby amended to read as follows:

645.440 1. If the division, after an application for a license in proper form has been filed with it, accompanied by the proper fee, denies an application, the division shall give notice of the fact to the applicant within 15 days after its ruling, order or decision.

2. Upon written request from the applicant, filed within 30 days after receipt of that notice by the applicant, the president of the commission shall set the matter for a hearing to be conducted within 90 days after receipt of the applicant's request if the request contains allegations which, if true:

(a) [Qualify the applicant to take the examination;

(b)] Qualify the applicant for a license; or

[(c)] (b) Would entitle the applicant to a waiver of the education requirements of NRS 645.343.

3. The hearing must be held at such time and place as the commission prescribes. At least 15 days before the date set for the hearing, the division shall notify the applicant and shall accompany the notification with an exact copy of any protest filed, together with copies of all communications, reports, affidavits or depositions in possession of the division relevant to the matter in question. Written notice of hearing may be served by delivery personally to the applicant, or by mailing it by certified mail to the last-known business address of the applicant. [If the application is for a real estate salesman's license, the division shall

also notify the broker with whom the applicant expected to be associated by mailing the notice by certified mail to the broker's last-known business address.]

4. The hearing may be held by the commission or a majority thereof, and a hearing must be held, if the applicant so desires, within the county where the applicant's principal place of business is situated. A record of the proceedings, or any part thereof, must be made available to each party upon the payment to the division of [such fee as the commission prescribes by regulation, not exceeding 25 cents per folio or the cost of reproducing the tape.] the reasonable cost of transcription.

5. The commission shall render a decision on any appeal within 60 days from the final hearing and shall notify the parties to the proceedings, in writing, of its ruling, order or decision within 15 days after it is made.

6. [Where an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or other like offense or offenses, or has been convicted of a felony or a crime involving moral turpitude, and has been convicted or has entered a plea of guilty in a court of competent jurisdiction of this or any other state, district or territory of the United States, or of a foreign country, such untrustworthiness of the applicant, and the conviction, may in itself be sufficient ground for refusal of a license.

7.] Where an applicant has made a false statement of material fact on his application [such] , the false statement may in itself be sufficient ground for refusal of a license.

Sec. 15. NRS 645.460 is hereby amended to read as follows:

645.460 1. [In addition to the proof of honesty, truthfulness and good reputation required of any applicant for a real estate license, the] The division shall ascertain by written examination that the applicant has an appropriate knowledge and understanding of those subjects which commonly and customarily apply to the real estate business.

2. The division may hire a professional testing organization to create, administer or score the written examination or perform all of those functions.

3. [The division shall notify each applicant of his having passed or failed the examination.] The division may accept successful completion of the uniform portion of a national real estate examination in partial satisfaction of the requirements of the examination in Nevada.

Sec. 16. NRS 645.475 is hereby amended to read as follows:

645.475 1. An applicant for a real estate broker's [examination] license may take the written examination [upon furnishing proof satisfactory to the division that] before he has complied with [all the requirements for a broker's license with the exception of] the experience requirements of subsection 3 of NRS 645.330; but the division shall not approve the issuance of a broker's license until all the requirements of this chapter are met.

2. An applicant, pursuant to subsection 1, who passes the broker's examination must be issued a broker-salesman's license. [The applicant shall pay the license fee and the required amount to the real estate education, research and recovery fund within 30 days after he is notified that he has passed the examination or paid the additional fee required by NRS 645.410.] The applicant may be issued a broker's license upon:

(a) Making proper application to the division; and

(b) Satisfying the experience requirements of subsection 3 of NRS 645.330.

Sec. 17. NRS 645.660 is hereby amended to read as follows:

645.660 1. Any unlawful act or violation of any of the provisions of this chapter by any licensee is not cause for the suspension or revocation of a license of any person associated with the licensee, unless it appears to the satisfaction of the commission that the associate had guilty knowledge thereof. A course of dealing shown to have been persistently and consistently followed by any licensee constitutes prima facie evidence of such knowledge upon the part of the associate.

2. If it appears that a registered owner-developer had guilty knowledge of any unlawful act or violation on the part of a real estate broker-salesman or salesman employed by him, in the course of his employment, the commission may suspend or revoke his registration.

3. The commission may suspend or revoke the license of a real estate broker if it appears he has failed to maintain adequate supervision of a salesman or broker-salesman associated with him and that person commits any unlawful act or violates any of the provisions of this chapter. Those provisions which impose a duty on the real estate broker to supervise persons associated with him also extend to situations where he does not have specific knowledge of the act of his associate.

Sec. 18. NRS 645.690 is hereby amended to read as follows:

645.690 1. The hearing on the charges must be held at such time and place as the commission prescribes. The hearing may be held by the commission or a majority thereof, and the hearing must be held, if the licensee so requests in writing, within the county where the licensee's principal place of business is situated.

2. [At the hearing the licensee is entitled:

(a) To examine, either in person or by counsel, all persons who testify against him, as well as all other witnesses whose testimony is presented at the hearing and is relied upon to substantiate the charge made.

(b) To present such evidence, written and oral, as he sees fit, and is pertinent to the inquiry.

3.] At the hearing, [all witnesses must be sworn by the commission, or any member thereof, and] a stenographic transcript of the proceedings must be made [and filed as part of the record in the case.] if requested or required for judicial review. Any party to

the proceedings desiring [it] a transcript must be furnished with a copy [of the transcript] upon payment to the division of [such fee as it adopts by regulation, not exceeding 25 cents per folio.] the reasonable cost of transcription.

Sec. 19. NRS 645.760 is hereby amended to read as follows:

645.760 1. A ruling or decision of the commission in any disciplinary action is final when in favor of the licensee.

2. If a ruling or decision is against the licensee, the licensee may within 30 days from the date of the decision appeal therefrom to the district court in and for the county in which the party adversely affected by the decision resides or has his place of business under the terms of this chapter, by serving upon the administrator a notice of such appeal, a written petition for review and a demand in writing for a certified transcript of all the papers on file in the office of the division affecting or relating to the decision, and all the evidence taken on the hearing, and paying not more than [25 cents for each folio of the transcript and] \$1 for the certification thereof. Thereupon, the division shall, within 30 days, make and certify the transcript, and the appellant shall, within 5 days after receiving it, file it and the notice of appeal with the clerk of the court. The petition for review need not be certified but must set forth in specific detail any ground for the appeal, including any errors which the licensee contends that the commission committed at the hearing. The commission is a party to review proceedings. The petition may be

served upon the administrator by delivery or by certified mail. The petition must be filed in the district court.

3. Upon the hearing of the appeal, the burden of proof shall be upon the appellant, and the court shall consider the action of the commission from which the appeal is taken, and is limited solely to a consideration and determination of the question whether there has been an abuse of discretion on the part of the commission in making such decision.

Sec. 20. NRS 645.830 is hereby amended to read as follows:

645.830 1. The following fees must be charged by and paid to the division:

For each real estate salesman's or broker's examination.....	\$40
For each original real estate broker's, broker-salesman's or corporate broker's license.....[80]	<u>130</u>
For each original real estate salesman's license.....[50]	<u>100</u>
For each original branch office license.....[50]	<u>100</u>
For [each] real estate education, research and recovery [fee] to be paid at the time of issuance of <u>each</u> original license or renewal.....	40

For each penalty assessed for failure of an applicant for an original broker's, broker-salesman's or corporate broker's license to file within [30 days of] <u>90 days after</u> notification.....	[\$40]	<u>\$65</u>
For each penalty assessed for failure of an applicant for an original salesman's license to file within [30 days of] <u>90 days after</u> notification.....	[25]	<u>50</u>
For each renewal of a real estate broker's, broker-salesman's or corporate broker's license.....	[80]	<u>130</u>
For each renewal of a real estate salesman's license.....	[50]	<u>100</u>
For each renewal of a real estate branch office license.....	[50]	<u>100</u>
For each penalty for late filing of a renewal for a broker's, broker-salesman's or corporate broker's license.....	[40]	<u>65</u>
For each penalty for late filing of a renewal for a salesman's license.....	[25]	<u>50</u>
For each change of name or address.....		10
For each transfer of a real estate salesman's or broker-salesman's license and change of association or employment.....		10

For each duplicate license [or pocket card] where the original license [or pocket card] is lost or destroyed, and an affidavit is made thereof.....	\$10
For each change of status from broker to broker-salesman, or the reverse.....	10
For each reinstatement to active status of an inactive real estate broker's, broker-salesman's or salesman's license.....	10
For each reinstatement of a real estate broker's license when the licensee fails to give immediate written notice to the division of a change of name or business location.....	20
For each reinstatement of a real estate salesman's or broker-salesman's license when he fails to notify the division of a change of broker within 30 days of termination by previous broker.....	20
For each original registration of an owner-developer.....	40
For each annual renewal of a registration of an owner-developer.....	40
For each enlargement of the area of an owner-developer's registration.....	15

For each cooperative certificate issued to
an out-of-state broker licensee for 1
year or fraction thereof.....\$40

For each original accreditation of a course
of continuing education..... 50

For each renewal of accreditation of a
course of continuing education..... 10

2. The fees prescribed for courses of continuing education do
not apply to any university or college of the University of Nevada
system.

Sec. 21. NRS 645.842 is hereby amended to read as follows:

645.842 The real estate education, research and recovery fund is hereby created as a special revenue fund. A balance of not [more] less than \$50,000 must be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in NRS 645.841 to 645.8494, inclusive. Any balance over \$50,000 at the end of any fiscal year must be set aside and used by the administrator, [after approval] with the advice of the commission, for real estate education and [research.] research and the costs to the division to operate such programs.

Sec. 22. NRS 645.843 is hereby amended to read as follows:

645.843 1. Upon issuance or renewal of every real estate broker's, broker-salesman's and salesman's license, every licensed broker, broker-salesman and salesman shall pay in addition to the original or renewal fee, a fee [of \$40.] for real estate education,

research and recovery. The additional fee must be deposited in the state treasury for credit to the real estate education, research and recovery fund, and [shall] must be used solely for the purposes provided in NRS 645.841 to 645.8494, inclusive.

2. Owner-developers need not contribute to the fund.

Sec. 23. NRS 645.844 is hereby amended to read as follows:

645.844 1. When any person obtains a final judgment in any court of competent jurisdiction against any licensee under this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required under this chapter, that person , [may,] upon termination of all proceedings, including appeals in connection with any judgment, may file a verified petition in the court in which the judgment was entered for an order directing payment out of the fund in the amount of the unpaid actual damages included in the judgment , [and unpaid,] but not more than \$10,000 per claimant . [and the] The liability of the fund does not exceed \$20,000 for any licensee. The petition must state the grounds which entitle the person to recover from the fund.

2. A copy of the petition must be served upon the administrator and an affidavit of service must be filed with the court.

3. The court shall act upon the petition within 30 days after service and, upon the hearing thereof, the petitioner shall show that:

(a) He is not the spouse of the debtor, or the personal representative of that spouse.

(b) He has complied with all the requirements of NRS 645.841 to 645.8494, inclusive.

(c) He has obtained a judgment of the kind described in subsection 1, stating the amount thereof, the amount owing thereon at the date of the petition, and that the action in which the judgment was obtained was based on fraud, misrepresentation or deceit of the licensee in a transaction for which a license is required pursuant to this chapter.

(d) A writ of execution has been issued upon the judgment and that no assets of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of assets was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due.

(e) He has made reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(f) The petition has been filed no more than 1 year after the termination of all proceedings, including reviews and appeals, in connection with the judgment.

[(g) He has posted a bond to guarantee costs should his application be denied, in the amount of 10 percent of the actual damages he seeks from the fund.]

4. The provisions of this section do not apply to owner-developers.

Sec. 24. NRS 645.847 is hereby amended to read as follows:

645.847 If the administrator pays from the fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensee, his license issued pursuant to chapter 119 of NRS and this chapter must be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker, broker-salesman or salesman may be reinstated until he has repaid in full, plus interest at the rate of [6] 8 percent per annum, the amount paid from the fund on his account. Interest is computed from the date payment from the fund was made by the administrator.

Sec. 25. Chapter 645 of NRS is hereby amended by adding thereto a new section which shall read as follows:

An applicant for examination for a license as broker, broker-salesman or salesman in this state must, as part of his application, be fingerprinted. Each applicant shall, at his own expense, and on a card provided by the division, arrange to be fingerprinted by any police or sheriff's office and shall attach his fingerprint card, after his fingerprints are taken, to his application. The division shall mail the applicant's fingerprint card to the Federal Bureau of Investigation, Washington, D.C., for its report, and to such other law enforcement agencies as the division may deem necessary.

Sec. 26. NRS 119.160 is hereby amended to read as follows:

119.160 1. The administrator of the division shall make an examination of any subdivision, and shall, unless there are grounds for denial, issue to the subdivider a public report authorizing the sale or lease, or the offer for sale or lease, in this state of the lots or parcels in the subdivision. The report [shall] must contain the data obtained in accordance with NRS 119.140 and which the administrator determines are necessary to implement the purposes of this chapter. The administrator may publish the report.

2. The grounds for denial are:

(a) Failure to comply with any of the provisions in this chapter or the rules and regulations of the division pertaining thereto.

(b) The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

(c) Inability to deliver title or other interest contracted for.

(d) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering.

(e) Inability to demonstrate that adequate financial arrangements have been made for any community, recreational or other facilities included in the offering.

(f) Failure to make a showing that the parcels can be used for the purpose for which they are offered.

(g) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto.

(h) Agreements or bylaws to provide for management or other services pertaining to common facilities in the offering, which fail to comply with the regulations of the division.

(i) Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

3. If the administrator of the division finds that grounds for denial exist, he shall issue an order so stating to the owner or subdivider no later than 30 days after receipt of the information required to be filed by NRS 119.130 and 119.140. The administrator may, alternatively, issue a temporary permit to be effective for not more than 6 months from the date of issuance. If the administrator of the division issues an order of denial, the owner or developer may appeal such order to the director of the department of commerce who shall, within 5 days of the receipt of such appeal, determine whether grounds for denial exist. If the director finds that grounds for denial exist, he shall confirm the denial. If the director confirms the denial, the owner or developer may appeal to the real estate [advisory] commission, [created by NRS 645.050,] which shall conduct a hearing and either confirm the denial or order a license issued within 30 days of the receipt of the appeal.

4. If it appears to the administrator of the division that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the administrator shall so advise the developer within a reasonable time after the

filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. [Such notification shall serve] This notification serves to suspend the effective date of the statement or the amendment until 30 days after the developer files such additional information as the administrator [shall require.] requires. Any developer, upon receipt of such notice, may request a hearing, and such hearing [shall] must be held within 20 days of receipt of such request by the administrator.

Sec. 27. NRS 119.320 is hereby amended to read as follows:

119.320 1. Subject to the provisions of this chapter, the division shall collect the following fees at such times and upon such conditions as it may provide by rule and regulation:

For each annual registered representative's license to represent a developer.....	\$25
For each transfer of a registered representative's license to represent a developer.....	10
<u>For each application for a developer's permit for a subdivision or for exemption from any provision of this chapter.....</u>	<u>25</u>
For each developer's permit per subdivision.....	250

The \$250 fee [shall] does not apply to any subdivision having 34 or fewer lots, parcels, interests or units nor to any subdivision

where the lots, parcels, interests or units being offered or disposed of are in excess of 40 acres net size.

2. At the time of the original filing, each developer shall pay an additional \$5 for each lot, parcel, interest or unit in any one subdivision in excess of 50, but not exceeding 250 such lots, parcels, interests or units; \$4 for 251 through 500 lots, parcels, interests or units in any one subdivision; \$3 for 501 through 750 lots, parcels, interests or units in any one subdivision; and \$2.50 for all lots, parcels, interests or units in excess of 750 in any one subdivision. The developer may designate lots, parcels, interests or units it intends to offer for sale or lease in this state out of the subdivision and the per lot parcel, interest, or unit fee shall only be applicable to such lots, parcels, interests or units. Such units [shall] must be designated in groupings of no less than 5 contiguous units in each group, except that the division in its discretion may accept fewer upon request of the developer. [Should] If the developer [determine] determines to offer additional lots, parcels, interests or units it shall so certify to the division and pay the additional fee therefor.

3. With the exception of the fees for a registered representative's license or transfer, the fees enumerated in this section [shall] must be reduced by the administrator at such times as, in his judgment, he considers a reduction equitable in relation to the necessary costs of carrying out the administration and enforcement of the provisions of this chapter.

Sec. 28. Section 9 of chapter 688, Statutes of Nevada 1979, at page 1841, is hereby amended to read as follows:

Sec. 9. Unless continued or reestablished by express act of the legislature, the following agencies terminate on July 1, 1981:

1. The Nevada racing commission.
2. The bureau of community health services established by the state board of health.

[3. The real estate division of the department of commerce.]

Sec. 29. NRS 645.360 and 645.540 are hereby repealed.

Sec. 30. Sections 13 to 27, inclusive, of chapter 688, Statutes of Nevada 1979, at page 1841, are hereby repealed.

Sec. 31. This section and sections 28 and 30 of this act shall become effective upon passage and approval. The remaining sections shall become effective on July 1, 1981.

Appendix G
Suggested Legislation
Racing

SUMMARY--Reestablishes Nevada racing commission and reenacts and amends Nevada Racing Act. (BDR 41-117)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the Nevada racing commission; providing for its reestablishment; abolishing Nevada racing commission fund; providing compensation for commission members; changing commission membership qualifications; providing that employees of the commission be in the unclassified service of the state; reenacting and amending the Nevada Racing Act; and providing other matters properly relating thereto.

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

Section 1. NRS 466.015 is hereby amended to read as follows:

466.015 The [purpose] purposes of this chapter [is] are to encourage [agriculture and] the breeding of horses and greyhounds in this state [and] , to produce an additional source of revenue for the state [.] and to protect the general public.

Sec. 2. NRS 466.030 is hereby amended to read as follows:

466.030 1. The Nevada racing commission, consisting of five members appointed by the governor, is hereby created.

2. The jurisdiction, supervision, powers and duties of the commission extend to all persons, associations or corporations which hold or conduct any meeting within the State of Nevada where any racing is permitted for any stake, purse or reward.

3. The commission [may] shall adopt regulations for the conduct of horse and greyhound racing.

Sec. 3. NRS 466.040 is hereby amended to read as follows:

466.040 1. The governor shall appoint five members who [:

(a) Have resided in the State of Nevada for at least 5 years preceding such appointment;

(b) Are qualified electors; and

(c) Are not less than 35 years of age at the time of the appointment.] are:

(a) Residents of Nevada; and

(b) Citizens of the United States.

2. The governor shall designate a member to serve as chairman.

3. Not more than three of the members may be of the same political party.

4. A person is not eligible for appointment if he:

(a) Holds any official relation to any association or corporation engaged in or conducting racing within the State of Nevada;

(b) Holds stock or bonds therein; or

(c) Has any pecuniary interest therein.

5. [Before entering upon the discharge of the duties of his office each member of the commission shall take an oath that he will well and faithfully execute all and singular the duties pertaining to his office according to the laws of the State of Nevada and the regulations adopted by the commission.

6.] The governor may remove any member of the commission for inefficiency, neglect of duty or misconduct in office.

Sec. 4. NRS 466.045 is hereby amended to read as follows:

466.045 No member of the commission may own or otherwise have a financial interest in any greyhound or horse which is entered in any race meet licensed pursuant to the provisions of this chapter.

Sec. 5. NRS 466.050 is hereby amended to read as follows:

466.050 The commission shall meet at such time and places within the State of Nevada as the commission [shall determine.] determines. The members of the commission [shall be] are entitled to receive as compensation \$40 for each day actually employed on the work of the commission, in addition to the travel expenses and per diem expense allowance as provided by law . [for each meeting of the commission attended and each race meeting personally supervised.] A majority of the members of the commission [shall] constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission.

Sec. 6. NRS 466.060 is hereby amended to read as follows:

466.060 1. The commission shall appoint a secretary of the commission who shall serve during the pleasure of the commission. The secretary shall keep a record of all proceedings of the commission, and shall preserve all books, maps, documents and papers belonging to the commission or entrusted to its care. The records of the commission [shall be] are open for inspection at all reasonable times. The secretary shall perform such other duties as the commission may prescribe.

2. The commission may appoint such other officers, clerks, stenographers, inspectors, experts, attorneys and employees as may be necessary, all of whom shall serve during the pleasure of the commission.

3. The personnel of the commission, except clerical employees, are exempt from the provisions of chapter 284 of NRS. They are entitled to such leaves of absence as the board prescribes, but such leaves must not be of a lesser duration than those provided for other state employees pursuant to chapter 284 of NRS.

4. No person [shall be] is eligible [for appointment or] to be appointed by the commission, or to hold any office or position under the commission, who:

(a) Holds any official relation to any association or corporation engaged in or conducting racing within the State of Nevada; or

(b) Holds stock or bonds therein; or

(c) Has any pecuniary interest therein.

Sec. 7. NRS 466.080 is hereby amended to read as follows:

466.080 [1. The Nevada racing commission fund is created as a special revenue fund. The commission shall deposit with the state treasurer for credit to the fund periodically, as collected, out of the proceeds of the taxes imposed by NRS 466.125, an amount equal to 1 percent of all money handled by each pari-mutuel licensee.

2. The commission shall deposit with the state treasurer for credit to the state general fund, periodically as collected, all

fees imposed by NRS 466.120 and the remainder of the taxes imposed by NRS 466.125.

3. The commission may, out of the Nevada racing commission fund:

(a) Pay the necessary and proper expenses of the commission for the efficient administration of this chapter, in the same manner as other claims against the state are paid.

(b) Retain, on July 1 of each year, a cash balance of \$10,000 for those expenses.

4.] The commission [shall,] may, on July 1 of each year, distribute [the remaining cash balance in excess of \$10,000 of the Nevada racing commission fund] , within the limits of legislative appropriations, money to those agricultural associations in this state which have conducted race meets without [state aid or] aid from any agricultural district or county, in proportion to the amount of license fees and taxes paid to the commission by each association.

Sec. 8. NRS 466.085 is hereby amended to read as follows:

466.085 In keeping with the purpose of this chapter to encourage [agriculture and] the breeding of horses in this state, the commission shall pay a sum equal to 10 percent of the first money of every purse won by a Nevada-bred thoroughbred or quarter horse at a race meeting [shall be paid by the commission] to the breeder of [such] that animal if [moneys for such purpose are available in the fund controlled by the commission pursuant to NRS 466.080.] money is appropriated for that purpose.

Sec. 9. NRS 466.105 is hereby amended to read as follows:

466.105 1. Every application for a license to conduct pari-mutuel wagering under this chapter [shall] must be made upon forms prescribed and furnished by the racing commission.

2. The Nevada racing commission shall refer such applications to the Nevada gaming commission for investigation, by the state gaming control board, of the applicant, including officers and directors thereof. Such investigations [shall] must be conducted in the same manner as those for gaming license applicants but subject to the [rules and] regulations of the racing commission.

3. The cost of each investigation made pursuant to this section [shall] must be paid by the applicant. Investigation costs [shall] must be charged on the same basis as those for gaming license investigations.

4. The Nevada gaming commission, through the state gaming control board, shall investigate such persons and applicants as are referred by the racing commission and shall make a full and complete report thereof , including a recommendation whether to approve or deny the license, to the racing commission.

Sec. 10. NRS 466.125 is hereby amended to read as follows:

466.125 1. Each licensee conducting racing with pari-mutuel wagering shall pay to the commission for the use of the State of Nevada a tax at the rate of 3 percent on all pari-mutuel moneys handled on horse races and 4 percent on all pari-mutuel moneys

handled on greyhound races during the race meeting . [, 1 percent of which shall be paid to the commission pursuant to NRS 466.080, and for greyhound races, 1 percent of which shall] For greyhound races, one-fourth of the money paid to the commission must be paid to the city in which the races are to be conducted or if the race is to be conducted outside any city, to the county in which the race is to be conducted.

2. State fair associations, agricultural societies, county fair and recreation boards and county agricultural associations are to pay 1 percent only of total pari-mutuel moneys handled during race meetings.

Sec. 11. NRS 466.170 is hereby amended to read as follows:

466.170 1. The commission [may make and adopt rules and regulations, and thereafter modify the same,] shall adopt regulations providing for the pari-mutuel method of wagering on races and for the licensing, supervising, disciplining, suspending, fining and barring from racing, on any track under the jurisdiction of the commission, of horses, greyhounds, owners, breeders, authorized agents, subagents, nominators, trainers, jockeys, jockey apprentices, jockey agents and any other person, persons, organizations, associations or corporations, the activities of whom affect the conduct or operation of licensed race meetings.

2. At a licensed race meeting or race, a person shall not enter a horse or greyhound or participate as an owner, agent, nominator,

trainer, jockey, jockey apprentice, or jockey agent, without first procuring from the commission a license so to do, and paying such fees as the commission shall determine to be reasonable therefor. The commission is authorized to issue such licenses, and may revoke [the same] them at any time for cause.

3. The [rules and] regulations of the commission may include, but are not limited to, the following:

(a) A requirement for fingerprinting, or other method of identification, of applicants and licensees;

(b) A requirement for information concerning applicants' antecedents, habits and character; and

(c) The procedure and form of application which applicants shall follow and complete prior to consideration of their applications by the commission.

4. If [any] one member of the commission is a resident within an agricultural district which is conducting racing, [such member shall be] that member is the representative of the commission at [such] that race meeting. If more than one member of the commission is a resident within such a district, the commission shall determine how it is represented at the race meeting.

Sec. 12. NRS 284.013 is hereby amended to read as follows:

284.013 1. Except for the provisions of NRS 284.182, this chapter does not apply to:

(a) Agencies, bureaus, commissions, officers or personnel in the

legislative department or the judicial department of state government; or

(b) [Members of the Nevada gaming commission or members of the state gaming control board.] Officers or employees of any agency of the executive department of the state government who are exempted by specific statute.

2. Terms and conditions of employment of all persons referred to in subsection 1, including salaries not set forth in NRS 284.182 and leaves of absence (including, without limitation, annual leave and sick and disability leave), must be fixed by the appointing or employing authority within the limits of legislative appropriations or authorizations, but leaves of absence so prescribed must not be of lesser duration than those provided for other state officers and employees pursuant to the provisions of this chapter.

Sec. 13. Section 9 of chapter 688, Statutes of Nevada 1979, at page 1841, is hereby amended to read as follows:

Sec. 9. Unless continued or reestablished by express act of the legislature, the following agencies terminate on July 1, 1981:

1. [The Nevada racing commission.

2.] The bureau of community health services established by the state board of health.

[3.] 2. The real estate division of the department of commerce.

Sec. 14. Sections 10 and 11 of chapter 688, Statutes of Nevada 1979, at page 1841, are hereby repealed.

Sec. 15. This section and sections 13 and 14 of this act shall become effective upon passage and approval. The remaining sections shall become effective on July 1, 1981.

Appendix H
Suggested Legislation
Community Health Services

SUMMARY--Amends certain provisions relating to public health.
(BDR 40-118)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial
Insurance: Yes.

AN ACT relating to public health; providing for the continuation of the bureau of community health services; authorizing the establishment of fees for programs and services of the health division; placing authority to receive financial aid in the department of human resources; and providing other matters properly relating thereto.

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

Section 1. NRS 439.150 is hereby amended to read as follows:

439.150 1. The state board of health is hereby declared to be supreme in all nonadministrative health matters and it [shall have] has general supervision over all matters, except for administrative matters, relating to the preservation of the health and lives of citizens of the state and over the work of the state health officer and all local (district, county and city) health departments, boards of health and health officers.

2. The department of human resources is hereby designated as the agency of this state to cooperate with the duly constituted federal authorities in the administration of those parts of the Social Security Act which relate to the general promotion of public health, and [is authorized to] may receive and expend all funds made available to the health division by the Federal Government, the state or

its political subdivisions, or from any other source, for the purposes provided in this chapter.

3. The state board of health may set reasonable fees for the:

(a) Licensing, registering, certifying, inspecting or granting of permits for any facility, establishment or service regulated by the health division;

(b) Copying of vital records;

(c) Programs and services of the division; and

(d) Review of plans.

Sec. 2. NRS 441.240 is hereby amended to read as follows:

441.240 The [board shall have the power to] health division may receive any financial aid made available by any private, state or federal or other grant or source, and shall use such funds to carry out the provisions of this chapter.

Sec. 3. Chapter 450B of NRS is hereby amended by adding thereto a new section which shall read as follows:

The legislature hereby declares that prompt and efficient emergency medical care and transportation is necessary for the health and safety of the people of Nevada, and that minimum and uniform standards for such care and all persons providing it must be established.

Sec. 4. Section 9 of chapter 688, Statutes of Nevada 1979, at page 1841 is hereby amended to read as follows:

Sec. 9. Unless continued or reestablished by express act of

the legislature, the following agencies terminate on July 1, 1981:

1. The Nevada racing commission.

2. [The bureau of community health services established by the state board of health.

3.] The real estate division of the department of commerce.

Sec. 5. Section 12 of chapter 688, Statutes of Nevada 1979, at page 1841 is hereby repealed.

Sec. 6. This section and sections 4 and 5 shall become effective upon passage and approval. The remaining sections shall become effective on July 1, 1981.

Appendix I

"Questions A Legislator Should Ask"

Questions Legislators Should Ask

What Is the Problem?

- Has the public been harmed because the occupational group has not been regulated?
 - To what extent has the public's health, safety, or economic well-being been harmed?
- Can the claims of proponents of regulation be documented?

Why Should the Occupational Group Be Regulated?

- Who are the users of services offered?
 - Are they members of the general public who lack knowledge necessary to evaluate qualifications of those offering services?
 - Are they institutions or qualified professionals who have the knowledge to evaluate qualifications?
- What is the extent of autonomy of practitioners?
 - Is there a high degree of independent judgment required of practitioners?
 - How much skill and experience are required in making these judgments?
 - Do practitioners customarily work on their own or under supervision?
 - If supervised, is supervisor covered by regulatory statute?
Note: There is little justification for licensure if practitioners work under supervision. If regulation is needed, it should be the supervisor who is regulated.

What Efforts Have Been Made to Address the Problems?

- Has the occupational group established a code of ethics?
 - To what extent has it been accepted and enforced?
- Has the occupational group established complaint-handling procedures for resolving disputes between practitioners and public?
 - How effective has this been?
- Has a nongovernmental certification program been established to assist the public in identifying qualified practitioners?
- Could the use of applicable laws or existing standards solve problems?
 - Use of unfair and deceptive trade practices laws.
 - Use of civil laws such as injunctions, cease and desist orders, etc.
 - Use of criminal laws such as prohibitions against cheating, false pretenses, deceptive advertising, etc.
 - Use of existing standards such as construction codes, product safety standards, etc.
- Would strengthening existing laws or standards help to deal with the problem?

Have Alternatives to Licensure Been Considered?

- Use of an existing agency under legislative control.
- Regulation of business employer rather than individual practitioner, e.g., licensing restaurants rather than cooks or waiters/waitresses.
- Registration of practitioners coupled with minimum standards set by state agency.
- Certification of practitioners, thereby restricting use of title to those who have demonstrated competence. Occupational group, however, would not have control of field of practice.
- Why would the use of the above not be adequate to protect the public interest?
 - Why would licensing be more effective?

Will the Public Benefit from Regulation of the Occupation?

- How will regulation help public identify qualified practitioners?
- How will regulation assure that practitioners are competent?
 - What standards are proposed for granting credentials?
 - Are all standards job related?
 - How do these standards compare with those of other states?
 - If standards differ from those of other states, can the difference be justified?
 - Are there training and experience requirements?
 - Are these requirements of excessive duration when compared with other states? Why?
 - Does training include supervised field experience? If so, is an additional experience requirement justified?
 - Are there restrictions on where or how experience may be acquired? Why?
 - Will alternative routes of entry be recognized?
 - Will applicants who have not gone through prescribed training/experience be eligible for licensure or certification?
 - Will licensure or certification in another state automatically allow an individual to be credentialed in this state?
 - Will applicants for licensure or certification be required to pass an examination?
 - Does an examination already exist?
 - Does it meet professional and legal testing standards (see footnote 2 on proposed uniform guidelines)?
 - If no test exists, who will develop it and how will development cost be met?
 - Is there a “grandfather” clause in licensure?
 - Why is it necessary?
 - Will such practitioners be required to take a test at a later date?
- What assurance will the public have that the individuals credentialed by the state have maintained their competence?
 - Will license or certificate carry expiration date?
 - Will renewal be based solely on payment of fee?
 - Will renewal require periodic examination, peer review, evidence of continuing education or other procedures for continued competence?

- How will complaints of the public against practitioners be handled?
 - Will there be a method for receiving complaints?
 - Will there be an effective procedure for disciplining incompetent or unethical practitioners?
 - What grounds will there be for suspension or revocation of credentials?
- Is it feasible to establish a restitution fund so that the public will be able to recover money lost through actions of unscrupulous practitioners?

Will Regulation Be Harmful to the Public?

- Will competition be restricted by the occupational group, e.g., prohibiting price advertising?
- Will the occupational group control the supply of practitioners?
 - By standards more restrictive than necessary?
 - By restricting entry of those from other states who have substantially similar qualifications?
- Will regulation prevent the optimum utilization of personnel?
 - Will "scope of practice" prevent individuals from other occupational groups from providing services for which they are qualified by training and experience?
- Will regulation increase costs of goods and services to consumers?
- Will regulation decrease availability of practitioners?
- Are there safeguards in law to ensure that the occupational group does not use its powers to promote self-interest over those of public?

How Will the Regulatory Activity Be Administered?

- Will the regulatory entity be composed only of members of occupation?
 - Will there be public members on the regulatory entity? In what percentage?
- What powers will regulatory entity have?
 - Will it review qualifications, examinations, investigations, and disciplining of practitioners?
 - Will it promulgate rules and codes of conduct?
- Will actions of regulatory entity be subject to review?
 - By whom?
 - Will reviewing authority have power to override regulatory entity actions? Which ones?
- How would cost of administering regulatory entity be financed?
 - How will fees be set?
 - Will income from fees go into general fund, departmental fund, or special account controlled by regulatory entity?

Who Is Sponsoring the Regulatory Program?

- Are members of the public sponsoring regulatory program?
- What associations, organizations, or other groups in the state represent practitioners?
 - Approximately how many practitioners belong to each group?
 - What are the different levels of practice in each group?
- Which of the above groups are actively involved in sponsoring regulatory programs?
 - Are other groups supporting the effort? If not, why?

Why Is Regulation Being Sought?

- Is the occupational group seeking to enhance its status by having its own regulatory law?
- Is the occupational group claiming it is prevented from rendering services for which its members are qualified by “scope of practice” statement of another occupation?
 - If so, what efforts have been made to resolve differences?
- Is the occupational group seeking licensure in order to gain reimbursement under federal-state programs or private insurers, e.g., Medicare or Blue Cross?
- Is the public seeking greater accountability of the occupational group?