

THE ONE HUNDRED AND SEVENTH DAY

CARSON CITY (Tuesday), May 19, 2009

Assembly called to order at 11:34 a.m.

Madam Speaker presiding.

Roll called.

All present except Assemblywoman Kirkpatrick, who was excused.

Prayer by the Chaplain, Rabbi Jonathan Freirich.

Thank you again for the honor of providing some opening words today. I hope my words will continue to be interesting and brief—since all of you are standing. Yesterday, I mentioned the two major Jewish holidays of this season—Passover in April and Shavuot, the Feast of Weeks, soon to come at the end of May. Many of you know all about Passover already, the Jewish celebration of freedom through the commemoration of the story of the Exodus from Egypt. In the Hebrews scriptures, Shavuot, the Feast of Weeks, celebrates the successful winter harvest—as Judaism evolved through the centuries, the ancient rabbis connected the celebration of Shavuot with the Israelites receiving the Five Books of Moses at Mount Sinai.

Jewish people have traditionally connected the freedom from slavery with the acceptance of responsibility at Mount Sinai. In other words, freedom does not grant us freedom to do whatever we want, but instead the freedom to enter into responsible relationships with individuals, communities, and our concept of the mystery of the universe.

Let us all remember that freedom and responsibility always depend upon each other. Our freedom to do what we want depends on us acting responsibly to each other and to our local and national communities.

We can now say,

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was referred Senate Bill No. 160, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

ELLEN M. KOIVISTO, *Chair*

Madam Speaker:

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 92, 124, 248, 267, 376, 396, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DAVID P. BOBZIEN, *VICE Chair*

Madam Speaker:

Your Committee on Health and Human Services, to which was referred Senate Bill No. 60, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DEBBIE SMITH, *Chair*

Madam Speaker:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 82, 183, 351, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BERNIE ANDERSON, *Chairman*

Madam Speaker:

Your Committee on Transportation, to which was referred Senate Bills Nos. 245, 394, 409, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

KELVIN ATKINSON, *Chairman*

Madam Speaker:

Your Committee on Ways and Means, to which were referred Senate Bills Nos. 234, 415, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MORSE ARBERRY JR., *Chair*

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, May 18, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 20, 40, 63, 75, 116, 117, 119, 123, 173, 206, 230, 239, 327, 329, 369, 380, 393, 403, 416, 473, 508, 528, 538.

Also, I have the honor to inform your honorable body that the Senate amended, and on this day passed, as amended, Assembly Bill No. 46, Amendment No. 621; Assembly Bill No. 100, Amendment No. 617; Assembly Bill No. 154, Amendment No. 630; Assembly Bill No. 193, Amendment No. 680; Assembly Bill No. 204, Amendment No. 643; Assembly Bill No. 233, Amendment No. 642; Assembly Bill No. 251, Amendment No. 622; Assembly Bill No. 307, Amendment No. 682; Assembly Bill No. 333, Amendment No. 665; Assembly Bill No. 348, Amendment No. 627; Assembly Bill No. 471, Amendment No. 728; Assembly Bill No. 496, Amendment No. 695, and respectfully requests your honorable body to concur in said amendments.

I have the honor to inform your honorable body that the Senate on this day adopted Assembly Concurrent Resolution No. 33.

Also, I have the honor to inform your honorable body that the Senate on this day adopted, as amended, Senate Concurrent Resolution No. 35.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly Amendment No. 614 to Senate Bill No. 77; Assembly Amendment No. 613 to Senate Bill No. 163; Assembly Amendment No. 657 to Senate Bill No. 170; Assembly Amendment No. 570 to Senate Concurrent Resolution No. 5.

Also, I have the honor to inform your honorable body that the Senate on this day respectfully refused to concur in the Assembly Amendment No. 647 to Senate Bill No. 54.

SHERRY L. RODRIGUEZ
Assistant Secretary of the Senate

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 35.

Assemblyman Ocegueda moved that the resolution be referred to the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 305.

Bill read second time.

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

Amendment No. 804.

AN ACT relating to communicable diseases; making various changes concerning dispensing a medication and providing a prescription for the sexual partner of a person diagnosed with a sexually transmitted disease; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill authorizes ~~the provider of health care or, under the direction of a local health officer,~~ an employee of a board of health, under the direction of the local health officer, to :(1) if the board of health has on its premises a pharmacy, dispense a medication for the treatment of the sexual partner of a person who has been diagnosed with a sexually transmitted disease without examining the partner; or (2) if the board of health does not have on its premises a pharmacy, issue a prescription for the treatment of the sexual partner of a person who has been diagnosed with a sexually transmitted disease without examining the partner. This bill further allows the ~~provider of health care or,~~ employee of a board of health to exclude from the prescription the name or other identifying information of the partner if the prescription specifies the purpose for the prescription. This bill also authorizes an employee of a board of health, under the direction of the local health officer, or a practitioner in a federally qualified health center to dispense such a medication or issue such a prescription if the sexual partner of a patient provides the employee or practitioner with a written diagnosis from a provider of health care indicating that the patient has been diagnosed with a sexually transmitted disease. This bill ~~also~~ further requires the State Board of Health to adopt regulations relating to dispensing a medication or providing a prescription pursuant to the provisions of this bill.

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

Section 1. Chapter 441A of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~Except as otherwise provided in this section or a regulation adopted pursuant thereto and notwithstanding any other provision of law, ~~for~~ a provider of health care or, under the direction of the local health officer, an employee of a board of health, under the direction of the local health officer, who diagnoses a patient with a sexually transmitted disease may ~~dispense~~ :~~

(a) If the board of health has on its premises a pharmacy, dispense a medication for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner; or ~~provide~~

(b) If the board of health does not have on its premises a pharmacy, provide a prescription for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner, and may exclude from the prescription the name or other identifying information about the sexual partner if the prescription specifies the purpose for the prescription.

2. A provider of health care who diagnoses a patient with a sexually transmitted disease may provide the patient with a written description of the diagnosis. Except as otherwise provided in this section or a regulation adopted pursuant thereto and notwithstanding any other provision of law, if the sexual partner of a patient provides an employee of a board of health or a practitioner in a federally qualified health center with the written diagnosis provided to the patient pursuant to this subsection, the employee of the board of health, under the direction of the local health officer, or the practitioner may:

(a) If the board of health or health center has on its premises a pharmacy, dispense a medication for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner; or

(b) If the board of health or health center does not have on its premises a pharmacy, provide a prescription for treatment of the sexually transmitted disease for the sexual partner of the patient without examining the partner, and may exclude from the prescription the name or other identifying information about the sexual partner if the prescription specifies the purpose for the prescription.

~~2.~~ 3. The Board shall adopt regulations for dispensing a medication and providing a prescription for treatment of a sexually transmitted disease for the sexual partner of a patient pursuant to this section, including, without limitation, regulations:

(a) For the reporting of such diseases pursuant to NRS 441A.150 and any regulation adopted pursuant to the provisions of chapter 441A of NRS relating to the reporting of communicable diseases;

(b) Prescribing the types of sexually transmitted diseases for which a medication may be dispensed or a prescription may be provided for treatment of a sexually transmitted disease for the sexual partner of a patient without examining the partner; and

(c) Prescribing the protocols for dispensing a medication and providing a prescription for treatment of the sexually transmitted disease for the sexual partner of a patient without examining the partner.

~~{3.}~~ 4. *A person may not dispense a medication or provide a prescription for treatment of a sexually transmitted disease for the sexual partner of a patient without examining the partner if dispensing the medication or providing the prescription is in violation of an ethical requirement or standard of practice which applies to the professional practice of the person.*

~~{4.}~~ 5. *As used in this section:*

(a) "Board of health" means a city, county or district board of health.

(b) "Local health officer" means a city health officer appointed pursuant to NRS 439.430, a county health officer appointed pursuant to 439.290 or a district health officer appointed pursuant to NRS 439.368 or 439.400.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 60.

Bill read second time.

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

Amendment No. 704.

AN ACT relating to public health; requiring the district board of health in certain counties and the State Board of Health in all other counties to evaluate the removal and remediation of methamphetamine and certain other substances; requiring the adoption of certain regulations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog which has not been deemed safe for habitation by a governmental entity or from which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so is a public nuisance. (NRS 40.140, 202.450) ~~{Existing law authorizes cities and counties of this State to adopt ordinances pursuant to which the district attorney may file an action seeking: (1) the abatement of a nuisance; (2) the closure of the property where the nuisance is located or occurring; and (3) penalties against the owner of the property. (NRS 244.3603, 268.4124)}~~ Sections 2 and 4 ~~{6}~~ of this bill provide that the district board of health in a county whose population is 400,000 or more (currently Clark County) or the State Board of Health in all other counties is the governmental entity responsible for determining that the building or place

is safe for habitation. ~~[Section 5 authorizes the board of county commissioners, in consultation with the district board of health or State Board of Health, as applicable, to adopt ordinances to protect the public health, safety and welfare for the incorporated areas of the county.]~~

Existing law provides that in any sale, lease or rental of real property, the fact that the property is or has been the site of a crime that involves any quantity of methamphetamine must be disclosed to the buyer, lessee or tenant unless: (1) all materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or (2) the property has been deemed safe for habitation by a governmental entity. (NRS 40.770) Existing law requires similar disclosures to a transferee of a manufactured home, mobile home or commercial coach that is or has been the site of a crime that involves any quantity of methamphetamine. (NRS 489.776) **Sections 3 and 9** of this bill provide that the district board of health in a county whose population is 400,000 or more or the State Board of Health in all other counties is the governmental entity responsible for determining that the property is safe for habitation.

Section 1 of this bill requires a district board of health and the State Board of Health to evaluate the removal or remediation of substances involving a controlled substance, immediate precursor or controlled substance analog and any material, compound, mixture or preparation that contains any quantity of methamphetamine. **Section 1** further requires the State Environmental Commission to adopt regulations: (1) concerning the monitoring of the removal or remediation of such substances; and (2) establishing standards pursuant to which a property, building or place may be deemed safe for habitation.

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

Section 1. Chapter 439 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board of health or its agent shall, for the purposes of NRS 40.140, 40.770, 202.450, ~~244.3603, 268.4124~~ and 489.776, evaluate the removal or remediation by any entity certified or licensed to do so of:

- (a) Substances involving a controlled substance, immediate precursor or controlled substance analog; and**
- (b) Any material, compound, mixture or preparation that contains any quantity of methamphetamine.**

2. The State Environmental Commission shall adopt regulations:

- (a) To carry out the provisions of subsection 1;**
- (b) Establishing standards pursuant to which a building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog may be**

deemed safe for habitation for the purposes of NRS 40.140, ~~and~~ 202.450 ; ~~244.3603 and 268.4124,~~ and

(c) Establishing standards pursuant to which any property that is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation that contains any quantity of methamphetamine may be deemed safe for habitation for the purposes of NRS 40.770 and 489.776.

3. As used in this section:

(a) "Board of health" means:

(1) In a county whose population is 400,000 or more, the district board of health; or

(2) In a county whose population is less than 400,000, the State Board of Health.

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 2. NRS 40.140 is hereby amended to read as follows:

40.140 1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog; or

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by ~~a governmental entity;~~ *the board of health;* or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog,

↪ is a nuisance, and the subject of an action. The action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

2. It is presumed:

(a) That an agricultural activity conducted on farmland, consistent with good agricultural practice and established before surrounding nonagricultural activities is reasonable. Such activity does not constitute a nuisance unless the activity has a substantial adverse effect on the public health or safety.

(b) That an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

3. A shooting range does not constitute a nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range in operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range that begins operation after October 1, 1997.

➤ A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

4. As used in this section:

(a) *"Board of health" has the meaning ascribed to it in section 1 of this act.*

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

~~{(b)}~~ (c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

~~{(c)}~~ (d) "Shooting range" means an area designed and used for archery or sport shooting, including, but not limited to, sport shooting that involves the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

Sec. 3. NRS 40.770 is hereby amended to read as follows:

40.770 1. Except as otherwise provided in subsection 6, in any sale, lease or rental of real property, the fact that the property is or has been:

(a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;

(b) The site of any crime punishable as a felony other than a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or

(c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property,

➤ is not material to the transaction.

2. In any sale, lease or rental of real property, the fact that a sex offender, as defined in NRS 179D.095, resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to chapter

449 of NRS is located near the property being sold, leased or rented is not material to the transaction.

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and his agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or

(b) The property has been deemed safe for habitation by ~~the board of health~~ ~~entity~~ ~~the board of health~~.

7. As used in this section ~~the facility~~:

(a) **"Board of health" has the meaning ascribed to it in section 1 of this act.**

(b) **"Facility for transitional living for released offenders" has the meaning ascribed to it in NRS 449.0055.**

Sec. 4. NRS 202.450 is hereby amended to read as follows:

202.450 1. A public nuisance is a crime against the order and economy of the State.

2. Every place:

(a) Wherein any gambling, bookmaking or pool selling is conducted without a license as provided by law, or wherein any swindling game or device, or bucket shop, or any agency therefor is conducted, or any article, apparatus or device useful therefor is kept;

(b) Wherein any fighting between animals or birds is conducted;

(c) Wherein any dog races are conducted as a gaming activity;

(d) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution;

(e) Wherein a controlled substance, immediate precursor or controlled substance analog is unlawfully sold, served, stored, kept, manufactured, used or given away; or

(f) Where vagrants resort,

↪ is a public nuisance.

3. Every act unlawfully done and every omission to perform a duty, which act or omission:

(a) Annoys, injures or endangers the safety, health, comfort or repose of any considerable number of persons;

(b) Offends public decency;

(c) Unlawfully interferes with, befouls, obstructs or tends to obstruct, or renders dangerous for passage, a lake, navigable river, bay, stream, canal, ditch, millrace or basin, or a public park, square, street, alley, bridge, causeway or highway; or

(d) In any way renders a considerable number of persons insecure in life or the use of property,

↪ is a public nuisance.

4. A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog is a public nuisance if the building or place has not been deemed safe for habitation by ~~[a governmental entity]~~ **the board of health** and:

(a) The owner of the building or place allows the building or place to be used for any purpose before all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have been removed from or remediated on the building or place by an entity certified or licensed to do so; or

(b) The owner of the building or place fails to have all materials or substances involving the controlled substance, immediate precursor or controlled substance analog removed from or remediated on the building or place by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog.

5. Agricultural activity conducted on farmland consistent with good agricultural practice and established before surrounding nonagricultural activities is not a public nuisance unless it has a substantial adverse effect on the public health or safety. It is presumed that an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

6. A shooting range is not a public nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range that begins operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range in operation after October 1, 1997.

↪ A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in

paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

7. As used in this section:

(a) *"Board of health" has the meaning ascribed to it in section 1 of this act.*

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

~~[(b)]~~ (c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

~~[(e)]~~ (d) "Shooting range" has the meaning ascribed to it in NRS 40.140.

Sec. 5. ~~[NRS 244.3603 is hereby amended to read as follows:~~

~~244.3603 1. Each board of county commissioners, in consultation with the board of health, may, by ordinance, to protect the public health, safety and welfare of the residents of the county, adopt procedures pursuant to which the district attorney or an attorney appointed by the board of county commissioners may file an action in a court of competent jurisdiction to:~~

~~(a) Seek the abatement of a chronic nuisance that is located or occurring within the incorporated or unincorporated area of the county;~~

~~(b) If applicable, seek the closure of the property where the chronic nuisance is located or occurring; and~~

~~(c) If applicable, seek penalties against the owner of the property within the incorporated or unincorporated area of the county and any other appropriate relief [.] , including, without limitation, placing a lien on the property.~~

~~2. An ordinance adopted pursuant to subsection 1 must:~~

~~(a) Contain procedures pursuant to which the owner of the property is:~~

~~(1) Sent a notice, by certified mail, return receipt requested, by the sheriff or other person authorized to issue a citation of the existence on his property of nuisance activities and the date by which he must abate the condition to prevent the matter from being submitted to the district attorney for legal action; and~~

~~(2) Afforded an opportunity for a hearing before a court of competent jurisdiction.~~

~~(b) Provide that the date specified in the notice by which the owner must abate the condition is tolled for the period during which the owner requests a hearing and receives a decision.~~

~~(c) Provide the manner in which the county will recover money expended to abate the condition on the property if the owner fails to abate the condition.~~

~~3. If the court finds that a chronic nuisance exists and action is necessary to avoid serious threat to the public welfare or the safety or health of the occupants of the property, the court may order the county to secure and close the property until the nuisance is abated and may:~~

~~(a) Impose a civil penalty of not more than \$500 per day for each day that the condition was not abated after the date specified in the notice by which the owner was required to abate the condition;~~

~~(b) Order the owner to pay the county for the cost incurred by the county in abating the condition; and~~

~~(c) Order any other appropriate relief.~~

~~4. In addition to any other reasonable means authorized by the court for the recovery of money expended by the county to abate the chronic nuisance, the board may make the expense a special assessment against the property upon which the chronic nuisance is located or occurring. The special assessment may be collected pursuant to the provisions set forth in subsection 4 of NRS 244.360.~~

~~5. As used in this section:~~

~~(a) "Board of health" has the meaning ascribed to it in section 1 of this act.~~

~~(b) A "chronic nuisance" exists:~~

~~(1) When three or more nuisance activities exist or have occurred during any 90-day period on the property;~~

~~(2) When a person associated with the property has engaged in three or more nuisance activities during any 90-day period on the property or within 100 feet of the property;~~

~~(3) When the property has been the subject of a search warrant based on probable cause of continuous or repeated violations of chapter 459 of NRS;~~

~~(4) When a building or place is used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog;~~

~~(5) When a building or place was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:~~

~~(I) The building or place has not been deemed safe for habitation by [a governmental entity;] **the board of health;** or~~

~~(II) All materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed from or remediated on the building or place by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog.~~

~~[(b)] (c) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.~~

~~[(c)] (d) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.~~

~~[(d)] (e) "Nuisance activity" means:~~

~~(1) Criminal activity;~~

~~(2) The presence of debris, litter, garbage, rubble, abandoned or junk vehicles or junk appliances;~~

~~(3) Violations of building codes, housing codes or any other codes regulating the health or safety of occupants of real property;~~

~~(4) Excessive noise and violations of curfew; or~~

~~(5) Any other activity, behavior or conduct defined by the board to constitute a public nuisance.~~

~~[(c)] ~~(f)~~ "Person associated with the property" means:~~

~~(1) The owner of the property;~~

~~(2) The manager or assistant manager of the property;~~

~~(3) The tenant of the property; or~~

~~(4) A person who, on the occasion of a nuisance activity, has:~~

~~(I) Entered, patronized or visited;~~

~~(II) Attempted to enter, patronize or visit; or~~

~~(III) Waited to enter, patronize or visit,~~

~~the property or a person present on the property.] (Deleted by amendment.)~~

Sec. 6. ~~[NRS 268.4124 is hereby amended to read as follows:~~

~~268.4124 1. [The] *To the extent consistent with an ordinance adopted pursuant to NRS 244.3603,* the governing body of a city may, by ordinance, to protect the public health, safety and welfare of the residents of the city, adopt procedures pursuant to which the city attorney may file an action in a court of competent jurisdiction to:~~

~~(a) Seek the abatement of a chronic nuisance that is located or occurring within the city;~~

~~(b) If applicable, seek the closure of the property where the chronic nuisance is located or occurring; and~~

~~(c) If applicable, seek penalties against the owner of the property within the city and any other appropriate relief.~~

~~2. An ordinance adopted pursuant to subsection 1 must:~~

~~(a) Contain procedures pursuant to which the owner of the property is:~~

~~(1) Sent notice, by certified mail, return receipt requested, by the city police or other person authorized to issue a citation, of the existence on his property of two or more nuisance activities and the date by which he must abate the condition to prevent the matter from being submitted to the city attorney for legal action; and~~

~~(2) Afforded an opportunity for a hearing before a court of competent jurisdiction.~~

~~(b) Provide that the date specified in the notice by which the owner must abate the condition is tolled for the period during which the owner requests a hearing and receives a decision.~~

~~(c) Provide the manner in which the city will recover money expended for labor and materials used to abate the condition on the property if the owner fails to abate the condition.~~

~~3. If the court finds that a chronic nuisance exists and emergency action is necessary to avoid immediate threat to the public health, welfare or safety, the court shall order the city to secure and close the property for a period not~~

~~to exceed 1 year or until the nuisance is abated, whichever occurs first, and may:~~

~~(a) Impose a civil penalty of not more than \$500 per day for each day that the condition was not abated after the date specified in the notice by which the owner was required to abate the condition;~~

~~(b) Order the owner to pay the city for the cost incurred by the city in abating the condition;~~

~~(c) If applicable, order the owner to pay reasonable expenses for the relocation of any tenants who are affected by the chronic nuisance; and~~

~~(d) Order any other appropriate relief.~~

~~4. In addition to any other reasonable means authorized by the court for the recovery of money expended by the city to abate the chronic nuisance, the governing body may make the expense a special assessment against the property upon which the chronic nuisance is or was located or occurring. The special assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and is subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes are applicable to such a special assessment.~~

~~5. As used in this section:~~

~~(a) *"Board of health"* has the meaning ascribed to it in section 1 of this act.~~

~~(b) A "chronic nuisance" exists:~~

~~(1) When three or more nuisance activities exist or have occurred during any 30 day period on the property.~~

~~(2) When a person associated with the property has engaged in three or more nuisance activities during any 30 day period on the property or within 100 feet of the property.~~

~~(3) When the property has been the subject of a search warrant based on probable cause of continuous or repeated violations of chapter 459 of NRS.~~

~~(4) When a building or place is used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog.~~

~~(5) When a building or place was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:~~

~~(I) The building or place has not been deemed safe for habitation by [a governmental entity;] *the board of health*; or~~

~~(II) All materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed from or remediated on the building or place by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog.~~

~~[(b)] (c) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.~~

~~[(c)] (d) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.~~

~~[(d)] (e) "Nuisance activity" means:~~

- ~~(1) Criminal activity;~~
- ~~(2) The presence of debris, litter, garbage, rubble, abandoned or junk vehicles or junk appliances;~~
- ~~(3) Excessive noise and violations of curfew; or~~
- ~~(4) Any other activity, behavior or conduct defined by the governing body to constitute a public nuisance.~~

~~[(e)] (f) "Person associated with the property" means a person who, on the occasion of a nuisance activity, has:~~

- ~~(1) Entered, patronized or visited;~~
- ~~(2) Attempted to enter, patronize or visit; or~~
- ~~(3) Waited to enter, patronize or visit;~~

~~— a property or a person present on the property.] (Deleted by amendment.)~~

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 489.776 is hereby amended to read as follows:

489.776 1. Except as otherwise provided in this section and unless required to make a disclosure pursuant to NRS 40.770, if a manufactured home, mobile home or commercial coach is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine, a transferor or his agent who has actual knowledge of such information shall disclose the information to a transferee or his agent.

2. The disclosure described in subsection 1 is not required if:

(a) All materials and substances involving methamphetamine have been removed from or remediated on the manufactured home, mobile home or commercial coach by an entity certified or licensed to do so; or

(b) The manufactured home, mobile home or commercial coach has been deemed safe for habitation by ~~[a governmental entity.]~~ **the board of health.**

3. The disclosure described in subsection 1 is not required for any sale or other transfer or intended sale or other transfer of a manufactured home, mobile home or commercial coach by a transferor:

(a) To any co-owner of the manufactured home, mobile home or commercial coach, the spouse of the transferor or a person related within the third degree of consanguinity **or affinity** to the transferor; or

(b) If the transferor is a dealer and this is the first sale or transfer of a new manufactured home, mobile home or commercial coach.

4. The Division may adopt regulations to carry out the provisions of this section.

5. *As used in this section, "board of health" has the meaning ascribed to it in section 1 of this act.*

Sec. 10. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act, and on July 1, 2009, for all other purposes.

Assemblywoman Smith moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 82.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 733.

SUMMARY—Makes various changes relating to ~~technological crime and the seizure of certain funds associated with~~ prepaid or stored value cards. (BDR 14-266)

AN ACT relating to crimes; ~~revising the provisions relating to the disclosure of certain electronic information by certain providers of certain technological services during investigations involving technological crimes; revising the provisions relating to the forfeiture of property and proceeds attributable to technological crimes;~~ establishing procedures for ~~the freezing and seizing of~~ identifying certain funds associated with prepaid or stored value cards; ~~making various other changes relating to technological crimes;~~ authorizing certain contracts to carry out the provisions relating to the identification of such funds; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~{Sections 2 and 14 of this bill repeal the existing provisions of Nevada law pertaining to the disclosure of certain information by a provider of Internet service and replace those existing provisions with new provisions authorizing the disclosure of certain information under certain circumstances by a provider of electronic communication service or a remote computing service which conform with, and which are closely patterned after, the requirements of applicable federal law. (NRS 193.340, 18 U.S.C. § 2703)}~~

~~Sections 3-10 of this~~ This bill ~~{establish}~~ establishes procedures to allow law enforcement to ~~{freeze and seize}~~ identify funds associated with prepaid or stored value cards.

~~{ Section 6 of this~~ This bill allows a peace officer to ~~{freeze for 10 business days the}~~ determine the name, personal information and amount of funds associated with a prepaid or stored value card in certain circumstances where there is probable cause to believe that the prepaid or stored value card is an instrumentality of a crime. ~~{and requires the peace officer to provide notice of the freeze to the financial institution identified as the issuer of the card.~~

~~Section 7 of this bill allows a peace officer to seize the funds associated with a prepaid or stored value card if the financial institution identified as the~~

~~issuer of the card is not located in this country and the peace officer has probable cause to believe a freeze will not be honored by the financial institution.~~

~~Section 8 of this bill provides procedures for the issuance of warrants to seize funds associated with prepaid or stored value cards.~~

~~Section 9 of this bill provides a procedure for a person aggrieved by the seizure of the funds associated with a prepaid or stored value card pursuant to a warrant to file a motion for the return of the funds and the suppression of the evidence obtained pursuant to the warrant.~~

~~Section 10 of~~ **Finally,** this bill allows the Attorney General or a state or local law enforcement agency to enter into a contract to carry out the provisions of this bill concerning the ~~freezing and seizing~~ **identification** of funds.

~~Section 11 of this bill revises the provisions relating to the forfeiture of property and proceeds attributable to any felony crime to include, specifically, reference to a “prepaid or stored value card” and funds associated with a prepaid or stored value card as property that is subject to forfeiture. (NRS 179.1162)~~

~~Section 12 of this bill revises the provisions relating to the forfeiture of property and proceeds attributable to technological crimes to include, specifically, reference to a “prepaid or stored value card” and funds associated with a prepaid or stored value card as property that is subject to forfeiture. (NRS 179.1215)~~

~~Section 13 of this bill makes a technical correction to include a necessary reference to the provisions relating to forfeiture of property and proceeds attributable to technological crimes. (NRS 179.1211-179.1235)~~

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

Section 1. Chapter 179 of NRS is hereby amended by adding thereto ~~the provisions set forth as sections 1 to 10, inclusive, of this act.~~ **a new section to read as follows:**

1. If a peace officer:

(a) Has detained a person pursuant to NRS 171.123, has arrested a person pursuant to any statutory provision authorizing or requiring the arrest of a person or is investigating a crime for which a suspect:

(1) Has not been identified; or

(2) Has been identified but was not reasonably believed by the peace officer to possess or control a prepaid or stored value card before the peace officer lawfully obtained possession of a prepaid or stored value card;

(b) Has lawfully obtained possession of a prepaid or stored value card; and

(c) Has probable cause to believe that the prepaid or stored value card represents the proceeds of a crime or has been used, is being used or is intended for use in the commission of a crime,

↪ the peace officer may use an electronic device, a necessary electronic communications network or any other reasonable means to determine the name, personal information and amount of funds associated with the prepaid or stored value card.

2. The Attorney General, his designee or any state or local law enforcement agency in this State may enter into a contract with any person to assist in carrying out the provisions of this section.

3. Before entering into a contract pursuant to subsection 2, the Attorney General, his designee or a state or local law enforcement agency shall consider the following factors:

(a) The functional benefits to all law enforcement agencies in this State of maintaining either a single database or a series of interlinked databases relating to possible criminal use of prepaid or stored value cards.

(b) The overall costs of establishing and maintaining such a database or databases.

(c) Any other factors that the Attorney General, his designee or the state or local law enforcement agency believe to be relevant.

4. Any contract entered into pursuant to this section:

(a) May be a sole source contract, not subject to the rules and requirements of open competitive bidding, if the period of the contract does not exceed 5 years; and

(b) Must indemnify and hold harmless any person who enters into a contract pursuant to this section, and any officers, employees or agents of that person, for claims for actions taken at the direction of a law enforcement agency in this State and within the scope of the contract .

5. As used in this section:

(a) "Prepaid or stored value card" means any instrument or device used to access funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(b) "Proceeds" has the meaning ascribed to it in NRS 179.1161.

~~Sec. 2. 1. In investigating criminal activity that involves or may involve a technological crime, a governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system:~~

~~(a) For 180 days or less, only by a search warrant issued pursuant to NRS 179.015 to 179.115, inclusive.~~

~~(b) For more than 180 days, by any means available pursuant to subsection 2.~~

~~2. A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this subsection applies.~~

~~(a) Without prior notice to the subscriber or customer from the governmental entity by obtaining a search warrant pursuant to NRS 179.015 to 179.115, inclusive; or~~

~~(b) With prior notice to the subscriber or customer from the governmental entity:~~

~~(1) By serving a subpoena; or~~

~~(2) By obtaining a court order for such disclosure pursuant to subsection 7, except that delayed notice may be given pursuant to subsection 11.~~

~~3. Subsection 2 applies with respect to any wire or electronic communication that is held or maintained on that remote computing service:~~

~~(a) On behalf of, and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such remote computing service; and~~

~~(b) Solely for the purpose of providing storage or computer processing services to such subscriber or customer, if such remote computing service is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.~~

~~4. A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service, not including the contents of communications, only when the governmental entity:~~

~~(a) Obtains a search warrant pursuant to NRS 179.015 to 179.115, inclusive;~~

~~(b) Obtains a court order for such disclosure pursuant to subsection 7;~~

~~(c) Has the consent of the subscriber or customer to such disclosure; or~~

~~(d) Seeks information pursuant to subsection 5.~~

~~5. A provider of electronic communication service or remote computing service shall disclose to a governmental entity the:~~

~~(a) Name;~~

~~(b) Address;~~

~~(c) Local and long distance telephone connection records, or records of session times and durations;~~

~~(d) Length of service, including start date, and types of service utilized;~~

~~(e) Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and~~

~~(f) Means and source of payment for such service, including any credit card or bank account number;~~

~~→ of a subscriber to or customer of such service when the governmental entity obtains a subpoena or uses any means available pursuant to subsection 4.~~

~~6. A governmental entity receiving records or information pursuant to subsection 4 or 5 is not required to provide notice to a subscriber or customer.~~

~~7. A court order for disclosure pursuant to subsection 2, 4 or 5 may be issued by any court of competent jurisdiction only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation that involves or may involve a technological crime. A court issuing an order pursuant to this subsection, on a motion made promptly by the provider of wire or electronic communication service or remote computing service, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on the provider of wire or electronic communication service or remote computing service.~~

~~8. If a person who has been issued a subpoena pursuant to this section:~~
~~(a) Charges a fee for providing the information, the fee must not exceed the actual costs for providing the information.~~

~~(b) Refuses to produce any information that the subpoena requires, the person who issued the subpoena may apply to the district court for the judicial district in which the investigation is being carried out for the enforcement of the subpoena in the manner provided by law for the enforcement of a subpoena in a civil action.~~

~~9. A provider of wire or electronic communication service or remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. Such records and other evidence must be retained for a period of 90 days, which may be extended for an additional 90 day period upon request by the governmental entity.~~

~~10. Notwithstanding the provisions of NRS 179.015 to 179.115, inclusive, the presence of a peace officer is not required for service or execution of a search warrant requiring disclosure by a provider of electronic communication service or remote computing service of the contents of communications or records or other information pertaining to a subscriber to or customer of such service.~~

~~11. The notice to a subscriber or customer required by this section may be delayed for a period not to exceed 90 days under any of the following circumstances:~~

~~(a) If the applicant for a search warrant or court order requests a delay of notification and the court finds that delay is necessary to protect the safety of any person or to prevent flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation.~~

~~(b) If the investigator or prosecuting attorney proceeding by subpoena executes a written certification that there is reason to believe that notice to the subscriber or party may result in danger to the safety of any person, flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation. A true copy of the certification must be retained with the subpoena.~~

~~➔ If further delay of notification is necessary, an extension not to exceed 90 days may be obtained by application to the court.~~

~~12. No cause of action may lie in any court against any provider of wire or electronic communication service or remote computing service, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order, search warrant, subpoena or other process pursuant to this section.~~

~~13. As used in this section:~~

~~(a) The terms “contents,” “electronic communication,” “electronic communication service,” “electronic communications system,” “electronic storage,” “oral communication” and “wire communication” have the meanings ascribed to them in 18 U.S.C. § 2510.~~

~~(b) “Governmental entity” includes the following law enforcement officials, and any authorized representative thereof:~~

~~(1) The Attorney General;~~

~~(2) A district attorney;~~

~~(3) A sheriff in this State;~~

~~(4) Any organized police department of any municipality in this State;~~

~~(5) Any school police unit of any school district in this State; and~~

~~(6) Any department of this State engaged in the enforcement of any criminal law of this State.~~

~~(c) “Remote computing service” has the meaning ascribed to it in 18 U.S.C. § 2711.] (Deleted by amendment.)~~

~~Sec. 3. [As used in sections 3 to 10, inclusive of this act, unless the context otherwise requires, the words and terms defined in sections 4 and 5 of this act have the meanings ascribed to them in those sections.] (Deleted by amendment.)~~

~~Sec. 4. [“Prepaid or stored value card” means any instrument or device used to access funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.] (Deleted by amendment.)~~

~~Sec. 5. [“Proceeds” has the meaning ascribed to it in NRS 179.1161.] (Deleted by amendment.)~~

~~Sec. 6. [I. If a peace officer:~~

~~(a) Has detained a person pursuant to NRS 171.123, has arrested a person pursuant to any statutory provision authorizing or requiring the arrest of a person or is investigating a crime for which a suspect;~~

~~(1) Has not been identified; or~~

~~(2) Has been identified but was not reasonably believed by the peace officer to possess or control a prepaid or stored value card before the peace officer lawfully obtained possession of a prepaid or stored value card;~~

~~(b) Has lawfully obtained possession of a prepaid or stored value card; and~~

~~(c) Has probable cause to believe that the prepaid or stored value card represents the proceeds of a crime or has been used, is being used or is intended for use in the commission of a crime;~~

~~the peace officer may use an electronic device, a necessary electronic communications network or any other reasonable means to determine the name, personal information and the amount of funds associated with the prepaid or stored value card, [and freeze the funds associated with the prepaid or stored value card, or any portion thereof, for a period of not more than 10 business days.]~~

~~2. Upon freezing any funds pursuant to this section, the peace officer shall give notice, or cause notice to be given, to any financial institution identified as the issuer of the prepaid or stored value card. Except as otherwise provided in this subsection, such notice must be in electronic form and must include, without limitation, the amount of funds frozen, the duration of the freeze and sufficient contact information to allow the holder of the funds to request the lifting of the freeze. If notice in electronic form cannot be reasonably effectuated, the peace officer shall make a reasonable effort under the circumstances to give the notice required by this subsection or cause such notice to be given. (Deleted by amendment.)~~

Sec. 7. ~~{1. If a peace officer has probable cause to believe the financial institution identified as the issuer of the prepaid or stored value card is located outside the United States and will not honor a freeze imposed pursuant to section 6 of this act, the peace officer may use an electronic device, a necessary communications network or any other reasonable means to seize the funds associated with the prepaid or stored value card, or any portion thereof.~~

~~2. Upon seizing any funds pursuant to this section, the peace officer shall give notice, or cause notice to be given, to the financial institution identified as the issuer of the prepaid or stored value card. Except as otherwise provided in this subsection, such notice must be in electronic form and must include, without limitation, the amount of funds seized, sufficient information to allow the financial institution to contact the peace officer or his law enforcement agency and a statement that the seizure is subject to the provisions of NRS 179.1156 to 179.121, inclusive, or 179.1211 to 179.1235, inclusive. If notice in electronic form cannot be reasonably effectuated, the peace officer shall make a reasonable effort under the circumstances to give the notice required by this subsection or cause such notice to be given.~~

~~3. A person aggrieved by the seizure of any funds pursuant to this section may move the court having jurisdiction where the peace officer who~~

~~seized the funds is headquartered for the return of the seized funds and to suppress the use as evidence of the seized funds and any identifying information obtained in connection with the seizure on the ground that there was not probable cause for believing that the funds represent the proceeds of a crime or had been used, are being used or were intended for use in the commission of a crime.~~

~~4. If the court hearing a motion filed pursuant to subsection 3 finds that there was not probable cause for believing that the funds represent the proceeds of a crime or had been used, are being used or were intended for use in the commission of a crime, the court shall restore the funds, unless the funds are otherwise subject to lawful detention, and the funds and any identifying information obtained in connection with the seizure are not admissible evidence at any trial or hearing. (Deleted by amendment.)~~

Sec. 8. ~~[1. A magistrate of the State of Nevada may issue a warrant to seize the funds associated with a prepaid or stored value card, or any portion thereof, if the magistrate finds that there is probable cause to believe that the funds to be seized:~~

~~(a) Were stolen or embezzled in violation of the laws of the State of Nevada, or of any other state or the United States;~~

~~(b) Were designed or intended for use, or are being or had been used, as the means of committing a criminal offense; or~~

~~(c) Constitute evidence which tends to show that a criminal offense has been committed or that a particular person committed a criminal offense.~~

~~2. Except as otherwise provided in subsection 3, the warrant described in this section may issue only on affidavit or affidavits sworn to before the magistrate and establishing the grounds for issuing the warrant.~~

~~3. In lieu of the affidavit required by subsection 2, the magistrate may take an oral statement given under oath, which must be recorded in the presence of the magistrate or in his immediate vicinity by a certified court reporter or by electronic means, transcribed, certified by the reporter if he recorded it and certified by the magistrate. The statement must be filed with the clerk of the court.~~

~~4. Upon a showing of good cause, the magistrate may order an affidavit or a recording of an oral statement given pursuant to this section to be sealed. Upon a showing of good cause, a court may cause the affidavit or recording to be unsealed.~~

~~5. A warrant issued pursuant to this section must be directed to a peace officer who is able to execute the warrant through the electronic seizure of the funds. The warrant must command the peace officer to seize the funds associated with the prepaid or stored value card, or any portion thereof, and:~~

~~(a) State the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof; or~~

~~(b) Incorporate by reference the affidavit or oral statement upon which it is based.~~

~~6. A warrant issued pursuant to this section must designate the magistrate to whom it is to be returned.~~

~~7. A warrant issued pursuant to this section may be executed and returned only within 10 days of its date.~~

~~8. The peace officer executing a warrant issued pursuant to this section shall give notice, or cause notice to be given, to any financial institution identified as the issuer of the prepaid or stored value card. Except as otherwise provided in this subsection, such notice must be in electronic form and must include, without limitation, the alleged crime associated with the seizure, the amount of funds seized, the manner in which the financial institution may obtain a copy of the warrant and the phone number and address of the clerk of the court having jurisdiction where the warrant was issued. If notice in electronic form cannot be reasonably effectuated, the peace officer shall make a reasonable effort under the circumstances to give the notice required by this subsection or cause such notice to be given.~~

~~9. The return must be made promptly and be accompanied by any physical evidence of the seizure.~~

~~10. The magistrate who has issued a warrant pursuant to this section shall attach to the warrant a copy of the return, any physical evidence of the seizure and any other papers in connection therewith and shall file them with the clerk of the court having jurisdiction where the warrant was issued.~~

~~11. Any funds seized to this section must be maintained in an escrow account, or other similar account, in a national bank that is chartered and regulated by the Office of the Comptroller of the Currency of the United States Department of the Treasury. The funds must be maintained pursuant to procedures that ensure appropriate accounting and auditing.]~~
(Deleted by amendment.)

Sec. 9. ~~[1. A person aggrieved by the seizure of funds pursuant to section 8 of this act may move the court having jurisdiction where the warrant was issued for the return of the seized funds and to suppress the use as evidence of the seized funds and any identifying information obtained in connection with the seizure on the grounds that:~~

- ~~(a) The funds were illegally seized without a warrant;~~
- ~~(b) The warrant is insufficient on its face;~~
- ~~(c) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or~~
- ~~(d) The warrant was illegally executed.~~

~~➤ The judge shall receive evidence on any issue of fact necessary to the decision of the motion.~~

~~2. If a motion filed pursuant to this section is granted, the funds must be restored, unless otherwise subject to lawful detention, and the funds and any identifying information obtained in connection with the seizure is not admissible evidence at any hearing or trial.~~

~~3.—Any motion to suppress evidence may also be made in the court where the trial is to take place. The motion must be made before trial or hearing, unless opportunity to file the motion did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.] (Deleted by amendment.)~~

Sec. 10. ~~[1.—The Attorney General, his designee or any state or local law enforcement agency in this State may enter into a contract with any person to assist in carrying out the provisions of sections 3 to 10, inclusive, of this act.~~

~~2.—Before entering into a contract pursuant to subsection 1, the Attorney General, his designee or a state or local law enforcement agency shall consider the following factors:~~

~~(a) The functional benefits to all law enforcement agencies in this State of maintaining either a single database or a series of interlinked databases relating to possible criminal use of prepaid or stored value cards.~~

~~(b) The overall costs of establishing and maintaining such a database or databases.~~

~~(c) Any other factors that the Attorney General, his designee or the state or local law enforcement agency believe to be relevant.~~

~~3.—Any contract entered into pursuant to this section:~~

~~(a) May be a sole source contract, not subject to the rules and requirements of open competitive bidding, if the period of the contract does not exceed 5 years;~~

~~(b) Must ensure that the freeze or seizure of funds pursuant to sections 3 to 10, inclusive, of this act does not deprive the financial institution subject to the freeze or seizure of interchange income; and~~

~~(c) Must indemnify and hold harmless any person who enters into a contract pursuant to this section, and any officers, employees or agents of that person, for claims for actions taken;~~

~~(1) At the direction of a law enforcement agency in this State and within the scope of the contract and sections 3 to 10, inclusive, of this act; and~~

~~(2) Pursuant to any warrant issued pursuant to section 8 of this act.]~~

~~(Deleted by amendment.)~~

Sec. 11. ~~[NRS 179.1162 is hereby amended to read as follows:~~

~~179.1162—“Property” includes any:~~

~~1.—Real property or interest in real property;~~

~~2.—Fixture or improvement to real property;~~

~~3.—Personal property, whether tangible or intangible, or interest in personal property;~~

~~4.—Conveyance, including any aircraft, vehicle or vessel;~~

~~5.—Money, security or negotiable instrument;~~

~~6.—Proceeds;~~

~~7.—Prepaid or stored value card and funds associated with a prepaid or stored value card. As used in this subsection, “prepaid or stored value~~

~~card” has the meaning ascribed to it in section 4 of this act.] (Deleted by amendment.)~~

Sec. 12. ~~[NRS 179.1215 is hereby amended to read as follows:~~

~~179.1215 “Property” includes, without limitation, any:~~

~~1. Real property or interest in real property.~~

~~2. Fixture or improvement to real property.~~

~~3. Personal property, whether tangible or intangible, or interest in personal property.~~

~~4. Conveyance, including, without limitation, any aircraft, vehicle or vessel.~~

~~5. Money, security or negotiable instrument.~~

~~6. Proceeds.~~

~~7. Prepaid or stored value card and funds associated with a prepaid or stored value card. As used in this subsection, “prepaid or stored value card” has the meaning ascribed to it in section 4 of this act.] (Deleted by amendment.)~~

Sec. 13. ~~[NRS 200.760 is hereby amended to read as follows:~~

~~200.760 All assets derived from or relating to any violation of NRS 200.366, 200.710 to 200.730, inclusive, or 201.230 are subject to forfeiture. A proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.119, inclusive, or 179.1211 to 179.1235, inclusive.] (Deleted by amendment.)~~

Sec. 14. ~~[NRS 193.340 is hereby repealed.] (Deleted by amendment.)~~

Sec. 15. This act becomes effective on July 1, 2009.

†

TEXT OF REPEALED SECTION

~~193.340 Required disclosure of certain information by provider of Internet service; penalty; issuance and enforcement of administrative subpoena; fee for information.~~

~~1. A provider of Internet service who violates the provisions of 18 U.S.C. § 2703 is guilty of a misdemeanor and shall be punished by a fine of not less than \$50 or more than \$500 for each violation.~~

~~2. In investigating criminal activity that involves or may involve the use of a computer, the Attorney General, a district attorney, the sheriff of any county in this State, the head of any organized police department of any municipality in this State, the head of any department of this State engaged in the enforcement of any criminal law of this State and any sheriff or chief of police of a municipality may, if there is reasonable cause to believe that an individual subscriber or customer of a provider of Internet service has committed an offense through the use of the services of the provider of Internet service, issue a subpoena to carry out the procedure set forth in 18 U.S.C. § 2703 to compel the provider of Internet service to provide information concerning the individual subscriber or customer that the provider of Internet service is required to disclose pursuant to 18 U.S.C. § 2703.~~

~~3.—If a person who has been issued a subpoena pursuant to subsection 2 charges a fee for providing the information, the fee must not exceed the actual cost for providing the information.~~

~~4.—If a person who has been issued a subpoena pursuant to subsection 2 refuses to produce any information that the subpoena requires, the person who issued the subpoena may apply to the district court for the judicial district in which the investigation is being carried out for the enforcement of the subpoena in the manner provided by law for the enforcement of a subpoena in a civil action.~~

~~5.—As used in this section, “provider of Internet service” has the meaning ascribed to it in NRS 205.4758, but does not include a public library when it is engaged in providing access to the Internet.~~

Assemblyman Anderson moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 92.

Bill read second time.

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

Amendment No. 735.

AN ACT relating to notaries public; providing for electronic notarization; authorizing the Secretary of State to appoint electronic notaries public; revising provisions for the appointment of resident and nonresident notaries public; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, the Secretary of State is authorized to appoint notaries public in this State. (NRS 240.010) **Sections 3-26** of this bill enact the Electronic Notary Public Authorization Act, which authorizes the Secretary of State to appoint electronic notaries public who will be authorized to notarize electronic documents.

Sections 2 and 5-10 of this bill set forth various definitions relating to electronic notarization. **Section 12** of this bill requires that a person seeking appointment as an electronic notary public already be a notary public in Nevada and successfully complete a course of study on electronic notarization, enter into a bond, pay an application fee and take an oath as a public officer. **Section 14** of this bill provides that the initial term of appointment for an electronic notary public is 2 years and any subsequent term of appointment is 4 years. **Section 16** of this bill states that an electronic notary public may perform the same notarial acts as a notary public except for certifying copies and noting protests of a negotiable instrument, and **section 17** of this bill sets forth the fees he may charge. **Section 18** of this bill prohibits the electronic notarization of a will, codicil, testamentary trust or any document related to transactions governed by certain sections of the

Uniform Commercial Code, as prohibited by the Uniform Electronic Transactions Act, codified as chapter 719 of NRS. (NRS 719.200) **Section 19** of this bill sets forth the specific requirements that distinguish the notarization of an electronic document from a nonelectronic notarization, including the use of an electronic signature and an electronic seal. **Sections 21 and 22** of this bill provide that an electronic notary public must safeguard his electronic signature and any software or device used in producing that signature. **Section 23** of this bill makes it a gross misdemeanor to: (1) wrongfully make or distribute software or hardware for the purpose of allowing a person to act as an electronic notary public without being appointed; or (2) wrongfully obtain, conceal, damage or destroy the software or hardware used by an electronic notary public. **Section 25** of this bill authorizes the Secretary of State to promulgate regulations to carry out the provisions of the Electronic Notary Public Authorization Act. **Section 26** of this bill provides that all the laws which apply to regular notaries public apply to electronic notaries public unless a provision of the Electronic Notary Public Authorization Act conflicts, in which case the latter controls.

Existing law prohibits a person who has been convicted of a crime of moral turpitude or a person who does not possess his civil rights from being appointed as a notary public. (NRS 240.010, 240.015) **Section 29** of this bill authorizes the Secretary of State to appoint as a notary public a person who was convicted of ~~a crime of moral turpitude~~ **certain crimes** if: (1) more than 10 years have passed since the end of his sentence, parole or probation; (2) he has made restitution, if applicable; ~~and~~ (3) he has had his civil rights restored ~~to him~~; **and (4) the crime for which he was convicted was not one of an enumerated list of crimes involving dishonesty or identity theft.**

Existing law allows a resident of an adjoining state to be appointed as a notary public in Nevada if he maintains or works for a business in Nevada. (NRS 240.015) **Sections 30-32** of this bill amend the requirements for a nonresident notary public to further require a copy of a state business license and any other business license required by a local government where the business is located as proof of employment or self-employment in Nevada when applying for an appointment or the renewal of an appointment as a nonresident notary public.

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

Section 1. Chapter 240 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 26, inclusive, of this act.

Sec. 2. *"Notarial record" means:*

1. *The journal that a notary public is required to keep pursuant to NRS 240.120;*

2. *The journal that an electronic notary public is required to keep pursuant to section 20 of this act; and*

3. *A document or other evidence retained by a notary public or an electronic notary public to record the performance of a notarial act or an electronic notarial act.*

Sec. 3. *Sections 3 to 26, inclusive, of this act may be cited as the Electronic Notary Public Authorization Act.*

Sec. 4. *As used in sections 3 to 26, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 5. *"Electronic" means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*

Sec. 6. *"Electronic document" means a document that is created, generated, sent, communicated, received or stored by electronic means.*

Sec. 7. *"Electronic notarial act" means an act that an electronic notary public of this State is authorized to perform. The term includes:*

1. *Taking an acknowledgment;*
2. *Administering an oath or affirmation;*
3. *Executing a jurat; and*
4. *Performing such other duties as may be prescribed by a specific statute.*

Sec. 8. *"Electronic notary public" means a person appointed by the Secretary of State pursuant to sections 3 to 26, inclusive, of this act to perform electronic notarial acts.*

Sec. 9. *"Electronic seal" means information within a notarized electronic document that includes the name, jurisdiction and expiration date of the appointment of an electronic notary public and generally includes the information required to be set forth in a mechanical stamp pursuant to NRS 240.040.*

Sec. 10. *"Electronic signature" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.*

Sec. 11. 1. *The Secretary of State may appoint electronic notaries public in this State.*

2. *The Secretary of State shall not appoint as an electronic notary public a person who submits an application containing a substantial and material misstatement or omission of fact.*

3. *An electronic notary public may cancel his appointment by submitting a written notice to the Secretary of State.*

4. *It is unlawful for a person to:*
 - (a) *Represent himself as an electronic notary public appointed pursuant to this section if he has not received a certificate of appointment from the Secretary of State pursuant to section 12 of this act.*
 - (b) *Submit an application for appointment as an electronic notary public that contains a substantial and material misstatement or omission of fact.*

5. *The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection 4.*

Sec. 12. 1. *Each person applying for appointment as an electronic notary public must:*

(a) *At the time of application, be a notarial officer in this State and have been a notarial officer in this State for not less than 4 years;*

(b) *Submit to the Secretary of State an electronic application pursuant to subsection 2;*

(c) *Pay to the Secretary of State an application fee of \$50;*

(d) *Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if he were a public officer;*

(e) *Submit to the Secretary of State proof satisfactory to the Secretary of State that he has successfully completed a course of study provided pursuant to section 15 of this act; and*

(f) *Enter into a bond to the State of Nevada in the sum of \$10,000, to be filed with the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. The applicant must submit to the Secretary of State a certificate issued by the appropriate county clerk which indicates that the applicant filed the bond required pursuant to this paragraph.*

2. *The application for an appointment as an electronic notary public must be submitted as an electronic document and must contain, without limitation, the following information:*

(a) *The applicant's full legal name, and the name to be used for appointment, if different.*

(b) *The county in which the applicant resides.*

(c) *The electronic mail address of the applicant.*

(d) *A description of the technology or device, approved by the Secretary of State, that the applicant intends to use to create his electronic signature in performing electronic notarial acts.*

(e) *The electronic signature of the applicant.*

(f) *Any other information requested by the Secretary of State.*

3. *An applicant for appointment as an electronic notary public who resides in an adjoining state, in addition to the requirements set forth in subsections 1 and 2, must submit to the Secretary of State with his application:*

(a) *An affidavit setting forth the adjoining state in which he resides, his mailing address and the address of his place of business or employment that is located within the State of Nevada;*

(b) *A copy of his state business license issued pursuant to NRS 360.780 and any business license required by the local government where his business is located, if he is self-employed; and*

(c) *Unless the applicant is self-employed, a copy of the state business license of his employer issued pursuant to NRS 360.780, a copy of any*

business license of his employer that is required by the local government where the business is located and an affidavit from his employer setting forth the facts which show that the employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.

4. In completing an application, bond, oath or other document necessary to apply for appointment as an electronic notary public, an applicant must not be required to disclose his residential address or telephone number on any such document which will become available to the public.

5. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when he applies for his appointment or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as an electronic notary public to the applicant.

6. The term of an electronic notary public commences on the effective date of the bond required pursuant to paragraph (f) of subsection 1. An electronic notary public shall not perform an electronic notarial act after the effective date of the bond unless he has been issued a certificate of appointment pursuant to subsection 5.

7. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of \$10 for each duplicate or amended certificate of appointment which is issued to an electronic notary public. If the electronic notary public does not receive an original certificate of appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the electronic notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.

Sec. 13. 1. The bond required to be filed pursuant to section 12 of this act must be executed by the person applying to become an electronic notary public as principal and by a surety company qualified and authorized to do business in this State. The bond must be made payable to the State of Nevada and be conditioned to provide indemnification to a person determined to have suffered damage as a result of an act by the electronic notary public which violates a provision of NRS 240.001 to 240.169, inclusive, or sections 3 to 26, inclusive, of this act. The surety company shall pay a final, nonappealable judgment of a court of this State that has jurisdiction, upon receipt of written notice of final judgment. The bond may be continuous, but regardless of the duration of the bond, the aggregate liability of the surety does not exceed the penal sum of the bond.

2. *If the penal sum of the bond is exhausted, the surety company shall notify the Secretary of State in writing within 30 days after its exhaustion.*

3. *The surety bond must cover the period of the appointment of the electronic notary public, except when a surety is released.*

4. *A surety on a bond filed pursuant to section 12 of this act may be released after the surety gives 30 days' written notice to the Secretary of State and the electronic notary public, but the release does not discharge or otherwise affect a claim filed by a person for damage resulting from an act of the electronic notary public which is alleged to have occurred while the bond was in effect.*

5. *The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer covered by a surety bond as required by this section and section 12 of this act or the penal sum of the bond is exhausted. If the Secretary of State receives notice pursuant to subsection 4 that the bond will be released or pursuant to subsection 2 that the penal sum of the bond is exhausted, the Secretary of State shall immediately notify the electronic notary public in writing that his appointment will be suspended by operation of law until another surety bond is filed in the same manner and amount as the bond being terminated.*

6. *The Secretary of State may reinstate the appointment of an electronic notary public whose appointment has been suspended pursuant to subsection 5 if the electronic notary public, before his current term of appointment expires:*

(a) Submits to the Secretary of State:

(1) An application for an amended certificate of appointment as an electronic notary public; and

(2) A certificate issued by the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, the county in this State in which the applicant maintains a place of business or is employed, which indicates that the applicant filed a new surety bond with the clerk; and

(b) Pays to the Secretary of State a fee of \$10.

Sec. 14. 1. *The initial term of appointment as an electronic notary public is 2 years. Each term of appointment as an electronic notary public subsequent to the initial term is 4 years.*

2. *The appointment of an electronic notary public is suspended by operation of law when the electronic notary public is no longer appointed as a notary public in this State. If the appointment of an electronic notary public has expired or been revoked or suspended, the Secretary of State shall immediately notify the electronic notary public in writing that his appointment as an electronic notary public will be suspended by operation of law until he is appointed as a notary public in this State.*

3. *If, at any time during his appointment, an electronic notary public changes his electronic mail address, county of residence, name, electronic*

signature or the technology or device used to create his electronic signature, the electronic notary public shall, within 10 days after making the change, submit to the Secretary of State:

(a) An electronic document, signed with the electronic signature submitted by the electronic notary public pursuant to subsection 2 of section 12 of this act, that includes the change of information; and

(b) A fee of \$10.

Sec. 15. 1. Except as otherwise provided in subsection 2, an applicant for appointment as an electronic notary public must successfully:

(a) Complete a course of study that is in accordance with the requirements of subsection 5; and

(b) Pass an examination at the completion of the course.

2. The following persons must successfully complete a course of study as required pursuant to subsection 1:

(a) A person applying for his first appointment as an electronic notary public;

(b) A person renewing his appointment as an electronic notary public if his appointment as an electronic notary public has been expired for a period of more than 1 year; and

(c) A person renewing his appointment as an electronic notary public if, during the 4 years immediately preceding his application for renewal, the Secretary of State took action against the person pursuant to NRS 240.150 for failing to comply with any provision of this chapter or any regulations adopted pursuant thereto.

↪ A person renewing his appointment as an electronic notary public need not successfully complete a course of study as required pursuant to subsection 1 if his appointment as an electronic notary public has been expired for a period of 1 year or less.

3. A course of study required to be completed pursuant to subsection 1 must:

(a) Include at least 3 hours of instruction;

(b) Provide instruction in electronic notarization, including, without limitation, notarial law and ethics, technology and procedures;

(c) Include an examination of the course content;

(d) Comply with the regulations adopted pursuant to section 25 of this act; and

(e) Be approved by the Secretary of State.

4. The Secretary of State may, with respect to a course of study required to be completed pursuant to subsection 1:

(a) Provide such a course of study; and

(b) Charge a reasonable fee to each person who enrolls in such a course of study.

5. A course of study provided pursuant to this section must satisfy the criteria set forth in subsection 3 and comply with the requirements set forth in the regulations adopted pursuant to section 25 of this act.

6. *The Secretary of State shall deposit the fees collected pursuant to paragraph (b) of subsection 4 in the Notary Public Training Fund created pursuant to NRS 240.018.*

Sec. 16. *A person appointed as an electronic notary public pursuant to sections 3 to 26, inclusive, of this act may, during normal business hours, perform the following electronic notarial acts for a person who requests the electronic notarial act and tenders the appropriate fee:*

1. *Taking an acknowledgment;*
2. *Executing a jurat; and*
3. *Administering an oath or affirmation.*

Sec. 17. 1. *An electronic notary public may charge the following fees and no more:*

(a) *For taking an acknowledgment, for each signature..... \$10*

(b) *For executing a jurat, for each signature \$10*

(c) *For administering an oath or affirmation without a signature \$10*

2. *An electronic notary public shall not charge a fee to perform a service unless he is authorized to charge a fee for such a service pursuant to this section.*

3. *All fees prescribed in this section are payable in advance, if demanded.*

4. *An electronic notary public may charge an additional fee for traveling to perform an electronic notarial act if:*

(a) *The person requesting the electronic notarial act asks the electronic notary public to travel;*

(b) *The electronic notary public explains to the person requesting the electronic notarial act that the fee for travel is in addition to the fee authorized in subsection 1 and is not required by law;*

(c) *The person requesting the electronic notarial act agrees in advance upon the hourly rate that the electronic notary public will charge for the additional fee for travel; and*

(d) *The additional fee for travel does not exceed:*

(1) *If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 6 a.m. and 7 p.m., \$10 per hour.*

(2) *If the person requesting the electronic notarial act asks the electronic notary public to travel between the hours of 7 p.m. and 6 a.m., \$25 per hour.*

↪ *The electronic notary public may charge a minimum of 2 hours for such travel and shall charge on a pro rata basis after the first 2 hours.*

5. *An electronic notary public is entitled to charge the amount of the additional fee for travel agreed to in advance by the person requesting the electronic notarial act pursuant to subsection 4 if:*

(a) *The person requesting the electronic notarial act cancels his request after the electronic notary public begins his travel to perform the requested electronic notarial act.*

(b) The electronic notary public is unable to perform the requested electronic notarial act as a result of the actions of the person who requested the electronic notarial act or any other person who is necessary for the performance of the electronic notarial act.

6. For each additional fee for travel that an electronic notary public charges pursuant to subsection 4, the electronic notary public shall enter in the journal that he keeps pursuant to section 20 of this act:

(a) The amount of the fee; and

(b) The date and time that the electronic notary public began and ended such travel.

7. A person who employs an electronic notary public may prohibit the electronic notary public from charging a fee for an electronic notarial act that the electronic notary public performs within the scope of his employment. Such a person shall not require the electronic notary public whom he employs to surrender to him all or part of a fee charged by the electronic notary public for an electronic notarial act performed outside the scope of his employment.

Sec. 18. 1. An electronic notary public shall not willfully electronically notarize the signature or electronic signature of a person unless the person is in the presence of the electronic notary public at the time of notarization and:

(a) Is known to the electronic notary public; or

(b) If unknown to the electronic notary public, provides a credible witness or documentary evidence of identification to the electronic notary public.

2. A person who:

(a) Violates the provisions of subsection 1; or

(b) Aids and abets an electronic notary public to commit a violation of subsection 1,

↪ is guilty of a gross misdemeanor.

3. An electronic notary public shall not electronically notarize any electronic document related to the following:

(a) A will, codicil or testamentary trust; and

(b) Any transaction governed by the Uniform Commercial Code other than NRS 104.1306, 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive.

4. An appointment as an electronic notary public pursuant to sections 3 to 26, inclusive, of this act does not authorize the electronic notary public to perform notarial acts in another state.

Sec. 19. An electronic notarial act must be evidenced by the following, which must be attached to or logically associated with the electronic document that is the subject of the electronic notarial act and which must be immediately perceptible and reproducible:

1. The electronic signature of the electronic notary public;

2. The electronic seal of the electronic notary public; and

3. *The wording of a notarial certificate pursuant to NRS 240.1655, 240.166 to 240.167, inclusive, 240.1685 or 240.169.*

Sec. 20. 1. *An electronic notary public shall keep a journal of each electronic notarial act which includes, without limitation, the requirements of subsections 1 and 2 of NRS 240.120.*

2. *The Secretary of State may suspend the appointment of an electronic notary public who fails to produce any journal entry within 10 days after receipt of a request from the Secretary of State.*

3. *Upon resignation, revocation or expiration of an appointment as an electronic notary public, all notarial records required pursuant to this chapter must be delivered to the Secretary of State.*

Sec. 21. 1. *The electronic signature and electronic seal of an electronic notary public must be used only for the purposes of performing electronic notarial acts.*

2. *An electronic notary public shall safeguard his electronic signature, the electronic seal and all notarial records maintained by the electronic notary public as follows:*

(a) *When not in use, the electronic notary public shall keep the electronic signature, electronic seal and all notarial records secure, under the exclusive control of the electronic notary public and protected by a password where applicable.*

(b) *An electronic notary public shall not permit his electronic signature or electronic seal to be used by any other person.*

(c) *An electronic notary public shall not surrender or destroy his notarial records except as otherwise required by the order of a court or as allowed pursuant to this chapter or any regulations adopted pursuant thereto.*

(d) *Except as otherwise provided in subsection 3, an electronic notary public, within 10 days after discovering that his electronic signature or electronic seal has been stolen, lost, damaged or otherwise rendered incapable of affixing a legible image, shall:*

(1) *Inform the appropriate law enforcement agency in the case of theft or vandalism; and*

(2) *Notify the Secretary of State in writing, including, without limitation, a signature using the name on the certificate of appointment issued pursuant to subsection 5 of section 12 of this act.*

3. *An electronic notary public shall take reasonable steps to maintain the technology or device used to create his electronic signature, and to ensure that the technology or device has not been recalled, revoked, terminated or otherwise rendered ineffective or unsecure by the entity that created the technology or device. Upon learning that the technology or device used to create his electronic signature has been rendered ineffective or unsecure, an electronic notary public shall cease performing electronic notarial acts until:*

(a) *A new technology or device is acquired; and*

(b) The electronic notary public sends an electronic notice to the Secretary of State that includes, without limitation, the information required pursuant to paragraphs (d) and (e) of subsection 2 of section 12 of this act relating to the new technology or device.

Sec. 22. 1. Except as otherwise provided in subsection 3, if an electronic notary public dies or resigns during his appointment, or if the appointment of the electronic notary public is revoked or expires, the electronic notary public, the executor of his estate or his authorized representative, as appropriate, shall:

(a) Notify the Secretary of State of the resignation or death; and

(b) Erase, delete, destroy or otherwise render ineffective the technology or device used to create his electronic signature.

2. Upon receipt of the notice required by subsection 1, the Secretary of State shall cancel the appointment of the electronic notary public, effective on the date on which the notice was received.

3. A former electronic notary public whose previous appointment as an electronic notary public was not revoked and whose previous application for appointment as an electronic notary public was not denied is not required to erase, delete, destroy or otherwise render ineffective the technology or device used to create his electronic signature if he renews his appointment, using the same electronic signature, within 3 months after the expiration of his previous appointment as an electronic notary public.

Sec. 23. 1. A person who knowingly creates, manufactures or distributes software or hardware for the purpose of allowing a person to act as an electronic notary public without being appointed in accordance with sections 3 to 26, inclusive, of this act is guilty of a gross misdemeanor.

2. A person who wrongfully obtains, conceals, damages or destroys the technology or device used to create the electronic signature of an electronic notary public is guilty of a gross misdemeanor.

Sec. 24. 1. Except as otherwise provided in subsection 2, the Secretary of State shall, upon request, issue an authentication to verify that the electronic signature of the electronic notary public on an electronic document is genuine and that the electronic notary public holds the office indicated on the electronic document. The authentication must be:

(a) Signed by the Secretary of State; and

(b) In conformance with any relevant international treaties, agreements and conventions subscribed to by the Government of the United States, including, without limitation, the Hague Convention of October 5, 1961.

2. The Secretary of State shall not issue an authentication pursuant to subsection 1 if:

(a) The electronic document has not been electronically notarized in accordance with the provisions of this chapter and sections 3 to 26, inclusive, of this act; or

(b) The Secretary of State has reasonable cause to believe that the electronic document may be used to accomplish any fraudulent, criminal or unlawful purpose.

Sec. 25. *The Secretary of State may adopt regulations to carry out the provisions of sections 3 to 26, inclusive, of this act.*

Sec. 26. *An electronic notary public shall comply with those provisions of NRS 240.001 to 240.169, inclusive, which are not inconsistent with sections 3 to 26, inclusive, of this act. To the extent that the provisions of NRS 240.001 to 240.169, inclusive, conflict with the provisions of sections 3 to 26, inclusive, of this act, the provisions of sections 3 to 26, inclusive, of this act control.*

Sec. 27. NRS 240.001 is hereby amended to read as follows:

240.001 As used in NRS 240.001 to 240.169, inclusive, *and sections 3 to 26, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 240.002 to 240.005, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 28. NRS 240.007 is hereby amended to read as follows:

240.007 1. Except as otherwise provided in ~~subsection 2,~~ *subsections 2 and 3*, information and documents filed with or obtained by the Secretary of State pursuant to NRS 240.001 to 240.169, inclusive, *and sections 2 to 26, inclusive, of this act* are public information and are available for public examination.

2. *Information and documents filed with or obtained by the Secretary of State pursuant to or in accordance with subsection 6 of NRS 240.010 are not public information and are confidential.*

3. Except as otherwise provided in subsections ~~[3]~~ 4 and ~~[4]~~ 5 and in NRS 239.0115, information and documents obtained by or filed with the Secretary of State in connection with an investigation concerning a possible violation of the provisions of NRS 240.001 to 240.169, inclusive, *and sections 2 to 26, inclusive, of this act* are not public information and are confidential.

~~[3]~~ 4. The Secretary of State may submit any information or evidence obtained in connection with an investigation concerning a possible violation of the provisions of NRS 240.001 to 240.169, inclusive, *and sections 2 to 26, inclusive, of this act* to the appropriate district attorney for the purpose of prosecuting a criminal action.

~~[4]~~ 5. The Secretary of State may disclose any information or documents obtained in connection with an investigation concerning a possible violation of the provisions of NRS 240.001 to 240.169, inclusive, *and sections 2 to 26, inclusive, of this act* to an agency of this State or a political subdivision of this State.

Sec. 29. NRS 240.010 is hereby amended to read as follows:

240.010 1. The Secretary of State may appoint notaries public in this State.

2. The Secretary of State shall not appoint as a notary public a person:

(a) Who submits an application containing a substantial and material misstatement or omission of fact.

(b) Whose previous appointment as a notary public in this State has been revoked.

(c) ~~Who~~ ~~Except~~, except as otherwise provided in subsection 6, ~~who~~ has been convicted of ~~fel~~ :

(1) A crime involving moral turpitude ~~fel~~ ; or

(2) **Burglary, conversion, embezzlement, extortion, forgery, fraud, identity theft, larceny, obtaining money under false pretenses, robbery or any other crime involving misappropriation of the identity or property of another person or entity.**

~~if~~ if the Secretary of State is aware of such a conviction before he makes the appointment.

(d) Against whom a complaint that alleges a violation of a provision of this chapter is pending.

(e) Who has not submitted to the Secretary of State proof satisfactory to the Secretary of State that he has enrolled in and successfully completed a course of study provided pursuant to NRS 240.018.

3. A notary public may cancel his appointment by submitting a written notice to the Secretary of State.

4. It is unlawful for a person to:

(a) Represent himself as a notary public appointed pursuant to this section if he has not received a certificate of appointment from the Secretary of State pursuant to this chapter.

(b) Submit an application for appointment as a notary public that contains a substantial and material misstatement or omission of fact.

5. The Secretary of State may request that the Attorney General bring an action to enjoin any violation of paragraph (a) of subsection 4.

6. A person who has been convicted of a crime involving moral turpitude may apply for appointment as a notary public if he provides proof satisfactory to the Secretary of State that:

(a) More than 10 years have elapsed since the date of his release from confinement or the expiration of the period of his parole, probation or sentence, whichever is later;

(b) He has made complete restitution for his crime involving moral turpitude, if applicable; ~~and~~

(c) He possesses his civil rights ~~fel~~ ; and

(d) The crime for which he was convicted is not one of the crimes enumerated in subparagraph (2) of paragraph (c) of subsection 2.

Sec. 30. NRS 240.015 is hereby amended to read as follows:

240.015 1. Except as otherwise provided in this section, a person appointed as a notary public must:

(a) During the period of his appointment, be a citizen of the United States or lawfully admitted for permanent residency in the United States as verified by the United States Citizenship and Immigration Services.

- (b) Be a resident of this State.
- (c) Be at least 18 years of age.
- (d) Possess his civil rights.

2. If a person appointed as a notary public ceases to be lawfully admitted for permanent residency in the United States during his appointment, he shall, within 90 days after his lawful admission has expired or is otherwise terminated, submit to the Secretary of State evidence that he is lawfully readmitted for permanent residency as verified by the United States Citizenship and Immigration Services. If the person fails to submit such evidence within the prescribed time, his appointment expires by operation of law.

3. The Secretary of State may appoint a person who resides in an adjoining state as a notary public if the person:

(a) Maintains a place of business in the State of Nevada ~~[-]~~ ***that is licensed pursuant to NRS 360.780 and any applicable business licensing requirements of the local government where the business is located;*** or

(b) Is regularly employed at an office, business or facility located within the State of Nevada by an employer licensed to do business in this State.

➡ If such a person ceases to maintain a place of business in this State or regular employment at an office, business or facility located within this State, the Secretary of State may suspend his appointment. The Secretary of State may reinstate an appointment suspended pursuant to this subsection if the notary public submits to the Secretary of State, before his term of appointment as a notary public expires, ~~[an affidavit which contains]~~ the information required pursuant to subsection 2 of NRS 240.030.

Sec. 31. NRS 240.030 is hereby amended to read as follows:

240.030 1. Each person applying for appointment as a notary public must:

(a) At the time he submits his application, pay to the Secretary of State \$35.

(b) Take and subscribe to the oath set forth in Section 2 of Article 15 of the Constitution of the State of Nevada as if he were a public officer.

(c) Submit to the Secretary of State proof satisfactory to the Secretary of State that he has enrolled in and successfully completed a course of study provided pursuant to NRS 240.018.

(d) Enter into a bond to the State of Nevada in the sum of \$10,000, to be filed with the clerk of the county in which the applicant resides or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. The applicant ~~[shall]~~ ***must*** submit to the Secretary of State a certificate issued by the appropriate county clerk which indicates that the applicant filed the bond required pursuant to this paragraph.

2. In addition to the requirements set forth in subsection 1, an applicant for appointment as a notary public who resides in an adjoining state must submit to the Secretary of State with his application:

(a) An affidavit setting forth the adjoining state in which he resides, his mailing address and the address of his place of business or employment that is located within the State of Nevada; ~~and~~

(b) ***A copy of his state business license issued pursuant to NRS 360.780 and any business license required by the local government where the business is located, if he is self-employed; and***

(c) Unless the applicant is self-employed, ***a copy of the state business license of his employer, a copy of any business license of his employer that is required by the local government where the business is located and*** an affidavit from his employer setting forth the facts ~~that~~ ***which*** show ~~that~~

~~(1) The employer is licensed to do business in the State of Nevada; and~~

~~(2) The~~ ***that the*** employer regularly employs the applicant at an office, business or facility which is located within the State of Nevada.

3. In completing an application, bond, oath or other document necessary to apply for appointment as a notary public, an applicant must not be required to disclose his residential address or telephone number on any such document which will become available to the public.

4. The bond, together with the oath, must be filed and recorded in the office of the county clerk of the county in which the applicant resides when he applies for his appointment or, if the applicant is a resident of an adjoining state, with the clerk of the county in this State in which the applicant maintains a place of business or is employed. On a form provided by the Secretary of State, the county clerk shall immediately certify to the Secretary of State that the required bond and oath have been filed and recorded. Upon receipt of the application, fee and certification that the required bond and oath have been filed and recorded, the Secretary of State shall issue a certificate of appointment as a notary public to the applicant.

5. The term of a notary public commences on the effective date of the bond required pursuant to paragraph (d) of subsection 1. A notary public shall not perform a notarial act after the effective date of the bond unless he has been issued a certificate of appointment.

6. Except as otherwise provided in this subsection, the Secretary of State shall charge a fee of \$10 for each duplicate or amended certificate of appointment which is issued to a notary. If the notary public does not receive an original certificate of appointment, the Secretary of State shall provide a duplicate certificate of appointment without charge if the notary public requests such a duplicate within 60 days after the date on which the original certificate was issued.

Sec. 32. NRS 240.031 is hereby amended to read as follows:

240.031 A notary public who is a resident of an adjoining state shall submit to the Secretary of State annually, within 30 days before the anniversary date of his appointment as a notary public, ~~an affidavit containing~~ ***a copy of the state business license of his place of employment in the State of Nevada issued pursuant to NRS 360.780, a copy of any***

license required by the local government where the business is located and the information required pursuant to subsection 2 of NRS 240.030.

Sec. 33. NRS 240.147 is hereby amended to read as follows:

240.147 ~~[1.]~~ It is unlawful for a person to knowingly destroy, deface or conceal a notarial record.

~~[2.—As used in this section, “notarial record” means:~~

~~(a) The journal that a notary public is required to keep pursuant to NRS 240.120; and~~

~~(b) A document or other evidence retained by a notary public to record the performance of a notarial act.]~~

Sec. 34. This act becomes effective on July 1, 2009.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 124.

Bill read second time.

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

Amendment No. 654.

AN ACT relating to general improvement districts; expanding the membership of the boards of trustees of certain general improvement districts; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Chapter 318 of NRS governs the creation and administration of general improvement districts in Nevada. Existing law requires that the board of trustees of a general improvement district consist of five members. (NRS 318.080) **Section 1** of this bill expands the membership of the board of trustees of a general improvement district **;(1) which exists on or before July 1, 2009, ~~and~~ ; (2) which** is authorized **only** to furnish electric light and power in a county whose population is 400,000 or more. ~~[(currently the Overton Power District in Clark County)] ; and (3) for which the board of county commissioners of the county is not ex officio the board of trustees,~~ from five to seven members. **Section 1** also provides the election procedure for the new members, the continuing election process to keep the staggered terms for all board members and the new quorum requirements for the expanded board. **Currently, the Overton Power District in Clark County is the only general improvement district that is impacted by this bill.**

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

Section 1. Chapter 318 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Notwithstanding any provision of law to the contrary, the board of trustees of a district organized or reorganized pursuant to this chapter that exists on July 1, 2009, ~~and~~ that is authorized only to exercise the basic power of furnishing electric light and power pursuant to NRS 318.117 in a county whose population is 400,000 or more, and for which the board of county commissioners of the county is not ex officio the board of trustees, shall consist of seven trustees.*

2. *The members of the board of trustees described in subsection 1 must be selected as follows:*

(a) *One member who is elected by the qualified electors of the largest incorporated city in the district at the first biennial election following July 1, 2009. The term of office of a trustee who is elected pursuant to this paragraph is 4 years.*

(b) *One member who is elected by the qualified electors of the district at the first biennial election following July 1, 2009. The initial term of office of a trustee who is elected pursuant to this paragraph is 2 years. After the initial term, the term of office of a trustee who is elected pursuant to this paragraph is 4 years.*

(c) *Five members who are elected from the election areas in the district created pursuant to NRS 318.0952 that existed on July 1, 2009, each of whom serves for a term of 4 years.*

3. *Each member of the board of trustees must be a resident of the area which he seeks to represent.*

4. *A majority of the members of the board constitutes a quorum at any meeting.*

Sec. 2. NRS 318.090 is hereby amended to read as follows:

318.090 Except as otherwise provided in NRS 318.0953 and 318.09533:

1. The board shall, by resolution, designate the place where the office or principal place of the district is to be located, which must be within the corporate limits of the district ~~and~~ and which may be changed by resolution of the board. Copies of all those resolutions must be filed with the county clerk or clerks of the county or counties wherein the district is located within 5 days after their adoption. The official records and files of the district must be kept at that office and must be open to public inspection as provided in NRS 239.010.

2. The board of trustees shall meet regularly at least once each year, and at such other times at the office or principal place of the district as provided in the bylaws.

3. Special meetings may be held on notice to each member of the board as often as, and at such places within the district as, the needs of the district require.

4. ~~Three~~ *Except as otherwise provided in section 1 of this act, three* members of the board constitute a quorum at any meeting.

5. A vacancy on the board must be filled by a qualified elector of the district chosen by the remaining members of the board, the appointee to act

until a successor in office qualifies as provided in NRS 318.080 on or after the first Monday in January next following the next biennial election, held in accordance with NRS 318.095 ~~or~~ **or section 1 of this act**, at which election the vacancy must be filled by election if the term of office extends beyond that first Monday in January. Nominations of qualified electors of the district as candidates to fill unexpired terms of 2 years may be made the same as nominations for regular terms of 4 years, as provided in NRS 318.095 ~~and~~ **section 1 of this act**. If the board fails, neglects or refuses to fill any vacancy within 30 days after the vacancy occurs, the board of county commissioners shall fill that vacancy.

6. Each term of office of 4 years terminates on the first Monday in January next following the general election at which a successor in office is elected, as provided in NRS 318.095 ~~or~~ **or section 1 of this act**. The successor's term of office commences then or as soon thereafter as the successor qualifies as provided in NRS 318.080, subject to the provisions in this chapter for initial appointments to a board, for appointments to fill vacancies of unexpired terms ~~and~~ and for the reorganizations of districts under this chapter which were organized under other chapters of NRS.

Sec. 3. NRS 318.095 is hereby amended to read as follows:

318.095 Except as otherwise provided in NRS 318.0953:

1. There must be held simultaneously with the first general election in the county after the creation of the district and simultaneously with every general election thereafter an election to be known as the biennial election of the district. The election must be conducted under the supervision of the county clerk or registrar of voters. A district shall reimburse the county clerk or registrar of voters for the costs he incurred in conducting the election for the district.

2. The office of trustee is a nonpartisan office. The general election laws of this State govern the candidacy, nominations and election of a member of the board. The names of the candidates for trustee of a district may be placed on the ballot for the primary or general election.

3. ~~At~~ **Except as otherwise provided in section 1 of this act, at** the first biennial election in any district organized or reorganized and operating under this chapter ~~and~~ and each fourth year thereafter, there must be elected by the qualified electors of the district two qualified electors as members of the board to serve for terms of 4 years. At the second biennial election and each fourth year thereafter, there must be so elected three qualified electors as members of the board to serve for terms of 4 years.

4. The secretary of the district shall give notice of election by publication ~~and~~ and shall arrange such other details in connection therewith as the county clerk or registrar of voters may direct.

5. Any new member of the board must qualify in the same manner as members of the first board qualify.

Sec. 4. NRS 318.0951 is hereby amended to read as follows:

318.0951 Except as otherwise provided in NRS 318.0952 or 318.0953:

1. Each trustee elected at any biennial election must be chosen by a plurality of the qualified electors of the district voting on the candidates for the vacancies to be filled.

2. ~~HH~~ *Except as otherwise provided in section 1 of this act, if* there are two regular terms which end on the first Monday in January next following the biennial election, the two qualified electors receiving the highest and next highest number of votes must be elected. If there are three regular terms so ending, the three qualified electors receiving the highest, next highest and third highest number of votes must be elected.

3. If there is a vacancy in an unexpired regular term to be filled at the biennial election, as provided in subsection 5 of NRS 318.090, the candidate who receives the highest number of votes, after there are chosen the successful candidates to fill the vacancies in expired regular terms as provided in subsection 2, must be elected.

Sec. 5. (Deleted by amendment.)

Sec. 6. NRS 318.09533 is hereby amended to read as follows:

318.09533 1. When the board of trustees of any district is constituted pursuant to NRS 318.0953, the following special provisions apply and supersede the corresponding provisions of NRS 318.080 to 318.09525, inclusive, *and section 1 of this act*, 318.0954 and 318.0955:

(a) The members need not file the oath of office or bond required by NRS 318.080.

(b) The members of the board of county commissioners may receive no additional compensation as trustees of the district.

(c) The chairman of the board of county commissioners may be chairman of the board of trustees and president of the district, or the board of county commissioners may, at its first meeting in January of each year, designate another of its members to serve as chairman of the board of trustees and president of the district for a term of 1 year.

(d) The vice chairman of the board of county commissioners may be vice chairman of the board of trustees and vice president of the district, or the board of county commissioners may, at its first meeting in January of each year, designate another of its members to serve as vice chairman of the board of trustees and vice president of the district for a term of 1 year.

(e) The secretary and treasurer of the district ~~shall~~ *must* not be members of the board of county commissioners. The board may designate the county clerk and county treasurer, respectively, to act ex officio as secretary and treasurer, or it may designate some other person to fill either or both of those offices. No additional bond may be required of the county treasurer as ex officio district treasurer ~~nor~~ *or* of any other county officer appropriately bonded as ex officio a district officer.

(f) The secretary and treasurer shall perform the duties prescribed in subsections 3 and 4 of NRS 318.085.

(g) No member of the board of county commissioners may be removed from the office of trustee under NRS 318.080, but any member is

automatically removed from that office upon his removal from the office of county commissioner in the manner provided by law.

(h) The regular place of meeting of the board need not be within the corporate limits of the district but must be within the corporate limits of the county and be the regular meeting place of the board of county commissioners unless the board otherwise provides by resolution.

(i) The times of regular meetings of the board must be the same as the times of the regular meetings of the board of county commissioners unless the board otherwise provides by resolution.

(j) Special meetings may be held on notice to each member of the board as often as, and at such place or places within the county as, the board may determine, unless it otherwise provides by resolution.

(k) The office or principal place of the district need not be located within the corporate limits of the district and must be the office of the county clerk unless the board otherwise provides by resolution.

2. Each board of county commissioners may, by resolution, designate the district's name which may be used for all purposes, including, *without limitation*, contracts, lawsuits or in the performance of its duties or exercises of its functions.

3. The board may enter into contracts extending beyond the terms of each member then serving on the board if the contract is entered into in the manner provided for a board of county commissioners in NRS 244.320.

Sec. 7. Nothing in this act affects the term of office or election area of a member of a board of trustees of a district organized or reorganized pursuant to this chapter, ~~and~~ authorized only to exercise the basic power of furnishing electric light and power pursuant to NRS 318.117 in a county whose population is 400,000 or more, and for which the board of county commissioners of the county is not ex officio the board of trustees, and who is in office on July 1, 2009.

Sec. 8. This act becomes effective on July 1, 2009.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 160.

Bill read second time.

The following amendment was proposed by the Committee on Elections, Procedures, Ethics, and Constitutional Amendments:

Amendment No. 675.

SUMMARY—Makes various changes relating to ~~comport with the constitutional doctrines of separation of powers and legislative privilege and immunity~~ public officers and employees. (BDR 3-1164)

AN ACT relating to ~~the Legislative Department of State Government;~~ government; implementing the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form

the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity; confirming that the constitutional doctrine of legislative privilege and immunity provides a testimonial privilege and an evidentiary privilege; revising provisions of the Nevada Ethics in Government Law and other provisions relating to ethics in government; making various statutory changes to comport with the constitutional doctrines of separation of powers and legislative privilege and immunity. ~~[-] and with the constitutional provisions governing impeachment, expulsion and removal from office;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides that for any speech or debate in either House of the Legislature, a member of the Senate or Assembly shall not be questioned in any other place. The purpose and effect of **section 1** is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

Under case law, the constitutional doctrine of legislative privilege and immunity provides a testimonial privilege and an evidentiary privilege which protect a Legislator from having to testify or disclose documents in administrative or judicial proceedings when such acts would intrude upon, interfere with or pry into the legislative process. (*Gravel v. United States*, 408 U.S. 606, 92 S.Ct. 2614 (1972); *United States v. Rayburn House Office Bldg.*, 497 F.3d 654 (D.C. Cir. 2007)). **Section 2** of this bill amends the Nevada statute governing testimonial and evidentiary privileges to confirm that the constitutional doctrine of legislative privilege and immunity provides a testimonial privilege and an evidentiary privilege. (NRS 49.015)

Sections ~~3-9~~ 6, 7, 4 and 9 of this bill amend provisions of the Nevada Ethics in Government Law (**Ethics Law**) to make those provisions comport with the constitutional doctrines of separation of powers and legislative privilege and immunity. (Chapter 281A of NRS) In particular, **section 9** amends NRS 281A.420 to clarify that the responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government. However, other provisions of the ~~Nevada Ethics in Government~~ **Ethics** Law remain applicable to State Legislators so that, for example, State Legislators will continue to be required to file the same financial disclosure forms as other public officers and the provisions prohibiting misuse of office that are applicable to other

public officers will continue to apply to State Legislators. **It with regard to conduct that falls outside the scope of legitimate legislative activity.** Section 9 also clarifies that the provisions of NRS 281A.420 concerning disclosure, voting and abstention do not apply to State Legislators or allow the Commission on Ethics to exercise jurisdiction or authority over State Legislators with regard to disclosure, voting and abstention.

On December 22, 2008, the First Judicial District Court in and for Carson City held that the Commission on Ethics could not apply the provisions of NRS 281A.420 concerning disclosure, voting and abstention to State Legislators because under the constitutional doctrines of separation of powers and legislative privilege and immunity, the Legislator's own House is the only governmental entity that may sanction the Legislator for performing legislative actions, like voting, that fall within the sphere of legitimate legislative activity and are an essential part of the legislative function. (*Warren B. Hardy II v. Commission on Ethics*, Nev. First Jud. Dist. Ct. Case No. 08 OC 00381 1B (Dec. 22, 2008))

The decision of the district court was based on the Nevada Supreme Court's pronouncement that "[u]nder the separation of powers doctrine, individual legislators cannot, nor should they, be subject to fines or other penalties for voting in a particular way." (*Guinn v. Legislature*, 119 Nev. 460, at 472 (2003)) The decision of the district court was also based on a long line of cases from the United States Supreme Court which hold that under the constitutional doctrines of separation of powers and legislative privilege and immunity, Federal and State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government. (*Tenney v. Brandhove*, 341 U.S. 367, 71 S.Ct. 783 (1951); *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944 (1969); *Gravel v. United States*, 408 U.S. 606, 92 S.Ct. 2614 (1972); *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 100 S.Ct. 1967 (1980)) Given this well-established and long-standing precedent, the district court found that the constitutional doctrines of separation of powers and legislative privilege and immunity are intended to protect the independence of individual Legislators by giving them broad freedom of speech, debate, deliberation and action during the legislative process and by shielding them from executive and judicial oversight that realistically threatens to control their conduct as Legislators.

Thus, because of the constitutional doctrines of separation of powers and legislative privilege and immunity, the district court determined that any inquiry into the ethical propriety of legislative actions concerning disclosure, voting and abstention must be conducted by the Legislative Department and cannot be conducted by an administrative agency of the Executive Department, such as the Commission on Ethics. The district court also determined that because each House is given the exclusive constitutional power to determine the rules of its legislative proceedings and to punish its

members for improper conduct related to those legislative proceedings, the Standing Rules adopted by each House concerning disclosure, voting and abstention take precedence over NRS 281A.420. Therefore, out of respect for the separation of powers under Section 1 of Article 3 of the Nevada Constitution and out of respect for the exclusive constitutional power of each House to determine its rules and punish its members under Section 6 of Article 4 of the Nevada Constitution, the district court held that the determination of whether a State Legislator has properly followed the Standing Rules concerning disclosure, voting and abstention is a matter reserved exclusively to the Legislator's own House.

Finally, the district court emphasized that its decision applied only to the provisions of NRS 281A.420 concerning disclosure, voting and abstention and that the constitutional doctrines of separation of powers and legislative privilege and immunity do not provide State Legislators with blanket protection from the Nevada Ethics in Government Law. Rather, State Legislators remain subject to the Ethics Law for conduct that falls outside the scope of legitimate legislative activity.

Sections 3.4-5.4 and 7.2-8.23 of this bill clarify the meaning of terms used in the Ethics Law and codify long-standing interpretations of those terms. Additionally, the definitions in sections 4 and 5 ensure that the Ethics Law accurately reflects the constitutional and legal differences between a "State Legislator" and a "member of a local legislative body." The definition of "investigatory panel" in section 8.1 recognizes that when the two-member panel is deciding whether there is just and sufficient cause to refer an ethics complaint to the Commission for a hearing, the panel is performing an investigatory function, not an adjudicatory function. Section 8.2 revises and clarifies the definition of "public officer" in the Ethics Law by employing terminology used in the definition of "public officer" in NRS 281.005 and by including members of boards of trustees of general improvement districts within the meaning of the term "public officer."

Sections 3.4, 3.6, 8.23 and 17.5 of this bill define the terms "intentionally," "knowingly," "willful violation" and "willfully" in the Ethics Law to conform with the legal meanings generally ascribed to those terms. A "willful" act is an act done intentionally and knowingly. (*In re Fine*, 116 Nev. 1001 (2000); *Black's Law Dictionary* 1593 (7th ed. 1999) (defining "willful")) A person acts "intentionally" when he acts voluntarily or deliberately, rather than accidentally or inadvertently. (*Batt v. State*, 111 Nev. 1127 (1995); *In re Fine*, 116 Nev. 1001 (2000); *Nevada Service Employees Union v. Orr*, 121 Nev. 675 (2005)) A person acts "knowingly" when he has knowledge of the facts which constitute the act or omission. (NRS 193.017, 624.024; *State v. Rhodig*, 101 Nev. 608 (1985); *Garcia v. Sixth Jud. Dist. Ct.*, 117 Nev. 697 (2001))

Section 5.6 of this bill clarifies that public officers and employees cannot assert common-law privileges and immunities in proceedings

under the Ethics Law but may assert constitutional or statutory privileges and immunities in such proceedings.

Section 5.8 of this bill moves the existing provisions of NRS 281.236 into the Ethics Law so that those provisions may be enforced by the Commission on Ethics. Under the existing provisions of NRS 281.236, certain regulated businesses and industries must observe a 1-year “cooling off” period before they may hire a former public officer or employee who had significant involvement in regulating the business or industry. Section 5.8 contains the same substantive provisions as NRS 281.236, except that the requirement to observe the 1-year “cooling off” period is imposed on the former public officer or employee instead of on the regulated business or industry.

Sections 8.25, 8.35 and 8.45 of this bill clarify existing provisions of the Ethics Law which prohibit members of the Commission on Ethics and the Commission’s Executive Director and Counsel from performing certain lobbying activities on behalf of private parties. (NRS 281A.200, 281A.230, 281A.250) Section 8.35 also provides that the Executive Director must have experience in administration, investigations and law.

The Ethics Law imposes civil penalties for certain violations (NRS 281A.480), but it does not contain an express statute of limitations. When a law imposes civil penalties but does not contain an express statute of limitations, it is presumed that the Legislature intended for a generally applicable statute of limitations to apply to proceedings brought under the law. (*DelCostello v. Int’l Bhd. of Teamsters*, 462 U.S. 151, 103 S.Ct. 2281 (1983); *3M Co. v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994); 51 Am. Jur. 2d *Limitation of Actions* § 129 (2000)) Because NRS 11.190 contains a generally applicable 2-year statute of limitations for actions brought upon a statute for a penalty or forfeiture, the 2-year period in NRS 11.190 is presumptively applicable to proceedings brought under the Ethics Law. (*Community Cause v. Boatwright*, 177 Cal. Rptr. 657 (Cal. Ct. App. 1981)) For purposes of clarity and certainty of application, sections 8.55 and 26 of this bill codify the existing 2-year statute of limitations expressly into the Ethics Law. (NRS 281A.280)

The Ethics Law places restrictions on certain public officers and employees with regard to representing or counseling a private person for compensation before various agencies. (NRS 281A.410) Section 8.7 of this bill clarifies those restrictions by replacing the terms “member of the executive branch” and “member of the legislative branch” with more specific, descriptive and accurate terms. Section 8.7 also clarifies the methods for filing the disclosure form certain public officers must file if they have represented or counseled a private person for compensation before certain agencies.

The Ethics Law requires public officers to disclose conflicts of interest and to abstain from voting because of certain types of conflicts. (NRS

281A.420) Because public officers must disclose conflicts before determining whether to abstain, section 9.5 of this bill rearranges the order of the existing disclosure and abstention provisions in the statute so that the disclosure provisions come before the abstention provisions. Section 9.5 also changes the abstention requirements which apply to members of certain county and city planning commissions so that those members are subject to the same abstention requirements which apply to other public officers under the statute.

Section 9.5 additionally requires the Commission to give appropriate weight and proper deference to the public policy of this State which favors the right of public officers to vote, provided they have properly disclosed all conflicts. Under this public policy, abstention is required only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the conflicts. This public policy demands proper disclosures of conflicts but prefers fewer instances of abstention because abstention disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs.

The Ethics Law allows public officers and employees to bid on or enter into contracts with governmental agencies when certain requirements are met, including that the contracting process is controlled by the rules of competitive bidding. (NRS 281A.430) Section 11 of this bill allows public officers and employees to enter into such contracts in situations where existing law exempts the contracts from the rules of competitive bidding because the contract is an emergency contract or because no responsible bids were received in response to a previous request for bids on the contract. (NRS 332.112, 332.148)

The Ethics Law contains procedures for investigating and adjudicating alleged ethical violations. (NRS 281A.440) Section 12 of this bill: (1) authorizes a public officer or employee who requested an advisory opinion regarding his own conduct to waive certain time limits; (2) provides a public officer or employee with 30 days to file an informational response to an ethics complaint and also provides that no objection or defense is waived by the failure to assert it in the informational response or during the investigatory stage of the proceedings; (3) grants the Executive Director an additional 10 days to complete his investigation of an ethics complaint and to present a recommendation regarding just and sufficient cause to the investigatory panel; and (4) grants the Commission a total of 60 days to hold a hearing and render an opinion if the investigatory panel finds just and sufficient cause, unless the public officer or employee waives the time limit.

The Ethics Law requires public officers to file a form acknowledging that they have received, read and understand the statutory ethical standards. (NRS 281A.500) Section 14 of this bill requires public officers to file the form at certain times while holding office and to acknowledge

in the form that they have a responsibility to inform themselves of any amendments to the statutory ethical standards. Section 14 provides methods for public officers to obtain hard copies of the statutory ethical standards and also provides for Internet access to the statutory ethical standards. Section 14 additionally clarifies the methods for filing the form and provides that the willful refusal to execute and file the form constitutes a willful violation of the Ethics Law.

Finally, when the Nevada Constitution specifies a particular method for removing a public officer from office for misconduct, that constitutional method is exclusive, and the public officer may not be removed from office through statutory removal proceedings. Because certain elected and appointed state officers may be removed from office only through impeachment pursuant to Article 7 of the Nevada Constitution, they may not be removed from office through statutory removal proceedings. (*Robison v. First Jud. Dist. Ct.*, 73 Nev. 169 (1957)) Similarly, because State Legislators may be removed from office only through expulsion by their own House pursuant to Section 6 of Article 4 of the Nevada Constitution, they may not be removed from office through impeachment or statutory removal proceedings. (*Hiss v. Bartlett*, 69 Mass. 468 (1855); *State ex rel. Martin v. Gilmore*, 20 Kan. 551 (1878); *In re Speakership*, 25 P. 707 (Colo. 1891); *State ex rel. Haviland v. Beadle*, 111 P. 720 (Mont. 1910); *State ex rel. Ezzell v. Shumate*, 113 S.W.2d 381 (Tenn. 1938); *State ex rel. Danforth v. Hickey*, 475 S.W.2d 617 (Mo. 1972)) Sections 13 and 18-24 of this bill conform existing statutory law with the constitutional provisions governing impeachment, expulsion and removal from office.

WHEREAS, The doctrine of separation of powers is fundamental to our system of State Government; and

WHEREAS, The constitutional source of the doctrine of separation of powers is Section 1 of Article 3 of the Nevada Constitution, which establishes a tripartite system of State Government and which firmly fixes the principle of separation of powers in the organic law of this State; and

WHEREAS, Under the doctrine of separation of powers, when the Nevada Constitution expressly grants the Legislative Department an exclusive power, the other Departments of State Government may not usurp, exercise, infringe upon or interfere with that exclusive power out of respect for an equal and coordinate branch of government; and

WHEREAS, Under Section 6 of Article 4 of the Nevada Constitution, each House of the Legislature has the exclusive constitutional power to determine the rules of its legislative proceedings and to punish its members for improper conduct related to those legislative proceedings; and

WHEREAS, Because Section 6 of Article 4 of the Nevada Constitution creates an exclusive constitutional power in each House, neither the Legislature nor one of the Houses may delegate that exclusive constitutional power to another branch of government; and

WHEREAS, For centuries, freedom of speech, debate, deliberation and action in National and State Legislatures has been recognized as essential to protect the integrity of the legislative process by ensuring that individual Legislators may perform their core or essential legislative functions without harassment, intimidation or interference by the other branches of government; and

WHEREAS, Legislative privilege and immunity has its origins in the Parliamentary struggles of the 16th and 17th centuries when the English monarchs used civil and criminal proceedings to harass, intimidate and suppress members of Parliament who were critical of the Crown; and

WHEREAS, Legislative privilege and immunity was first codified in the English Bill of Rights of 1689, which provided “That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament”; and

WHEREAS, Legislative privilege and immunity was extended to Legislators in the American Colonies where freedom of speech, debate, deliberation and action in the legislative process was taken as a matter of course by those who severed the American Colonies from the Crown and who became the Founders of our Nation; and

WHEREAS, The Founders of our Nation viewed legislative privilege and immunity as fundamental to the system of checks and balances and indispensable to the constitutional structure of separate, coequal and independent branches of government; now, therefore,

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Legislature hereby finds and declares that:

(a) The Framers of the Nevada Constitution created a system of checks and balances so that the constitutional powers separately vested in the Legislative, Executive and Judicial Departments of State Government may be exercised without intrusion from the other Departments.

(b) As part of the system of checks and balances, the constitutional doctrines of separation of powers and legislative privilege and immunity facilitate the autonomy of the Legislative Department by curtailing intrusions by the Executive or Judicial Department into the sphere of legitimate legislative activities.

(c) The constitutional doctrines of separation of powers and legislative privilege and immunity protect State Legislators from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

(d) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be hindered or obstructed by executive or judicial oversight that realistically threatens to control their conduct as Legislators.

(e) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must be free to represent the interests of their constituents with assurance that they will not later be called to task for that representation by the other branches of government.

(f) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, State Legislators must not be questioned or sanctioned by the other branches of government for their actions in carrying out their core or essential legislative functions.

(g) Under the constitutional doctrines of separation of powers and legislative privilege and immunity, the only governmental entity that may question or sanction a State Legislator for any actions taken within the sphere of legitimate legislative activity is the Legislator's own House pursuant to Section 6 of Article 4 of the Nevada Constitution.

(h) Therefore, the purpose and effect of this section is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

2. For any speech or debate in either House, a State Legislator shall not be questioned in any other place.

3. In interpreting and applying the provisions of this section, the interpretation and application given to the constitutional doctrines of separation of powers and legislative privilege and immunity under the Speech or Debate Clause of Section 6 of Article I of the Constitution of the United States must be considered to be persuasive authority.

4. The rights, privileges and immunities recognized by this section are in addition to any other rights, privileges and immunities recognized by law.

5. As used in this section, "State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.

Sec. 2. NRS 49.015 is hereby amended to read as follows:

49.015 1. Except as otherwise required by the Constitution of the United States or of the State of Nevada, and except as *otherwise* provided in this title or title 14 of NRS, *or section 1 of this act*, no person has a privilege to:

- (a) Refuse to be a witness;
- (b) Refuse to disclose any matter;
- (c) Refuse to produce any object or writing; or

(d) Prevent another from being a witness or disclosing any matter or producing any object or writing.

2. This section does not:

(a) Impair any privilege created by title 14 of NRS or by the Nevada Rules of Civil Procedure which is limited to a particular stage of the proceeding; or

(b) Extend any such privilege to any other stage of a proceeding.

Sec. 3. Chapter 281A of NRS is hereby amended by adding thereto the provisions set forth as sections ~~[4 and 5]~~ **3.4 to 5.8, inclusive**, of this act.

Sec. 3.4. "Intentionally" means voluntarily or deliberately, rather than accidentally or inadvertently. The term does not require proof of bad faith, ill will, evil intent or malice.

Sec. 3.6. "Knowingly" imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

Sec. 4. "Member of a local legislative body" means a member of a board of county commissioners, a governing body of a city or a governing body of any other political subdivision who performs ~~for a legislative function~~ any function that involves introducing, voting upon or otherwise acting upon any matter of a permanent or general character which may reflect public policy and which is not typically restricted to identifiable persons or groups.

Sec. 4.4. "Opinion" includes, without limitation, the disposition of a request for an opinion by stipulation, agreed settlement, consent order or default as authorized by NRS 233B.121.

Sec. 4.6. "Political subdivision" means any county, city or other local government as defined in NRS 354.474.

Sec. 5. "State Legislator" or "Legislator" means a member of the Senate or Assembly of the State of Nevada.

Sec. 5.4. In applying the provisions of this chapter to an alleged violation by a former public officer or employee, the use of the term "public officer" or "public employee" in this chapter must be interpreted to include the former public officer or employee, unless the commencement of proceedings against the former public officer or employee concerning the alleged violation is time-barred by the statute of limitations pursuant to NRS 281A.280.

Sec. 5.6. 1. In any proceeding commenced against a public officer or employee pursuant to the authority of this chapter, including any judicial review thereof, the public officer or employee who is the subject of the proceeding may not assert, claim or raise any common-law privilege or immunity as an affirmative defense, for testimonial or evidentiary purposes or for any other purpose.

2. The provisions of this chapter are intended to abrogate common-law privileges and immunities only in a proceeding commenced pursuant to the

authority of this chapter and only for the public officer or employee who is the subject of the proceeding. This abrogation of common-law privileges and immunities does not apply to or affect:

(a) Any privilege or immunity granted by the Constitution of the United States or of the State of Nevada or by section 1 of this act, chapter 49 of NRS or any other statute;

(b) Any person who is not the subject of the proceeding; or

(c) Any other proceeding that is not commenced pursuant to the authority of this chapter.

Sec. 5.8. 1. A former member of the Public Utilities Commission of Nevada shall not:

(a) Be employed by a public utility or parent organization or subsidiary of a public utility; or

(b) Appear before the Public Utilities Commission of Nevada to testify on behalf of a public utility or parent organization or subsidiary of a public utility.

↪ for 1 year after the termination of his service on the Public Utilities Commission of Nevada.

2. A former member of the State Gaming Control Board or the Nevada Gaming Commission shall not:

(a) Appear before the State Gaming Control Board or the Nevada Gaming Commission on behalf of a person who holds a license issued pursuant to chapter 463 or 464 of NRS or who is required to register with the Nevada Gaming Commission pursuant to chapter 463 of NRS; or

(b) Be employed by such a person.

↪ for 1 year after the termination of his service on the State Gaming Control Board or the Nevada Gaming Commission.

3. In addition to the prohibitions set forth in subsections 1 and 2, and except as otherwise provided in subsections 4 and 6, a former public officer or employee of a board, commission, department, division or other agency of the Executive Department of State Government, except a clerical employee, shall not solicit or accept employment from a business or industry whose activities are governed by regulations adopted by the board, commission, department, division or other agency for 1 year after the termination of his service or period of employment if:

(a) His principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year, he directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ him; or

(c) As a result of his governmental service or employment, he possesses knowledge of the trade secrets of a direct business competitor.

4. The provisions of subsection 3 do not apply to a former public officer who was a member of a board, commission or similar body of the State if:

(a) The former public officer is engaged in the profession, occupation or business regulated by the board, commission or similar body;

(b) The former public officer holds a license issued by the board, commission or similar body; and

(c) Holding a license issued by the board, commission or similar body is a requirement for membership on the board, commission or similar body.

5. Except as otherwise provided in subsection 6, a former public officer or employee of the State or a political subdivision, except a clerical employee, shall not solicit or accept employment from a person to whom a contract for supplies, materials, equipment or services was awarded by the State or political subdivision, as applicable, for 1 year after the termination of the officer's or employee's service or period of employment, if:

(a) The amount of the contract exceeded \$25,000;

(b) The contract was awarded within the 12-month period immediately preceding the termination of the officer's or employee's service or period of employment; and

(c) The position held by the former public officer or employee at the time the contract was awarded allowed him to affect or influence the awarding of the contract.

6. A current or former public officer or employee may request that the Commission apply the relevant facts in his case to the provisions of subsection 3 or 5, as applicable, and determine whether relief from the strict application of those provisions is proper. If the Commission determines that relief from the strict application of the provisions of subsection 3 or 5, as applicable, is not contrary to:

(a) The best interests of the public;

(b) The continued ethical integrity of the State Government or political subdivision, as applicable; and

(c) The provisions of this chapter,

↪ it may issue an opinion to that effect and grant such relief. The opinion of the Commission in such a case is final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the current or former public officer or employee.

7. Each request for an opinion that a current or former public officer or employee submits to the Commission pursuant to subsection 6, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the current or former public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the Commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion or any motion, evidence or record of a hearing related thereto; or

(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.

8. A meeting or hearing that the Commission or an investigatory panel holds to receive information or evidence concerning the propriety of the conduct of a current or former public officer or employee pursuant to this section and the deliberations of the Commission and the investigatory panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.

9. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038 and also includes regulations adopted by a board, commission, department, division or other agency of the Executive Department of State Government that is exempted from the requirements of chapter 233B of NRS.

Sec. 6. NRS 281A.020 is hereby amended to read as follows:

281A.020 1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

2. The Legislature finds **and declares** that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

(c) ~~[Members of the Legislature]~~ **In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators** serve as "citizen Legislators" who have other occupations and business interests ~~[. Each Legislator has]~~ **, who are expected to have** particular philosophies and perspectives that are necessarily influenced by the life experiences of ~~[that]~~ **the** Legislator, including, without limitation, professional, family and business experiences ~~[. Our system assumes that Legislators will]~~ **, and who are expected to** contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. ~~[The law concerning~~

ethics in government is not intended to require a member of the Legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.]

(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or section 1 of this act.

Sec. 7. NRS 281A.030 is hereby amended to read as follows:

281A.030 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 281A.040 to 281A.170, inclusive, **and sections ~~4 and~~ 3.4 to 5, inclusive, of this act** have the meanings ascribed to them in those sections.

Sec. 7.2. NRS 281A.040 is hereby amended to read as follows:

281A.040 "Business entity" means ~~any~~ **an organization or enterprise operated for economic gain, including, without limitation, a** proprietorship, partnership, **firm, business, company, trust, joint venture, syndicate,** corporation or ~~other enterprise doing business in the State of Nevada.~~ **association.**

Sec. 7.4. NRS 281A.080 is hereby amended to read as follows:

281A.080 **1.** The making of a "decision" is the exercise of governmental power to adopt laws, regulations or standards, render quasi-judicial decisions, establish executive policy or determine questions involving substantial discretion.

2. The term does not include ~~the~~ **:**

(a) The functions of the judiciary.

(b) The functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or section 1 of this act.

Sec. 8. [NRS 281A.130 is hereby amended to read as follows:

281A.130 "Member of the legislative branch" means ~~any~~ **a State Legislator or a** member of ~~the Legislature or any member of a board of county commissioners or governing body of a city or other political subdivision who performs a legislative function.~~ **a local legislative body.** **(Deleted by amendment.)**

Sec. 8.1. NRS 281A.140 is hereby amended to read as follows:

281A.140 ~~["Panel" means the]~~ **"Investigatory panel" or "panel" means an investigatory** panel appointed by the Commission pursuant to NRS 281A.220.

Sec. 8.15. NRS 281A.150 is hereby amended to read as follows:

281A.150 "Public employee" means any person who performs public duties under the direction and control of a public officer for compensation

paid by the State ~~[a county or an incorporated city.]~~ or any county, city or other political subdivision.

Sec. 8.2. NRS 281A.160 is hereby amended to read as follows:

281A.160 1. "Public officer" means a person elected or appointed to a position which ~~is~~ :

~~(a) Is~~ established by the Constitution of the State of Nevada, a statute of this State or ~~an~~ a charter or ordinance of any ~~of its counties or incorporated cities and which involves~~ county, city or other political subdivision; and

~~(b) Involves~~ the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

~~(a)~~ (1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;

~~(b)~~ (2) The expenditure of public money; and

~~(c)~~ (3) The administration of laws and rules of the State ~~[a county or a city.]~~ or any county, city or other political subdivision.

2. "Public officer" does not include:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a ~~board of trustees for a general improvement district or~~ special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

3. "Public office" does not include an office held by:

(a) Any justice, judge or other officer of the court system;

(b) Any member of a board, commission or other body whose function is advisory;

(c) Any member of a ~~board of trustees for a general improvement district or~~ special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or

(d) A county health officer appointed pursuant to NRS 439.290.

Sec. 8.23. NRS 281A.170 is hereby amended to read as follows:

281A.170 "Willful violation" means a violation where the public officer or employee ~~[knew or reasonably should have known that his conduct violated]~~ :

1. Acted intentionally and knowingly; or

2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter.

Sec. 8.25. NRS 281A.200 is hereby amended to read as follows:

281A.200 1. The Commission on Ethics, consisting of eight members, is hereby created.

2. The Legislative Commission shall appoint to the Commission four residents of the State, at least two of whom are former public officers, and at least one of whom must be an attorney licensed to practice law in this State.

3. The Governor shall appoint to the Commission four residents of the State, at least two of whom must be former public officers or public employees, and at least one of whom must be an attorney licensed to practice law in this State.

4. Not more than four members of the Commission may be members of the same political party. Not more than four members may be residents of the same county.

5. None of the members of the Commission may ~~be~~, **while he is serving on the Commission:**

(a) Hold another public office;

(b) Be actively involved in the work of any political party or political campaign; or

(c) Communicate directly with **a State Legislator or** a member of ~~the legislative branch~~ **a local legislative body** on behalf of someone other than himself or the Commission, for compensation, to influence ~~legislative action;~~

~~while he is serving on the Commission.]:~~

(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or

(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:

(I) The appropriation of public money;

(II) The issuance of a license or permit; or

(III) Any proposed subdivision of land or special exception or variance from zoning regulations.

6. After the initial terms, the terms of the members are 4 years. Any vacancy in the membership must be filled by the appropriate appointing authority for the unexpired term. Each member may serve no more than two consecutive full terms.

Sec. 8.3. NRS 281A.220 is hereby amended to read as follows:

281A.220 1. The Chairman shall appoint one or more **investigatory** panels of two members of the Commission on a rotating basis to review the determinations of just and sufficient cause made by the Executive Director pursuant to NRS 281A.440 and make a final determination regarding whether **there is** just and sufficient cause ~~exists~~ for the Commission to render an opinion ~~is~~ **in a matter.**

2. The Chairman and Vice Chairman of the Commission may not serve together on ~~an~~ **an investigatory** panel.

3. The members of ~~the~~ an investigatory panel may not be members of the same political party.

4. If ~~the~~ an investigatory panel ~~finds~~ determines that there is just and sufficient cause for the Commission to render an opinion in a matter, the members of the investigatory panel shall not participate in any further proceedings of the Commission relating to that matter.

Sec. 8.35. NRS 281A.230 is hereby amended to read as follows:

281A.230 1. The Commission shall appoint, within the limits of legislative appropriation, an Executive Director who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the Commission.

2. The Executive Director must have experience in administration, ~~law enforcement, investigations or~~ investigations and law.

3. The Executive Director is in the unclassified service of the State.

4. The Executive Director shall devote his entire time and attention to the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of his duties.

5. The Executive Director may not:

(a) Be actively involved in the work of any political party or political campaign; or

(b) ~~Communicate~~ Except in pursuit of the business of the Commission, communicate directly or indirectly with a State Legislator or a member of ~~the legislative branch~~ a local legislative body on behalf of someone other than himself to influence ~~legislative action, except in pursuit of the business of the Commission~~.

(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or

(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:

(I) The appropriation of public money;

(II) The issuance of a license or permit; or

(III) Any proposed subdivision of land or special exception or variance from zoning regulations.

Sec. 8.4. NRS 281A.240 is hereby amended to read as follows:

281A.240 1. In addition to any other duties imposed upon him, the Executive Director shall:

(a) Maintain complete and accurate records of all transactions and proceedings of the Commission.

(b) Receive requests for opinions pursuant to NRS 281A.440.

(c) Gather information and conduct investigations regarding requests for opinions received by the Commission and submit recommendations to the investigatory panel appointed pursuant to NRS 281A.220 regarding whether

there is just and sufficient cause to render an opinion in response to a particular request.

(d) Recommend to the Commission any regulations or legislation that he considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government.

(e) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations adopted by the Commission and previous opinions of the Commission. In any such training, the Executive Director shall emphasize that he is not a member of the Commission and that only the Commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances. The Commission may charge a reasonable fee to cover the costs of training provided by the Executive Director pursuant to this subsection.

(f) Perform such other duties, not inconsistent with law, as may be required by the Commission.

2. The Executive Director shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of his duties relating to:

- (a) The administration of the affairs of the Commission;
- (b) The review of statements of financial disclosure; and
- (c) The investigation of matters under the jurisdiction of the Commission.

Sec. 8.45. NRS 281A.250 is hereby amended to read as follows:

281A.250 1. The Commission shall appoint, within the limits of legislative appropriation, a Commission Counsel who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the Commission.

2. The Commission Counsel must be an attorney who is licensed to practice law in this State.

3. The Commission Counsel is in the unclassified service of the State.

4. The Commission Counsel shall devote his entire time and attention to the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of his duties.

5. The Commission Counsel may not:

(a) Be actively involved in the work of any political party or political campaign; or

(b) ~~Communicate~~ **Except in pursuit of the business of the Commission, communicate** directly or indirectly with **a State Legislator or** a member of ~~the legislative branch~~ **a local legislative body** on behalf of someone other than himself to influence ~~legislative action, except in pursuit of the business of the Commission.~~

(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or

(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:

(I) The appropriation of public money;

(II) The issuance of a license or permit; or

(III) Any proposed subdivision of land or special exception or variance from zoning regulations.

Sec. 8.5. NRS 281A.260 is hereby amended to read as follows:

281A.260 1. The Commission Counsel is the legal adviser to the Commission. For each opinion of the Commission, the Commission Counsel shall prepare, at the direction of the Commission, the appropriate findings of fact and conclusions as to relevant standards and the propriety of particular conduct within the time set forth in subsection ~~44~~ 6 of NRS 281A.440. The Commission Counsel shall not issue written opinions concerning the applicability of the statutory ethical standards to a given set of facts and circumstances except as directed by the Commission.

2. The Commission may rely upon the legal advice of the Commission Counsel in conducting its daily operations.

3. If the Commission Counsel is prohibited from acting on a particular matter or is otherwise unable to act on a particular matter, the Commission may:

(a) Request that the Attorney General appoint a deputy to act in the place of the Commission Counsel; or

(b) Employ outside legal counsel.

Sec. 8.55. NRS 281A.280 is hereby amended to read as follows:

281A.280 1. The Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of this chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:

(a) The filing of a request for an opinion with the Commission; or

(b) The Commission on its own motion ~~1.~~

~~2. The provisions of subsection 1 apply to a public officer or employee who:~~

~~(a) Currently holds public office or is publicly employed at the commencement of proceedings against him;~~

~~(b) Resigns or otherwise leaves his public office or employment;~~

~~(1) After the commencement of proceedings against him; or~~

~~(2) Within 1 year].~~

~~↪ within 2 years~~ after the alleged violation or reasonable discovery of the alleged violation.

2. For the purposes of this section, a proceeding is commenced:

(a) On the date on which a request for an opinion is filed in the proper form with the Commission in accordance with the regulations of the Commission; or

(b) If the proceeding is commenced by the Commission on its own motion, on the date on which the Commission serves the public officer or employee or former public officer or employee with notice of the proceeding in accordance with the regulations of the Commission.

Sec. 8.6. NRS 281A.300 is hereby amended to read as follows:

281A.300 1. The Chairman and Vice Chairman of the Commission may administer oaths.

2. The Commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of books and papers. Upon the request of the Executive Director or the public officer or public employee who is the subject of a request for an opinion, the Chairman or, in his absence, the Vice Chairman, may issue a subpoena to compel the attendance of a witness and the production of books and papers.

3. Before issuing a subpoena to a public officer or public employee who is the subject of a request for an opinion, the Executive Director shall submit a written request to the public officer or public employee requesting:

(a) His appearance as a witness; or

(b) His production of any books and papers relating to the request for an opinion.

4. Each written request submitted by the Executive Director pursuant to subsection 3 must specify the time and place for the attendance of the public officer or public employee or the production of any books and papers, and designate with certainty the books and papers requested, if any. If the public officer or public employee fails or refuses to attend at the time and place specified or produce the books and papers requested by the Executive Director within 5 business days after receipt of the request, the Chairman may issue the subpoena. Failure of the public officer or public employee to comply with the written request of the Executive Director shall be deemed a waiver by the public officer or public employee of the time set forth in subsections ~~3 and 4~~ **4, 5 and 6** of NRS 281A.440.

5. If any witness refuses to attend, testify or produce any books and papers as required by the subpoena, the Chairman of the Commission may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the Commission pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the Commission, or has refused to answer questions propounded to him, and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the Commission.

6. Upon such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order,

and then and there show cause why he has not attended, testified or produced the books or papers before the Commission. A certified copy of the order must be served upon the witness.

7. If it appears to the court that the subpoena was regularly issued by the Commission, the court shall enter an order that the witness appear before the Commission, at the time and place fixed in the order, and testify or produce the required books and papers. Upon failure to obey the order, the witness must be dealt with as for contempt of court.

Sec. 8.65. NRS 281A.400 is hereby amended to read as follows:

281A.400 A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any ~~private~~ business entity in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. ~~Except for State Legislators who are subject to the restrictions set forth in subsection 8, a~~ public officer or employee ~~[, other than a member of the Legislature,]~~ shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

➡ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A ~~member of the Legislature~~ **State Legislator** shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of his public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the Legislator or legislative employee to perform his official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

Sec. 8.7. NRS 281A.410 is hereby amended to read as follows:

281A.410 In addition to the requirements of the code of ethical standards:

1. ~~[A member of the executive branch or]~~ If a public *officer or* employee
~~[of the executive branch shall]~~ serves in a state agency of the Executive
Department or an agency of any county, city or other political subdivision,
the public officer or employee:

(a) Shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions ~~[. Any such]~~ ; and

(b) If the public officer or employee ~~[who]~~ leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this ~~[subsection,]~~ paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A State Legislator or a member of ~~[the legislative branch,]~~ a local legislative body, or a ~~[member of the executive branch or]~~ public officer or employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other ~~[member of the executive branch or]~~ public officer or employee shall not represent or counsel a ~~[client]~~ private person for compensation before any state agency of the Executive or Legislative ~~[Branch of Government,]~~ Department.

3. Not later than January 15 of each year, any State Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive ~~[Branch]~~ Department shall disclose for each such representation or counseling during the previous calendar year:

- (a) The name of the client;
- (b) The nature of the representation; and
- (c) The name of the state agency.

~~[→]~~

4. The disclosure required by subsection 3 must be made in writing and filed with the Commission ~~[,]~~ on a form prescribed by the Commission. For the purposes of this subsection, the disclosure is timely filed if, on or before the last day for filing, the disclosure is filed in one of the following ways:

(a) Delivered in person to the principal office of the Commission in Carson City.

(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the disclosure with the United States Postal Service.

(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the disclosure with the third-party commercial carrier.

5. The Commission shall retain a disclosure filed pursuant to ~~this subsection~~ subsections 3 and 4 for 6 years after the date on which the disclosure was filed.

Sec. 9. NRS 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in ~~subsection 2, 3 or 4,~~ this section, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. Except as otherwise provided in ~~subsection 3,~~ this section, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

➡ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His direct pecuniary interest; or
- (c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.

➡ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The

presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.

4. ~~4.1~~ **Except as otherwise provided in this section, a** public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;
 (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,
 ➔ without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. ~~Except as otherwise provided in subsection 6, such~~ **Such** a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.

5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

6. ~~After a member of the Legislature makes a disclosure pursuant to subsection 4, he may file with the Director of the Legislative Counsel Bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a Legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the Legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the Legislative Counsel Bureau.~~

~~7.1~~ The provisions of this section do not, under any circumstances:

(a) Prohibit a member of ~~the legislative branch~~ **a local legislative body** from requesting or introducing a legislative measure; or

(b) Require a member of ~~[the legislative branch]~~ *a local legislative body* to take any particular action before or while requesting or introducing a legislative measure.

7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government ~~and pursuant to Section 6 of Article 4 of the Nevada Constitution.~~

8. As used in this section ~~["commitment"]~~ :

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

~~[(a)]~~ (1) Who is a member of his household;

~~[(b)]~~ (2) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

~~[(c)]~~ (3) Who employs him or a member of his household;

~~[(d)]~~ (4) With whom he has a substantial and continuing business relationship; or

~~[(e)]~~ (5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this ~~subsection.~~ paragraph.

(b) "Public officer" and "public employee" do not include a State Legislator.

Sec. 9.5. NRS 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in this section, a public officer ~~may~~ or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter ~~if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.~~

~~2-1~~ :

(a) Regarding which he has accepted a gift or loan;

(b) In which he has a pecuniary interest; or

(c) Which would reasonably be affected by his commitment in a private capacity to the interest of others,

without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private

capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected.

2. The provisions of subsection 1 do not require a public officer to disclose:

(a) Any campaign contributions that the public officer reported in a timely manner pursuant to NRS 294A.120 or 294A.125; or

(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 294A.286.

3. Except as otherwise provided in this section, in addition to the requirements of ~~the code of ethical standards,~~ subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in ~~this~~ the public officer's situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

~~[4]~~

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him, or if he has a commitment in a private capacity to the interests of others, accruing to the other persons, ~~whose interests to which the member is committed in a private capacity,~~ is not greater than that accruing to any other member of the general business, profession, occupation or group ~~that is affected by the matter.~~ The presumption set forth in this ~~subsection~~ paragraph does not affect the applicability of the requirements set forth in subsection ~~[4]~~ 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which he was elected or appointed and to vote or otherwise act upon a matter, provided he has properly disclosed his acceptance of a gift or loan, his pecuniary interest or his commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of

this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by his acceptance of a gift or loan, his pecuniary interest or his commitment in a private capacity to the interests of others.

~~§ 3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:~~

~~(a) His acceptance of a gift or loan;~~

~~(b) His direct pecuniary interest; or~~

~~(c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;~~

~~It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.~~

~~4. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:~~

~~(a) Regarding which he has accepted a gift or loan;~~

~~(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or~~

~~(c) In which he has a pecuniary interest,~~

~~without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.]~~

5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

6. The provisions of this section do not, under any circumstances:

(a) Prohibit a member of a local legislative body from requesting or introducing a legislative measure; or

(b) Require a member of a local legislative body to take any particular action before or while requesting or introducing a legislative measure.

7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to Section 6 of Article 4 of the Nevada Constitution.

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

(1) Who is a member of his household;

(2) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(3) Who employs him or a member of his household;

(4) With whom he has a substantial and continuing business relationship; or

(5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

(b) "Public officer" and "public employee" do not include a State Legislator.

Sec. 10. [This act becomes effective on January 1, 2009.] ~~(Deleted by amendment.)~~

Sec. 11. NRS 281A.430 is hereby amended to read as follows:

281A.430 1. Except as otherwise provided in this section and NRS 281A.530 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any ~~private~~ business entity in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board ~~for~~ commission, , commission or body may, in the ordinary course of his

business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than ~~an~~ a public officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if ~~the~~ :

(a) The contracting process is controlled by the rules of open competitive bidding ~~[the]~~ or the rules of open competitive bidding are not employed as a result of the applicability of NRS 332.112 or 332.148;

(b) The sources of supply are limited ~~[he]~~ :

(c) He has not taken part in developing the contract plans or specifications ; and ~~he~~

(d) He will not be personally involved in opening, considering or accepting offers.

↪ If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281A.420, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

Sec. 12. NRS 281A.440 is hereby amended to read as follows:

281A.440 1. The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances ~~[as soon as practicable or]~~ within 45 days after receiving a request, ~~[whichever is sooner,]~~ on a form prescribed by the Commission, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee ~~[. He]~~ , unless the public officer or employee waives the time limit. The public officer or employee may also request the Commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the Commission is:

(a) Binding upon the requester as to his future conduct; and

(b) Final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the requester.

2. The Commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

- (a) Upon request from a specialized or local ethics committee.
- (b) Except as otherwise provided in this subsection, upon request from a person, if the requester submits:
 - (1) The request on a form prescribed by the Commission; and
 - (2) All related evidence deemed necessary by the Executive Director and the investigatory panel to make a determination of whether there is just and sufficient cause to render an opinion in the matter.
- (c) Upon the Commission's own motion regarding the propriety of conduct by a public officer or employee. The Commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint.

↪ The Commission shall not render an opinion interpreting the statutory ethical standards or apply those standards to a given set of facts and circumstances if the request is submitted by a person who is incarcerated in a correctional facility in this State.

3. Upon receipt of a request for an opinion by the Commission or upon the motion of the Commission pursuant to subsection 2, the Executive Director shall investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. The Executive Director shall notify the public officer or employee ~~that~~ who is the subject of the request ~~may~~ and provide the public officer or employee an opportunity to submit to the Executive Director a response to the allegations against him within 30 days after the date on which the public officer or employee received the notice of the request. The purpose of the response is to provide the Executive Director with any information relevant to the request ~~is~~ which the public officer or employee believes may assist the Executive Director and the investigatory panel in conducting the investigation. The public officer or employee is not required in the response or in any proceeding before the investigatory panel to assert, claim or raise any objection or defense, in law or fact, to the allegations against him, and no objection or defense, in law or fact, is waived, abandoned or barred by the failure to assert, claim or raise it in the response or in any proceeding before the investigatory panel.

4. The Executive Director shall complete ~~an~~ the investigation and present his recommendation relating to just and sufficient cause to the investigatory panel within ~~60~~ 70 days after the receipt of or the motion of the Commission for the request, unless the public officer or employee waives this time limit. If , after the investigation, the Executive Director determines ~~after an investigation~~ that there is just and sufficient cause ~~exists~~ for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific evidence that supports his recommendation. If, after ~~an~~ the investigation,

the Executive Director ~~[does not determine]~~ determines that there is not just and sufficient cause ~~[exists]~~ for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific reasons for his recommendation.

5. Within 15 days after the Executive Director has provided his recommendation in the matter to the investigatory panel, the investigatory panel shall make a final determination regarding whether there is just and sufficient cause ~~[exists]~~ for the Commission to render an opinion in the matter, unless the public officer or employee waives this time limit. The investigatory panel shall not determine that there is just and sufficient cause for the Commission to render an opinion in the matter unless the ~~[panel]~~ Executive Director has provided the public officer or employee an opportunity to respond to the allegations against him ~~[]~~ as required by subsection 3. The investigatory panel shall cause a record of its proceedings in each matter to be kept, and such a record must remain confidential until the investigatory panel determines whether there is just and sufficient cause for the Commission to render an opinion in the matter.

~~[4.]~~ 6. If the investigatory panel determines that there is just and sufficient cause ~~[exists]~~ for the Commission to render an opinion ~~[requested pursuant to this section.]~~ in the matter, the Commission shall hold a hearing and render an opinion in the matter within ~~[30]~~ 60 days after the determination of just and sufficient cause by the investigatory panel, unless the public officer or employee waives this time limit.

~~[5.]~~ 7. Each request for an opinion that a public officer or employee submits to the Commission pursuant to subsection 1, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the Commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto; or

(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.

~~[6.]~~ 8. Except as otherwise provided in this subsection, each document in the possession of the Commission or its staff that is related to a request for an opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to subsection 2, including, without limitation, the Commission's copy of the request and all materials and information gathered in an investigation of the request, is confidential until the investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter. The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 may in writing

authorize the Commission to make its files, material and information which are related to the request publicly available.

~~{7}~~ 9. Except as otherwise provided in paragraphs (a) and (b), the proceedings of ~~{a}~~ the investigatory panel are confidential until the investigatory panel determines whether there is just and sufficient cause to render an opinion ~~{1}~~ in the matter. A person who:

(a) Requests an opinion from the Commission pursuant to paragraph (b) of subsection 2 may:

(1) At any time, reveal to a third party the alleged conduct of a public officer or employee underlying the request that he filed with the Commission or the substance of testimony, if any, that he gave before the Commission.

(2) After the investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he requested an opinion from the Commission.

(b) Gives testimony before the Commission may:

(1) At any time, reveal to a third party the substance of testimony that he gave before the Commission.

(2) After the investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he gave testimony before the Commission.

~~{8}~~ 10. Whenever the Commission holds a hearing pursuant to this section, the Commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the Commission's hearing on the matter;

(b) Allow the person to be represented by counsel; and

(c) Allow the person to hear the evidence presented to the Commission and to respond and present evidence on his own behalf.

↪ The Commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

~~{9}~~ 11. If a person who is not a party to a hearing before the Commission, including, without limitation, a person who has requested an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of a witness at the hearing, the person must submit the question to the Executive Director in writing. The Executive Director may submit the question to the Commission if he deems the question relevant and appropriate. This subsection does not require the Commission to ask any question submitted by a person who is not a party to the proceeding.

~~{10}~~ 12. If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the Commission; and

(b) Declare by oath or affirmation that he will testify truthfully,

↪ the Commission may decline to render an opinion.

~~{11}~~ 13. For good cause shown, the Commission may take testimony from a person by telephone or video conference.

~~[12.]~~ **14.** For the purposes of NRS 41.032, the members of the Commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking an action related to the rendering of an opinion pursuant to this section.

~~[13.]~~ **15.** A meeting or hearing that the Commission or the *investigatory* panel holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the Commission and the *investigatory* panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.

Sec. 13. NRS 281A.480 is hereby amended to read as follows:

281A.480 1. In addition to any other ~~[penalty]~~ *penalties* provided by law, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

- (a) Not to exceed \$5,000 for a first willful violation of this chapter;
- (b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and
- (c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

2. In addition to *any* other penalties provided by law, the Commission may impose a civil penalty not to exceed \$5,000 and assess an amount equal to the amount of attorney's fees and costs actually and reasonably incurred by the person about whom an opinion was requested pursuant to NRS 281A.440 against a person who prevents, interferes with or attempts to prevent or interfere with the discovery or investigation of a violation of this chapter.

3. If the Commission finds that a violation of a provision of this chapter ~~[is]~~ by a public officer or employee or former public officer or employee has resulted in the realization of a financial benefit by the current or former public officer or employee or another person, the Commission may, in addition to *any* other penalties provided by law, require the current or former public officer or employee to pay a civil penalty of not more than twice the amount so realized.

4. ~~[If the Commission finds]~~ **In addition to any other penalties provided by law, if a proceeding results in an opinion** that:

(a) ~~[A willful violation]~~ **One or more willful violations** of this chapter ~~[has]~~ **have** been committed by a ~~[public officer]~~ **State Legislator** removable from office ~~[by impeachment only, the Commission shall file a report with the appropriate person responsible for commencing impeachment proceedings as to its finding. The report must contain a statement of the facts alleged to constitute the violation.]~~

~~(b) A willful violation of this chapter has been committed by a public officer removable from office pursuant to NRS 283.440, the Commission may file a proceeding in the appropriate court for removal of the officer.~~

~~(e) Three or more willful violations have been committed by a public officer removable from office pursuant to NRS 283.440, the Commission shall file a proceeding in the appropriate court for removal of the officer.]~~
only through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution, the Commission shall:

(1) If the State Legislator is a member of the Senate, submit the opinion to the Majority Leader of the Senate or, if the Majority Leader of the Senate is the subject of the opinion or the person who requested the opinion, to the President Pro Tempore of the Senate; or

(2) If the State Legislator is a member of the Assembly, submit the opinion to the Speaker of the Assembly or, if the Speaker of the Assembly is the subject of the opinion or the person who requested the opinion, to the Speaker Pro Tempore of the Assembly.

(b) One or more willful violations of this chapter have been committed by a state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution, the Commission shall submit the opinion to the Speaker of the Assembly and the Majority Leader of the Senate or, if the Speaker of the Assembly or the Majority Leader of the Senate is the person who requested the opinion, to the Speaker Pro Tempore of the Assembly or the President Pro Tempore of the Senate, as appropriate.

(c) One or more willful violations of this chapter have been committed by a public officer other than a public officer described in paragraphs (a) and (b), the willful violations shall be deemed to be malfeasance in office for the purposes of NRS 283.440 and the Commission:

(1) May file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed fewer than three willful violations of this chapter.

(2) Shall file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed three or more willful violations of this chapter.

↪ This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation found in the opinion.

5. An action taken by a public officer or employee or former public officer or employee relating to this chapter is not a willful violation of a provision of those sections if the public officer or employee establishes by sufficient evidence that he satisfied all of the following requirements:

(a) He relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the public employee or upon the manual published by the Commission pursuant to NRS 281A.290;

(b) He was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and

(c) He took action that was not contrary to a prior published opinion issued by the Commission.

6. In addition to any other penalties provided by law, a public employee who ~~[willfully violates a provision]~~ **commits a willful violation** of this chapter is subject to disciplinary proceedings by his employer and must be referred for action in accordance to the applicable provisions governing his employment.

7. The provisions of this chapter do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the Commission shall refer the matter to the Attorney General or the district attorney, as appropriate, for a determination of whether a crime has been committed that warrants prosecution.

8. The imposition of a civil penalty pursuant to subsection 1, 2 or 3 is a final decision for the purposes of judicial review ~~[]~~ **pursuant to NRS 233B.130.**

9. A finding by the Commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

Sec. 14. NRS 281A.500 is hereby amended to read as follows:

281A.500 1. ~~[Every]~~ **Each** public officer shall acknowledge that he ~~[has]~~ :

(a) Has received, read and understands the statutory ethical standards ~~[]~~ ;
and

(b) Has a responsibility to inform himself of any amendments to the statutory ethical standards as soon as reasonably practicable after each session of the Legislature.

2. The acknowledgment must be **executed** on a form prescribed by the Commission and must ~~[accompany the first statement of financial disclosure that the public officer is required to file]~~ **be filed** with the Commission ~~[pursuant to NRS 281A.600 or the Secretary of State pursuant to NRS 281A.610.]~~

~~[]~~ :

(a) If the public officer is elected to office at the general election, on or before January 15 of the year following his election.

(b) If the public officer is elected to office at an election other than the general election or is appointed to office, on or before the 30th day following the date on which he takes office.

3. Except as otherwise provided in this subsection, a public officer shall execute and file the acknowledgment once for each term of office. If the public officer serves at the pleasure of the appointing authority and does

not have a definite term of office, the public officer, in addition to executing and filing the acknowledgment after he takes office in accordance with subsection 2, shall execute and file the acknowledgment on or before January 15 of each even-numbered year while he holds that office.

4. For the purposes of this section, the acknowledgment is timely filed if, on or before the last day for filing, the acknowledgment is filed in one of the following ways:

(a) Delivered in person to the principal office of the Commission in Carson City.

(b) Mailed to the Commission by first-class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the acknowledgment with the United States Postal Service.

(c) Dispatched to a third-party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third-party commercial carrier is complete upon timely depositing the acknowledgment with the third-party commercial carrier.

5. The form for making the acknowledgment must contain:

(a) The address of the Internet website of the Commission where a public officer may view the statutory ethical standards and print a hard copy; and

(b) The telephone number and mailing address of the Commission where a public officer may make a request to obtain a hard copy of the statutory ethical standards from the Commission.

6. Whenever the Commission, or any public officer or employee as part of his official duties, provides a public officer with a hard copy of the form for making the acknowledgment, a hard copy of the statutory ethical standards must be included with the form.

7. The Commission ~~and the Secretary of State~~ shall retain ~~an~~ each acknowledgment filed pursuant to this section for 6 years after the date on which the acknowledgment was filed.

~~§~~ 8. Willful refusal to execute and file the acknowledgment required by this section ~~constitutes nonfeasance~~ shall be deemed to be:

(a) A willful violation of this chapter for the purposes of NRS 281A.480; and

(b) Nonfeasance in office ~~and is a ground for removal~~ for the purposes of NRS 283.440 and, if the public officer is removable from office pursuant to NRS 283.440 ~~§~~, the Commission may file a complaint in the appropriate court for removal of the public officer pursuant to that section. This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation of this section.

9. As used in this section, "general election" has the meaning ascribed to it in NRS 293.060.

Sec. 15. NRS 281A.520 is hereby amended to read as follows:

281A.520 1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

- (a) A ballot question.
- (b) A candidate.

2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:

(a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

- (1) The public office held by the public officer who is the candidate; or
- (2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

- (1) The public officer who is the candidate; or
- (2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

- (1) The government of this State;

- (2) An agency of the government of this State;
- (3) A political subdivision of this State; and
- (4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

- (1) A press release issued to the media by a governmental entity; or
- (2) The official website of a governmental entity.

~~[(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.]~~

Sec. 16. NRS 281A.540 is hereby amended to read as follows:

281A.540 1. In addition to any other ~~[penalty]~~ penalties provided by law, a governmental grant, contract or lease entered into in violation of this chapter is voidable by the State, county, city or ~~town]~~ political subdivision. In a determination under this section of whether to void a grant, contract or lease, the interests of innocent third parties who could be damaged must be taken into account. The Attorney General, district attorney or city attorney must give notice of his intent to void a grant, contract or lease under this section no later than 30 days after the Commission has determined that there has been a related violation of this chapter.

2. In addition to any other ~~[penalty]~~ penalties provided by law, a contract prohibited by NRS 281.230 which is knowingly entered into by a person designated in subsection 1 of NRS 281.230 is void.

3. Any action taken by the State in violation of this chapter is voidable, except that the interests of innocent third parties in the nature of the violation must be taken into account. The Attorney General may also pursue any other available legal or equitable remedies.

4. In addition to any other ~~[penalty]~~ penalties provided by law, the Attorney General may recover any fee, compensation, gift or benefit received by a person as a result of a violation of this chapter by a public officer. An action to recover pursuant to this section must be brought within 2 years after the violation or reasonable discovery of the violation.

Sec. 17. NRS 281A.620 is hereby amended to read as follows:

281A.620 1. Statements of financial disclosure, as approved pursuant to NRS 281A.470 or in such form as the Commission otherwise prescribes, must contain the following information concerning the candidate for public office or public officer:

(a) His length of residence in the State of Nevada and the district in which he is registered to vote.

(b) Each source of his income, or that of any member of his household who is 18 years of age or older. No listing of individual clients, customers or patients is required, but if that is the case, a general source such as "professional services" must be disclosed.

(c) A list of the specific location and particular use of real estate, other than a personal residence:

(1) In which he or a member of his household has a legal or beneficial interest;

(2) Whose fair market value is \$2,500 or more; and

(3) That is located in this State or an adjacent state.

(d) The name of each creditor to whom he or a member of his household owes \$5,000 or more, except for:

(1) A debt secured by a mortgage or deed of trust of real property which is not required to be listed pursuant to paragraph (c); and

(2) A debt for which a security interest in a motor vehicle for personal use was retained by the seller.

(e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift, except:

(1) A gift received from a person who is related to the candidate for public office or public officer within the third degree of consanguinity or affinity.

(2) Ceremonial gifts received for a birthday, wedding, anniversary, holiday or other ceremonial occasion if the donor does not have a substantial interest in the legislative, administrative or political action of the candidate for public office or public officer.

(f) A list of each business entity with which he or a member of his household is involved as a trustee, beneficiary of a trust, director, officer, owner in whole or in part, limited or general partner, or holder of a class of stock or security representing 1 percent or more of the total outstanding stock or securities issued by the business entity.

(g) A list of all public offices presently held by him for which this statement of financial disclosure is required.

2. The Commission shall distribute or cause to be distributed the forms required for such a statement to each candidate for public office and public officer who is required to file one. The Commission is not responsible for the costs of producing or distributing a form for filing statements of financial disclosure which is prescribed pursuant to subsection 1 of NRS 281A.470.

3. As used in this section ~~the~~

~~(a) "Business entity" means an organization or enterprise operated for economic gain, including a proprietorship, partnership, firm, business, trust, joint venture, syndicate, corporation or association.~~

~~(b) "Household", "member of his household" includes:~~

~~[(1)] (a)~~ The spouse of a candidate for public office or public officer;

~~[(2)] (b)~~ A person who does not live in the same home or dwelling, but who is dependent on and receiving substantial support from the candidate for public office or public officer; and

~~[(3)]~~ (c) A person who lived in the home or dwelling of the candidate for public office or public officer for 6 months or more in the year immediately preceding the year in which the candidate for public office or public officer files the statement of financial disclosure.

Sec. 17.5. NRS 281A.660 is hereby amended to read as follows:

281A.660 1. If the Secretary of State receives information that a candidate for public office or public officer willfully fails to file his statement of financial disclosure or willfully fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281A.600 or 281A.610, the Secretary of State may, after giving notice to that person or entity, cause the appropriate proceedings to be instituted in the First Judicial District Court.

2. Except as otherwise provided in this section, a candidate for public office or public officer who willfully fails to file his statement of financial disclosure or willfully fails to file his statement of financial disclosure in a timely manner pursuant to NRS 281A.600 or 281A.610 is subject to a civil penalty and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer.

3. The amount of the civil penalty is:

(a) If the statement is filed not more than 10 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, \$25.

(b) If the statement is filed more than 10 days but not more than 20 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, \$50.

(c) If the statement is filed more than 20 days but not more than 30 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, \$100.

(d) If the statement is filed more than 30 days but not more than 45 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, \$250.

(e) If the statement is not filed or is filed more than 45 days after the applicable deadline set forth in subsection 1 of NRS 281A.600 or subsection 1 of NRS 281A.610, \$2,000.

4. For good cause shown, the Secretary of State may waive a civil penalty that would otherwise be imposed pursuant to this section. If the Secretary of State waives a civil penalty pursuant to this subsection, the Secretary of State shall:

(a) Create a record which sets forth that the civil penalty has been waived and describes the circumstances that constitute the good cause shown; and

(b) Ensure that the record created pursuant to paragraph (a) is available for review by the general public.

5. As used in this section, “willfully” means ~~[deliberately]~~ intentionally and knowingly.

Sec. 18. NRS 283.040 is hereby amended to read as follows:

283.040 1. Every office becomes vacant upon the occurring of any of the following events before the expiration of the term:

- (a) The death or resignation of the incumbent.
- (b) The removal of the incumbent from office.
- (c) The confirmed insanity of the incumbent, found by a court of competent jurisdiction.
- (d) A conviction of the incumbent of any felony or offense involving a violation of his official oath or bond or a violation of NRS 241.040, 293.1755 or 293C.200.
- (e) A refusal or neglect of the person elected or appointed to take the oath of office, as prescribed in NRS 282.010, or, when a bond is required by law, his refusal or neglect to give the bond within the time prescribed by law.
- (f) Except as otherwise provided in NRS 266.400, the ceasing of the incumbent to be an actual, as opposed to constructive, resident of the State, district, county, city, ward or other unit prescribed by law in which the duties of his office are to be exercised, or from which he was elected or appointed, or in which he was required to reside to be a candidate for office or appointed to office.
- (g) The neglect or refusal of the incumbent to discharge the duties of his office for a period of 30 days, except when prevented by sickness or absence from the State or county, as provided by law. In a county whose population is less than 15,000, after an incumbent, other than a state officer, has been prevented by sickness from discharging the duties of his office for at least 6 months, the district attorney, either on his own volition or at the request of another person, may petition the district court to declare the office vacant. If the incumbent holds the office of district attorney, the Attorney General, either on his own volition or at the request of another person, may petition the district court to declare the office vacant. The district court shall hold a hearing to determine whether to declare the office vacant and, in making its determination, shall consider evidence relating to:
 - (1) The medical condition of the incumbent;
 - (2) The extent to which illness, disease or physical weakness has rendered the incumbent unable to manage independently and perform the duties of his office; and
 - (3) The extent to which the absence of the incumbent has had a detrimental effect on the applicable governmental entity.
- (h) The decision of a competent tribunal declaring the election or appointment void or the office vacant.
- (i) A determination pursuant to NRS 293.182 or 293C.186 that the incumbent fails to meet any qualification required for the office.

2. Upon the happening of any of the events described in subsection 1, if the incumbent fails or refuses to relinquish his office, the Attorney General

shall, if the office is a state office or concerns more than one county, or the district attorney shall, if the office is a county office or concerns territory within one county, commence and prosecute, in a court of competent jurisdiction, any proceedings for judgment and decree declaring that office vacant.

3. The provisions of this section do not apply to the extent that they conflict or are otherwise inconsistent with any provision of the Constitution of the State of Nevada regarding the power to judge of the qualifications, elections and returns of or to punish, impeach, expel or remove from office the Governor, other state and judicial officers or State Legislators.

Sec. 19. NRS 283.140 is hereby amended to read as follows:

283.140 **1.** Any state officer ~~created by state law,~~ shall be liable ~~for~~ **to** impeachment for ~~any~~ misdemeanor **or malfeasance** in office ~~in~~ **pursuant to Article 7 of the Nevada Constitution.**

2. As used in NRS 283.140 to 283.290, inclusive, "state officer" means the Governor and other state and judicial officers, except:

(a) Justices of the peace; and

(b) State Legislators removable from office only through expulsion by their own House pursuant to Section 6 of Article 4 of the Nevada Constitution.

Sec. 20. NRS 283.160 is hereby amended to read as follows:

283.160 When ~~an officer of the State~~ **a state officer** is impeached by the Assembly for ~~a~~ misdemeanor **or malfeasance** in office, the articles of impeachment shall be delivered to the President of the Senate.

Sec. 21. NRS 283.300 is hereby amended to read as follows:

283.300 **1.** An accusation in writing against any district, county, township or municipal officer ~~except a justice or judge of the court system,~~ for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

2. As used in this section, "district, county, township or municipal officer" does not include:

(a) A justice or judge of the court system;

(b) A state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution; or

(c) A State Legislator removable from office only through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution.

Sec. 22. NRS 283.440 is hereby amended to read as follows:

283.440 **1.** Any person **who is** now holding or who shall hereafter hold any office in this State ~~except a justice or judge of the court system,~~ **and** who refuses or neglects to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office, may be removed therefrom as hereinafter prescribed in this section ~~in~~ **, except that this section does not apply to:**

(a) A justice or judge of the court system;

(b) A state officer removable from office only through impeachment pursuant to Article 7 of the Nevada Constitution; or

(c) A State Legislator removable from office only through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution.

2. Whenever a complaint in writing, duly verified by the oath of any complainant, is presented to the district court alleging that any officer within the jurisdiction of the court:

(a) Has been guilty of charging and collecting any illegal fees for services rendered or to be rendered in his office;

(b) Has refused or neglected to perform the official duties pertaining to his office as prescribed by law; or

(c) Has been guilty of any malpractice or malfeasance in office,
 ➔ the court shall cite the party charged to appear before it on a certain day, not more than 10 days or less than 5 days from the day when the complaint was presented. On that day, or some subsequent day not more than 20 days from that on which the complaint was presented, the court, in a summary manner, shall proceed to hear the complaint and evidence offered by the party complained of. If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall enter a decree that the party complained of shall be deprived of his office.

3. The clerk of the court in which the proceedings are had, shall, within 3 days thereafter, transmit to the Governor or the board of county commissioners of the proper county, as the case may be, a copy of any decree or judgment declaring any officer deprived of any office under this section. The Governor or the board of county commissioners, as the case may be, shall appoint some person to fill the office until a successor shall be elected or appointed and qualified. The person so appointed shall give such bond as security as is prescribed by law and pertaining to the office.

4. If the judgment of the district court is against the officer complained of and an appeal is taken from the judgment so rendered, the officer so appealing shall not hold the office during the pendency of the appeal, but the office shall be filled as in case of a vacancy.

Sec. 23. NRS 283.450 is hereby amended to read as follows:

283.450 1. Any civil officer in this state who, during his term of office, becomes intoxicated or is under the influence of alcoholic, malt or vinous liquors, or becomes or is addicted to the use of controlled substances, so that he is not at all times in proper condition for the discharge of the duties of his office, is guilty of a gross misdemeanor ~~[-and,] and~~ if he is ~~[-a]~~ :

(a) A state officer, *he* is subject to removal from office ~~[by impeachment, or if he is a]~~ through impeachment pursuant to Article 7 of the Nevada Constitution;

(b) A State Legislator, he is subject to removal from office through expulsion by his own House pursuant to Section 6 of Article 4 of the Nevada Constitution; or

(c) A county, city or township officer, he shall be removed from office by the judgment of the court in which the conviction is had, as a part of the penalty in such a conviction.

2. Upon receiving information from any person that the provisions of this section have been violated, sheriffs and their deputies, constables and their deputies, district attorneys, and all other peace officers in this state shall immediately institute proceedings in the proper court against the person complained of, and shall prosecute the same with reasonable diligence to final judgment.

3. If any person makes and files a complaint under oath charging the district attorney with a violation of this section, the Attorney General shall prosecute the district attorney pursuant to the terms of this section.

4. If any state officer is convicted pursuant to this section, the prosecuting officer obtaining the conviction shall file a certified copy of the judgment roll with the Secretary of State. The Secretary of State shall lay the certified copy of the judgment roll before the **appropriate House of the** Legislature at its next session.

5. The provisions of this section must be specially charged to the grand juries of the several counties by district judges.

Sec. 24. NRS 193.105 is hereby amended to read as follows:

193.105 1. If, during the course of his employment, an employee of the State or of any political subdivision of the State is convicted on or after October 1, 1989, of violating any federal or state law prohibiting the sale of any controlled substance, the employer upon discovery of the conviction shall terminate the employment of the employee.

2. If, during the course of his tenure in office, an officer of any county, city or township of the State is convicted on or after October 1, 1989, of violating any federal or state law prohibiting the sale of any controlled substance, the court as part of the penalty for such a conviction shall remove the officer from his office.

3. If, during the course of his tenure in office, an elected or appointed officer of the State is convicted on or after October 1, 1989, of violating any federal or state law prohibiting the sale of any controlled substance, the prosecuting officer who obtained the conviction shall file a certified copy of the judgment roll with the Secretary of State. The Secretary of State shall lay the certified copy of the judgment roll before the ~~[Assembly]~~ **appropriate House of the Legislature** at its next session. ~~[for the preparation of articles of impeachment.]~~

4. This section does not apply to a justice or judge of the court system.

Sec. 25. NRS 281.236, 281A.110, 281A.120 and 281A.130 are hereby repealed.

Sec. 26. The Legislature hereby finds and declares that:

1. NRS 11.190 contains a generally applicable 2-year statute of limitations for any action upon a statute for a penalty or forfeiture, where the action is given to a person or the State.

2. Because NRS 281A.480 authorizes the Commission on Ethics to impose civil penalties on a current or former public officer or employee for a violation of chapter 281A of NRS, the existing 2-year statute of limitations in NRS 11.190 is applicable to proceedings commenced against a current or former public officer or employee pursuant to chapter 281A of NRS.

3. By enacting the 2-year statute of limitations in NRS 281A.280, as amended by section 8.55 of this act, the Legislature is substituting in a continuing way the 2-year statute of limitations in NRS 281A.280 for the existing 2-year statute of limitations in NRS 11.190 with regard to violations of chapter 281A of NRS.

4. Therefore, the 2-year statute of limitations in NRS 281A.280, as amended by section 8.55 of this act, is applicable to any proceeding against a current or former public officer or employee for a violation of chapter 281A of NRS if the proceeding is commenced on or after the effective date of section 8.55 of this act, whether or not the violation occurred before that effective date.

Sec. 27. 1. This section and sections 1, 2, 3, 4, 5, 6, 7, 7.4 and 9 of this act become effective on January 1, 2009.

2. Sections 3.4, 3.6, 4.4, 4.6, 5.4, 5.6, 5.8, 7.2, 8 to 8.7, inclusive, and 9.5 to 26, inclusive, of this act become effective upon passage and approval.

LEADLINES OF REPEALED SECTIONS

281.236 Employment of certain former public officers and employees by regulated businesses prohibited; certain former public officers and employees prohibited from soliciting or accepting employment from certain persons contracting with State or local government; determination by Commission on Ethics.

281A.110 "Legislative function" defined.

281A.120 "Member of the executive branch" defined.

281A.130 "Member of the legislative branch" defined.

Assemblywoman Koivisto moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 183.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 751.

AN ACT relating to common-interest communities; ~~revising provisions relating to systems for obtaining solar or wind energy; revising the provisions~~

~~governing the regulation of certain streets in common interest communities;~~
revising provisions concerning voting rights exercised by delegates or representatives; prohibiting an association in a common-interest community from imposing an assessment against the owners of certain tax-exempt property; clarifying various provisions governing common-interest communities; making various other changes to the provisions governing common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Existing law provides that a covenant, restriction or condition in a deed, contract or other legal instrument cannot unreasonably restrict the use of a system for obtaining solar or wind energy. (NRS 111.239, 278.0208) Sections 1 and 45 of this bill specify the circumstances under which a specification regarding the color of such a system is enforceable.]~~

Section 3 of this bill provides additional ethical requirements for members of an executive board by requiring a member who stands to gain any personal profit or compensation from a matter before the executive board to disclose the matter to the executive board and to abstain from voting on the matter. (NRS 116.31185, 116.31187)

~~[Section 4 of this bill: (1) states that the provisions of chapter 116 of NRS do not modify the tariffs, rules and standards of a public utility; and (2) provides that the governing documents of an association must be consistent and not conflict with the tariffs, rules and standards of a public utility.~~

~~Existing law provides that certain common interest communities are prohibited from regulating motor vehicles on thoroughfares accepted by the State or local governments for public use. (NRS 116.350) Section 5 of this bill prohibits a common interest community from restricting the operation of motorcycles. Section 6 of this bill prohibits a common interest community from using information from radar guns or other devices unless the radar gun or device meets certain specifications and the person operating the radar gun or device meets certain qualifications.]~~

Section 5.5 of this bill authorizes the Commission for Common-Interest Communities and Condominium Hotels, or the Administrator of the Real Estate Division of the Department of Business and Industry with the Commission's approval, to adopt regulations to require any additional disclosures in the sale of a unit as the Commission deems necessary.

Under existing law, a common-interest community created before January 1, 1992, and a common-interest community, with a declaration so providing, that consists of at least 1,000 units, may have the voting rights of the units' owners in the association for that common-interest community be exercised by delegates or representatives. (NRS 116.1201, 116.31105) **Sections 8, 14, 15, 18, 20 and 21** of this bill prohibit the use of delegates or representatives to exercise the voting rights of units' owners in the election or removal of a member of the executive board. Also, **sections 9 and 22** of this bill provide that this form of voting may occur only during the period that the declarant is

in control of the association and during the 2-year period after the declarant's control of the association is terminated. A master association which governs a time-share plan created pursuant to chapter 119A of NRS is excluded from these new provisions and is allowed to continue using delegates or representatives to exercise the voting rights of owners of time shares. A master association which governs a planned community that is exempt from the provisions of chapter 116 of NRS is also excluded from these new provisions.

Section 11 of this bill prohibits an association from imposing an assessment against the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. **Section 46** of this bill provides that this prohibition applies to such owners who are not obligated to pay assessments as of January 1, 2009.

Section 12 of this bill provides that: (1) a unit's owner must receive notice of a violation and possible fine; (2) an association may not impose a fine against a unit's owner or tenant of a unit's owner for a vehicular violation of the governing documents committed by a person delivering goods to, or performing services for, a unit's owner or tenant of a unit's owner; (3) a member of the executive board cannot participate in hearings on fines if he has not paid his assessments; and (4) the association must provide written confirmation when a fine is paid. (NRS 116.31031)

Section 13 of this bill requires an association to establish an account for a unit owner's payments for fines, which must be kept separate from any account established for assessments. (NRS 116.310315)

Section 14 of this bill increases the maximum term of office for a member of an executive board from 2 years to 3 years. (NRS 116.31034) **Section 14** also provides that an association is not obligated to distribute any disclosure made by a candidate for the executive board if the disclosure contains information that is believed to be defamatory, libelous or profane.

Section 16 of this bill requires that a declarant deliver to an association an ancillary audit of the association's money and audited financial statements from the date of the last audit until the date the declarant's control ends. (NRS 116.31038) **Section 14** also requires the declarant to pay for the costs of the ancillary audit.

Sections 35-37 and 39-44 of this bill eliminate the issuance of permits to reserve study specialists and instead provide for their registration. (NRS 116.750, 116A.120, 116A.260, 116A.420-116A.900)

Section 19 of this bill lengthens the period between which meetings of the executive board must be held from every 90 days to every quarter, but not less than every 100 days. (NRS 116.31083)

~~f Section 23 of this bill revises provisions relating to financial statements for certain associations. (NRS 116.31144)~~

~~Existing law provides that an association has the statutory obligation to: (1) fund adequately its reserves; (2) include in its annual budget a statement concerning its reserves and whether it will be necessary to impose any~~

~~special assessments; and (3) review its study of the reserves on an annual basis and make any appropriate adjustments necessary to ensure that the reserves are always funded adequately. (NRS 116.3115, 116.31151, 116.31152) Section 24 of this bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate reserves.]~~

Existing law requires certain signatures before money in the reserve account of an association may be withdrawn. (NRS 116.31153) **Section 26** of this bill also requires certain signatures before money in the operating account of an association may be withdrawn, unless the withdrawal is to transfer money to the reserve account or to make automatic payments for utilities.

Section 28 of this bill excludes the books, records and other papers of the association which are in the process of being developed and have not yet been placed on an agenda for final approval by the executive board from the material which the board must make available upon the written request of a unit's owner. (NRS 116.31175) **Section 28** also provides that if an official publication contains any mention of a candidate or ballot question or contains the views or opinions of the association concerning an issue of official interest, the official publication must, upon request, provide equal space and equivalent exposure to opposing views and opinions. In addition, **section 28** provides immunity from criminal or civil liability for an association and its officers, employees and agents who publish or disclose information pursuant to the duties imposed by this section.

Section 29 of this bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing. (NRS 116.31187)

~~[Existing law provides that except as otherwise provided in the declaration, an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. (NRS 116.335) Section 30 of this bill provides that unless at the time a unit's owner purchases his unit the declaration prohibited the unit's owner from renting or leasing his unit or required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit, the association may not: (1) prohibit the unit's owner from renting or leasing his unit; or (2) require the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit.]~~

Section 31 of this bill provides additional rights to units' owners by mandating notice before an association may interrupt utility service to a unit's owner. (NRS 116.345)

~~[Existing law provides that certain common interest communities are prohibited from regulating motor vehicles on thoroughfares accepted by the State or local governments for public use. (NRS 116.350) Section 32 of this~~

~~bill prohibits a common interest community from restricting the parking of certain utility service vehicles, law enforcement vehicles and emergency services vehicles.~~

~~Existing law provides that an association may charge certain fees for furnishing certain documents and certificates in connection with the resale of a unit. (NRS 116.4109) Section 33 of this bill provides that if the association enters into a contract or agreement with any person or entity to furnish such documents or certificates, the contract or agreement must not allow a unit's owner to be charged any fee that exceeds the amount of the fee that the association itself may charge. Additionally, section 33 provides that an association may not charge a unit's owner, and may not require a unit's owner to pay, any fee related to the resale of a unit that is not specifically authorized, including, without limitation, any transaction fee, transfer fee, asset enhancement fee or other similar fee, except it may charge a fee to transfer the unit to a new owner in the association books and records based on the actual cost incurred.]~~

Section 34 of this bill deems deposits made in connection with the purchase or reservation of units from a person required to deliver a public offering statement placed in out-of-state escrow companies as being deposited in this State if the escrow holder has a legal right to conduct business in the State, has a registered agent in this State and has consented to the jurisdiction of the courts of this State. (NRS 116.411)

~~[Section 38 of this bill provides for the issuance of temporary certificates for community managers for a period of 1 year under certain circumstances. In addition, section 38 requires the posting of bonds by community managers in an amount established by regulation, based on a sliding scale. (NRS 116A.410)]~~

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

Section 1. ~~[NRS 111.239 is hereby amended to read as follows:~~

~~111.239 1. [Any] Except as otherwise provided in subsection 2, any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner of the property from using a system for obtaining solar or wind energy on his property is void and unenforceable.~~

~~2. A covenant, restriction or condition contained in the governing documents of a common interest community or a policy established by a common interest community specifying the color of such a system is enforceable so long as such a system is manufactured in such color and the specification was:~~

~~(a) In existence on July 1, 2007; or~~

~~(b) Contained in the governing documents in effect on the close of escrow of the first sale of a unit in the common interest community.~~

~~3.—For the purposes of this section [, “unreasonably”]~~

~~(a) “Common interest community” has the meaning ascribed to it in NRS 116.021.~~

~~(b) “Governing documents” has the meaning ascribed to it in NRS 116.049.~~

~~(c) “Unit” has the meaning ascribed to it in NRS 116.093.~~

~~(d) “Unreasonably restricts the use of a system for obtaining solar or wind energy” means placing a restriction or requirement on the use of such a system which significantly decreases the efficiency or performance of the system and does not allow for the use of an alternative system at a comparable cost and with comparable efficiency and performance. (Deleted by amendment.)~~

Sec. 2. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. 1. A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:

(a) Disclose the matter to the executive board; and

(b) Abstain from voting on any such matter.

2. For the purposes of this section:

(a) An employee of a declarant or an affiliate of a declarant who is a member of the executive board shall not, solely by reason of such employment or affiliation, be deemed to gain any personal profit or compensation.

(b) A member of an executive board shall not be deemed to gain any personal profit or compensation solely because the member of the executive board is the owner of a unit in the common-interest community.

Sec. 4. ~~1.—The provisions of this chapter do not invalidate or modify the tariffs, rules and standards of a public utility.~~

~~2.—The governing documents of an association must be consistent and not conflict with the tariffs, rules and standards of a public utility. Any provision of the governing documents which conflicts with the tariffs, rules and standards of a public utility is void and may not be enforced against a purchaser.~~

~~3.—As used in this section, “public utility” has the meaning ascribed to it in NRS 704.020. (Deleted by amendment.)~~

Sec. 5. ~~1.—The executive board of a common interest community shall not, and the governing documents of a common interest community must not, restrict, prohibit or otherwise impede the operation of a motorcycle if the motorcycle is operated on any road, street, alley or other surface intended for use by a motor vehicle.~~

~~2.—The provisions of this section do not preclude the governing documents of a common interest community from reasonably restricting the parking or storage of a motorcycle to the extent authorized by law.~~

~~3. As used in this section, "motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground which is required to be registered pursuant to chapter 482 of NRS.] (Deleted by amendment.)~~

Sec. 5.5. The Commission, or the Administrator with the approval of the Commission, may adopt regulations to require any additional disclosures in the case of a sale of a unit as it deems necessary.

Sec. 6. ~~[A member of the executive board of a common interest community, a community manager for the common interest community and any other representative of the association shall not use a radar gun or other device designed to gauge the speed of a vehicle for the purpose of imposing any fine or other penalty upon or taking any other action against a unit's owner or other person unless:~~

~~1. The radar gun or other device:~~

~~(a) Is, or was at the time of purchase, on the Conforming Product List of the International Association of Chiefs of Police; and~~

~~(b) Is inspected at least every 3 years to determine whether its level of power and structural integrity comply with the minimum performance specifications for that model established by the United States Department of Transportation; and~~

~~2. The person operating the radar gun or other device has successfully completed a course of training in the proper use of the radar gun or other device.] (Deleted by amendment.)~~

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

(II) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply

to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; ~~for~~

(d) Prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government ~~[]~~, *except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives;*

(e) Prohibit a master association which governs a time-share plan created pursuant to chapter 119A of NRS from providing for a representative form of government for the time-share plan; or

(f) Prohibit a master association which governs a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted and which is exempt from the provisions of this chapter pursuant to paragraph (b) of subsection 2 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, “limited-purpose association” means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units’ owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 9. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

(II) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units’ owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has

less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992;

(d) ~~Prohibit~~ ***Except as otherwise provided in subsection 8 of NRS 116.31105, prohibit*** a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government, except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives; ~~or~~

(e) Prohibit a master association which governs a time-share plan created pursuant to chapter 119A of NRS from providing for a representative form of government for the time-share plan ~~[-]~~; ***or***

(f) Prohibit a master association which governs a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted and which is exempt from the provisions of this chapter pursuant to paragraph (b) of subsection 2 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 10. (Deleted by amendment.)

Sec. 11. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in ~~[subsection 2,]~~ **this section**, and subject to the provisions of the declaration, the association may do any or all of the following:

- (a) Adopt and amend bylaws, rules and regulations.
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.
- (c) Hire and discharge managing agents and other employees, agents and independent contractors.
- (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.
- (e) Make contracts and incur liabilities.
- (f) Regulate the use, maintenance, repair, replacement and modification of common elements.
- (g) Cause additional improvements to be made as a part of the common elements.
- (h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:
 - (1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and
 - (2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.
- (i) Grant easements, leases, licenses and concessions through or over the common elements.
- (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.
- (k) Impose charges for late payment of assessments.
- (l) Impose construction penalties when authorized pursuant to NRS 116.310305.
- (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
- (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.
- (o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

3. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Sec. 12. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or ~~guest~~ invitee of a unit's owner violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or ~~guest~~ invitee of the unit's owner from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or ~~guest~~ **invitee** of the unit's owner from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or ~~guest~~ **invitee** of the unit's owner for each violation, except that ~~it~~ :

(1) A fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305 ~~[-]~~ ; **and**

(2) ***A fine may not be imposed against a unit's owner or a tenant or invitee of a unit's owner for a violation of the governing documents which involves a vehicle and which is committed by a person who is delivering goods to, or performing services for, the unit's owner or tenant or invitee of the unit's owner.***

↪ If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the ***unit's owner and, if different, the*** person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the ***unit's owner and, if different, the*** person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

↪ ***For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.***

3. The executive board must schedule the date, time and location for the hearing on the violation so that the *unit's owner and, if different, the* person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

4. The executive board must hold a hearing before it may impose the fine, unless *the fine is paid before the hearing or unless the unit's owner and, if different, the* person against whom the fine will be imposed:

- (a) ~~{Pays the fine;~~
- ~~{b)}~~ Executes a written waiver of the right to the hearing; or
- ~~{c)}~~ (b) Fails to appear at the hearing after being provided with proper notice of the hearing.

5. If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

6. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

7. *A member of the executive board shall not participate in any hearing or cast any vote relating to a fine imposed pursuant to subsection 1 if the member has not paid all assessments which are due to the association by the member. If a member of the executive board:*

- (a) *Participates in a hearing in violation of this subsection, any action taken at the hearing is void.*
- (b) *Casts a vote in violation of this subsection, the vote is void.*

8. The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

~~{8.}~~ 9. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the *units' owners or* residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

- (1) May not exceed \$20, if the outstanding balance is less than \$200.

(2) May not exceed \$50, if the outstanding balance is \$200 or more, but is less than \$500.

(3) May not exceed \$100, if the outstanding balance is \$500 or more, but is less than \$1,000.

(4) May not exceed \$250, if the outstanding balance is \$1,000 or more, but is less than \$5,000.

(5) May not exceed \$500, if the outstanding balance is \$5,000 or more.

(c) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~{9-}~~ **10. If requested by a person upon whom a fine was imposed, not later than 60 days after receiving any payment of a fine, an association shall provide to the person upon whom the fine was imposed a statement of the remaining balance owed.**

11. As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.

Sec. 13. NRS 116.310315 is hereby amended to read as follows:

116.310315 If an association has imposed a fine against a unit's owner or a tenant or ~~guest~~ **invitee** of a unit's owner pursuant to NRS 116.31031 for violations of the governing documents of the association, the association ~~[-~~

~~1.— Shall, in the books and records of the association, account for the fine separately from any assessment, fee or other charge; and~~

~~2.— Shall not apply, in whole or in part, any payment made by the unit's owner for any assessment, fee or other charge toward the payment of the outstanding balance of the fine or any costs of collecting the fine, unless the unit's owner provides written authorization which directs the association to apply the payment made by the unit's owner in such a manner.] shall establish a compliance account to account for the fine, which must be separate from any account established for assessments.~~

Sec. 14. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, at least a majority of whom must be units' owners. Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners. The executive board shall elect the officers of the association. The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed ~~[2]~~ 3 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

➡ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. ~~[The]~~ ***Except as otherwise provided in this subsection, the*** association shall distribute the disclosures, ***on behalf of the candidate,*** to each member of the association with the ballot in the manner established in the bylaws of the association. ***The association is not obligated to distribute any disclosure pursuant to this subsection if the disclosure contains information that is believed to be defamatory, libelous or profane.***

6. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or

his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, he shall file proof in the records of the association that:

(a) He is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

8. ~~[The]~~ ***Except as otherwise provided in NRS 116.31105, the*** election of any member of the executive board must be conducted by secret written ballot ~~[unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:]~~ ***in the following manner:***

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) A quorum is not required for the election of any member of the executive board.

(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 15. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section the number of votes cast in favor of removal constitutes:

(a) At least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election.

2. ~~[The]~~ ***Except as otherwise provided in NRS 116.31105, the*** removal of any member of the executive board must be conducted by secret written ballot ~~[unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:]~~ ***in the following manner:***

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton

misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against the association, but may be recovered from persons whose activity gave rise to the damages.

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 16. NRS 116.31038 is hereby amended to read as follows:

116.31038 In addition to any applicable requirement set forth in NRS 116.310395, within 30 days after units' owners other than the declarant may elect a majority of the members of the executive board, the declarant shall deliver to the association all property of the units' owners and of the association held by or controlled by him, including:

1. The original or a certified copy of the recorded declaration as amended, the articles of incorporation, articles of association, articles of organization, certificate of registration, certificate of limited partnership, certificate of trust or other documents of organization for the association, the bylaws, minute books and other books and records of the association and any rules or regulations which may have been adopted.

2. An accounting for money of the association and audited financial statements for each fiscal year and any ancillary period from the date of ~~[inception]~~ **the last audit** of the association to the date the period of the declarant's control ends. The financial statements must fairly and accurately report the association's financial position. ***The declarant shall pay the costs of the ancillary audit. The ancillary audit must be delivered within 210 days after the date the period of the declarant's control ends.***

3. A complete study of the reserves of the association, conducted by a person who ~~[holds a permit to conduct such a study issued]~~ **is registered as a reserve study specialist** pursuant to chapter 116A of NRS. At the time the control of the declarant ends, he shall:

(a) Except as otherwise provided in this paragraph, deliver to the association a reserve account that contains the declarant's share of the amounts then due, and control of the account. If the declaration was recorded before October 1, 1999, and, at the time the control of the declarant ends, he has failed to pay his share of the amounts due, the executive board shall authorize the declarant to pay the deficiency in installments for a period of 3 years, unless the declarant and the executive board agree to a shorter period.

(b) Disclose, in writing, the amount by which he has subsidized the association's dues on a per unit or per lot basis.

4. The association's money or control thereof.

5. All of the declarant's tangible personal property that has been represented by the declarant as property of the association or, unless the

declarant has disclosed in the public offering statement that all such personal property used in the common-interest community will remain the declarant's property, all of the declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties.

6. A copy of any plans and specifications used in the construction of the improvements in the common-interest community which were completed within 2 years before the declaration was recorded.

7. All insurance policies then in force, in which the units' owners, the association, or its directors and officers are named as insured persons.

8. Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the common-interest community other than units in a planned community.

9. Any renewable permits and approvals issued by governmental bodies applicable to the common-interest community which are in force and any other permits and approvals so issued and applicable which are required by law to be kept on the premises of the community.

10. Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.

11. A roster of owners and mortgagees of units and their addresses and telephone numbers, if known, as shown on the declarant's records.

12. Contracts of employment in which the association is a contracting party.

13. Any contract for service in which the association is a contracting party or in which the association or the units' owners have any obligation to pay a fee to the persons performing the services.

Sec. 17. NRS 116.310395 is hereby amended to read as follows:

116.310395 1. At the time of each close of escrow of a unit in a converted building, the declarant shall deliver to the association the amount of the converted building reserve deficit allocated to that unit.

2. The allocation to a unit of the amount of any converted building reserve deficit must be made in the same manner as assessments are allocated to that unit.

3. As used in this section, "converted building reserve deficit" means the amount necessary to replace the major components of the common elements needing replacement within 10 years after the date of the first ~~sale~~ *close of escrow* of a unit.

Sec. 18. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the ~~units'~~ owners *of time shares* will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before

recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 19. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every ~~90~~ **quarter, and not less than once every 100** days.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

- (a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;
- (b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or
- (c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

- (a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the

executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. The period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every ~~90~~ **quarter, and not less than once every 100** days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the executive board. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meetings to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

- (a) Could not have been reasonably foreseen;
- (b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;
- (c) Requires the immediate attention of, and possible action by, the executive board; and
- (d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 20. NRS 116.311 is hereby amended to read as follows:

116.311 1. If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners cast the votes allocated to that unit without protest made promptly to the person presiding over the meeting by any of the other owners of the unit.

2. Except as otherwise provided in this section, votes allocated to a unit may be cast pursuant to a proxy executed by a unit's owner. A unit's owner may give a proxy only to a member of his immediate family, a tenant of the unit's owner who resides in the common-interest community, another unit's owner who resides in the common-interest community, or a delegate or representative when authorized pursuant to NRS 116.31105. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through an executed proxy. A unit's owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

3. Before a vote may be cast pursuant to a proxy:

- (a) The proxy must be dated.
- (b) The proxy must not purport to be revocable without notice.
- (c) The proxy must designate the meeting for which it is executed.
- (d) The proxy must designate each specific item on the agenda of the meeting for which the unit's owner has executed the proxy, except that the

unit's owner may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the unit's owner has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the unit's owner. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the unit's owner were present but not voting on that particular item.

(e) The holder of the proxy must disclose at the beginning of the meeting for which the proxy is executed the number of proxies pursuant to which the holder will be casting votes.

4. A proxy terminates immediately after the conclusion of the meeting for which it is executed.

5. ~~{A}~~ ***Except as otherwise provided in this subsection, a*** vote may not be cast pursuant to a proxy for the election or removal of a member of the executive board of an association. ~~{unless}~~ ***A vote may be cast pursuant to a proxy for the election or removal of a member of the executive board of a master association which governs a time-share plan created pursuant to chapter 119A of NRS if*** the proxy is exercised through a delegate or representative authorized pursuant to NRS 116.31105.

6. The holder of a proxy may not cast a vote on behalf of the unit's owner who executed the proxy in a manner that is contrary to the proxy.

7. A proxy is void if the proxy or the holder of the proxy violates any provision of subsections 1 to 6, inclusive.

8. If the declaration requires that votes on specified matters affecting the common-interest community must be cast by the lessees of leased units rather than the units' owners who have leased the units:

(a) The provisions of subsections 1 to 7, inclusive, apply to the lessees as if they were the units' owners;

(b) The units' owners who have leased their units to the lessees may not cast votes on those specified matters;

(c) The lessees are entitled to notice of meetings, access to records and other rights respecting those matters as if they were the units' owners; and

(d) The units' owners must be given notice, in the manner provided in NRS 116.3108, of all meetings at which the lessees are entitled to vote.

9. If any votes are allocated to a unit that is owned by the association, those votes may not be cast, by proxy or otherwise, for any purpose.

Sec. 21. NRS 116.31105 is hereby amended to read as follows:

116.31105 1. If the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives ~~{}~~ ***except that, in the election or***

removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives.

2. In addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives ~~but~~ *except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives.*

3. *In addition to a common-interest community identified in subsections 1 and 2, if the declaration so provides, the voting rights of the owners of time shares within a time-share plan created pursuant to chapter 119A of NRS which is governed by a master association may be exercised by delegates or representatives.*

4. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

~~but~~ 5. *For the purposes of subsection 3, each time share that a developer has reserved the right to create pursuant to paragraph (g) of subsection 2 of NRS 119A.380 must be counted in determining the number of time shares in a time-share plan.*

6. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.

~~but~~ 7. When an election of a delegate or representative is conducted by secret written ballot:

(a) The secretary or other officer of the association specified in the bylaws of the association shall cause a secret written ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot

before those secret written ballots have been opened and counted at a meeting called for that purpose.

Sec. 22. NRS 116.31105 is hereby amended to read as follows:

116.31105 1. ~~HH~~ *Except as otherwise provided in subsection 8, if* the declaration so provides, in a common-interest community that consists of at least 1,000 units, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives.

2. ~~HH~~ *Except as otherwise provided in subsection 8, in* addition to a common-interest community identified in subsection 1, if the declaration so provides, in a common-interest community created before October 1, 1999, the voting rights of the units' owners in the association for that common-interest community may be exercised by delegates or representatives except that, in the election or removal of a member of the executive board, the voting rights of the units' owners may not be exercised by delegates or representatives.

3. In addition to a common-interest community identified in subsections 1 and 2, if the declaration so provides, the voting rights of the owners of time shares within a time-share plan created pursuant to chapter 119A of NRS which is governed by a master association may be exercised by delegates or representatives.

4. For the purposes of subsection 1, each unit that a declarant has reserved the right to create pursuant to NRS 116.2105 and for which developmental rights exist must be counted in determining the number of units in a common-interest community.

5. For the purposes of subsection 3, each time share that a developer has reserved the right to create pursuant to paragraph (g) of subsection 2 of NRS 119A.380 must be counted in determining the number of time shares in a time-share plan.

6. Notwithstanding any provision in the declaration, the election of any delegate or representative must be conducted by secret written ballot.

7. When an election of a delegate or representative is conducted by secret written ballot:

(a) The secretary or other officer of the association specified in the bylaws of the association shall cause a secret written ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association in the manner prescribed on the ballot may be counted to determine the outcome of the election.

(d) The secret written ballots must be opened and counted at a meeting called for the purpose of electing delegates or representatives. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) A candidate for delegate or representative may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association in the manner prescribed on the ballot before those secret written ballots have been opened and counted at a meeting called for that purpose.

8. Except as otherwise provided in subsection 9, the voting rights of the units' owners in the association for a common-interest community may be exercised by delegates or representatives only during the period that the declarant is in control of the association and during the 2-year period after the declarant's control of the association is terminated pursuant to NRS 116.31032.

9. The provisions of subsection 8 do not apply to:

(a) A time-share plan created pursuant to chapter 119A of NRS which is governed by a master association; or

(b) A condominium or cooperative containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted.

Sec. 23. ~~[NRS 116.31144 is hereby amended to read as follows:~~

~~116.31144 1. Except as otherwise provided in [subsection 2,] **this section**, the executive board shall:~~

~~(a) If the annual budget of the association is less than \$75,000, cause the financial statement of the association to be [audited] **reviewed** by an independent certified public accountant at least once every 4 fiscal years.~~

~~(b) If the annual budget of the association is \$75,000 or more but less than \$150,000, cause the financial statement of the association to be [:~~

~~(1) Audited by an independent certified public accountant at least once every 4 fiscal years; and~~

~~(2) Reviewed] **reviewed** by an independent certified public accountant every fiscal year. [for which an audit is not conducted.]~~

~~(c) If the annual budget of the association is \$150,000 or more, cause the financial statement of the association to be audited by an independent certified public accountant every fiscal year.~~

~~2. For any fiscal year for which an audit of the financial statement of the association will not be conducted pursuant to subsection 1, the executive board shall cause the financial statement for that fiscal year to be audited by an independent certified public accountant if, within 180 days before the end of the fiscal year, 15 percent of the total number of voting members of the association submit a written request for such an audit.~~

~~3.—The Commission shall adopt regulations prescribing the requirements for the auditing or reviewing of the financial statements of an association pursuant to this section. Such regulations must include, without limitation:~~

~~(a) The qualifications necessary for a person to audit or review financial statements of an association; [and]~~

~~(b) The standards and format to be followed in auditing or reviewing financial statements of an association [.] ; and~~

~~(c) The requirement that an audit or review of the financial statements of an association be completed within 210 days after the end of the fiscal year.~~ (Deleted by amendment.)

Sec. 24. ~~[NRS 116.3115 is hereby amended to read as follows:~~

~~116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.~~

~~2. Except for assessments under subsections 4 to 7, inclusive:~~

~~(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.~~

~~(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary. *Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common interest community.*~~

~~3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.~~

~~4. To the extent required by the declaration:~~

~~(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;~~

~~(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and~~

~~(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.~~

~~5. Assessments to pay a judgment against the association may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.~~

~~6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.~~

~~7. The association of a common interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.~~

~~8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.~~

~~9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting. (Deleted by amendment.)~~

Sec. 25. (Deleted by amendment.)

Sec. 26. NRS 116.31153 is hereby amended to read as follows:

116.31153 **1.** Money in the reserve account of an association required by paragraph (b) of subsection 2 of NRS 116.3115 may not be withdrawn without the signatures of at least two members of the executive board or the signatures of at least one member of the executive board and one officer of the association who is not a member of the executive board.

2. Except as otherwise provided in subsection 3, money in the operating account of an association may not be withdrawn without the signatures of at least one member of the executive board or one officer of the association and a member of the executive board, an officer of the association or the community manager.

3. Money in the operating account of an association may be withdrawn without the signatures required pursuant to subsection 2 to:

(a) Transfer money to the reserve account of the association at regular intervals; or

(b) Make automatic payments for utilities.

Sec. 27. (Deleted by amendment.)

Sec. 28. NRS 116.31175 is hereby amended to read as follows:

116.31175 **1.** Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association

for review during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees;

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2; ~~and~~

(c) A contract between the association and an attorney ~~[-]; and~~

(d) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a budget, if the document:

(1) Is in the process of being developed for final consideration by the executive board; and

(2) Has not been placed on an agenda for final approval by the executive board.

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

6. *If an official publication contains or will contain any mention of a candidate or ballot question, the official publication must, upon request and without charge, provide equal space to the candidate or a representative of an organization which supports the passage or defeat of the ballot question.*

7. *If an official publication contains or will contain the views or opinions of the association, the executive board, a community manager or an officer, employee or agent of an association concerning an issue of official interest, the official publication must, upon request and without charge, provide equal space to opposing views and opinions of a unit's owner, tenant or resident of the common-interest community.*

8. *The association and its officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to subsection 6 or 7.*

9. *As used in this section:*

(a) *"Issue of official interest" includes, without limitation:*

(1) *Any issue on which the executive board or the units' owners will be voting, including, without limitation, the election of members of the executive board; and*

(2) *The enactment or adoption of rules or regulations that will affect a common-interest community.*

(b) *"Official publication" means:*

(1) *An official website;*

(2) *An official newsletter or other similar publication that is circulated to each unit's owner; or*

(3) *An official bulletin board that is available to each unit's owner, which is published or maintained at the cost of an association and by an association, an executive board, a member of an executive board, a community manager or an officer, employee or agent of an association.*

Sec. 29. NRS 116.31187 is hereby amended to read as follows:

116.31187 1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide **financing**, goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing **financing**, goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any *financing*, goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 30. ~~NRS 116.335 is hereby amended to read as follows:~~

~~116.335 1. [Except as otherwise provided in] *Unless, at the time a unit's owner purchased his unit, the declaration [,] prohibited the unit's owner from renting or leasing his unit, the association may not prohibit the unit's owner from renting or leasing his unit.*~~

~~2. *Unless, at the time a unit's owner purchased his unit, the declaration required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit,* an association may not require [a] *the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit.*~~

~~[2.] 3. The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations.] (Deleted by amendment.)~~

Sec. 31. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat or plan of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners

and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. *An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility service. An association must in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.*

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 32. ~~[NRS 116.350 is hereby amended to read as follows:~~

~~116.350 1. In a common interest community which is not gated or enclosed and the access to which is not restricted or controlled by a person or device, the executive board shall not and the governing documents must not provide for the regulation of any road, street, alley or other thoroughfare the right of way of which is accepted by the State or a local government for dedication as a road, street, alley or other thoroughfare for public use.~~

~~2. [The] Except as otherwise provided in subsection 3, the provisions of subsection 1 do not preclude an association from adopting, and do not preclude the governing documents of an association from setting forth, rules that reasonably restrict the parking or storage of inoperable vehicles, recreational vehicles, watercraft, trailers or commercial vehicles in the common interest community to the extent authorized by law.~~

~~3. In a common interest community, the executive board shall not and the governing documents must not prohibit a person from:~~

~~(a) Parking a utility service vehicle that has a gross vehicle weight rating of 20,000 pounds or less on a driveway, road, street, alley or other thoroughfare;~~

~~(1) While the person is engaged in any activity relating to the delivery of public utility services to subscribers or consumers; or~~

~~(2) If the person is:~~

~~(I) A unit's owner;~~

~~(II) Parking the vehicle within 50 yards of his unit; and~~

~~(III) Bringing the vehicle to his unit pursuant to his employment with the entity which owns the vehicle and which requires the person to~~

~~park the vehicle overnight at his residence for the purpose of responding to requests for public utility services; or~~

~~(b) Parking a law enforcement vehicle or emergency services vehicle on a driveway, road, street, alley or other thoroughfare;~~

~~(1) While the person is engaged in his official duties; or~~

~~(2) If the person is:~~

~~(I) A unit's owner;~~

~~(II) Parking the vehicle within 50 yards of his unit; and~~

~~(III) Bringing the vehicle to his unit pursuant to his employment with the entity which owns the vehicle and which requires the person to park the vehicle overnight at his residence for the purpose of responding to requests for law enforcement services or emergency services.~~

~~4. As used in this section:~~

~~(a) "Commercial motor vehicle" has the meaning ascribed to it in 49 C.F.R. § 350.105.~~

~~(b) "Emergency services vehicle" means a vehicle:~~

~~(1) Owned by any governmental agency or political subdivision of this State; and~~

~~(2) Identified by the entity which owns the vehicle as a vehicle used to provide emergency services.~~

~~(c) "Law enforcement vehicle" means a vehicle:~~

~~(1) Owned by any governmental agency or political subdivision of this State; and~~

~~(2) Identified by the entity which owns the vehicle as a vehicle used to provide law enforcement services.~~

~~(d) "Utility service vehicle" means any commercial motor vehicle:~~

~~(1) Used in the furtherance of repairing, maintaining or operating any structure or any other physical facility necessary for the delivery of public utility services, including, without limitation, the furnishing of electricity, gas, water, sanitary sewer, telephone, cable or community antenna service;~~

~~(2) Except for any emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the commercial motor vehicle is owned, leased or rented by the utility. (Deleted by amendment.)~~

Sec. 33. [NRS 116.4109 is hereby amended to read as follows:

~~116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall, at the expense of the unit's owner, furnish to a purchaser a resale package [containing] which is purchased directly from the association and which contains all of the following:~~

~~(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;~~

~~(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;~~

~~(c) A copy of the current operating budget of the association and current year to date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in [paragraphs (a) to (c), inclusive, of] subsection 3 of NRS 116.31152; and~~

~~(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common interest community of which the unit's owner has actual knowledge.~~

~~2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:~~

~~(a) Cancel the contract pursuant to this subsection; or~~

~~(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.~~

~~3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:~~

~~(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and~~

~~(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1.~~

~~4. If the association furnishes the documents and certificate pursuant to subsection 3:~~

~~(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.~~

~~(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission~~

~~shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.~~

~~(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.~~

~~(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.~~

~~5. If the association enters into a contract or agreement with any person or entity to furnish the documents and certificate pursuant to subsection 3:~~

~~(a) The contract or agreement must not allow a unit's owner to be charged any fee that exceeds the amount of the fee that the association may charge pursuant to subsection 4; and~~

~~(b) The person or entity shall not charge or attempt to charge any such fee.~~

~~6. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.~~

~~[6.] 7. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.~~

~~8. The association may not charge a unit's owner, and may not require a unit's owner to pay, any fee related to the resale of a unit that is not specifically authorized pursuant to this section, including, without limitation, any transaction fee, transfer fee, asset enhancement fee or other similar fee, except the association may charge the unit's owner a reasonable fee to cover the cost of recording in the books and records of the association the transfer of the ownership of the unit. Such a fee must be based on the actual cost the association incurs to record the transfer of the ownership of the unit. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for transferring the ownership of a unit.] (Deleted by amendment.)~~

Sec. 34. NRS 116.411 is hereby amended to read as follows:

116.411 1. Except as otherwise provided in subsections 2 ~~[and 3,]~~ , 3 and 4, a deposit made in connection with the purchase or reservation of a

unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 must be placed in escrow and held either in this State or in the state where the unit is located in an account designated solely for that purpose by a licensed title insurance company, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until:

- (a) Delivered to the declarant at closing;
- (b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit;
- (c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released:

(1) Must not exceed the lesser of the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for the purpose; and

(2) Must be credited upon the purchase price; or

(d) Refunded to the purchaser.

2. A deposit or advance payment made for an additional item, improvement, optional item or alteration may be deposited in escrow or delivered directly to the declarant, as the parties may contract.

3. In lieu of placing a deposit in escrow pursuant to subsection 1, the declarant may furnish a bond executed by him as principal and by a corporation qualified under the laws of this State as surety, payable to the State of Nevada, and conditioned upon the performance of the declarant's duties concerning the purchase or reservation of a unit. Each bond must be in a principal sum equal to the amount of the deposit. The bond must be held until:

- (a) Delivered to the declarant at closing;
- (b) Delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
- (c) Released to the declarant for an additional item, improvement, optional item or alteration, but the amount so released must not exceed the amount due the declarant from the purchaser at the time of the release or the amount expended by the declarant for that purpose, whichever is less.

4. Pursuant to subsection 1, a deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 is deemed to be placed in escrow and held in this State when the escrow holder has:

- (a) The legal right to conduct business in this State;**
- (b) A registered agent in this State pursuant to subsection 1 of NRS 14.020; and**
- (c) Consented to the jurisdiction of the courts of this State by:**
 - (1) Maintaining a physical presence in this State; or**
 - (2) Executing a written instrument containing such consent, with respect to any suit or claim, whether brought by the declarant or**

purchaser, relating to or arising in connection with such sale or the escrow agreement related thereto.

Sec. 35. NRS 116.750 is hereby amended to read as follows:

116.750 1. In carrying out the provisions of NRS 116.745 to 116.795, inclusive, the Division and the Ombudsman have jurisdiction to investigate and the Commission and each hearing panel has jurisdiction to take appropriate action against any person who commits a violation, including, without limitation:

- (a) Any association and any officer, employee or agent of an association.
- (b) Any member of an executive board.
- (c) Any community manager who holds a certificate and any other community manager.
- (d) Any person who ~~holds a permit to conduct a study of the reserves of an association issued by~~ **is registered as a reserve study specialist, or who conducts a study of reserves**, pursuant to chapter 116A of NRS.
- (e) Any declarant or affiliate of a declarant.
- (f) Any unit's owner.
- (g) Any tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter and any regulations adopted pursuant thereto.

2. The jurisdiction set forth in subsection 1 applies to any officer, employee or agent of an association or any member of an executive board who commits a violation and who:

- (a) Currently holds his office, employment, agency or position or who held his office, employment, agency or position at the commencement of proceedings against him.
- (b) Resigns his office, employment, agency or position:
 - (1) After the commencement of proceedings against him; or
 - (2) Within 1 year after the violation is discovered or reasonably should have been discovered.

Sec. 36. NRS 116A.120 is hereby amended to read as follows:

116A.120 ~~["Permit"]~~ **"Registration"** means ~~for a permit~~ **a registration** to conduct a study of the reserves of an association pursuant to NRS 116.31152 or 116B.605 ~~issued by~~ **with** the Division pursuant to this chapter.

Sec. 37. NRS 116A.260 is hereby amended to read as follows:

116A.260 The Division shall maintain in each district office a public docket or other record in which it shall record, from time to time as made:

- 1. The rulings or decisions upon all complaints filed with that district office.
- 2. All investigations instituted by that district office in the first instance, upon or in connection with which any hearing has been held, or in which the person charged has made no defense.
- 3. Denials of applications made to that district office for examination , **registration** or issuance of a certificate . ~~for permit.~~

Sec. 38. ~~[NRS 116A.410 is hereby amended to read as follows:~~

~~116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:~~

~~(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. The regulations must include, without limitation, provisions that:~~

~~(1) Provide for the issuance of a temporary certificate for a 1-year period to a person who:~~

~~(I) Holds a professional designation in the field of management of a common interest community from a nationally recognized organization;~~

~~(II) Provides evidence that the person has been engaged in the management of a common interest community for at least 5 years; and~~

~~(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common interest community.~~

~~(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1-year period to a person who:~~

~~(I) Receives an offer of employment as a community manager from an association or its agent; and~~

~~(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in subparagraph (1). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph.~~

~~(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1-year period if the certificate holder ceases to be employed by the association or its agent which offered him employment as described in subparagraph (2).~~

~~(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common Interest Ownership Act within the 1-year period.~~

~~(5) Provide for the issuance of a certificate at the conclusion of the 1-year period if the person:~~

~~(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common Interest Ownership Act; and~~

~~(II) Has not been the subject of any disciplinary action pursuant to this chapter, chapter 116 of NRS or any regulations adopted pursuant thereto.~~

~~(6) Provide that a temporary certificate described in subparagraph (1) or (2), and a certificate described in subparagraph (5):~~

~~(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and~~

~~(H) Must not be treated as a limited, restricted or provisional form of a certificate.~~

~~(b) Must require an applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds.~~

~~(e) May require applicants to pass an examination in order to obtain a certificate [.] other than a temporary certificate described in paragraph (a). If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.~~

~~[(c)] (d) May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.~~

~~[(d)] (e) Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.~~

~~[(e)] (f) Must establish rules of practice and procedure for conducting disciplinary hearings.~~

~~2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.~~

~~3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military.~~

~~(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and~~

~~(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association. [.] Deleted by amendment.)~~

Sec. 39. NRS 116A.420 is hereby amended to read as follows:

116A.420 1. Except as otherwise provided in this section, a person shall not act as a reserve study specialist unless the person ~~[holds a permit.] registers with the Division on a form provided by the Division.~~

2. The Commission shall by regulation provide for the standards of practice for reserve study specialists. ~~[who hold permits.]~~

3. The Division may investigate any reserve study specialist ~~[who holds a permit]~~ to ensure that the reserve study specialist is complying with the

provisions of this chapter and chapters 116 and 116B of NRS and the standards of practice adopted by the Commission.

4. In addition to any other remedy or penalty, if the Commission or a hearing panel, after notice and hearing, finds that a reserve study specialist ~~[who holds a permit]~~ has violated any provision of this chapter or chapter 116 or 116B of NRS or any of the standards of practice adopted by the Commission, the Commission or the hearing panel may take appropriate disciplinary action against the reserve study specialist.

5. In addition to any other remedy or penalty, the Commission may:

(a) Refuse to ~~issue a permit to~~ **accept the registration of** a person who has failed to pay money which the person owes to the Commission or the Division.

(b) Suspend, revoke or refuse to renew the ~~[permit]~~ **registration** of a person who has failed to pay money which the person owes to the Commission or the Division.

6. The provisions of this section do not apply to a member of an executive board or an officer of an association who is acting solely within the scope of his duties as a member of the executive board or an officer of the association.

7. A person who assists a registered reserve study specialist in preparing a reserve study, signed by a registered reserve study specialist, is not required to register as a reserve study specialist.

Sec. 40. NRS 116A.430 is hereby amended to read as follows:

116A.430 1. The Commission shall by regulation provide for the ~~[issuance]~~ **registration** by the Division of ~~[permits to]~~ reserve study specialists. The regulations:

(a) Must establish the qualifications for ~~[the issuance of such a permit,]~~ **registration**, including, without limitation, the education and experience required ~~[to obtain such a permit.]~~ **for registration.**

(b) May require applicants to pass an examination ~~[in order to obtain a permit.]~~ **for registration.** If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

(c) May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

(d) Must establish the grounds for initiating disciplinary action against a person ~~[to whom a permit has been issued,]~~ **who has registered**, including, without limitation, the grounds for placing conditions, limitations or restrictions on ~~[a permit]~~ **registration** and for the suspension or revocation of ~~[a permit.]~~ **registration.**

(e) Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for ~~the issuance of a permit~~ **registration** in an amount not to exceed the administrative costs of ~~issuing the permit.~~ **registration.**

Sec. 41. NRS 116A.440 is hereby amended to read as follows:

116A.440 1. An applicant for a certificate or ~~permit~~ **registration** shall submit to the Division:

(a) The social security number of the applicant; and
 (b) The statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for **registration or** the issuance of the certificate ; ~~for permit;~~ or

(b) A separate form prescribed by the Division.

3. A certificate ~~for permit~~ may not be issued **and an application for registration may not be accepted** if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or
 (b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 42. NRS 116A.450 is hereby amended to read as follows:

116A.450 1. If the Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to **a person who is registered or** the holder of a certificate , ~~for permit,~~ the Division shall deem the **registration or** certificate ~~for permit~~ to be suspended at the end of the 30th day after the date the court order was issued unless the Division receives a letter issued to the **person who is registered or the** holder of the certificate ~~for permit~~ by the district attorney or other public agency pursuant to NRS 425.550 stating that the **person who is registered or the** holder of the certificate ~~for permit~~ has complied with a subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The Division shall reinstate a **registration or** certificate ~~for permit~~ that has been suspended by a district court pursuant to NRS 425.540 if the Division receives a letter issued by the district attorney or other public

agency pursuant to NRS 425.550 to the *person who is registered or the* holder of the certificate ~~for permit~~ that he has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 43. NRS 116A.460 is hereby amended to read as follows:

116A.460 The expiration or revocation of a *registration or* certificate ~~for permit~~ by operation of law or by order or decision of any agency or court of competent jurisdiction, or the voluntary surrender of such a *registration or* certificate ~~for permit~~ by the *person who is registered or the* holder of the certificate ~~for permit~~ does not:

1. Prohibit the Commission or the Division from initiating or continuing an investigation of, or action or disciplinary proceeding against, the *person who is registered or the* holder of the certificate ~~for permit~~ as authorized pursuant to the provisions of this chapter or chapter 116 or 116B of NRS or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or chapter 116 or 116B of NRS or the regulations adopted pursuant thereto against the *person who is registered or the* holder of the certificate . ~~for permit.~~

Sec. 44. NRS 116A.900 is hereby amended to read as follows:

116A.900 1. In addition to any other remedy or penalty, the Commission may impose an administrative fine against any person who knowingly:

(a) Engages or offers to engage in any activity for which a *registration or* certificate ~~for permit~~ is required pursuant to this chapter or chapter 116 or 116B of NRS, or any regulation adopted pursuant thereto, if the person *has not registered or* does not hold the required certificate ~~for permit~~ or has not been given the required authorization; or

(b) Assists or offers to assist another person to commit a violation described in paragraph (a).

2. If the Commission imposes an administrative fine against a person pursuant to this section, the amount of the administrative fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or \$5,000, whichever amount is greater.

3. In determining the appropriate amount of the administrative fine, the Commission shall consider:

(a) The severity of the violation and the degree of any harm that the violation caused to other persons;

(b) The nature and amount of any gain or economic benefit that the person derived from the violation;

(c) The person's history or record of other violations; and

(d) Any other facts or circumstances that the Commission deems to be relevant.

4. Before the Commission may impose the administrative fine, the Commission must provide the person with notice and an opportunity to be heard.

5. The person is entitled to judicial review of the decision of the Commission in the manner provided by chapter 233B of NRS.

6. The provisions of this section do not apply to a person who engages or offers to engage in activities within the purview of this chapter or chapter 116 or 116B of NRS if:

(a) A specific statute exempts the person from complying with the provisions of this chapter or chapter 116 or 116B of NRS with regard to those activities; and

(b) The person is acting in accordance with the exemption while engaging or offering to engage in those activities.

Sec. 45. ~~[NRS 278.0208 is hereby amended to read as follows:]~~

~~278.0208 1. A governing body shall not adopt an ordinance, regulation or plan or take any other action that prohibits or unreasonably restricts the owner of real property from using a system for obtaining solar or wind energy on his property.~~

~~2. [Any] Except as otherwise provided in subsection 3, any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner of the property from using a system for obtaining solar or wind energy on his property is void and unenforceable.~~

~~3. A covenant, restriction or condition contained in the governing documents of a common interest community or a policy established by a common interest community specifying the color of such a system is enforceable so long as such a system is manufactured in such color and the specification was:~~

~~(a) In existence on July 1, 2009; or~~

~~(b) Contained in the governing documents in effect on the close of escrow of the first sale of a unit in the common interest community.~~

~~4. For the purposes of this section [, "unreasonably"]:~~

~~(a) "Common interest community" has the meaning ascribed to it in NRS 116.021.~~

~~(b) "Governing documents" has the meaning ascribed to it in NRS 116.049.~~

~~(c) "Unit" has the meaning ascribed to it in NRS 116.093.~~

~~(d) "Unreasonably restricting the use of a system for obtaining solar or wind energy" means placing a restriction or requirement on the use of such a system which significantly decreases the efficiency or performance of the system and does not allow for the use of an alternative system at a comparable cost and with comparable efficiency and performance. (Deleted by amendment.)~~

Sec. 46. The amendatory provisions of section 11 of this act apply to all owners of property in a common-interest community that is exempt from taxation pursuant to NRS 361.125 who are not obligated to pay assessments as of January 1, 2009.

Sec. 47. 1. This section becomes effective upon passage and approval.

2. Section 38 of this act becomes effective:

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

(b) On January 1, 2010, for all other purposes.

3. Section 34 of this act becomes effective on July 1, 2009.

4. Sections 1 to 8, inclusive, 10, 11, 12, 14 to 21, inclusive, 23 to 33, inclusive, 35, 36, 37 and 39 to 46, inclusive, of this act become effective on October 1, 2009.

5. Sections 9, 13 and 22 of this act become effective on October 1, 2011.

6. Sections 41 and 42 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,
 ➔ are repealed by the Congress of the United States.

Assemblyman Anderson moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Anderson moved that upon return from the printer, Senate Bill No. 183 be placed on the Chief Clerk's desk.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 234.

Bill read second time and ordered to third reading.

Senate Bill No. 245.

Bill read second time and ordered to third reading.

Senate Bill No. 248.

Bill read second time.

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

Amendment No. 736.

AN ACT relating to local governmental planning; authorizing the extension of the validity of certain building permits and development agreements for a maximum of 15 years beyond the original expiration date if the land is leased for renewable energy generation projects; providing that

certain changes to regulations or laws which are made after the issuance of the permit or the time the agreement is entered into, and which apply environmental, life or safety restrictions to the land, apply to the permit ~~or~~ **agreement**; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits construction without a building permit issued by the building official with authority over the land where any proposed construction would take place. (NRS 278.610) Existing law also authorizes the governing body of a city or county to enter into an agreement with a person concerning the development of land. (NRS 278.0201) This bill authorizes the extension of the validity of any such permit or agreement beyond its original expiration date if: (1) the permit holder or landowner cannot finance the proposed project; and (2) the land is leased for certain renewable energy projects. The extension is available for permits and agreements for residential and commercial development for a maximum of 15 years after the original expiration date of the permit or agreement. This bill also provides that if a building permit or development agreement is extended, no condition may be placed on the permit or agreement that was not imposed on the original permit or agreement. Additionally, this bill provides that new regulations or laws that apply environmental, life or safety protections to the land in question would also apply, but other zoning changes enacted after the issuance of the permit would not. **Extensions for building permits and agreements pursuant to the provisions of this bill will not be issued after June 30, 2013.**

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

Section 1. Chapter 278 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. **1. "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:**

- (a) **Biomass;**
- (b) **Fuel cells;**
- (c) **Geothermal energy;**
- (d) **Solar energy;**
- (e) **Waterpower; and**
- (f) **Wind.**

2. The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

Sec. 3. **"Renewable energy generation project" means a project involving an electric generating facility or system that uses renewable energy as its primary source of energy to generate electricity. The term does not include a project involving an electric generating facility or system that uses nuclear energy, in whole or in part, to generate electricity.**

Sec. 4. 1. A ~~{building official who issued a building permit for a residential or commercial project}~~ director of planning or a governing body may extend the period for which ~~the~~ a building permit for a residential or commercial project is valid if the person to whom the permit has been issued:

(a) Applies for an extension ~~+~~ before July 1, 2013, subject to any applicable ordinances or regulations adopted by the governing body; ~~+~~ ~~building official; and~~

(b) Demonstrates to the satisfaction of the ~~building official}~~ director of planning or governing body that:

(1) Financing for the residential or commercial project is not available; and

(2) The land will be leased for a renewable energy generation project ~~+~~; and

(c) Submits with his application for an extension an affidavit showing that due diligence has been used to obtain financing for the residential or commercial project. The affidavit must include, without limitation, evidence that:

(1) The project was denied financing by at least two lenders; or

(2) The person was unable to issue bonds or other securities to finance the project.

2. A building permit that is extended pursuant to subsection 1 must not be effective:

(a) For more than 15 years after the original expiration date of the building permit; or

(b) If the land ceases to be leased for a renewable energy generation project, after the period established by the ~~building official}~~ director of planning or governing body pursuant to subsection 3.

3. If a ~~building official}~~ director of planning or governing body extends the period for which a building permit is valid pursuant to subsection 1, the ~~building official}~~ director of planning or governing body shall establish the maximum duration of the period for which the permit will remain valid if the land is no longer leased for a renewable energy generation project.

4. If a ~~building official}~~ director of planning or governing body extends the period for which a building permit is valid pursuant to subsection 1:

(a) No condition may be placed on the permit that was not imposed on the original permit; and

(b) Except as otherwise provided in subsection 5, the ordinances, resolutions or regulations applicable to the land and governing the permitted uses of the land, density and standards for design, improvements and construction are those in effect at the time the building permit is issued.

5. *Changes to ordinances, resolutions or regulations that enforce environmental, life or safety standards against parcels of land that the ~~building official~~ director of planning or governing body determines are similar to the land for which the building permit was issued will apply to the parcel of land for which the permit was issued.*

6. *As used in this section, "environmental, life or safety standards" include, without limitation:*

- (a) Standards and codes relating to the usage of water; and*
- (b) Any specialized or uniform code related to environmental, life or safety standards.*

Sec. 5. NRS 278.010 is hereby amended to read as follows:

278.010 As used in NRS 278.010 to 278.630, inclusive, *and sections 2, 3 and 4 of this act*, unless the context otherwise requires, the words and terms defined in NRS 278.0105 to 278.0195, inclusive, *and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 278.0201 is hereby amended to read as follows:

278.0201 1. In the manner prescribed by ordinance, a governing body may, upon application of any person having a legal or equitable interest in land, enter into an agreement with that person concerning the development of that land. This agreement must describe the land which is the subject of the agreement and specify the duration of the agreement, the permitted uses of the land, the density or intensity of its use, the maximum height and size of the proposed buildings and any provisions for the dedication of any portion of the land for public use. The agreement may fix the period within which construction must commence and provide for an extension of that deadline.

2. *For an agreement entered into for the residential or commercial development of land, the governing body may extend, beyond the original deadline and beyond any extension of that deadline pursuant to subsection 1, the period within which construction must commence if the person:*

(a) Applies for an extension ~~on or~~ before July 1, 2013, subject to any applicable ordinances adopted by the governing body; ~~and~~

(b) Demonstrates to the satisfaction of the governing body that:

(1) Financing for the residential or commercial project is not available; and

(2) The land will be leased for a renewable energy generation project ~~on or~~; and

(c) Submits with his application for an extension an affidavit showing that due diligence has been used to obtain financing for the residential or commercial project. The affidavit must include, without limitation, evidence that:

(1) The project was denied financing by at least two lenders; or

(2) The person was unable to issue bonds or other securities to finance the project.

3. *An agreement must not be extended pursuant to subsection 2:*

(a) For more than 15 years after the original deadline or, if the deadline is extended pursuant to subsection 1, after that extension; or

(b) If the land ceases to be leased for a renewable energy generation project, after the period established pursuant to subsection 4.

4. If a governing body extends a deadline pursuant to subsection 2, the governing body shall establish the maximum duration of the period for which the agreement will remain valid if the land is no longer leased for a renewable energy generation project.

5. Unless the agreement otherwise provides ~~{ }~~ **and except as otherwise provided in subsection 7**, the ordinances, resolutions or regulations applicable to that land and governing the permitted uses of that land, density and standards for design, improvements and construction are those in effect at the time the agreement is made.

~~{ }~~ **6.** This section does not prohibit the governing body from adopting new ordinances, resolutions or regulations applicable to that land which do not conflict with those ordinances, resolutions and regulations in effect at the time the agreement is made, except that any subsequent action by the governing body must not prevent the development of the land as set forth in the agreement. The governing body is not prohibited from denying or conditionally approving any other plan for development pursuant to any ordinance, resolution or regulation in effect at the time of that denial or approval.

~~{ }~~ **7. Notwithstanding the provisions of subsection 6, if the governing body extends a deadline pursuant to subsection 2, changes to ordinances, resolutions or regulations that:**

(a) Are made after the extension is granted; and

(b) Enforce environmental, life or safety standards against land that the governing body determines are similar to the land for which an agreement was made pursuant to this section,

↪ apply to the land for which the agreement was made.

8. The provisions of subsection 2 of NRS 278.315 and NRS 278.350 and 278.360 do not apply if an agreement entered into pursuant to this section contains provisions which are contrary to the respective sections.

9. As used in this section, “environmental, life or safety standards” include, without limitation:

(a) Standards and codes relating to the usage of water; and

(b) Any specialized or uniform code related to environmental, life or safety standards.

Sec. 7. This act becomes effective on July 1, 2009.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 267.

Bill read second time.

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

Amendment No. 656.

SUMMARY—Makes various changes concerning ~~[the procedures for adopting administrative regulations and the requirements of the Open Meeting Law.]~~ **governmental administration.** (BDR 18-62)

AN ACT relating to governmental administration; revising the provisions governing the notice of intention to act on a proposed regulation by a state agency subject to the Nevada Administrative Procedure Act; providing that workshops and hearings regarding a proposed regulation of such a state agency are subject to the Open Meeting Law; revising the procedure for the review of permanent regulations and certain temporary regulations by the Legislative Commission or the Subcommittee to Review Regulations; requiring a public body to make available certain documents to the public at a public meeting; eliminating certain nonprofit entities affiliated with a university or college from the definition of “university foundation” for purposes of the Open Meeting Law, the requirements relating to public records, the exemption from the tax on the transfer of real property and other requirements pertaining to university foundations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Nevada Administrative Procedure Act requires each state agency that is not exempt from the Act to provide 30 days’ notice of its intended action on any proposed regulation. The agency is required to wait to give such notice until at least 30 days after delivering the proposed regulation to the Legislative Counsel or until the agency has received the approved or revised text of the proposed regulation from the Legislative Counsel, whichever occurs first. (NRS 233B.060) **Section 1** of this bill makes receipt of the approved or revised text of the proposed regulation from the Legislative Counsel the only required condition before provision of the 30 days’ notice. **Section 3** of this bill makes a conforming change.

Existing law prescribes a procedure for the review of certain temporary regulations and of adopted permanent regulations by the Legislative Commission or the Subcommittee to Review Regulations for conformity with statutory authority and legislative intent. Under existing law, unless the Commission or Subcommittee objects to such a temporary or permanent regulation, the regulation becomes effective. (NRS 233B.0633, 233B.067, 233B.0675) **Sections 4-6** of this bill require the Commission or Subcommittee to either affirmatively approve or object to a regulation.

The Open Meeting Law requires all meetings of public bodies to be open and public unless otherwise provided by a specific statute. (NRS 241.020) **Section 2** of this bill provides that each workshop and hearing required to be conducted concerning administrative regulations is subject to the Open Meeting Law. (NRS 233B.061)

Under the Open Meeting Law, a public body is required, upon request and at no charge, to provide a copy of an agenda for the meeting, any proposed ordinance or regulation to be discussed at the meeting, and other supporting documents to members of the public body for an item on the agenda. (NRS 241.020) **Section 7** of this bill requires that a public body make at least one copy of those documents available to the public at the public meeting to which the documents pertain.

Section 8 of this bill amends the definition of “university foundation” to exclude certain nonprofit organizations affiliated with a university or college for the purposes of provisions applicable to university foundations, including the Open Meeting Law, the requirements relating to public records and the exemption from the tax on the transfer of real property. (NRS 239.005, 241.015, 375.090, 396.405, 396.535).

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

Section 1. NRS 233B.060 is hereby amended to read as follows:

233B.060 1. Except as otherwise provided in subsection 2 and NRS 233B.061, before adopting, amending or repealing:

(a) A permanent regulation, the agency must, ~~{30 days or more after delivering a copy of the proposed regulation to the Legislative Counsel, or}~~ after receiving the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063, give at least 30 days’ notice of its intended action, unless a shorter period of notice is specifically permitted by statute.

(b) A temporary regulation, the agency must give at least 30 days’ notice of its intended action, unless a shorter period of notice is specifically permitted by statute.

2. Except as otherwise provided in subsection 3, if an agency has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt, after providing a second notice and the opportunity for a hearing, a permanent regulation, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation ~~{is subject to review}~~ **must be approved** by the Legislative Commission or the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.

3. If the Public Utilities Commission of Nevada has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this chapter, it may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and the adopted regulation ~~{is subject to review}~~ **must be approved** by the Legislative Commission or the Subcommittee to Review Regulations.

Sec. 2. NRS 233B.061 is hereby amended to read as follows:

233B.061 1. All interested persons must be afforded a reasonable opportunity to submit data, views or arguments upon a proposed regulation, orally or in writing.

2. Before holding the public hearing required pursuant to subsection 3, an agency shall conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in a proposed regulation. Not less than 15 days before the workshop, the agency shall provide notice of the time and place set for the workshop:

(a) In writing to each person who has requested to be placed on a mailing list; and

(b) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

3. With respect to substantive regulations, the agency shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the agency may proceed immediately to act upon any written submissions. The agency shall consider fully all written and oral submissions respecting the proposed regulation.

4. An agency shall not hold the public hearing required pursuant to subsection 3 on the same day that the agency holds the workshop required pursuant to subsection 2.

5. ~~{The agency shall keep, retain and make available for public inspection written minutes and an audio recording or transcript of each public hearing held pursuant to subsection 3 in the manner provided in NRS 241.035.}~~ ***Each workshop and public hearing required pursuant to subsections 2 and 3 must be conducted in accordance with the provisions of chapter 241 of NRS.***

Sec. 3. NRS 233B.063 is hereby amended to read as follows:

233B.063 1. ~~{At least 30 days before the time of giving notice of its intention}~~ ***An agency that intends*** to adopt, amend or repeal a permanent regulation ~~{an agency shall}~~ ***must*** deliver to the Legislative Counsel a copy of the proposed regulation. The Legislative Counsel shall examine and if appropriate revise the language submitted so that it is clear, concise and suitable for incorporation in the Nevada Administrative Code, but shall not alter the meaning or effect without the consent of the agency.

2. Unless the proposed regulation is submitted to him between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the Legislative Counsel shall deliver the approved or revised text of the regulation within 30 days after it is submitted to him. If the proposed or revised text of a regulation is changed before adoption, the agency shall submit the changed text to the Legislative Counsel, who shall examine and revise it if appropriate pursuant to the standards of subsection 1. Unless it is submitted between July 1 of an even-numbered year and July 1 of the

succeeding odd-numbered year, the Legislative Counsel shall return it with any appropriate revisions within 30 days. If the agency is a licensing board as defined in NRS 439B.225 and the proposed regulation relates to standards for licensing or registration or for the renewal of a license or a certificate of registration issued to a person or facility regulated by the agency, the Legislative Counsel shall also deliver one copy of the approved or revised text of the regulation to the Legislative Committee on Health Care.

3. An agency may adopt a temporary regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year without following the procedure required by this section and NRS 233B.064, but any such regulation expires by limitation on November 1 of the odd-numbered year. A substantively identical permanent regulation may be subsequently adopted.

4. An agency may amend or suspend a permanent regulation between August 1 of an even-numbered year and July 1 of the succeeding odd-numbered year by adopting a temporary regulation in the same manner and subject to the same provisions as prescribed in subsection 3.

Sec. 4. NRS 233B.0633 is hereby amended to read as follows:

233B.0633 1. Upon the request of a Legislator, the Legislative Commission may examine a temporary regulation adopted by an agency that is not yet effective pursuant to subsection 2 of NRS 233B.070 to determine whether the temporary regulation conforms to the statutory authority pursuant to which it was adopted and whether the temporary regulation carries out the intent of the Legislature in granting that authority.

2. If a temporary regulation that the Legislative Commission is requested to examine pursuant to subsection 1 was required to be adopted by the agency pursuant to a federal statute or regulation and the temporary regulation exceeds the specific statutory authority of the agency or sets forth requirements that are more stringent than a statute of this State, the agency shall submit a statement to the Legislative Commission that adoption of the temporary regulation was required by a federal statute or regulation. The statement must include the specific citation of the federal statute or regulation requiring such adoption.

3. Except as otherwise provided in subsection 4, the Legislative Commission shall:

(a) Review the temporary regulation at its next regularly scheduled meeting if the request for examination of the temporary regulation is received more than 10 working days before the meeting; or

(b) Refer the temporary regulation for review to the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067.

4. If an agency determines that an emergency exists which requires a temporary regulation of the agency for which a Legislator requested an examination pursuant to subsection 1 to become effective before the next meeting of the Legislative Commission is scheduled to be held, the agency may notify the Legislative Counsel in writing of the emergency. Upon receipt

of such a notice, the Legislative Counsel shall refer the temporary regulation for review by the Subcommittee to Review Regulations as soon as practicable.

5. If the Legislative Commission, or the Subcommittee to Review Regulations if the temporary regulation was referred, ~~[does not object to]~~ **approves** the temporary regulation, the Legislative Counsel shall notify the agency that the agency may file the temporary regulation with the Secretary of State. If the Commission or the Subcommittee objects to the temporary regulation after determining that:

(a) If subsection 2 is applicable, the temporary regulation is not required pursuant to a federal statute or regulation;

(b) The temporary regulation does not conform to statutory authority; or

(c) The temporary regulation does not carry out legislative intent,

↪ the Legislative Counsel shall attach to the temporary regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the temporary regulation to the agency.

6. If the Legislative Commission or the Subcommittee to Review Regulations has objected to a temporary regulation, the agency that adopted the temporary regulation shall revise the temporary regulation to conform to the statutory authority pursuant to which it was adopted and to carry out the intent of the Legislature in granting that authority and return it to the Legislative Counsel within 60 days after the agency received the written notice of the objection to the temporary regulation pursuant to subsection 5. Upon receipt of the revised temporary regulation, the Legislative Counsel shall resubmit the temporary regulation to the Legislative Commission or the Subcommittee for review. If ~~[there is no objection to]~~ **the Legislative Commission or the Subcommittee approves** the revised temporary regulation, the Legislative Counsel shall notify the agency that the agency may file the revised temporary regulation with the Secretary of State.

7. If the Legislative Commission or the Subcommittee to Review Regulations objects to the revised temporary regulation, the Legislative Counsel shall attach to the revised temporary regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the revised temporary regulation to the agency. The agency shall continue to revise it and resubmit it to the Legislative Commission or the Subcommittee within 30 days after the agency received the written notice of the objection to the revised temporary regulation.

Sec. 5. NRS 233B.067 is hereby amended to read as follows:

233B.067 1. After adopting a permanent regulation, the agency shall submit the informational statement prepared pursuant to NRS 233B.066 and one copy of each regulation adopted to the Legislative Counsel for review by the Legislative Commission to determine whether the regulation conforms to the statutory authority pursuant to which it was adopted and whether the

regulation carries out the intent of the Legislature in granting that authority. The Legislative Counsel shall endorse on the original and the copy of each adopted regulation the date of their receipt. The Legislative Counsel shall maintain the copy of the regulation in a file and make the copy available for public inspection for 2 years.

2. If an agency submits an adopted regulation to the Legislative Counsel pursuant to subsection 1 that:

(a) The agency is required to adopt pursuant to a federal statute or regulation; and

(b) Exceeds the specific statutory authority of the agency or sets forth requirements that are more stringent than a statute of this State,

➡ it shall include a statement that adoption of the regulation is required by a federal statute or regulation. The statement must include the specific citation of the federal statute or regulation requiring such adoption.

3. Except as otherwise provided in subsection 4, the Legislative Commission shall:

(a) Review the regulation at its next regularly scheduled meeting if the regulation is received more than 10 working days before the meeting; or

(b) Refer the regulation for review to the Subcommittee to Review Regulations appointed pursuant to subsection 6.

4. If an agency determines that an emergency exists which requires a regulation of the agency submitted pursuant to subsection 1 to become effective before the next meeting of the Legislative Commission is scheduled to be held, the agency may notify the Legislative Counsel in writing of the emergency. Upon receipt of such a notice, the Legislative Counsel shall refer the regulation for review by the Subcommittee to Review Regulations. The Subcommittee shall meet to review the regulation as soon as practicable.

5. If the Legislative Commission, or the Subcommittee to Review Regulations if the regulation was referred, ~~does not object to~~ **approves** the regulation, the Legislative Counsel shall promptly file the regulation with the Secretary of State and notify the agency of the filing. If the Commission or Subcommittee objects to the regulation after determining that:

(a) If subsection 2 is applicable, the regulation is not required pursuant to a federal statute or regulation;

(b) The regulation does not conform to statutory authority; or

(c) The regulation does not carry out legislative intent,

➡ the Legislative Counsel shall attach to the regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the regulation to the agency.

6. As soon as practicable after each regular legislative session, the Legislative Commission shall appoint a Subcommittee to Review Regulations consisting of at least three members of the Legislative Commission.

Sec. 6. NRS 233B.0675 is hereby amended to read as follows:

233B.0675 1. If the Legislative Commission, or the Subcommittee to Review Regulations appointed pursuant to subsection 6 of NRS 233B.067, has objected to a regulation, the agency shall revise the regulation to conform to the statutory authority pursuant to which it was adopted and to carry out the intent of the Legislature in granting that authority and return it to the Legislative Counsel within 60 days after the agency received the written notice of the objection to the regulation pursuant to NRS 233B.067. Upon receipt of the revised regulation, the Legislative Counsel shall resubmit the regulation to the Commission or Subcommittee for review. If ~~there is no objection to~~ **the Commission or Subcommittee approves** the revised regulation, the Legislative Counsel shall promptly file the revised regulation with the Secretary of State and notify the agency of the filing.

2. If the Legislative Commission or Subcommittee objects to the revised regulation, the Legislative Counsel shall attach to the revised regulation a written notice of the objection, including, if practicable, a statement of the reasons for the objection, and shall promptly return the revised regulation to the agency. The agency shall continue to revise it and resubmit it to the Commission or Subcommittee within 30 days after the agency received the written notice of the objection to the revised regulation.

Sec. 7. NRS 241.020 is hereby amended to read as follows:

241.020 1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

- (a) The time, place and location of the meeting.
- (b) A list of the locations where the notice has been posted.
- (c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

(a) An agenda for a public meeting;

(b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

➡ ***The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain.*** As used in this subsection, “proprietary information” has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

➡ If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

8. As used in this section, “emergency” means an unforeseen circumstance which requires immediate action and includes, but is not limited to:

(a) Disasters caused by fire, flood, earthquake or other natural causes; or

(b) Any impairment of the health and safety of the public.

Sec. 8. NRS 396.405 is hereby amended to read as follows:

396.405 1. A university foundation:

(a) Shall comply with the provisions of chapter 241 of NRS;

(b) Except as otherwise provided in subsection 2, shall make its records public and open to inspection pursuant to NRS 239.010;

(c) Is exempt from the taxes imposed by NRS 375.020, 375.023 and 375.026 pursuant to subsection 14 of NRS 375.090; and

(d) May allow a president or an administrator of the university, state college or community college which it supports to serve as a member of its governing body.

2. A university foundation is not required to disclose the name of any contributor or potential contributor to the university foundation, the amount of his contribution or any information which may reveal or lead to the discovery of his identity. The university foundation shall, upon request, allow a contributor to examine, during regular business hours, any record, document or other information of the foundation relating to that contributor.

3. As used in this section, "university foundation" means a nonprofit corporation, association or institution or a charitable organization that is:

(a) Organized and operated ~~[exclusively]~~ primarily for the purpose of ~~[supporting]~~ fundraising in support of a university, state college or a community college;

(b) Formed pursuant to the laws of this State; and

(c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

~~[Sec. 8.]~~ **Sec. 9.** This act becomes effective on July 1, 2009.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 351.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 750.

AN ACT relating to common-interest communities; providing that money collected by a unit-owners' association must be deposited or invested in certain institutions or securities; ~~[revising the provisions relating to amendment of the governing documents to conform with the laws of this State,]~~ providing that an executive board of an association may not fill a vacancy on the executive board if the governing documents require a vote of the membership of the association; ~~[providing that an executive board may conduct a workshop without complying with certain requirements,]~~ making various other changes relating to common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill provides that a unit-owners' association must deposit all funds of the association into certain financial institutions. **Section 3** also provides that an association shall invest all funds of the association in certain investments.

~~[Section 6 of this bill amends existing law to authorize the executive board of an association to amend the declaration or governing documents of the association to conform with the laws of this State without complying with the procedural requirements or obtaining the approval of the members of the association. (NRS 116.1206)]~~

Section 7 of this bill clarifies existing law to provide that a change in the use of a unit which requires unanimous approval of the units' owners

includes only changes to the boundary of a unit or the allocated interests of a unit. (NRS 116.2117)

~~Existing law provides that an association may take certain actions, subject to the provisions of the declaration. (NRS 116.3102) Section 8 of this bill provides that an association may take certain actions, unless the governing documents expressly prohibit the association from doing so.~~

Section 9 of this bill provides that the executive board of an association may not fill a vacancy on the board without a vote of the units' owners if the governing documents provide that the vacancy must be filled by a vote of the membership of the association. (NRS 116.3103)

~~Section 10 of this bill clarifies existing law to provide that a special meeting of the units' owners includes a special meeting at which the units' owners will vote to remove a member of the executive board. (NRS 116.3108)~~

~~Section 11 of this bill provides that the executive board of an association may conduct a workshop, which is not considered a meeting of the executive board as long as no action is taken, without complying with the requirements imposed on the executive board for holding a meeting. (NRS 116.31083)~~

Existing law requires an association to: (1) establish reserves for the repair, replacement and restoration of the major components of the common elements; (2) include in the annual budget certain information pertaining to the repair, replacement and restoration of the major components of the common elements; and (3) conduct a study every 5 years of the reserves required to repair, replace and restore the major components of the common elements. (NRS 116.3115 116.31151, 116.31152) **Sections 12, 12.3 and 12.7** of this bill require an association to perform such functions with respect to any other portion of the common-interest community which the association has a duty to maintain, repair, replace or restore in addition to the major components of the common elements.

Section 13 of this bill amends existing law to exempt architectural records submitted by a unit's owner from the records which must be made available by an association. (NRS 116.31175)

Section 14 of this bill amends existing law to add to the information statement provided as part of a purchase of a unit in a common-interest community a statement that the provisions of the Declaration of Covenants, Conditions and Restrictions or other governing documents may be superseded by provisions of chapter 116 of NRS. (NRS 116.41095)

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. **1. Except as otherwise provided in subsection 2, an association, a member of the executive board, or a community manager**

shall deposit or invest all funds of the association at a financial institution which:

- (a) Is located in this State;*
- (b) Is qualified to conduct business in this State; or*
- (c) Has consented to be subject to the jurisdiction, including the power to subpoena, of the courts of this State and the Division.*

2. Except as otherwise provided by the governing documents, in addition to the requirements of subsection 1, an association shall deposit, maintain and invest all funds of the association:

- (a) In a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation;*
- (b) With a private insurer approved pursuant to NRS 678.755; or*
- (c) In a government security backed by the full faith and credit of the Government of the United States.*

3. The Commission shall adopt regulations prescribing the contents of the declaration to be executed and signed by a financial institution located outside of this State to submit to consent to the jurisdiction of the courts of this State and the Division.

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. ~~[NRS 116.1206 is hereby amended to read as follows:~~

~~116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common interest community that violates the provisions of this chapter shall be deemed to conform with those provisions by operation of law. [, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.~~

~~2. In]~~

~~2. A declaration, bylaw or other governing document of a common interest community that violates the provisions of this chapter may be changed to conform to those provisions. A declaration, bylaw or other governing document of a common interest community that is changed for the sole purpose of conforming with the provisions of this chapter may be changed by the executive board without the approval of the members of the association and without complying with the procedural requirements of NRS 116.2117 or any other provision generally applicable to the adoption of an amendment to such declaration, bylaw or other governing document.~~

~~3. Except as otherwise provided in subsection 2, in the case of amendments to the declaration, bylaws or plats and plans of any common interest community created before January 1, 1992:~~

~~(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and~~

~~(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.~~

~~[3.—An]~~

~~4. Except as otherwise provided in subsection 2, an amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person. (Deleted by amendment.)~~

Sec. 7. NRS 116.2117 is hereby amended to read as follows:

116.2117 1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection 6 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, ~~[subsection 4 of NRS]~~ 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsection 4, the declaration, including any plats and plans, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. Every amendment to the declaration must be recorded in every county in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit ~~[.] or the allocated interests of a unit for the uses to which any unit is restricted,]~~ in the absence of unanimous consent of the units' owners affected and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 8. ~~NRS 116.3102 is hereby amended to read as follows:~~

~~116.3102—1. Except as otherwise provided in subsection 2, and [subject to the provisions of the declaration,] unless the governing documents expressly prohibit the association from doing so, the association may do any or all of the following:~~

- ~~(a) Adopt and amend bylaws, rules and regulations.~~
- ~~(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.~~
- ~~(c) Hire and discharge managing agents and other employees, agents and independent contractors.~~
- ~~(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.~~
- ~~(e) Make contracts and incur liabilities.~~
- ~~(f) Regulate the use, maintenance, repair, replacement and modification of common elements.~~
- ~~(g) Cause additional improvements to be made as a part of the common elements.~~
- ~~(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:~~
 - ~~(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and~~
 - ~~(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.~~
- ~~(i) Grant easements, leases, licenses and concessions through or over the common elements.~~
- ~~(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.~~
- ~~(k) Impose charges for late payment of assessments.~~
- ~~(l) Impose construction penalties when authorized pursuant to NRS 116.310305.~~
- ~~(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.~~
- ~~(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.~~
- ~~(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.~~

~~(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.~~

~~(q) Exercise any other powers conferred by the declaration or bylaws.~~

~~(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.~~

~~(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:~~

~~(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or~~

~~(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common interest community.~~

~~(t) Exercise any other powers necessary and proper for the governance and operation of the association.~~

~~2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.~~ **(Deleted by amendment.)**

Sec. 9. NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries. The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The ~~Except as otherwise provided in NRS 116.1206, the~~ executive board may not act on behalf of the association to amend the declaration, to terminate the common-interest community, or to elect members of the executive board or determine their qualifications, powers and duties or terms of office, but the executive board may fill vacancies in its membership for the unexpired portion of any term ~~unless the governing documents provide that a vacancy on the executive board must be filled by a vote of the membership of the association.~~

Sec. 10. ~~NRS 116.3108 is hereby amended to read as follows:~~

~~116.3108—1.—A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.~~

~~2.—Special meetings of the units' owners, including a special meeting at which the units' owners will vote on the removal of a member of the executive board, may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:~~

~~(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or~~

~~(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.~~

~~3.—Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:~~

~~(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.~~

~~(b) Speak to the association or executive board, unless the executive board is meeting in executive session.~~

~~4. The agenda for a meeting of the units' owners must consist of:~~

~~(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.~~

~~(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.~~

~~(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).~~

~~5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.~~

~~6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.~~

~~7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:~~

~~(a) The date, time and place of the meeting;~~

~~(b) The substance of all matters proposed, discussed or decided at the meeting; and~~

~~(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.~~

~~8.—The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.~~

~~9.—The association shall maintain the minutes of each meeting of the units' owners until the common interest community is terminated.~~

~~10.—A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.~~

~~11.—The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.~~

~~12.—As used in this section, "emergency" means any occurrence or combination of occurrences that:~~

- ~~(a) Could not have been reasonably foreseen;~~
- ~~(b) Affects the health, welfare and safety of the units' owners or residents of the common interest community;~~
- ~~(c) Requires the immediate attention of, and possible action by, the executive board; and~~
- ~~(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.] (Deleted by amendment.)~~

Sec. 11. [NRS 116.31083 is hereby amended to read as follows:

~~116.31083—1.—A meeting of the executive board must be held at least once every 90 days.~~

~~2.—Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:~~

- ~~(a) Sent prepaid by United States mail to the mailing address of each unit within the common interest community or to any other mailing address designated in writing by the unit's owner;~~
- ~~(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or~~
- ~~(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.~~

~~3.—In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common interest community. If delivery of the notice in this manner is impracticable, the notice must be hand delivered to each unit within the common interest community or posted in a prominent place or places within the common elements of the association.~~

~~4.—The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:~~

~~(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.~~

~~(b) Speak to the association or executive board, unless the executive board is meeting in executive session.~~

~~5.—The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. The period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.~~

~~6.—At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:~~

~~(a) A current year-to-date financial statement of the association;~~

~~(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;~~

~~(c) A current reconciliation of the operating account of the association;~~

~~(d) A current reconciliation of the reserve account of the association;~~

~~(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and~~

~~(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.~~

~~7.—The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the executive board. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meetings to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.~~

~~8.—Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:~~

~~(a) The date, time and place of the meeting;~~

~~(b) Those members of the executive board who were present and those members who were absent at the meeting;~~

~~(c) The substance of all matters proposed, discussed or decided at the meeting;~~

~~(d) A record of each member's vote on any matter decided by vote at the meeting; and~~

~~(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.~~

~~9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.~~

~~10. The association shall maintain the minutes of each meeting of the executive board until the common interest community is terminated.~~

~~11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.~~

~~12. Notwithstanding any other provision of this chapter, the executive board may conduct a workshop to prepare for a meeting of the executive board. A workshop shall not be deemed to be a meeting of the executive board as long as the executive board does not take any action on any matter discussed during the workshop. If the executive board conducts a workshop, the executive board is not required to:~~

~~(a) Provide to the units' owners notice of the workshop pursuant to subsection 2 or 3;~~

~~(b) Permit a unit's owner to attend or speak at a workshop pursuant to subsections 4 and 5;~~

~~(c) Comply with the requirements of this section for creating or distributing an agenda for a workshop; or~~

~~(d) Comply with the requirements of this section for recording or distributing minutes for a workshop.~~

~~13. As used in this section, "emergency" means any occurrence or combination of occurrences that:~~

~~(a) Could not have been reasonably foreseen;~~

~~(b) Affects the health, welfare and safety of the units' owners or residents of the common interest community;~~

~~(c) Requires the immediate attention of, and possible action by, the executive board; and~~

~~(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.] (Deleted by amendment.)~~

Sec. 12. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least

annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements ~~[-] and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore.~~ The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements *and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore* over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements *or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore* are necessary.

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. ~~[To the extent required by the declaration:]~~ *Except as otherwise provided in the governing documents:*

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 12.3. NRS 116.31151 is hereby amended to read as follows:

116.31151 1. Except as otherwise provided in subsection 2 and unless the declaration of a common-interest community imposes more stringent standards,

the executive board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the association. The budget must include, without limitation, the estimated annual revenue and expenditures of the association and any contributions to be made to the reserve account of the association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements ~~and~~ ***and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;***

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements ~~and~~ ***and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;***

(3) A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements ***or any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore*** or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

2. In lieu of distributing copies of the budgets of the association required by subsection 1, the executive board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(a) The budgets are available for review at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties; and

(b) Copies of the budgets will be provided upon request.

3. Within 60 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the proposed budget to each unit's owner and shall set a date for a meeting of the units' owners to consider ratification of the proposed budget not less than 14 days or more than 30 days after the mailing of the summaries. Unless at that meeting a majority of all units' owners, or any larger vote specified in the declaration, reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

Sec. 12.7. NRS 116.31152 is hereby amended to read as follows:

116.31152 1. The executive board shall:

(a) At least once every 5 years, cause to be conducted a study of the reserves required to repair, replace and restore the major components of the common elements ~~{ }~~ **and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;**

(b) At least annually, review the results of that study to determine whether those reserves are sufficient; and

(c) At least annually, make any adjustments to the association's funding plan which the executive board deems necessary to provide adequate funding for the required reserves.

2. The study of the reserves required by subsection 1 must be conducted by a person who holds a permit issued pursuant to chapter 116A of NRS.

3. The study of the reserves must include, without limitation:

(a) A summary of an inspection of the major components of the common elements **and any other portion of the common-interest community** that the association is obligated to ***maintain***, repair, replace or restore;

(b) An identification of the major components of the common elements **and any other portion of the common-interest community** that the association is obligated to ***maintain***, repair, replace or restore which have a remaining useful life of less than 30 years;

(c) An estimate of the remaining useful life of each major component of the common elements **and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore** identified pursuant to paragraph (b);

(d) An estimate of the cost of *maintenance*, repair, replacement or restoration of each major component of the common elements *and any other portion of the common-interest community* identified pursuant to paragraph (b) during and at the end of its useful life; and

(e) An estimate of the total annual assessment that may be necessary to cover the cost of *maintaining*, repairing, replacement or restoration of the major components of the common elements *and any other portion of the common-interest community* identified pursuant to paragraph (b), after subtracting the reserves of the association as of the date of the study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

4. A summary of the study of the reserves required by subsection 1 must be submitted to the Division not later than 45 days after the date that the executive board adopts the results of the study.

5. If a common-interest community was developed as part of a planned unit development pursuant to chapter 278A of NRS and is subject to an agreement with a city or county to receive credit against the amount of the residential construction tax that is imposed pursuant to NRS 278.4983 and 278.4985, the association that is organized for the common-interest community may use the money from that credit for the repair, replacement or restoration of park facilities and related improvements if:

(a) The park facilities and related improvements are identified as major components of the common elements of the association; and

(b) The association is obligated to repair, replace or restore the park facilities and related improvements in accordance with the study of the reserves required by subsection 1.

Sec. 13. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees;

(b) The records of the association relating to another unit's owner, *including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents*, except for those records described in subsection 2; and

(c) A contract between the association and an attorney.

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation

involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

Sec. 14. NRS 116.41095 is hereby amended to read as follows:

116.41095 The information statement required by NRS 116.4103 and 116.4109 must be in substantially the following form:

BEFORE YOU PURCHASE PROPERTY IN A
COMMON-INTEREST COMMUNITY
DID YOU KNOW . . .

1. YOU GENERALLY HAVE 5 DAYS TO CANCEL THE PURCHASE AGREEMENT?

When you enter into a purchase agreement to buy a home or unit in a common-interest community, in most cases you should receive either a public offering statement, if you are the original purchaser of the home or unit, or a resale package, if you are not the original purchaser. The law

generally provides for a 5-day period in which you have the right to cancel the purchase agreement. The 5-day period begins on different starting dates, depending on whether you receive a public offering statement or a resale package. Upon receiving a public offering statement or a resale package, you should make sure you are informed of the deadline for exercising your right to cancel. In order to exercise your right to cancel, the law generally requires that you hand deliver the notice of cancellation to the seller within the 5-day period, or mail the notice of cancellation to the seller by prepaid United States mail within the 5-day period. For more information regarding your right to cancel, see Nevada Revised Statutes 116.4108, if you received a public offering statement, or Nevada Revised Statutes 116.4109, if you received a resale package.

2. YOU ARE AGREEING TO RESTRICTIONS ON HOW YOU CAN USE YOUR PROPERTY?

These restrictions are contained in a document known as the Declaration of Covenants, Conditions and Restrictions. The CC&Rs become a part of the title to your property. They bind you and every future owner of the property whether or not you have read them or had them explained to you. The CC&Rs, together with other “governing documents” (such as association bylaws and rules and regulations), are intended to preserve the character and value of properties in the community, but may also restrict what you can do to improve or change your property and limit how you use and enjoy your property. By purchasing a property encumbered by CC&Rs, you are agreeing to limitations that could affect your lifestyle and freedom of choice. You should review the CC&Rs, and other governing documents before purchasing to make sure that these limitations and controls are acceptable to you. *Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of chapter 116 of the Nevada Revised Statutes. The Nevada Revised Statutes are available at the Internet address <http://www.leg.state.nv.us/nrs/>.*

3. YOU WILL HAVE TO PAY OWNERS’ ASSESSMENTS FOR AS LONG AS YOU OWN YOUR PROPERTY?

As an owner in a common-interest community, you are responsible for paying your share of expenses relating to the common elements, such as landscaping, shared amenities and the operation of any homeowners’ association. The obligation to pay these assessments binds you and every future owner of the property. Owners’ fees are usually assessed by the homeowners’ association and due monthly. You have to pay dues whether or not you agree with the way the association is managing the property or spending the assessments. The executive board of the association may have the power to change and increase the amount of the assessment and to levy special assessments against your property to meet extraordinary expenses. In some communities, major components of the common elements of the community such as roofs and private roads must be maintained and replaced by the association. If the association is not well managed or fails to provide

adequate funding for reserves to repair, replace and restore common elements, you may be required to pay large, special assessments to accomplish these tasks.

4. IF YOU FAIL TO PAY OWNERS' ASSESSMENTS, YOU COULD LOSE YOUR HOME?

If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the association's costs and attorney's fees to become current. If you dispute the obligation or its amount, your only remedy to avoid the loss of your home may be to file a lawsuit and ask a court to intervene in the dispute.

5. YOU MAY BECOME A MEMBER OF A HOMEOWNERS' ASSOCIATION THAT HAS THE POWER TO AFFECT HOW YOU USE AND ENJOY YOUR PROPERTY?

Many common-interest communities have a homeowners' association. In a new development, the association will usually be controlled by the developer until a certain number of units have been sold. After the period of developer control, the association may be controlled by property owners like yourself who are elected by homeowners to sit on an executive board and other boards and committees formed by the association. The association, and its executive board, are responsible for assessing homeowners for the cost of operating the association and the common or shared elements of the community and for the day to day operation and management of the community. Because homeowners sitting on the executive board and other boards and committees of the association may not have the experience or professional background required to understand and carry out the responsibilities of the association properly, the association may hire professional community managers to carry out these responsibilities.

Homeowners' associations operate on democratic principles. Some decisions require all homeowners to vote, some decisions are made by the executive board or other boards or committees established by the association or governing documents. Although the actions of the association and its executive board are governed by state laws, the CC&Rs and other documents that govern the common-interest community, decisions made by these persons will affect your use and enjoyment of your property, your lifestyle and freedom of choice, and your cost of living in the community. You may not agree with decisions made by the association or its governing bodies even though the decisions are ones which the association is authorized to make. Decisions may be made by a few persons on the executive board or governing bodies that do not necessarily reflect the view of the majority of homeowners in the community. If you do not agree with decisions made by the association, its executive board or other governing bodies, your remedy is typically to attempt to use the democratic processes of the association to seek the election of members of the executive board or other governing bodies that are more responsive to your needs. If you have a dispute with the association,

its executive board or other governing bodies, you may be able to resolve the dispute through the complaint, investigation and intervention process administered by the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the Nevada Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels. However, to resolve some disputes, you may have to mediate or arbitrate the dispute and, if mediation or arbitration is unsuccessful, you may have to file a lawsuit and ask a court to resolve the dispute. In addition to your personal cost in mediation or arbitration, or to prosecute a lawsuit, you may be responsible for paying your share of the association's cost in defending against your claim.

6. YOU ARE REQUIRED TO PROVIDE PROSPECTIVE PURCHASERS OF YOUR PROPERTY WITH INFORMATION ABOUT LIVING IN YOUR COMMON-INTEREST COMMUNITY?

The law requires you to provide a prospective purchaser of your property with a copy of the community's governing documents, including the CC&Rs, association bylaws, and rules and regulations, as well as a copy of this document. You are also required to provide a copy of the association's current year-to-date financial statement, including, without limitation, the most recent audited or reviewed financial statement, a copy of the association's operating budget and information regarding the amount of the monthly assessment for common expenses, including the amount set aside as reserves for the repair, replacement and restoration of common elements. You are also required to inform prospective purchasers of any outstanding judgments or lawsuits pending against the association of which you are aware. For more information regarding these requirements, see Nevada Revised Statutes 116.4109.

7. YOU HAVE CERTAIN RIGHTS REGARDING OWNERSHIP IN A COMMON-INTEREST COMMUNITY THAT ARE GUARANTEED YOU BY THE STATE?

Pursuant to provisions of chapter 116 of Nevada Revised Statutes, you have the right:

(a) To be notified of all meetings of the association and its executive board, except in cases of emergency.

(b) To attend and speak at all meetings of the association and its executive board, except in some cases where the executive board is authorized to meet in closed, executive session.

(c) To request a special meeting of the association upon petition of at least 10 percent of the homeowners.

(d) To inspect, examine, photocopy and audit financial and other records of the association.

(e) To be notified of all changes in the community's rules and regulations and other actions by the association or board that affect you.

8. QUESTIONS?

Although they may be voluminous, you should take the time to read and understand the documents that will control your ownership of a property in a common-interest community. You may wish to ask your real estate professional, lawyer or other person with experience to explain anything you do not understand. You may also request assistance from the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, Nevada Real Estate Division, at (telephone number).

Buyer or prospective buyer's initials:_____

Date:_____.

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 376.

Bill read second time.

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

Amendment No. 689.

AN ACT relating to labor; making various changes relating to the establishment of the prevailing rates of wages in each county; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Labor Commissioner to establish the prevailing rate of wages for public works performed in each county. In determining the prevailing rate of wages for a county for a particular year, the Labor Commissioner is required to survey contractors who have performed work in the county during the preceding year. (NRS 338.030) **Section 1** of this bill: (1) clarifies that the survey encompasses private and public nonresidential construction work; (2) specifies the classes of workmen for which the Labor Commissioner is required to survey; (3) if the prevailing rate of wages for a craft or type of work is a wage that has been collectively bargained, requires the Labor Commissioner to recognize the rate for the classes and subclasses of workmen and certain premium pay established in the collective bargaining agreement and adjust to the rate of wages in the agreement that are in effect ~~for the effective date of the determination;~~ **and on file with the Labor Commissioner by a specified deadline;** and (4) clarifies the circumstances in which the Labor Commissioner is required to hold a hearing in a locality concerning an objection to or information received on a rate of prevailing wage that has been determined. These requirements apply initially to the process of determining and issuing the prevailing rate of wages that will become effective on October 1, 2010.

Under existing law, agencies of the Executive Branch of the State Government, unless specifically exempted, are required to comply with the Nevada Administrative Procedure Act when adopting administrative

regulations or adjudicating contested cases. (NRS 233B.039) **Section 2** of this bill exempts the Labor Commissioner from compliance with the Act only in the process of determining and issuing the prevailing rate of wages **and subclassifications** in each county.

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

Section 1. NRS 338.030 is hereby amended to read as follows:

338.030 1. The public body awarding any contract for public work, or otherwise undertaking any public work, ***and any person who wishes to bid on a public work*** shall ascertain from the Labor Commissioner the prevailing wage in the county in which the public work is to be performed for each craft or type of work.

2. To establish a prevailing wage in each county, including Carson City, the Labor Commissioner shall, annually, survey contractors who have performed ***private or public nonresidential construction*** work in the county. ***As used in this subsection, “nonresidential construction work” means any type of construction other than the construction of multifamily residences which are less than four stories in height and the construction of single-family residences.***

3. ***For the purpose of a survey conducted pursuant to subsection 2, the Labor Commissioner shall recognize and survey only for the following classes of workmen:***

- (a) Alarm Installer;***
- (b) Boilermaker;***
- (c) Bricklayer, including, without limitation, Stone Mason;***
- (d) Carpenter;***
- (e) Cement Mason;***
- (f) Electrician-Communication Technician;***
- (g) Electrician-Lineman/Groundman/Operator;***
- (h) Electrician-Neon Sign;***
- (i) Electrician-Wireman;***
- (j) Elevator Constructor;***
- (k) Fence Erector;***
- (l) Floor Coverer;***
- (m) Glazier;***
- (n) Highway Stripper;***
- (o) Hod Carrier-Brick Mason Tender;***
- (p) Hod Carrier-Plasterer Tender;***
- (q) Ironworker;***
- (r) Laborer;***
- (s) Mechanical Insulator;***
- (t) Millwright;***
- (u) Operating Engineer, including, without limitation, Survey Technician, Equipment Greaser, and Soils and Materials Tester;***

- (v) *Painter;*
- (w) *Piledriver (nonequipment);*
- (x) *Plasterer;*
- (y) *Plumber-Pipefitter;*
- (z) *Refrigeration Technician;*
- (aa) *Roofer (excluding metal roofs);*
- (bb) *Sheet Metal Worker, including, without limitation, Air Balance Technician;*
- (cc) *Sprinkler Fitter;*
- (dd) *Taper;*
- (ee) *Tile Setter-Terrazzo Worker-Marble Mason, including, without limitation, Tile Setter-Terrazzo Worker-Marble Mason Finisher;*
- (ff) *Truck Driver; and*
- (gg) *Well Driller.*

4. Within 30 days after the determination *of the prevailing wages in a county* is issued:

(a) A public body or person entitled under subsection ~~[5.]~~ 7 to be heard may submit an objection to the Labor Commissioner with evidence to substantiate that a different wage prevails; and

(b) Any person may submit information to the Labor Commissioner that would support a change in the prevailing wage of a craft or type of work by 50 cents or more per hour in any county.

~~{3.—The}~~

5. *Except as otherwise provided in this subsection, the* Labor Commissioner shall hold a hearing in the locality in which the work is to be executed if he:

(a) Is in doubt as to the prevailing wage; or

(b) Receives an objection or information pursuant to *paragraph (a) or (b) of subsection ~~[2.]~~ 4, unless the prevailing wage to which the objection or information pertains can be corrected ~~to the rate of wages requested in the objection or information~~ by the Labor Commissioner through administrative action, including, without limitation, the correction of a clerical error.*

↪ The Labor Commissioner may hold only one hearing a year on the prevailing wage of any craft or type of work in any county.

~~[4.]~~ 6. Notice of the hearing must be advertised in a newspaper nearest to the locality of the work once a week for 2 weeks before the time of the hearing.

~~[5.]~~ 7. At the hearing, any public body, the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the locality or their representatives must be heard. From the evidence presented, the Labor Commissioner shall determine the prevailing wage.

~~{6-}~~ 8. *If the Labor Commissioner determines that the prevailing rate of wages for a craft or type of work is a wage which has been collectively bargained, the Labor Commissioner shall:*

(a) *Recognize:*

(1) *The rate for the classes and subclasses of workmen established in the collective bargaining agreement; and*

(2) *Any premium pay established in the collective bargaining agreement for subsistence, traveling to another zone or area or similar purposes.*

(b) *Adjust the prevailing rate of wages for the classes and subclasses of workmen to the rate of wages established in the collective bargaining agreement that are in effect ~~for the effective date of the determination.~~ and on file with the Labor Commissioner on or before September 1 of the year in which the determination of the prevailing rate of wages is made.*

9. The wages so determined *pursuant to this section* must be filed by the Labor Commissioner and must be available to any public body which awards a contract for any public work.

~~{7-}~~ 10. Nothing contained in NRS 338.020 to 338.090, inclusive, may be construed to authorize the fixing of any wage below any rate which may now or hereafter be established as a minimum wage for any person employed upon any public work, or employed by any officer or agent of any public body.

Sec. 2. NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:

- (a) The Governor.
- (b) The Department of Corrections.
- (c) The Nevada System of Higher Education.
- (d) The Office of the Military.
- (e) The State Gaming Control Board.
- (f) Except as otherwise provided in NRS 368A.140, the Nevada Gaming Commission.
- (g) The Division of Welfare and Supportive Services of the Department of Health and Human Services.
- (h) The Division of Health Care Financing and Policy of the Department of Health and Human Services.
- (i) The State Board of Examiners acting pursuant to chapter 217 of NRS.
- (j) Except as otherwise provided in NRS 533.365, the Office of the State Engineer.
- (k) The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375.
- (l) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

(m) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.

(n) The Labor Commissioner only in the process of determining and issuing the prevailing rate of wages and subclasses of workmen in each county pursuant to NRS 338.030, including, without limitation, the conduct of annual surveys.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees' Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:

(a) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;

(b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;

(c) Chapter 703 of NRS for the judicial review of decisions of the Public Utilities Commission of Nevada;

(d) Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and

(e) NRS 90.800 for the use of summary orders in contested cases,

↪ prevail over the general provisions of this chapter.

4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Health and Human Services in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184; or

(c) A regulation adopted by the State Board of Education pursuant to NRS 392.644 or 394.1694.

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

Sec. 2.5. The provisions of NRS 338.030, as amended by section 1 of this act, apply initially to the process of determining and issuing the prevailing rate of wages that will become effective on October 1, 2010.

Sec. 3. 1. This section and section 2 of this act become effective on July 1, 2009.

2. Sections 1 and 2.5 of this act become effective on January 1, 2010.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 394.

Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Atkinson moved that Senate Bill No. 394 be taken from the General File and rereferred to the Committee on Ways and Means.

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 396.

Bill read second time.

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

Amendment No. 658.

AN ACT relating to peace officers; revising provisions governing the review by a peace officer of administrative or investigative files maintained by a law enforcement agency; revising provisions governing investigations of or hearings concerning peace officers that are conducted by a law enforcement agency; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a law enforcement agency that investigates an allegation of misconduct by a peace officer or takes any punitive action against the peace officer must comply with certain requirements for providing notice and a hearing, using polygraphic examinations, maintaining confidentiality and taking other actions relating to the rights of the peace officer. (NRS 289.010-289.120)

Section 2 of this bill authorizes a peace officer who is the subject of an investigation by a law enforcement agency to review and copy any administrative or investigative file maintained by the law enforcement agency concerning the investigation if, after the conclusion of the investigation, the charges against the peace officer are sustained and the law enforcement agency imposes or considers the imposition of punitive action against the peace officer. (NRS 289.057)

Section 3 of this bill requires a law enforcement agency that intends to conduct an interrogation or to hold a hearing concerning an investigation of a peace officer to provide a written notice of that fact to both the peace officer who is the subject of the investigation and to any peace officer believed by the law enforcement agency to have knowledge of any fact concerning the complaint or allegation made against the peace officer who is the subject of

the investigation. ~~Section 3 also requires the law enforcement agency to allow the peace officer to review certain compiled evidence prepared by the law enforcement agency before conducting the interrogation or hearing and prohibits the law enforcement agency from taking various other actions concerning the peace officer. (NRS 289.060) Finally, section 3~~ provides that, if a peace officer provides a statement or answers a question relating to the alleged misconduct of the peace officer who is the subject of an investigation after he is informed that failure to provide the statement or answer may result in punitive action against him, the peace officer's answer or statement cannot be used against him in any criminal investigation of him.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 289.057 is hereby amended to read as follows:

289.057 1. An investigation of a peace officer may be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action.

2. A law enforcement agency shall not suspend a peace officer without pay during or pursuant to an investigation conducted pursuant to this section until all investigations relating to the matter have concluded.

3. After the conclusion of the investigation:

(a) If the ~~investigation causes a~~ *charges brought against the peace officer are sustained and, based on those charges, the* law enforcement agency ~~to impose~~ :

(1) *Imposes or considers the imposition of* punitive action against the peace officer ~~who was the subject of the investigation and the~~ ; *and*

(2) *The* peace officer has received *a* notice of the imposition *or proposed imposition* of the punitive action, *including a notice of the right of the peace officer to attend any hearing conducted before the imposition or proposed imposition of the punitive action,*

↪ the peace officer or a representative authorized by the peace officer may, except as otherwise prohibited by federal or state law, review *and copy* any administrative or investigative file maintained by the law enforcement agency relating to the investigation, including any recordings, notes, transcripts of interviews and documents.

(b) If, pursuant to a policy of a law enforcement agency or a labor agreement, the record of the investigation or the imposition of punitive action is subject to being removed from any administrative file relating to the peace officer maintained by the law enforcement agency, the law enforcement agency shall not, except as otherwise required by federal or state law, keep or make a record of the investigation or the imposition of punitive action after the record is required to be removed from the administrative file.

Sec. 3. NRS 289.060 is hereby amended to read as follows:

289.060 1. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted pursuant to NRS 289.057, provide **a** written notice to the peace officer ~~[-A]~~ **who is the subject of the investigation and to any** peace officer **believed by the law enforcement agency to have knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation.** Each of those peace officers may waive the notice required pursuant to this section.

2. The notice must include:

- (a) A description of the nature of the investigation;
- (b) A summary of **the** alleged misconduct of the peace officer ~~[-]~~ **who is the subject of the investigation;**
- (c) The date, time and place of the interrogation or hearing;
- (d) The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation;
- (e) The name of any other person who will be present at any interrogation or hearing; and
- (f) A statement setting forth the provisions of subsection 1 of NRS 289.080.

3. The law enforcement agency shall:

(a) Interrogate the peace officer during his regular working hours, if reasonably practicable, or compensate him for that time based on his regular wages if no charges **against the peace officer** arise from the interrogation.

(b) Immediately before the interrogation or hearing begins, inform the peace officer orally on the record that:

(1) He is required to provide a statement and answer questions related to ~~[-his]~~ **the** alleged misconduct ~~[-; and]~~ **of the peace officer who is the subject of the investigation; and**

(2) If he fails to provide such a statement or to answer any such questions, the agency may charge him with insubordination ~~[-; and]~~

~~(3) He is entitled to review any evidence pursuant to subsection 4.~~

(c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer ~~[-]~~ **who is the subject of the investigation.**

(d) Allow the peace officer to explain an answer or refute a negative implication which results from questioning during an interrogation or hearing.

~~4. If the law enforcement agency has any audio, video or written evidence prepared by the peace officer, and the evidence is compiled during the investigation, the law enforcement agency shall allow the peace officer a reasonable period to review the evidence off the record before the interrogation or hearing begins.~~

~~5. If a law enforcement agency has any knowledge of or a belief that a peace officer may be subject to punitive action, the law enforcement agency~~

~~shall not, without complying with the provisions of NRS 289.010 to 289.120, inclusive, order or otherwise require the peace officer to provide a written statement or memorandum concerning any involvement or activities of the peace officer in the alleged misconduct of the peace officer who is the subject of the investigation.~~

6. If a peace officer provides a statement or answers a question relating to the alleged misconduct of the peace officer who is the subject of the investigation pursuant to this section after the peace officer is informed that failing to provide the statement or answer may result in punitive action against him, the statement or answer must not be used against the peace officer who provided the statement or answer in any criminal investigation of that peace officer.

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. This act becomes effective on July 1, 2009.

Assemblyman Bobzien moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

Senate Bill No. 409.

Bill read second time and ordered to third reading.

Senate Bill No. 415.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 534.

Bill read third time.

Remarks by Assemblyman Hardy.

Roll call on Assembly Bill No. 534:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Assembly Bill No. 534 having received a constitutional majority,

Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 549.

Bill read third time.

Roll call on Assembly Bill No. 549:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Assembly Bill No. 549 having received a constitutional majority,

Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 555.

Bill read third time.

Remarks by Assemblyman Hogan.

Roll call on Assembly Bill No. 555:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Assembly Bill No. 555 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 556.

Bill read third time.

Remarks by Assemblyman Goicoechea.

Roll call on Assembly Bill No. 556:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Assembly Bill No. 556 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 560.

Bill read third time.

Remarks by Assemblywoman Smith.

Roll call on Assembly Bill No. 560:

YEAS—40.

NAYS—Parnell.

EXCUSED—Kirkpatrick.

Assembly Bill No. 560 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that Senate Bills Nos. 137, 175, 263, and
363 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Assemblyman Horne moved that Senate Bill No. 47 be taken from its
position on the General File and placed at the bottom of the General File.

Motion carried.

Assemblyman Atkinson moved that Senate Bill No. 243 be taken from the
General File and placed on the Chief Clerk's desk.

Motion carried.

Assemblyman Bobzien moved that Senate Bills Nos. 73 and 218 be taken from their position on the General File and placed at the bottom of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 8.

Bill read third time.

Roll call on Senate Bill No. 8:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 8 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 17.

Bill read third time.

Remarks by Assemblymen Spiegel, Cobb, and Smith.

Madam Speaker requested the privilege of the Chair for the purpose of making remarks.

Roll call on Senate Bill No. 17:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 17 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 26.

Bill read third time.

Roll call on Senate Bill No. 26:

YEAS—32.

NAYS—Anderson, Christensen, Goedhart, Gustavson, Hambrick, McArthur, Settlemeyer, Stewart, Woodbury—9.

EXCUSED—Kirkpatrick.

Senate Bill No. 26 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 84.

Bill read third time.

Remarks by Assemblyman Kihuen.

Roll call on Senate Bill No. 84:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 84 having received a two-thirds majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 121.

Bill read third time.

Roll call on Senate Bill No. 121:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 121 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 128.

Bill read third time.

Remarks by Assemblyman Ohrenschall.

Roll call on Senate Bill No. 128:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 128 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 162.

Bill read third time.

Roll call on Senate Bill No. 162:

YEAS—23.

NAYS—Atkinson, Bobzien, Carpenter, Christensen, Gansert, Goedhart, Goicoechea, Grady, Gustavson, Hambrick, Hardy, Manendo, McArthur, Ohrenschall, Parnell, Settlemeyer, Spiegel, Woodbury—18.

EXCUSED—Kirkpatrick.

Senate Bill No. 162 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 165.

Bill read third time.

Remarks by Assemblywoman Gansert.

Roll call on Senate Bill No. 165:

YEAS—28.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goicoechea, Grady, Gustavson, Hambrick, Hardy, McArthur, Settlemeyer, Stewart, Woodbury—13.

EXCUSED—Kirkpatrick.

Senate Bill No. 165 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 172.

Bill read third time.

Roll call on Senate Bill No. 172:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 172 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 186.

Bill read third time.

Remarks by Assemblymen Pierce, Hardy, and Smith.

Roll call on Senate Bill No. 186:

YEAS—29.

NAYS—Carpenter, Christensen, Gansert, Goicoechea, Grady, Gustavson, Hambrick, Hardy,
McArthur, Settlemeyer, Stewart, Woodbury—12.

EXCUSED—Kirkpatrick.

Senate Bill No. 186 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 195.

Bill read third time.

Remarks by Assemblymen Settlemeyer and Conklin.

Madam Speaker requested the privilege of the Chair for the purpose of
making remarks.

Roll call on Senate Bill No. 195:

YEAS—27.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson,
Hambrick, Hardy, McArthur, Settlemeyer, Stewart, Woodbury—14.

EXCUSED—Kirkpatrick.

Senate Bill No. 195 having received a constitutional majority,
Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that Senate Bill No. 222 be taken from the
General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 228.

Bill read third time.

Roll call on Senate Bill No. 228:

YEAS—37.

NAYS—Christensen, Grady, Gustavson, McArthur—4.

EXCUSED—Kirkpatrick.

Senate Bill No. 228 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 253.

Bill read third time.

Remarks by Assemblymen Parnell, Christensen, and Manendo.

Roll call on Senate Bill No. 253:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 253 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that Senate Bill No. 265 be taken from its position on the General File and placed at the bottom of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 261.

Bill read third time.

Remarks by Assemblywoman Parnell.

Roll call on Senate Bill No. 261:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 261 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 266.

Bill read third time.

Roll call on Senate Bill No. 266:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 266 having received a two-thirds majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 268.

Bill read third time.

Roll call on Senate Bill No. 268:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 268 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 276.

Bill read third time.

Roll call on Senate Bill No. 276:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 276 having received a two-thirds majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Anderson moved that Senate Bill No. 277 be taken from its position on the General File and placed at the bottom of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 312.

Bill read third time.

Roll call on Senate Bill No. 312:

YEAS—40.

NAYS—Pierce.

EXCUSED—Kirkpatrick.

Senate Bill No. 312 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 313.

Bill read third time.

Remarks by Assemblyman Anderson.

Assemblyman Anderson requested that his remarks be entered in the Journal.

Thank you, Madam Speaker. Senate Bill 313 adopts, in part, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and amends various provisions concerning guardianships.

The bill adopts portions of the Uniform Act regarding jurisdictional issues in order to: (a) facilitate cooperation between courts in different states; (b) clarify which court has jurisdiction in certain circumstances; (c) specify a procedure for transferring proceedings from one state to another; and (d) address the enforcement of orders from other states.

Additionally, Senate Bill 313 provides that a court may find that a petitioner for guardianship is a “vexatious litigant” and issue sanctions if he files repeated petitions that are without merit or to harass or annoy the guardian. The bill revises the persons who must be notified of a guardianship petition and revises requirements concerning supporting documents necessary in certain petitions.

The measure also establishes certain record keeping and accounting requirements for the guardian, revises the guardian’s authority to manage the state and affairs of a ward, and

addresses responsibility for repayment of certain expenses of a ward that were paid by the county.

Finally, the bill addresses the release of a ward who was involuntarily committed by a court and gives the guardian discretion to determine where the person will be released.

The measure is effective on October 1, 2009.

This rather extensive Act created from the Uniform Code is to a large extent supported by the guardians here in the state to bring in those parts of the Uniform Code that have been left out in our documents in the past and thus the extensive nature of the document.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Anderson moved that Senate Bill No. 313 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 333.

Bill read third time.

Remarks by Assemblyman Cobb.

Roll call on Senate Bill No. 333:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 333 having received a constitutional majority,
Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 339.

Bill read third time.

Roll call on Senate Bill No. 339:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 339 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 340.

Bill read third time.

Remarks by Assemblyman Hardy.

Madam Speaker requested the privilege of the Chair for the purpose of making remarks.

Roll call on Senate Bill No. 340:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 340 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 360.

Bill read third time.

Remarks by Assemblywoman Dondero Loop.

Roll call on Senate Bill No. 360:

YEAS—38.

NAYS—Christensen, Goedhart, Settlemeyer—3.

EXCUSED—Kirkpatrick.

Senate Bill No. 360 having received a two-thirds majority,
Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 361.

Bill read third time.

Roll call on Senate Bill No. 361:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 361 having received a two-thirds majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 362.

Bill read third time.

Roll call on Senate Bill No. 362:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 362 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 365.

Bill read third time.

Roll call on Senate Bill No. 365:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 365 having received a two-thirds majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 377.

Bill read third time.

Roll call on Senate Bill No. 377:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 377 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 378.

Bill read third time.

Remarks by Assemblymen Kihuen, Stewart, Mastroluca, and Denis.

Roll call on Senate Bill No. 378:

YEAS—27.

NAYS—Carpenter, Christensen, Cobb, Gansert, Goedhart, Goicoechea, Grady, Gustavson,
Hambrick, Hardy, McArthur, Settlemeyer, Stewart, Woodbury—14.

EXCUSED—Kirkpatrick.

Senate Bill No. 378 having received a constitutional majority,
Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 414.

Bill read third time.

Remarks by Assemblyman Bobzien.

Roll call on Senate Bill No. 414:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Bill No. 414 having received a constitutional majority,
Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 1.

Resolution read third time.

Remarks by Assemblyman Mortenson.

Roll call on Senate Joint Resolution No. 1:

YEAS—41.

NAYS—None.

EXCUSED—Kirkpatrick.

Senate Joint Resolution No. 1 having received a constitutional majority,
Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Assemblyman Ocegüera moved that the Assembly recess until 3:30 p.m.

Motion carried.

Assembly in recess at 1:13 p.m.

ASSEMBLY IN SESSION

At 6:04 p.m.

Mr. Speaker pro Tempore presiding.

Quorum present.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Assembly Bills Nos. 20, 40, 63, 75, 116, 117, 119, 123, 173, 206, 230, 239, 327, 329, 369, 380, 393, 403, 416, 473, 508, 528, 538; Senate Bills Nos. 27, 34, 66, 74, 77, 79, 131, 132, 134, 163, 169, 170, 174, 209, 215, 217; Senate Concurrent Resolutions Nos. 5 and 6.

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Anderson, the privilege of the floor of the Assembly Chamber for this day was extended to Gail Ruff.

On request of Assemblyman Cobb, the privilege of the floor of the Assembly Chamber for this day was extended to Chris Fream.

On request of Assemblyman Grady, the privilege of the floor of the Assembly Chamber for this day was extended to the following students from E.C. Best Elementary School: Brenda Boone, Benjamin Alexander, EmmaLeigh Bake, Brenda Cervantes, Kelsee Chasing Crow, Robert Dunlap, Shanice Durr, Jacob Evans, Dontae Groves, Addyson Harmon, Michael Harnack, Jolynn Lehman, Bryan Lynn, Ashley Marran, Cameron Matzen, Colton Moretto, Tyler Moye, Rebekah Orozco, Russell Peterson, Cesar Rosales, Dominic Rushing, Orianah Street, Evette Togafau, Gabriel Young, Todd Moretto, Brandy Moretto, Cathi Tuni, Shelby Brown, Summer Thomson, Tammy Harmon, Trudy Mills, Ethan Bohrn, Ian Cayro, Kody Chrislock, Blake Davis, Megan Dixon, Jaqueline Enriquez-Sanchez, Marissa Foley, Anthony Gatica, Nocona Gonzales, Madissun Hodes, Amber Kieszkowski, Austin McInnis, Michael Meadows, Kuera Mendiola, Jessica Navarrete, Sydney Pauley, Brandon Perry, Aarron Rogers, Eduardo Rojas, Ricardo Rojas, Maritza Ruiz, Katelynn White, Logan Whitney, Anthony Wright, Mayra Alvarado, Cameron Archer, Bradley Bennett, Aaron Bitter, Evan Bitter, Whisper Brown, Ryan Brune, Kenrick Crutcher, Rachael Duran, Corrina Gerard, Jaime Gonzalez, Daniel Holden, Dustin Hopkins, Davis Koenig, Christopher Laingen, Rebecca Mills, Samantha Nihua, James Pendergrass, Shane Rasmussen, Savannah Simms, Makayla Smith, Michelle Therianos, Isabella Thomas, Tristen Thomson, Daniela Valtierra, Oden Wayman, Dani Whooley, Bryson Abe, Kevin Aguilera, Christopher Beech, Diane Brainerd, Courtney Cross, Jason Disney, Monica Dixon, Lilia Garcia-Rojas, Cady Godfrey, Cortny Harrison, Kaylee Heaton, Robert Hurlburt, Jose Ibarra, JayLeanna Johnson, Courtney Judd, Loren Lammel, Cade Monardo, Dana Nevin, Orlando Pardini, Lizet Ruiz, Edmond Sadekoski, Makenzie Sanders, Gabriel Schaefer, Makayla Webb, Paula Worsham, Dave Gertson, Lori Kaiser, Paula Parrish, Tristin Thomas, Logan Whitney, Tami Harmon and Addy Harmon.

On request of Assemblyman Segerblom, the privilege of the floor of the Assembly Chamber for this day was extended to Angelina Liguori.

Assemblyman Ocegüera moved that the Assembly adjourn until Wednesday, May 20, 2009, at 10 a.m.

Motion carried.

Assembly adjourned at 6:05 p.m.

Approved:

BARBARA E. BUCKLEY
Speaker of the Assembly

Attest: SUSAN FURLONG REIL

Chief Clerk of the Assembly