# THE SEVENTY-SECOND DAY

CARSON CITY (Tuesday), April 14, 2009

Senate called to order at 11:32 a.m.

President Krolicki presiding.

Roll called.

All present except Senator Townsend, who was excused.

Prayer by the Chaplain, Monte Fast.

Yesterday, I was inspired to write a prayer extolling the beauty of our northern Nevada area. From the Chaplain's chair, I could see the pink and white blossoms outside of this Senate chamber.

Today, the weatherman reported that we might have snow after 11 a.m.

Let us learn from this that there are some issues and things which we cannot control. What can be improved for the benefit of all Nevadans should be improved, but let us also realize that the control of some things is not ours to manage.

In the words of St. Francis, help us "to have the wisdom to know the difference."

AMEN.

Pledge of Allegiance to the Flag.

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

Motion carried.

## REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 273, 362, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 57, 266, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MAGGIE CARLTON, *Chair*

*Mr. President:*

Your Committee on Energy, Infrastructure and Transportation, to which were referred Senate Bills Nos. 206, 242; Senate Joint Resolution No. 3, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL A. SCHNEIDER, *Chair*

*Mr. President:*

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 263, 264, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN J. LEE, *Chair*

*Mr. President:*

Your Committee on Health and Education, to which were referred Assembly Bills Nos. 136, 137, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Health and Education, to which were referred Senate Bills Nos. 60, 78, 79, 185, 305, 325, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Health and Education, to which was referred Senate Bill No. 306, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and rerefer to the Committee on Finance.

Also, your Committee on Health and Education, to which was referred Senate Bill No. 382, has had the same under consideration, and begs leave to report the same back with the recommendation: Rerefer to the Committee on Finance.

VALERIE WIENER, *Chair*

*Mr. President:*

Your Committee on Judiciary, to which was referred Assembly Bill No. 250, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Judiciary, to which were referred Senate Bills Nos. 82, 349, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

TERRY CARE, *Chair*

*Mr. President:*

Your Committee on Natural Resources, to which were referred Senate Bills Nos. 280, 300, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DAVID R. PARKS, *Chair*

*Mr. President:*

Your Committee on Taxation, to which were referred Senate Bills Nos. 177, 276, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BOB COFFIN, *Chair*

## MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, April 13, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bills Nos. 14, 253, 266, 280, 286, 289, 291, 301, 306, 327, 329, 332, 393, 407, 412, 414, 415, 417, 429, 459, 462, 473, 477, 517, 518.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 188, 193, 237, 249, 264, 296, 362, 403, 516, 533.

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

## WAIVERS AND EXEMPTIONS

### WAIVER OF JOINT STANDING RULE(S)

A Waiver requested by Senator Horsford

For: Senate Bill No. 288.

To Waive:

Subsection 1 of Joint Standing Rule No. 14.3

Has been granted effective: Friday, April 10, 2009.

STEVEN A. HORSFORD
*Senate Majority Leader*

BARBARA BUCKLEY
*Speaker of the Assembly*

NOTICE OF EXEMPTION

April 13, 2009

The Fiscal Analysis Division, pursuant to Joint Standing Rule 14.6, has determined the eligibility for exemption of: Senate Bills Nos. 7, 17, 236, 294, 311.

GARY GHIGGERI
*Fiscal Analysis Division*

MOTIONS, RESOLUTIONS AND NOTICES

SENATOR HORSFORD:

Thank you, Mr. President. Today, we have two distinguished former Senators to induct into the 2009 Senate Hall of Fame—Charles D. Gallagher of White Pine County and Dina Titus of Clark County.

The Senate Hall of Fame was created by the esteemed Minority Leader, the Senator from Washoe County District No. 3, to honor former Senators with a significant number of years of Legislative service who served with distinction in leadership positions both within the Senate and outside the Legislature. These members are selected by the Senate leadership from recommendations made by the Legislative Counsel Bureau's Research Director based on the historical research and analysis of his staff. In previous sessions, the former State Archivist assisted with this research. The research director typically nominates one Senator who served in the Senate since 1970 and one Senator who served prior to 1970.

Former Senator James I. Gibson of Clark County was inducted as the first member of the Senate Hall of Fame in 1989. With the addition of the two Senators today, the Hall of Fame will now include 36 members and 3 honorary members—their photos are displayed on the walls in the Senate hallways.

Today, we are inducting former Senate Majority Leader Charles Gallagher, Republican of Ely, and former Senate Minority Leader Dina Titus, Democrat of Las Vegas.

By Senators Horsford, Raggio, Amodei, Breeden, Care, Carlton, Cegavske, Coffin, Copening, Hardy, Lee, Mathews, McGinness, Nolan, Parks, Rhoads, Schneider, Townsend, Washington, Wiener and Woodhouse:

Senate Resolution No. 6—Inducting Charles D. Gallagher into the Senate Hall of Fame.

WHEREAS, The Senate of the Nevada Legislature has established a Senate Hall of Fame whose members are selected by leadership from those past Senators who have served with distinction and who have made exemplary contributions to the State of Nevada; and

WHEREAS, Charles D. Gallagher was born on May 22, 1887, on the Duck Creek Ranch near Ely, White Pine County, Nevada, and was educated in a one-room schoolhouse, the same school where he began teaching at the age of 16; and

WHEREAS, After moving to Illinois and completing a 1-year course in photography in 1904, Charles became a professor at the Illinois College of Photography while he was still less than 21 years of age; and

WHEREAS, Charles returned to Ely in 1907 to open his own photography shop, which he operated for 10 years until the United States entered World War I, and even though Charles was serving in the Nevada Assembly and could have been exempted from service in the military, he volunteered to serve out of loyalty to his country; and

WHEREAS, Charles was assigned as an aerial photographer with the Aviation Section of the U.S. Signal Corps, and after completing his advanced technical training courses, he began instructing duty at Cornell University, a job he continued until the Armistice; and

WHEREAS, Following his discharge from military service, Charles spent the remainder of his working years in photography; and

WHEREAS, Charles served in the Nevada Assembly from 1914 to 1918, and during his time in the Nevada Senate from 1952 to 1964, Senator Gallagher served as the President Pro Tempore in 1959, 1960 and 1961 and as the Majority Floor Leader in 1963 and during the 1964 Special Session, and also chaired the committees on Education and State University (1955-1961),

Engrossed and Enrolled Bills (1953), Legislative Functions (1953, 1959-1963), Public Health (1955-1957) and Rules (1959-1963); and

WHEREAS, Among his legislative accomplishments, Senator Gallagher focused much of his efforts in the Nevada Senate on education matters, such as changing the way in which money was apportioned to school districts, and as a result of this work in education, Senator Gallagher was made an honorary lifetime member of the Nevada Parent Teacher Association; and

WHEREAS, Senator Gallagher's community service interests included the White Pine County Chamber of Commerce and Mines, the White Pine Public Museum, the Ely Rotary Club and the Masonic Order; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That Charles D. Gallagher, a caring educator and dedicated public servant, is hereby inducted into the Senate Hall of Fame of the Nevada Legislature.

Senator Raggio moved the adoption of the resolution.

Remarks by Senators Raggio.

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

On this day, we recognize former Senator Charles D. Gallagher with his induction into the Senate Hall of Fame. Charles was a highly respected member and leader of this body, and one of the most revered men ever to serve in this institution. He died in 1977. I had the privilege and pleasure of knowing him personally during those years in the 1970s when I first served in this body. Even after his departure from the Senate, he came to visit during many of those early sessions in which I served. There was no one who was more distinguished and more liked than Senator Gallagher.

We are pleased and honored to have members of Charles' extended family with us today. Due in part to the fact that Charles was a lifelong bachelor, locating members of his family was quite a task for our staff. I would like to thank Danielle Mayabb in our Research Library for her excellent work in locating Roger and Sylvia Baird from Maple Valley, Washington. Roger is the great nephew of Charles Gallagher.

Public service must run in the family, as one of Roger and Sylvia's daughters is Washington state Senator Cheryl Pflug.

To complete the tie in with the State of Nevada, Roger and Sylvia's granddaughter, Whitney Gilson, is attending the University of Nevada.

Senator Charles D. Gallagher of Ely had a total of 16 years of legislative service, with 12 years in the Senate and 4 years in the Assembly. A photographer by profession, Senator Gallagher was first elected to the Assembly in 1914. He left the Legislature in 1918 and did not return again until he was elected to the Senate in 1952. His is the longest span of nonconsecutive years of total service of any Nevada Legislator. Senator Gallagher served as President Pro Tempore from 1959 through 1961, and he was the Senate Majority Floor Leader during the 1963 regular Session and the 1964 Special Session.

As the resolution indicates, most of Senator Gallagher's work in the Legislature centered on education matters. He was a lifetime member, honored by the Nevada State PTA. He spent much time working on issues related to funding our education system. He developed and endorsed the Peabody Formula, which was the appropriate measure for funding education at that time. This is an important issue still facing those of us who currently serve in this body.

Outside of his legislative service, Charles was the perennial teacher. His first job was teaching in the one-room schoolhouse he once attended. Even as he explored other careers, such as photography and the military, in each of these ventures, he was always teaching others.

One item I recall hearing about was Charles "membership" in the Firehouse Five. The Firehouse Five was a bipartisan group who was known to always vote for what they thought was right, no matter how the rest of the members of their party voted. Known as independents, or mavericks, this group of five often was the deciding factor as to what legislation was passed or defeated.

Please join with me today in support of this resolution, inducting Senator Charles D. Gallagher, an exceptional representative of White Pine County in the Legislature, into the Senate Hall of Fame.

Resolution adopted.

Mr. President announced that if there were no objections, the Senate would recess subject to the call of the Chair.

Senate in recess at 11:52 a.m.

## SENATE IN SESSION

At 11:54 a.m.
President Krolicki presiding.
Quorum present.

By Senators Horsford, Raggio, Amodei, Breeden, Care, Carlton, Cegavske, Coffin, Copening, Hardy, Lee, Mathews, McGinness, Nolan, Parks, Rhoads, Schneider, Townsend, Washington, Wiener and Woodhouse:

Senate Resolution No. 7—Inducting Dina Titus into the Senate Hall of Fame.

WHEREAS, The Senate of the Legislature of the State of Nevada has established a Senate Hall of Fame whose members are selected by leadership from those past Senators who have served with distinction and who have made exemplary contributions to the State of Nevada; and

WHEREAS, Dina Titus was born in Thomasville, Georgia, on May 23, 1950; and

WHEREAS, Dina Titus received her bachelor of arts degree from the College of William and Mary, her master of arts degree from the University of Georgia and her doctor of philosophy degree in political science from Florida State University, and subsequently, Dr. Titus has been a professor of political science at the University of Nevada, Las Vegas, for the last 30 years and is married to Thomas C. Wright, Ph.D., a history professor at the University; and

WHEREAS, Senator Titus was first elected to the Nevada Senate from Clark County in 1988 and is one of only two women who served 20 years in the Nevada Senate, and she served as the Minority Leader of the Senate from 1992-2008, making her the longest-serving Minority Leader of the Senate in Nevada history; and

WHEREAS, Senator Titus chaired numerous interim studies, including the Legislative Committee on Persons With Disabilities in 2003-2004, the Legislative Commission's Subcommittee to Study the Protection of Natural Treasures in 2005-2006, the Legislative Commission's Subcommittee to Review Present Efforts to Conserve and Develop Energy Resources in 1993-1994 and the Study of Gaming in 1991-1992; and

WHEREAS, Senator Titus sponsored significant legislation relating to children's health, prescription drugs for seniors, enhanced penalties for offenders who commit crimes against persons with disabilities, smaller class sizes in early elementary grades, a freeze on property tax valuations leading to capping increases at 3 percent for homes, smart growth, green power and the opposition to the storage of nuclear waste at Yucca Mountain, and she created the Legislative Internship Program at the University of Nevada, Las Vegas, which allows select students from southern Nevada to work at the Nevada Legislature; and

WHEREAS, Dina Titus has many accomplishments outside the legislative arena, such as her inclusion in Outstanding Nevada Women by the Nevada Women's Lobby, receipt of the President's Medal from the University of Nevada, Las Vegas, authorship of *Bombs in the Backyard: Atomic Testing and American Politics* and *Battle Born: Federal-State Relations in Nevada During the Twentieth Century*, selection by the *Las Vegas Review-Journal* as Outstanding Legislator of the Year in 1999 and service as Chairman of the Nevada Humanities Committee in 1984-1986; and

WHEREAS, Ever the public servant, Senator Titus was elected in 2008 to the United States House of Representatives from Nevada's Third District; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, That Dina Titus, who has dedicated many years of her life to the service of the people of the State of Nevada as a

professor, member of the Legislature and now a member of the United States Congress, is hereby inducted into the Senate Hall of Fame of the Legislature of the State of Nevada.

Senator Horsford moved the adoption of the resolution.

Remarks by Senators Horsford, Raggio, Cegavske, Wiener, Hardy, Care and Mathews.

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

SENATOR HORSFORD:

Today, I have my two mentors with us on the Senate Floor.

Former Senator Joe Neal and our honoree, Congresswoman Dina Titus, who was my predecessor in this leadership position. It is appropriate that we are adopting Senate Resolution No. 7 which was the number of her Senate District.

Mr. President, I stand in support of this resolution inducting Senator Titus into the Senate Hall of Fame.

Most of us served in this Chamber with former Senator Titus before she was elected to Congress last year. Senator Titus, a resident of Las Vegas, served in the Senate for 20 years.

Dina Titus is a native of Georgia who holds degrees from the College of William & Mary and the University of Georgia. She received her doctorate degree from Florida State University. After moving to Nevada, Dina has had a distinguished, 30-plus-year career as a professor of political science at the University of Nevada, Las Vegas (UNLV), and is a noted author.

Dina Titus was, and still remains, my mentor. She has been a great teacher of political science and many of Nevada's current political leaders were her students, either in her classroom at UNLV or within the walls of this Legislative Building.

As the resolution indicates, Dina began her service in the Nevada Legislature in 1988, and she is one of only two women who served as long as 20 years in the Nevada Senate. Another member of the Senate Hall of Fame, Ann O'Connell, also served 20 years. Dina's first session was the 1989 regular Session, and her last was the 24th Special Session in June of 2008. Senator Titus served as Minority Leader starting in the 1992 Session and continuing for a total of eight regular sessions and seven special sessions.

Dina is responsible for many significant legislative measures over the course of her distinguished legislative career. She has been a champion of programs to benefit children, disabled persons and the elderly. Dina was ahead of her time in leading the fight for developing green energy in Nevada long before it was recognized as important to the future of our State, our Nation and the planet. She sponsored important legislation promoting renewable energy and alternative fuels and has supported developing new modes of transportation, such as the super speed train between Las Vegas and southern California.

During her service in the Senate, Dina Titus had a record of being a strong supporter of protecting the environment—from cleaning up the air, to protecting water quality, to preserving our natural treasures, such as Lake Tahoe, Red Rock Canyon, the Ruby Mountains, Mount Charleston and countless other scenic sites within Nevada.

Through many challenging years for our State, Dina Titus served the people of Nevada with distinction here in the Senate. It is my great honor and pleasure to recognize her dedication and leadership, and I ask you to join with me in recognizing now Congresswoman, Senator Dina Titus, as an esteemed member of the Nevada Senate Hall of Fame.

SENATOR RAGGIO:

Mr. President. I stand in support of this resolution inducting Senator and now Congresswoman Titus into the Senate Hall of Fame. I do take some personal responsibility for allowing her to earn the distinction of being the longest serving Minority Leader. I recognized her as the leader of her party in this body for so many years. We often disagreed on things, but more often than not, we agreed, and I think our goals were the same—what was ultimately best for the State of Nevada. Though we argued a little and cajoled a little, we did develop a mutual respect for one another. That respect continues to this day. I know she will serve this State well

as our Congresswoman. She will be listened to in the United States Congress. We will be well represented there.

Congratulations. Even though you were representing a district in Clark County while in this body, you earned the respect of the entire State and most certainly in this legislative body as a whole. We welcome you back today.

You were not my mentor, I would say, tormentor, for me, but in spite of that, I will vote to approve this resolution. Thank you.

SENATOR CEGAVSKE:

Thank you, Mr. President. I rise in support of Senate Resolution No. 7. I would like to thank Dina. It was my pleasure to work with her. We were in the Women's Caucus where we could talk about issues that affect women in the State of Nevada. Dina was a leader of us. I want to thank her for that.

I was impressed when I came to the Senate for the first time. I was impressed by her quick wit. Her floor statements and her floor debate were second to none. I learned a lot about making floor statements, about talking and making certain that I have my facts and information. She always did that, and I was impressed.

I enjoyed working with Dina on the Committee of Persons with Disabilities. She was good at picking out the details and getting to the heart of what needed to be done. Those in that community know that Dina is a supporter and is there to listen. She has a strong group of supporters in the disability community. I chaired it during the following interim, and I want to thank Dina for her leadership during the interim before.

She is now my Congresswoman. I look forward to working with you, Dina, on issues for not only my district, but for the Congressional seat.

Congratulations for today and congratulations for being our Congresswoman.

SENATOR WIENER:

I, too, rise in support of Senate Resolution No. 7. I first knew Congresswoman Titus, not in the capacity of politics, but in the capacity that we both love and share, that of being an author. We crossed paths several times and the respect began there because of our love of word and putting word to paper so that it could travel beyond our time to those who would read it later and far away.

Shortly after my father died in 1996, I received a telephone call from Senator Titus. We had been missing each other, and I thought she was calling me so that I could prepare her candidates in my professional capacity as a positioning strategist with speech writing, speaking and media training. When we finally connected, she asked me if I would consider running for the State Senate. I shared with her that it was a good thing I was sitting down when I got the message because I would have been falling down otherwise after receiving such a request. I eventually said, "yes."

I learned from Congresswoman Titus things we could not put in text, things she would not put in a primer for a first-time Senator. What I learned was that she could guide without telling me what to do. She was there to share insights, history and perspective, but she never told me what to do. She helped me learn how to do it my own way. She shared her laughter. She shared her love of animals. On July 4, 1997, in her office, the first of my furry feline family adopted me. A few months later, we went to a mining conference and I told her how I had not had a sense of family for a long time. I told her how I missed my cat at home, and she told me to go home because that was where I should be. She told me I had done my work at the conference and it was time for me to go home to my family. That time has grown into my love of many animals and the work I do for animals.

There are many times that have been the silent times and quiet times. Times, when Dina and I have been in her office or other places, where we have struggled with issues for the State, issues that were important to us, whether as Legislators or as people and she has given me the ability, through her wisdom, to make my own decisions, to create my own path.

As she made that choice to run for Congress, we shared tears of joy, tears of sadness that she would be going in a new direction. We are all so proud of you. Your presence, here, is a forever thing. Your influence, here, is among those of us who have served with you and those who will

follow you and those you may never know by name, but you have left an imprint, an impression, a way of doing business.

From the head and the heart, we love you; we cherish what you are doing in public service because it comes from who you are from the soul, and we know that you serve our State well. We thank you for your dedication to public service in all ways, always, Congresswoman Dina Titus.

SENATOR HARDY:

Thank you, Mr. President. I think I am the only student left in the Senate. I would be remiss if I did not stand to congratulate Congresswoman Titus. My association with her began as a student. I took an elections class from her. I have often been asked what she was like as a teacher. At the time, I was the Chair of the Nevada Young Republicans. She always gave me equal time in that class to give the Republican side. She treated me fairly.

In my senior year at UNLV, I decided to run for the State Assembly. I do not think she was pleased that I decided to run as a Republican, but she was supportive of my effort. To everyone's surprise, I won. I stopped by her office the next day and asked her, since we were colleagues, "What shall I call you?" She smiled and said, "Professor Titus is just fine."

When I came here as an Assemblyman in 1991, she took me under her wing. By the end of Session, I realized I had not passed any legislation. My legislation had failed. I did not have anything else. She pulled me aside and said that I needed a piece of legislation with my name on it. She helped me with that, and I got a piece of legislation with my name on it.

Later, I became a lobbyist. There was a time during a hearing she had some difficulties with one of my clients and how they were handling a particular bill. She called me up in front of the committee and told me that. She dressed me down pretty good, and that was when I knew that class was out. I was no longer a student, and I was expected to perform.

When I came to the Senate, Senator Titus and I did not always agree, but she always treated me as a colleague and a friend, not a student. I am proud to have been her student, her colleague and now her friend.

SENATOR CARE:

Thank you, Mr. President. It is not just that Dina and I served in this body for ten years together, we also represented the same district for ten years. I cannot count the number of times I would talk to someone who knew I was in politics and I would tell that person I was their State Senator and they would say, "No, you are not. Dina Titus is my State Senator." I would then have to explain they had two of them. Now, I can say, "Dina is your Congresswoman, and I am your State Senator."

SENATOR MATHEWS:

Thank you, Mr. President. I stand in support of this resolution and a very special lady in my life. She had no clue who I was when I decided to run for office. No one else in the State knew who I was, either. They thought, "Who is this woman who wants to run for a Senate seat?" Dina came to Reno to look me over. She said, "It will be hard work, but you can do it." I thought that was her way of telling me I was crazy, but she did not discourage me at all. She encouraged me to work hard, to run for the seat. After I arrived here, she was one of my mentors. I appreciate her very much, and I would like to be just like her, when I grow up. I do not know if I will ever grow up, though.

Dina is a lady who can sit on this floor, listen to a bill she wants be raked over the coals, while others talk to her the whole time writing her rebuttal to everything that is being said. I do not have her command of words. I have my homespun humor, but I do not have her gift of words.

I appreciate her so much. I love her and her family. I have always wanted her mother to spend some time with me. I appreciate you, Dina, your family and Doc. Thank you.

Resolution adopted.

Senator Horsford requested that the remarks of former Senator Dina Titus be entered in the Journal.

U.S. REPRESENTATIVE TITUS:

I am so honored and delighted to be inducted into the Nevada Senate Hall of Fame. To be in the company of such great Legislators, as Senator Joe Neal; my fellow honoree, Charles Gallagher, and others whose portraits grace the walls of this building, is a privilege I can hardly describe. I so appreciate all of your remarks. After 20 years, trust me, I can tell stories on all of you, but I will not because I know time is of the essence and you have a lot of business to attend to and also because I have got to save some of the good stuff for the book I plan to write.

But, if you allow me a point of personal privilege, there are a few of you I must single out. Senator Raggio—a respected leader, worthy adversary and good friend, thanks in part to your lovely wife, Dale. Getting into the Hall of Fame is the only thing I ever beat you at, and I had to leave the Legislature to do it. Randolph, and I wish he were here—you may be Armani to my T.J. Maxx, but we have more in common than many realize, a passion for animals, a love of movies and a commitment to renewable energy. Dean Rhoads—one of my all time favorites, a true cowboy in the best sense of the Western icon. And, Warren Hardy—I used to enjoy saying I taught you everything you know, just not everything I know. But, we have gone far beyond that. Bob Coffin—who paid my first and most recent filing fees and who, despite a few crazy incidents, remains a dear and loyal friend. Darling Valerie—you are the guardian angel on my shoulder. Bernice—you are the most delightful person I have ever met, but I still do not know what you meant when you often admonished me not to "pee in my cornflakes." Maggie—my confidante and communicator. Terry—my lawyer and steady hand on the tiller, Mike—who was never really the nemesis Ralston made him out to be and Steven—an incredible young man I have long known and loved and have watched grow and mature into one of the best leaders this State will ever see.

To all of you, please know that you will always have a special place in my heart and in my memory. During the 20 years I was here, I met many wonderful people, learned an incredible amount, the teacher indeed became the pupil, and if this tribute is to be believed, actually did some good things for the people of Nevada. I am proud of that legislative record, and I know I could have never done it alone.

You often acknowledge the staff here in this Chamber, but I wonder if you truly realize how unbelievably fortunate you are to have them.

The devoted ladies at the Front Desk were always willing to help, were always cheerful about doing so, and were somehow able to read my handwriting with the multiple edits of my speeches often scratched out fast and furiously on the floor as the debate heated up. Brenda Erdoes is a saint; Dave Ziegler helped me draw a "ring around the valley" and then save Red Rock; Scott Young knows more about renewable energy than I can ever hope to learn; Bob Guernsey had the patience of Job as he helped me understand the budget in those early days on Finance. And, the wonderful Don Williams—everyday I regret not having him watching my back in Washington as we tackle the huge challenges facing our country.

Thank you all again including my family, husband, Dr. Tom Wright; mother, Betty Titus; sister, Dr. Rho Hudson and the dear friends who came to share this special occasion: Marlene, Randy, Mike and others. I look forward to coming back to Carson City, not just for "Old Timers Day," but also to check to be sure no one has drawn a mustache and horns on my picture here in this wonderful place that will always be so dear to me.

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

Motion carried.

Senate in recess at 12:30 p.m.

## SENATE IN SESSION

At 12:47 p.m.

President Krolicki presiding.

Quorum present.

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 2.

Resolution read.

Senator Parks moved the adoption of the resolution, as amended.

Remarks by Senator Parks.

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

Senate Concurrent Resolution No. 2 encourages entities that are engaged in monitoring the water quality of the Truckee River to coordinate certain activities. Specifically, the resolution notes that various entities involved in monitoring the watershed along the Truckee River have developed a central clearinghouse of technical and water-related information. The resolution directs the Division of Environmental Protection of the State Department of Conservation and Natural Resources to develop a memorandum of understanding (MOU) concerning these coordinated efforts and to submit a report concerning the MOU to the Legislative Committee to Oversee the Western Regional Water Commission.

Resolution adopted as amended.

Resolution ordered transmitted to the Assembly.

Senate Concurrent Resolution No. 16.

Resolution read.

Senator Schneider moved the adoption of the resolution.

Remarks by Senator Schneider.

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

Senate Concurrent Resolution No. 16 encourages the Nevada Development Authority (NDA) to create a revolving fund to help support businesses specializing in medical, health care, biotechnological, bioindustrial and bioagricultural activities. The resolution states that the fund should be established to receive money from the federal government as well as any gifts or donations with the NDA having the discretion to loan or grant the money as appropriate.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

Senator Care moved that Senate Bill No. 7 be taken from the Secretary's desk and rereferred to the Committee on Finance.

Motion carried.

Senator Care moved that Senate Bill No. 17 be taken from General File and rereferred to the Committee on Finance.

Motion carried.

Senator Care moved that Senate Bill No. 208 be taken from the Second Reading File and rereferred to the Committee on Finance.

Motion carried.

Senator Care moved that Senate Bill No. 255 be taken from the Second Reading File and rereferred to Finance.

Motion carried.

Senator Care moved that Senate Bill No. 311 be taken from the Second Reading File and rereferred to Finance.

Motion carried.

Senator Care moved that Senate Bill No. 351 be taken from the Second Reading File and placed on the Secretary's desk.

Motion carried.

Senator Care moved that Senate Bills Nos. 14, 18, 26, 31, 40, 58, 61, 121, 130, 156, 168, 173, 209, 218, 219, 246, 256, 298, 304, 314, 348, 391; Senate Joint Resolutions Nos. 2, 7; Senate Joint Resolution No. 4 of the 74th Session be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Care.

Motion carried.

Senator Care moved that Senate Bill No. 11 be taken from the General File and placed on the Secretary's desk.

Motion carried.

Senator Lee moved that Senate Bill No. 66 be taken from the Secretary's desk and placed on the top of the General File.

Motion carried.

Senator Washington moved that Senate Bill No. 292 be taken from the Second Reading File and placed on the Secretary's desk.

Motion lost.

Senator Wiener moved that Senate Bill No. 382 be rereferred to the Committee on Finance.

Motion carried.

Senator Schneider moved that Senate Bill No. 243 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

## INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 14.

Senator Care moved that the bill be referred to the Committee on Health and Education.

Motion carried.

Assembly Bill No. 188.

Senator Care moved that the bill be referred to the Committee on Health and Education.

Motion carried.

Assembly Bill No. 193.

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

Motion carried.

Assembly Bill No. 237.

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

Motion carried.

Assembly Bill No. 249.

Senator Care moved that the bill be referred to the Committee on Health and Education.

Motion carried.

Assembly Bill No. 253.

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

Motion carried.

Assembly Bill No. 264.

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

Motion carried.

Assembly Bill No. 266.

Senator Care moved that the bill be referred to the Committee on Commerce and Labor.

Motion carried.

Assembly Bill No. 280.

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

Motion carried.

Assembly Bill No. 286.

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

Motion carried.

Assembly Bill No. 289.

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

Motion carried.

Assembly Bill No. 291.

Senator Care moved that the bill be referred to the Committee on Energy, Infrastructure and Transportation.

Motion carried.

Assembly Bill No. 296.

Senator Care moved that the bill be referred to the Committee on Energy, Infrastructure and Transportation.

Motion carried.

Assembly Bill No. 301.

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

Motion carried.

Assembly Bill No. 306.

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

Motion carried.

Assembly Bill No. 327.

Senator Care moved that the bill be referred to the Committee on Health and Education.

Motion carried.

Assembly Bill No. 329.

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

Motion carried.

Assembly Bill No. 332.

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

Motion carried.

Assembly Bill No. 362.

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

Motion carried.

Assembly Bill No. 393.

Senator Care moved that the bill be referred to the Committee on Health and Education.

Motion carried.

Assembly Bill No. 403.

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

Motion carried.

Assembly Bill No. 407.

Senator Care moved that the bill be referred to the Committee on Energy, Infrastructure and Transportation.

Motion carried.

Assembly Bill No. 412.

Senator Care moved that the bill be referred to the Committee on Energy, Infrastructure and Transportation.

Motion carried.

Assembly Bill No. 414.

Senator Care moved that the bill be referred to the Committee on Energy, Infrastructure and Transportation.

Motion carried.

Assembly Bill No. 415.

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

Motion carried.

Assembly Bill No. 417.

Senator Care moved that the bill be referred to the Committee on Energy, Infrastructure and Transportation.

Motion carried.

Assembly Bill No. 429.

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

Motion carried.

Assembly Bill No. 459.

Senator Care moved that the bill be referred to the Committee on Health and Education.

Motion carried.

Assembly Bill No. 462.

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

Motion carried.

Assembly Bill No. 473.

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

Motion carried.

Assembly Bill No. 477.

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

Motion carried.

Assembly Bill No. 516.

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

Motion carried.

Assembly Bill No. 517.

Senator Care moved that Senate Standing Rule No. 40 be suspended and that the bill be referred to the Committee on Judiciary.

Motion carried.

Assembly Bill No. 518.
Senator Care moved that the bill be referred to the Committee on Taxation.
Motion carried.

Assembly Bill No. 533.
Senator Care moved that the bill be referred to the Committee on Finance.
Motion carried.

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

Senate in recess at 1:01 p.m.

## SENATE IN SESSION

At 1:06 p.m.
President Krolicki presiding.
Quorum present.

### SECOND READING AND AMENDMENT

Senate Bill No. 12.
Bill read second time and ordered to third reading.

Senate Bill No. 42.
Bill read second time.

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

Amendment No. 102.

"SUMMARY— ~~[Transfers final authority over the acceptance of certain public buildings and structures from]~~ *Exempts from the authority of* the State Public Works Board ~~[to]~~ *and* the deputy manager for compliance and code enforcement ~~[.]~~ *certain projects, improvements and buildings administered by other agencies.* (BDR 28-326)"

"AN ACT relating to the State Public Works Board; ~~[transferring final authority over the acceptance of certain public buildings and structures from the Board to the deputy manager for compliance and code enforcement;]~~ *exempting from the authority of the Board and the deputy manager for compliance and code enforcement certain projects, improvements and buildings administered by the Department of Transportation, the Division of State Parks of the State Department of Conservation and Natural Resources or the Department of Wildlife; providing for the Department of Transportation to determine the use of certain buildings;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Under existing law, the deputy manager for compliance and code enforcement appointed by the State Public Works Board serves as the building official for all public buildings and structures. (NRS 341.100) Existing law also provides that the Board has final authority to accept certain

public buildings and structures as completed or to require alterations thereto. (NRS *341.100,* 341.145)

~~[ This bill transfers the final authority over the acceptance of certain public buildings and structures from the Board to the deputy manager for compliance and code enforcement.]~~

*This bill exempts from the authority of the Board and of the deputy manager for compliance and code enforcement certain projects, improvements and buildings or structures administered by the Department of Transportation, the Division of State Parks of the State Department of Conservation and Natural Resources or the Department of Wildlife.*

*Existing law also exempts, among other structures, buildings used in maintaining highways from a requirement that the Board provide architectural and engineering services to state agencies that are constructing buildings. (NRS 341.141) Section 3 of this bill provides that the Department of Transportation will determine whether a building is "used in maintaining highways" for the purpose of this section and that the exemption applies to such buildings located on property controlled by the Department of Transportation.*

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

Section 1. NRS 341.100 is hereby amended to read as follows:

341.100 1. The Board shall appoint a Manager and a deputy manager for compliance and code enforcement, each of whom must be approved by the Governor. The Manager and the deputy manager for compliance and code enforcement serve at the pleasure of the Board and the Governor.

2. The Manager, with the approval of the Board, shall appoint:

(a) A deputy manager for professional services; and

(b) A deputy manager for administrative, fiscal and constructional services.

➥ Each deputy manager appointed pursuant to this subsection serves at the pleasure of the Manager.

3. The Manager may appoint such other technical and clerical assistants as may be necessary to carry into effect the provisions of this chapter.

4. The Manager and each deputy manager are in the unclassified service of the State. Except as otherwise provided in NRS 284.143, the Manager and each deputy manager shall devote his entire time and attention to the business of his office and shall not pursue any other business or occupation or hold any other office of profit.

5. The Manager and the deputy manager for professional services must each be a licensed professional engineer pursuant to the provisions of chapter 625 of NRS or an architect registered pursuant to the provisions of chapter 623 of NRS.

6. The deputy manager for administrative, fiscal and constructional services must have a comprehensive knowledge of the principles of

administration and a working knowledge of the principles of engineering or architecture as determined by the Board.

7. The deputy manager for compliance and code enforcement must have a comprehensive knowledge of building codes and a working knowledge of the principles of engineering or architecture as determined by the Board.

8. The Manager shall:

(a) Serve as the Secretary of the Board.

(b) Manage the daily affairs of the Board.

(c) Represent the Board before the Legislature.

(d) Prepare and submit to the Board, for its approval, the recommended priority for proposed capital improvement projects and provide the Board with an estimate of the cost of each project.

(e) Make recommendations to the Board for the selection of architects, engineers and contractors.

(f) Make recommendations to the Board concerning the acceptance of completed projects. ~~*[The Board shall transmit to the deputy manager for compliance and code enforcement any such recommendations which are relevant to the duties of that deputy manager as set forth in subsection 9.]*~~

(g) Submit in writing to the Board, the Governor and the Interim Finance Committee a monthly report regarding all public works projects which are a part of the approved capital improvement program. For each such project, the monthly report must include, without limitation, a detailed description of the progress of the project which highlights any specific events, circumstances or factors that may result in:

(1) Changes in the scope of the design or construction of the project or any substantial component of the project which increase or decrease the total square footage or cost of the project by 10 percent or more;

(2) Increased or unexpected costs in the design or construction of the project or any substantial component of the project which materially affect the project;

(3) Delays in the completion of the design or construction of the project or any substantial component of the project; or

(4) Any other problems which may adversely affect the design or construction of the project or any substantial component of the project.

(h) Have final authority to approve the architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping ~~[.]~~ *, except for the architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping associated with buildings and improvements for which the Board is exempted, pursuant to the provisions of paragraphs (a) and (b) of subsection 1 of NRS 341.141, from the requirement that it furnish engineering and architectural services.*

9. The deputy manager for compliance and code enforcement shall *:*

*(a)* ~~*[Shall serve]*~~ *Serve* as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government ~~[.]~~ *, except, subject to the provisions of subsection 10, for:*

*(1) The following, if administered by the Department of Transportation, the Division of State Parks of the State Department of Conservation and Natural Resources or the Department of Wildlife:*

*(I) Maintenance projects;*

*(II) Site improvements; and*

*(III) Unenclosed or normally unoccupied buildings or structures; and*

*(2) Buildings and improvements for which the Board is exempted, pursuant to the provisions of paragraphs (a) and (b) of subsection 1 of NRS 341.141, from the requirement that it furnish engineering and architectural services; and*

*(b) ~~[In his capacity as the building official has, without limitation, final authority to accept each building or structure, or any portion thereof, on property of the State or held in trust for any division of the State Government as completed or to require necessary alterations to conform to the contract or to codes adopted by the Board, and to file the notice of completion and certificate of occupancy for the building or structure.]~~ Make recommendations to the Board concerning compliance with codes adopted by the Board for the acceptance of completed projects, except, subject to the provisions of subsection 10, for:*

*(1) The following, if administered by the Department of Transportation, the Division of State Parks of the State Department of Conservation and Natural Resources or the Department of Wildlife:*

*(I) Maintenance projects;*

*(II) Site improvements; and*

*(III) Unenclosed or normally unoccupied buildings or structures; and*

*(2) Buildings and improvements for which the Board is exempted, pursuant to the provisions of paragraphs (a) and (b) of subsection 1 of NRS 341.141, from the requirement that it furnish engineering and architectural services.*

*10. Nothing in subsection 9 shall be construed to exempt any building, structure or improvement from any applicable standards or codes.*

*11. As used in this section, "normally unoccupied building or structure" means a general utility or equipment building or structure, including, without limitation, a:*

*(a) Pump house;*

*(b) Well house;*

*(c) Water or sewage treatment plant;*

*(d) Building or structure whose primary purpose is the storage or protection of electrical or electronic equipment;*

*(e) Enclosed storage facility; or*

*(f) Garage,*

*➥ into which personnel from, as applicable, the Department of Transportation, the Division of State Parks of the State Department of Conservation and Natural Resources or the Department of Wildlife enter intermittently for activities including, without limitation, the monitoring of*

*equipment or gauges, the servicing of equipment that is permanently housed in the building or structure, or the moving of materials or equipment stored in the building or structure.*

Sec. 2. *NRS 341.119 is hereby amended to read as follows:*

341.119 1. Upon the request of the head of a state agency, the Board may delegate to that agency any of the authority granted the Board pursuant to NRS 341.141 to 341.148, inclusive ~~.~~ *, except for the authority to require necessary alterations to conform to codes and to file certificates of occupancy granted to the Board pursuant to the provisions of subsection 9 of NRS 341.145.*

2. This section does not limit any of the authority of the Legislature when the Legislature is in regular or special session or the Interim Finance Committee when the Legislature is not in regular or special session to consult with the Board concerning a construction project or to approve the advance planning of a project.

*Sec. 3.* *NRS 341.141 is hereby amended to read as follows:*

341.141 1. The Board shall furnish engineering and architectural services to the Nevada System of Higher Education and all other state departments, boards or commissions charged with the construction of any building constructed on state property or for which the money is appropriated by the Legislature, except:

(a) Buildings *on property controlled by the Department of Transportation and* used *, as determined by the Department of Transportation,* in maintaining highways;

(b) Improvements, other than nonresidential buildings with more than 1,000 square feet in floor area, made:

(1) In state parks by the State Department of Conservation and Natural Resources; or

(2) By the Department of Wildlife; and

(c) Buildings on property controlled by other state agencies if the Board has delegated its authority in accordance with NRS 341.119.

➥ The Board of Regents of the University of Nevada and all other state departments, boards or commissions shall use those services.

2. The services must consist of:

(a) Preliminary planning;

(b) Designing;

(c) Estimating of costs; and

(d) Preparation of detailed plans and specifications.

*Sec. 4.* NRS 341.145 is hereby amended to read as follows:

341.145 The Board:

1. Shall determine whether any rebates are available from a public utility for installing devices in any state building which are designed to decrease the use of energy in the building. If such a rebate is available, the Board shall apply for the rebate.

2. Shall solicit bids for and let all contracts for new construction or major repairs.

3. May negotiate with the lowest responsible and responsive bidder on any contract to obtain a revised bid if:

(a) The bid is less than the appropriation made by the Legislature for that building project; and

(b) The bid does not exceed the relevant budget item for that building project as established by the Board by more than 10 percent.

4. May reject any or all bids.

5. After the contract is let, shall supervise and inspect construction and major repairs. The cost of supervision and inspection must be financed from the capital construction program approved by the Legislature.

6. Shall obtain prior approval from the Interim Finance Committee before authorizing any change in the scope of the design or construction of a project as that project was authorized by the Legislature ~~[,]~~ if the change increases or decreases the total square footage or cost of the project by 10 percent or more.

7. Except for changes that require prior approval pursuant to subsection 6, may authorize change orders, before or during construction:

(a) In any amount, where the change represents a reduction in the total awarded contract price.

(b) Except as otherwise provided in paragraph (c), not to exceed in the aggregate 15 percent of the total awarded contract price, where the change represents an increase in that price.

(c) In any amount, where the total awarded contract price is less than $50,000 and the change represents an increase not exceeding the amount of the total awarded contract price.

(d) In any amount, where additional money was authorized or appropriated by the Legislature and issuing a new contract would not be in the best interests of the State.

8. Shall specify in any contract with a design professional the period within which the design professional must prepare and submit to the Board a change order that has been authorized by the design professional. As used in this subsection, "design professional" means a person with a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.

9. Has final authority to accept each building or structure, or any portion thereof, on property of the State or held in trust for any division of the State Government as completed or to require necessary alterations to conform to the contract or to codes adopted by the Board, and to file the notice of completion and *to issue the* certificate of occupancy for the building or structure ~~[.]~~ *, except, subject to the provisions of subsection 10, for:*

*(1) The following, if administered by the Department of Transportation, the Division of State Parks of the State Department of Conservation and Natural Resources or the Department of Wildlife:*

*(I) Maintenance projects;*

*(II) Site improvements; and*

*(III) Unenclosed or normally unoccupied buildings or structures, as defined in subsection 11 of NRS 341.100; and*

*(2) Buildings and improvements for which the Board is exempted, pursuant to the provisions of paragraphs (a) and (b) of subsection 1 of NRS 341.141, from the requirement that it furnish engineering and architectural services.*

*10. Nothing in subsection 9 shall be construed to exempt any building, structure or improvement from any applicable standards or codes.*

~~[Sec. 3.]~~ *Sec. 5.* NRS 341.153 is hereby amended to read as follows:

341.153 1. The Legislature hereby finds as facts:

(a) That the construction of public buildings is a specialized field requiring for its successful accomplishment a high degree of skill and experience not ordinarily acquired by public officers and employees whose primary duty lies in some other field.

(b) That this construction involves the expenditure of large amounts of public money which, whatever their particular constitutional, statutory or governmental source, involve a public trust.

(c) That the application by state agencies of conflicting standards of performance results in wasteful delays and increased costs in the performance of public works.

2. The Legislature therefore declares it to be the policy of this State that all construction of buildings upon property of the State or held in trust for any division of the State Government be supervised by ~~[,]~~ and *, except as otherwise provided in subsection 9 of NRS 341.100,* final authority for its completion and acceptance vested in, the Board as provided in NRS 341.141 to 341.148, inclusive ~~[.]~~ *, except, subject to the provisions of subsection 3, for buildings and improvements for which the Board is exempted, pursuant to the provisions of paragraphs (a) and (b) of subsection 1 of NRS 341.141, from the requirement that it furnish engineering and architectural services.*

*3. Nothing in subsection 2 shall be construed to exempt any building, structure or improvement from any applicable standards or codes.*

~~[Sec. 4.]~~ *Sec. 6.* This act becomes effective upon passage and approval.

Senator Lee moved the adoption of the amendment.

Remarks by Senator Lee.

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

Thank you, Mr. President. This removes provisions that would have required the State Public Works Board to delegate certain authority to the Deputy Manager for Compliance and Code Enforcement, the "Building Official."

It exempts from the authority of the Public Works Board certain projects, improvements and buildings or structures administered by the Departments of Transportation and Wildlife and the Division of State Parks. These projects would include certain maintenance projects. For example, boat ramp or campground repair and site improvements such as picnic areas, certain recreation facilities, unenclosed or normally unoccupied buildings such as a pump house, well house, water or sewage treatment plant, electrical housing structure, enclosed storage facility or

garage, and similar unoccupied structures. This handles small projects that can be handled in house without having the State Public Works Board oversee it.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 86.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 477.

"SUMMARY—Makes various changes concerning children who are ordered to be placed in the custody of ~~[an agency which provides child welfare services]~~ *certain governmental entities* by the juvenile court. (BDR 5-361)"

"AN ACT relating to children; revising provisions governing the detention of juveniles; revising provisions governing the placement of children into foster care by the juvenile court; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill provides that if a child who is alleged to be delinquent is detained for more than 24 hours, the juvenile court must determine whether there is reasonable cause to believe that it is contrary to the welfare of the child to return home or that it is in the best interests of the child to be placed outside his home. (NRS 62C.040) Section 2 of this bill requires the juvenile court to make the same determination with respect to a child who is being detained because he is alleged to be in need of supervision . ~~[to return home.]~~ (NRS 62C.050)

Chapter 62E of NRS sets forth the procedures upon the disposition of a case before the juvenile court. Existing law provides for a periodic review of the placement of a child who is placed in a foster home or other similar placement by the juvenile court. (NRS 62E.170) Section 10 of this bill revises the determinations made during the periodic review and removes the requirement for a dispositional hearing within 18 months after the review.

Sections ~~[4-9]~~ 5-9 of this bill provide additional procedures in such cases which are similar to requirements for children who enter the child welfare system because they are the subject of a report of abuse or neglect. (Chapter 432B of NRS) ~~[Section 4 requires the juvenile court to appoint a guardian ad litem for such a child and sets forth the qualifications and duties for such a guardian. (See NRS 432B.500)]~~ Section 5 requires the juvenile court to hold a hearing within 60 days after a child is ~~[placed in a foster home or other similar placement]~~ *removed from his home* to determine *: (1)* whether reasonable efforts have been made to preserve and reunify the family and to prevent or eliminate the need for the removal of the child from his home and to make it possible for the child to safely return home ~~[.]~~ *; or (2) whether such efforts are not required because of exigent circumstances.* (See NRS 432B.550) Section 6 requires the Division of Child and Family

Services of the Department of Health and Human Services *or another governmental entity, as applicable,* to ~~[adopt]~~ *develop* a plan for the permanent placement of a child who is placed in its custody by a juvenile court and to make reasonable efforts to finalize the permanent placement of the child in accordance with that plan. (See NRS 432B.553) Section 6 further requires the Division *or the other governmental entity, as applicable,* to include in such a plan the termination of parental rights in certain circumstances. (See NRS 432B.553) Section 7 requires the juvenile court to hold a hearing concerning the permanent placement of a child who is placed in a foster home or other similar placement within 12 months after the child is first detained and annually thereafter, and within 30 days after determining that reasonable efforts to preserve and reunify the family of the child ~~[is]~~ *are* not necessary. (See NRS 432B.590) Section 8 requires any hearing held to consider the status of a child who has been placed in the custody of the Division of Child and Family Services *or of another governmental entity* by the juvenile court to include certain determinations. Section 9 requires that any out-of-state placement of such a child be in accordance with the provisions of the Interstate Compact ~~[on the Placement of Children. (See NRS 127.330)]~~ *for Juveniles. Section 9.5 of this bill requires the juvenile court to include in an order placing a child into the custody of an institution or agency in this State that the Division of Child and Family Services or another governmental entity, as appropriate, is responsible for the placement and care of the child. (NRS 62E.110)*

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

Section 1. NRS 62C.040 is hereby amended to read as follows:

62C.040 1. If a child who is alleged to be delinquent is taken into custody and detained, the child must be given a detention hearing before the juvenile court:

(a) Not later than 24 hours after the child submits a written application;

(b) In a county whose population is less than 100,000, not later than 24 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined;

(c) In a county whose population is 100,000 or more, not later than 6 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined; or

(d) Not later than 72 hours after the commencement of detention at a facility in which adults are not detained or confined,

➥ whichever occurs first, excluding Saturdays, Sundays and holidays.

2. A child must not be released after a detention hearing without the written consent of the juvenile court.

*3. If a child is detained pursuant to this section for 24 hours or more, the juvenile court must determine whether there is reasonable cause to believe that it is contrary to the welfare of the child to return home or that it is in the best interests of the child to be placed outside his home.*

Sec. 2. NRS 62C.050 is hereby amended to read as follows:

62C.050 1. Except as otherwise provided in this section, if a child who is alleged to be in need of supervision is taken into custody and detained, the child must be released not later than 24 hours, excluding Saturdays, Sundays and holidays, after the child's initial contact with a peace officer or probation officer to:

(a) A parent or guardian of the child;

(b) Any other person who is able to provide adequate care and supervision for the child; or

(c) Shelter care.

2. A child does not have to be released pursuant to subsection 1 if the juvenile court:

(a) Holds a detention hearing;

(b) Determines that the child:

(1) Has threatened to run away from home or from the shelter;

(2) Is accused of violent behavior at home; or

(3) Is accused of violating the terms of a supervision and consent decree; and

(c) Determines that ~~[the child needs to be detained to make an alternative placement for the child.]~~ *there is reasonable cause to believe that it is contrary to the welfare of the child to return home or that it is in the best interests of the child to be placed outside his home.*

➥ The child may be detained for an additional 24 hours but not more than 48 hours after the detention hearing, excluding Saturdays, Sundays and holidays.

3. A child does not have to be released pursuant to this section if the juvenile court:

(a) Holds a detention hearing; ~~[and]~~

(b) Determines that the child:

(1) Is a ward of a federal court or held pursuant to a federal statute;

(2) Has run away from another state and a jurisdiction within that state has issued a want, warrant or request for the child; or

(3) Is accused of violating a valid court order ~~[.]~~ *; and*

*(c) Determines that there is reasonable cause to believe that it is contrary to the welfare of the child to return home or that it is in the best interests of the child to be placed outside his home.*

➥ The child may be detained for an additional period as necessary for the juvenile court to return the child to the jurisdiction from which the child originated or to make an alternative placement for the child.

4. For the purposes of this section, an alternative placement must be in a facility in which there are no physical restraining devices or barriers.

Sec. 3. Chapter 62E of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 9, inclusive, of this act.

Sec. 4. ~~*[1. After a child whom the juvenile court has ordered into the custody of the Division of Child and Family Services is placed in a foster*~~

~~*home or other similar placement, the juvenile court shall appoint a guardian ad litem for the child. The person so appointed:*~~

~~*(a) Must meet the requirements set forth in NRS 432B.505 or, if such a person is not available, must be a representative of an agency which provides child welfare services, a juvenile probation officer, an officer of the juvenile court or another volunteer.*~~

~~*(b) Must not be a parent or other person responsible for the child's welfare.*~~

~~*2. No compensation may be allowed a person serving as a guardian ad litem pursuant to this section.*~~

~~*3. A guardian ad litem appointed pursuant to this section shall:*~~

~~*(a) Represent and protect the best interests of the child until excused by the juvenile court;*~~

~~*(b) Thoroughly research and ascertain the relevant facts of each case for which he is appointed, and ensure that the juvenile court receives an independent, objective account of those facts;*~~

~~*(c) Meet with the child wherever the child is placed as often as is necessary to determine that the child is safe and to ascertain the best interests of the child;*~~

~~*(d) Explain to the child the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in his case;*~~

~~*(e) Participate in the development and negotiation of any plans for and orders regarding the child, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner;*~~

~~*(f) Appear at all proceedings regarding the child;*~~

~~*(g) Inform the juvenile court of the desires of the child, but exercise his independent judgment regarding the best interests of the child;*~~

~~*(h) Present recommendations to the juvenile court and provide reasons in support of those recommendations;*~~

~~*(i) Request the juvenile court to enter orders that are clear, specific and, when appropriate, include periods for compliance;*~~

~~*(j) Review the progress of each case for which he is appointed, and advocate for the expedient completion of the case; and*~~

~~*(k) Perform such other duties as the juvenile court orders.]*~~ *(Deleted by amendment.)*

Sec. 5. *1. Within 60 days after a child* ~~*[whom the juvenile court ordered into the custody of the Division of Child and Family Services is placed in a foster home or other similar placement,]*~~ *is removed from his home the juvenile court shall* ~~*[hold a hearing to]*~~ *determine whether:*

*(a) Except as otherwise provided in subsection 2, the Division of Child and Family Services or other governmental entity, as applicable, has made reasonable efforts to preserve and reunify the family of the child and to prevent or eliminate the need for his removal from his home and to make it possible for the child to safely return to his home; or*

*(b) No such efforts were required in the particular case because of exigent circumstances.*

*2. ~~[The Division of Child and Family Services is not required to make the reasonable]~~ Reasonable efforts pursuant to paragraph (a) of subsection 1 are not required if the juvenile court finds that:*

*(a) A parent or other primary caretaker of the child has:*

*(1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit, murder or voluntary manslaughter ~~[,~~*

*~~(2) Caused the abuse or neglect of the child, or of another child of the parent or primary caretaker, which resulted in substantial bodily harm to the abused or neglected child;~~*

*~~(3) ]~~ against the child or another child of the parent or has committed any other felony that resulted in substantial bodily harm to the child or to another child of the parent;*

*(2) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to his home would result in an unacceptable risk to the health or welfare of the child; or*

*~~[(4)]~~ (3) Abandoned the child for 60 or more days, and the identity of the parent of the child is unknown and cannot be ascertained through reasonable efforts; or*

*(b) ~~[The parent or other primary caretaker of the child has, for the previous 6 months, had the ability to contact or communicate with the child and made no more than token efforts to do so;~~*

*~~(c)]~~ The parental rights of a parent to a sibling of the child have been terminated by a court order upon any basis other than the execution of a voluntary relinquishment of those rights by a natural parent, and the court order is not currently being appealed . ~~[; or~~*

*~~(d) The child or a sibling of the child was previously removed from his home, adjudicated to have been abused or neglected, returned to his home and subsequently removed from his home as a result of additional abuse or neglect.]~~*

*3. The juvenile court shall prepare an explicit statement of the facts upon which its determination pursuant to subsection 1 is based.*

Sec. 6. *1. If a child whom the juvenile court has ordered into the custody of the Division of Child and Family Services or of another governmental entity is placed in a foster home or other similar placement, the Division or governmental entity, as applicable, shall:*

*(a) ~~[Adopt]~~ Not later than 60 days after the placement, develop a plan for the permanent placement of the child for review by the juvenile court at a hearing; and*

*(b) Make reasonable efforts to finalize the permanent placement of the child in accordance with the plan ~~[adopted]~~ developed pursuant to paragraph (a).*

*2. For purposes of subsection 1, "reasonable efforts" have been made if the agency which provides child welfare services that has custody of the child has exercised diligence and care in arranging appropriate and available services for the child, with the health and safety of the child as its paramount concerns. The exercise of such diligence and care, includes, without limitation, obtaining necessary and appropriate information concerning the child for the purposes of NRS 127.152, 127.410 and 424.038.*

*3. In determining whether reasonable efforts have been made pursuant to subsection 1, the juvenile court shall:*

*(a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;*

*(b) Consider any input from the child;*

*(c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;*

*(d) Consider the diligence and care that the agency is legally authorized and able to exercise;*

*(e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;*

*(f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue; and*

*(g) ~~[Consider whether the provisions of subsection 4 are applicable; and~~*

*~~(h)]~~ Consider any other matters the court deems relevant.*

*4. ~~[An agency which provides child welfare services may satisfy the requirement of making reasonable efforts pursuant to this section by taking no action concerning a child or making no effort to provide services to a child if it is reasonable under the circumstances to do so.~~*

*~~5.]~~ If a child is not residing in his home and has been placed in a foster home or other similar placement for ~~[14]~~ 15 or more of the immediately preceding ~~[20]~~ 22 months, the Division of Child and Family Services or other governmental entity which has custody of the child, as applicable, shall include the termination of parental rights to the child in the plan for the permanent placement of the child, unless the agency determines that:*

*(a) The child is in the care of a relative;*

*(b) The plan for the child requires the Division of Child and Family Services or other governmental entity to make reasonable efforts pursuant to section 5 of this act to reunify the family of the child, and the Division or governmental entity has not provided to the family, consistently within the period specified in the plan for the child, such services as the Division or governmental entity deems necessary for the safe return of the child to his home; or*

*(c) There are compelling reasons, which are documented in the plan for the child, for concluding that the filing of a petition to terminate parental rights to the child would not be in the best interests of the child.*

*5. The Division of Child and Family Services shall adopt regulations in consultation with the Nevada Association of Juvenile Justice Administrators, or its successor organization, other agencies which provide child welfare services and the Court Administrator to carry out its responsibilities pursuant to the provisions of this section.*

Sec. 7. *1. The juvenile court shall hold a hearing concerning the permanent placement of a child who is placed in a foster home or other similar placement pursuant to section 6 of this act:*

*(a) Not later than 12 months after the initial placement of the child in a foster home or other similar placement and annually thereafter.*

*(b) Within 30 days after making any of the findings set forth in subsection 2 of section 5 of this act necessary to show that the Division of Child and Family Services or other governmental entity that has custody of the child, as applicable, is not required to make reasonable efforts to preserve and reunify the family of the child.*

*2. Except as otherwise provided in this subsection, notice of the hearing must be given by ~~[registered or certified]~~ mail to the parent or parents of the child, the guardian ad litem of the child and the attorney, if any, representing the parent or the child. If the parent of the child has not appeared in the action, the report need not be given to that parent.*

*3. The juvenile court may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 2 an opportunity to be heard at the hearing.*

*4. At the hearing, the juvenile court shall review any plan for the permanent placement of the child adopted pursuant to section 6 of this act and determine:*

*(a) Whether the Division of Child and Family Services or other governmental entity that has custody of the child, as applicable, has made ~~[the]~~ reasonable efforts to finalize the plan for the permanent placement of the child as required by paragraph (b) of subsection 1 of section ~~[5]~~ 6 of this act; and*

*(b) Whether, and if applicable when:*

*(1) The child should be returned to his parent or placed with other relatives;*

*(2) ~~[It is in the best interests of the child to:~~*

*~~(I) Initiate proceedings to terminate parental rights pursuant to chapter 128 of NRS so that the child can be placed for adoption;~~*

*~~(II) Initiate proceedings to establish a guardianship pursuant to chapter 159 of NRS; or~~*

*~~(III) Establish a guardianship in accordance with NRS 432B.466 to 432B.468, inclusive; or]~~ A petition for termination of parental rights to the child should be filed and the child placed for adoption;*

*(3) A legal guardian should be appointed for the child; or*

*(4) The Division of Child and Family Services or other governmental entity that has custody of the child, as applicable, has produced*

*documentation of its conclusion that there is a compelling reason for the placement of the child in another permanent living arrangement.*

~~[—]~~

*5. If the juvenile court determines not to return the child to his parent, the juvenile court must consider:*

*(a) Placements available for the child in this State and outside of this State;*

*(b) If the child is placed in foster care outside of the state where the parent of the child resides, whether that placement continues to be appropriate and in the best interest of the child; and*

*(c) If the child is 16 years of age or older, the services that will be needed to assist the child to transition out of foster care.*

*6. The court shall prepare an explicit statement of the facts upon which each of its determinations pursuant to this section is based.* ~~*[If the court determines that it is in the best interests of the child to terminate parental rights, the court shall use its best efforts to ensure that the procedures required by chapter 128 of NRS are completed within 6 months after the date the court makes that determination, including, without limitation, appointing a private attorney to expedite the completion of the procedures. The provisions of this subsection do not limit the jurisdiction of the court to review any decisions of the agency with legal custody of the child regarding the permanent placement of the child.*~~

~~*5. If a child has been placed outside of his home and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.]*~~

~~*[6.]*~~ *7. The hearing held pursuant to* ~~*[subsection 1]*~~ *this section may take the place of the hearing for review required by NRS 62E.170.*

Sec. 8. *1. In any hearing held to consider the status of a child whom the juvenile court has ordered into the custody of the Division of Child and Family Services or of another governmental entity and who has been placed in a foster home or other similar placement, the juvenile court shall* ~~*[determine whether the]*~~ *consider whether:*

*(a) The child has complied with the terms of his supervision and any court order;*

*(b) The child has been rehabilitated;*

*(c) The child is, or continues to be, a danger to himself or others; and*

*(d) The physical, psychological and sociological needs of the child are being met.*

*2. The health and safety of the child must be given paramount concern in any such review.*

Sec. 9. *If a child whom the juvenile court has ordered into the custody of the Division of Child and Family Services or of another governmental entity is placed with any person who resides outside of the State of Nevada, the placement must made be in accordance with the provisions of*

*~~[NRS 127.330.]~~ the Interstate Compact for Juveniles set forth in NRS 62I.010 to 62I.070, inclusive.*

*Sec. 9.5. NRS 62E.110 is hereby amended to read as follows:*

62E.110 1. Except as otherwise provided in this chapter, the juvenile court may:

(a) Place a child in the custody of a suitable person for supervision in the child's own home or in another home; or

(b) Commit the child to the custody of a public or private institution or agency authorized to care for children.

2. If the juvenile court places the child under supervision in a home:

(a) The juvenile court may impose such conditions as the juvenile court deems proper; and

(b) The program of supervision in the home may include electronic surveillance of the child.

3. If the juvenile court commits the child to the custody of a public or private institution or agency, the juvenile court shall select one that is required to be licensed by:

(a) The Department of Health and Human Services to care for such children; or

(b) If the institution or agency is in another state, the analogous department of that state.

*4. When the juvenile court orders a child into the custody of an institution or agency in this State, the court shall include in the order that the Division of Child and Family Services or other governmental entity, as appropriate, is responsible for the placement and care of the child in the institution or with the agency.*

Sec. 10. NRS 62E.170 is hereby amended to read as follows:

62E.170 1. Except as otherwise provided in this section, if *a child whom* the juvenile court ~~[places a child]~~ *has ordered into the custody of the Division of Child and Family Services or of another governmental entity is placed* in a foster home or other similar ~~[institution,]~~ *placement,* the juvenile court shall review the placement at least semiannually ~~[for the purpose of determining]~~ *to determine* whether:

(a) ~~[Continued placement or supervision is in the best interests of the child and the public; and]~~ ~~*[It is contrary to the welfare of the child for him to reside at his home;*~~

~~*(b) It is in the best interests of the child to place him outside of his home;*~~

~~*(c) Reasonable efforts have been made to preserve or reunify the family or to establish a permanent placement for the child as required pursuant to section 6 of this act;*~~

~~*(d) The child is being treated fairly]*~~ ~~[.]~~ ~~*[;*~~

~~*(e) The child should be returned to his parent or guardian or other relative;*~~

~~*(f) The placement of the child in the foster home or other similar placement should be continued; and*~~

~~*(g) The child should be placed for adoption or under a legal guardianship.]*~~ *The child remains safe;*

*(b) The placement continues to be necessary and appropriate;*

*(c) The plan for the permanent placement of the child has been complied with; and*

*(d) Progress has been made toward correcting or mitigating the circumstances which caused the placement of the child in a foster home or other similar placement.*

2. *The juvenile court must also determine the probable date by which the child may safely be returned to the home of his parent or other legal guardian or in another identified permanent placement.*

*3. At least 5 days before a hearing is held pursuant to this section, the Division of Child and Family Services or the other governmental entity which has custody of the child, as applicable, shall submit a report to the juvenile court addressing each of the items listed in subsections 1 and 2.*

*4. Except as otherwise provided in this subsection, the* ~~*[juvenile court]*~~ *Division or the other governmental entity which has custody of the child, as applicable, shall* ~~*[cause]*~~ *, at least 72 hours before the hearing held pursuant to subsection 1, provide a copy of the report submitted to the juvenile court pursuant to* ~~*[paragraph (a) of]*~~ *subsection 3 to* ~~*[be given by registered or certified mail to]*~~ *the parent or parents of the child, the guardian ad litem of the child and the attorney, if any, representing the parent or the child. If the parent of the child has not appeared in the action, the report need not be given to that parent.*

~~*[ 3. In conducting the review, the juvenile court]*~~ ~~[may:]~~ ~~*[shall:*~~

~~(a) Require a written report from the]~~ ~~[child's protective services officer, welfare worker or other guardian]~~ ~~*[Division of Child and Family Services that has custody*~~ ~~of the child which includes, but is not limited to, an evaluation of the progress of the child and recommendations for further supervision, treatment or rehabilitation.~~

~~(b) Request any information or statements that the juvenile court deems necessary for the review.]~~

~~[3. The juvenile court shall hold dispositional hearings not later than 18 months after the review required by subsection 1, and at least annually thereafter.~~

~~4. The juvenile court shall hold each dispositional hearing to determine whether:~~

~~(a) The child should be returned to his parent or guardian or other relatives;~~

~~(b) The child's placement in the foster home or other similar institution should be continued;~~

~~(c) The child should be placed for adoption or under a legal guardianship; or~~

~~(d) The child should remain in the foster home or other similar institution on a long-term basis.]~~

5. ~~[4.]~~ The provisions of this section do not apply to the placement of a child in the home of the child's parent or parents.

6. ~~[5.]~~ This section does not limit the power of the juvenile court to order a review or similar proceeding under subsection 1 other than semiannually.

7. ~~[6.]~~ In determining the placement of the child pursuant to this section, the juvenile court shall give preference to any person who is related to the child within the third degree of consanguinity if the juvenile court finds that the person is suitable and able to provide proper care and guidance for the child.

Sec. 11. This act becomes effective ~~[upon passage and approval.]~~ *on July 1, 2010*.

Senator Care moved the adoption of the amendment.

Remarks by Senators Care and Cegavske.

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

SENATOR CARE:

Thank you, Mr. President. The amendment eliminates the appointment of a guardian ad litem, provides flexibility in the agency having responsibility for the child and requires the juvenile court to hold the agency responsible for the placement and continued care of the child.

SENATOR CEGASKE:

Thank you, Mr. President. Could I ask why we got this amendment and what the difference is between the amendments?

SENATOR CARE:

Thank you, Mr. President. The new amendment deletes the language in section 5, subsection 1, so that the language now is confined to the child removed from his home.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 110.

Bill read second time.

The following amendment was proposed by the Committee on Natural Resources:

Amendment No. 385.

"SUMMARY—Authorizes the State Quarantine Officer to adopt regulations specifying a schedule of administrative fines for certain violations relating to noxious weeds. (BDR 49-500)"

"AN ACT relating to noxious weeds; authorizing the State Quarantine Officer to adopt regulations specifying a schedule of administrative fines for certain violations relating to noxious weeds; authorizing the State Quarantine Officer to require a violator to take certain corrective actions; *authorizing a weed control officer to impose administrative fines under certain circumstances;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law requires the State Quarantine Officer to provide for the control and eradication of noxious weeds in this State.

(NRS 555.130-555.201) Section 1 of this bill authorizes the State Quarantine Officer to adopt regulations specifying a schedule of administrative fines for the failure to control and eradicate noxious weeds. Section 1 also authorizes the State Quarantine Officer to take certain actions or to order a violator to take certain actions if the noxious weeds are not controlled or eradicated. Further, section 1 requires the violator to pay for the cost of any action so ordered. Section 2 of this bill provides for the use of the money collected from administrative fines. Section 3 of this bill clarifies that the misdemeanor provisions set forth in NRS 555.201 are in addition to any administrative fine imposed by the State Quarantine Officer. *Section 3 also authorizes the State Quarantine Officer to recover the costs of prosecuting a person for such a misdemeanor. Section 4 of this bill provides that if a landowner fails to carry out a plan of weed control in compliance with the regulations of the weed control district, the weed control officer may impose an administrative fine. (NRS 555.210) Section 5 of this bill clarifies that the misdemeanor provisions set forth in NRS 555.220 are in addition to any administrative fine imposed by the weed control officer. Section 5 also authorizes the weed control officer to recover the costs of prosecuting a person for such a misdemeanor. (NRS 555.220)*

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

Section 1. Chapter 555 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The State Quarantine Officer may adopt regulations specifying a schedule of administrative fines which may be imposed, upon notice and a hearing, for each violation of a provision of this section and NRS 555.130 to 555.220, inclusive, or any regulation adopted pursuant thereto. The maximum administrative fine that may be imposed by the State Quarantine Officer for each violation must not exceed $1,000.*

*2. If an administrative fine is imposed against a person pursuant to subsection 1 and the noxious weeds for which the person received the administrative fine are not cut, eradicated or destroyed, the State Quarantine Officer may cause the noxious weeds to be cut, eradicated or destroyed in accordance with NRS 555.160 to 555.200, inclusive.*

*3. The State Quarantine Officer may:*

*(a) In addition to imposing an administrative fine pursuant to subsection 1 or taking any action pursuant to subsection 2, issue an order requiring a violator to take appropriate action to correct the violation. The violator shall pay the cost of any appropriate action so ordered.*

*(b) Request the district attorney of the appropriate county to investigate or file a criminal complaint against any person who the State Quarantine Officer suspects may have committed flagrant or repeated violations of any provision of this section and NRS 555.130 to 555.220, inclusive.*

*4. In addition to any cost paid pursuant to paragraph (a) of subsection 3, if an administrative fine is imposed pursuant to this section, the costs of the*

*proceeding, including ~~[, without limitation,]~~ investigative costs and attorney's fees, may be recovered by the State Quarantine Officer.*

Sec. 2. NRS 555.140 is hereby amended to read as follows:

555.140 1. The State Quarantine Officer shall carry out and enforce the provisions of NRS 555.130 to 555.220, inclusive ~~[.]~~ *, and section 1 of this act.*

2. To secure information ~~[better]~~ to carry out *more effectively* the provisions of NRS 555.130 to 555.220, inclusive, *and section 1 of this act,* the State Quarantine Officer may conduct reasonably limited trials of various methods of controlling or eradicating noxious or potentially noxious weeds under practical Nevada conditions.

3. The State Quarantine Officer may provide supervision and technical advice in connection with any project approved by him for the control or eradication of any noxious weed or weeds in this State.

4. ~~[All funds]~~ *Except as otherwise provided in subsection 5, all money* appropriated for, or received incident to, the control or eradication of any noxious weeds *, including, without limitation, any money collected pursuant to subsection 6,* must be available for carrying out the provisions of NRS 555.130 to 555.220, inclusive ~~[.]~~ *, and section 1 of this act.*

*5. Except as otherwise provided in subsection 6, all administrative fines collected by the State Quarantine Officer pursuant to section 1 of this act must be deposited with the State Treasurer for credit to the State General Fund.*

*6. The State Quarantine Officer may delegate to a hearing officer or panel the authority of the State Quarantine Officer to impose and collect administrative fines pursuant to section 1 of this act and use the money collected from such fines in accordance with subsection 4.*

Sec. 3. NRS 555.201 is hereby amended to read as follows:

555.201 ~~[Any]~~ *In addition to any administrative fine imposed pursuant to section 1 of this act, any* person violating any of the provisions of NRS 555.130 to 555.200, inclusive, *and section 1 of this act* or failing, refusing or neglecting to perform or observe any conditions or regulations prescribed by the State Quarantine Officer, in accordance with the provisions of NRS 555.130 to 555.200, inclusive, *and section 1 of this act* is guilty of a misdemeanor. *The State Quarantine Officer may recover the costs of the proceeding, including investigative costs and attorney's fees, against a person convicted of a misdemeanor pursuant to this section.*

*Sec. 4. NRS 555.210 is hereby amended to read as follows:*

555.210 *1.* If any landowner fails to carry out a plan of weed control for his land in compliance with the regulations of the district, the weed control officer may *:*

*(a) For a first violation, impose an administrative fine of not more than $1,000, as determined by the regulations of the district.*

*(b) For a second or subsequent violation,* enter upon the land affected, perform any work necessary to carry out the plan, and charge such work

against the landowner. Any such charge, until paid, is a lien against the land affected coequal with a lien for unpaid general taxes, and may be enforced in the same manner.

*2. Except as otherwise provided in subsection 3, all administrative fines collected by the weed control officer pursuant to this section must be deposited with the treasurer of the county in which the administrative fine is imposed for credit to the general fund of the county.*

*3. The weed control officer may delegate to a hearing officer or panel the authority of the weed control officer to impose and collect administrative fines pursuant to subsection 1 and use the money collected from such fines to carry out the provisions of NRS 555.202 to 555.220, inclusive, within the weed control district.*

*Sec. 5. NRS 555.220 is hereby amended to read as follows:*

555.220 ~~[Any]~~ *In addition to any administrative fine imposed pursuant to NRS 555.210, any* person violating any of the provisions of NRS 555.202 to 555.210, inclusive, or failing, refusing or neglecting to perform or observe any conditions or regulations prescribed by the State Quarantine Officer, in accordance with the provisions of NRS 555.202 to 555.210, inclusive, is guilty of a misdemeanor. *A weed control officer may, on behalf of the weed control district for which he is the weed control officer and in which the violation occurred, recover the costs of the proceeding, including investigative costs and attorney's fees, against a person convicted of a misdemeanor pursuant to this section.*

Senator Rhoads moved the adoption of the amendment.

Remarks by Senators Rhoads and Carlton.

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

SENATOR RHOADS:

Thank you, Mr. President. This amendment adds language to the bill to extend the authority given to the State Quarantine Officer concerning imposing administrative fines for certain violations related to noxious weeds.

SENATOR CARLTON:

Thank you, Mr. President. I am concerned that we are allowing someone through the regulatory process to establish administrative fines with no idea what those fines might be. Could the sponsor of the bill or the Committee Chair give us a level of comfort on that and if it was discussed in the Committee.

Senator Rhoads moved that Senate Bill No. 110 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

Senate Bill No. 124.

Bill read second time.

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

Amendment No. 36.

"SUMMARY—~~[Authorizes the expansion of]~~ *Expands* the number of members of the boards of trustees of certain general improvement districts. (BDR 25-196)"

"AN ACT relating to general improvement districts; ~~[authorizing the expansion of]~~ *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 ~~[to]~~ consist of five members. (NRS 318.080) Section 1 of this bill ~~[authorizes]~~ *expands the membership of the board of trustees of* a general improvement district which *exists on or before July 1, 2009, and* is authorized to furnish electric light and power in a county whose population is 400,000 or more (currently the Overton Power District in Clark County) ~~[to expand its board of trustees]~~ *from five* to seven members. ~~[If the board chooses to expand its membership, section]~~ *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.

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 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 ~~[may expand the number of members of the board of trustees of the district from five to seven. If a board votes to expand its membership to]~~ shall consist of seven trustees. ~~[:~~*

*~~1. At the first biennial election following the decision to expand the board and each fourth year thereafter, there must be elected by the qualified electors of the district three qualified electors as members of the board to serve for terms of 4 years. At the second biennial election following the decision to expand the board and each fourth year thereafter, there must be elected four qualified electors as members of the board to serve for terms of 4 years.~~*

*~~2. If there are three regular terms which end on the first Monday in January next following the biennial election, the three qualified electors receiving the highest, next highest and third highest number of votes must be elected. If there are four regular terms so ending, the four qualified electors receiving the highest, next highest, third highest and fourth highest number of votes must be elected.]~~*

*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. [Four] A majority of the members of the board [constitute] 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 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 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 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 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 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 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. ~~[If]~~ *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. ~~[NRS 318.0952 is hereby amended to read as follows:~~

~~318.0952 Except as otherwise provided in NRS 318.0953:~~

~~1. Trustees may be elected in the alternate manner provided in this section from election areas within the district.~~

~~2. Within 30 days before May 1 of any year in which a general election is to be held in the State, 10 percent or more of the qualified electors of the district voting at the next preceding biennial election of the district may file a written petition with the board of county commissioners of the county vested with jurisdiction under NRS 318.050 praying for the creation of election areas within the district in the manner provided in this section. The petition must specify with particularity the five areas proposed to be created. *[or, in a district governed pursuant to section 1 of this act, the seven areas proposed to be created.]* The description of the proposed election areas need not be given by metes and bounds or by legal subdivisions [,] but must be sufficient to enable a person to ascertain what territory is proposed to be included within a particular area. The signatures to the petition need not all be appended to one paper, but each signer must add to his name his place of residence, giving the street and number whenever practicable. One of the signers of each paper shall take an oath, before a person competent to administer oaths, that each signature to the paper appended is the genuine signature of the person whose name it purports to be.~~

~~3. Immediately after the receipt of the petition, the board of county commissioners shall fix a date for a public hearing to be held during the month of May [,] and shall give notice thereof by publication at least once in a newspaper published in the county [,] or , if no such newspaper is published therein , then in a newspaper published in the State of Nevada and having a general circulation in the county. The costs of publication of that notice are a proper charge against the district fund.~~

~~4. If, [as a result] *because* of the public hearing, the board of county commissioners finds that the creation of election areas within the district is desirable, the board of county commissioners shall, by resolution regularly adopted before June 1, divide the district into the areas specified in the petition, designate them by number and define their boundaries. The territory comprising each election area must be contiguous. One trustee must be elected from each election area by a majority of the qualified electors voting on the candidates for any vacancy for that area as provided in subsection 7.~~

~~5. Before June 1 and immediately following the adoption of the resolution creating election areas within a district, the clerk of the board of~~

~~county commissioners shall transmit a certified copy of the resolution to the secretary of the district.~~

~~6. Upon the creation of election areas within a district, the terms of office of all trustees then in office expire on the first Monday of January thereafter next following a biennial election. At the biennial election held following the creation of election areas within a district, district trustees to represent the odd-numbered election areas must be elected for terms of 4 years and district trustees to represent the even-numbered election areas must be elected for terms of 2 years. Thereafter, at each biennial election, the offices of trustees must be filled for terms of 4 years in the order in which the terms of office expire.~~

~~7. Candidates for election as a trustee representing any election area must be elected only by those qualified electors of the district residing in that area. No qualified elector may vote in more than one election area at any one time.~~

~~8. A candidate for the office of trustee of a district in which election areas have been created must be a qualified elector of the district and must be a resident of the election area which he seeks to represent.~~

~~9. Election areas may be altered or abolished in the same manner as provided in this section for the creation of election areas and the election of trustees therefor.]~~ *(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 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 who is in office on July 1, 2009.*

~~[Sec. 7.]~~ *Sec. 8.* This act becomes effective on July 1, 2009.

Senator Lee moved the adoption of the amendment.

Remarks by Senator Lee.

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

Thank you, Mr. President. This requires the expansion of the Board of Trustees for the Overton Power District from five members to seven. It provides that one additional member be elected from the election area comprised of the City of Mesquite, the largest incorporated city in the district service area, and sets forth the initial election and term of that member. In addition, it provides that the other additional member be elected at-large from within the boundaries of the district service area and sets forth the initial election and term of that member.

It declares that the existing five election areas remain as presently set by law and that no one currently serving on the Board as of July 1, 2009, shall be impacted by the bill.

This bill and the amendment are supported by the Overton Power District Board and the City of Mesquite.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 176.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 106.

"SUMMARY—Makes various changes relating to time shares. (BDR 10-692)"

"AN ACT relating to time shares; providing for the relocation of ~~[an interest in]~~ a time share under certain circumstances; authorizing the withdrawal of time share units from a time-share plan under certain circumstances; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill provides that certain types of ~~[interests in a time share]~~ *time shares* may be relocated to another unit or ~~[parcel if the replacement unit or]~~ parcel: (1) *if the replacement unit or parcel* is within the same project and governed by the same time-share instrument as the original unit or parcel; (2) *if the replacement unit or parcel* has a value which is greater than or equal to the value of the original unit or parcel; ~~[and]~~ (3) *if the replacement unit or parcel* contains *similar* sleeping accommodations for at least the same number of persons as the original unit or *unit type within the* parcel ~~[.]~~ *; (4) if the time share is not a fixed-unit time share; and (5) if the time share is a fixed-week time share or the rights of use are within a particular season, use in the same fixed week or season is available.* Section 1 only authorizes such relocation of ~~[an interest in]~~ a time share if: (1) the ~~[interest]~~ *time share* is owned by the developer; or (2) the relocation is approved by a majority of the association and agreed to by the developer.

Existing law provides that if a time-share instrument authorizes the developer to withdraw units from the time-share plan, any unit that is subject to withdrawal may not be withdrawn if a time share attributable to that unit is owned by a purchaser. (NRS 119A.495) ~~[Sections 1 and]~~ *Section* 2 of this bill ~~[allow a unit or parcel]~~ *allows units or parcels* to be withdrawn from a time-share plan by the developer if ~~[: (1) all remaining owners having an interest in the unit or parcel give their written consent; and (2) an equitable cost-sharing agreement covering any shared common area or amenities is entered into between the association and the owners.]~~ *all the requirements for such a withdrawal are met, including consent by any remaining owners, amendment of the time-share instrument to reflect the withdrawal, and the establishment or amendment of agreements between the developer and the association to share certain costs equitably.*

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

Section 1. Chapter 119A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Any ~~[interest in a]~~ time share that is an undivided fee simple interest or leasehold interest in a unit or parcel on which units are located, and any ~~[interest in a]~~ time share that is a license, may be relocated to another unit or parcel on which units are located ~~[if the]~~ :*

*(a) If the replacement unit or parcel:*

*~~[(a)]~~ (1) Is within the same project and governed by the same time-share instrument as the original unit or parcel;*

*~~[(b)]~~ (2) Has a value which is greater than or equal to the value of the original unit or parcel; and*

*~~[(c)]~~ (3) Contains similar sleeping accommodations for at least the same number of persons as the original unit or original unit type within the parcel ~~[.]~~ ;*

*(b) If the time share is not a fixed-unit time share; and*

*(c) If the time share is a fixed-week time share or the rights of use for the time share are within a particular season of the year, if use of the time share in the same fixed week or season is available to the owner of the time share after the relocation.*

*2. Relocation of ~~[an interest in]~~ a time share pursuant to this section only applies to ~~[an interest]~~ a time share that is owned by the developer, unless the relocation is:*

*(a) Approved by the vote or the written consent of members of the association , excluding the developer, constituting the minimum percentage of the voting power of the association which constitutes a quorum pursuant to NRS 82.291; and*

*(b) Agreed to in writing by the developer.*

*3. The relocation of each ~~[interest in a]~~ time share pursuant to this section must be made by the recordation of an instrument signed by the developer that identifies:*

*(a) The names of the record owners of each ~~[interest in the]~~ time share to be relocated;*

*(b) The permanent identifying number of each ~~[interest in the]~~ time share;*

*(c) A legal description of the unit or parcel and the unit type to which each permanent identifying number was originally assigned; and*

*(d) A legal description of the unit or parcel and the unit type to which each permanent identifying number will be reassigned.*

*4. Upon recordation of the instrument described in subsection 3 and the mailing of the recorded instrument to the owner by certified mail, return receipt requested, to the last known address of the owner as shown in the records of the association, the owner of the ~~[interest in a]~~ time share identified in the recorded instrument shall be deemed to have no further right, title or interest in the unit or parcel originally conveyed or assigned to the owner.*

*5. ~~[Any legally created unit or parcel within a project may be withdrawn from the time-share plan by the developer if:~~*

*~~(a) All remaining owners having an interest in the unit or parcel, if there are any such remaining owners, give written consent to the withdrawal; and~~*

*~~(b) An equitable cost-sharing agreement covering any shared common area or amenities is entered into between the association governing the time-share plan and the owners of the withdrawn unit or parcel.]~~ As used in this section:*

*(a) "Fixed-unit time share" means a time share in which the owner's rights of use are in a single designated unit.*

*(b) "Fixed-week time share" means a time share in which the owner's rights of use are within a certain week or weeks on a recurrent, periodic basis, and the weeks of use may rotate based on a fixed-week calendar.*

Sec. 2. NRS 119A.495 is hereby amended to read as follows:

119A.495 ~~[If]~~

*1. Except as otherwise provided in ~~[section 1 of this act,]~~ subsection 2, if* a time-share instrument authorizes the developer to withdraw units from the time-share plan, any unit that is subject to withdrawal may not be withdrawn if a time share attributable to that unit is owned by a purchaser.

*2. Any legally created units or parcels within a project may be withdrawn from the time-share plan by the developer if:*

*(a) All remaining owners having an interest in the unit or parcel, if there are any such remaining owners, give written consent to the withdrawal;*

*(b) The developer amends the time-share instrument which established the time-share plan to reduce the number of units or parcels included in the time-share plan by the number of units or parcels withdrawn pursuant to this subsection;*

*(c) Any existing cost-sharing agreement between the developer and the association covering shared common areas or amenities is amended to reflect the reduction in the number of units or parcels included in the time-share plan as the result of the withdrawal of units or parcels pursuant to this subsection; and*

*(d) A new cost-sharing agreement which covers any common areas or amenities that are shared by the remaining units or parcels within the time-share plan and the units or parcels withdrawn pursuant to this subsection and which allocates the shared costs proportionately between the developer and the association according to the number and size of the units withdrawn pursuant to this subsection is entered into between the developer and the association.*

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

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

Thank you, Mr. President. The amendment addresses the relocation of fixed-unit and fixed-week time shares not previously covered in the bill. The amendment also revises the

process for changing a time-share plan when units are withdrawn and requires a cost-share agreement to equitably fund common areas and related amenities.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 188.

Bill read second time.

The following amendment was proposed by the Committee on Energy, Infrastructure and Transportation:

Amendment No. 238.

"SUMMARY— ~~[Establishes]~~ *Provides for the establishment of* the Solar ~~[Hot Water Heating]~~ *Thermal* Systems Demonstration Program. (BDR 58-379)"

"AN ACT relating to energy; ~~[establishing]~~ *providing for the establishment of* the Solar ~~[Hot Water Heating]~~ *Thermal* Systems Demonstration Program; requiring the Public Utilities Commission of Nevada to adopt certain regulations governing the Demonstration Program; requiring a public utility that supplies natural gas to file with the Commission an annual plan for carrying out the Demonstration Program; ~~[requiring the Task Force for Renewable Energy and Energy Conservation to nominate participants for the Demonstration Program; requiring the Commission to review applications and select participants for the Demonstration Program;]~~ providing for rebates ~~[and the issuance of portfolio energy credits]~~ to certain participants in the Demonstration Program; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 17 of this bill ~~[creates]~~ *requires the Public Utilities Commission of Nevada to establish* the Solar ~~[Hot Water Heating]~~ *Thermal* Systems Demonstration Program and ~~[sets forth the categories of and eligibility requirements for participants. Section 17 further requires the Public Utilities Commission of Nevada]~~ to adopt regulations establishing the qualifications that a person must meet to participate in the Demonstration Program.

Section 18 of this bill provides that each year on or before the date established by the Commission, a public utility that supplies natural gas must file with the Commission its annual plan for carrying out and administering the Demonstration Program within its service area. ~~[for that program year. Section 19 of this bill requires the Task Force for Renewable Energy and Energy Conservation to develop an application for the Demonstration Program and advertise for the submission of applications on or before November 1, 2009, and on or before November 1 of each year thereafter. Section 20 of this bill provides that on or before February 1, 2010, and on or before February 1 of each year thereafter, an applicant that wishes to participate in the Demonstration Program for the following program year must apply to the Task Force. Section 21 of this bill requires the Task Force to review the applications and nominate applicants to participate in the~~

~~Demonstration Program. Section 22 of this bill requires the Commission, on or before May 1 of each year, to select participants for the Demonstration Program and notify each participant not later than 10 days after the selection is made.]~~

Section 23 of this bill requires the Commission to adopt regulations that establish *program milestones and* a rebate program for a participant who installs a solar ~~[hot water heating]~~ *thermal* system and sets forth ~~[the maximum amounts allowed]~~ *guidelines* for such rebates. ~~[Section 24 of this bill requires the Commission to adopt regulations relating to the issuance of portfolio energy credits to certain participants.]~~

Section 25 of this bill authorizes the Commission to withdraw certain participants from the Demonstration Program for noncompliance.

*Section 26 of this bill requires the Commission to adopt the regulations required by this bill on or before March 1, 2010. Section 27 of this bill requires the Commission, on or before July 1, 2012, to submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the Demonstration Program.*

*WHEREAS, Nevada is heavily dependent on natural gas; and*

*WHEREAS, Solar thermal systems constitute a large, untapped source for reducing the demand for natural gas in Nevada; and*

*WHEREAS, Growing demand for solar thermal systems will create jobs in Nevada, promote greater energy independence and protect consumers from rising energy costs; and*

*WHEREAS, It is in the interest of the State to promote solar thermal systems and other technologies that directly reduce the demand for natural gas in homes, businesses, schools and other governmental buildings; and*

*WHEREAS, It is the intent of the Legislature to build a mainstream market for solar thermal systems that directly reduces the demand for natural gas in homes, businesses, schools and other governmental buildings through the installation of at least 3,000 solar thermal systems in this State by 2019; and*

*WHEREAS, It is the intent of the Legislature that incentives for the installation of solar thermal systems should be a cost-effective investment by natural gas customers and that such customers will recoup the cost of their investments through lower prices for natural gas, additional system stability and reduced pollution; now, therefore,*

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

Section 1. Chapter 701B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this act.

Sec. 2. *As used in sections 2 to 25, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. ~~*["Applicant" means a person who applies to the Commission to participate in the Demonstration Program.]*~~ *(Deleted by amendment.)*

Sec. 4. *"Category" means one of the categories of participants in the Demonstration Program as set forth in section 17 of this act.*

Sec. 5. *"Commission" means the Public Utilities Commission of Nevada.*

Sec. 6. *"Demonstration Program" means the Solar ~~[Hot Water Heating]~~ Thermal Systems Demonstration Program ~~[created]~~ established by the Commission pursuant to section 17 of this act.*

Sec. 7. *"Institution of higher education" means:*

*1. A university, college or community college which is privately owned or which is part of the Nevada System of Higher Education; or*

*2. A postsecondary educational institution, as defined in NRS 394.099, or any other institution of higher education.*

Sec. 8. *"Participant" means a person who has been ~~[selected]~~ approved by the Commission ~~[,]~~ pursuant to section ~~[22]~~ 17 of this act ~~[,]~~ to participate in the Demonstration Program.*

Sec. 9. *"Person" includes a government, governmental agency or political subdivision of a government.*

Sec. 10. ~~[*"Program year" means the period from July 1 to June 30 of each year.*]~~ *(Deleted by amendment.)*

Sec. 11. *1. "Public and other property" means any real property, building or facility which is owned, leased or occupied by:*

*(a) A public entity;*

*(b) A nonprofit organization that is recognized as exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), as amended; or*

*(c) A corporation for public benefit as defined in NRS 82.021.*

*2. The term includes, without limitation, any real property, building or facility which is owned, leased or occupied by:*

*(a) A church; or*

*(b) A benevolent, fraternal or charitable lodge, society or organization.*

*3. The term does not include school property.*

Sec. 12. *"School property" means any real property, building or facility which is owned, leased or occupied by:*

*1. A public school as defined in NRS 385.007;*

*2. A private school as defined in NRS 394.103; or*

*3. An institution of higher education.*

Sec. 13. *"Small business" means a business conducted for profit which employs 500 or fewer full-time or part-time employees.*

Sec. 14. *"Solar ~~[hot water heating]~~ thermal system" means a system of related components that uses solar energy to heat water or air and is designed to work as an integral package such that the system is not complete without one of its related components.*

Sec. 15. ~~[*"Task Force" means the Task Force for Renewable Energy and Energy Conservation created by NRS 701.350.*]~~ *(Deleted by amendment.)*

Sec. 16. *"Utility" means a public utility that supplies natural gas in this State.*

Sec. 17. *1. The Commission shall establish the Solar ~~[Hot Water Heating]~~ Thermal Systems Demonstration Program ~~[is hereby created.]~~ to carry out the intent of the Legislature to promote the installation of at least 3,000 solar thermal systems in homes, businesses, schools and other governmental buildings throughout this State by 2019.*

*2. The Demonstration Program must have ~~[three]~~ four categories of participants as follows:*

*(a) School property;*

*(b) Public and other property; ~~[and]~~*

*(c) Private residential property ; and ~~[small]~~*

*(d) Small business property.*

*3. To be eligible to participate in the Demonstration Program, a person must:*

*(a) Apply to the Commission on a form prescribed by the Commission;*

*(b) Meet the qualifications established pursuant to subsection ~~[4]~~ 5 and be approved by the Commission;*

*~~[(b)]~~ (c) When installing a solar ~~[hot water heating]~~ thermal system, use an installer who has been issued a classification C-1 license with the appropriate subclassification by the State Contractors' Board pursuant to the regulations adopted by the Board; and*

*~~[(c)]~~ (d) If the person participates in the category of school property or public and other property, provide for the public display of the solar ~~[hot water heating]~~ thermal system, including, without limitation, providing for public demonstrations of the solar ~~[hot water heating]~~ thermal system and for hands-on experience of the solar ~~[hot water heating]~~ thermal system by the public.*

*4. The Commission shall notify each applicant who is approved to participate in the Demonstration Program not later than 10 days after the approval.*

*5. The Commission shall adopt regulations ~~[setting forth the]~~ which must include, without limitation, provisions which:*

*(a) Establish the qualifications an applicant must meet to qualify to participate in the Demonstration Program . ~~[, including, without limitation, regulations specifying]~~*

*(b) Establish specifications for the design, installation, energy output and displacement standards of the solar ~~[hot water heating]~~ thermal systems that qualify for the Demonstration Program.*

*(c) Require that the components of any solar thermal system be new and unused.*

*(d) Require that any solar thermal collector have a warranty against defects and undue degradation of not less than 10 years.*

*(e) Require that a solar thermal system be installed in a building which is connected to the existing distribution system of a utility in this State.*

*(f) Require that a solar thermal system have a meter or other measuring device installed to monitor and measure the performance of the system and the quantity of energy generated or displaced by the system.*

*(g) Require that a solar thermal system be installed in conformity with the manufacturer's specifications and all applicable codes and standards.*

*(h) Establish siting and installation requirements for solar thermal systems to ensure efficient and appropriate installation and to promote maximized performance of such systems.*

*6. As used in this section, "applicant" means a person who applies to the Commission to participate in the Demonstration Program.*

Sec. 18. *1. Each year on or before a date established by the Commission, each utility in this State shall file with the Commission the annual plan of the utility for carrying out and administering the Demonstration Program within its service area . ~~[for that program year.]~~*

*2. The Commission shall:*

*(a) Adopt regulations governing the annual plans of utilities;*

*(b) Review the annual plan filed by a utility to determine whether the utility has complied with the regulations; and*

*(c) Approve the annual plan with such modifications and upon such terms and conditions as the Commission determines necessary or appropriate to facilitate the Demonstration Program.*

*3. A utility shall carry out and administer the Demonstration Program within its service area in accordance with the annual plan approved by the Commission.*

*4. A utility may recover its reasonable and prudent costs, including, without limitation, customer incentives, that are associated with carrying out and administering the Demonstration Program within its service area by seeking recovery of those costs in an appropriate proceeding before the Commission pursuant to NRS 704.110.*

~~*[ 5. The Commission may, by regulation, authorize an electric utility to participate in the Demonstration Program if a customer of the electric utility is using an electric hot water heating system in conjunction with a solar hot water heating system.*~~

~~*6. As used in this section, "electric utility" means any public utility or successor in interest that:*~~

~~*(a) Is in the business of providing electric service to customers;*~~

~~*(b) Holds a certificate of public convenience and necessity issued or transferred pursuant to chapter 704 of NRS; and*~~

~~*(c) In the most recently completed calendar year or in any other calendar year within the 7 calendar years immediately preceding the most recently completed calendar year, had a gross operating revenue of $250,000,000 or more in this State.*~~

~~*The term does not include a cooperative association, nonprofit corporation, nonprofit association or provider of electric service which is*~~

~~*declared to be a public utility pursuant to NRS 704.673 and which provides service only to its members.]*~~

Sec. 19. ~~*[1. On or before November 1, 2009, the Task Force shall:*~~

~~*(a) Develop an application for the Demonstration Program; and*~~

~~*(b) Advertise for the submission of applications for the Demonstration Program for the program year beginning July 1, 2010.*~~

~~*2. On or before November 1, 2010, and on or before November 1 of each year thereafter, the Task Force shall advertise for the submission of applications for the Demonstration Program for the following program year.*~~

~~*3. The advertisements of the Task Force for applications for the Demonstration Program must include, without limitation, a description of:*~~

~~*(a) The requirements for participation in the Demonstration Program;*~~

~~*(b) The incentives available to participants in the Demonstration Program; and*~~

~~*(c) The application process to participate in the Demonstration Program.]*~~ *(Deleted by amendment.)*

Sec. 20. ~~*[1. On or before February 1, 2010, and on or before February 1 of each year thereafter, a person who wishes to participate in the Demonstration Program for the following program year must apply to the Task Force, on an application form prescribed by the Task Force.*~~

~~*2. The application must include:*~~

~~*(a) A designation of the category of the applicant;*~~

~~*(b) The therms per year of capacity of the proposed solar hot water heating system;*~~

~~*(c) If the person is applying to participate in the Demonstration Program in the category of school property or public and other property, a description of the plan for the public display of the solar hot water heating system required by subsection 3 of section 17 of this act; and*~~

~~*(d) Any other information required by the Task Force.]*~~ *(Deleted by amendment.)*

Sec. 21. ~~*[1. On or before March 1, 2010, the Task Force shall:*~~

~~*(a) Review each application submitted for participation in the Demonstration Program for the program year beginning July 1, 2010, to determine whether the applicant meets the requirements of subsection 4 of section 17 of this act; and*~~

~~*(b) Nominate applicants that are qualified for participation in the Demonstration Program for the program year beginning July 1, 2010.*~~

~~*2. On or before March 1, 2011, and on or before March 1 of each year thereafter, the Task Force shall:*~~

~~*(a) Review each application submitted for participation in the Demonstration Program for the following program year to determine whether the applicant meets the requirements of subsection 4 of section 17 of this act; and*~~

~~*(b) Nominate applicants that are qualified for participation in the Demonstration Program for the following program year.]*~~ *(Deleted by amendment.)*

Sec. 22. ~~*[1. On or before May 1 of each year, the Commission shall:*~~

~~*(a) Review each applicant nominated by the Task Force pursuant to section 21 of this act to ensure that the applicant meets the requirements of subsection 4 of section 17 of this act; and*~~

~~*(b) From those qualified applicants nominated by the Task Force, select participants for the Demonstration Program for the following program year.*~~

~~*2. The Commission may approve, from among the qualified applicants, solar hot water heating systems totaling:*~~

~~*(a) For the program year beginning July 1, 2010:*~~

~~*(1) Not more than 5,000 therms per year of capacity for school property;*~~

~~*(2) Not more than 10,000 therms per year of capacity for public and other property; and*~~

~~*(3) Not more than 10,000 therms per year of capacity for private residential property and small business property.*~~

~~*(b) For the program year beginning July 1, 2011:*~~

~~*(1) Not more than 22,500 therms per year of capacity for school property;*~~

~~*(2) Not more than 22,500 therms per year of capacity for public and other property; and*~~

~~*(3) Not more than 30,000 therms per year of capacity for private residential property and small business property.*~~

~~*(c) For the program year beginning July 1, 2012, and for each program year thereafter:*~~

~~*(1) Not more than 45,000 therms per year of capacity for school property;*~~

~~*(2) Not more than 45,000 therms per year of capacity for public and other property; and*~~

~~*(3) Not more than 60,000 therms per year of capacity for private residential property and small business property.*~~

~~*3. The Commission shall notify each applicant selected to participate in the Demonstration Program not later than 10 days after the selection is made.]*~~ *(Deleted by amendment.)*

Sec. 23. *1. The Commission shall adopt regulations establishing program milestones and a rebate program for a participant who installs a solar* ~~*[hot water heating]*~~ *thermal system* ~~*. [, including, without limitation, the installation of a system for heating a swimming pool.*~~

~~*2. The rebate for a participant pursuant to subsection 1 must be equal to the estimated first year savings of kilowatt hours resulting from the installation of the solar hot water heating system multiplied by 75 cents.*~~

~~*3. The estimation of the savings of kilowatt hours must be based upon the annual OG-300 performance estimates of the Solar Rating and Certification Corporation.*~~

~~*4. Notwithstanding the provisions of this section, the rebate amount must not exceed the lesser of:*~~

~~*(a) Fifty percent of the total cost of the solar hot water heating system;*~~

~~*(b) For a residential solar hot water heating system, $5,000; or*~~

~~*(c) For a nonresidential solar hot water heating system, $25,000.]*~~ *The rebates provided by the Commission must:*

*(a) Decline over time as the program milestones are reached;*

*(b) Be structured to reduce the cost of solar thermal systems; and*

*(c) Be based on the actual energy savings or predicted energy savings of the solar thermal system as determined by the Commission.*

*2. The regulations must require that to be eligible for a rebate pursuant to the Demonstration Program, a solar thermal system must have received an OG-300 performance certification from the Solar Rating and Certification Corporation.*

*3. In determining the amount of the rebates provided through the Demonstration Program, the Commission shall consider any federal tax credits and other incentives available to participants.*

Sec. 24. ~~*[1. The Commission shall adopt regulations for the issuance of portfolio energy credits to a participant that installs a solar hot water heating system included in the Demonstration Program for use within the system of portfolio energy credits adopted by the Commission pursuant to NRS 704.7821.*~~

~~*2. All portfolio energy credits issued for a solar hot water heating system installed pursuant to the Demonstration Program are assigned to and become the property of the utility administering the Demonstration Program.*~~

~~*3. As used in this section, "portfolio energy credit" has the meaning ascribed to it in NRS 704.7803.]*~~ *(Deleted by amendment.)*

Sec. 25. *1. Except as otherwise provided in this section, if the Commission determines that a participant has not complied with the requirements for participation in the Demonstration Program, the Commission shall, after notice and an opportunity for a hearing, withdraw the participant from the Demonstration Program.*

*2. The Commission may, without notice or an opportunity for a hearing, withdraw from the Demonstration Program:*

*(a) A participant in the category of private residential property and small business property if the participant does not complete the installation of a solar* ~~*[hot water heating]*~~ *thermal system within 12 months after the date the participant receives notice of his* ~~*[selection]*~~ *approval to participate in the Demonstration Program.*

*(b) A participant in the category of school property or public and other property if the participant does not complete the installation of a solar* ~~*[hot water heating]*~~ *thermal system within 30 months after the date the participant*

*receives notice of his ~~[selection]~~ approval to participate in the Demonstration Program.*

*3. A participant who is withdrawn from the Demonstration Program pursuant to subsection 2 forfeits any rebates ~~[or portfolio energy credits]~~ provided by sections 2 to 25, inclusive, of this act.*

*Sec. 26. On or before March 1, 2010, the Public Utilities Commission of Nevada shall adopt the regulations required by sections 17 and 23 of this act.*

*Sec. 27. On or before July 1, 2012, the Public Utilities Commission of Nevada shall submit to the Director of the Legislative Counsel Bureau for transmittal to the Legislature a report concerning the Solar Thermal Systems Demonstration Program which must include, without limitation:*

*1. An explanation of the criteria used by the Commission to determine the amount of the rebates provided pursuant to the Demonstration Program;*

*2. A statement of the anticipated benefits of the Demonstration Program; and*

*3. Any recommendations concerning the Demonstration Program.*

~~[Sec. 26.]~~ *Sec. 28.* This act becomes effective on July 1, 2009.

Senator Schneider moved the adoption of the amendment.

Remarks by Senator Schneider.

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

Thank you, Mr. President. Amendment No. 238 to Senate Bill No. 188 establishes the Solar Thermal Heating Systems Demonstration Program and requires the Public Utilities Commission of Nevada (PUCN) to determine the appropriate rebates and other aspects of the program. The program covers solar hot-water heaters and solar hot-air heaters.

Instead of yearly allocations for specific customer categories, the amendment sets a target of 3,000 units over 10 years.

The amendment also requires the PUCN to file a report with the Legislature on or before July, 2012.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 193.

Bill read second time and ordered to third reading.

Senate Bill No. 216.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 307.

"SUMMARY—Revises provisions regarding the addition of shutters ~~[to units]~~ in common-interest communities. (BDR 10-1078)"

"AN ACT relating to common-interest communities; providing that an association may not unreasonably restrict the addition of shutters ~~[to a unit]~~ *that are attached to certain common elements or limited common elements* in a common-interest community ~~[.]~~ *under certain circumstances;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides that a unit's owner may not change the appearance of the common elements or the exterior appearance of a unit without permission of the association. (NRS 116.2111) However, an association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit shutters to improve the security of the unit or to reduce the costs of energy for the unit. This bill provides that an association may not unreasonably restrict, prohibit or withhold such approval for a unit's owner to add shutters that ~~[change the appearance of a window, exterior or interior wall, roof or other surface which is not part of his unit, which is a common element or limited common element and which is adjoining or in close proximity to his unit.]~~ *are attached to certain common elements or limited common elements under certain circumstances.*

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

Section 1. NRS 116.2111 is hereby amended to read as follows:

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:

(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit;

(3) Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or

(4) A system that uses wind energy to reduce the costs of energy for the unit if the boundaries of the unit encompass 2 acres or more within the common-interest community.

(c) With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

4. *An association may not unreasonably restrict, prohibit or withhold approval for a unit's owner to add shutters ~~[,]~~ to improve the security of the unit or to reduce the costs of energy for the unit, including, without limitation, rolling shutters, ~~[and change the appearance of a window, exterior or interior wall, roof or other surface]~~ that are attached to a portion of an interior or exterior window, interior or exterior door or interior or exterior wall which is not part of his unit ~~[,]~~ and which is a common element or limited common element ~~[and which is]~~ if:*

*(a) The portion of the window, door or wall to which the shutters are attached is adjoining ~~[or in close proximity to]~~ his unit ~~[.]~~ ; and*

*(b) The shutters must necessarily be attached to that portion of the window, door or wall during installation to achieve the maximum benefit in improving the security of the unit or reducing the costs of energy for the unit.*

*5. If a unit's owner adds shutters pursuant to ~~[this]~~ subsection ~~[,]~~ 4, the unit's owner is responsible for the maintenance of the shutters.*

*6. For the purposes of ~~[this]~~ subsection ~~[,]~~ 4, a covenant, restriction or condition which does not unreasonably restrict the addition of shutters and which is contained in the governing documents of a common-interest community or a policy established by a common-interest community is enforceable so long as the covenant, restriction or condition 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.*

~~[5.]~~ 7. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph 4 of paragraph (b) of subsection 2 unless he first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

Sec. 2. This act becomes effective on July 1, 2009.

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

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

Thank you, Mr. President. The amendment limits the addition of shutters to a unit's windows and doors, in order to improve the security and energy efficiency of the unit.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 228.

Bill read second time and ordered to third reading.

Senate Bill No. 236.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 163.

"SUMMARY—Revises provisions relating to certain programs for criminal offenders and parolees. (BDR 14-896)"

"AN ACT relating to criminal procedure; ~~[increasing the amount of the administrative assessment required]~~ *requiring a certain fee* to be included in the sentence of certain defendants; creating the Fund for Reentry Programs; requiring ~~[the increased amount of such an administrative assessment]~~ *such fees* to be credited to the Fund; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

~~[Existing law generally requires the judge to include an administrative assessment of $25 in the sentence of a defendant who pleads guilty or is found guilty of a felony or gross misdemeanor. (NRS 176.062) Section 1 of this bill increases that administrative assessment by $250 and requires that the money from the increased assessment]~~ *Section 1.5 of this bill requires a judge to include in the sentence of a defendant who pleads guilty or guilty but mentally ill to, or is found guilty or guilty but mentally ill of, a category C, D or E felony or gross misdemeanor a fee of $250 to* be credited to the Fund for Reentry Programs which is created in section 2 of this bill. Existing law authorizes the establishment by a judicial district and by the Director of the Department of Corrections of programs for reentry of criminal offenders and parolees into the community. (NRS 209.4883, 209.4887) Section 2 authorizes the money in the Fund to be used only to pay necessary administrative costs and to pay for programs for reentry of criminal offenders and parolees into the community, including correctional programs and judicial programs.

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

Section 1. ~~[NRS 176.062 is hereby amended to read as follows:~~

~~176.062 1. When a defendant pleads guilty or guilty but mentally ill or is found guilty or guilty but mentally ill of a felony or gross misdemeanor, the judge shall include in the sentence the sum of [$25] $275 as an administrative assessment and render a judgment against the defendant for the assessment.~~

~~2. The money collected for an administrative assessment:~~

~~(a) Must not be deducted from any fine imposed by the judge;~~

~~(b) Must be taxed against the defendant in addition to the fine; and~~

~~(c) Must be stated separately on the court's docket.~~

~~3. The money collected for administrative assessments in district courts must be paid by the clerk of the court to the county treasurer on or before the fifth day of each month for the preceding month. The county treasurer shall distribute, on or before the 15th day of that month, the money received in the following amounts for each assessment received:~~

~~(a) Five dollars for credit to a special account in the county general fund for the use of the district court.~~

~~(b) *Two hundred and fifty dollars to the State Controller for credit to the Fund for Reentry Programs created by section 2 of this act.*~~

~~*(c)* The remainder of each assessment to the State Controller.~~

~~4. The State Controller shall credit the money received pursuant to *paragraph (c) of* subsection 3 to a special account for the assistance of criminal justice in the State General Fund, and distribute the money from the account to the Attorney General as authorized by the Legislature. Any amount received in excess of the amount authorized by the Legislature for distribution must remain in the account.]~~ *(Deleted by amendment.)*

*Sec. 1.5. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:*

*1. When a defendant pleads guilty or guilty but mentally ill to, or is found guilty or guilty but mentally ill of, a category C, D or E felony or gross misdemeanor, the judge shall include in the sentence, in addition to any other fine, assessment, fee or restitution, the sum of $250 as a fee to be deposited into the Fund for Reentry Programs created by section 2 of this act and render a judgment against the defendant for the fee.*

*2. The money collected as a fee pursuant to subsection 1:*

*(a) Must not be deducted from any fine imposed by the judge;*

*(b) Must be taxed against the defendant in addition to the fine; and*

*(c) Must be stated separately on the court's docket.*

*3. The money collected as fees in district courts must be paid by the clerk of the court to the county treasurer on or before the fifth day of each month for the preceding month. The county treasurer shall distribute, on or before the 15th day of that month, the money received to the State Controller for credit to the Fund for Reentry Programs created by section 2 of this act.*

Sec. 2. Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. The Fund for Reentry Programs is hereby created in the State Treasury as a special revenue fund, to be administered by the Director.*

*2. The Director may apply for and accept any gift, donation, bequest, grant or other source of money for the use of the Fund.*

*3. All money received for the use of the Fund pursuant to subsection 2 or NRS ~~[176.062 or]~~ 209.4889 or section 1.5 of this act or from any other source must be deposited in the State Treasury for credit to the Fund.*

*4. All expenditures from the Fund must be approved by the Director. The money in the Fund may be expended only to pay necessary administrative costs and to pay for programs for reentry of offenders and parolees into the*

*community, including, without limitation, correctional programs and judicial programs.*

*5. The interest and income earned on the money in the Fund, after deducting any applicable charges, must be credited to the Fund. All claims against the Fund must be paid as other claims against the State are paid.*

Sec. 3. NRS 209.4871 is hereby amended to read as follows:

209.4871 As used in NRS 209.4871 to 209.4889, inclusive, *and section 2 of this act,* unless the context otherwise requires, the words and terms defined in NRS 209.4873 to 209.488, inclusive, have the meanings ascribed to them in those sections.

Sec. 4. NRS 209.4889 is hereby amended to read as follows:

209.4889 1. The Director may, after consulting with the Division, enter into one or more contracts with one or more public or private entities to provide any of the following services, as necessary and appropriate, to offenders or parolees participating in a correctional or judicial program:

(a) Transitional housing;

(b) Treatment pertaining to substance abuse or mental health;

(c) Training in life skills;

(d) Vocational rehabilitation and job skills training; and

(e) Any other services required by offenders or parolees who are participating in a correctional or judicial program.

2. The Director shall, as necessary and appropriate, provide referrals and information regarding:

(a) Any of the services provided pursuant to subsection 1;

(b) Access and availability of any appropriate self-help groups;

(c) Social services for families and children; and

(d) Permanent housing.

3. The Director may apply for and accept any gift, donation, bequest, grant or other source of money to carry out the provisions of this section. *Any money received pursuant to this subsection must be deposited in the State Treasury for credit to the Fund for Reentry Programs created by section 2 of this act.*

4. As used in this section, "training in life skills" includes, without limitation, training in the areas of:

(a) Parenting;

(b) Improving human relationships;

(c) Preventing domestic violence;

(d) Maintaining emotional and physical health;

(e) Preventing abuse of alcohol and drugs;

(f) Preparing for and obtaining employment; and

(g) Budgeting, consumerism and personal finances.

Sec. 5. This act becomes effective on July 1, 2009.

Senator Care moved the adoption of the amendment.

Remarks by Senators Care, Horsford, Parks and Carlton.

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

SENATOR CARE:

Thank you, Mr. President. The original bill called for an administrative assessment of $275 charged to anyone who pleads or is found guilty of a misdemeanor or a felony.

The amendment changes that to a fee of $250 that will be included when a judge sentences a defendant found guilty of a Category C, D or E felony.

SENATOR HORSFORD:

Thank you, Mr. President. I have a question which probably goes to the bill, but regarding the establishment of the fund for reentry programs, who will administer that fund?

SENATOR PARKS:

Thank you, Mr. President. Any money received pursuant to this subsection must be deposited with the State Treasurer for credit to the fund for reentry programs created by section 2.

This program is run by the courts.

SENATOR CARLTON:

Thank you, Mr. President. My question goes to the $250. I am assuming that a number of these folks will end up on probation and will not get off probation until they pay all the fines, restitution, fees and assessments. Will that be true of this $250? Will it have to be paid before they can be released from probation?

SENATOR PARKS:

Thank you, Mr. President. Yes, that would be the case. This is an assessment that is included in the fines that are already imposed.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 248.

Bill read second time.

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

Amendment No. 232.

"SUMMARY—~~[Extends]~~ *Authorizes the extension of* the validity of certain building permits and development agreements beyond the original expiration date under certain circumstances. (BDR 22-981)"

"AN ACT relating to local governmental planning; ~~[extending]~~ *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; 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 ~~[extends]~~ *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.

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 ~~[shall]~~ may extend the period for which the permit is valid if the person to whom the permit has been issued:*

*(a) Applies for an extension, subject to any applicable ordinances or regulations adopted by the governing body or building official; and*

*(b) Demonstrates to the satisfaction of the building official 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.*

*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 pursuant to subsection 3.*

*3. If a building official extends the period for which a building permit is valid pursuant to subsection 1, the building official 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 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 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 ~~[shall]~~ 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, 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.*

*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.

~~[3.]~~ *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.

~~[4.]~~ *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.

Senator Lee moved the adoption of the amendment.

Remarks by Senator Lee.

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

Thank you, Mr. President. This makes the extension of the building permits and development agreements permissive by changing "shall" to "may" in sections 4 and 6.

It provides that changes to ordinances and laws regarding life and safety standards are applicable to extended permits. It clarifies that "environmental, life and safety standards" include standards and codes relating to water and specialized or uniform codes relating to environmental, life and safety standards.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 253.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 310.

"SUMMARY—Makes various changes to provisions relating to common-interest communities. (BDR 10-18)"

"AN ACT relating to common-interest communities; requiring a member of an executive board of a unit-owners' association who stands to profit personally from a matter before the board to disclose and abstain from voting on the matter; requiring that bids for an association project be considered and opened at a meeting of the executive board; revising provisions relating to the renting or leasing of units; making provisions authorizing the transient commercial use of units in a planned community in certain circumstances applicable in all counties; revising the provisions relating to the resale package furnished to the purchaser of a unit; increasing the amount of the administrative fine for engaging in certain activity without holding the required certificate or permit; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 2 of this bill provides additional ethical requirements for members of an executive board of a unit-owners' association by requiring 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)

With some exceptions, existing law requires an executive board to hold open meetings, including meetings to consider a contract. (NRS 116.31085) Sections 3 and 5 of this bill require an association that solicits bids for association projects, including, without limitation, projects that involve maintenance, repair, replacement or restoration of any part of the common elements ~~[,]~~ *or which involve services provided to the association,* to

consider and open the bids during a meeting of the executive board of the association.

Existing law provides for remedial and disciplinary action for any violation of the provisions of chapter 116 of NRS governing common-interest communities which will apply to a violation of section 2 or 3 of this bill. (NRS 116.745-116.795)

Existing law provides that except as otherwise provided in the declaration, an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. (NRS 116.335) Section 6 of this bill provides that unless, at the time a unit's owner purchased his unit, the declaration prohibited the unit's owner from renting or leasing his unit or required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit, the association may not: (1) prohibit the unit's owner from renting or leasing his unit; or (2) require the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. Section 6 also provides that if, before October 1, 2009, a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended on or after October 1, 2009, to decrease that maximum number or percentage of units which may be rented or leased.

Section 7 of this bill makes the provisions allowing the transient commercial use of units within a planned community that is restricted to residential use in certain circumstances applicable in all counties rather than just in larger counties. (NRS 116.340)

Existing law requires a unit's owner or his authorized agent to furnish to a purchaser a resale package which includes certain documents relating to the association. (NRS 116.4109) Section 8 of this bill: (1) requires the unit's owner to furnish the resale package at his own expense; and (2) requires the disclosure of any transfer fees, transaction fees or other fees associated with the resale of the unit.

Section 9 of this bill increases the amount of the administrative fine that may be imposed against a person who engages in certain activity without holding the required certificate or permit from $5,000 to $10,000. (NRS 116A.900)

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

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. A member of an executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall:*

*~~1.~~ (a) Disclose the matter to the executive board; and*

*~~2.~~ (b) Abstain from voting on any such matter.*

*2. For the purposes of this section, an employee of a declarant or an affiliate of a declarant who is a member of the executive board shall not, solely by reason of such employment or affiliation, be deemed to gain any personal profit or compensation.*

Sec. 3. *1. If an association solicits bids for an association project, the bids must be opened during a meeting of the executive board.*

*2. As used in this section, "association project" includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements ~~[.]~~ or which involves the provision of services to the association.*

Sec. 4. NRS 116.1203 is hereby amended to read as follows:

116.1203 1. Except as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.

2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138, the provisions of NRS 116.3101 to 116.350, inclusive, *and sections 2 and 3 of this act,* and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than six units.

Sec. 5. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to *open or consider bids for an association project as defined in section 3 of this act, or to* enter into, renew, modify, terminate or take any other action regarding a contract, unless it is a contract between the association and an attorney.

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; and

(b) Is not entitled to attend the deliberations of the executive board.

5. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

6. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 6. NRS 116.335 is hereby amended to read as follows:

116.335 1. ~~[Except as otherwise provided in]~~ *Unless, at the time a unit's owner purchased his unit,* the declaration ~~[,]~~ *prohibited the unit's owner from renting or leasing his unit, the association may not prohibit the unit's owner from renting or leasing his unit.*

*2. Unless, at the time a unit's owner purchased his unit, the declaration required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit,* an association may not require ~~[a]~~ *the* unit's owner to secure or obtain any approval from the association in order to rent or lease his unit.

~~[2.]~~ *3. If, before October 1, 2009, the declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended on or after October 1, 2009, to decrease that maximum number or percentage of units in the common-interest community which may be rented or leased.*

*4.* The provisions of this section do not prohibit an association from enforcing any provisions which govern the renting or leasing of units and which are contained in this chapter or in any other applicable federal, state or local laws or regulations.

Sec. 7. NRS 116.340 is hereby amended to read as follows:

116.340 1. Except as otherwise provided in subsection 2, ~~[in a county whose population is 400,000 or more,]~~ a person who owns, or directly or indirectly has an interest in, one or more units within a planned community

that are restricted to residential use by the declaration ~~[,]~~ may use that unit or one of those units for a transient commercial use only if:

(a) The governing documents of the association and any master association do not prohibit such use;

(b) The executive board of the association and any master association approve the transient commercial use of the unit, except that such approval is not required if the planned community and one or more hotels are subject to the governing documents of a master association and those governing documents do not prohibit such use; and

(c) The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

2. ~~[In a county whose population is 400,000 or more, a]~~ *A* declarant who owns, or directly or indirectly has an interest in, one or more units within a planned community under the governing documents of the association that are restricted to residential use by the declaration ~~[,]~~ may use that unit or those units for a transient commercial use during the period that the declarant is offering units for sale within the planned community if such use complies with the requirements set forth in paragraphs (a) and (c) of subsection 1.

3. The association and any master association may establish requirements for the transient commercial use of a unit pursuant to the provisions of this section, including, without limitation, the payment of additional fees that are related to any increase in services or other costs associated with the transient commercial use of the unit.

4. As used in this section:

(a) "Remuneration" means any compensation, money, rent or other valuable consideration given in return for the occupancy, possession or use of a unit.

(b) "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

Sec. 8. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall *, at the expense of the unit's owner,* furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats and plans, the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152; ~~[and]~~

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge ~~[.]~~ *; and*

*(e) A statement of any transfer fees, transaction fees or any other fees associated with the resale of a unit.*

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) , ~~[and]~~ (d) *and (e)* of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission

shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 9. NRS 116A.900 is hereby amended to read as follows:

116A.900 1. In addition to any other remedy or penalty, the Commission may impose an administrative fine against any person who knowingly:

(a) Engages or offers to engage in any activity for which a certificate or permit is required pursuant to this chapter or chapter 116 or 116B of NRS, or any regulation adopted pursuant thereto, if the person does not hold the required certificate or permit or has not been given the required authorization; or

(b) Assists or offers to assist another person to commit a violation described in paragraph (a).

2. If the Commission imposes an administrative fine against a person pursuant to this section, the amount of the administrative fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or ~~[$5,000,]~~ *$10,000,* whichever amount is greater.

3. In determining the appropriate amount of the administrative fine, the Commission shall consider:

(a) The severity of the violation and the degree of any harm that the violation caused to other persons;

(b) The nature and amount of any gain or economic benefit that the person derived from the violation;

(c) The person's history or record of other violations; and

(d) Any other facts or circumstances that the Commission deems to be relevant.

4. Before the Commission may impose the administrative fine, the Commission must provide the person with notice and an opportunity to be heard.

5. The person is entitled to judicial review of the decision of the Commission in the manner provided by chapter 233B of NRS.

6. The provisions of this section do not apply to a person who engages or offers to engage in activities within the purview of this chapter or chapter 116 or 116B of NRS if:

(a) A specific statute exempts the person from complying with the provisions of this chapter or chapter 116 or 116B of NRS with regard to those activities; and

(b) The person is acting in accordance with the exemption while engaging or offering to engage in those activities.

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

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

Amendment No. 310 to Senate Bill No. 253 clarifies that an employee or affiliate of a declarant who is a member of the executive board will not be deemed to gain by personal profit simply because of that employment or affiliation and adds "services provided to the association" to the types of bids that must be opened and considered during an executive board meeting.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 254.

Bill read second time and ordered to third reading.

Senate Bill No. 262.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 241.

"SUMMARY—Prescribes penalties for the cultivation of marijuana in greater amounts than is allowable for medical use. (BDR 40-1107)"

"AN ACT relating to controlled substances; prohibiting certain acts relating to marijuana; providing penalties; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 1 of this bill prohibits a person from knowingly and intentionally manufacturing, growing, planting, cultivating, harvesting, drying, propagating or processing marijuana, except as specifically authorized for the medical use of marijuana. The severity of the punishment for a violation of section 1 depends upon the number of marijuana plants involved in the violation. A person convicted of a violation of section 1 is also required to pay all costs associated with necessary cleanup and disposal. ~~[Additionally, a violation of section 1 that involves possession of 8 or more marijuana plants~~

~~constitutes prima facie evidence of possession of marijuana for the purpose of sale.]~~

Sections 2 and 3 of this bill include internal references to section 1 *of this bill* to indicate that ~~[: (1)]~~ section 1 will be codified in chapter 453 of NRS in proximity to similar offenses involving controlled substances ~~[; and (2)]~~ *, but* section 1 will ~~[therefore]~~ *not* be treated in the same manner as those similar offenses for other purposes in NRS, such as being included in the list of crimes related to racketeering and being included in the definition of "immorality" for the purposes of certain provisions related to educational personnel. (NRS 207.360, 391.311)

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

Section 1. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person shall not knowingly and intentionally manufacture, grow, plant, cultivate, harvest, dry, propagate or process marijuana, except as specifically authorized by the provisions of this chapter and chapter 453A of NRS.*

*2. Unless a greater penalty is provided in NRS 453.339, a person who violates subsection 1 shall be punished, if the quantity involved:*

*(a) Is 1 to 25 marijuana plants, for a ~~[category E felony as provided in NRS 193.130.]~~ gross misdemeanor.*

*(b) Is 26 to ~~[99]~~ 75 marijuana plants, for a category ~~[D]~~ E felony as provided in NRS 193.130.*

*(c) Is ~~[100 to 499]~~ 76 to 100 marijuana plants, for a category ~~[C]~~ D felony as provided in NRS 193.130.*

*(d) Is ~~[500]~~ more than 100 marijuana plants , ~~[or more,]~~ for a category ~~[B felony by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $100,000.]~~ C felony as provided in NRS 193.130.*

*3. In addition to the punishment imposed pursuant to subsection 2, the court shall order a person convicted of a violation of subsection 1 to pay all costs associated with any necessary cleanup and disposal related to the manufacturing, growing, planting, cultivation, harvesting, drying, propagation or processing of the marijuana.*

*~~[~~ ~~4. A violation of subsection 1 that involves possession by a person of 8 or more marijuana plants constitutes prima facie evidence of possession of marijuana for the purpose of sale in violation of NRS 453.337.]~~*

Sec. 2. NRS 207.360 is hereby amended to read as follows:

207.360 "Crime related to racketeering" means the commission of, attempt to commit or conspiracy to commit any of the following crimes:

1. Murder;

2. Manslaughter, except vehicular manslaughter as described in NRS 484.3775;

3. Mayhem;
4. Battery which is punished as a felony;
5. Kidnapping;
6. Sexual assault;
7. Arson;
8. Robbery;
9. Taking property from another under circumstances not amounting to robbery;
10. Extortion;
11. Statutory sexual seduction;
12. Extortionate collection of debt in violation of NRS 205.322;
13. Forgery;
14. Any violation of NRS 199.280 which is punished as a felony;
15. Burglary;
16. Grand larceny;
17. Bribery or asking for or receiving a bribe in violation of chapter 197 or 199 of NRS which is punished as a felony;
18. Battery with intent to commit a crime in violation of NRS 200.400;
19. Assault with a deadly weapon;
20. Any violation of NRS 453.232, 453.316 to 453.3395, inclusive, ~~[and]~~ *except a violation of section 1 of this act,* or 453.375 to 453.401, inclusive;
21. Receiving or transferring a stolen vehicle;
22. Any violation of NRS 202.260, 202.275 or 202.350 which is punished as a felony;
23. Any violation of subsection 2 or 3 of NRS 463.360 or chapter 465 of NRS;
24. Receiving, possessing or withholding stolen goods valued at $250 or more;
25. Embezzlement of money or property valued at $250 or more;
26. Obtaining possession of money or property valued at $250 or more, or obtaining a signature by means of false pretenses;
27. Perjury or subornation of perjury;
28. Offering false evidence;
29. Any violation of NRS 201.300 or 201.360;
30. Any violation of NRS 90.570, 91.230 or 686A.290, or insurance fraud pursuant to NRS 686A.291;
31. Any violation of NRS 205.506, 205.920 or 205.930; or
32. Any violation of NRS 202.445 or 202.446.

Sec. 3. NRS 391.311 is hereby amended to read as follows:

391.311 As used in NRS 391.311 to 391.3197, inclusive, unless the context otherwise requires:

1. "Administrator" means any employee who holds a license as an administrator and who is employed in that capacity by a school district.

2. "Board" means the board of trustees of the school district in which a licensed employee affected by NRS 391.311 to 391.3197, inclusive, is employed.

3. "Demotion" means demotion of an administrator to a position of lesser rank, responsibility or pay and does not include transfer or reassignment for purposes of an administrative reorganization.

4. "Immorality" means:

(a) An act forbidden by NRS 200.366, 200.368, 200.400, 200.508, 201.180, 201.190, 201.210, 201.220, 201.230, 201.265, 201.540, 201.560, 207.260, 453.316 to 453.336, inclusive, ~~*[and]*~~ *except an act forbidden by section 1 of this act*, 453.337, 453.338, 453.3385 to 453.3405, inclusive, 453.560 or 453.562; or

(b) An act forbidden by NRS 201.540 or any other sexual conduct or attempted sexual conduct with a pupil enrolled in an elementary or secondary school. As used in this paragraph, "sexual conduct" has the meaning ascribed to it in NRS 201.520.

5. "Postprobationary employee" means an administrator or a teacher who has completed the probationary period as provided in NRS 391.3197 and has been given notice of reemployment.

6. "Probationary employee" means an administrator or a teacher who is employed for the period set forth in NRS 391.3197.

7. "Superintendent" means the superintendent of a school district or a person designated by the board or superintendent to act as superintendent during the absence of the superintendent.

8. "Teacher" means a licensed employee the majority of whose working time is devoted to the rendering of direct educational service to pupils of a school district.

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

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

Thank you, Mr. President. The amendment lowers the penalties and modifies the numbers of marijuana plants being grown, so that the first offense up to 25 plants is a gross misdemeanor and the highest offense for more than 100 plants is a Category C felony. It also removes the provision that possession of 8 or more plants constitutes prima facie evidence of possession with the intent to sell.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 292.

Bill read second time and ordered to third reading.

Senate Bill No. 312.

Bill read second time and ordered to third reading.

Senate Bill No. 327.

Bill read second time.

The following amendment was proposed by the Committee on Energy, Infrastructure and Transportation:

Amendment No. 237.

"SUMMARY—Provides incentives for certain electrification projects. (BDR S-377)"

"AN ACT relating to energy; authorizing the Public Utilities Commission of Nevada to provide certain incentives for investments in advanced travel center electrification systems and systems for recharging plug-in electric or plug-in hybrid electric vehicles; *establishing the Electric Vehicle Demonstration Program; requiring the Commission to adopt regulations to carry out the Demonstration Program; requiring electric utilities in this State to administer the Demonstration Program in their service areas;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

~~[This]~~ *Section 1 of this* bill authorizes the Public Utilities Commission of Nevada to adopt regulations providing certain incentives and portfolio energy credits to an electric utility that operates or invests in an advanced travel center electrification system or a system for recharging plug-in electric or plug-in hybrid electric vehicles. An electric utility is authorized to enter into a joint venture with one or more persons or governmental entities to develop or invest in such an electrification project. To be eligible for any incentives or portfolio energy credits authorized by this bill, an electrification project must be located within the service area of the electric utility.

*Sections 2-21 of this bill establish the Electric Vehicle Demonstration Program. Section 16 creates the Demonstration Program. Section 17 requires the Commission to adopt regulations to carry out the Demonstration Program, including regulations concerning the qualifications of and the incentives available to participants in the Demonstration Program. Section 18 requires each electric utility in this State to carry out the Demonstration Program in the utility's service area and authorizes the utility to recover its reasonable and prudent costs for carrying out and administering the Demonstration Program. Section 20 authorizes the Task Force for Renewable Energy and Energy Conservation to select qualified applicants to participate in the Demonstration Program. Section 21 authorizes the Task Force to withdraw a participant from the Demonstration Program if the participant does not comply with the requirements of the Demonstration Program. Section 22 of this bill provides that the Demonstration Program will expire in 2013.*

WHEREAS, Energy and clean air are essential to the health, welfare and security of Nevada residents and businesses; and

WHEREAS, New electrical vehicle propulsion technologies are emerging and their adoption should be encouraged; and

WHEREAS, Nevada public utilities should be encouraged to prepare for large-scale use of electric powered motor vehicles; and

WHEREAS, The efficiency and cost effectiveness of electric generation facilities can be enhanced by spreading the fixed cost of operation over a greater number of hours per day and by introducing a new customer base, namely vehicles; and

WHEREAS, Nevada has been a leader in energy efficiency and should continue to adopt public policies that foster energy innovation; and

WHEREAS, Transportation fuel costs have risen dramatically, and such costs impact the price of goods and services in Nevada as well as the strength of Nevada's tourism industry; and

WHEREAS, Fossil fuel use in vehicles has a detrimental impact on air quality and the health of Nevada's residents and the reduction in use of such fuels will benefit Nevada's environment; now, therefore,

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

Section 1. 1. The Public Utilities Commission of Nevada may adopt regulations which:

(a) Establish a program for the approval of an increased rate of return on equity for investments made by an electric utility in:

(1) An advanced travel center electrification system; or

(2) A system for recharging plug-in electric or plug-in hybrid electric vehicles.

(b) For the purpose of complying with a portfolio standard established pursuant to NRS 704.7821:

(1) Provide more than one portfolio energy credit for each kilowatt-hour of electricity generated by a wind energy system on the premises of an electrification project if, on an annual basis, 50 percent or more of the energy generated by the wind energy system is used by the electrification project; and

(2) Provide more than the number of kilowatt-hours deemed to have been generated from a solar photovoltaic energy system pursuant to NRS 704.7822 on the premises of an electrification project if, on an annual basis, 50 percent or more of the energy generated by the solar photovoltaic system is used by the electrification project.

2. In applying for any program or portfolio energy credit authorized pursuant to subsection 1, an electric utility may:

(a) Enter into a joint venture with one or more persons or governmental entities; and

(b) Invest in an electrification project owned by a person other than an electric utility.

3. To be eligible for any program or portfolio energy credit authorized pursuant to subsection 1, an electrification project must be located within the service area of the electric utility.

4. As used in this section:

(a) "Advanced travel center electrification system" means a system designed to allow a commercial truck to shut down its engine and still obtain power for heating, cooling, lighting and communication.

(b) "Electric utility" has the meaning ascribed to it in NRS 704B.050.

(c) "Electrification project" means:

(1) An advanced travel center electrification system; or

(2) A system for recharging plug-in electric or plug-in hybrid electric vehicles.

*Sec. 2. Sections 2 to 21, inclusive, of this act may be cited as the Electric Vehicle Demonstration Program.*

*Sec. 3. As used in sections 2 to 21, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 15, inclusive, of this act have the meaning ascribed to them in those sections.*

*Sec. 4. "Applicant" means a person who is applying to participate in the Demonstration Program.*

*Sec. 5. "Category" means one of the categories of participation in the Demonstration Program as set forth in section 16 of this act.*

*Sec. 6. "Commission" means the Public Utilities Commission of Nevada.*

*Sec. 7. "Demonstration Program" means the Electric Vehicle Demonstration Program created by section 16 of this act.*

*Sec. 8. "Electric personal assistive mobility device" means a self-balancing, nontandem two-wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.*

*Sec. 9. "Electric vehicle" means any vehicle that is powered in whole or in part by electrical power.*

*Sec. 10. "Participant" means a person who has been selected by the Task Force pursuant to section 20 of this act to participate in the Demonstration Program.*

*Sec. 11. "Person" includes, without limitation, a governmental entity.*

*Sec. 12. "Program year" means the period of July 1 to June 30 of the following year.*

*Sec. 13. "Task Force" means the Task Force for Renewable Energy and Energy Conservation created by NRS 701.350.*

*Sec. 14. "Utility" means a public utility that supplies electricity in this State.*

*Sec. 15. "Vehicle" means every device in, upon or by which any person or property is or may be transported. The term does not include:*

*1. Devices moved by human power or used exclusively upon stationary rails or tracks;*

*2. Mobile homes or commercial coaches as defined in chapter 489 of NRS; or*

*3. Electric personal assistive mobility devices.*

*Sec. 16. 1. The Electric Vehicle Demonstration Program is hereby created.*

*2. The Demonstration Program must have four categories as follows:*

*(a) Schools;*

*(b) Other public entities;*

*(c) Private persons; and*

*(d) Businesses.*

*3. To be eligible to participate in the Demonstration Program, a person must:*

*(a) Meet the qualifications established by the Commission pursuant to section 17 of this act;*

*(b) Submit an application to a utility and be selected by the Task Force for inclusion in the Demonstration Program pursuant to sections 19 and 20 of this act; and*

*(c) If the person will be participating in the Demonstration Program in the category of schools or other public entities, provide for the public display of the electric vehicle and any electric vehicle charging station installed or operated by the participant, including, without limitation, providing for public demonstrations of the electric vehicle and the electric vehicle charging station.*

*Sec. 17. The Commission shall adopt regulations necessary to carry out the provisions of the Demonstration Program, including, without limitation, regulations that establish:*

*1. The qualifications and requirements an applicant must meet to be eligible to participate in the Demonstration Program in each category.*

*2. The type of incentives available to participants in the Demonstration Program and the level or amount of those incentives.*

*3. The requirements for a utility's annual plan for carrying out and administering the Demonstration Program. A utility's annual plan must include, without limitation:*

*(a) A detailed plan for advertising the Demonstration Program;*

*(b) A detailed budget and schedule for carrying out and administering the Demonstration Program;*

*(c) A detailed account of administrative processes and forms that will be used to carry out and administer the Demonstration Program, including, without limitation, a description of the application process and copies of all applications and any other forms that are necessary to apply for and participate in the Demonstration Program;*

*(d) A detailed account of the procedures that will be used for inspection and verification of a participant's electric vehicle and any system for recharging plug-in electric vehicles installed or operated by the participant;*

*(e) A detailed account of training and educational activities that will be used to carry out and administer the Demonstration Program; and*

*(f) Any other information required by the Commission.*

*Sec. 18. 1. Each utility shall carry out and administer the Demonstration Program within its service area in accordance with its*

*annual plan as approved by the Commission pursuant to section 19 of this act.*

*2. A utility may recover its reasonable and prudent costs, including, without limitation, customer incentives, that are associated with carrying out and administering the Demonstration Program within its service area by seeking recovery of those costs in an appropriate proceeding before the Commission pursuant to NRS 704.110.*

*Sec. 19. 1. On or before February 1, 2010, and on or before February 1 of each year thereafter, each utility shall file with the Commission its annual plan for carrying out and administering the Demonstration Program within its service area for the following program year.*

*2. On or before July 1, 2010, and on or before July 1 of each year thereafter, the Commission shall:*

*(a) Review the annual plan filed by each utility for compliance with the requirements established by regulation pursuant to section 17 of this act; and*

*(b) Approve the annual plan with such modifications and upon such terms and conditions as the Commission finds necessary or appropriate to facilitate the Demonstration Program.*

*3. On or before November 1, 2010, and on or before November 1 of each year thereafter, each utility shall submit to the Task Force the utility's recommendations as to which applications received by the utility should be approved for participation in the Demonstration Program. The Task Force shall review the applications to ensure that each applicant meets the qualifications and requirements to be eligible to participate in the Demonstration Program.*

*4. Except as otherwise provided in section 20 of this act, the Task Force may approve, from among the applications recommended by each utility, electric vehicles totaling:*

*(a) For the program year beginning July 1, 2010:*

*(1) One hundred electric vehicles for schools;*

*(2) One hundred electric vehicles for other public entities;*

*(3) One hundred electric vehicles for private persons; and*

*(4) One hundred electric vehicles for businesses.*

*(b) For the program year beginning July 1, 2011:*

*(1) An additional 125 electric vehicles for schools;*

*(2) An additional 125 electric vehicles for other public entities;*

*(3) An additional 125 electric vehicles for private persons; and*

*(4) An additional 125 electric vehicles for businesses.*

*(c) For the program year beginning July 1, 2012:*

*(1) An additional 150 electric vehicles for schools;*

*(2) An additional 150 electric vehicles for other public entities;*

*(3) An additional 150 electric vehicles for private persons; and*

*(4) An additional 150 electric vehicles for businesses.*

*Sec. 20.* *1. Based on the applications submitted by each utility for a program year, the Task Force shall:*

*(a) Within the limits allocated to each category, select applicants to be participants in the Demonstration Program and place those applicants on a list of participants; and*

*(b) Select applicants to be placed on a prioritized waiting list to become participants in the Demonstration Program if any allocation within a category becomes available.*

*2. Not later than 30 days after the date on which the Task Force selects an applicant to be on the list of participants or the prioritized waiting list, the utility which submitted the application to the Task Force on behalf of the applicant shall provide written notice of the selection to the applicant.*

*3. If the electric vehicles allocated to any category for a program year are not fully subscribed by participants in that category, the Task Force may, in any combination it deems appropriate:*

*(a) Allow a utility to submit additional applications from applicants who wish to participate in that category;*

*(b) Reallocate any of the unallocated electric vehicles in that category to any of the other categories; or*

*(c) Reallocate any of the unallocated electric vehicles for a program year to the next program year.*

*Sec. 21.* *1. Except as otherwise provided in this section, if the Task Force determines that a participant has not complied with the requirements for participation in the Demonstration Program, the Task Force shall, after notice and an opportunity for a hearing, withdraw the participant from the Demonstration Program.*

*2. The Task Force may, without notice or an opportunity for a hearing, withdraw a participant from the Demonstration Program if the participant does not purchase an electric vehicle within 90 days after the date the participant receives written notice of his selection to participate in the Demonstration Program.*

*3. A participant who is withdrawn from the Demonstration Program pursuant to subsection 2 forfeits any incentives.*

~~[Sec. 2.]~~ *Sec. 22.* *1.* This *section and section 1 of this* act ~~[becomes]~~ *become* effective upon passage and approval.

*2. Sections 2 to 21, inclusive, of this act become effective on July 1, 2009, and expire by limitation on September 30, 2013.*

Senator Schneider moved the adoption of the amendment.

Remarks by Senator Schneider.

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

Thank you, Mr. President. Amendment No. 237 to Senate Bill 327 establishes the Electric Vehicle Demonstration Program to incentivize buyers to purchase hybrid electric and plug-in electric motor vehicles. The program provides rebates to purchasers under conditions set by the Public Utilities Commission.

The demonstration program is modeled on similar programs the Legislature has established to foster deployment of renewable energy sources such as solar, wind and water power.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 337.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 324.

"SUMMARY—Revises the statutes of repose relating to certain actions concerning construction defects. (BDR 2-1149)"

"AN ACT relating to civil actions; revising the statutes of repose relating to certain actions concerning construction defects; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law generally authorizes an action for damages for injury to property or a person or for wrongful death caused by a defect in construction of improvements to real property to be commenced at any time after substantial completion of the improvement if the defect is a result of willful misconduct or was fraudulently concealed. ~~[Section 1 of this bill prohibits such an action from being commenced more than 6 years after the substantial completion of such an improvement rather than authorizing the commencement of such an action at any time after substantial completion of the improvement.]~~ (NRS 11.202)

Section 2 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a known defect in construction of improvements to real property from being commenced more than 3 years after substantial completion of the improvement rather than more than 10 years after substantial completion of the improvement. (NRS 11.203)

Section 3 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a latent defect, a defect that is not apparent by reasonable inspection, in construction of improvements to real property from being commenced more than 4 years after substantial completion of the improvement rather than more than 8 years after substantial completion of the improvement. (NRS 11.204)

Section 4 of this bill generally prohibits an action for damages for such injury or wrongful death caused by a patent defect, a defect that is apparent by reasonable inspection, in construction of improvements to real property from being commenced more than 3 years after substantial completion of the improvement rather than more than 6 years after substantial completion of the improvement. (NRS 11.205)

Sections 2-4 of this bill also eliminate the provisions that authorize an action for damages for such injury or wrongful death caused by a defect in construction of improvements to real property to be commenced within 2 years after the date of such an injury which occurs: (1) in the 10th year after the substantial completion of such an improvement for a known defect; (2) in the eighth year after the substantial completion of such an

improvement for a latent defect; and (3) in the sixth year after the substantial completion of such an improvement for a patent defect. (NRS 11.203, 11.204, 11.205)

Section 5 of this bill provides that the decreased periods for bringing an action as set forth in sections ~~[1-4]~~ *2-4* of this bill may apply retroactively under certain circumstances. Section 5 also provides a 1-year grace period for persons to commence an action pursuant to NRS ~~[11. 202 to]~~ *11.203, 11.204 or* 11.205 ~~[, inclusive,]~~ if the ~~[actions]~~ *action* accrued before October 1, 2009.

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

Section 1. ~~[NRS 11.202 is hereby amended to read as follows:~~

~~11.202 1. [An] *No* action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property [at any time] *more than 6 years* after the substantial completion of such an improvement, for the recovery of damages for:~~

~~(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement which is the result of his willful misconduct or which he fraudulently concealed;~~

~~(b) Injury to real or personal property caused by any such deficiency; or~~

~~(c) Injury to or the wrongful death of a person caused by any such deficiency.~~

~~2. The provisions of this section do not apply in an action brought against:~~

~~(a) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his liability as an innkeeper.~~

~~(b) Any person on account of a defect in a product.]~~ *(Deleted by amendment.)*

Sec. 2. NRS 11.203 is hereby amended to read as follows:

11.203 1. Except as otherwise provided in NRS 11.202 , *11.204* and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~[10]~~ *3* years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement which is known or through the use of reasonable diligence should have been known to him;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the 10th year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 12 years after the substantial completion of the improvement.~~

~~3.]~~ The provisions of this section do not apply to a claim for indemnity or contribution.

Sec. 3. NRS 11.204 is hereby amended to read as follows:

11.204 1. Except as otherwise provided in NRS 11.202 ~~[, 11.203]~~ and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction, of an improvement to real property more than ~~[8]~~ *4* years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any latent deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the eighth year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 10 years after the substantial completion of the improvement.~~

~~3.]~~ The provisions of this section do not apply to a claim for indemnity or contribution.

~~[4.]~~ *3.* For the purposes of this section, "latent deficiency" means a deficiency which is not apparent by reasonable inspection.

Sec. 4. NRS 11.205 is hereby amended to read as follows:

11.205 1. Except as otherwise provided in NRS 11.202 ~~[, 11.203]~~ and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~[6]~~ *3* years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any patent deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the sixth year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 8 years after the substantial completion of the improvement.~~

~~3.]~~ The provisions of this section do not apply to a claim for indemnity or contribution.

~~[4.]~~ *3.* For the purposes of this section, "patent deficiency" means a deficiency which is apparent by reasonable inspection.

Sec. 5. 1. Except as otherwise provided in subsection 2, the period of limitations on actions set forth in NRS ~~[11.202 to]~~ *11.203, 11.204 and* 11.205, ~~[inclusive,]~~ as amended by sections ~~[1 to 4, inclusive,]~~ *2, 3 and 4* of this act, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2009.

2. The provisions of subsection 1 do not limit an action:

(a) That accrued before October 1, 2009, and was commenced before October 1, 2010; or

(b) If doing so would constitute an impairment of the obligation of contracts under the Constitution of the United States or the Constitution of the State of Nevada.

Senator Care moved the adoption of the amendment.

Conflict of interest declared by Senator Hardy.

Remarks by Senators Care, and Carlton.

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

SENATOR CARE:

Amendment No. 324 to Senate Bill No. 337 deletes any changes to the statute of repose for damages caused by willful misconduct or defects that were fraudulently concealed.

SENATOR CARLTON:

I would like to have an additional explanation of what this bill would do to homeowners who are within the construction-defect litigation world.

SENATOR CARE:

It would not do anything to a homeowner already involved in litigation. It would have an impact on parties who potentially, in the future, could be litigants in construction-defect litigation. Senate Bill No. 337 deals with statutes of repose. As with a statute of limitation, you may only sue within a certain period of time. In the current law, there are periods for latent defect, patent defect, whether you knew about it and had not discovered it through the use of due diligence you should have discovered it. Amendment No. 324 simply deleted section 1 from Senate Bill No. 337. The deleted section would have reduced an open-ended period to 6-years as the time within which you may commence a construction-defect lawsuit, where there has been willful misconduct by the builder, contractor or subcontractor, or an attempt to fraudulently

conceal the defect. This amendment allows a homeowner to sue without time limitations for willful misconduct in a construction-defect lawsuit.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 339.

Bill read second time.

The following amendment was proposed by the Committee on Energy, Infrastructure and Transportation:

Amendment No. 266.

"SUMMARY—Requires the Colorado River Commission of Nevada to ~~[conduct a study of]~~ *review and analyze available information, studies and reports to assess* the feasibility of ~~[the generation of electricity from]~~ *constructing a* hydrokinetic ~~[electric power]~~ *generation project* below Hoover Dam. (BDR 58-1150)"

"AN ACT relating to energy; requiring the Colorado River Commission of Nevada to ~~[conduct a study of]~~ *review and analyze available information, studies and reports to assess* the feasibility of ~~[the generation of electricity from]~~ *constructing a* hydrokinetic ~~[electric power]~~ *generation project* below Hoover Dam; requiring the Commission *under certain circumstances* to ~~[apply for money from]~~ *present its analysis to appropriate agencies of* the Federal Government ~~[to conduct a demonstration program if the study indicates that such use of that]~~ *and request that those agencies determine whether to construct a* hydrokinetic ~~[electric power is feasible;]~~ *generation project below Hoover Dam;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law authorizes the Colorado River Commission of Nevada to sell electricity to certain customers without being subject to the jurisdiction of the Public Utilities Commission of Nevada. (NRS 704.787) ~~[This]~~ *Section 1 of this* bill requires the Colorado River Commission to ~~[conduct a study of]~~ *review and analyze available information, studies and reports to assess* the feasibility of ~~[the generation of electricity from]~~ *constructing a* hydrokinetic ~~[electric power]~~ *generation project* below Hoover Dam to meet the existing and future requirements of: (1) any customer that the Colorado River Commission was serving or had a contract to serve on July 16, 1997; and (2) the Southern Nevada Water Authority and its member agencies. ~~[This bill]~~ *Section 1* additionally requires the Colorado River Commission *, if it determines that such a project is feasible,* to ~~[apply for money from the]~~ *present its analysis to appropriate agencies of the* Federal Government ~~[to establish a demonstration program for the use of that]~~ *and request that those agencies determine whether to construct a* hydrokinetic ~~[electric power to generate electricity if the study indicates that such use of that hydrokinetic electric power is feasible.]~~ *generation project below Hoover Dam.*

*Section 2 of this bill requires the Colorado River Commission to report to the Legislative Committee on Public Lands concerning the feasibility of constructing a hydrokinetic generation project below Hoover Dam.*

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

Section 1. NRS 704.787 is hereby amended to read as follows:

704.787 1. The Colorado River Commission of Nevada may sell electricity and provide transmission service or distribution service, or both, only to meet the existing and future requirements of:

(a) Any customer that the Colorado River Commission of Nevada on July 16, 1997, was serving or had a contract to serve; and

(b) The Southern Nevada Water Authority and its member agencies for their water and wastewater operations,

➥ without being subject to the jurisdiction of the Public Utilities Commission of Nevada.

2. The Public Utilities Commission of Nevada shall establish a just and reasonable tariff for such electric distribution service to be provided by an electric utility that primarily serves densely populated counties to the Colorado River Commission of Nevada for its sale of electricity or electric distribution services, or both, to any customer that the Colorado River Commission of Nevada on July 16, 1997, was serving or had a contract to serve, and to the Southern Nevada Water Authority and its member agencies to meet the existing and future requirements for their water and wastewater operations.

3. An electric utility that primarily serves densely populated counties shall provide electric distribution service pursuant to the tariff required by subsection 2.

4. *The Colorado River Commission of Nevada shall:*

*(a)* ~~*[Conduct a study of]*~~ *Review and analyze available information, studies and reports to assess the feasibility of* ~~*[the generation of electricity from]*~~ *constructing a hydrokinetic* ~~*[electric power]*~~ *generation project below Hoover Dam to* ~~*[meet]*~~ *assist in meeting any existing or future requirements described in subsection 1; and*

*(b) If the* ~~*[study]*~~ *analysis indicates that* ~~*[such use of that]*~~ *construction of such a hydrokinetic* ~~*[electric power]*~~ *generation project is feasible,* ~~*[apply for money from]*~~ *present that analysis to appropriate agencies of the Federal Government* ~~*[to establish a demonstration program for the use of that]*~~ *and request that those agencies determine whether to construct a hydrokinetic* ~~*[electric power to generate electricity.]*~~ *generation project below Hoover Dam.*

*5.* As used in this section:

(a) "Electric utility that primarily serves densely populated counties" means an electric utility that, with regard to the provision of electric service, derives more of its annual gross operating revenue in this State from customers located in counties whose population is 400,000 or more than it

does from customers located in counties whose population is less than 400,000.

(b) *"Hydrokinetic ~~[electric power"]~~ generation project" means ~~[energy generated from free flowing]~~ a project that generates electricity from waves or directly from the flow of water in rivers, streams , ~~[and]~~ channels ~~[.]~~ and other inland waterways.*

*(c)* "Southern Nevada Water Authority" has the meaning ascribed to it in NRS 538.041.

*Sec. 2. The Colorado River Commission of Nevada shall, on or before July 1, 2010, submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Committee on Public Lands concerning the feasibility of constructing a hydrokinetic generation project below Hoover Dam.*

~~[Sec. 2.]~~ *Sec. 3.* This act becomes effective on July 1, 2009.

Senator Schneider moved the adoption of the amendment.

Remarks by Senator Schneider.

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

Amendment No. 266 to Senate Bill No. 339 requires the Colorado River Commission (CRC) to review and analyze available information, studies and reports to assess the feasibility of constructing a hydrokinetic generation project below Hoover Dam. This review and analysis of existing information is in lieu of conducting its own study, which would have a fiscal impact on the CRC customers. The same information can be gathered from existing sources. If such a project proves to be feasible after review, the CRC will present its findings to the relevant federal agencies and request those agencies to determine whether to develop a hydrokinetic facility.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 352.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 242.

"SUMMARY—Makes various changes to provisions governing mechanics' and materialmen's liens. (BDR 9-866)"

"AN ACT relating to liens; ~~[requiring a lien claimant to provide certain proof of a lien under certain circumstances; revising the provisions governing the priority of liens; revising provisions relating to the recovery of attorney's fees and court costs; revising provisions relating to the attachment of certain liens to property; reducing the amount of a security bond required to be posted under certain circumstances; revising the contents of a notice of right to lien; revising provisions governing the waiver and release of a claim of a lien;]~~ *revising provisions governing the commencement of certain work; revising provisions concerning claims of a lien; revising provisions relating to the attachment of certain liens to property; revising the requirements of a surety bond; revising certain notice provisions; revising provisions concerning the waiver of certain rights or obligations; revising provisions*

*governing the waiver and release of a claim of a lien; making various other changes pertaining to liens;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

~~[ Existing law provides the circumstances under which and manner in which a person may claim a lien for work, material or equipment used in or for the construction, alteration or repair of any improvement, property or work of improvement. (NRS 108.221-108.246)~~

~~Section 4 of this bill provides that a lien for equipment or material to be furnished must be proven by a writing signed by the owner or his representative requesting such equipment or material or by showing that the equipment or material had to be specially ordered and that such equipment or material was not delivered before the cessation of work through no fault of the lien claimant. (NRS 108.222)~~

~~Section 5 of this bill provides that a lien, mortgage or other encumbrance may have priority over a lien for the construction of a work improvement if the owner of the property or his lender provides or reserves money equal to the amount of the lien, mortgage or encumbrance to pay for the construction of a work of improvement. Additionally, if a lien, mortgage or other encumbrance which has attached to the property is foreclosed upon, the lien for the construction of the work of improvement remains attached to the property until the lien is satisfied. (NRS 108.225)~~

~~Section 6 of this bill prevents the recovery of attorney's fees and court costs for a subcontractor or supplier who fails to deliver the notice of lien to the prime contractor. (NRS 108.227)~~

~~Section 9 of this bill requires a court, instead of giving the court discretion, to award attorney's fees and court costs if the court finds that the notice of lien was pursued by the lien claimant without a reasonable basis in law or fact. (NRS 108.237)~~

~~Section 10 of this bill provides that if a lessee establishes a construction disbursement account or executes a surety bond, a lien arising out of a work of improvement attaches to the construction disbursement account or surety bond and not to the property of the lessor. (NRS 108.2403)~~

~~Sections 12 and 14 of this bill reduce the amount required for a surety bond. (NRS 108.2415, 108.2425)~~

~~Section 15 of this bill revises the contents of the notice of right to lien. (NRS 108.245)~~

~~Section 16 of this bill limits the amount a lien claimant waives or releases on his claim of a lien depending upon the form used for the written waiver and release. (NRS 108.2457)]~~

*Section 1 of this bill amends the existing definition of "agent of the owner." (NRS 108.22104)*

*Section 2 of this bill amends the existing definition of "commencement of construction" to provide that construction will also be considered to have*

*begun once a notice of commencement of construction is filed with the county recorder. (NRS 108.22112)*

*Sections 3-5 of this bill make certain technical revisions to existing definitions of certain terms. (NRS 108.22116, 108.22164, 108.22168)*

*Section 6 of this bill provides that a lien claimant may not include certain costs of work, materials or equipment for a claim of lien after termination of a contract but may include overhead and profit in the lien. (NRS 108.222)*

*Section 7 of this bill provides that a deed of trust which attached to the property before the work of improvement is preferred to a mechanic's or materialman's lien if the holder of the deed of trust deposits the funds necessary to pay for the work of improvement in an account administered by the construction control or if the owner sets aside funds necessary to pay for the work of improvement.*

*Section 8 of this bill provides a definition of the term "nonresidential construction project." (NRS 108.226)*

*Sections 9 and 10 of this bill make certain revisions to clarify certain provisions relating to a frivolous notice of lien and a work stoppage. (NRS 108.2275, 108.2403)*

*Sections 11 and 12 of this bill reduce the amount required for a surety bond. (NRS 108.2415, 108.2425)*

*Section 13 of this bill: (1) revises the contents of a notice of right to lien; (2) provides for the contents of a notice of prime contractor; (3) provides for circumstances under which a lien claimant does not have to provide a notice of right to lien; and (4) provides for certain limitations on recovery if the lien claimant fails to provide a notice of right to lien when it is required. (NRS 108.245)*

*Section 14 of this bill requires owners and prime contractors to provide certain information to a contractor or subcontractor if the work, materials or equipment is covered by an insurance policy and provides that a contractor or subcontractor can terminate a contract or refuse to enter a contract if such information is not provided. Section 14 also provides limitations on certain indemnity and hold-harmless provisions in contracts and provides for notification by a prime contractor or owner of deficient work of the contractor or subcontractor. (NRS 108.2453)*

*Section 15 of this bill revises the contents of certain waivers and releases for a lien claim and revises the provisions governing when certain waivers should be executed by a lien claimant. (NRS 108.2457)*

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

Delete existing sections 1 through 16 of this bill and replace with the following new sections 1 through 15:

*Section 1.* NRS 108.22104 is hereby amended to read as follows:

108.22104 "Agent of the owner" means every architect, builder, contractor, *construction manager,* engineer, geologist, land surveyor, lessee, miner, *property manager,* subcontractor or other person ~~[having]~~ :

*1. Having* charge or control of the property, improvement or work of improvement of the owner, or any part thereof ~~[.]~~ *; or*

*2. Who contracts for, causes or allows a work of improvement or any part thereof to be constructed, altered or repaired upon the property, improvement or work of improvement of the owner.*

*Sec. 2.* NRS 108.22112 is hereby amended to read as follows:

108.22112 "Commencement of construction" means the date on which:

1. Work performed ~~[, or~~

~~2. Materials]~~ *or materials* or equipment furnished in connection with a work of improvement ~~[,~~

~~➥]~~ is visible from a reasonable inspection of the ~~[site.]~~ *property; or*

*2. A notice of commencement of construction is recorded in the office of the county recorder of the county where the property is located,*

➥ *whichever occurs first.*

*Sec. 3.* NRS 108.22116 is hereby amended to read as follows:

108.22116 "Completion of the work of improvement" means:

1. The occupation or use by the owner, an agent of the owner or a representative of the owner of the work of improvement, accompanied by the cessation of all work on the work of improvement;

2. The acceptance by the owner, an agent of the owner or a representative of the owner of the work of improvement, accompanied by the cessation of all work on the work of improvement; or

3. The cessation of all work on a work of improvement for 30 consecutive days, provided a notice of completion is timely recorded and served *pursuant to NRS 108.228* and the work is not resumed under the same contract.

*Sec. 4.* NRS 108.22164 is hereby amended to read as follows:

108.22164 "Prime contractor" means:

1. A person who contracts with an owner or a lessee of property to provide work, materials or equipment to be used for the improvement of the property or in the construction, alteration or repair of a work of improvement; or

2. A person who is an owner of the property, is licensed as a general *engineering contractor or a general building* contractor pursuant to chapter 624 of NRS and provides work, materials or equipment to be used for the improvement of the property or in the construction, alteration or repair of a work of improvement.

*Sec. 5.* NRS 108.22168 is hereby amended to read as follows:

108.22168 "Principal," as pertaining to a surety bond, means ~~[the debtor of the lien claimant or a party in interest in the property subject to the lien]~~ *a person* whose name and signature appear as principal on a surety bond.

*Sec. 6.* NRS 108.222 is hereby amended to read as follows:

108.222 1. Except as otherwise provided in ~~[subsection 2,]~~ *this section,* a lien claimant has a lien upon the property, any improvements for which the work, materials and equipment were furnished or to be furnished, and any

construction disbursement account established pursuant to NRS 108.2403, for:

(a) If the parties agreed, by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished or to be furnished by or through the lien claimant, the unpaid balance of the price agreed upon for such work, material or equipment, as the case may be, whether performed, furnished or to be performed or furnished at the instance of the owner or his agent; and

(b) If the parties did not agree, by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished or to be furnished by or through the lien claimant, including, without limitation, any additional or changed work, material or equipment, an amount equal to the fair market value of such work, material or equipment, as the case may be, including a reasonable allowance for overhead and a profit, whether performed, furnished or to be performed or furnished at the instance of the owner or at the instance of his agent.

2. *If a lien claimant's contract is terminated, the lien may not include the costs of work, materials or equipment that the lien claimant has not furnished and will not furnish for the work of improvement unless the lien claimant has or will become indebted for the work, materials or equipment. This subsection does not preclude a lien claimant from including in the lien any overhead and profit that the lien claimant would otherwise be entitled to recover under the contract, at law or in equity.*

*3.* If a contractor or professional is required to be licensed pursuant to the provisions of NRS to perform his work, the contractor or professional will only have a lien pursuant to subsection 1 if he is licensed to perform the work.

*Sec. 7.* NRS 108.225 is hereby amended to read as follows:

108.225 1. ~~[The]~~ *Except as otherwise provided in this section, the* liens provided for in NRS 108.221 to 108.246, inclusive, are preferred to:

(a) Any lien, mortgage or other encumbrance which may have attached to the property after the commencement of construction of a work of improvement.

(b) Any lien, mortgage or other encumbrance of which the lien claimant had no notice and which was unrecorded against the property at the commencement of construction of a work of improvement.

2. ~~[Every]~~ *Except as otherwise provided in this section, every deed of trust,* mortgage or encumbrance imposed upon, or conveyance made of, property affected by the liens provided for in NRS 108.221 to 108.246, inclusive, after the commencement of construction of a work of improvement are subordinate and subject to the liens provided for in NRS 108.221 to 108.246, inclusive, regardless of the date of recording the notices of liens.

*3. Any deed of trust which may have attached to the property after the commencement of construction of a work of improvement is preferred to the*

*liens provided for in NRS 108.221 to 108.246, inclusive, if either of the following conditions set forth in paragraph (a) or (b) is satisfied:*

*(a) The holder of the deed of trust deposits all funds necessary to pay for the work of improvement, including funds for additional or changed work, materials or equipment, in an account which is dedicated to the work of improvement, administered by a construction control and used only to pay a lien claimant for work, materials and equipment furnished or to be furnished to construct the work of improvement. Upon written request of a lien claimant, within 5 days:*

*(1) The owner shall provide, in writing:*

*(I) The name, address and telephone number of the holder of the deed of trust;*

*(II) The name and address of the bank or financial institution in which the funds are deposited;*

*(III) The bank account number in which the funds are deposited;*

*(IV) The name and address of the construction control and the name of the person administering disbursements from the account for the construction control; and*

*(V) An acknowledgment, signed by the holder of the deed of trust and the construction control, that the funds deposited in the account cannot be used for any purpose other than to pay a lien claimant for work, materials and equipment furnished or to be furnished to construct the work of improvement; and*

*(2) The construction control shall provide an accounting of all amounts deposited with the construction control and all disbursements of amounts made by the construction control.*

*(b) The owner agrees, in a writing signed by the owner and the holder of the deed of trust, that money equal to the amount necessary to pay the cost of the work of improvement, including money for additional or changed work, materials or equipment, exists and has been dedicated to, set aside for and is immediately accessible for the sole benefit of the work of improvement to pay a lien claimant for work, materials and equipment furnished or to be furnished to construct the work of improvement. Upon written request of a lien claimant, within 5 days:*

*(1) The owner shall provide, in writing:*

*(I) The name, address and telephone number of the holder of the deed of trust;*

*(II) The name and address of the bank or financial institution in which the money is deposited;*

*(III) The bank account number in which the money is deposited; and*

*(IV) An acknowledgment, signed by the owner and the holder of the deed of trust that the money deposited in the account cannot be used for any purpose other than to pay a lien claimant for work, materials and equipment furnished or to be furnished to construct the work of improvement; and*

*(2) The holder of the deed of trust shall provide an accounting of all amounts deposited and all disbursements of amounts from the account.*

*4. If an owner defaults under the loan agreement that is secured by a deed of trust, within 30 days after the default, the holder of the deed of trust shall pay from the account established pursuant to paragraph (a) or (b) of subsection 3, as applicable, any amount owed to a lien claimant for work, materials and equipment furnished or to be furnished to construct the work of improvement.*

*5. If a deed of trust, mortgage or other encumbrance that attached to the property before or after the commencement of construction of the work of improvement is before a lien provided for in NRS 108.221 to 108.246, inclusive, and such deed of trust, mortgage or other encumbrance is foreclosed upon, the lien recorded pursuant to NRS 108.226:*

*(a) Remains attached to the property after the foreclosure until the lien is paid or satisfied; and*

*(b) May be perfected by the lien claimant and the lien claimant may foreclose his lien pursuant to the provisions of NRS 108.221 to 108.246, inclusive.*

*Sec. 8.* NRS 108.226 is hereby amended to read as follows:

108.226 1. To perfect his lien, a lien claimant must record his notice of lien in the office of the county recorder of the county where the property or some part thereof is located in the form provided in subsection 5:

(a) Within 90 days after the date on which the latest of the following occurs:

(1) The completion of the work of improvement;

(2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or

(3) The last performance of work by the lien claimant for the work of improvement; or

(b) Within 40 days after the recording of a valid notice of completion, if the notice of completion is recorded and served in the manner required pursuant to NRS 108.228.

2. The notice of lien must contain:

(a) A statement of the lienable amount after deducting all just credits and offsets.

(b) The name of the owner if known.

(c) The name of the person by whom he was employed or to whom he furnished the material or equipment.

(d) A brief statement of the terms of payment of his contract.

(e) A description of the property to be charged with the notice of lien sufficient for identification.

3. The notice of lien must be verified by the oath of the lien claimant or some other person. The notice of lien need not be acknowledged to be recorded.

4. It is unlawful for a person knowingly to make a false statement in or relating to the recording of a notice of lien pursuant to the provisions of this section. A person who violates this subsection is guilty of a gross misdemeanor and shall be punished by a fine of not less than $5,000 nor more than $10,000.

5. A notice of lien must be substantially in the following form:

Assessor's Parcel Numbers

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: $.....
2. The total amount of all additional or changed work, materials and equipment, if any, is: $.....
3. The total amount of all payments received to date is: $.....
4. The amount of the lien, after deducting all just credits and offsets, is: $...
5. The name of the owner, if known, of the property is: .....
6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials or equipment is: .....
7. A brief statement of the terms of payment of the lien claimant's contract is: .....

.....

8. A description of the property to be charged with the lien is: .....

.....

(Print Name of Lien Claimant)

By: .....

(Authorized Signature)

State of Nevada )
) ss.
County of .....)

..... (print name), being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.

.....

(Authorized Signature of Lien Claimant)

Subscribed and sworn to before me
this …... day of the month of ..... of the year .....

.....

Notary Public in and for
the County and State

6. Except as otherwise provided in subsection 7, if a work of improvement involves the construction, alteration or repair of multifamily or single-family residences, including, without limitation, apartment houses, a lien claimant, except laborers, must serve a 15-day notice of intent to lien incorporating substantially the same information required in a notice of lien upon both the owner and the reputed prime contractor before recording a notice of lien. Service of the notice of intent to lien must be by personal delivery or certified mail and will extend the time for recording the notice of lien described in subsection 1 by 15 days. A notice of lien for materials or equipment furnished or to be furnished for work or services performed or to be performed, except labor, for a work of improvement involving the construction, alteration or repair of multifamily or single-family residences may not be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the 15-day notice of intent to lien has been given to the owner.

7. The provisions of subsection 6 do not apply to the construction of any nonresidential construction project. *As used in this subsection, "nonresidential construction project" means an improvement or work of improvement which is not designed or intended to be a permanent residence of a natural person.*

*Sec. 9.* NRS 108.2275 is hereby amended to read as follows:

108.2275 1. The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without *a* reasonable ~~[cause,]~~ *basis in law or fact,* or that *there is no reasonable basis in law or fact to support* the amount *or a portion of the amount* of the notice of lien *,* ~~[is excessive,]~~ may apply by motion to the district court for the county where the property or some part thereof is located for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted.

2. The motion must:

(a) Set forth in detail the legal and factual grounds upon which relief is requested; and

(b) Be supported by:

(1) A notarized affidavit signed by the applicant setting forth a concise statement of the facts upon which the motion is based; and

(2) Documentary evidence in support of the affidavit, if any.

3. If the court issues an order for a hearing, the applicant shall serve notice of the application and order of the court on the lien claimant within 3 days after the court issues the order. The court shall conduct the hearing within not less than 15 days or more than 30 days after the court issues the order for a hearing.

4. The order for a hearing must include a statement that if the lien claimant fails to appear at the time and place noted, the notice of lien will be released with prejudice and the lien claimant will be ordered to pay the

reasonable costs the applicant incurs in bringing the motion, including reasonable attorney's fees.

5. If, at the time the application is filed, an action to foreclose the notice of lien has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of $85. *A lien claimant may file an action to foreclose the notice of lien in the action to show cause.* If an action has been filed to foreclose the notice of lien before the application was filed pursuant to this section, the application must be made a part of the action to foreclose the notice of lien.

6. If, after a hearing on the matter, the court determines that:

(a) The notice of lien is frivolous and was made without *a* reasonable ~~[cause,]~~ *basis in fact or law,* the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion.

(b) ~~[The]~~ *There is no reasonable basis in fact or law to support the* amount of the notice of lien , ~~[is excessive,]~~ the court may make an order reducing the notice of lien ~~[to]~~ *by* an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant for bringing the motion.

(c) The notice of lien is not frivolous and was made with *a* reasonable ~~[cause]~~ *basis in law or fact* or that *there is a reasonable basis in law or fact to support* the amount of the notice of lien , ~~[is not excessive,]~~ the court shall make an order awarding costs and reasonable attorney's fees to the lien claimant for defending the motion.

7. Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.

8. An appeal may be taken from an order made pursuant to subsection 6. A stay may not be granted if the district court does not release the lien pursuant to subsection 6.

9. If an order releasing or reducing a notice of lien is entered by the court, and the order is not stayed, the applicant may, within 5 days after the order is entered, record a certified copy of the order in the office of the county recorder of the county where the property or some part thereof is located. The recording of a certified copy of the order releasing or reducing a notice of lien is notice to any interested party that the notice of lien has been released or reduced.

*Sec. 10.* NRS 108.2403 is hereby amended to read as follows:

108.2403 1. Except as otherwise provided in NRS 108.2405, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that he is leasing, the lessee shall:

(a) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(b) Either:

(1) Establish a construction disbursement account and:

(I) Fund the account in an amount equal to the total cost of the work of improvement, but in no event less than the total amount of the prime contract;

(II) Obtain the services of a construction control to administer the construction disbursement account; and

(III) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in paragraph (f) of subsection 2; or

(2) Record a surety bond for the prime contract that meets the requirements of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a notice of right to lien of the recording of the surety bond as provided in paragraph (f) of subsection 2.

2. The notice of posted security required pursuant to subsection 1 must:

(a) Identify the name and address of the lessee;

(b) Identify the location of the improvement and the address, legal description and assessor's parcel number of the property upon which the improvement is or will be constructed, altered or repaired;

(c) Describe the nature of the lessee's interest in:

(1) The property upon which the improvement is or will be constructed, altered or repaired; and

(2) The improvement on such property;

(d) If the lessee establishes a construction disbursement account pursuant to subsection 1, include:

(1) The name and address of the construction control;

(2) The date that the lessee obtained the services of the construction control and the total amount of funds in the construction disbursement account; and

(3) The number of the construction disbursement account, if any;

(e) If the lessee records a surety bond pursuant to subsection 1, include:

(1) The name and address of the surety;

(2) The surety bond number;

(3) The date that the surety bond was recorded in the office of the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired;

(4) The book and the instrument or document number of the recorded surety bond; and

(5) A copy of the recorded surety bond with the notice of posted security; and

(f) Be served upon each person who gives a notice of right to lien within 10 days after receipt of the notice of right to lien, in one of the following ways:

(1) By personally delivering a copy of the notice of posted security to the person who gives a notice of right to lien at the address identified in the notice of right to lien; or

(2) By mailing a copy of the notice of posted security by certified mail, return receipt requested, to the person who gives a notice of right to lien at the address identified in the notice of right to lien.

3. If a lessee fails to satisfy the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 ~~[,]~~ *at any time during the construction of a work of improvement*, the prime contractor who has furnished or will furnish materials or equipment for the work of improvement may stop work. *If the prime contractor stops work, the prime contractor's lower-tiered subcontractors and suppliers may stop work.*

*4.* If the lessee:

(a) Satisfies the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 within 25 days after any work stoppage, the prime contractor *and his lower-tiered subcontractors or suppliers* who stopped work shall resume work and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to compensation for any reasonable costs and expenses that any of them have incurred because of the delay and remobilization; or

(b) Does not satisfy the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 within 25 days after the work stoppage, the prime contractor *and his lower-tiered subcontractors and suppliers* who stopped work may terminate his contract relating to the work of improvement and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to recover:

(1) The cost of all work, materials and equipment, including any overhead the prime contractor and his lower-tiered subcontractors and suppliers incurred and profit the prime contractor and his lower-tiered subcontractors and suppliers earned through the date of termination;

(2) The balance of the profit the prime contractor and his lower-tiered subcontractors and suppliers would have earned if the contract had not been terminated;

(3) Any interest, costs and attorney's fees that the prime contractor and his lower-tiered subcontractors and suppliers are entitled to pursuant to NRS 108.237; and

(4) Any other amount awarded by a court or other trier of fact.

~~[4.]~~ *5.* The rights and remedies provided *to a prime contractor and his lower-tiered subcontractors and suppliers* pursuant to this section are in addition to any other rights and remedies that may exist at law or in equity, including, without limitation, the rights and remedies provided pursuant to NRS 624.606 to 624.630, inclusive.

*Sec. 11.* NRS 108.2415 is hereby amended to read as follows:

108.2415 1. To obtain the release of a lien for which notice of lien has been recorded against the property, the principal and a surety must execute a surety bond in an amount equal to 1.5 times the lienable amount in the notice of lien, which must be in the following form:

(Assessor's Parcel Numbers)

(Title of court and cause, if action has been commenced)

WHEREAS, ..... (name of principal), located at ..... (address of principal), desires to give a bond for releasing the following described property owned by ..... (name of owners) from that certain notice of lien in the sum of $..... recorded ... (month) ... (day) ..., (year), in the office of the recorder in ..... (name of county where the property is located):

(Legal Description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, ....., (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of $..... (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by his lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

IN TESTIMONY WHEREOF, the principal and surety have executed this bond at ....., Nevada, on the .... day of the month of .... of the year .....

...…….....

(Signature of Principal)

(Surety Corporation)

By....…….....

(Its Attorney in Fact)

State of Nevada }

} ss.

County of ..... }

On ... (month) ... (day) ..., (year), before me, the undersigned, a notary public of this County and State, personally appeared ..... who acknowledged that he executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared ..... known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he acknowledged to me that the surety executed the foregoing instrument.

.....

(Notary Public in and for

the County and State)

2. To obtain the release of all prospective ~~[and existing]~~ lien rights of lien claimants related to a work of improvement, the principal and a surety must execute and cause to be recorded a surety bond in an amount equal to ~~[1.5 times]~~ the *total* amount of the prime contract ~~[, which]~~ *to be paid by the owner for the work, material and equipment to be furnished by or through the prime contractor for the improvement or work of improvement. The surety bond* must be in the following form:

(Assessor's Parcel Numbers)

(Title of court and cause, if action has been commenced)

WHEREAS, ..... (name of principal), located at ..... (address of principal), desires to give a bond for releasing the following described property owned by ..... (name of owners) from all prospective and existing lien rights and notices of liens arising from materials, equipment or work provided or to be provided under the prime contract described as follows:

(Parties to the Prime Contract)
(Amount of the Prime Contract)
(Date of the Prime Contract)
(Summary of Terms of the Prime Contract)

WHEREAS, the property that is the subject of the surety bond is described as follows:

(Legal Description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves in the sum of $..... ~~[(1 1/2 x]~~ *(the total* amount of *the* prime contract ~~[)]~~ *to be paid by the owner for the work, material and equipment to be furnished by or through the prime contractor for the improvement or work of improvement)* to all prospective and existing lien claimants who have provided or hereafter provide materials, equipment or work under the prime contract, from which sum the principal and surety will pay the lien claimants the lienable amount that a court of competent jurisdiction may determine is owed to each lien claimant, and such additional amounts as may be awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.

IN TESTIMONY WHEREOF, the principal and surety have executed this bond at ....., Nevada, on the .... day of the month of .... of the year .....

...…….....
(Signature of Principal)
(Surety Corporation)
By....…….....
(Its Attorney in Fact)

State of Nevada }
}ss.
County of ..... }

On ... (month) ... (day), ... (year), before me, the undersigned, a notary public of this County and State, personally appeared ..... who acknowledged that he executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared ..... known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he acknowledged to me that the surety executed the foregoing instrument.

.....
(Notary Public in and for
the County and State)

3. The principal must record the surety bond in the office of the county recorder in the county in which the property upon which the improvement is located, either before or after the commencement of an action to enforce the lien. A certified copy of the recorded surety bond shall be deemed an original for purposes of this section.

4. Upon the recording of the surety bond, the principal must serve a file-stamped copy of the recorded surety bond in the following manner:

(a) If a lien claimant has appeared in an action that is pending to enforce the notice of lien, service must be made by certified or registered mail, return receipt requested, upon the lien claimant at the address set forth in the lien and the lien claimant's counsel of record at his place of business;

(b) If a notice of lien is recorded at the time the surety bond is recorded and no action is pending to enforce the notice of lien, personal service must be made upon each lien claimant pursuant to Rule 4 of the Nevada Rules of Civil Procedure; or

(c) If no notice of lien is recorded at the time the surety bond is recorded, service must be made by personal service or certified mail, return receipt requested, upon each lien claimant and prospective lien claimant that has provided or thereafter provides the owner or lessee with a notice of a right to lien. Such service must be within 10 days after the recording of the surety bond, or the service of notice of the right to lien upon the owner by a lien claimant, whichever is later.

5. Failure to serve the surety bond as provided in subsection 4 does not affect the validity of the surety bond, but the statute of limitations on any action on the surety bond, including a motion excepting to the sufficiency of the surety pursuant to NRS 108.2425, is tolled until notice is given.

6. Subject to the provisions of NRS 108.2425, the recording and service of the surety bond pursuant to:

(a) Subsection 1 releases the property described in the surety bond from the lien and the surety bond shall be deemed to replace the property as security for the lien.

(b) Subsection 2 releases the property described in the surety bond from any liens and prospective liens for work, materials or equipment related to the prime contract and the surety bond shall be deemed to replace the property as security for the lien.

*Sec. 12.* NRS 108.2425 is hereby amended to read as follows:

108.2425 1. The lien claimant may, within 15 days after the service of a copy of the surety bond pursuant to subsection 4 of NRS 108.2415, file a motion with the clerk of the court in a pending action, or if no action has been commenced, file a petition with the court, excepting to the sufficiency of the surety or the surety bond, and shall, at the same time and together with that motion or petition, file an affidavit setting forth the grounds and basis of the exceptions to the surety or the surety bond, and shall serve a copy of the motion or petition and a copy of the affidavit upon the principal at the address set forth in the surety bond within 5 business days after the date of

filing. A hearing must be had upon the justification of the surety or the surety bond not less than 10 days and not more than 20 days after the filing of the motion or petition. If the court determines that the surety or surety bond is insufficient, the lien claimant's lien will remain against the property or the court may allow the substitution of a sufficient surety and surety bond.

2. If, at any time after the recording of a surety bond pursuant to NRS 108.2415, the surety becomes unauthorized to transact surety business in this State pursuant to NRS 679A.030 or is dropped from the United States Department of the Treasury's Listing of Approved Sureties or there exists any other good cause, a lien claimant or other person having an interest in the surety bond may apply to the district court in a pending action, or commence an action if none is pending, for an order to require the principal to provide additional security or to change, substitute or add securities, or to enforce or change any other matter affecting the security provided by the surety bond.

3. If a court finds that the amount of a surety bond recorded pursuant to NRS *108.2403 or* 108.2415 is insufficient to pay the total amount that may be awarded by the court pursuant to NRS 108.237, the court shall order the principal to obtain additional security or to change or substitute securities so that the amount of the security provided is ~~[1.5 times]~~ *equal to* the total amount that may be awarded.

4. Any surety that records or consents to the recording of a surety bond pursuant to NRS 108.2415 will remain fully liable to any lien claimant for up to the penal sum of the surety bond regardless of the payment or nonpayment of any surety bond premium.

*Sec. 13.* NRS 108.245 is hereby amended to read as follows:

108.245 1. Except as otherwise provided in ~~[subsection 5,]~~ *subsections 2, 3 and 4,* every lien claimant, other than ~~[one]~~ *a laborer, as defined in NRS 108.2214, or a natural person* who performs only labor, who claims ~~[the benefit of]~~ *a lien pursuant to* NRS 108.221 to 108.246, inclusive, shall, at any time *before or* after the first delivery of material *or equipment* or *the* performance of work ~~[or services under his contract,]~~ *for a work of improvement,* deliver in person or by certified mail to the owner ~~[of the property]~~ *and the prime contractor* a notice of right to lien in substantially the following form:

NOTICE OF RIGHT TO LIEN

~~[To:~~ .....

~~(Owner's name and address)~~

~~The]~~

*AND REQUEST FOR RECEIPT OF NOTICE OF COMPLETION*

*Name and address of owner:* .....

*Name and address of tenant, if known:* .....

*Name and address of prime contractor, if known:* .....

*Name and address of the customer of the undersigned:* .....

*Name and address of the property to be improved:* .....

*Description of work, materials or equipment:* .....
*Anticipated value of work, materials or equipment:* .....
*Certified Return Receipt Number:* .....
*NOTICE IS HEREBY GIVEN that the* undersigned ~~[notifies you that he]~~ has ~~[supplied]~~ *furnished or intends to furnish* materials or equipment or *has* performed work or ~~[services as follows:~~

.....

~~(General description of materials, equipment, work or services)]~~

*intends to perform work (described above),* for *the* improvement of property *(* identified ~~[as (property description or street address)]~~ *above)* under contract with ~~[(general contractor or subcontractor).]~~ *the customer of the undersigned (identified above).* This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.

~~[~~.....

~~(Claimant)~~

~~A subcontractor or equipment or material supplier who gives such a notice must also deliver in person or send by certified mail a copy of the notice to the prime contractor for information only. The failure by a subcontractor to deliver the notice to the prime contractor is a ground for disciplinary proceedings against the subcontractor under chapter 624 of NRS but does not invalidate the notice to the owner.~~

~~2. Such a~~]

*REQUEST IS HEREBY MADE that the owner, pursuant to NRS 108.228, serve on the undersigned a copy or copies of any and all notices of completion the owner or an agent of the owner may cause to be recorded with the office of the county recorder where the property is located with respect to the improvements made.*

*Signature:* .....
*Printed Name:* .....
*Position or Title:* .....
*Company Name:* .....
*Company Address:* .....
*Date Signed:* .....

*2. A lien claimant is not required to provide a notice of right to lien to a prime contractor if:*

*(a) Before the commencement of construction, the prime contractor fails to record against the property a notice of prime contractor in the office of the county recorder of the county where the property is located;*

*(b) The prime contractor fails to continually and openly post the notice of prime contractor on the property in a conspicuous location where it can be seen by all lien claimants on the work of improvement;*

*(c) The notice of prime contractor fails to comply with the provisions of subsection 3; or*

*(d) The lien claimant contracts directly with the prime contractor or his agent to perform work or furnish materials or equipment.*

*3. The notice of prime contractor must include the following:*

*(a) A first sentence of the notice that conspicuously states in bold, oversized and capitalized font, "PURSUANT TO NRS 108.245, YOU ARE HEREBY NOTIFIED TO GIVE A NOTICE OF RIGHT TO LIEN TO THE PRIME CONTRACTOR IDENTIFIED BELOW";*

*(b) The name, address, telephone number, facsimile number and license number of the prime contractor and the contact information for the authorized representative of the prime contractor of the work of improvement;*

*(c) The name and a description of the work of improvement to be constructed by the prime contractor that is sufficient to identify the work to be performed by the prime contractor; and*

*(d) The common address or a legal description of the property to be improved.*

*4. A lien claimant is not required to provide an owner a notice of right to lien if the lien claimant contracts directly with the owner or the agent of the owner to perform work or furnish materials or equipment.*

*5. A* notice *of right to lien* does not constitute a lien or give actual or constructive notice of a lien for any purpose.

~~[3. No lien for materials or equipment furnished or for work or services performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the notice has been given.~~

~~4.]~~ *6. If a lien claimant is required by this section to give notice of right to lien to the owner or prime contractor and fails to give such notice, the lien claimant is not entitled to recover:*

*(a) The amount of interest awarded by the court to the lien claimant pursuant to NRS 108.237; or*

*(b) The amount of attorney's fees and costs awarded by the court to the lien claimant pursuant to NRS 108.237,*

*➥ whichever is less.*

*7.* The notice need not be verified, sworn to or acknowledged.

~~[5. A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.~~

~~6.]~~ *8.* A lien claimant who is required by this section to give a notice of right to lien to an owner *or a prime contractor* and who gives such a notice has ~~[a]~~ *the* right to *perfect his* lien *pursuant to NRS 108.222* for materials or equipment furnished or for work ~~[or services]~~ performed in the 31 days before the date the notice of right to lien is given and for the materials or equipment furnished *or to be furnished* or for work ~~[or services]~~ performed *or to be performed* anytime thereafter until the completion of the work of improvement.

*Sec. 14.* NRS 108.2453 is hereby amended to read as follows:

108.2453 1. Except as otherwise provided in NRS 108.221 to 108.246, inclusive, a person *, by any provision in a contract or otherwise,* may not ~~[waive or modify a right,]~~ *:*

*(a) Be relieved of an* obligation or liability set forth in the provisions of NRS 108.221 to 108.246, inclusive ~~[.]~~ *; or*

*(b) Obtain a waiver, modification or impairment from a lien claimant of any of the rights and remedies provided to a lien claimant pursuant to NRS 108.221 to 108.246, inclusive.*

2. A condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this State that attempts to do any of the following is contrary to public policy and is void and unenforceable:

(a) Require a lien claimant to waive rights provided by law to lien claimants or to limit the rights provided to lien claimants, other than as expressly provided in NRS 108.221 to 108.246, inclusive;

(b) Relieve a person of an obligation or liability imposed by the provisions of NRS 108.221 to 108.246, inclusive;

(c) Make the contract or other agreement subject to the laws of a state other than this State;

(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State; ~~[or]~~

(e) Require a prime contractor ~~[or]~~ *, higher-tiered contractor,* subcontractor *or lower-tiered subcontractor* to waive, release or extinguish a claim or right that the prime contractor ~~[or]~~ *, higher-tiered contractor,* subcontractor *or lower-tiered subcontractor* may otherwise possess or acquire for delay, acceleration, disruption or impact damages or an extension of time for delays incurred, for any delay, acceleration, disruption or impact event which was unreasonable under the circumstances, not within the contemplation of the parties at the time the contract was entered into, or for which the prime contractor ~~[or]~~ *, higher-tiered contractor,* subcontractor *or lower-tiered subcontractor* is not responsible ~~[.]~~ *; or*

*(f) Incorporate by reference exhibits, terms or conditions of a higher-tiered contract unless a complete copy of the contract to which the lower-tiered subcontractor will be bound is provided to the subcontractor before the time at which the subcontractor signs the contract.*

*3. If all or part of the work, materials or equipment furnished or to be furnished by a prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor is insured by one or more insurance policies provided or to be provided by the owner or a higher-tiered contractor, then before the date on which the prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor begins to furnish work, materials or equipment or before the date a contract is entered into, whichever occurs first, the owner or prime contractor shall provide to the*

*contractor or subcontractor a copy of any insurance policy and endorsements confirming the coverage to be provided and that the prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor are enrolled insureds under the insurance policy.*

*4. If the owner or prime contractor fails to provide a contractor or subcontractor with a copy or endorsement of any insurance policy, the prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor may:*

*(a) If no contract has been entered into, decline to enter into a contract; or*

*(b) If a contract has been entered into, terminate the contract after giving 10 days' notice, in writing, to the other party with whom the contract was made.*

*5. A prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor, their lower-tiered subcontractors and the sureties of each may not be held liable for any delays or damages that may result from declining to enter into or terminating a contract pursuant to subsection 4.*

*6. Except as otherwise provided in subsection 7, any contractual duty or obligation that a prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor has to indemnify or hold harmless a person for defective or deficient work, materials or equipment furnished by the prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor is limited to the proceeds that may be recovered from the insurance policy provided for the work of improvement, including any insurance provided by the prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor.*

*7. The limitation pursuant to subsection 6 does not limit any contractual duty a prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor may have to warranty any defective or deficient work, materials or equipment furnished by him. The contractual warranty to be provided must not exceed 2 years from the date the work is substantially completed or the materials and equipment were last furnished, but a manufacturer of materials or equipment may provide a warranty longer or shorter than is provided for in this section.*

*8. An owner or prime contractor may provide written notice to a prime contractor, higher-tiered contractor, subcontractor or lower-tiered subcontractor that work, materials or equipment furnished is defective or deficient. Such notice must be provided during the period established by the contract during which the work, materials or equipment is under warranty.*

*Sec. 15.* NRS 108.2457 is hereby amended to read as follows:

108.2457 1. Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier is void. An owner, contractor or subcontractor by any term of a contract, or otherwise, may not

obtain the waiver of, or impair the lien rights of, a contractor, subcontractor or supplier, except as provided in this section. ~~[Any written consent given by a lien claimant that waives or limits his lien rights is unenforceable unless the lien claimant:~~

~~(a) Executes and delivers a waiver and release that is signed by the lien claimant or his authorized agent in the form set forth in this section; and~~

~~(b) In the case of a conditional waiver and release, receives payment of the amount identified in the conditional waiver and release.]~~

2. ~~[An]~~ *Any* oral or written statement ~~[purporting]~~ *or consent given by a lien claimant that purports* to waive, release or otherwise adversely affect the *lien* rights of ~~[a]~~ *the* lien claimant is not enforceable and does not create any estoppel or impairment of a lien unless:

(a) ~~[There is]~~ *The lien claimant delivers* a written waiver and release *that is signed by the lien claimant or his authorized agent* in the form set forth in this section; and

(b) The lien claimant received payment ~~[for the lien]~~ and then only to the extent of the payment received.

3. Payment in the form of a two-party joint check made payable to a lien claimant and another joint payee who are in privity with each other shall, upon endorsement by the lien claimant and the joint check clearing the bank upon which it is drawn, be deemed to be payment to the lien claimant for only:

(a) The amount of the joint check;

(b) The amount the payor intended to pay the lien claimant out of the joint check; or

(c) The balance owed to the lien claimant for the work, materials or equipment covered by the joint check, whichever is less.

4. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court or arbitration, provided the accord and satisfaction or settlement makes specific reference to the lien rights waived or impaired and is in a writing signed by the lien claimant.

5. The waiver and release given by any lien claimant is *void and* unenforceable unless it is in the following forms in the following circumstances:

(a) Where the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing and the lien claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:

CONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT

Property Name: .....
Property Location: .....
Undersigned's Customer: .....

Invoice/Payment Application Number: .....
*Invoice/Payment Application Period:* .....
Payment Amount: .....

Upon receipt by the undersigned of a check in the above-referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property to the following extent:

This release covers a progress payment for ~~[the]~~ *certain* work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer *during the Invoice or Payment Application Period* which are the subject of the Invoice or Payment Application ~~[,]~~ *for which payment is being sought,* but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid ~~[,]~~ *for such work, materials or equipment,* and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished that are not paid. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

~~[Dated:~~ .....

.....
~~(Company Name)~~
~~By:~~ .....
~~Its:~~ .....~~]~~
*Signature:..... .....*
*Printed Name:..... ..... .*
*Position/Title:..... .....*
*Company Name:..... .....*
*Company Address:..... .*
*Date Signed:..... .....*

*STATE OF NEVADA )*
*) ss.*
*COUNTY OF.....)*

*On the ..... (day) of ..... (month), ..... (year), ..... (name) personally appeared and signed the Conditional Waiver and Release Upon Progress Payment before me.*

.....
*NOTARY PUBLIC in and for said County and State*

(b) Where the lien claimant has been paid in full or a part of the amount provided for in the progress billing, the waiver and release of the amount paid must be in the following form:

UNCONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT

Property Name: .....
Property Location: .....
Undersigned's Customer: .....

Invoice/Payment Application Number: .....
*Invoice/Payment Application Period:* .....
Payment Amount: .....

The undersigned has been paid and has received a progress payment ~~[in the above-referenced Payment Amount]~~ for ~~[all]~~ *certain* work, materials and equipment the undersigned furnished to his Customer for the above-described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property to the following extent:

This release covers a progress payment for ~~[the]~~ *certain* work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer *during the Invoice or Payment Application Period* which are the subject of the Invoice or Payment Application ~~[,]~~ *for which payment was sought,* but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned ~~[is]~~ *was* actually paid ~~[,]~~ *for such work, materials or equipment* and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished that ~~[are]~~ *were* not paid. The undersigned warrants that he either has already paid or will use the money he ~~[receives]~~ *received* from ~~[this]~~ *the* progress payment *to* promptly ~~[to]~~ pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

~~[Dated:~~ .....

.....
~~(Company Name)~~
~~By:~~ .....
~~Its:~~ .....~~]~~
*Signature:* ..... ..... .....
*Printed Name:* ..... ..... .....
*Position/Title:* ..... ..... .....
*Company Name:* ..... ..... .
*Company Address:* ..... .....
*Date Signed:* .....

*STATE OF NEVADA* )
) *ss.*

*COUNTY OF.....)*
*On the …..... (day) of …..... (month), …..... (year), ..... (name) personally appeared and signed the Unconditional Waiver and Release Upon Progress Payment before me.*

.....
*NOTARY PUBLIC in and for said*
*County and State*

(Each unconditional waiver and release must contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice: ~~[This document waives rights unconditionally and states that you have been paid for giving up those rights.]~~ This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a conditional release form.

(c) Where the lien claimant is required to execute a waiver and release in exchange for or to induce payment of a final billing and the lien claimant is not paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:

CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT

Property Name: .....
Property Location: .....
Undersigned's Customer: .....

Invoice/Payment Application Number: .....
Payment Amount: .....
~~[Payment Period:~~ .....~~]~~
Amount of Disputed Claims: .....

Upon receipt by the undersigned of a check in the above-referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from the final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

~~[Dated:~~ .....

.....

~~(Company Name)~~

~~By:~~.....

~~Its:~~.....~~]~~

*Signature:..... ..... ...*

*Printed Name:..... ..... .....*

*Position/Title:..... ..... .....*

*Company Name:..... ..... .....*

*Company Address:..... .....*

*Date Signed:..... ..... ....*

*STATE OF NEVADA )*

*) ss.*

*COUNTY OF.....)*

*On the …..... (day) of …..... (month), …..... (year), ..... (name) personally appeared and signed the Conditional Waiver and Release Upon Final Payment before me.*

.....

*NOTARY PUBLIC in and for said*

*County and State*

(d) Where the lien claimant has been paid the final billing, the waiver and release must be in the following form:

UNCONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT

Property Name:.....

Property Location: .....

Undersigned's Customer: .....

Invoice/Payment Application Number: .....

Payment Amount: .....

Amount of Disputed Claims: .....

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above-described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money he receives from this final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

~~[Dated:~~ .....

.....

~~(Company Name)~~

~~By:~~.....

~~Its:~~ .....~~]~~

*Signature:* .....

*Printed Name:* .....

*Position/Title:* .....

*Company Name:* ..... .....

*Company Address:* ..... .....

*Date Signed:* .....

*STATE OF NEVADA )*

*) ss.*

*COUNTY OF.....)*

*On the ..... (day) of …..... (month), …..... (year) ,..... (name) personally appeared and signed the Unconditional Waiver and Release Upon Final Payment before me.*

.....

*NOTARY PUBLIC in and for said*

*County and State*

(Each unconditional waiver and release must contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. ~~[This document is enforceable against you if you sign it, even if you have not been paid.]~~ If you have not been paid, use a conditional release form.

(e) Notwithstanding any language in any waiver and release form set forth in this section, if the payment given in exchange for any waiver and release of lien is made by check, draft or other such negotiable instrument, and the same fails to clear the bank on which it is drawn for any reason, then the waiver and release shall be deemed null, void and of no legal effect whatsoever and all liens, lien rights, bond rights, contract rights or any other right to recover payment afforded to the lien claimant in law or equity will not be affected by the lien claimant's execution of the waiver and release.

*(f) A higher-tiered contractor may require a lien claimant to provide waivers and releases as a condition precedent to paying a lien claimant only pursuant to the circumstances described in paragraphs (a) and (c).*

*(g) A lien claimant is not required to execute a waiver described in paragraph (b) or (d) until after the lien claimant receives payment of the amounts described in the waiver. Any waiver or release obtained before payment of the lien claimant shall be deemed null, void and of no legal effect whatsoever.*

Senator Care moved the adoption of the amendment.

Conflict of interest declared by Senator Hardy.

Remarks by Senator Care.

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

Amendment No. 242 to Senate Bill No. 352 replaces the bill with language that addresses the costs that may be included in a lien claim, preference of a deed of trust over a lien in certain circumstances, frivolous notices of a lien that lead to work stoppage, the contents of a notice of

lien, the amount required in a surety bond, notification of an insurance policy and the contents of certain waivers and releases.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 354.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 311.

"SUMMARY—Revises provisions governing land use decisions. (BDR 22-235)"

"AN ACT relating to land use planning; revising provisions relating to the appeal of land use decisions; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Under existing law, the governing body of each city and county is required to adopt an ordinance providing that an aggrieved person may appeal the decision of a planning commission, board of adjustment, hearing examiner or other similar official. This bill *: (1) revises the terminology used in existing law concerning the rights of a person who has appeared before a planning commission, board of adjustment, hearing examiner or other similar official; and (2)* authorizes an aggrieved person to ~~[also]~~ appeal the decision of a governing body that ~~[acted to accept or reject]~~ *considered* a recommendation of a planning commission, board of adjustment, hearing examiner or other similar official ~~[.]~~ *or a decision of a governing body which was made without the necessity of a decision or recommendation by a planning commission, board of adjustment, hearing examiner or other similar official.* Solely within the confines of a county whose population is 400,000 or more (currently Clark County), this bill defines an "aggrieved person" as a person who: (1) appeared before the governing body, planning commission, board of adjustment, hearing examiner or other similar official on the matter which is the subject of the decision; and (2) suffered an injury as a result of the decision that has a substantial adverse effect on the person's property or other legal rights *.* ~~[or which is not suffered by the public as a whole.]~~ (NRS 278.3195)

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

Section 1. NRS 278.3195 is hereby amended to read as follows:

278.3195 1. Except as otherwise provided in NRS 278.310, each governing body shall adopt an ordinance providing that any person who ~~[is aggrieved by a decision of:]~~ *appeared before:*

(a) The planning commission, if the governing body has created a planning commission pursuant to NRS 278.030;

(b) The board of adjustment, if the governing body has created a board of adjustment pursuant to NRS 278.270;

(c) A hearing examiner, if the governing body has appointed a hearing examiner pursuant to NRS 278.262; or

(d) Any other person appointed or employed by the governing body who is authorized to make administrative decisions regarding the use of land,

➥ may appeal the decision *on the matter for which the person appeared* to the governing body. In a county whose population is 400,000 or more, a person shall be deemed to ~~[be aggrieved]~~ *have appeared* under an ordinance adopted pursuant to this subsection if the person appeared, either in person, through an authorized representative or in writing, before a person or entity described in paragraphs (a) to (d), inclusive, on the matter which is the subject of the decision.

2. Except as otherwise provided in NRS 278.310, an ordinance adopted pursuant to subsection 1 must set forth, without limitation:

(a) The period within which an appeal must be filed with the governing body.

(b) The procedures pursuant to which the governing body will hear the appeal.

(c) That the governing body may affirm, modify or reverse a decision.

(d) The period within which the governing body must render its decision except that:

(1) In a county whose population is 400,000 or more, that period must not exceed 45 days.

(2) In a county whose population is less than 400,000, that period must not exceed 60 days.

(e) That the decision of the governing body is a final decision for the purpose of judicial review.

(f) That, in reviewing a decision, the governing body will be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020.

(g) That the governing body may charge the appellant a fee for the filing of an appeal.

3. In addition to the requirements set forth in subsection 2, in a county whose population is 400,000 or more, an ordinance adopted pursuant to subsection 1 must:

(a) Set forth procedures for the consolidation of appeals; and

(b) Prohibit the governing body from granting to an ~~[aggrieved person]~~ *appellant* more than two continuances on the same matter, unless the governing body determines, upon good cause shown, that the granting of additional continuances is warranted.

4. Any person who:

(a) Has appealed a decision to the governing body in accordance with an ordinance adopted pursuant to subsection 1 ~~[,]~~ and *is aggrieved by the decision of the governing body;* ~~*[or]*~~

(b) Is aggrieved by ~~[the]~~ *a* decision of ~~[the]~~ *a* governing body ~~[,]~~ *regarding the use of land in which the governing body* ~~*[accepted or rejected]*~~

*considered a recommendation of a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1 ~~[,]~~ ; or*

*(c) Is aggrieved by a decision of the governing body which, pursuant to the procedures contained in the applicable local ordinance, was made without the necessity of a decision or recommendation by a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1,*

➥ may appeal that decision to the district court of the proper county by filing a petition for judicial review within 25 days after the date of filing of notice of the decision with the clerk or secretary of the governing body, as set forth in NRS 278.0235. *The appeal to the district court must be confined to the issues considered by the governing body. The remedy provided in this subsection is the exclusive remedy for a person described in paragraphs (a) , ~~[and]~~ (b) ~~[.]~~ and (c).*

5. *For the purposes of ~~[this section and any ordinance adopted pursuant to subsection 1,]~~ judicial review, in a county whose population is 400,000 or more, a person shall be deemed to be aggrieved by a decision if, on the matter which is the subject of the decision:*

*(a) The person appeared in person, through an authorized representative or in writing ~~[:]~~ and fully set forth his position and the grounds in support of his position:*

*(1) Before a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1 ~~[,]~~ that considered the matter, if applicable; and*

*(2) Before the applicable governing body; and*

*(b) The injury that the person claims he will suffer as a result of the decision ~~[:~~*

*~~(1) Will~~ will have a substantial adverse effect on his property rights or other legal interests, except that a person shall not be deemed to be aggrieved pursuant to this ~~[subparagraph if]~~ paragraph on the basis that the decision he is appealing may increase or create competition that he claims may be detrimental to his property rights or other legal interests . ~~[; or~~*

*~~(2) Is not suffered by the public as a whole.]~~*

6. *The provisions of this section must not be construed to impair or prohibit a person from exercising the right to:*

*(a) Seek appropriate redress for any violation of state or federal law by a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1 if the person has exhausted all available administrative remedies; or*

*(b) Appear before a governing body to express his opinion concerning any matter before the governing body, notwithstanding the fact that the person has previously failed to appear before a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1 and that the person is not entitled to appeal a decision to the governing body in accordance with an ordinance adopted pursuant to subsection 1.*

*7.* As used in this section, "person" includes the Armed Forces of the United States or an official component or representative thereof.

Sec. 2. This act becomes effective on July 1, 2009.

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

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

Amendment No. 311 to Senate Bill No. 354 changes the appeal contemplated by the bill to include any decision that is considered by the governing body, including decisions made without a recommendation from a planning commission, board of adjustment or other similar entity. The amendment also revises necessary terminology that is used in existing law concerning the rights of a person who appears before a planning commission or other similar entity.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 360.

Bill read second time.

The following amendment was proposed by the Committee on Energy, Infrastructure and Transportation:

Amendment No. 236.

"SUMMARY—Revises provisions governing the sale and title of ~~[salvaged]~~ *salvage* vehicles. (BDR 43-1244)"

"AN ACT relating to vehicles; authorizing a person other than an automobile wrecker, dealer of new or used motor vehicles or rebuilder to obtain an identifying card and bid to purchase a vehicle other than a nonrepairable vehicle from the operator of a salvage pool; imposing a fee for the issuance of such a card; *prohibiting a person who obtains such a card from purchasing from the operator of a salvage pool more than three vehicles in any calendar year;* increasing the period within which an insurance company or its authorized agent must submit an application for a salvage title or nonrepairable vehicle certificate for a salvage vehicle; providing a penalty; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides that only a licensed automobile wrecker, dealer of new or used motor vehicles or rebuilder may bid to purchase a vehicle from the operator of a salvage pool. (NRS 487.470) Section 5 of this bill authorizes a person other than an automobile wrecker, dealer of new or used motor vehicles or rebuilder to bid to purchase a vehicle other than a nonrepairable vehicle from the operator of a salvage pool ~~[.]~~ *, but prohibits the person from purchasing more than three such vehicles in any calendar year.* Section ~~[2]~~ *2.3* of this bill requires such a person, before he bids to purchase a salvage vehicle, to obtain an identifying card which must contain the person's name and signature, personal address, business name and address, if applicable, and picture. Section ~~[2]~~ *2.3* requires the Department of Motor Vehicles to charge a fee of $50 for the issuance of each card. A card expires on December 31 of the year in which it is issued but may be renewed upon application and payment of a renewal fee of $25. The fees collected by the Department from the issuance of the cards must be deposited with the State Treasurer for credit to the Motor Vehicle Fund. Section 10 of this bill

provides that any person who violates the provisions of section ~~[2]~~ *2.3* is guilty of a misdemeanor. (NRS 487.510)

Section 11 of this bill increases from 60 to 180 days the period within which an insurance company or its authorized agent is required to submit an application for a salvage title or nonrepairable vehicle certificate for a salvage vehicle to the Department of Motor Vehicles. (NRS 487.800)

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

Section 1. NRS 482.31776 is hereby amended to read as follows:

482.31776 1. A consignee of a vehicle shall, upon entering into a consignment contract or other form of agreement to sell a vehicle owned by another person:

(a) Open and maintain a separate trust account in a federally insured bank or savings and loan association that is located in this State, into which the consignee shall deposit all money received from a prospective buyer as a deposit, or as partial or full payment of the purchase price agreed upon, toward the purchase or transfer of interest in the vehicle. A consignee of a vehicle shall not:

(1) Commingle the money in the trust account with any other money that is not on deposit or otherwise maintained toward the purchase of the vehicle subject to the consignment contract or agreement; or

(2) Use any money in the trust account to pay his operational expenses for any purpose that is not related to the consignment contract or agreement.

(b) Obtain from the consignor, before receiving delivery of the vehicle, a signed and dated disclosure statement that is included in the consignment contract and provides in at least 10-point bold type or font:

IMPORTANT NOTICE TO VEHICLE OWNERS

State law (NRS 482.31776) requires that the operator of this business file a Uniform Commercial Code 1 (UCC1) form with the Office of the Secretary of State on your behalf to protect your interest in your vehicle. The form is required to protect your vehicle from forfeiture in the event that the operator of this business fails to meet his financial obligations to a third party holding a security interest in his inventory. The form must be filed by the operator of this business before he may take possession of your vehicle. If the form is not filed as required, YOU MAY LOSE YOUR VEHICLE THROUGH NO FAULT OF YOUR OWN. For a copy of the UCC1 form filed on your behalf or for more information, please contact:

The Office of the Secretary of State of Nevada
Uniform Commercial Code Division
(775) 684-5708

I understand and acknowledge the above disclosure.

…….. ……

Consignee Signature Date

(c) Assist the consignor in completing, with respect to the consignor's purchase-money security interest in the vehicle, a ~~[financial]~~ *financing*

statement of the type described in subsection 5 of NRS 104.9317 and shall file the ~~[financial]~~ *financing* statement with the Secretary of State on behalf of the consignor. If a consignee has previously granted to a third party a security interest with an after-acquired property clause in the consignee's inventory, the consignee additionally shall assist the consignor in sending an authenticated notification, as described in paragraph (b) of subsection 1 of NRS 104.9324, to each holder of a conflicting security interest. The consignee must not receive delivery of the vehicle until the consignee has:

(1) Filed the financing statement with the Secretary of State; and

(2) If applicable, assisted the consignor in sending an authenticated notification to each holder of a conflicting security interest.

2. Upon the sale or transfer of interest in the vehicle, the consignee shall forthwith:

(a) Satisfy or cause to be satisfied all outstanding security interests in the vehicle; and

(b) Satisfy the financial obligations due the consignor pursuant to the consignment contract.

3. Upon the receipt of money by delivery of cash, bank check or draft, or any other form of legal monetary exchange, or after any form of transfer of interest in a vehicle, the consignee shall notify the consignor that the money has been received or that a transfer of interest in the vehicle has occurred. Notification by the consignee to the consignor must be given in person or, in the absence of the consignor, by registered or certified mail addressed to the last address or residence of the consignor known to the consignee. The notification must be made within 3 business days after the date on which the money is received or the transfer of interest in the vehicle is made.

4. The provisions of this section do not apply to:

(a) An executor;

(b) An administrator;

(c) A sheriff;

(d) A salvage pool subject to the provisions of NRS 487.400 to 487.510, inclusive ~~[;]~~ *, and ~~[section 2]~~ sections 2.3 and 2.7 of this act;* or

(e) Any other person who sells a vehicle pursuant to the powers or duties granted to or imposed on him by specific statute.

5. Notwithstanding any provision of NRS 482.423 to 482.4247, inclusive, to the contrary, a vehicle subject to a consignment contract may not be operated by the consignee, an employee or agent of the consignee, or a prospective buyer in accordance with NRS 482.423 to 482.4247, inclusive, by displaying a temporary placard to operate the vehicle unless the operation of the vehicle is authorized by the express written consent of the consignor.

6. A vehicle subject to a consignment contract may not be operated by the consignee, an employee or agent of the consignee, or a prospective buyer in accordance with NRS 482.320 by displaying a special plate unless the operation of the vehicle is authorized by the express written consent of the consignor.

7. A consignee shall maintain a written log for each vehicle for which he has entered into a consignment contract. The written log must include:

(a) The name and address, or place of residence, of the consignor;

(b) A description of the vehicle consigned, including the year, make, model and serial or identification number of the vehicle;

(c) The date on which the consignment contract is entered into;

(d) The period that the vehicle is to be consigned;

(e) The minimum agreed upon sales price for the vehicle;

(f) The approximate amount of money due any lienholder or other person known to have an interest in the vehicle;

(g) If the vehicle is sold, the date on which the vehicle is sold;

(h) The date that the money due the consignor and the lienholder was paid;

(i) The name and address of the federally insured bank or savings and loan association in which the consignee opened the trust account required pursuant to subsection 1; and

(j) The signature of the consignor acknowledging that the terms of the consignment contract were fulfilled or terminated, as appropriate.

8. A person who:

(a) Appropriates, diverts or otherwise converts to his own use money in a trust account opened pursuant to paragraph (a) of subsection 1 or otherwise subject to a consignment contract or agreement is guilty of embezzlement and shall be punished in accordance with NRS 205.300. The court shall, in addition to any other penalty, order the person to pay restitution.

(b) Violates paragraphs (b) or (c) of subsection 1 is guilty of a misdemeanor. The court shall, in addition to any other penalty, order the person to pay restitution.

(c) Violates any other provision of this section is guilty of a misdemeanor.

Sec. 2. Chapter 487 of NRS is hereby amended by adding thereto ~~[a new section to read as follows:]~~ *the provisions set forth as sections 2.3 and 2.7 of this act.*

*Sec. 2.3. 1. An identifying card authorizing a person other than a licensed automobile wrecker, dealer of new or used motor vehicles or rebuilder to bid to purchase a vehicle other than a nonrepairable vehicle from an operator of a salvage pool must contain the person's:*

*(a) Name and signature;*

*(b) Personal address;*

*(c) Business name, if applicable;*

*(d) Business address, if applicable; and*

*(e) Picture.*

*2. The Department shall charge a fee of $50 for each identifying card issued in accordance with this section.*

*3. An identifying card issued in accordance with this section expires on December 31 of the year in which it is issued. The person must submit to the Department an application for renewal accompanied by a renewal fee of*

*$25. The application must be made on a form provided by the Department and contain such information as the Department requires.*

*4. Fees collected by the Department pursuant to this section must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.*

*Sec. 2.7.* *The Department shall adopt regulations to carry out the provisions of this section, NRS 487.400 to 487.510, inclusive, and section 2.3 of this act.*

Sec. 3. NRS 487.400 is hereby amended to read as follows:

487.400 As used in NRS 487.400 to 487.510, inclusive ~~[.]~~ *, and ~~[section 2]~~ sections 2.3 and 2.7 of this act:*

1. "Identifying card" means a card:

(a) Authorizing the holder to bid for the purchase of vehicles from the operator of a salvage pool; and

(b) Containing the information required by NRS 487.070 or 487.475 ~~[.]~~ *or section ~~[2]~~ 2.3 of this act.*

2. "Salvage pool" means a business which obtains motor vehicles from:

(a) Insurers and self-insurers for sale on consignment or as an agent for the insurer or self-insurer if the vehicles are acquired by the insurer or self-insurer as the result of a settlement for insurance; or

(b) Licensed vehicle dealers, rebuilders, lessors or wreckers for sale on consignment.

Sec. 4. NRS 487.420 is hereby amended to read as follows:

487.420 1. No applicant may be granted a license to operate a salvage pool until he has procured and filed with the Department a good and sufficient bond in the amount of $50,000, with a corporate surety thereon licensed to do business in the State of Nevada, approved as to form by the Attorney General, and conditioned that the applicant conducts his business as an operator of a salvage pool without fraud or fraudulent representation, and without violation of the provisions of NRS 487.400 to 487.510, inclusive ~~[.]~~ *, and ~~[section 2]~~ sections 2.3 and 2.7 of this act.* The Department may, by agreement with any operator of a salvage pool who has been licensed by the Department for 5 years or more, allow a reduction in the amount of his bond, if his business has been conducted satisfactorily for the preceding 5 years, but no bond may be in an amount less than $5,000.

2. The bond may be continuous in form and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.

3. The bond must provide that any person injured by the action of the operator of the salvage pool in violation of any of the provisions of NRS 487.400 to 487.510, inclusive, *and ~~[section 2]~~ sections 2.3 and 2.7 of this act* may apply to the Director for compensation from the bond. The Director, for good cause shown and after notice and opportunity for hearing, may determine the amount of compensation and the person to whom it is to be paid. The surety shall then make the payment.

4. In lieu of a bond an operator of a salvage pool may deposit with the Department, under the terms prescribed by the Department:

(a) A like amount of money or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or

(b) A savings certificate of a bank, credit union or savings and loan association situated in Nevada, which must indicate an account of an amount equal to the amount of the bond which would otherwise be required by this section and that this amount is unavailable for withdrawal except upon order of the Department. Interest earned on the certificate accrues to the account of the applicant.

5. A deposit made pursuant to subsection 4 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing, in an amount determined by him to compensate a person injured by an action of the licensee, or released upon receipt of:

(a) A court order requiring the Director to release all or a specified portion of the deposit; or

(b) A statement signed by the person under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State, requesting the Director to release the deposit, or a specified portion thereof, and stating the purpose for which the release is requested.

6. When a deposit is made pursuant to subsection 4, liability under the deposit is in the amount prescribed by the Department. If the amount of the deposit is reduced or there is an outstanding judgment of a court for which the licensee is liable under the deposit, the license is automatically suspended. The license must be reinstated if the licensee:

(a) Files an additional bond pursuant to subsection 1;

(b) Restores the deposit with the Department to the original amount required under this section; or

(c) Satisfies the outstanding judgment for which he is liable under the deposit.

7. A deposit made pursuant to subsection 4 may be refunded:

(a) By order of the Director, 3 years after the date the licensee ceases to be licensed by the Department, if the Director is satisfied that there are no outstanding claims against the deposit; or

(b) By order of court, at any time within 3 years after the date the licensee ceases to be licensed by the Department, upon evidence satisfactory to the court that there are no outstanding claims against the deposit.

8. Any money received by the Department pursuant to subsection 4 must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.

Sec. 5. NRS 487.470 is hereby amended to read as follows:

487.470 1. ~~[Only]~~ *Except as otherwise provided in subsection 4, only* a licensed automobile wrecker, dealer of new or used motor vehicles or rebuilder *or a person who has been issued an identifying card described in section* ~~[2]~~ *2.3 of this act* may bid to purchase a vehicle from an operator of a

salvage pool, and the operator may only sell a vehicle to such a person. An operator shall not accept a bid from:

(a) An automobile wrecker until:

(1) He presents the card issued by the Department pursuant to NRS 487.070 or other identifying card; or

(2) If he is licensed or otherwise authorized to operate as an automobile wrecker in another state or foreign country, he presents evidence of that licensure or authorization and has registered with the operator pursuant to subsection 2; ~~[or]~~

(b) A dealer of new or used motor vehicles or a rebuilder until:

(1) He presents the card issued by the Department pursuant to NRS 487.475 or other identifying card; or

(2) If he is licensed or otherwise authorized to operate as a dealer of new or used motor vehicles or as a rebuilder in another state or foreign country, he presents evidence of that licensure or authorization and has registered with the operator pursuant to subsection 2 ~~[.]~~ *; or*

*(c) A person who has been issued an identifying card described in section ~~[2]~~ 2.3 of this act:*

*(1) For a nonrepairable vehicle; or*

*(2) For any other vehicle, until he presents the identifying card.*

2. Any automobile wrecker, dealer of new or used motor vehicles or rebuilder who is licensed or otherwise authorized to operate in another state or foreign country shall register with each operator of a salvage pool with whom he bids to purchase vehicles, by filing with the operator copies of his license or other form of authorization from the other state or country, and his driver's license, business license, certificate evidencing the filing of a bond, resale certificate and proof of social security or tax identification number, if such documentation is required for licensure in the other state or country. Each operator of a salvage pool shall keep such copies at his place of business and in a manner so that they are easily accessible and open to inspection by employees of the Department ~~[of Motor Vehicles]~~ and to officers of law enforcement agencies in this State.

*3. Each person who has been issued an identifying card described in section ~~[2]~~ 2.3 of this act shall register with each operator of a salvage pool with whom he bids to purchase vehicles by filing with the operator copies of his driver's license, business license, if applicable, and proof of social security or tax identification number. Each operator of a salvage pool shall keep such copies at his place of business and in a manner so that they are easily accessible and open to inspection by employees of the Department and to officers of law enforcement agencies in this State.*

*4. A person who has been issued an identifying card described in section ~~[2]~~ 2.3 of this act shall not ~~[bid]~~ :*

*(a) Purchase more than three vehicles in any calendar year from an operator of a salvage pool; or*

*(b) Bid on a nonrepairable vehicle.*

Sec. 6. NRS 487.480 is hereby amended to read as follows:

487.480 1. Before an operator of a salvage pool sells any vehicle subject to registration pursuant to the laws of this State, he must have in his possession the certificate of title for a vehicle obtained pursuant to subsection 3 of NRS 487.800 or the salvage title for that vehicle. The Department shall not issue a certificate of registration or certificate of title for a vehicle with the same identification number if the vehicle was manufactured in the 5 years preceding the date on which the salvage title was issued, unless the Department authorizes the restoration of the vehicle pursuant to subsection 2 of NRS 482.553.

2. Upon sale of the vehicle, the operator of the salvage pool shall provide a salvage title to the licensed automobile wrecker, dealer of new or used motor vehicles or rebuilder *or other person* who purchased the vehicle.

Sec. 7. NRS 487.490 is hereby amended to read as follows:

487.490 1. The Department may refuse to issue a license or may suspend, revoke or refuse to renew a license of an operator of a salvage pool upon determining that the operator:

(a) Is not lawfully entitled to the license;

(b) Has made, or knowingly or negligently permitted, any illegal use of that license;

(c) Made a material misstatement in any application;

(d) Willfully fails to comply with any provision of NRS 487.400 to 487.510, inclusive ~~[,]~~ *, and ~~[section 2]~~ sections 2.3 and 2.7 of this act;*

(e) Fails to discharge any final judgment entered against him when the judgment arises out of any misrepresentation regarding a vehicle;

(f) Fails to maintain any license or bond required by a political subdivision of this State;

(g) Has been convicted of a felony;

(h) Has been convicted of a misdemeanor or gross misdemeanor for a violation of a provision of this chapter;

(i) Fails or refuses to provide to the Department an authorization for the disclosure of financial records for the business as required pursuant to subsection 6; or

(j) Displays evidence of unfitness for a license pursuant to NRS 487.165.

2. The applicant or licensee may, within 30 days after receipt of the notice of refusal to grant or renew or the suspension or revocation of a license, petition the Department in writing for a hearing.

3. Hearings under this section and appeals therefrom must be conducted in the manner prescribed in NRS 482.353 and 482.354.

4. If an application for a license as an operator of a salvage pool is denied, the applicant may not submit another application for at least 6 months after the date of the denial.

5. The Department may refuse to review a subsequent application for licensing submitted by any person who violates any provision of

NRS 487.400 to 487.510, inclusive ~~[.]~~ , *and* ~~*[section 2]*~~ *sections 2.3 and 2.7 of this act.*

6. Upon the receipt of any report or complaint that an applicant or a licensee has engaged in financial misconduct or has failed to satisfy financial obligations related to the operation of a salvage pool, the Department may require the applicant or licensee to submit to the Department an authorization for the disclosure of financial records for the business as provided in NRS 239A.090. The Department may use any information obtained pursuant to such an authorization only to determine the suitability of the applicant or licensee for initial or continued licensure. Information obtained pursuant to such an authorization may be disclosed only to those employees of the Department who are authorized to issue a license to an applicant pursuant to NRS 487.400 to 487.510, inclusive, *and* ~~*[section 2]*~~ *sections 2.3 and 2.7 of this act* or to determine the suitability of an applicant or a licensee for such licensure.

7. For the purposes of this section, the failure to adhere to the directives of the Department advising the licensee of his noncompliance with any provision of NRS 487.400 to 487.510, inclusive, *and* ~~*[section 2]*~~ *sections 2.3 and 2.7 of this act* or regulations of the Department, within 10 days after the receipt of those directives, is prima facie evidence of willful failure to comply.

Sec. 8. NRS 487.497 is hereby amended to read as follows:

487.497 1. A person licensed to issue identifying cards shall maintain a record of all fees collected and identifying cards issued.

2. The record must contain:

(a) The name and signature of the licensed automobile wrecker, vehicle dealer or rebuilder *or other person* from whom fees were collected, the amount of fees collected and the number of identifying cards issued or renewed.

(b) ~~[The]~~ *For each identifying card issued to an automobile wrecker, vehicle dealer or rebuilder, the* business name, address and license number under which the automobile wrecker, vehicle dealer or rebuilder is licensed by the Department.

(c) A photograph of the natural person to whom the identifying card was issued.

3. The record must be open to inspection during regular business hours by any peace officer or investigator of the Department.

4. Upon request of the Department, a person licensed to issue identifying cards shall allow the Department, or a person designated by the Department, to conduct an audit of his records.

5. The records of the licensee must be maintained at the licensed location.

Sec. 9. NRS 487.500 is hereby amended to read as follows:

487.500 Every licensed operator of a salvage pool shall maintain a record of all vehicles he sells. The record must contain the name and address

of the person from whom the vehicle was purchased or acquired and the date of the acquisition or purchase, the name and address of the automobile wrecker, dealer of new or used motor vehicles , ~~[or]~~ rebuilder *or other person* to whom the vehicle was sold and the date of the sale, the registration number last assigned to the vehicle and a brief description of the vehicle, including, insofar as the information exists with respect to a given vehicle, the make, type, serial number and motor number, or any other number of the vehicle. The record must be open to inspection during regular business hours by any peace officer or investigator of the Department.

Sec. 10. NRS 487.510 is hereby amended to read as follows:

487.510 Any person who violates any of the provisions of NRS 487.400 to 487.500, inclusive, *and* ~~*[section 2]*~~ *sections 2.3 and 2.7 of this act* is guilty of a misdemeanor.

Sec. 11. NRS 487.800 is hereby amended to read as follows:

487.800 1. When an insurance company acquires a motor vehicle as a result of a settlement in which the motor vehicle is determined to be a salvage vehicle, the owner of the motor vehicle who is relinquishing ownership of the motor vehicle shall endorse the certificate of title of the motor vehicle and forward the endorsed certificate of title to the insurance company within 30 days after accepting the settlement from the insurance company. The insurance company or its authorized agent shall forward the endorsed certificate of title, together with an application for a salvage title or nonrepairable vehicle certificate, to the state agency within ~~[60]~~ *180* days after receipt of the endorsed certificate of title.

2. If the owner of the motor vehicle who is relinquishing ownership does not provide the endorsed certificate of title to the insurance company within 30 days after accepting the settlement pursuant to subsection 1, the insurance company shall, within ~~[60]~~ *180* days after the expiration of that 30-day period, forward an application for a salvage title or nonrepairable vehicle certificate to the state agency. The state agency shall issue a salvage title or nonrepairable vehicle certificate to the insurance company for the vehicle upon receipt of:

(a) The application;

(b) A motor vehicle inspection certificate signed by a representative of the Department or, as one of the authorized agents of the Department, by a peace officer, dealer, rebuilder, automobile wrecker, operator of a salvage pool or garageman;

(c) Documentation that the insurance company has made at least two written attempts by certified mail, return receipt requested, or by use of a delivery service with a tracking system, to obtain the endorsed certificate of title; and

(d) Proof satisfactory to the state agency that the certificate of title was required to be surrendered to the insurance company as part of the settlement.

3. Except as otherwise provided in subsections 1 and 2, before any ownership interest in a salvage vehicle, except a nonrepairable vehicle, may be transferred, the owner or other person to whom the motor vehicle is titled:

(a) If the person has possession of the certificate of title to the vehicle, shall forward the endorsed certificate of title, together with an application for salvage title to the state agency within 30 days after the vehicle becomes a salvage vehicle.

(b) If the person does not have possession of the certificate of title to the vehicle and the certificate of title is held by a lienholder, shall notify the lienholder within 10 days after the vehicle becomes a salvage vehicle that the vehicle has become a salvage vehicle. The lienholder shall, within 30 days after receiving such notice, forward the certificate of title, together with an application for salvage title, to the state agency.

4. An insurance company or its authorized agent may sell a vehicle for which a total loss settlement has been made with the properly endorsed certificate of title if the total loss settlement resulted from the theft of the vehicle and the vehicle, when recovered, was not a salvage vehicle.

5. An owner who has determined that a vehicle is a total loss salvage vehicle may sell the vehicle with the properly endorsed certificate of title obtained pursuant to this section, without making any repairs to the vehicle, to a salvage pool, automobile auction, rebuilder, automobile wrecker or a new or used motor vehicle dealer.

6. Except with respect to a nonrepairable vehicle, if a salvage vehicle is rebuilt and restored to operation, the vehicle may not be licensed for operation, displayed or offered for sale, or the ownership thereof transferred, until there is submitted to the state agency with the prescribed salvage title, an appropriate application, other documents, including, without limitation, an affidavit from the state agency attesting to the inspection and verification of the vehicle identification number and the identification numbers, if any, for parts used to repair the motor vehicle and fees required, together with a certificate of inspection completed pursuant to NRS 487.860.

7. Except with respect to a nonrepairable vehicle, if a total loss insurance settlement between an insurance company and any person results in the retention of the salvage vehicle by that person, before the execution of the total loss settlement, the insurance company or its authorized agent shall:

(a) Obtain, upon an application for salvage title, the signature of the person who is retaining the salvage vehicle;

(b) Append to the application for salvage title the certificate of title to the motor vehicle or an affidavit stating that the original certificate of title has been lost; and

(c) Apply to the state agency for a salvage title on behalf of the person who is retaining the salvage vehicle.

8. If the state agency determines that a salvage vehicle retained pursuant to subsection 6 is titled in another state or territory of the United States, the

state agency shall notify the appropriate authority of that state or territory that the owner has retained the salvage vehicle.

9. A person who retains a salvage vehicle pursuant to subsection 7 may not transfer any ownership interest in the vehicle unless he has received a salvage title.

Senator Schneider moved the adoption of the amendment.

Remarks by Senator Schneider.

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

Amendment No. 236 to Senate Bill No. 360 adds a provision instructing the Department of Motor Vehicles to adopt regulations to carry out the provisions of this bill relating to the issuance of cards that authorize certain people to purchase vehicles from salvage pools. The amendment also prohibits people who have been issued said cards from purchasing more than three vehicles a year from salvage pools.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 372.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 305.

"SUMMARY—Revises the Nevada Clean Indoor Air Act. (BDR 15-1099)"

"AN ACT relating to smoking; revising the Nevada Clean Indoor Air Act; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

The Nevada Clean Indoor Air Act, which is currently codified as NRS 202.2483, was proposed by an initiative petition and approved by the voters at the 2006 General Election and therefore is not subject to legislative amendment or repeal until after December 8, 2009. The Act: (1) generally prohibits the smoking of tobacco in certain locations, such as within indoor places of employment, within school buildings and on school property; (2) provides that local authorities may adopt and enforce local tobacco control measures that meet or exceed the minimum applicable standards set forth in the Act; and (3) authorizes state and local health authorities and local law enforcement to enforce the provisions of the Act and issue citations for violations of the Act.

This bill revises the provisions of the Act by: (1) authorizing the smoking of tobacco in certain ~~[public smoking areas of an indoor place of employment, under certain circumstances, and in certain]~~ convention facilities during certain meetings and trade shows; (2) establishing an "adult stand-alone bar, tavern or saloon" as a new type of establishment in which smoking is allowed; (3) eliminating the provision that authorizes local authorities to adopt and enforce local tobacco control measures that meet or exceed the minimum applicable standards set forth in the Act; ~~[and]~~ (4) *requiring the State Board of Health to adopt regulations relating to the enforcement of the Act; and (5)* providing that the State Health Officer or his

designee may enforce the provisions of the Act and issue citations for violations of the Act, ~~[but]~~ *and the State Health Officer is required to designate* local health authorities ~~[and local law enforcement officers may not do so.]~~ *to enforce the provisions of the Act in certain areas of this State under certain circumstances.*

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

Section 1. NRS 202.2483 is hereby amended to read as follows:

202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

(a) Child care facilities;

(b) Movie theatres;

(c) Video arcades;

(d) Government buildings and public places;

(e) Malls and retail establishments;

(f) All areas of grocery stores; and

(g) All indoor areas within restaurants.

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

3. Smoking tobacco is not prohibited in:

(a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;

(b) Stand-alone bars, taverns and saloons ~~[;]~~ *and adult stand-alone bars, taverns and saloons;*

(c) Strip clubs or brothels;

(d) Retail tobacco stores; ~~[and]~~

(e) Private residences, including private residences which may serve as an office workplace, except if used as a child care, an adult day care or a health care facility ~~[.]~~ *; and*

*(f)* ~~*[The public smoking area of an indoor place of employment if:*~~

~~*(1) The smoking area is in a completely enclosed area;*~~

~~*(2) The smoking area contains a separate method of ventilation from the other public areas of the indoor place of employment, which substantially prevents smoke from infiltrating the other public areas of the indoor place of employment; and*~~

~~*(3) Persons who are under 21 years of age are prohibited at all times from being present in the smoking area; and*~~

~~*(g)]*~~ *The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:*

*(1) Is not open to the public;*

*(2) Is being produced or organized by a business relating to tobacco or a professional association for convenience stores; and*

*(3) Involves the display of tobacco products.*

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

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

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

~~[7. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions,]~~

*6. The State Health Officer or his designee shall , in accordance with the regulations adopted by the State Board of Health pursuant to subsection 9,* enforce the provisions of this section and ~~[shall]~~ issue citations for violations of this section pursuant to NRS ~~[202.2492 and NRS]~~ 202.24925 ~~[.]~~ *, except that the provisions of subsection 7 apply to the amount of any civil penalty imposed for a violation of subsection 7. For areas of this State that are within a health district, the State Health Officer shall, upon request of the district health officer, designate the district health officer as his designee to enforce the provisions of this section and issue citations for violations of this section, unless the State Health Officer determines that good cause exists not to designate the district health officer as his designee.*

*7. An adult stand-alone bar, tavern or saloon that allows any person who is under 21 years of age to remain inside the adult stand-alone bar, tavern or saloon is liable for a civil penalty of:*

*(a) For the first offense, $1,000.*

*(b) For the second or any subsequent offense, $2,000.*

8. ~~*[7.]*~~ No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this section.

9. ~~*[8.]*~~ *The State Board of Health shall adopt regulations governing the enforcement of the provisions of this section and the issuance of citations for violations of this section.*

*10.* For the purposes of this section, the following terms have the following definitions:

(a) *"Adult stand-alone bar, tavern or saloon" means an establishment that* ~~*[:]*~~ *, in addition to giving, serving or offering for sale food:*

*(1) Is licensed pursuant to any applicable local ordinance to sell alcoholic beverages to be consumed on the premises;*

*(2) Holds a nonrestricted license as defined in NRS 463.0177 or a restricted license as defined in NRS 463.0189; and*

*(3) Prohibits at all times persons who are under 21 years of age from entering the premises.*

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

~~[(b)]~~ *(c)* "Child care facility" has the meaning ascribed to it in NRS 432A.024.

~~[(c)]~~ *(d)* "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling.

~~[(d)]~~ *(e) "District health officer" means the district health officer in a health district. The term includes any employee designated by the district health officer to enforce the provisions of this section and issue citations for violations of this section.*

*(f)* "Government building" means any building or office space owned or occupied by:

(1) Any component of the Nevada System of Higher Education and used for any purpose related to the System;

(2) The State of Nevada and used for any public purpose; or

(3) Any county, city, school district or other political subdivision of the State and used for any public purpose.

~~[(e) "Health authority" has the meaning ascribed to it in NRS 202.2485.]~~

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

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

~~[(h)]~~ *(i)* "Public places" means any enclosed areas to which the public is invited or in which the public is permitted.

~~[(i)]~~ *(j)* "Restaurant" means a business *, other than an adult stand-alone bar, tavern or saloon,* which gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

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

~~[(k)]~~ *(l)* "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

~~[(l)]~~ *(m)* "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

~~[(m)]~~ *(n)* "Stand-alone bar, tavern or saloon" means an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this section. In addition, a stand-alone bar, tavern or saloon must be housed in either:

(1) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or

(2) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

~~[(n)]~~ *(o)* "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345.

~~[10.]~~ ~~*[9.]*~~ *11.* Any statute or regulation inconsistent with this section is null and void.

~~[11.]~~ ~~*[10.]*~~ *12.* The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 2. This act becomes effective on December 9, 2009.

Senator Care moved the adoption of the amendment.

Conflict of interest declared by Senator Raggio.

Remarks by Senators Care and Cegavske.

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

SENATOR CARE:

Amendment No. 305 to Senate Bill No. 372 deletes language that would have permitted smoking in the "public smoking area of an indoor place of employment." It also revises the definition of "adult stand-alone bar, tavern or saloon" to include establishments that give, serve or offer food and provides for a civil fine of $1,000 for a first violation and $2,000 for a second or subsequent violation for allowing a person under the age of 21 in an "adult stand-alone bar, tavern or saloon." The amendment allows the State Board of Health to adopt regulations to enforce the Nevada Clean Indoor Air Act and clarifies that the State Health Officer's designee must be the district health officer if the local health district requests enforcement authority. Note that this amendment retains provisions in the original bill that would allow for smoking in "adult stand-alone bars, taverns and saloons" and in convention facilities where certain meetings or trade shows are held, under certain circumstances where those meetings would be closed to the public. These are the only two additional areas where smoking would be permitted under Senate Bill No. 372.

SENATOR CEGAVSKE:

I would like to disclose that my husband is the General Manager for Crawford Coin. Crawford Coin operates convenience stores and is a licensed slot-route operator. Amendment No. 305 to Senate Bill No. 372 removes the portion of the bill that would have allowed smoking areas in convenience stores to equalize the law relating to all gaming licensees. Although, this amendment does not affect my husband's employer any more than any other convenience store or slot-route operator, it does involve a private economic interest for me and therefore; to avoid any appearance of impropriety, I will be abstaining on this amendment.

Conflict of interest declared by Senator Cegavske.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 394.

Bill read second time.

The following amendment was proposed by the Committee on Energy, Infrastructure and Transportation:

Amendment No. 234.

"SUMMARY—Makes various changes to provisions relating to off-highway vehicles. (BDR 43-501)"

"AN ACT relating to off-highway vehicles; requiring certain owners of off-highway vehicles to obtain certificates of title and registration for those vehicles; requiring the Department of Motor Vehicles to charge and collect certain fees; creating the Fund for Off-Highway Vehicles; creating the Commission on Off-Highway Vehicles; *creating the Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration as a special account in the Motor Vehicle Fund;* eliminating the requirement that certain persons obtain certificates of operation before operating off-highway vehicles; *providing for the licensing of dealers, manufacturers and lessors of off-highway vehicles and for the consignment of off-highway vehicles;* making various other changes relating to off-highway vehicles; *providing penalties;* and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law prohibits a person from operating an off-highway vehicle on a highway in this State unless the person has obtained a certificate of operation for the off-highway vehicle and has attached the certificate of operation to the off-highway vehicle in the manner specified by the Department of Taxation. (NRS 490.080) The term "off-highway vehicle" means any motor vehicle that is designed primarily for off-highway and all-terrain use, including, without limitation, an all-terrain vehicle, an all-terrain motorcycle, a dune buggy, a snowmobile or any motor vehicle used for recreational purposes on public lands. (NRS 490.060)

Existing law requires an authorized dealer of off-highway vehicles to issue a certificate of operation for the off-highway vehicle upon the sale of the vehicle or upon request by a person who purchased the vehicle outside this State under certain circumstances. (NRS 490.070)

With limited exceptions, section ~~[5]~~ *12* of this bill requires a person who acquires ownership of an off-highway vehicle on or after ~~[January]~~ *July* 1, 2010, to apply to the Department of Motor Vehicles for the titling and annual registration of the vehicle within 30 days after acquiring ownership of the vehicle. A person who acquired ownership of an off-highway vehicle before ~~[January]~~ *July* 1, 2010, may apply to the Department for the titling of the vehicle, but is required to apply to the Department for annual registration of the vehicle on or before ~~[December 31, 2010.]~~ *June 30, 2011.*

Section ~~[8]~~ *15* of this bill creates the Fund for Off-Highway Vehicles in the State Treasury. A portion of the money received from the fees collected pursuant to section ~~[5]~~ *12* of this bill must be deposited into the Fund. All money deposited into the Fund must be used only for projects relating to off-highway vehicles as set forth in section ~~[8.]~~ *15.*

~~[ Section 11 of this bill authorizes any game warden, sheriff or other peace officer of this State and its political subdivisions to issue a citation to an owner of an off-highway vehicle who is operating the vehicle and does not have a current registration displayed on the vehicle.]~~

Section ~~[9]~~ *16* of this bill creates the Commission on Off-Highway Vehicles. The Commission consists of 11 members who are appointed by the Governor. Each member of the Commission serves for a term of 3 years and, if money is available from the Fund for Off-Highway Vehicles, is entitled to receive the per diem allowance and travel expenses provided to state officers and employees.

Section ~~[10]~~ *17* of this bill imposes various duties upon the Commission, including, without limitation, the duty to select nonvoting advisers to the Commission and to adopt regulations for awarding grants from the Fund for Off-Highway Vehicles.

Section ~~[17]~~ *59* of this bill, in part, repeals the provisions of NRS 490.030, which define the term "Department" for purposes of chapter 490 of NRS to mean the Department of Taxation. Because NRS 481.015 defines the term "Department" for purposes of title 43 of NRS to mean the Department of Motor Vehicles, the effect of the repeal of NRS 490.030 and the amendment of NRS 481.015 set forth in section 1 of this bill is to place the authority to administer the provisions of chapter 490 of NRS under the Department of Motor Vehicles.

*Sections 20-52 of this bill provide for the licensing of manufacturers, dealers and lessors of off-highway vehicles and for the consignment of off-highway vehicles.*

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

Section 1. NRS 481.015 is hereby amended to read as follows:

481.015 1. Except as otherwise provided in this subsection, as used in this title, unless the context otherwise requires, "certificate of title" means the document issued by the Department that identifies the legal owner of a vehicle and contains the information required pursuant to subsection 2 of

NRS 482.245. The definition set forth in this subsection does not apply to chapters 488 and 489 of NRS.

2. Except as otherwise provided in chapter 480 of NRS, NRS 484.388 to 484.3888, inclusive, 486.363 to 486.377, inclusive, and chapters 486A ~~[, 488 and 490]~~ *and 488* of NRS, as used in this title, unless the context otherwise requires:

(a) "Department" means the Department of Motor Vehicles.

(b) "Director" means the Director of the Department . ~~[of Motor Vehicles.]~~

*Sec. 2.* *NRS 481.048 is hereby amended to read as follows:*

481.048 1. The Director shall appoint, within the limits of legislative appropriations, investigators for the Division of Compliance Enforcement.

2. The duties of the investigators are to travel the State and:

(a) Act as investigators in the enforcement of the provisions of chapters 482 , ~~[and]~~ 487 *and 490* of NRS, NRS 108.265 to 108.367, inclusive, and 108.440 to 108.500, inclusive, as those sections pertain to motor vehicles, trailers, motorcycles, recreational vehicles and semitrailers, as defined in chapter 482 of NRS ~~[.]~~ *, and off-highway vehicles, as defined in NRS 490.060.*

(b) Act as advisers to any business licensed by the Department in connection with any problems arising under the provisions of chapters 108, 482, 483 , ~~[and]~~ 487 *and 490* of NRS.

(c) Advise and assist personnel of the Nevada Highway Patrol in the enforcement of traffic laws and motor vehicle registration laws as they pertain to any business licensed by the Department.

(d) Act as investigators in the enforcement of the provisions of NRS 483.700 to 483.780, inclusive, relating to the licensing of schools and instructors for training drivers.

(e) Exercise their police powers in the enforcement of the laws of this State to prevent acts of fraud or other abuses in connection with the provision of services offered to the public by the Department.

(f) Perform such other duties as may be imposed by the Director.

~~[Sec. 2.]~~ *Sec. 3.* Chapter 490 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~[3 to 11,]~~ *4 to 52,* inclusive, of this act.

~~[Sec. 3.]~~ *Sec. 4. "Commission" means the Commission on Off-Highway Vehicles created ~~[pursuant to]~~ by section ~~[9]~~ 16 of this act.*

*Sec. 5. "Consignee" means any person licensed pursuant to this chapter to sell or lease off-highway vehicles or any person who holds himself out as being in the business of selling, leasing or consigning off-highway vehicles.*

*Sec. 6. "Consignment" means any transaction whereby the registered owner or lienholder of an off-highway vehicle subject to registration pursuant to this chapter agrees, entrusts or in any other manner authorizes a consignee to act as his agent to sell, exchange, negotiate or attempt to*

*negotiate a sale or an exchange of the interest of the registered owner or lienholder in the off-highway vehicle, whether or not for compensation.*

*Sec. 7. "Consignment contract" means a written agreement between a registered owner or lienholder of an off-highway vehicle and a consignee to whom the off-highway vehicle has been entrusted by consignment for the purpose of sale that specifies the terms and conditions of the consignment and sale.*

~~[Sec. 4.]~~ *Sec. 8. "Fund" means the Fund for Off-Highway Vehicles created ~~[pursuant to]~~ by section ~~[8]~~ 15 of this act.*

*Sec. 9. For the purposes of regulation under this chapter and of imposing tort liability under NRS 41.440, and for no other purpose:*

*1. "Lease" means a contract by which the lienholder or owner of an off-highway vehicle transfers to another person, for compensation, the right to use such off-highway vehicle.*

*2. "Long-term lessee" means a person who has leased an off-highway vehicle from another person for a fixed period of more than 31 days.*

*3. "Long-term lessor" means a person who has leased an off-highway vehicle to another person for a fixed period of more than 31 days.*

*4. "Short-term lessee" means a person who has leased an off-highway vehicle from another person for a period of 31 days or less, or by the day, or by the trip.*

*5. "Short-term lessor" means a person who has leased an off-highway vehicle to another person for a period of 31 days or less, or by the day, or by the trip.*

*Sec. 9.5. "Manufacturer" means every person engaged in the business of manufacturing off-highway vehicles.*

*Sec. 10. 1. "Off-highway vehicle dealer" means any person who:*

*(a) For compensation, money or other thing of value sells, exchanges, buys, offers or displays for sale, negotiates or attempts to negotiate a sale or exchange of an interest in an off-highway vehicle;*

*(b) Represents himself as having the ability to sell, exchange, buy or negotiate the sale or exchange of an interest in an off-highway vehicle under this chapter or in any other state or territory of the United States;*

*(c) Receives or expects to receive a commission, money, brokerage fee, profit or any other thing of value from the seller or purchaser of an off-highway vehicle; or*

*(d) Is engaged wholly or in part in the business of selling off-highway vehicles or buying or taking in trade off-highway vehicles for the purpose of resale, selling or offering for sale or consignment to be sold or otherwise dealing in off-highway vehicles, whether or not he owns the off-highway vehicles.*

*2. "Off-highway vehicle dealer" does not include:*

*(a) An insurance company, bank, finance company, governmental agency or any other person coming into possession of an off-highway vehicle,*

*acquiring a contractual right to an off-highway vehicle or incurring an obligation with respect to an off-highway vehicle in the performance of official duties or under the authority of any court of law, if the sale of the off-highway vehicle is to save the seller from loss or pursuant to the authority of a court of competent jurisdiction;*

*(b) A person, other than a long-term or short-term lessor, who is not engaged in the purchase or sale of off-highway vehicles as a business but is disposing of off-highway vehicles acquired by the owner for his use and not to avoid the provisions of this chapter, or a person who sells not more than three personally owned off-highway vehicles in any 12-month period;*

*(c) Persons regularly employed as salesmen by off-highway vehicle dealers, licensed under this chapter, while those persons are acting within the scope of their employment; or*

*(d) Persons who are incidentally engaged in the business of soliciting orders for the sale and delivery of off-highway vehicles outside the territorial limits of the United States if their sales of such vehicles produce less than 5 percent of their total gross revenue.*

*Sec. 11. "Off-highway vehicle salesman" means:*

*1. A person employed by an off-highway vehicle dealer, under any form of contract or arrangement to sell, exchange, buy, or offer for sale, or exchange an interest in an off-highway vehicle to any person, who receives or expects to receive a commission, fee or any other consideration from the seller or purchaser of the off-highway vehicle; or*

*2. A person who exercises managerial control within the business of an off-highway vehicle dealer or a long-term or short-term lessor, or who supervises salesmen employed by an off-highway vehicle dealer or a long-term or short-term lessor, whether compensated by salary or by commission, or who negotiates with or induces a customer to enter into a security agreement on behalf of an off-highway vehicle dealer or a long-term or short-term lessor of off-highway vehicles.*

~~[Sec. 5.]~~ *Sec. 12. 1. An owner of an off-highway vehicle that is acquired:*

*(a) Before ~~[January]~~ July 1, 2010:*

*(1) May apply for, to the Department ~~[for]~~ by mail or to an authorized dealer and obtain, a certificate of title for the off-highway vehicle.*

*(2) Except as otherwise provided in subsection 3, shall, on or before ~~[December 31, 2010, register]~~ June 30, 2011, apply for, to the Department by mail or to an authorized dealer, and obtain, the registration of the off-highway vehicle . ~~[with the Department. The Department shall impose an administrative fine of not more than $25 on an owner of an off-highway vehicle who violates the provisions of this subparagraph. Any such fine collected by the Department must be deposited with the State Treasurer for credit to the Motor Vehicle Fund and allocated to the Department to defray the costs of providing the certificate of title or registration.]~~*

*(b) On or after ~~[January]~~ July 1, 2010, shall within 30 days after acquiring ownership of the off-highway vehicle:*

*(1) Apply for, to the Department ~~[for]~~ by mail or to an authorized dealer, and obtain, a certificate of title for the off-highway vehicle.*

*(2) Except as otherwise provided in subsection 3, ~~[register]~~ apply for, to the Department by mail or to an authorized dealer, and obtain, the registration of the off-highway vehicle . ~~[with the Department. The Department shall impose an administrative fine of not more than $25 on an owner of an off-highway vehicle who violates the provisions of this subparagraph. Any such fine collected by the Department must be deposited with the State Treasurer for credit to the Motor Vehicle Fund and allocated to the Department to defray the costs of providing the certificate of title or registration.]~~*

*2. If an owner of an off-highway vehicle applies to the Department or to an authorized dealer for:*

*(a) A certificate of title for the off-highway vehicle, he shall submit to the Department or to the authorized dealer proof prescribed by the Department that he is the owner of the off-highway vehicle.*

*(b) The registration of the off-highway vehicle, he shall submit:*

*(1) If he obtained ownership of the off-highway vehicle before ~~[January]~~ July 1, 2010, proof prescribed by the Department:*

*(I) That he is the owner of the off-highway vehicle; and*

*(II) Of the unique vehicle identification or serial number ~~[of]~~ for the off-highway vehicle; or*

*(2) If he obtained ownership of the off-highway vehicle on or after ~~[January]~~ July 1, 2010:*

*(I) Evidence satisfactory to the Department that the owner has paid all taxes applicable in this State relating to the purchase of the off-highway vehicle or submit an affidavit indicating that he purchased the vehicle through a private party sale and no tax is due relating to the purchase of the off-highway vehicle; and*

*(II) Proof prescribed by the Department that he is the owner of the off-highway vehicle and of the unique vehicle identification or serial number ~~[of]~~ for the off-highway vehicle.*

*3. Registration of an off-highway vehicle is not required if the off-highway vehicle:*

*(a) Is owned and operated by:*

*(1) A federal agency;*

*(2) An agency of this State; or*

*(3) A county, incorporated city or unincorporated town in this State;*

*(b) Is part of the inventory of a dealer of off-highway vehicles;*

*(c) Is registered or certified in another state and is located in this State for not more than ~~[90]~~ 60 days;*

*(d) Is used solely for husbandry on private land or on public land that is leased to the owner or operator of the off-highway vehicle;*

*(e) Is used for work conducted by or at the direction of a public or private utility; or*

*(f) Was manufactured before January 1, 1976.*

*4. The registration of an off-highway vehicle expires 1 year after its issuance. If an owner of an off-highway vehicle fails to renew the registration of the off-highway vehicle before it expires, the registration may be reinstated upon the payment to the Department of the annual renewal fee and ~~[an administrative fine]~~ a late fee of $25. Any ~~[such fine]~~ late fee collected by the Department must be deposited with the State Treasurer for credit to the ~~[Motor Vehicle Fund and allocated to the Department to defray the costs of providing the certificate of title or registration.]~~ Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration created by section 19 of this act.*

*5. If a certificate of title or registration for an off-highway vehicle is lost or destroyed, the owner of the off-highway vehicle may ~~[request a new]~~ apply to the Department by mail, or to an authorized dealer, for a duplicate certificate of title or registration . ~~[from an authorized dealer or the Department.]~~ The Department may collect a fee to replace a certificate of title or registration certificate, sticker or decal that is lost, damaged or destroyed. Any such fee collected by the Department must be:*

*(a) Set forth by the Department by regulation; and*

*(b) Deposited with the State Treasurer for credit to the ~~[Motor Vehicle Fund and allocated to the Department to defray the costs of providing the replacement certificate of title or registration.]~~ Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration created by section 19 of this act.*

*6. ~~[Except as otherwise provided in subsection 7, an owner of an off-highway vehicle who is a resident of a state other than Nevada shall obtain from the Department or an authorized dealer a temporary permit before he may operate the off-highway vehicle in this State pursuant to NRS 490.090 to 490.130, inclusive. The Department shall offer two options for temporary permits as follows:~~*

*~~(a) A temporary permit that expires 7 days after purchase for the cost of $10; and~~*

*~~(b) A temporary permit that expires 90 days after purchase for the cost of $25.~~*

*~~7.~~ The provisions of ~~[subsection 6]~~ subsections 1 to 5, inclusive, do not apply to an owner of an off-highway vehicle who has registered the off-highway vehicle in a state that ~~[:~~*

*~~(a) Has~~ has similar requirements for the registration of off-highway vehicles . ~~[that are substantially similar to or more stringent than the requirements of this section, as determined by the Commission; and~~*

*~~(b) Does not impose any fees or restrictions on an owner of an off-highway vehicle who is not a resident of that state.~~*

~~*8. The Department shall afford to any person who is fined pursuant to this section an opportunity for a hearing pursuant to the provisions of NRS 233B.121.*~~

~~*9. The Department may adopt regulations to carry out the provisions of this section.]*~~

~~[Sec. 6.]~~ *Sec. 13. Each registration of an off-highway vehicle must:*

*1. Be in the form of a sticker or ~~[license plate,]~~ decal, as prescribed by the Department and approved by the Commission.*

*2. Be approximately the size of a license plate for a motorcycle, as set forth by the Department.*

*3. Include a unique vehicle identification or serial number for the off-highway vehicle.*

*4. Be displayed on the off-highway vehicle in the manner set forth by the Commission.*

~~[Sec. 7.]~~ *Sec. 14. 1. The Department shall determine the fee for issuing a certificate of title for an off-highway vehicle, but such fee must not exceed the fee imposed for issuing a certificate of title pursuant to NRS 482.429. Money received from the payment of the fees described in this subsection must be deposited with the State Treasurer for credit to the ~~[Motor Vehicle Fund and allocated to the Department to defray the costs of providing certificates of title for, and the registration of, off-highway vehicles.]~~ Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration created by section 19 of this act.*

*2. The Commission shall determine the fee for the annual registration of an off-highway vehicle, but such fee must not ~~[exceed $20.]~~ be less than $20 or more than $30. Money received from the payment of the fees described in this subsection must be distributed as follows:*

*(a) During the period from ~~[January]~~ July 1, 2010, through ~~[December 31, 2010:]~~ June 30, 2011:*

*(1) ~~[Seventy-five]~~ Eighty-five percent must be deposited with the State Treasurer for credit to the ~~[Motor Vehicle Fund and allocated to the Department to defray the costs of providing certificates of title for, and the registration of, off-highway vehicles.]~~ Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration created by section 19 of this act.*

*(2) To the extent that any portion of the fee for registration is not for the operation of the off-highway vehicle on a highway, ~~[twenty-five]~~ 15 percent must be deposited into the Fund . ~~[for Off-Highway Vehicles.]~~*

*(b) On or after ~~[January]~~ July 1, 2011:*

*(1) ~~[Ten]~~ Fifteen percent must be deposited with the State Treasurer for credit to the ~~[Motor Vehicle Fund and allocated to the Department to defray the costs of providing certificates of title for, and the registration of, off-highway vehicles.]~~ Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration created by section 19 of this act.*

*(2) To the extent that any portion of the fee for registration is not for the operation of the off-highway vehicle on a highway, ~~[ninety]~~ 85 percent must be deposited into the Fund . ~~[for Off-Highway Vehicles.]~~*

~~[Sec. 8.]~~ *Sec. 15. 1. The Fund for Off-Highway Vehicles is hereby created in the State Treasury as a revolving fund. The Commission shall administer the Fund. Any money remaining in the Fund at the end of a fiscal year does not revert to the State General Fund, and the balance in the Fund must be carried forward.*

*2. During the period from ~~[January]~~ July 1, 2010, through ~~[December 31, 2010,]~~ June 30, 2011, money in the Fund may only be used by the Commission for the reasonable administrative costs of the Commission and to inform the public of the requirements of this chapter . ~~[490 of NRS.]~~*

*3. On or after ~~[January 1, 2011,]~~ June 30, 2011, money in the Fund may only be used by the Commission as follows:*

*(a) Not more than 5 percent of the money that is in the Fund as of January 1 of each year may be used for the reasonable administrative costs of the Fund.*

*(b) Except as otherwise provided in subsection 4, any money in the Fund as of January 1 of each year that is not used pursuant to paragraph (a) may be used as follows:*

*(1) Sixty percent of the money may be used for projects relating to:*

*(I) Studies or planning for trails and facilities for use by owners and operators of off-highway vehicles. Money received pursuant to this sub-subparagraph may be used to prepare environmental assessments and environmental impact studies that are required pursuant to 42 U.S.C. §§ 4321 et seq.*

*(II) The mapping and signing of those trails and facilities.*

*(III) The acquisition of land for those trails and facilities.*

*(IV) The enhancement and maintenance of those trails and facilities.*

*(V) The construction of those trails and facilities.*

*(VI) The restoration of areas that have been damaged by the use of off-highway vehicles.*

*(2) Twenty percent of the money may be used for law enforcement, as recommended by the Office of Criminal Justice Assistance of the Department of Public Safety, or its successor.*

*(3) Fifteen percent of the money may be used for safety training and education relating to off-highway vehicles.*

*4. If money is used for the projects described in paragraph (b) of subsection 3, not more than 30 percent of such money may be allocated to any one category of projects described in subparagraph (1) ~~[.]~~ of that paragraph.*

~~[Sec. 9.]~~ *Sec. 16. 1. The Commission on Off-Highway Vehicles is hereby created.*

*2. The Commission consists of 11 members as follows:*

*(a) One member who is an authorized dealer, appointed by the Governor;*

*(b) One member who is a sportsman, appointed by the Governor from a list of persons submitted to him by the Director of the Department of Wildlife;*

*(c) One member who is a rancher, appointed by the Governor from a list of persons submitted to him by the Director of the State Department of Agriculture;*

*(d) One member who is a representative of the Nevada Association of Counties, appointed by the Governor from a list of persons submitted to him by the Executive Director of the Association;*

*(e) One member who is a representative of law enforcement, appointed by the Governor from a list of persons submitted to him by the Nevada Sheriffs' and Chiefs' Association;*

*(f) One member, appointed by the Governor from a list of persons submitted to him by the Director of the State Department of Conservation and Natural Resources, who:*

*(1) Possesses a degree in soil science, rangeland ecosystems science or a related field;*

*(2) Has at least 5 years of experience working in one of the fields described in subparagraph (1); and*

*(3) Is knowledgeable about the ecosystems of the Great Basin Region of central Nevada or the Mojave Desert; and*

*(g) ~~[Five]~~ One member, appointed by the Governor, who is a representative of an organization that represents persons who use off-highway vehicles to access areas to participate in recreational activities that do not primarily involve off-highway vehicles;*

*(h) Four members, appointed by the Governor, who reside in the State of Nevada and have participated in recreational activities for off-highway vehicles for at least 5 years using the type of off-highway vehicle owned or operated by the persons they will represent, as follows:*

*(1) One member who represents persons who own or operate all-terrain vehicles;*

*(2) One member who represents persons who own or operate all-terrain motorcycles;*

*(3) One member who represents persons who own or operate snowmobiles; and*

*(4) ~~[One member who represents persons who own or operate any off-highway vehicle used for rock crawling; and~~*

*~~(5)]~~ One member who represents persons who own or operate, and participate in the racing of, off-highway vehicles.*

*3. The Governor shall not appoint to the Commission any member described in paragraph ~~[(g)]~~ (h) of subsection 2 unless the member has been recommended to the Governor by an off-highway vehicle organization. As used in this subsection, "off-highway vehicle organization" means a profit or nonprofit corporation, association or organization formed pursuant to the*

*laws of this State and which promotes off-highway vehicle recreation or racing.*

*4. After the initial terms, each member of the Commission serves for a term of 3 years. A vacancy on the Commission must be filled in the same manner as the original appointment.*

*5. Except as otherwise provided in this subsection, a member of the Commission may not serve more than two consecutive terms on the Commission. A member who has served two consecutive terms on the Commission may be reappointed if the Governor does not receive any applications for that member's seat or if the Governor determines that no qualified applicants are available to fill that member's seat.*

*6. The Governor shall ensure that, insofar as practicable, the members whom he appoints reflect the geographical diversity of this State.*

*7. Each member of the Commission:*

*(a) Is entitled to receive, if money is available for that purpose from the fees collected pursuant to section ~~[7]~~ 14 of this act, the per diem allowance and travel expenses provided for state officers and employees generally.*

*(b) Shall swear or affirm that he will work to create and promote responsible off-highway vehicle recreation in the State. The Governor may remove a member from the Commission if the member violates the oath described in this paragraph.*

*8. The Commission may employ an Executive Secretary, who must not be a member of the Commission, to assist in its daily operations and in administering the Fund.*

*9. The Commission may adopt regulations for the operation of the Commission. Upon request by the Commission, the nonvoting advisers ~~[selected]~~ solicited by the Commission pursuant to section ~~[10]~~ 17 of this act may provide assistance to the Commission in adopting those regulations.*

~~[Sec. 10.]~~ *Sec. 17. 1. The Commission shall:*

*(a) Elect a Chairman, Vice Chairman, Secretary and Treasurer from among its members.*

*(b) Meet at the call of the Chairman.*

*(c) Meet at least four times each year.*

*(d) ~~[Select eight]~~ Solicit nine nonvoting advisers to the Commission to serve for terms of 2 years as follows:*

*(1) One adviser from the Bureau of Land Management.*

*(2) One adviser from the United States Forest Service.*

*(3) One adviser who is:*

*(I) From the Natural Resources Conservation Service of the United States Department of Agriculture; or*

*(II) A teacher, instructor or professor at an institution of the Nevada System of Higher Education and who provides instruction in environmental science or a related field.*

*(4) One adviser from the State Department of Conservation and Natural Resources.*

*(5) One adviser from the Department of Wildlife.*

*(6) One adviser from the Department of Motor Vehicles.*

*(7) One adviser from the Commission on Tourism.*

*(8) One adviser from the Nevada Indian Commission.*

*(9) One adviser from the United States Fish and Wildlife Service.*

*2. The Commission may award a grant of money from the Fund. Any such grant must comply with the requirements set forth in section ~~[8]~~ 15 of this act. The Commission shall:*

*(a) Adopt regulations setting forth who may apply for a grant of money from the Fund and the manner in which such a person may submit the application to the Commission. The regulations adopted pursuant to this paragraph must include, without limitation, ~~[a requirement]~~ requirements that ~~[any]~~ :*

*(1) Any person requesting a grant ~~[obtain any necessary prior approval from a]~~ provide proof satisfactory to the Commission that the appropriate federal, state or local governmental agency ~~[before he applies to the Commission for a grant.]~~ has been consulted regarding the nature of the project to be funded by the grant and regarding the area affected by the project;*

*(2) The application for the grant address all applicable laws and regulations, including, without limitation, those concerning:*

*(I) Threatened and endangered species in the area affected by the project;*

*(II) Ecological, cultural and archaeological sites in the area affected by the project; and*

*(III) Existing land use authorizations and prohibitions, land use plans, special designations and local ordinances for the area affected by the project; and*

*(3) Any compliance information provided by an appropriate federal, state or local governmental agency, and any information or advice provided by any agency, group or individual be submitted with the application for the grant.*

*(b) Adopt regulations for awarding grants from the Fund.*

*(c) Adopt regulations for determining the acceptable performance of work on a project for which a grant is awarded.*

*(d) Approve the completion of, and payment of money for, work performed on a project for which a grant is awarded, if the Commission determines the work is acceptable.*

*(e) Monitor the accounting activities of the Fund.*

*3. The nonvoting advisers ~~[appointed]~~ solicited by the Commission pursuant to paragraph (d) of subsection 1 shall assist the Commission in carrying out the duties set forth in this section ~~[.]~~ and shall review for completeness and for compliance with the requirements of paragraph (a) of subsection 2 all applications for grants.*

*4. For each regular session of the Legislature, the Commission shall prepare a comprehensive report, including, without limitation, a summary of any grants that the Commission awarded and of the accounting activities of the Fund, and any recommendations of the Commission for proposed legislation. The report must be submitted to the Director of the Legislative Counsel Bureau for distribution to the Legislature not later than September 1 of each even-numbered year.*

~~[Sec. 11.]~~ *Sec. 18.* ~~*[1. Any game warden, sheriff or other peace officer of this State and its political subdivisions may issue a citation to an owner of an off-highway vehicle who is operating the off-highway vehicle pursuant to NRS 490.090 to 490.130, inclusive, and does not have a current registration displayed on the off-highway vehicle in the manner set forth by the Commission.*~~

~~*2. Not later than 30 days after receiving a citation issued pursuant to subsection 1, an owner of an off-highway vehicle shall:*~~

~~*(a) Pay a fine of $50 to the Department; or*~~

~~*(b) Submit a request for a hearing to the Department. The Department shall afford an opportunity for a hearing pursuant to NRS 233B.121 to any person who submits a request pursuant to this paragraph.*~~

~~*3. Fines collected pursuant to this section:*~~

~~*(a) Are in addition to any fines that may be collected by the Department pursuant to section 5 of this act.*~~

~~*(b) Must be deposited into the Fund.*~~

~~*4. The Department may adopt regulations to carry out the provisions of this section.]*~~ *(Deleted by amendment.)*

*Sec. 19. 1. The Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration is hereby created as a special account in the Motor Vehicle Fund.*

*2. The Department shall use the money in the Account to pay the expenses of administering the provisions of sections 12 and 14 of this act.*

*3. Money in the Account must be used only for the purposes specified in subsection 2.*

*4. Any money remaining in the Account at the end of the fiscal year does not revert to the State General Fund, and the balance in the Account must be carried forward to the next fiscal year.*

*Sec. 20. The Department, all officers thereof and all peace officers in this State shall enforce the provisions of this chapter.*

*Sec. 21. The Director may adopt and enforce such administrative regulations as are necessary to carry out the provisions of this chapter.*

*Sec. 22. 1. Before taking an off-highway vehicle on consignment, an off-highway vehicle dealer or lessor shall prepare a written consignment contract.*

*2. A consignment contract must include, without limitation:*

*(a) The names of the consignor and consignee;*

*(b) The date on which the consignment contract was entered into;*

*(c) A complete description of the off-highway vehicle subject to the consignment contract, including the unique vehicle identification or serial number, and the year, make and model of the off-highway vehicle;*

*(d) The term of the consignment contract;*

*(e) The name of each person or business entity holding any security interest in the off-highway vehicle to be consigned;*

*(f) The minimum sales price for the off-highway vehicle and the disposition of the proceeds therefrom, as agreed upon by the consignor and consignee; and*

*(g) The signatures of the consignor and consignee acknowledging all the terms and conditions set forth in the consignment contract.*

*Sec. 23. 1. A consignee of an off-highway vehicle shall, upon entering into a consignment contract or other form of agreement to sell an off-highway vehicle owned by another person:*

*(a) Open and maintain a separate trust account in a federally insured bank or savings and loan association that is located in this State, into which the consignee shall deposit all money received from a prospective buyer as a deposit, or as partial or full payment of the purchase price agreed upon, toward the purchase or transfer of interest in the off-highway vehicle. A consignee of an off-highway vehicle shall not:*

*(1) Commingle the money in the trust account with any other money that is not on deposit or otherwise maintained toward the purchase of the off-highway vehicle subject to the consignment contract or agreement; or*

*(2) Use any money in the trust account to pay his operational expenses for any purpose that is not related to the consignment contract or agreement.*

*(b) Obtain from the consignor, before receiving delivery of the off-highway vehicle, a signed and dated disclosure statement that is included in the consignment contract and provides in at least 10-point bold type or font:*

*IMPORTANT NOTICE TO OFF-HIGHWAY VEHICLE OWNERS*

*State law (section 23 of this act) requires that the operator of this business file a Uniform Commercial Code 1 (UCC1) form with the Office of the Secretary of State on your behalf to protect your interest in your off-highway vehicle. The form is required to protect your off-highway vehicle from forfeiture in the event that the operator of this business fails to meet his financial obligations to a third party holding a security interest in his inventory. The form must be filed by the operator of this business before he may take possession of your off-highway vehicle. If the form is not filed as required, YOU MAY LOSE YOUR VEHICLE THROUGH NO FAULT OF YOUR OWN. For a copy of the UCC1 form filed on your behalf or for more information, please contact:*

*The Office of the Secretary of State of Nevada*
*Uniform Commercial Code Division*
*(775) 684-5708*

*I understand and acknowledge the above disclosure.*

…… …….

*Consignee Signature Date*

*(c) Assist the consignor in completing, with respect to the consignor's purchase-money security interest in the off-highway vehicle, a financial statement of the type described in subsection 5 of NRS 104.9317 and shall file the financial statement with the Secretary of State on behalf of the consignor. If a consignee has previously granted to a third party a security interest with an after-acquired property clause in the consignee's inventory, the consignee additionally shall assist the consignor in sending an authenticated notification, as described in paragraph (b) of subsection 1 of NRS 104.9324, to each holder of a conflicting security interest. The consignee must not receive delivery of the off-highway vehicle until the consignee has:*

*(1) Filed the financing statement with the Secretary of State; and*

*(2) If applicable, assisted the consignor in sending an authenticated notification to each holder of a conflicting security interest.*

*2. Upon the sale or transfer of interest in the off-highway vehicle, the consignee shall forthwith:*

*(a) Satisfy or cause to be satisfied all outstanding security interests in the off-highway vehicle; and*

*(b) Satisfy the financial obligations due the consignor pursuant to the consignment contract.*

*3. Upon the receipt of money by delivery of cash, bank check or draft, or any other form of legal monetary exchange, or after any form of transfer of interest in an off-highway vehicle, the consignee shall notify the consignor that the money has been received or that a transfer of interest in the off-highway vehicle has occurred. Notification by the consignee to the consignor must be given in person or, in the absence of the consignor, by registered or certified mail addressed to the last address or residence of the consignor known to the consignee. The notification must be made within 3 business days after the date on which the money is received or the transfer of interest in the off-highway vehicle is made.*

*4. The provisions of this section do not apply to:*

*(a) An executor;*

*(b) An administrator;*

*(c) A sheriff; or*

*(d) Any other person who sells off-highway vehicles pursuant to the powers or duties granted to or imposed on him by specific statute.*

*5. Notwithstanding any provision of the Nevada Revised Statutes to the contrary, an off-highway vehicle subject to a consignment contract may not be operated by the consignee, an employee or agent of the consignee, or a prospective buyer unless the operation of the off-highway vehicle is authorized by the express written consent of the consignor.*

*6. A consignee shall maintain a written log for each off-highway vehicle for which he has entered into a consignment contract. The written log must include:*

*(a) The name and address, or place of residence, of the consignor;*

*(b) A description of the off-highway vehicle consigned, including the year, make, model and unique vehicle identification or serial number of the off-highway vehicle;*

*(c) The date on which the consignment contract is entered into;*

*(d) The period that the off-highway vehicle is to be consigned;*

*(e) The minimum agreed upon sales price for the off-highway vehicle;*

*(f) The approximate amount of money due any lienholder or other person known to have an interest in the off-highway vehicle;*

*(g) If the off-highway vehicle is sold, the date on which the off-highway vehicle is sold;*

*(h) The date that the money due the consignor and the lienholder was paid;*

*(i) The name and address of the federally insured bank or savings and loan association in which the consignee opened the trust account required pursuant to subsection 1; and*

*(j) The signature of the consignor acknowledging that the terms of the consignment contract were fulfilled or terminated, as appropriate.*

*7. A person who:*

*(a) Appropriates, diverts or otherwise converts to his own use money in a trust account opened pursuant to paragraph (a) of subsection 1 or otherwise subject to a consignment contract or agreement is guilty of embezzlement and shall be punished in accordance with NRS 205.300. The court shall, in addition to any other penalty, order the person to pay restitution.*

*(b) Violates paragraph (b) or (c) of subsection 1 is guilty of a misdemeanor. The court shall, in addition to any other penalty, order the person to pay restitution.*

*(c) Violates any other provision of this section is guilty of a misdemeanor.*

*Sec. 24. 1. Except as otherwise provided in subsection 5, a natural person who applies for the issuance or renewal of a license issued pursuant to the provisions of sections 24 to 47, inclusive, of this act shall submit to the Department 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 Department shall include the statement required pursuant to subsection 1 in:*

*(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or*

*(b) A separate form prescribed by the Department.*

*3. A license may not be issued or renewed by the Department pursuant to the provisions of sections 24 to 47, inclusive, of this act if the applicant is a natural person who:*

*(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 Department 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.*

*5. If a licensee renews an existing license electronically, the licensee shall keep the original of the statement required pursuant to subsection 1 at his place of business for not less than 3 years after submitting the electronic renewal. The statement must be available during business hours for inspection by any authorized agent of the Director or the State of Nevada.*

*Sec. 25. 1. If the Department 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 the holder of a license issued pursuant to sections 24 to 47, inclusive, of this act, the Department shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Department receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

*2. The Department shall reinstate an occupational license issued pursuant to the provisions of this chapter that has been suspended by a district court pursuant to NRS 425.540 if the Department receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

*Sec. 26. 1. Except as otherwise provided in subsection 2, a person shall not engage in the activities of a new off-highway vehicle dealer, used off-highway vehicle dealer, long-term or short-term lessor or manufacturer in this State until he has been issued:*

*(a) A license or permit to act as a new off-highway vehicle dealer, used off-highway vehicle dealer, long-term or short-term lessor or manufacturer, or a similar license or permit, by every city within whose corporate limits he maintains an established place of business and by every county in which he maintains an established place of business outside the corporate limits of a city; and*

*(b) A license by the Department. The Department shall not issue a license to the person until he has been issued all licenses and permits required by paragraph (a).*

*2. A person licensed as an off-highway vehicle dealer pursuant to this chapter shall not engage in the activities of a new off-highway vehicle dealer until he has provided the Department with satisfactory proof that he is authorized by a manufacturer to display and offer for sale the off-highway vehicles produced or distributed by that manufacturer.*

*3. A license for an off-highway vehicle dealer or manufacturer issued pursuant to this chapter does not permit a person to engage in the business of buying, selling or leasing or manufacturing motor vehicles or trailers governed pursuant to the laws and regulations established in chapter 482 of NRS.*

*4. The Department shall investigate any applicant for a license as an off-highway vehicle dealer, long-term or short-term lessor or manufacturer and shall complete an investigation report on a form provided by the Department.*

*5. A person who violates subsection 1 or 2 is guilty of:*

*(a) For a first offense, a misdemeanor.*

*(b) For a second offense, a gross misdemeanor.*

*(c) For a third and any subsequent offense, a category D felony and shall be punished as provided in NRS 193.130.*

*Sec. 27. 1. Except as otherwise provided in subsections 2 and 3, every off-highway vehicle dealer, long-term or short-term lessor and manufacturer who is licensed by the Department to do business in this State shall maintain an established place of business in this State which:*

*(a) Includes a permanent enclosed building, owned in fee or leased, with sufficient space to display one or more off-highway vehicles which the off-highway vehicle dealer, lessor or manufacturer is licensed to sell, lease or manufacture; and*

*(b) Is principally used by the licensee to conduct his business.*

*2. Every new and used off-highway vehicle dealer, long-term or short-term lessor or manufacturer shall maintain an established place of business in this State which has:*

*(a) In addition to sufficient customer and employee parking, adequate usable space to display one or more off-highway vehicles offered for sale or lease from his established place of business;*

*(b) Except for businesses licensed pursuant to this chapter or chapter 482 of NRS and owned by a single principal or group of principals, physical*

*boundaries which are clearly marked that physically separate the licensee's established place of business from any other adjacent place of business; and*

*(c) A permanent enclosed building large enough to accommodate an office but not less than 100 square feet of usable floor space to accommodate his business office and provide a safe place to keep and store the books and other records of his business.*

*3. A short-term off-highway vehicle lessor shall:*

*(a) Designate his principal place of business as his established place of business and each other location where he conducts business as a branch that is operated pursuant to the license for the principal place of business.*

*(b) Notify the Department of each branch at which he conducts business by filing, on forms provided by the Department, such information pertaining to each branch as required by the Department.*

*Sec. 28. 1. An application for a license for an off-highway vehicle dealer, long-term or short-term lessor or manufacturer must be filed upon forms supplied by the Department and include the social security number of the applicant. The forms must designate the persons whose names are required to appear thereon. The applicant must furnish:*

*(a) Such proof as the Department may deem necessary that the applicant is an off-highway vehicle dealer, long-term or short-term lessor or manufacturer.*

*(b) A fee of $125.*

*(c) A fee for the processing of fingerprints. The Department shall establish by regulation the fee for processing fingerprints. The fee must not exceed the sum of the amounts charged by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for processing the fingerprints.*

*(d) For initial licensure, a complete set of his fingerprints and written permission authorizing the Department to forward those fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.*

*(e) If the applicant is a natural person, the statement required pursuant to section 24 of this act.*

*(f) A certificate of insurance for liability.*

*2. Upon receipt of the application and when satisfied that the applicant is entitled thereto, the Department shall issue to the applicant a license for an off-highway vehicle dealer, long-term or short-term lessor or manufacturer containing the name of the licensee and the address of his established place of business or the address of the main office of a manufacturer without an established place of business in this State.*

*3. Licenses issued pursuant to this section expire on December 31 of each year. Before December 31 of each year, a licensee must furnish the Department with an application for renewal of his license accompanied by an annual fee of $50. If the applicant is a natural person, the application for renewal also must be accompanied by the statement required pursuant to*

*section 24 of this act. The additional fee for the processing of fingerprints, established by regulation pursuant to paragraph (c) of subsection 1, must be submitted for each applicant whose name does not appear on the original application for the license. The renewal application must be provided by the Department and contain information required by the Department.*

*Sec. 29. The Director shall, before renewing any occupational license issued pursuant to this chapter, consider:*

*1. The number and types of complaints received against an off-highway vehicle dealer, long-term or short-term lessor or manufacturer by the Department; and*

*2. Any administrative fines imposed upon the off-highway vehicle dealer, lessor or manufacturer by the Department pursuant to this chapter,*

*➥ and may require the dealer, lessor or manufacturer to provide a good and sufficient bond in the amount set forth in subsection 1 of section 40 of this act for each category of off-highway vehicle sold at each place of business and in each county in which the dealer, lessor or manufacturer is licensed to do business.*

*Sec. 30. Evidence of unfitness of an applicant for or a licensee of an off-highway vehicle dealer, long-term or short-term lessor or manufacturer for the purposes of denial or revocation of a license may consist of, but is not limited to:*

*1. Failure to discharge a lienholder on an off-highway vehicle within 30 days after it is traded to his dealership.*

*2. Being the former holder of or being a partner, officer, director, owner or manager involved in management decisions of an off-highway vehicle dealership which held a license issued pursuant to section 28 of this act or of an occupational license issued pursuant to chapter 482 of NRS which was revoked for cause and never reissued or was suspended upon terms which were never fulfilled.*

*3. Defrauding or attempting to defraud the State or a political subdivision of any taxes or fees in connection with the sale or transfer of an off-highway vehicle.*

*4. Forging the signature of the registered or legal owner of an off-highway vehicle on a certificate of title.*

*5. Purchasing, selling, otherwise disposing of or having in his possession any off-highway vehicle which he knows, or a reasonable person should know, is stolen or otherwise illegally appropriated.*

*6. Willfully failing to deliver to a purchaser or his lienholder a certificate of title to an off-highway vehicle he has sold.*

*7. Refusing to allow an agent of the Department to inspect, during normal business hours, all books, records and files which are required to be maintained within the State.*

*8. Any fraud which includes, but is not limited to:*

*(a) Misrepresentation in any manner, whether intentional or grossly negligent, of a material fact.*

*(b) An intentional failure to disclose a material fact.*

*9. Willful failure to comply with any regulation adopted by the Department.*

*10. Knowingly submitting or causing to be submitted any false, forged or otherwise fraudulent document to the Department to obtain a lien, title or certificate of ownership or any duplicate thereof for an off-highway vehicle.*

*11. Knowingly causing or allowing a false, forged or otherwise fraudulent document to be maintained as a record of his business.*

*12. Violating any provisions of this chapter which involve the sale or transfer of an interest in an off-highway vehicle.*

*Sec. 31. An off-highway vehicle dealer, long-term or short-term lessor or manufacturer licensed under the provisions of this chapter shall post his license, and all licenses issued to persons in his employ who are licensed as off-highway vehicle salesmen pursuant to the provisions of this chapter, in a conspicuous place clearly visible to the general public at the location described in the license.*

*Sec. 32. Except as otherwise provided in subsection 2 of section 10 of this act, the following activities are prima facie evidence that a person is engaged in the activities of an off-highway vehicle dealer:*

*1. A person displays for sale, sells or offers for sale any off-highway vehicle which he does not personally own;*

*2. A person demonstrates, or allows the demonstration or operation of, any off-highway vehicle for the purpose of sale or future sale or as an inducement to purchase the vehicle; or*

*3. A person engages in an activity specified by subsection 1 of section 10 of this act or any other act regarding an off-highway vehicle which would lead a reasonable person to believe that he may purchase that off-highway vehicle or a similar off-highway vehicle from the person.*

*Sec. 33. 1. An off-highway vehicle dealer shall inform the Department of the location of each place at which he conducts any business and the name under which he does business at each location.*

*2. If an off-highway vehicle dealer does business at more than one location, he shall designate one location in each county in which he does business as his principal place of business for that county and one name as the principal name of his business. He shall designate all of his other business locations not otherwise designated as a principal place of business pursuant to this subsection as branches.*

*3. An off-highway vehicle dealer who maintains a principal place of business and one or more businesses designated as branches may operate those branches under the authority of the license issued by the Department to the principal place of business under the following conditions:*

*(a) The principal and branch locations are owned and operated by the same principal or group of principals listed on the records of the Department for the principal place of business;*

*(b) The sales activities conducted at a branch location are the same as those authorized by the Department at the principal place of business;*

*(c) The principal place of business and each branch location are located within the same county;*

*(d) The principal place of business and each branch location maintain the appropriate city or county license;*

*(e) The closest boundary of a branch location is not more than 500 feet from the principal place of business;*

*(f) The business sign displayed at each branch location meets the requirements of section 39 of this act and is essentially the same in name, style and design as that of the principal place of business;*

*(g) Sales transactions originating at a branch location are culminated, and the records of the transaction maintained, at the principal place of business; and*

*(h) The off-highway vehicle dealer provides all documentation which the Department deems necessary to ensure that each business location is operated in accordance with the provisions of this chapter and all other applicable laws and regulations established for the operation of an off-highway vehicle sales business in this State.*

*4. If an off-highway vehicle dealer changes the name or location of any of his established places of business, he shall not conduct business as an off-highway vehicle dealer under the new name or at the new location until he has been issued a license for the new name or location from the Department.*

*Sec. 34. 1. An off-highway vehicle dealer, long-term or short-term lessor or manufacturer shall keep his books and records for all locations at which he does business within a county at his principal place of business in that county.*

*2. Each off-highway vehicle dealer, lessor and manufacturer shall:*

*(a) Permit any authorized agent of the Director or the State of Nevada to inspect and copy the books and records during usual business hours; or*

*(b) Not later than 3 business days after receiving a request from such a person for the production of the books and records or any other information, provide the requested books, records and other information to the person at the location specified in the request.*

*3. An off-highway vehicle dealer, lessor and manufacturer shall retain his books and records for 3 years after he ceases to be licensed as an off-highway vehicle dealer, lessor or manufacturer.*

*Sec. 35. 1. If an off-highway vehicle dealer or long-term lessor has one or more branches, he shall procure from the Department a license for each branch, in addition to the license issued for his principal place of business.*

*2. The Department shall specify on each license it issues:*

*(a) The name of the licensee;*

*(b) The location for which the license is issued; and*

*(c) The name under which the licensee does business at that location.*

*3. Each off-highway vehicle dealer and lessor shall post each license issued to him by the Department in a conspicuous place clearly visible to the general public at the location described in the license.*

*4. The Department shall, by regulation, provide for the issuance of a temporary license for a licensed off-highway vehicle dealer to conduct business at a temporary location. Any such regulations must include the imposition of a reasonable fee for the issuance of the temporary license.*

*Sec. 36. Except as otherwise provided in section 41 of this act, the Department or any other agency of this State shall not require that an off-highway vehicle dealer have his signature acknowledged before a notary public or any other person authorized to take acknowledgments in this State on any document the off-highway vehicle dealer is required to file with the Department or agency.*

*Sec. 37. Each off-highway vehicle dealer who advertises that the Spanish language is spoken at his place of business or who conducts business by communicating in Spanish with a purchaser or prospective purchaser regarding the potential purchase of an off-highway vehicle shall, upon the request of a purchaser or prospective purchaser of an off-highway vehicle with whom the off-highway vehicle dealer or his agent is communicating or has communicated in Spanish as a part of the preliminary discussions and negotiations regarding the purchase or potential purchase of the off-highway vehicle, allow the purchaser or prospective purchaser to view the version of the forms for the application for credit and contracts to be used in the sale of off-highway vehicles which have been translated into Spanish pursuant to subsection 3 of NRS 97.299.*

*Sec. 38. If a licensed off-highway vehicle dealer takes an off-highway vehicle in trade on the purchase of another off-highway vehicle and there is an outstanding security interest, the licensed off-highway vehicle dealer shall satisfy the outstanding security interest within 30 days after the off-highway vehicle is taken in trade on the purchase of the other off-highway vehicle.*

*Sec. 39. 1. Except as otherwise provided in subsection 2, at each of his established places of business, each off-highway vehicle dealer, long-term or short-term lessor or manufacturer shall permanently affix a sign containing the name of his business in lettering of sufficient size to be clearly legible from the center of the nearest street or roadway, except that the lettering must be at least 8 inches high and formed by lines that are at least 1 inch wide.*

*2. Upon approval of the Director, and in accordance with all other city and county ordinances, an off-highway vehicle dealer or a long-term or short-term lessor may be exempted from the requirements of subsection 1 if:*

*(a) His established place of business or branch location is located within the confines of another business;*

*(b) The other place of business is the primary business at that location; and*

*(c) The primary business is not licensed pursuant to any provision of this chapter.*

*Sec. 40. 1. Before any off-highway vehicle dealer, long-term or short-term lessor or manufacturer is issued a license pursuant to this chapter, the Department shall require that the applicant procure and file with the Department a good and sufficient bond with a corporate surety thereon, duly licensed to do business within the State of Nevada, approved as to form by the Attorney General and conditioned that the applicant or any employee who acts on his behalf within the scope of his employment shall conduct his business as an off-highway vehicle dealer, lessor or manufacturer without breaching a consumer contract or engaging in a deceptive trade practice, fraud or fraudulent representation and without violation of the provisions of this chapter. The bond must be in the amount of $50,000.*

*2. The Department may, pursuant to a written agreement with any off-highway vehicle dealer, long-term or short-term lessor or manufacturer who has been licensed to do business in this State for at least 5 years, allow a reduction in the amount of the bond of the off-highway vehicle dealer, lessor or manufacturer if his business has been conducted in a manner satisfactory to the Department for the preceding 5 years. No bond may be reduced to less than 50 percent of the bond required pursuant to subsection 1.*

*3. The bond must be continuous in form, and the total aggregate liability on the bond must be limited to the payment of the total amount of the bond.*

*4. The undertaking on the bond includes any breach of a consumer contract, deceptive trade practice, fraud, fraudulent representation or violation of any of the provisions of this chapter by the representative of any licensed representative or salesman of any licensed off-highway vehicle dealer, long-term or short-term lessor or manufacturer who acts for the off-highway vehicle dealer, lessor or manufacturer on his behalf and within the scope of the employment of the representative or the salesman.*

*5. The bond must provide that any person injured by the action of the off-highway vehicle dealer, long-term or short-term lessor, manufacturer, representative or off-highway vehicle salesman in violation of any provision of this chapter may apply to the Director, for good cause shown, for compensation from the bond. The surety issuing the bond shall appoint the Secretary of State as its agent to accept service of notice or process for the surety in any action upon the bond brought in a court of competent jurisdiction or brought before the Director.*

*6. If a person is injured by the actions of an off-highway vehicle dealer, long-term or short-term lessor, manufacturer, representative or off-highway vehicle salesman, the person may:*

*(a) Bring and maintain an action in any court of competent jurisdiction. If the court enters:*

*(1) A judgment on the merits against the off-highway vehicle dealer, lessor, manufacturer, representative or salesman, the judgment is binding on the surety.*

*(2) A judgment other than on the merits against the off-highway vehicle dealer, lessor, manufacturer, representative or salesman, including, without limitation, a default judgment, the judgment is binding on the surety only if the surety was given notice and an opportunity to defend at least 20 days before the date on which the judgment was entered against the off-highway vehicle dealer, lessor, manufacturer, representative or salesman.*

*(b) Apply to the Director, for good cause shown, for compensation from the bond. The Director may determine the amount of compensation and the person to whom it is to be paid. The surety shall then make the payment.*

*(c) Settle the matter with the off-highway vehicle dealer, lessor, manufacturer, representative or salesman. If such a settlement is made, the settlement must be reduced to writing, signed by both parties and acknowledged before any person authorized to take acknowledgments in this State and submitted to the Director with a request for compensation from the bond. If the Director determines that the settlement was reached in good faith and there is no evidence of collusion or fraud between the parties in reaching the settlement, the surety shall make the payment to the injured person in the amount agreed upon in the settlement.*

*7. Any judgment entered by a court against an off-highway vehicle dealer, long-term or short term lessor, manufacturer, representative or off-highway vehicle salesman may be executed through a writ of attachment, garnishment, execution or other legal process, or the person in whose favor the judgment was entered may apply to the Director for compensation from the bond of the off-highway vehicle dealer, lessor, manufacturer, representative or salesman.*

*8. The Department shall not issue a license pursuant to subsection 1 to an off-highway vehicle dealer, long-term or short term lessor or manufacturer who does not have and maintain an established place of business in this State.*

*Sec. 41. 1. In lieu of a bond, an applicant may deposit with the Department, under terms prescribed by the Department:*

*(a) A like amount of lawful money of the United States or bonds of the United States or of the State of Nevada of an actual market value of not less than the amount fixed by the Department; or*

*(b) A savings certificate of a bank, credit union or savings and loan association situated in Nevada, which must indicate an account of an amount equal to the amount of the bond which would otherwise be required by NRS 482.345 and indicate that this amount is unavailable for withdrawal except upon order of the Department. Interest earned on the amount accrues to the account of the applicant.*

*2. A deposit made pursuant to subsection 1 may be disbursed by the Director, for good cause shown and after notice and opportunity for hearing,*

*in an amount determined by him to compensate a person injured by an action of the licensee, or released upon receipt of:*

*(a) A court order requiring the Director to release all or a specified portion of the deposit; or*

*(b) A statement signed by the person or persons under whose name the deposit is made and acknowledged before any person authorized to take acknowledgments in this State requesting the Director to release the deposit, or a specified portion thereof, and stating the purpose for which the release is requested.*

*3. When a deposit is made pursuant to subsection 1, liability under the deposit is in the amount prescribed by the Department. If the amount of the deposit is reduced or there is an outstanding court judgment for which the licensee is liable under the deposit, the license is automatically suspended. The license must be reinstated if the licensee:*

*(a) Files an additional bond pursuant to subsection 1 of section 40 of this act;*

*(b) Restores the deposit with the Department to the original amount required under this section; or*

*(c) Satisfies the outstanding judgment for which he is liable under the deposit.*

*4. A deposit made pursuant to subsection 1 may be refunded:*

*(a) By order of the Director, 3 years after the date the licensee ceases to be licensed by the Department, if the Director is satisfied that there are no outstanding claims against the deposit; or*

*(b) By order of court, at any time within 3 years after the date the licensee ceases to be licensed by the Department, upon evidence satisfactory to the court that there are no outstanding claims against the deposit.*

*5. Any money received by the Department pursuant to subsection 1 must be deposited with the State Treasurer for credit to the Motor Vehicle Fund.*

*Sec. 42. 1. The bond required by section 40 of this act must cover the licensee's principal place of business and all branches operated by him, including, without limitation, any place of business operated in this State by the licensee that is located outside the county of the licensee's principal office or any place of business operated by the licensee under a different name.*

*2. In addition to the coverage provided by the licensee's bond pursuant to subsection 1, the licensee shall procure a separate bond for:*

*(a) Each place of business operated in this State by the licensee that is located outside the county of the licensee's principal office; and*

*(b) Each place of business operated by the licensee under a different name.*

*Sec. 43. 1. A new off-highway vehicle dealer's license must not be furnished to any off-highway vehicle dealer in new off-highway vehicles unless the off-highway vehicle dealer first furnishes the Department an instrument executed by or on behalf of the manufacturer certifying that he is an authorized franchised off-highway vehicle dealer for the make or makes of*

*off-highway vehicles concerned. New off-highway vehicle dealers are authorized to sell at retail only those new off-highway vehicles for which they are certified as franchised off-highway vehicle dealers by the manufacturer.*

*2. In addition to selling used off-highway vehicles, a used off-highway vehicle dealer may:*

*(a) Sell at wholesale a new off-highway vehicle taken in trade or acquired as a result of a sales contract to a new off-highway vehicle dealer who is licensed and authorized to sell that make of vehicle;*

*(b) Sell at wholesale a new off-highway vehicle through a wholesale vehicle auction if the wholesale vehicle auctioneer:*

*(1) Does not take an ownership interest in the off-highway vehicle; and*

*(2) Auctions the off-highway vehicle to an off-highway vehicle dealer who is licensed and authorized to sell that make of off-highway vehicle; or*

*(c) Sell a new off-highway vehicle on consignment from a person not licensed as an off-highway vehicle dealer or long-term or short-term lessor.*

*Sec. 44. 1. No off-highway vehicle dealer, long-term or short-term lessor or manufacturer may employ "bait and switch" advertising or otherwise intentionally publish, display or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold, leased, manufactured, handled or furnished to the public.*

*2. The Director shall adopt such regulations as may be necessary for making the administration of this section effective.*

*3. As used in this section, "bait and switch" advertising consists of an offer to sell or lease goods or services which the seller or lessor in truth may not intend or desire to sell or lease, accompanied by one or more of the following practices:*

*(a) Refusal to show the goods advertised.*

*(b) Disparagement in any material respect of the advertised goods or services or the terms of sale or lease.*

*(c) Requiring other sales or leases or other undisclosed conditions to be met before selling or leasing the advertised goods or services.*

*(d) Refusal to take orders for the goods or services advertised for delivery within a reasonable time.*

*(e) Showing or demonstrating defective goods which are unusable or impractical for the purposes set forth in the advertisement.*

*(f) Accepting a deposit for the goods or services and subsequently switching the purchase order to higher-priced goods or services.*

*Sec. 45. 1. The Department may deny the issuance of, suspend or revoke a license to engage in the activities of an off-highway vehicle dealer, long-term or short-term lessor or manufacturer in new or used off-highway vehicles in this State upon any of the following grounds:*

*(a) Failure of the applicant to have an established place of business in this State.*

*(b) Conviction of a felony in the State of Nevada or any other state, territory or nation.*

*(c) Material misstatement in the application.*

*(d) Evidence of unfitness of the applicant or licensee.*

*(e) Willful failure to comply with any of the provisions of the laws of the State of Nevada or the directives of the Director. For the purpose of this paragraph, failure to comply with the directives of the Director advising the licensee of his noncompliance with any provision of the laws of this State or regulations of the Department, within 10 days after receipt of the directive, is prima facie evidence of willful failure to comply with the directive.*

*(f) Failure or refusal to furnish and keep in force any bond.*

*(g) Failure on the part of the licensee to maintain a fixed place of business in this State.*

*(h) Failure or refusal by a licensee to pay or otherwise discharge any final judgment against the licensee rendered and entered against him, arising out of the misrepresentation of any off-highway vehicle or out of any fraud committed in connection with the sale of any off-highway vehicle.*

*(i) Failure of the licensee to maintain any other license or bond required by any political subdivision of this State.*

*(j) Allowing an unlicensed off-highway vehicle salesman to sell or lease any off-highway vehicle or to act in the capacity of an off-highway vehicle salesman as defined in this chapter.*

*(k) Failure or refusal to provide to the Department an authorization for the disclosure of financial records for the business as required pursuant to subsection 3.*

*(l) Engaging in a deceptive trade practice relating to the purchase and sale or lease of an off-highway vehicle.*

*2. The Director may deny the issuance of a license to an applicant or revoke a license already issued if the Department is satisfied that the applicant or licensee is not entitled thereto.*

*3. Upon the receipt of any report or complaint alleging that an applicant or a licensee has engaged in financial misconduct or has failed to satisfy financial obligations related to the activities of an off-highway vehicle dealer, long-term or short term lessor or manufacturer, the Department may require the applicant or licensee to submit to the Department an authorization for the disclosure of financial records for the business as provided in NRS 239A.090. The Department may use any information obtained pursuant to the authorization only to determine the suitability of the applicant or licensee for initial or continued licensure. Information obtained pursuant to the authorization may be disclosed only to those employees of the Department who are authorized to issue a license to an applicant pursuant to sections 24 to 47, inclusive, of this act or to determine the suitability of an applicant or a licensee for such licensure.*

*4. The Department may adopt regulations establishing additional criteria that may be used to deny, suspend, revoke or refuse to renew a license issued pursuant to this chapter.*

*Sec. 46. 1. Except as otherwise provided in subsection 5, an applicant or licensee may, within 30 days after receipt of the notice of denial, suspension or revocation, petition the Director in writing for a hearing.*

*2. Subject to the further requirements of subsection 3, the Director shall make written findings of fact and conclusions and grant or finally deny the application or revoke the license within 15 days after the hearing unless by interim order he extends the time to 30 days after the hearing. If the license has been temporarily suspended, the suspension expires not later than 15 days after the hearing.*

*3. If the Director finds that the action is necessary in the public interest, upon notice to the licensee, he may temporarily suspend or refuse to renew the license issued to an off-highway vehicle dealer, long-term or short-term lessor or manufacturer for a period not to exceed 30 days. A hearing must be held, and a final decision rendered, within 30 days after notice of the temporary suspension.*

*4. The Director may issue subpoenas for the attendance of witnesses and the production of evidence.*

*5. The provisions of this section do not apply to an applicant for a temporary permit to engage in the activity of an off-highway vehicle salesman.*

*Sec. 47. 1. A person shall not engage in the activity of a salesman of off-highway vehicles or act in the capacity of an off-highway vehicle salesman as defined in this chapter in the State of Nevada without first having received a license or temporary permit from the Department.*

*2. A license to act as an off-highway vehicle salesman must be issued in accordance with the provisions for the licensing of vehicle salesmen as defined in chapter 482 of NRS.*

*3. A person who has received a license issued pursuant to the provisions of chapter 482 of NRS must be licensed to act as a salesman of vehicles defined in chapter 482 of NRS and as an off-highway vehicle salesman as defined in this chapter.*

*4. All requirements, restrictions and penalties applicable to a vehicle salesman licensed pursuant to the provisions of chapter 482 of NRS apply without exception to off-highway vehicle salesmen.*

*Sec. 48. 1. It is a gross misdemeanor for any person knowingly to falsify:*

*(a) An off-highway vehicle dealer's report of sale, as described in section 50 of this act; or*

*(b) An application or document to obtain any license, permit, certificate of title or registration issued under the provisions of this chapter.*

*2. It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this section or other provision of this*

*chapter or other law of this State declared to be a gross misdemeanor or a felony.*

*Sec. 49. 1. The Department may impose an administrative fine, not to exceed $2,500, for a violation of any provision of this chapter or any rule, regulation or order adopted or issued pursuant thereto. The Department shall afford to any person so fined an opportunity for a hearing pursuant to the provisions of NRS 233B.121.*

*2. All administrative fines collected by the Department pursuant to subsection 1 must be deposited with the State Treasurer to the credit of the Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration created by section 19 of this act.*

*3. In addition to any other remedy provided by this chapter, the Department may compel compliance with any provision of this chapter and any rule, regulation or order adopted or issued pursuant thereto by injunction or other appropriate remedy, and the Department may institute and maintain in the name of the State of Nevada any such enforcement proceedings.*

*Sec. 50. 1. When a new or used off-highway vehicle is sold or leased in this State for the first time, the seller or lessor of the off-highway vehicle shall, unless a new off-highway vehicle is sold to an off-highway vehicle dealer who is licensed to sell the make of off-highway vehicle being sold, complete and execute an off-highway vehicle dealer's report of sale.*

*2. The form, content and disposition of the off-highway vehicle dealer's report of sale must be prescribed by regulation adopted by the Department.*

*Sec. 51. When a used off-highway vehicle is sold in this State by a person who is not an off-highway vehicle dealer, the seller or buyer or both of them shall, within 10 days after the sale:*

*1. Submit to the Department:*

*(a) If a certificate of title has been issued in this State, the certificate properly endorsed.*

*(b) If a certificate of title or other document of title has been issued by a public authority of another state, territory or country:*

*(1) The certificate or document properly endorsed; and*

*(2) A statement containing, if not included in the endorsed certificate or document, the description of the off-highway vehicle, including the names and addresses of the buyer and seller and the name and address of any person who takes or retains a purchase money security interest. Any such statement must be signed and acknowledged by the seller and the buyer.*

*(c) If no document of title has been issued by any public authority, a statement containing all the information and signed and acknowledged in the manner required by subparagraph (2) of paragraph (b).*

*2. Remit to the Department any fee for the processing of an endorsed certificate of title or statement submitted to the Department pursuant to this section.*

*Sec. 52. Any person is guilty of a gross misdemeanor who knowingly:*

*1. Makes or causes to be made any false entry on any certificate of origin or certificate of title for an off-highway vehicle;*

*2. Furnishes or causes to be furnished false information to the Department concerning any security interest; or*

*3. Fails to submit or causes to not be submitted the original of the off-highway vehicle dealer's or long-term lessor's report of sale or lease, together with the certificate of title or certificate of ownership issued for a new or used off-highway vehicle to the Department within the time prescribed by regulation adopted by the Department.*

~~[Sec. 12.]~~ *Sec. 53.* NRS 490.010 is hereby amended to read as follows:

490.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 490.020 to 490.060, inclusive, *and sections ~~[3 and]~~ 4 to 11, inclusive, of this act* have the meanings ascribed to them in those sections.

~~[Sec. 13.]~~ *Sec. 54.* NRS 490.020 is hereby amended to read as follows:

490.020 "Authorized dealer" means a dealer authorized by the Department to issue certificates of ~~[operation]~~ *title* for *, and registrations of,* off-highway vehicles pursuant to NRS 490.070.

~~[Sec. 14.]~~ *Sec. 55.* NRS 490.060 is hereby amended to read as follows:

490.060 1. "Off-highway vehicle" means a motor vehicle that is designed primarily for off-highway and all-terrain use. The term includes, but is not limited to:

(a) An all-terrain vehicle;

(b) An all-terrain motorcycle;

(c) A dune buggy;

(d) A snowmobile; and

(e) Any motor vehicle used on public lands for the purpose of recreation.

2. The term does not include:

(a) A motor vehicle designed primarily for use in water;

(b) A motor vehicle that is registered by the Department *;* ~~[of Motor Vehicles;]~~ ~~[or]~~

(c) A low-speed vehicle as defined in NRS 484.527 ~~[.]~~ *; or*

*(d) Special mobile equipment, as defined in NRS 482.123.*

~~[Sec. 15.]~~ *Sec. 56.* NRS 490.070 is hereby amended to read as follows:

490.070 1. Upon the request of ~~[a dealer of]~~ *an* off-highway ~~[vehicles,]~~ *vehicle dealer*, the Department may authorize the *off-highway vehicle* dealer to ~~[issue]~~ *receive and submit to the Department applications for the:*

*(a) Issuance of* certificates of ~~[operation]~~ *title and registration* for off-highway vehicles ~~[pursuant to subsection 3.~~

~~2. Each certificate of operation for an off-highway vehicle issued by an authorized dealer must be in the form of a sticker approved by the Department.~~

~~3.]~~ *; and*

*(b) Renewal of registration for off-highway vehicles.*

*2.* An authorized dealer shall:

(a) ~~[Upon the sale of an off-highway vehicle, issue to the purchaser of the off-highway vehicle a certificate of operation for the off-highway vehicle;~~

~~(b) Upon request, issue a certificate of operation to a person who purchased the off-highway vehicle before January 1, 2006;~~

~~(c) Issue a certificate of operation to the owner of an off-highway vehicle that was purchased outside this State on or after January 1, 2006, if the owner:~~

~~(1) Requests the certificate of operation; and~~

~~(2) Pays or submits evidence satisfactory to the authorized dealer that he has paid all taxes applicable in this State to the purchase of the off-highway vehicle or submits an affidavit indicating that he purchased the vehicle through a private party sale and no tax is due relating to the purchase of the off-highway vehicle;]~~ ~~*[On or before the end of each month, submit to the Department each application described in subsection 1 received during that month;*~~

~~*(b)]*~~ *Except as otherwise provided in paragraph* ~~*[(c)]*~~ *(b) and subsection 4, submit to the State Treasurer for allocation to the Department or to the Fund all fees collected by the authorized dealer from each applicant and properly account for those fees each month;*

~~*[(c)]*~~ *(b) Submit to the State Treasurer for deposit into the Fund all fees charged and collected and required to be deposited in the Fund pursuant to section* ~~*[7]*~~ *14 of this act;*

~~[(d)]~~ *(c)* Comply with the regulations adopted pursuant to subsection ~~[6;]~~ *5;* and

~~[(e)]~~ *(d)* Bear any cost of equipment which is required to ~~[issue certificates of operation,]~~ *receive and submit to the Department the applications described in subsection 1*, including any computer software or hardware.

~~[4. An]~~

*3. Except as otherwise provided in subsection 4, an* authorized dealer is not entitled to receive compensation ~~[from the Department]~~ for the performance of ~~[those services.]~~ *any services pursuant to this section.*

~~[5.]~~ *4.* An authorized dealer ~~[shall not charge or]~~ *may charge and* collect a fee *of not more than $2* for ~~[issuing]~~ *each application for* a certificate of ~~[operation.~~

~~6.]~~ *title or registration* ~~*[or renewal of registration]*~~ *received by the authorized dealer pursuant to this section. An authorized dealer may retain any fee collected by the authorized dealer pursuant to this subsection.*

*5.* The Department shall adopt regulations to carry out the provisions of this section. The regulations must include, without limitation, provisions for:

(a) The expedient and secure issuance of *:*

*(1) Forms for applying for the* ~~*[:*~~

~~*(I) Issuance]*~~ *issuance of* certificates of ~~[operation]~~ *title for, or registration of, off-highway vehicles;* ~~*[and*~~

~~*(II) Renewal of registration of off-highway vehicles;]*~~

*(2) Certificates of title and registration* by the Department to ~~[authorized dealers; and]~~ *each applicant whose application is approved by the Department; and*

*(3) Renewal notices for registrations before the date of expiration of the registrations;*

(b) *The renewal of registrations by mail or Internet;*

*(c) The collection of a fee of not* ~~*[more]*~~ *less than $20 or more than $30 for the renewal of a registration of an off-highway vehicle;*

*(d) The submission* ~~*[in person at]*~~ *by mail or electronic transmission to the Department of an application for:*

*(1) The issuance of a certificate of title for, or registration of, an off-highway vehicle; or*

*(2) The renewal of registration of an off-highway vehicle;*

*(e) The replacement of a lost, damaged or destroyed certificate of title or registration* ~~*[,]*~~ *certificate, sticker or decal; and*

*(f)* The revocation of the authorization granted to a dealer pursuant to subsection 1 if the authorized dealer fails to comply with the regulations.

*Sec. 57. NRS 490.100 is hereby amended to read as follows:*

490.100 1. Except as otherwise provided in subsection 2, a city or county may designate any portion of a highway within the city or county as permissible for the operation of off-highway vehicles for the purpose of allowing off-highway vehicles to reach a private or public area that is open for use by off-highway vehicles. If a city or county designates any portion a state highway as permissible for the operation of off-highway vehicles pursuant to this subsection, the city or county must obtain approval for the designation from the Department . ~~[of Transportation.]~~ The Department ~~[of Transportation]~~ shall issue a timely decision concerning the request for approval and must not unreasonably deny the request.

2. The highway designated for operation of off-highway vehicles pursuant to subsection 1 may not consist of any portion of an interstate highway.

3. If a city or county designates a highway for the operation of off-highway vehicles, the city or county may adopt an ordinance requiring a person who is less than 16 years of age and who is operating the off-highway vehicle on a designated highway to be under the direct visual supervision of a person who is at least 18 years of age.

4. A person operating an off-highway vehicle on a highway designated for operation of off-highway vehicles pursuant to subsection 1 may not

operate the off-highway vehicle on the highway for any purpose other than to travel to or from the private or public area as described in subsection 1.

~~[Sec. 16.]~~ *Sec. 58.* NRS 490.130 is hereby amended to read as follows:

490.130 The operator of an off-highway vehicle that is being driven on a highway in this State in accordance with NRS 490.090 to 490.130, inclusive, shall:

1. Comply with all traffic laws of this State;

2. Ensure that the ~~[certificate of operation for]~~ *registration of* the off-highway vehicle is attached to the vehicle in accordance with ~~[NRS 490.080;]~~ *section ~~[6]~~ 13 of this act;* and

3. Wear a helmet.

*Sec. 58.3. NRS 41.440 is hereby amended to read as follows:*

41.440 Any liability imposed upon a wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family arising out of his or her driving and operating a motor vehicle ~~[upon a highway]~~ with the permission, express or implied, of such owner is hereby imposed upon the owner of the motor vehicle, and such owner shall be jointly and severally liable with his or her wife, husband, son, daughter, father, mother, brother, sister or other immediate member of a family for any damages proximately resulting from such negligence or willful misconduct, and such negligent or willful misconduct shall be imputed to the owner of the motor vehicle for all purposes of civil damages.

*Sec. 58.7. NRS 104A.2104 is hereby amended to read as follows:*

104A.2104 1. A lease, although subject to this Article, is also subject to any applicable:

(a) Certificate of title statute of this State, including any applicable provision of chapters 482, 488 ~~[and]~~ 489 *and 490* of NRS;

(b) Certificate of title statute of another jurisdiction (NRS 104A.2105); or

(c) Consumer protection statute of this State, including any applicable provision of NRS 97.297, 97.299, 97.301 and 100.095 to 100.175, inclusive, and a final decision of a court of this State concerning the protection of consumers rendered before January 1, 1990.

2. In case of conflict between this Article, other than NRS 104A.2105, subsection 3 of NRS 104A.2304 and subsection 3 of NRS 104A.2305, and a statute or decision referred to in subsection 1, the statute or decision controls.

3. Failure to comply with an applicable law has only the effect specified therein.

~~[Sec. 17.]~~ *Sec. 59.* NRS 490.030 and 490.080 are hereby repealed.

~~[Sec. 18.]~~ *Sec. 60.* An owner of an off-highway vehicle who obtained a certificate of operation for an off-highway vehicle before ~~[January]~~ *July* 1, 2010, shall on or before ~~[December 31, 2010,]~~ *June 30, 2011,* register the off-highway vehicle pursuant to the provisions of section ~~[5]~~ *12* of this act.

~~[Sec. 19.]~~ *Sec. 61.* 1. Any ~~[dealer of]~~ off-highway ~~[vehicles]~~ *vehicle dealer* who is an authorized dealer pursuant to NRS 490.070 before ~~[January]~~ *July* 1, 2010, shall be deemed to be an authorized dealer by the Department of Motor Vehicles pursuant to that section, as amended by section ~~[15]~~ *56* of this act.

2. The regulations adopted by the Department of Taxation pursuant to NRS 490.070 become the regulations of the Department of Motor Vehicles on ~~[January]~~ *July* 1, 2010, and, to the extent that the regulations are consistent with the amendatory provisions of this act, remain in effect until amended or repealed by the Department of Motor Vehicles.

~~[Sec. 20.]~~ *Sec. 62.* 1. As soon as practicable after the effective date of this section, the Governor shall solicit applications for the appointment of the members of the Commission on Off-Highway Vehicles created ~~[pursuant to]~~ *by* section ~~[9]~~ *16* of this act.

2. As soon as practicable after July 1, 2009, the Governor shall, after considering each application received pursuant to subsection 1, appoint the members of the Commission on Off-Highway Vehicles who are qualified pursuant to section ~~[9]~~ *16* of this act to initial terms as follows:

(a) Four members to terms that expire on January 1, 2011.

(b) Four members to terms that expire on January 1, 2012.

(c) Three members to terms that expire on January 1, 2013.

~~[Sec. 21.]~~ *Sec. 63.* *1.* This act becomes effective:

~~[1.]~~ *(a)* Upon passage and approval for purposes of:

~~[(a)]~~ *(1)* The appointment by the Governor of the members of the Commission on Off-Highway Vehicles created ~~[pursuant to]~~ *by* section ~~[9]~~*16* of this act; and

~~[(b)]~~ *(2)* The adoption of regulations to carry out the provisions of this act ~~[; and~~

~~2.]~~ *(b)* On ~~[January]~~ *July* 1, 2010, for all other purposes.

*2. Sections 24 and 25 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 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.*

TEXT OF REPEALED SECTIONS

490.030 "Department" defined. "Department" means the Department of Taxation.

490.080 Prerequisite to operation of vehicle on highway; attachment to vehicle; replacement; transferability; exceptions.

1. Except as otherwise provided in subsection 4, a person shall not operate an off-highway vehicle on a highway pursuant to NRS 490.090 to 490.130, inclusive, unless he has:

(a) Obtained a certificate of operation for the off-highway vehicle; and

(b) Attached the certificate to the off-highway vehicle in the manner specified by the Department.

2. If a certificate of operation for an off-highway vehicle is lost or destroyed, the owner of the off-highway vehicle may request a new certificate of operation from an authorized dealer.

3. If the owner of an off-highway vehicle sells or otherwise transfers ownership of the off-highway vehicle, the certificate of operation remains valid.

4. A certificate of operation is not required for an off-highway vehicle which:

(a) Is owned and operated by:

(1) A federal agency;

(2) An agency of this State; or

(3) A county, incorporated city or unincorporated town in this State;

(b) Is part of the inventory of a dealer of off-highway vehicles;

(c) Is registered or certified in another state and is located in this State for not more than 90 days;

(d) Is used solely for husbandry on private land or on public land that is leased to the owner or operator of the off-highway vehicle; or

(e) Is used for work conducted by or at the direction of a public or private utility.

Senator Rhoads moved the adoption of the amendment.

Remarks by Senator Rhoads.

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

Amendment No. 234 to Senate Bill No. 394 creates the Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration as a special account in the Motor Vehicle Fund. The amendment also provides for the licensing of dealers, manufacturers and lessors of off-highway vehicles and for the consignment of such vehicles. Penalties for failure to comply with these provisions are also added. Finally, the amendment changes some of the effective dates in the bill to allow more time to implement its provisions.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 396.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 309.

"SUMMARY—Revises provisions governing an investigation of a peace officer by a law enforcement agency. (BDR 23-1098)"

"AN ACT relating to peace officers; ~~[making certain provisions governing peace officers applicable to a peace officer who is a probationary employee of a law enforcement agency;]~~ 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; ~~[providing for the civil liability of a law enforcement agency for a violation of certain provisions governing peace officers;]~~ 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 1 of this bill expands the definition of "peace officer" to include a peace officer who is a probationary employee of a law enforcement agency. Section 1 also expands the definition of "punitive action" to include the termination of employment of a probationary peace officer by a law enforcement agency. (NRS 289.010)]~~

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 peace officer before conducting the interrogation or hearing and prohibits the law enforcement agency from taking various other actions concerning the peace officer. (NRS 289.060) ~~[Section 4 of this bill provides that a law enforcement agency which violates certain provisions governing the rights of peace officers is civilly liable to the peace officer for damages in the amount of $25,000 for each violation, in addition to any actual damages and reasonable attorney's fees and costs incurred by the peace officer because of the violation. Section 4 also requires the arbitrator or court which makes the determination that the law enforcement agency committed the violation to make certain specific findings concerning the violation. (NRS 289.095) Sections 5 and 6 of this bill ensure that the limitation set forth in existing law concerning the amount of damages that may be awarded against an officer or employee of the State or a political subdivision of the State does not apply to~~

~~an award of damages made pursuant to section 4.]~~ *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. ~~[NRS 289.010 is hereby amended to read as follows:~~

~~289.010 As used in this chapter, unless the context otherwise requires:~~

~~1. "Administrative file" means any file of a peace officer containing information, comments or documents about the peace officer. The term does not include any file relating to an investigation conducted pursuant to NRS 289.057 or a criminal investigation of a peace officer.~~

~~2. "Choke hold" means the holding of a person's neck in a manner specifically intended to restrict the flow of oxygen or blood to the person's lungs or brain. The term includes the arm-bar restraint, carotid restraint and lateral vascular neck restraint.~~

~~3. "Peace officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive. *The term includes a peace officer who is a probationary employee of a law enforcement agency.*~~

~~4. "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for purposes of punishment. *The term includes a nonconfirmation of employment, dismissal or any other refusal of a law enforcement agency to continue the employment of a peace officer who is a probationary employee of the law enforcement agency.*]~~ *(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;*

(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 ~~[he is charged or threatened to be charged with insubordination for]~~ 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 ~~[the]~~ that peace officer.*

Sec. 4. ~~[NRS 289.085 is hereby amended to read as follows:~~

~~289.085 *1.* If an arbitrator or court determines that evidence was obtained during an investigation of a peace officer concerning conduct that could result in punitive action in a manner which violates any provision of NRS 289.010 to 289.120, inclusive, and that such evidence may be prejudicial to the peace officer, such evidence is inadmissible and the arbitrator or court shall exclude such evidence during any administrative proceeding commenced or civil action filed against the peace officer.~~

~~*2. If an arbitrator or court determines that a law enforcement agency intentionally violated a provision of NRS 289.010 to 289.120, inclusive, during an investigation of a peace officer, the law enforcement agency is civilly liable to the peace officer for damages in the amount of $25,000 for each violation, in addition to the amount of any actual damages and reasonable attorney's fees and costs incurred by the peace officer because of the violation. The arbitrator or court shall include in its determination a specific finding:*~~

~~*(a) That the law enforcement agency engaged in misconduct;*~~

~~*(b) Setting forth each violation committed by the law enforcement agency; and*~~

~~*(c) Setting forth the amount of any damages awarded pursuant to this section.*~~

~~*3. If an arbitrator awards a peace officer any damages or reasonable attorney's fees and costs pursuant to this section, the peace officer may confirm the award pursuant to NRS 38.239.]*~~ *(Deleted by amendment.)*

Sec. 5. ~~[NRS 41.035 is hereby amended to read as follows:~~

~~41.035 1. [An]~~ *Except as otherwise provided in NRS 289.085, an* ~~award for damages in an action sounding in tort brought under NRS 41.031 or against a present or former officer or employee of the State or any political subdivision, immune contractor or State Legislator arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of $75,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant. An award may not include any amount as exemplary or punitive damages.~~

~~2. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort and arising from any recreational activity or recreational use of land or water which is brought against:~~

~~(a) Any public or quasi-municipal corporation organized under the laws of this State.~~

~~(b) Any person with respect to any land or water leased or otherwise made available by that person to any public agency.~~

~~(c) Any Indian tribe, band or community whether or not a fee is charged for such activity or use. The provisions of this paragraph do not impair or modify any immunity from liability or action existing on February 26, 1968, or arising after February 26, 1968, in favor of any Indian tribe, band or community.~~

~~➥ The Legislature declares that the purpose of this subsection is to effectuate the public policy of the State of Nevada by encouraging the recreational use of land, lakes, reservoirs and other water owned or controlled by any public or quasi-municipal agency or corporation of this State, wherever such land or water may be situated.]~~ *(Deleted by amendment.)*

Sec. 6. ~~[NRS 41.035 is hereby amended to read as follows:~~

~~41.035 1. [An]~~ *Except as otherwise provided in NRS 289.085, an* ~~award for damages in an action sounding in tort brought under NRS 41.031 or against a present or former officer or employee of the State or any political subdivision, immune contractor or State Legislator arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of $100,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant. An award may not include any amount as exemplary or punitive damages.~~

~~2. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort and arising from any recreational activity or recreational use of land or water which is brought against:~~

~~(a) Any public or quasi-municipal corporation organized under the laws of this State.~~

~~(b) Any person with respect to any land or water leased or otherwise made available by that person to any public agency.~~

~~(c) Any Indian tribe, band or community whether or not a fee is charged for such activity or use. The provisions of this paragraph do not impair or modify any immunity from liability or action existing on February 26, 1968, or arising after February 26, 1968, in favor of any Indian tribe, band or community.~~

~~➥ The Legislature declares that the purpose of this subsection is to effectuate the public policy of the State of Nevada by encouraging the recreational use of land, lakes, reservoirs and other water owned or controlled by any public or quasi-municipal agency or corporation of this State, wherever such land or water may be situated.]~~ *(Deleted by amendment.)*

Sec. 7. ~~[1.]~~ This ~~[section and sections 1 to 5, inclusive, of this act become]~~ *act becomes* effective on ~~[October]~~ *July* 1, 2009.

~~[2. Section 5 of this act expires by limitation on September 30, 2011.~~

~~3. Section 6 of this act becomes effective on October 1, 2011.]~~

Senator Care moved the adoption of the amendment.

Remarks by Senators Care and Carlton.

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

SENATOR CARE:

Amendment No. 309 to Senate Bill No. 396 deletes changes to the definitions of "peace officer" and "punitive action" that would have included probationary employees. It removes the section of the bill that held law enforcement agencies liable for damages and required an arbitrator or court to make specific findings. The amendment adds provisions concerning written statements by the peace officer as they pertain to an investigation.

SENATOR CARLTON:

I am looking at section 3, trying to read how it tracks through this. Do I understand it correctly to say, if a supervisor who is doing an internal-affairs investigation goes to another officer and asks if he knows anything about the officer that is being investigated, that his statements will be protected? Is the peace officer, in this section, the actual officer under investigation?

SENATOR CARE:

May I get some clarification on the question? Is your question regarding section 3, subsection 6?

SENATOR CARLTON:

Yes, that is correct. It is in section 3. Does this relate to the peace officer that is under investigation and a statement that he may make about the incident that he was involved in?

SENATOR CARE:

If we are talking about subsection 6, it says, "If a peace officer provides a statement." Further, it talks about the misconduct of another peace officer. It states, "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." I believe that is in reference to the peace officer who is the subject of an investigation. I want to clarify that.

Senator Care moved that Senate Bill No. 396 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 66.

Bill read third time.

The following amendment was proposed by Senator Lee:

Amendment No. 243.

"SUMMARY—Revises certain provisions governing the appropriation of water. (BDR 48-618)"

"AN ACT relating to water; providing that certain uses of water from the Muddy River and the Virgin River are beneficial uses of that water; authorizing the State Engineer to grant extensions of time for not more than a certain period for the completion of work or the application of water to a beneficial use; revising the circumstances under which the fee for filing an application for an extension of time must be paid; setting forth the circumstances under which an order or decision of the State Engineer may be stayed; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Existing law provides that, subject to existing rights, all water in this State may be appropriated for beneficial use in accordance with the provisions of chapter 533 of NRS. (NRS 533.030) Section 1 of this bill provides that the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus, as defined in certain guidelines established by the United States Department of the Interior, is a beneficial use of that water for purposes of that chapter.

Existing law requires an applicant for water rights to complete construction of work and put water to beneficial use within specified periods, with extensions of time allowed under certain circumstances. (NRS 533.380) Section 2 of this bill authorizes the State Engineer to grant any number of extensions of time to complete the work or to make beneficial use of the water, but limits any single extension of time for a municipal or quasi-municipal use for a public water system to not more than 5 years and any other single extension of time to not more than 1 year.

Existing law sets forth the fee for filing an application for an extension of time to file a proof of completion of work or proof of beneficial use. (NRS 533.435) Section 3 of this bill specifies that the fee must be paid for each year for which an extension of time is sought.

Existing law sets forth the manner in which a person who is aggrieved by an order or decision of the State Engineer may appeal that order or decision to the appropriate court. (NRS 533.450) Section 4 of this bill sets forth the manner in which the order or decision of the State Engineer may be stayed during the appeal of the order or decision.

Existing law specifies the jurisdiction of the Colorado River Commission of Nevada concerning water and water rights in this State and the extent to which the appropriation and use of that water is not subject to regulation by the State Engineer. (NRS 538.171) Section 5 of this bill specifies that any use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus ~~[is]~~ *does* not ~~[subject to regulation by]~~ *require the submission of an application to* the State Engineer ~~[.]~~ *to change the place of diversion, manner of use or place of use.*

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

Section 1. NRS 533.030 is hereby amended to read as follows:

533.030 1. Subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

2. The use of water, from any stream system as provided in this chapter and from underground water as provided in NRS 534.080, for any recreational purpose, *or the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus,* is hereby declared to be a beneficial use. *As used in this subsection:*

*(a) "Developed shortage supply" has the meaning ascribed to it in Volume 73 of the Federal Register at page 19,884, April 11, 2008, and any subsequent amendment thereto.*

*(b) "Intentionally created surplus" has the meaning ascribed to it in Volume 73 of the Federal Register at page 19,884, April 11, 2008, and any subsequent amendment thereto.*

3. Except as otherwise provided in subsection 4, in any county whose population is 400,000 or more:

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any man-made lake or stream located within the unincorporated areas of the county.

(b) The governing body of a city may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any man-made lake or stream located within the boundaries of the city.

4. In any county whose population is 400,000 or more, the provisions of subsection 1 and of any ordinance adopted pursuant to subsection 3 do not apply to:

(a) Water stored in a man-made reservoir for use in flood control, in meeting peak water demands or for purposes relating to the treatment of sewage;

(b) Water used in a mining reclamation project; or

(c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

Sec. 2. NRS 533.380 is hereby amended to read as follows:

533.380 1. Except as otherwise provided in subsection 5, in his endorsement of approval upon any application, the State Engineer shall:

(a) Set a time before which the construction of the work must be completed, which must be within 5 years after the date of approval.

(b) Except as otherwise provided in this paragraph, set a time before which the complete application of water to a beneficial use must be made, which must not exceed 10 years after the date of the approval. The time set under this paragraph respecting an application for a permit to apply water to a municipal or quasi-municipal use on any land:

(1) For which a final subdivision map has been recorded pursuant to chapter 278 of NRS;

(2) For which a plan for the development of a project has been approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(3) On any land for which a plan for the development of a planned unit development has been recorded pursuant to chapter 278A of NRS,

➥ must not be less than 5 years.

2. The State Engineer may limit the applicant to a smaller quantity of water, to a shorter time for the completion of work, and, except as otherwise provided in paragraph (b) of subsection 1, to a shorter time for the perfecting of the application than named in the application.

3. Except as otherwise provided in subsection 4 and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, ~~[extend the]~~ *grant any number of extensions of* time within which construction work must be completed, or water must be applied to a beneficial use under any permit therefor issued by him, but ~~[an]~~ *a single extension of time for a municipal or quasi-municipal use for a public water system, as defined in NRS 445A.235, must not exceed 5 years, and any other single extension of time must not exceed 1 year. An* application for the extension must in all cases be:

(a) Made within 30 days following notice by registered or certified mail that proof of the work is due as provided for in NRS 533.390 and 533.410; and

(b) Accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application.

➥ The State Engineer shall not grant an extension of time unless he determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the application.

4. Except as otherwise provided in subsection 5 and NRS 533.395, whenever the holder of a permit issued for any municipal or quasi-municipal

use of water on any land referred to in paragraph (b) of subsection 1, or for any use which may be served by a county, city, town, public water district or public water company, requests an extension of time to apply the water to a beneficial use, the State Engineer shall, in determining whether to grant or deny the extension, consider, among other factors:

(a) Whether the holder has shown good cause for not having made a complete application of the water to a beneficial use;

(b) The number of parcels and commercial or residential units which are contained in or planned for the land being developed or the area being served by the county, city, town, public water district or public water company;

(c) Any economic conditions which affect the ability of the holder to make a complete application of the water to a beneficial use;

(d) Any delays in the development of the land or the area being served by the county, city, town, public water district or public water company which were caused by unanticipated natural conditions; and

(e) The period contemplated in the:

(1) Plan for the development of a project approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(2) Plan for the development of a planned unit development recorded pursuant to chapter 278A of NRS,

➥ if any, for completing the development of the land.

5. The provisions of subsections 1 and 4 do not apply to an environmental permit.

6. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is ~~[comprised]~~ *composed* of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

Sec. 3. NRS 533.435 is hereby amended to read as follows:

533.435 1. The State Engineer shall collect the following fees:

| | |
|---|---|
| For examining and filing an application for a permit to appropriate water<br>This fee includes the cost of publication, which is $50. | $250.00 |
| For examining and acting upon plans and specifications for construction of a dam | 500.00 |
| For examining and filing an application for each permit to change the point of diversion, manner of use or place of use of an existing right<br>This fee includes the cost of the publication of the application, which is $50. | 150.00 |

For issuing and recording each permit to appropriate water for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water or watering livestock or wildlife purposes ..... 150.00
plus $2 per acre-foot approved or fraction thereof.

For issuing and recording each permit to change an existing right whether temporary or permanent for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water, for watering livestock or wildlife purposes which change the point of diversion or place of use only, or for irrigational purposes which change the point of diversion or place of use only ..... 100.00
plus $2 per acre-foot approved or fraction thereof.

For issuing and recording each permit to change the point of diversion or place of use only of an existing right whether temporary or permanent for irrigational purposes ..... 200.00

For issuing and recording each permit to appropriate or change the point of diversion or place of use of an existing right only whether temporary or permanent for watering livestock or wildlife purposes for each second-foot of water approved or fraction thereof ..... 50.00

For issuing and recording each permit to appropriate or change an existing right whether temporary or permanent for water for generating hydroelectric power which results in nonconsumptive use of the water for each second-foot of water approved or fraction thereof ..... 100.00
This fee must not exceed $1,000.

For filing a secondary application under a reservoir permit ..... 200.00

For approving and recording a secondary permit under a reservoir permit ..... 200.00

For reviewing each tentative subdivision map ..... $150.00
plus $1 per lot.

For storage approved under a dam permit for privately owned nonagricultural dams which store more than 50 acre-feet ..... 100.00
plus $1 per acre-foot storage capacity. This fee includes the cost of inspection and must be paid annually.

For filing proof of completion of work ..... 10.00

For filing proof of beneficial use ..... 50.00

For filing any protest ..... 25.00

For filing any application for extension of time within which to file proofs , *for each year for which the extension of time is sought* ..... 100.00
For examining and filing a report of conveyance filed pursuant to paragraph (a) of subsection 1 of NRS 533.384 ..... 25.00
plus $10 per conveyance document
For filing any other instrument ..... 1.00
For making *a* copy of any document recorded or filed in his office, for the first page ..... 1.00
For each additional page ..... .20
For certifying to copies of documents, records or maps, for each certificate ..... 1.00
For each blueprint copy of any drawing or map, per square foot ..... .50
The minimum charge for a blueprint copy, per print ..... 3.00

2. When fees are not specified in subsection 1 for work required of his office, the State Engineer shall collect the actual cost of the work.

3. Except as otherwise provided in this subsection, all fees collected by the State Engineer under the provisions of this section must be deposited in the State Treasury for credit to the *State* General Fund. All fees received for blueprint copies of any drawing or map must be kept by him and used only to pay the costs of printing, replacement and maintenance of printing equipment. Any publication fees received which are not used by him for publication expenses must be returned to the persons who paid the fees. If, after exercising due diligence, the State Engineer is unable to make the refunds, he shall deposit the fees in the State Treasury for credit to the *State* General Fund. The State Engineer may maintain, with the approval of the State Board of Examiners, a checking account in any bank or credit union qualified to handle state money to carry out the provisions of this subsection. The account must be secured by a depository bond satisfactory to the State Board of Examiners to the extent the account is not insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

Sec. 4. NRS 533.450 is hereby amended to read as follows:

533.450 1. Any person feeling himself aggrieved by any order or decision of the State Engineer, acting in person or through his assistants or the water commissioner, affecting his interests, when the order or decision relates to the administration of determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, or NRS 533.481, 534.193, 535.200 or 536.200, may have the same reviewed by a proceeding for that purpose, insofar as may be in the nature of an appeal, which must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated, but on stream systems where a decree of court has been entered, the action must be initiated in the court that entered the decree. The order or

decision of the State Engineer remains in full force and effect unless proceedings to review the same are commenced in the proper court within 30 days after the rendition of the order or decision in question and notice thereof is given to the State Engineer as provided in subsection 3.

2. The proceedings in every case must be heard by the court, and must be informal and summary, but full opportunity to be heard must be had before judgment is pronounced.

3. No such proceedings may be entertained unless notice thereof, containing a statement of the substance of the order or decision complained of, and of the manner in which the same injuriously affects the petitioner's interests, has been served upon the State Engineer, personally or by registered or certified mail, at his office at the State Capital within 30 days following the rendition of the order or decision in question. A similar notice must also be served personally or by registered or certified mail upon the person who may have been affected by the order or decision.

4. Where evidence has been filed with, or testimony taken before, the State Engineer, a transcribed copy thereof, or of any specific part of the same, duly certified as a true and correct transcript in the manner provided by law, must be received in evidence with the same effect as if the reporter were present and testified to the facts so certified. A copy of the transcript must be furnished on demand, at actual cost, to any person affected by the order or decision, and to all other persons on payment of a reasonable amount therefor, to be fixed by the State Engineer.

5. *An order or decision of the State Engineer must not be stayed unless the petitioner files a written motion for a stay with the court and serves the motion personally or by registered or certified mail upon the State Engineer, the applicant or other real party in interest and each party of record within 10 days after the petitioner files the petition for judicial review. Any party may oppose the motion and the petitioner may reply to any such opposition. In determining whether to grant or deny the motion for a stay, the court shall consider:*

*(a) Whether any nonmoving party to the proceeding may incur any harm or hardship if the stay is granted;*

*(b) Whether the petitioner may incur any irreparable harm if the stay is denied;*

*(c) The likelihood of success of the petitioner on the merits; and*

*(d) Any potential harm to the members of the public if the stay is granted.*

*6. Except as otherwise provided in this subsection, the petitioner must file a bond in an amount determined by the court, with sureties satisfactory to the court and conditioned in the manner specified by the court. The bond must be filed within 5 days after the court determines the amount of the bond pursuant to this subsection. If the petitioner fails to file the bond within that period, the stay is automatically denied.* A bond must not be required ~~[except when a stay is desired, and the proceedings provided for in this section are not a stay unless, within 5 days after the service of notice thereof, a bond is~~

~~filed in an amount to be fixed by the court, with sureties satisfactory to the court, conditioned to perform the judgment rendered in the proceedings.~~

~~6.~~] *for a public agency of this State or a political subdivision of this State.*

*7.* Costs must be paid as in civil cases brought in the district court, except by the State Engineer or the State.

[~~7.~~] *8.* The practice in civil cases applies to the informal and summary character of such proceedings, as provided in this section.

[~~8.~~] *9.* Appeals may be taken to the Supreme Court from the judgment of the district court in the same manner as in other civil cases.

[~~9.~~] *10.* The decision of the State Engineer is prima facie correct, and the burden of proof is upon the party attacking the same.

[~~10.~~] *11.* Whenever it appears to the State Engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, he shall request the Attorney General to appear and protect the interests of the State.

Sec. 5. NRS 538.171 is hereby amended to read as follows:

538.171 1. The Commission shall receive, protect and safeguard and hold in trust for the State of Nevada all water and water rights, and all other rights, interests or benefits in and to the waters described in NRS 538.041 to 538.251, inclusive, and to the power generated thereon, held by or which may accrue to the State of Nevada under and by virtue of any Act of the Congress of the United States or any agreements, compacts or treaties to which the State of Nevada may become a party, or otherwise.

2. Except as otherwise provided in this subsection, applications for the original appropriation of such waters, or to change the place of diversion, manner of use or place of use of water covered by the original appropriation, must be made to the Commission in accordance with the regulations of the Commission. In considering such an application, the Commission shall use the criteria set forth in subsection 6 of NRS 533.370. The Commission's action on the application constitutes the recommendation of the State of Nevada to the United States for the purposes of any federal action on the matter required by law. The provisions of this subsection do not apply to supplemental water.

3. The Commission shall furnish to the State Engineer a copy of all agreements entered into by the Commission concerning the original appropriation and use of such waters. It shall also furnish to the State Engineer any other information it possesses relating to the use of water from the Colorado River which the State Engineer deems necessary to allow him to act on applications for permits for the subsequent appropriation of these waters after they fall within the State Engineer's jurisdiction.

4. Notwithstanding any provision of chapter 533 of NRS, any original appropriation and use of the waters described in subsection 1 by the Commission or by any entity to whom or with whom the Commission has contracted the water *[, or any use of water from the Muddy River or the*

~~*Virgin River to create any developed shortage supply or intentionally created surplus,]*~~ is not subject to regulation by the State Engineer.

*5. Any use of water from the Muddy River or the Virgin River for the creation of any developed shortage supply or intentionally created surplus does not require the submission of an application to the State Engineer to change the place of diversion, manner of use or place of use. As used in this subsection:*

*(a) "Developed shortage supply" has the meaning ascribed to it in NRS 533.030.*

*(b) "Intentionally created surplus" has the meaning ascribed to it in NRS 533.030.*

Sec. 6. This act becomes effective on July 1, 2009.

Senator Lee moved the adoption of the amendment.

Conflict of interest declared by Senator Raggio.

Remarks by Senator Lee.

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

Thank you, Mr. President. This amendment is a technical amendment that is needed for more clarification regarding the use of water from the Muddy and Virgin Rivers for the creation of developed shortage supply or intentionally created surplus. Specifically, the amendment provides that any such use does not require the submission of an application to the State Engineer to change the place of diversion, manner of use or place of use.

Originally, this amendment from the Senate Committee on Government Affairs provided that such use is not subject to regulation by the State Engineer. This amendment makes that condition much more specific to just the diversion, manner of use or place of use.

Amendment adopted.

Bill ordered reprinted, reengrossed and to third reading.

## MOTIONS, RESOLUTIONS AND NOTICES

Senator Care moved that Senate Bills Nos. 188, 236, 394 be rereferred to the Committee on Finance upon return from reprint.

Motion carried.

## GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Breeden, the privilege of the floor of the Senate Chamber for this day was extended to the following students, parents and teachers from the Green Valley Christian School: Jared Anderson, Taylor Austin, Tyrell Buhain, Anabella Cooper, Bailee Courtney, Kaycee Daniels, Dylan DeStout, Autumn Dewey, Dixon Etchings, Brookelyn Frazier, Samantha Golonka, Harrison Griffin, Gracie Haley, James-Ben Heskett, Courtney Klagues, Riley Koch, Emma Kohler, Devin Langston, Jamaica Lewis, Julia Maese, Conall McIntyre, Samantha Pochop, Isaiah Robinson, Christian Sanford, Sean Seubert, Caitlin Sunada, Mathew Vitolo, Jessica Zarley; parents: Bonnie Seubert, Kristi McKay, April Haley, Terry Frazier, Kyle Nagy, Kim Pochop, Donna Daniels, Liz McIntyre, Penka Cooper, Joe Maese, Heather Ditto, Sandra Sanford; teachers: Sonja Finley-Tratos and Amy Buckels.

On request of Senator Care, the privilege of the floor of the Senate Chamber for this day was extended to Darlenda Hood.

On request of Senator Horsford, the privilege of the floor of the Senate Chamber for this day was extended to Congresswoman Dina Titus, Betty Titus, Don Williams, Guy Rocha, Michelle Van Geel, Danielle Mayabb, Martha Gould, Karen Starr, Phyllis Sargent, Diane Baker, Hope Williams, Sandy Marz and Kelly Chouinard.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to Ellen Fockler.

On request of Senator McGinness, the privilege of the floor of the Senate Chamber for this day was extended to Elizabeth Walton and Katrina Willis.

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to Roger Baird, Sylvia Baird, Whitney Gilson and the following members of the American Association of University Women: Jerry Alexander, Pat Alexander, Joey Ames, Charlotte Bass, Bernice Behrens, Sue Callahan, Vicky Caviglia, Jean Chapman, Verlita Conner, Barb Contos, Barbara Crossland, Jane Cunnien, Nancy Cunningham, Mona Dible, Jacki Falkenroth, Chuck Falkenroth, Teresa Feleciano, Sue Hawkins, Gina Jacobsen, Claire Keenan, Rita Malkin, Marlys Mandelos, Deborah Marche', Shirley McKinnon, Sunny Minedew, Kathy Nicholson, Jim Nicholson, Jean Pagni, Irene Pauls, Jean Pritsos, Karen Pritsos, Margee Richardson, Mahree Roberts, Gabi Schwarz, Marge Stein, Ellen Williams, Shirley Yates, Pat Furman, Betty Manfredi, Richard Manfredi, Charlotte Dinning and Ginger Traut.

On request of Senator Schneider, the privilege of the floor of the Senate Chamber for this day was extended to Michael Naft and Marlene Lockard.

On request of Senator Wiener, the privilege of the floor of the Senate Chamber for this day was extended to former Senator Joseph M. Neal, Dr. Thomas C. Wright and the following students and adults from Liberty Baptist Academy: Alena Bigger, Irene Castaneda, Samantha Cuellar, Chase Custer, Bianca Fimbres, Caitlin Foster, Logan King, Anthony Reese, Alyssa Williams; adults: Lorrie Bigger, Kathy Castaneda, Jessica Cuellar, Sarah Kercher, Jeanna Lemasson and Yann Lemasson.

On request of Senator Woodhouse, the privilege of the floor of the Senate Chamber for this day was extended to Rho Hudson, Darla Geary and Randy Soltero.

Senator Horsford moved that the Senate adjourn until Wednesday, April 15, 2009, at 11 a.m.

Motion carried.

Senate adjourned at 1:50 p.m.

Approved: BRIAN K. KROLICKI
*President of the Senate*

Attest: CLAIRE J. CLIFT
*Secretary of the Senate*