THE ONE HUNDRED AND FIFTEENTH DAY

CARSON CITY (Wednesday), May 31, 2017

Senate called to order at 11:51 a.m.
President pro Tempore presiding.
Roll called.
All present.
Prayer by the Chaplain, Deacon Gil Coleman.

Good and gracious God, we thank You for the blessing of our State and our Nation. Help all of us who have the privilege to live here to understand and accept the responsibility to care for our home and those with whom we share it. As the Session of the Nevada Legislature comes to a close, bless and sustain our Senators as they complete the vital work they have left for our State and its people. Help them to find a sense of duty and comradeship as they seek what is best for those of us who have put our confidence in them.

We make this prayer as a people of trust and faith.

AMEN.

Pledge of Allegiance to the Flag.

By previous order of the Senate, the reading of the Journal is dispensed with, and the President pro Tempore and Secretary are authorized to make the necessary corrections and additions.

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

Senate in recess at 11:53 a.m.

SENATE IN SESSION

At 12:04 p.m.
President pro Tempore Denis presiding.
Quorum present.

REPORTS OF COMMITTEES

Mr. President pro Tempore:

Your Committee on Education, to which were referred Assembly Bills Nos. 7, 124, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MOISES DENIS, *Chair*

Mr. President pro Tempore:

Your Committee on Finance, to which were referred Senate Bill Nos. 528, 544, 545, 546; Assembly Bill No. 494, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was re-referred Senate Bill No. 390, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

Also, your Committee on Finance, to which were referred Senate Bills Nos. 534, 536, 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 Finance, to which were re-referred Senate Bill No. 235, 478, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOYCE WOODHOUSE, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 30, 2017

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bills Nos. 130, 144, 224, 348, 374, 417, 436, 467, 491, 505, 506, 507, 508, 509, 510.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolution No. 1.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 966 to Assembly Bill No. 249 and respectfully refused to concur in Senate Amendment No. 751 to Assembly Bill No. 249.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to concur in Senate Amendment No. 960 to Assembly Bill No. 36.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 258, Assembly Amendment No. 765, and requests a conference, and appointed Assemblymen Yeager, Watkins and Krasner as a Conference Committee to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 376, Assembly Amendment No. 682, and requests a conference, and appointed Assemblymen Yeager, Ohrenschall and Hansen as a Conference Committee to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 432, Assembly Amendment No. 886, and requests a conference, and appointed Assemblymen Yeager, Cohen and Tolles as a Conference Committee to meet with a like committee of the Senate.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ratti moved that Senate Bill No. 244 be taken from the Secretary's desk and placed on the General File, third Agenda.

Motion carried.

Senator Ford moved that Senate Bill No. 306 be taken from the Secretary's desk and placed on the General File, third Agenda.

Motion carried.

Senator Farley moved that Senate Bill No. 315 be taken from the General File and placed on the General File, last Agenda.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By Senator Ford (emergency request of Senate Majority Leader):

Senate Bill No. 547—AN ACT relating to education; requiring certain large school districts to establish, through negotiations with an employee organization, a salary incentive program for professional growth; requiring the board of trustees of such large school districts to reserve a certain amount of money to carry out the salary incentive program; requiring the salary

incentive program to be included in the scope of mandatory collective bargaining; and providing other matters properly relating thereto.

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

Motion carried.

Assembly Bill No. 130.

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

Motion carried.

Assembly Bill No. 144.

Senator Atkinson moved that the bill be referred to the Committee on Education.

Motion carried.

Assembly Bill No. 224.

Senator Atkinson moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

Assembly Bill No. 348.

Senator Atkinson moved that the bill be referred to the Committee on Education.

Motion carried.

Assembly Bill No. 374.

Senator Atkinson moved that the bill be referred to the Committee on Health and Human Services.

Motion carried.

Assembly Bill No. 417.

Senator Atkinson moved that the bill be referred to the Committee on Revenue and Economic Development.

Motion carried.

Assembly Bill No. 436.

Senator Atkinson moved that the bill be referred to the Committee on Revenue and Economic Development.

Motion carried.

Assembly Bill No. 467.

Senator Atkinson moved that the bill be referred to the Committee on Legislative Operations and Elections.

Motion carried.

Assembly Bill No. 491.

Senator Atkinson moved that the bill be referred to the Committee on Education.

Motion carried.

Assembly Bill No. 505.

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

Motion carried.

Assembly Bill No. 506.

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

Motion carried.

Assembly Bill No. 507.

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

Motion carried.

Assembly Bill No. 508.

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

Motion carried.

Assembly Bill No. 509.

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

Motion carried.

Assembly Bill No. 510.

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

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 21.

Bill read third time.

Remarks by Senator Cannizzaro.

Assembly Bill No. 21 relates to candidate qualifications and residency requirements. The bill provides the following remedies if a candidate fails to meet qualifications required for office or knowingly and willfully files a declaration or acceptance of candidacy that contains a false statement omitting the name of a candidate from a ballot unless the deadline for revising the ballot has passed, in which case a sign must be posted at each polling place informing voters the candidate is disqualified from taking office and disqualifying the person from entering into the duties of the office.

The bill revises candidate filing forms to include a statement that a candidate understands that filing a false statement is a gross misdemeanor. The measure also clarifies, based on recent Nevada Supreme Court decisions, what constitutes a person's actual and legal domicile. The Secretary of State may establish forms of alternative proof of residence.

The measure clarifies that certain provisions relating to the filing of a declaration or acceptance of candidacy do not apply to candidates for federal office. It also codifies the authority of the Legislature, as set forth in various court rulings, to act with regard to its own members and provides that the Legislature is not subject to certain provisions. Finally, the bill specifies that campaign accounts must be established in financial institutions located in the United States.

Roll call on Assembly Bill No. 21:

YEAS—20.

NAYS—None.

EXCUSED—Roberson.

Assembly Bill No. 21 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 181.

Bill read third time.

Remarks by Senator Segerblom.

Assembly Bill No. 181 revises provisions governing the restoration of civil rights to resident offenders in this State. A probationer, parolee or person who has completed his or her sentence and was released from prison, with certain exceptions, is immediately restored his or her right to serve as a juror in a civil case and to vote after discharge from probation, discharge from parole or release from prison unless the person was previously convicted of a category A felony or certain category B felonies, in which case the person's right to vote is restored two years after discharge from probation, discharge from parole or release from prison. The bill also allows for the restoration of the civil rights of a probationer or a parolee who receives a dishonorable discharge.

Roll call on Assembly Bill No. 181:

YEAS—12.

NAYS—Gansert, Goicoechea, Gustavson, Hammond, Hardy, Harris, Kieckhefer, Settelmeyer—8.

EXCUSED—Roberson.

Assembly Bill No. 181 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 278.

Bill read third time.

Remarks by Senator Cannizzaro.

Assembly Bill No. 278 creates the Committee to Review Child-Support Guidelines and requires the Committee to review the existing child-support guidelines established in this State and provide any recommendations for revisions to the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services by July 1, 2018. The Committee must review the guidelines at least once every four years. The Administrator is required to review and consider any recommendations of the Committee and adopt regulations establishing the child-support guidelines. The bill repeals the provisions of existing law establishing the general formula for calculating child support and certain related provisions and provides that the repeal of such provisions becomes effective on the effective date of the regulations adopted by the Administrator establishing child-support guidelines. Child-support guidelines that are adopted by the Administrator are required to be adopted in accordance with the Nevada Administrative Procedure Act and codified in the Nevada Administrative Code.

Roll call on Assembly Bill No. 278:

YEAS—20.

NAYS—None.

EXCUSED—Roberson.

Assembly Bill No. 278 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 309.

Bill read third time.

Remarks by Senator Settelmeyer.

Assembly Bill No. 309 provides additional preference points to any open-competitive examination in the classified State service by increasing to ten points the number of points to be added to the passing grade of a veteran who does not have a disability, and the addition of ten points to the passing grade of a widow or widower of a person killed in the line of duty while on active duty in the Armed Forces of the United States. A person cannot combine his or her preference points for each qualifying preference. However, the bill does remove the restriction on applying such points to more than one promotional examination.

In addition, Assembly Bill No. 309 requires the Administrator of the Division of Human Resource Management to certify for a position, the name of any veteran with a service-connected disability on the list of eligible persons and requires State agencies to interview any such veteran certified for the position. If this certification is not required under the law for a particular position, the bill requires the State agency to interview each qualified applicant who is a veteran with a service-connected disability. For veterans without a service-connected disability, at least 22 percent of such qualified applicants must be interviewed, or if there are fewer applicants than that amount, all such veterans must be interviewed.

Assembly Bill No. 309 requires the Administrator to submit various reports, to the extent information is available, to the Director of the Department of Veterans Services, the Governor, and the Legislative Counsel Bureau relating to veterans and widows and widowers of persons killed in the line of duty who are hired and employed by the State. Finally, the Administrator must ensure the percentage of officers and employees in State employment who are veterans and widows and widowers of persons killed in the line of duty while on active duty in the Armed Forces is proportional to the percentage of veterans and such widows and widowers residing in this State and who are in the labor force.

Roll call on Assembly Bill No. 309:

YEAS—21.

NAYS—None.

Assembly Bill No. 309 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 232.

The following Assembly amendments were read:

Amendment No. 815.

SUMMARY—Enacts the Domestic Workers' Bill of Rights. (BDR 53-887)

AN ACT relating to domestic workers; enacting the Domestic Workers' Bill of Rights; providing for the mandatory payment of wages and overtime wages for certain hours worked, limitations on deductions for food and lodging, rest breaks and days off; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that employees must be paid a minimum wage and must be paid overtime for certain hours. (NRS 608.018, 608.250; Nev. Const. Art. 15, § 16) Section 6 of this bill enacts the Domestic Workers' Bill of Rights. Section 6 defines a "domestic worker" to mean a natural person who is paid by an employer to perform work of a domestic nature and requires that an employer of a domestic worker supply the domestic worker with certain written documentation of the conditions of his or her employment and his or her rights under the law. Section 6 also requires that a domestic worker be compensated for all hours during which he or she is required to be on duty and is required to remain in the employer's household, except under certain circumstances in which the domestic worker is employed at a residential facility for a group of certain persons who require supervision, care or other assistance. Section 6 requires that a domestic worker who is paid less than one and one half times the minimum hourly wage and who does not reside in the employer's household be paid overtime wages for certain hours; however, per the Labor Commissioner, a domestic worker who resides in the employer's household is only entitled to his or her regular wages for all hours worked. Section 6 further requires that a domestic worker be allowed at least 1 day off per week and 2 consecutive days off at least once per month. Section 6 also prohibits an employer from limiting or monitoring a domestic worker's private communications or taking or holding such a worker's personal documents. Section 1 of this bill sets limits on the amount an employer may deduct from a worker's pay for lodging provided by the employer. Section 2 of this bill revises the amounts an employer may deduct from a worker's pay for meals. Existing law provides that children under the age of 16 years employed in domestic service, farm labor or motion picture performances are exempt from limitations on working hours. (NRS 609.240) Section 3 of this bill deletes the exemption for children employed in domestic service.

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

Section 1. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of lodging. In no case may the value of the lodging be computed at more than five times the statutory minimum hourly wage for each week that lodging is provided to the employee.

2. The monetary limitations on the value of lodging specified in subsection 1 do not apply to agricultural employees.

Sec. 2. NRS 608.155 is hereby amended to read as follows:

608.155 1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals be computed at more than

~~[$1.50]~~ *100 percent of the statutory minimum hourly wage* per day. In no case shall the value of the meals consumed by such employee be computed or valued at more than ~~[35 cents]~~ *25 percent of the statutory minimum hourly wage* for each breakfast actually consumed, ~~[45 cents]~~ *25 percent of the statutory minimum hourly wage* for each lunch actually consumed, and ~~[70 cents]~~ *50 percent of the statutory minimum hourly wage* for each dinner actually consumed.

2. The monetary limitations on the value of meals, contained in subsection 1, do not apply to agricultural employees.

Sec. 3. NRS 609.240 is hereby amended to read as follows:

609.240 1. No child under the age of 16 years may be employed, permitted or suffered to work at any gainful occupation, other than ~~[domestic service,]~~ employment as a performer in the production of a motion picture or work on a farm, more than 48 hours in any 1 week, or more than 8 hours in any 1 day.

2. The presence of a child in any establishment during working hours is prima facie evidence of employment of the child therein.

Sec. 4. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 and 6 of this act.

Sec. 5. *This section and section 6 of this act may be cited as the Domestic Workers' Bill of Rights.*

Sec. 6. *1. The Legislature hereby declares that a domestic worker must be afforded the following rights and protections:*

(a) An employer shall provide to a domestic worker, when the domestic worker begins his or her employment, a written employment agreement outlining the conditions of his or her employment. If the domestic worker is not able to understand the provisions of the written agreement, the employer shall ensure that those provisions are explained to the domestic worker in a language that the domestic worker understands. The employment agreement must include, without limitation:

(1) The full name and address of the employer;

(2) The name of the domestic worker and a description of the duties for which he or she is being employed;

(3) Each place where the domestic worker is required to work;

(4) The date on which the employment will begin;

(5) The period of notice required for either party to terminate the employment or, if the employment is for a specified period, the date on which the employment will end;

(6) The ordinary workdays and hours of work required of the domestic worker, including any breaks;

(7) The rate of pay, rate and conditions of overtime pay and any other payment or benefits, including, without limitation, health insurance, workers' compensation insurance or paid leave, which the domestic worker is entitled to receive;

(8) The frequency and method of pay;

(9) Any deductions to be made from the domestic worker's wages;

(10) If the domestic worker is to reside in the employer's household, the conditions under which the employer may enter the domestic worker's designated living space; and

(11) A notice of all applicable state and federal laws pertaining to the employment of domestic workers. A copy of the notice provided in subsection 3 will satisfy the requirement to comply with this subparagraph.

(b) Except as otherwise provided in this section and subject to the provisions of chapter 608 of NRS, a domestic worker must, for all of his or her working time, be paid at least the minimum hourly wage published pursuant to Section 16 of Article 15 of the Nevada Constitution.

(c) A domestic worker who is paid less than one and one half times the minimum hourly wage and who does not reside in the employer's household must be paid not less than one and one half times the domestic worker's regular rate of wages for all working time in excess of 8 hours in a workday or 40 hours in a week of work as provided in NRS 608.018. A domestic worker who resides in the employer's household is not entitled to pay in excess of the minimum hourly wage for any working time in excess of 8 hours in a workday or 40 hours in a week of work.

(d) Except as otherwise provided in NRS 608.0195, if a domestic worker is required to be on duty, he or she must be paid for all working time, including, without limitation, sleeping time and meal breaks.

(e) If a domestic worker is hired to work for 40 hours per week or more, his or her employer must provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month. The domestic worker may agree in writing to work on a scheduled day of rest but must be compensated for such time pursuant to this section.

(f) An employer may deduct from the wages of a domestic worker an amount for food and beverages supplied by the employer if the domestic worker freely and voluntarily accepts such food and beverages and provides written consent for such a deduction. An employer must not make a deduction for food and beverages supplied by the employer if a domestic worker cannot easily bring or prepare meals on the premises. Any deduction for food and beverages pursuant to this paragraph must not exceed the limits set forth in NRS 608.155.

(g) An employer may deduct from the wages of a domestic worker an amount for lodging if the domestic worker freely and voluntarily accepts such lodging and provides written consent for such a deduction. An employer may not make a deduction for lodging if the domestic worker is required to reside on the employer's premises as a condition of his or her employment. Any deduction for lodging pursuant to this paragraph must not exceed the limits set forth in section 1 of this act.

(h) If a domestic worker is required to wear a uniform, the employer may not deduct from his or her wages the cost of the uniform or its care.

(i) An employer shall not restrict, interfere with or monitor a domestic worker's private communications or take any of the domestic worker's documents or other personal effects.

(j) A domestic worker may request a written evaluation of his or her work performance from the employer 3 months after his or her employment begins and annually thereafter.

(k) If a domestic worker resides in the employer's household and the employer terminates his or her employment without cause, the employer shall provide written notice and at least 30 days of lodging to the domestic worker, either on-site or in comparable off-site conditions.

(l) An employer shall keep a record of the wages and hours of the domestic worker as required by NRS 608.115.

2. The provisions of this section are not intended to prevent an employer from providing greater wages and benefits than those required by this section.

3. The Labor Commissioner shall adopt regulations to carry out the provisions of this section and shall post on his or her Internet website, if any, a multilingual notice of employment rights provided under this section and any applicable state and federal laws pertaining to the employment of domestic workers.

4. As used in this section, unless the context otherwise requires:

(a) "Domestic worker" means a natural person who is paid by an employer to perform work of a domestic nature for the employer's household, including, without limitation, housekeeping, housecleaning, cooking, laundering, nanny services, caretaking of sick, convalescing or elderly persons, gardening or chauffeuring. ~~[The term does not include persons who provide services on a casual, irregular or intermittent basis or persons who are employed by a third-party service or agency.]~~

(b) "Employer" means a person who employs a domestic worker to work for the employer's household.

(c) "Household" means the premises of an employer's residence and includes any living quarters on the employer's property.

(d) "On duty" means any period during which a domestic worker is working or is required to remain on the employer's property.

(e) "Period of rest" means a period during which the domestic worker has complete freedom from all duties and is free to leave the employer's household or stay within the household solely for personal pursuits.

(f) "Working time" means all compensable time, other than periods of rest, during which a domestic worker is on duty, regardless of whether the domestic worker is actually working.

Sec. 7. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any preparatory administrative tasks necessary to carry out the provisions of this act; and

2. On January 1, 2018, for all other purposes.

Amendment No. 929.

SUMMARY—Enacts the Domestic Workers' Bill of Rights. (BDR 53-887)

AN ACT relating to domestic workers; enacting the Domestic Workers' Bill of Rights; providing for the mandatory payment of wages and overtime wages for certain hours worked, limitations on deductions for food and lodging, rest breaks and days off; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that employees must be paid a minimum wage and must be paid overtime for certain hours. (NRS 608.018, 608.250; Nev. Const. Art. 15, § 16) Section 6 of this bill enacts the Domestic Workers' Bill of Rights. Section 6 defines a "domestic worker" to mean a natural person who is paid by an employer to perform work of a domestic nature and requires that an employer of a domestic worker supply the domestic worker with certain written documentation of the conditions of his or her employment and his or her rights under the law. Section 6 also requires that a domestic worker be compensated for all hours during which he or she is required to be on duty and is required to remain in the employer's household, except under certain circumstances in which the domestic worker is employed at a residential facility for a group of certain persons who require supervision, care or other assistance. Section 6 requires that a domestic worker who is paid less than one and one half times the minimum hourly wage and who does not reside in the employer's household be paid overtime wages for certain hours; however, per the Labor Commissioner, a domestic worker who resides in the employer's household is only entitled to his or her regular wages for all hours worked. Section 6 further requires that a domestic worker be allowed at least 1 day off per week and 2 consecutive days off at least once per month. Section 6 also prohibits an employer from limiting or monitoring a domestic worker's private communications or taking or holding such a worker's personal documents. Section 1 of this bill sets limits on the amount an employer may deduct from a worker's pay for lodging provided by the employer. Section 2 of this bill revises the amounts an employer may deduct from a worker's pay for meals. Existing law provides that children under the age of 16 years employed in domestic service, farm labor or motion picture performances are exempt from limitations on working hours. (NRS 609.240) Section 3 of this bill deletes the exemption for children employed in domestic service.

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

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1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of lodging. In no case may the value of the lodging be computed at more than five times the

statutory minimum hourly wage for each week that lodging is provided to the employee.

2. The monetary limitations on the value of lodging specified in subsection 1 do not apply to agricultural employees.

Sec. 2. NRS 608.155 is hereby amended to read as follows:

608.155 1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals be computed at more than ~~[$1.50]~~ *100 percent of the statutory minimum hourly wage* per day. In no case shall the value of the meals consumed by such employee be computed or valued at more than ~~[35 cents]~~ *25 percent of the statutory minimum hourly wage* for each breakfast actually consumed, ~~[45 cents]~~ *25 percent of the statutory minimum hourly wage* for each lunch actually consumed, and ~~[70 cents]~~ *50 percent of the statutory minimum hourly wage* for each dinner actually consumed.

2. The monetary limitations on the value of meals, contained in subsection 1, do not apply to agricultural employees.

Sec. 3. NRS 609.240 is hereby amended to read as follows:

609.240 1. No child under the age of 16 years may be employed, permitted or suffered to work at any gainful occupation, other than ~~[domestic service,]~~ employment as a performer in the production of a motion picture or work on a farm, more than 48 hours in any 1 week, or more than 8 hours in any 1 day.

2. The presence of a child in any establishment during working hours is prima facie evidence of employment of the child therein.

Sec. 4. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 and 6 of this act.

Sec. 5. *This section and section 6 of this act may be cited as the Domestic Workers' Bill of Rights.*

Sec. 6. *1. The Legislature hereby declares that a domestic worker must be afforded the following rights and protections:*

(a) An employer shall provide to a domestic worker, when the domestic worker begins his or her employment, a written employment agreement outlining the conditions of his or her employment. If the domestic worker is not able to understand the provisions of the written agreement, the employer shall ensure that those provisions are explained to the domestic worker in a language that the domestic worker understands. The employment agreement must include, without limitation:

(1) The full name and address of the employer;

(2) The name of the domestic worker and a description of the duties for which he or she is being employed;

(3) Each place where the domestic worker is required to work;

(4) The date on which the employment will begin;

(5) The period of notice required for either party to terminate the employment or, if the employment is for a specified period, the date on which the employment will end;

(6) The ordinary workdays and hours of work required of the domestic worker, including any breaks;

(7) The rate of pay, rate and conditions of overtime pay and any other payment or benefits, including, without limitation, health insurance, workers' compensation insurance or paid leave, which the domestic worker is entitled to receive;

(8) The frequency and method of pay;

(9) Any deductions to be made from the domestic worker's wages;

(10) If the domestic worker is to reside in the employer's household, the conditions under which the employer may enter the domestic worker's designated living space; and

(11) A notice of all applicable state and federal laws pertaining to the employment of domestic workers. A copy of the notice provided in subsection 3 will satisfy the requirement to comply with this subparagraph.

(b) Except as otherwise provided in this section and subject to the provisions of chapter 608 of NRS, a domestic worker must, for all of his or her working time, be paid at least the minimum hourly wage published pursuant to Section 16 of Article 15 of the Nevada Constitution.

(c) A domestic worker who is paid less than one and one half times the minimum hourly wage and who does not reside in the employer's household must be paid not less than one and one half times the domestic worker's regular rate of wages for all working time in excess of 8 hours in a workday or 40 hours in a week of work as provided in NRS 608.018. A domestic worker who resides in the employer's household is not entitled to pay in excess of the minimum hourly wage for any working time in excess of 8 hours in a workday or 40 hours in a week of work.

(d) Except as otherwise provided in NRS 608.0195, if a domestic worker is required to be on duty, he or she must be paid for all working time, including, without limitation, sleeping time and meal breaks.

(e) If a domestic worker is hired to work for 40 hours per week or more, his or her employer must provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month. The domestic worker may agree in writing to work on a scheduled day of rest but must be compensated for such time pursuant to this section.

(f) An employer may deduct from the wages of a domestic worker an amount for food and beverages supplied by the employer if the domestic worker freely and voluntarily accepts such food and beverages and provides written consent for such a deduction. An employer must not make a deduction for food and beverages supplied by the employer if a domestic worker cannot easily bring or prepare meals on the premises. Any deduction

for food and beverages pursuant to this paragraph must not exceed the limits set forth in NRS 608.155.

(g) An employer may deduct from the wages of a domestic worker an amount for lodging if the domestic worker freely and voluntarily accepts such lodging and provides written consent for such a deduction. An employer may not make a deduction for lodging if the domestic worker is required to reside on the employer's premises as a condition of his or her employment. Any deduction for lodging pursuant to this paragraph must not exceed the limits set forth in section 1 of this act.

(h) If a domestic worker is required to wear a uniform, the employer may not deduct from his or her wages the cost of the uniform or its care.

(i) An employer shall not restrict, interfere with or monitor a domestic worker's private communications or take any of the domestic worker's documents or other personal effects.

(j) A domestic worker may request a written evaluation of his or her work performance from the employer 3 months after his or her employment begins and annually thereafter.

(k) If a domestic worker resides in the employer's household and the employer terminates his or her employment without cause, the employer shall provide written notice and at least 30 days of lodging to the domestic worker, either on-site or in comparable off-site conditions.

(l) An employer shall keep a record of the wages and hours of the domestic worker as required by NRS 608.115.

2. The provisions of this section are not intended to prevent an employer from providing greater wages and benefits than those required by this section.

3. The Labor Commissioner shall adopt regulations to carry out the provisions of this section and shall post on his or her Internet website, if any, a multilingual notice of employment rights provided under this section and any applicable state and federal laws pertaining to the employment of domestic workers.

4. As used in this section, unless the context otherwise requires:

(a) "Domestic worker" means a natural person who is paid by an employer to perform work of a domestic nature for the employer's household, including, without limitation, housekeeping, housecleaning, cooking, laundering, nanny services, caretaking of sick, convalescing or elderly persons, gardening or chauffeuring. <u>The term:</u>

<u>(1) Includes a natural person who is employed by a third-party service or agency; and</u>

<u>(2) Does not include a natural person who provides services on a casual, irregular or intermittent basis.</u>

(b) "Employer" means a person who employs a domestic worker to work for the employer's household.

(c) "Household" means the premises of an employer's residence and includes any living quarters on the employer's property.

(d) "On duty" means any period during which a domestic worker is working or is required to remain on the employer's property.

(e) "Period of rest" means a period during which the domestic worker has complete freedom from all duties and is free to leave the employer's household or stay within the household solely for personal pursuits.

(f) "Working time" means all compensable time, other than periods of rest, during which a domestic worker is on duty, regardless of whether the domestic worker is actually working.

Sec. 7. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any preparatory administrative tasks necessary to carry out the provisions of this act; and

2. On January 1, 2018, for all other purposes.

Amendment No. 959.

SUMMARY—Enacts the Domestic Workers' Bill of Rights. (BDR 53-887)

AN ACT relating to domestic workers; enacting the Domestic Workers' Bill of Rights; providing for the mandatory payment of wages and , under certain circumstances, overtime wages for certain hours worked, limitations on deductions for food and lodging, rest breaks and days off; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that employees must be paid a minimum wage and must be paid overtime for certain hours. (NRS 608.018, 608.250; Nev. Const. Art. 15, § 16) Section 6 of this bill enacts the Domestic Workers' Bill of Rights. Section 6 defines a "domestic worker" to mean a natural person who is paid by an employer to perform work of a domestic nature and requires that an employer of a domestic worker supply the domestic worker with certain written documentation of the conditions of his or her employment and his or her rights under the law. Section 6 also requires that a domestic worker be compensated for all hours during which he or she is required to be on duty and is required to remain in the employer's household, except under certain circumstances in which the domestic worker is employed at a residential facility for a group of certain persons who require supervision, care or other assistance. Section 6 requires that a domestic worker who is paid less than one and one-half times the minimum hourly wage ~~[and who does not reside in the employer's household]~~ must be paid overtime wages ~~[for]~~ under certain ~~[hours; however, per the Labor Commissioner, a domestic worker who resides in the employer's household is only entitled to his or her regular wages for all hours worked.]~~ circumstances. Section 6 further requires that a domestic worker be allowed at least 1 day off per week and 2 consecutive days off at least once per month. Section 6 also prohibits an employer from limiting or monitoring a domestic worker's private communications or taking or holding such a worker's personal documents. Section 1 of this bill sets limits on the amount an employer may deduct from a worker's pay for

lodging provided by the employer. Section 2 of this bill revises the amounts an employer may deduct from a worker's pay for meals. Existing law provides that children under the age of 16 years employed in domestic service, farm labor or motion picture performances are exempt from limitations on working hours. (NRS 609.240) Section 3 of this bill deletes the exemption for children employed in domestic service.

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

Section 1. Chapter 608 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of lodging. In no case may the value of the lodging be computed at more than five times the statutory minimum hourly wage for each week that lodging is provided to the employee.

2. The monetary limitations on the value of lodging specified in subsection 1 do not apply to agricultural employees.

Sec. 1.5. NRS 608.018 is hereby amended to read as follows:

608.018 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) ~~[Employees]~~ *Except as otherwise provided in paragraph (o), employees* who are not covered by the minimum wage provisions of NRS 608.250;

(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;

(h) Employees of a carrier by air;

(i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;

(j) Drivers of taxicabs or limousines;

(k) Agricultural employees;

(l) Employees of business enterprises having a gross sales volume of less than $250,000 per year;

(m) Any salesperson or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; ~~[and]~~

(n) A mechanic or worker for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply ~~[.]~~ *; and*

(o) A domestic worker who resides in the household where he or she works if the domestic worker and his or her employer agree in writing to exempt the domestic worker from the requirements of subsections 1 and 2.

4. As used in this section, "domestic worker" has the meaning ascribed to it in section 6 of this act.

Sec. 2. NRS 608.155 is hereby amended to read as follows:

608.155 1. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals be computed at more than ~~[$1.50]~~ *100 percent of the statutory minimum hourly wage* per day. In no case shall the value of the meals consumed by such employee be computed or valued at more than ~~[35 cents]~~ *25 percent of the statutory minimum hourly wage* for each breakfast actually consumed, ~~[45 cents]~~ *25 percent of the statutory minimum hourly wage* for each lunch actually consumed, and ~~[70 cents]~~ *50 percent of the statutory minimum hourly wage* for each dinner actually consumed.

2. The monetary limitations on the value of meals, contained in subsection 1, do not apply to agricultural employees.

Sec. 3. NRS 609.240 is hereby amended to read as follows:

609.240 1. No child under the age of 16 years may be employed, permitted or suffered to work at any gainful occupation, other than ~~[domestic service,]~~ employment as a performer in the production of a motion picture or work on a farm, more than 48 hours in any 1 week, or more than 8 hours in any 1 day.

2. The presence of a child in any establishment during working hours is prima facie evidence of employment of the child therein.

Sec. 4. Chapter 613 of NRS is hereby amended by adding thereto the provisions set forth as sections 5 and 6 of this act.

Sec. 5. *This section and section 6 of this act may be cited as the Domestic Workers' Bill of Rights.*

Sec. 6. *1. The Legislature hereby declares that a domestic worker must be afforded the following rights and protections:*

(a) An employer shall provide to a domestic worker, when the domestic worker begins his or her employment, a written employment agreement outlining the conditions of his or her employment. If the domestic worker is not able to understand the provisions of the written agreement, the employer shall ensure that those provisions are explained to the domestic worker in a language that the domestic worker understands. The employment agreement must include, without limitation:

(1) The full name and address of the employer;

(2) The name of the domestic worker and a description of the duties for which he or she is being employed;

(3) Each place where the domestic worker is required to work;

(4) The date on which the employment will begin;

(5) The period of notice required for either party to terminate the employment or, if the employment is for a specified period, the date on which the employment will end;

(6) The ordinary workdays and hours of work required of the domestic worker, including any breaks;

(7) The rate of pay, rate and conditions of overtime pay and any other payment or benefits, including, without limitation, health insurance, workers' compensation insurance or paid leave, which the domestic worker is entitled to receive;

(8) The frequency and method of pay;

(9) Any deductions to be made from the domestic worker's wages;

(10) If the domestic worker is to reside in the employer's household, the conditions under which the employer may enter the domestic worker's designated living space; and

(11) A notice of all applicable state and federal laws pertaining to the employment of domestic workers. A copy of the notice provided in subsection 3 will satisfy the requirement to comply with this subparagraph.

(b) Except as otherwise provided in this section and subject to the provisions of chapter 608 of NRS, a domestic worker must, for all of his or her working time, be paid at least the minimum hourly wage published pursuant to Section 16 of Article 15 of the Nevada Constitution.

(c) ~~[A]~~ Except as otherwise provided in NRS 608.018, a domestic worker who is paid less than one and one-half times the minimum hourly wage ~~[and who does not reside in the employer's household]~~ must be paid not less than one and one-half times the domestic worker's regular rate of wages for all working time in excess of 8 hours in a workday or 40 hours in a week of work ~~[as provided]~~ in accordance with the provisions of NRS 608.018. ~~[A domestic worker who resides in the employer's household is not entitled to pay in excess of the minimum hourly wage for any working time in excess of 8 hours in a workday or 40 hours in a week of work.]~~

(d) Except as otherwise provided in NRS 608.0195, if a domestic worker is required to be on duty, he or she must be paid for all working time, including, without limitation, sleeping time and meal breaks.

(e) If a domestic worker is hired to work for 40 hours per week or more, his or her employer must provide a period of rest of at least 24 consecutive hours in each calendar week and at least 48 consecutive hours during each calendar month. The domestic worker may agree in writing to work on a scheduled day of rest but must be compensated for such time pursuant to this section.

(f) An employer may deduct from the wages of a domestic worker an amount for food and beverages supplied by the employer if the domestic worker freely and voluntarily accepts such food and beverages and provides written consent for such a deduction. An employer must not make a deduction for food and beverages supplied by the employer if a domestic worker cannot easily bring or prepare meals on the premises. Any deduction for food and beverages pursuant to this paragraph must not exceed the limits set forth in NRS 608.155.

(g) An employer may deduct from the wages of a domestic worker an amount for lodging if the domestic worker freely and voluntarily accepts such lodging and provides written consent for such a deduction. An employer may not make a deduction for lodging if the domestic worker is required to reside on the employer's premises as a condition of his or her employment. Any deduction for lodging pursuant to this paragraph must not exceed the limits set forth in section 1 of this act.

(h) If a domestic worker is required to wear a uniform, the employer may not deduct from his or her wages the cost of the uniform or its care.

(i) An employer shall not restrict, interfere with or monitor a domestic worker's private communications or take any of the domestic worker's documents or other personal effects.

(j) A domestic worker may request a written evaluation of his or her work performance from the employer 3 months after his or her employment begins and annually thereafter.

(k) If a domestic worker resides in the employer's household and the employer terminates his or her employment without cause, the employer shall provide written notice and at least 30 days of lodging to the domestic worker, either on-site or in comparable off-site conditions.

(l) An employer shall keep a record of the wages and hours of the domestic worker as required by NRS 608.115.

2. The provisions of this section are not intended to prevent an employer from providing greater wages and benefits than those required by this section.

3. The Labor Commissioner shall adopt regulations to carry out the provisions of this section and shall post on his or her Internet website, if any, a multilingual notice of employment rights provided under this section and

any applicable state and federal laws pertaining to the employment of domestic workers.

4. As used in this section, unless the context otherwise requires:

(a) "Domestic worker" means a natural person who is paid by an employer to perform work of a domestic nature for the employer's household, including, without limitation, housekeeping, housecleaning, cooking, laundering, nanny services, caretaking of sick, convalescing or elderly persons, gardening or chauffeuring. The term:

(1) Includes a natural person who is employed by a third-party service or agency; and

(2) Does not include a natural person who provides services on a casual, irregular or intermittent basis.

(b) "Employer" means a person who employs a domestic worker to work for the employer's household.

(c) "Household" means the premises of an employer's residence and includes any living quarters on the employer's property.

(d) "On duty" means any period during which a domestic worker is working or is required to remain on the employer's property.

(e) "Period of rest" means a period during which the domestic worker has complete freedom from all duties and is free to leave the employer's household or stay within the household solely for personal pursuits.

(f) "Working time" means all compensable time, other than periods of rest, during which a domestic worker is on duty, regardless of whether the domestic worker is actually working.

Sec. 7. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any preparatory administrative tasks necessary to carry out the provisions of this act; and

2. On January 1, 2018, for all other purposes.

Senator Atkinson moved that the Senate concur in Assembly Amendments Nos. 815, 929, 959 to Senate Bill No. 232.

Motion carried by a constitutional majority.

Bill ordered enrolled.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce, Labor and Energy, to which was re-referred Assembly Bill No. 354, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

KELVIN ATKINSON, *Chair*

Mr. President

Your Committee on Natural Resources, to which was referred Assembly Bill No. 52, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

YVANNA D. CANCELA, *Chair*

SECOND READING AND AMENDMENT

Senate Bill No. 528.

Bill read second time and ordered to third reading.

Senate Bill No. 534.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1028.

SUMMARY—Makes appropriations to the Division of Child and Family Services of the Department of Health and Human Services for deferred maintenance projects essential for the security and operation of certain facilities. (BDR S-1199)

AN ACT making appropriations to the Division of Child and Family Services of the Department of Health and Human Services for deferred maintenance projects essential for the security and operation of certain facilities; and providing other matters properly relating thereto.

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

Section 1. There is hereby appropriated from the State General Fund to the Division of Child and Family Services of the Department of Health and Human Services the following sums for deferred maintenance projects essential for the security and operation of:

The Summit View Youth Center	$152,000
The Caliente Youth Center	$900,256
The Nevada Youth Training Center	$1,429,662
Northern Nevada Child and Adolescent Services	$70,927
Southern Nevada Child and Adolescent Services	$286,865

Sec. 2. Any remaining balance of the appropriations made by section 1 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 3. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1028 changes section 3 to make Senate Bill No. 534 effective upon passage and approval.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 536.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1029.

SUMMARY—Makes appropriations to the Division of State Parks of the State Department of Conservation and Natural Resources for projects at certain parks and recreation areas. (BDR S-1205)

AN ACT making appropriations to the Division of State Parks of the State Department of Conservation and Natural Resources for projects at certain parks and recreation areas; authorizing the expenditure of certain money by the Division for the Walker River State Recreation Area; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby appropriated from the State General Fund to the Division of State Parks of the State Department of Conservation and Natural Resources the sum of $1,200,000 for the stabilization and restoration project at the Fort Churchill State Historic Park.

2. There is hereby appropriated from the State General Fund to the Division of State Parks of the State Department of Conservation and Natural Resources the sum of $550,000 for the construction of cabins at the Walker River State Recreation Area.

3. There is hereby appropriated from the State General Fund to the Division of State Parks of the State Department of Conservation and Natural Resources the sum of ~~[$1,420,000]~~ $750,000 for the construction of campgrounds with full hook-ups at the Walker River State Recreation Area.

4. Expenditure of $1,200,000 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the State Department of Conservation and Natural Resources for the same purpose as set forth in subsection 3.

5. There is hereby appropriated from the State General Fund to the Division of State Parks of the State Department of Conservation and Natural Resources the sum of $168,000 for the construction of pull-through campsites at 10 state park campgrounds.

6. There is hereby appropriated from the State General Fund to the Division of State Parks of the State Department of Conservation and Natural Resources the sum of $159,000 for the construction of cabins at the Wild Horse State Recreation Area.

Sec. 2. Any remaining balance of the appropriations made by section 1 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money

was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 3. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1029 to Senate Bill No. 536 reduces the amount appropriated in subsection 3 of section 1 from $1,420,000 to $750,000 for the construction of campgrounds with full hook-ups at the Walker River State Recreation Area.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 544.

Bill read second time and ordered to third reading.

Senate Bill No. 545.

Bill read second time and ordered to third reading.

Senate Bill No. 546.

Bill read second time and ordered to third reading.

Assembly Bill No. 7.

Bill read second time and ordered to third reading.

Assembly Bill No. 124.

Bill read second time and ordered to third reading.

Assembly Bill No. 494.

Bill read second time and ordered to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Woodhouse moved that Senate Bill No. 235 be taken from the General File and placed on the General File, last Agenda.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 390.

Bill read third time.

Remarks by Senator Denis.

Senate Bill No. 390 extends the Zoom schools program for the 2017-2019 biennium. The bill requires the schools that operated as Zoom schools for the 2015-17 biennium continue to operate as Zoom schools for the 2017-19 biennium. Senate Bill No. 390 increases the percent of funding that may be utilized for professional development, family engagement and recruitment and retention incentives from 2 to 5 percent.

Roll call on Senate Bill No. 390:

YEAS—21.

NAYS—None.

Senate Bill No. 390 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 478.

Bill read third time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1021.

SUMMARY—Revises provisions relating to certain disciplinary action against state employees. (BDR 23-1043)

AN ACT relating to state employees; revising provisions governing the dismissal, involuntary demotion or suspension of a permanent classified employee in the state service; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires an appointing authority to take certain actions when dismissing, involuntarily demoting or suspending a permanent classified employee in the state service or conducting an internal administrative investigation which may result in the dismissal, involuntary demotion or suspension of a permanent classified employee. (NRS 284.385, 284.387; NAC 284.655) ~~[Section 1 of this bill requires an appointing authority, before dismissing, involuntarily demoting or suspending a permanent classified employee, to conduct an impartial, fact-finding investigation into the allegations to determine whether evidence exists to justify the dismissal, involuntary demotion or suspension, unless such an investigation is waived by the employee in writing.]~~ Section 2 of this bill requires ~~[the]~~ an appointing authority to provide an employee with notice of the allegations against the employee within 30 days after the appointing authority becomes aware, or reasonably should have become aware, of the allegations and requires the appointing authority to provide such notice before commencing any part of the internal administrative investigation into those allegations.

Existing law requires an appointing authority to complete an internal administrative investigation and make a determination whether to dismiss, involuntarily demote or suspend an employee within 90 days after providing the employee with notice of the allegations, unless the appointing authority obtains approval for an extension of time. (NRS 284.387) Section 2 prohibits an appointing authority from dismissing, involuntarily demoting or suspending an employee based on allegations if the investigation into those allegations does not result in a determination regarding disciplinary action within the prescribed time period. ~~[Additionally, section 2 requires the appointing authority to provide an employee with a copy of each request and approval for the extension of time for an investigation beyond the initial 90 days.]~~

Existing law authorizes a permanent employee to appeal a dismissal, involuntary demotion or suspension in a hearing before the hearing officer of

the Personnel Commission. (NRS 284.390) If the employee requests such a hearing, section 3 of this bill requires the appointing authority of the employee to produce and allow the employee or his or her representative to inspect or receive a copy of any document or evidence related to the internal investigation leading to the employee's dismissal, involuntary demotion or suspension ~~[.]~~ within 5 days after a request is made by the employee or his or her representative.

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

Section 1. ~~[NRS 284.385 is hereby amended to read as follows:~~

~~284.385 1. An appointing authority may:~~

~~(a) Dismiss or demote any permanent classified employee when the appointing authority considers that the good of the public service will be served thereby.~~

~~(b) Except as otherwise provided in NRS 284.148, suspend without pay, for disciplinary purposes, a permanent employee for a period not to exceed 30 days.~~

~~2. Before a permanent classified employee is dismissed, involuntarily demoted or suspended, the appointing authority must [consult] :~~

~~*(a) Consult* with the Attorney General or, if the employee is employed by the Nevada System of Higher Education, the appointing authority's general counsel, regarding the proposed discipline [.] *; and*~~

~~*(b) Conduct an impartial fact finding investigation and make a determination as a result of the investigation in the manner set forth in NRS 284.387, unless the employee, in writing, admits to the allegations on which the proposed dismissal, involuntary suspension or demotion is based and waives the investigation.*~~

~~*3.* After [such consultation,] *compliance with the requirements of subsection 2,* the appointing authority may take such lawful action regarding the proposed discipline as it deems necessary under the circumstances.~~

~~[3.] *4.* A dismissal, involuntary demotion or suspension does not become effective until the employee is notified in writing of the dismissal, involuntary demotion or suspension and the reasons therefor. The Commission shall adopt regulations setting forth the procedures for properly notifying the employee of the dismissal, involuntary demotion or suspension and the reasons therefor.~~

~~[4.] *5.* No employee in the classified service may be dismissed for religious or racial reasons.~~ (Deleted by amendment.)

Sec. 2. NRS 284.387 is hereby amended to read as follows:

284.387 1. ~~*[The investigation described in subsection 2 of NRS 284.385 must:*~~

~~*(a) Commence within 20 days after the date on which the appointing authority becomes aware of the allegations against the employee; and*~~

~~*(b) Include a review of the documentation relating to the proposed dismissal, involuntary suspension or demotion of the employee and an*~~

~~*interview with the employee and each potential witness to determine whether evidence exists to justify the dismissal, involuntary suspension or demotion of the employee.*~~

~~*— 2.]*~~ An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee ~~*[conducted]*~~ pursuant to NRS 284.385 must be:

(a) Provided notice in writing of the allegations against the employee *within 30 days after the date on which the appointing authority becomes aware, or reasonably should have become aware, of the allegations. The notice must be provided* before *any part of the investigation begins* ~~*[, including, without limitation,]*~~ *and before* the employee is questioned regarding the allegations . ~~*[; and]*~~

(b) Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. The employee must be given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.

2. ~~*[3.]*~~ An internal administrative investigation that could lead to disciplinary action against an employee ~~*[conducted]*~~ pursuant to NRS 284.385 and any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1. ~~*[2.]*~~ If the appointing authority cannot complete the investigation and make a determination within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1, ~~*[2,]*~~ the appointing authority may request an extension of not more than 60 days from the Administrator upon showing good cause for the delay. No further extension may be granted unless approved by the Governor.

~~*[4. The appointing authority shall provide an employee with a copy of each request for an extension and approval of a request for an extension made pursuant to subsection 3 before the expiration of 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 2 or any extension of time approved pursuant to subsection 3, as applicable.*~~

~~*— 5.]*~~ *3. If the appointing authority does not make a determination within 90 days after the employee is provided notice of the allegations or within any extended time period approved pursuant to subsection* ~~*[3,]*~~ *2, the appointing authority* ~~*[may]*~~ *shall not take any disciplinary action against the employee pursuant to NRS 284.385 which is based on those allegations.*

Sec. 3. NRS 284.390 is hereby amended to read as follows:

284.390 1. Within 10 working days after the effective date of an employee's dismissal, demotion or suspension pursuant to NRS 284.385, the employee who has been dismissed, demoted or suspended may request in writing a hearing before the hearing officer of the Commission to determine

the reasonableness of the action. The request may be made by mail and shall be deemed timely if it is postmarked within 10 working days after the effective date of the employee's dismissal, demotion or suspension.

2. The hearing officer shall grant the employee a hearing within 20 working days after receipt of the employee's written request unless the time limitation is waived, in writing, by the employee or there is a conflict with the hearing calendar of the hearing officer, in which case the hearing must be scheduled for the earliest possible date after the expiration of the 20 days.

3. ~~*[Unless the employee waived the conduct of an investigation pursuant to NRS 284.385,]*~~ *Upon verification that a request for a hearing has been made pursuant to subsection 1, the appointing authority of the employee* ~~*[who requests a hearing pursuant to subsection 1]*~~ *who was the subject of the internal administrative investigation shall, within* ~~*[the time prescribed by the hearing officer,]*~~ *5 days after receiving a request by the employee or his or her representative, produce and allow the employee or his or her representative to inspect or receive a copy of any document concerning the internal administrative investigation* ~~*[conducted pursuant to NRS 284.385,]*~~ *including, without limitation, any recordings, notes, transcripts of interviews or other documents or evidence related to the internal administrative investigation.*

4. The employee may represent himself or herself at the hearing or be represented by an attorney or other person of the employee's own choosing.

~~[4.]~~ *5.* Technical rules of evidence do not apply at the hearing.

~~[5.]~~ *6.* After the hearing and consideration of the evidence, the hearing officer shall render a decision in writing, setting forth the reasons therefor.

~~[6.]~~ *7.* If the hearing officer determines that the dismissal, demotion or suspension was without just cause as provided in NRS 284.385, the action must be set aside and the employee must be reinstated, with full pay for the period of dismissal, demotion or suspension.

~~[7.]~~ *8.* The decision of the hearing officer is binding on the parties.

~~[8.]~~ *9.* Any petition for judicial review of the decision of the hearing officer must be filed in accordance with the provisions of chapter 233B of NRS.

Sec. 4. This act becomes effective on July 1, 2017.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1021 to Senate Bill No. 478 eliminates the requirement that an appointing authority before taking action to dismiss, involuntarily demote or suspend a permanent classified employee in the State service, conduct an impartial, fact-finding investigation into the allegations against the employee to determine whether evidence exists to justify the action and specifies timeframes for providing notice to an employee regarding allegations that could lead to disciplinary action and producing copies of documentation concerning certain internal administrative investigations.

Amendment adopted.

Bill read third time.

Remarks by Senators Parks, Settelmeyer and Ford.

SENATOR PARKS:

Senate Bill No. 478 requires an appointing authority to provide a classified employee in the State service who is the subject of an internal administrative investigation that could lead to disciplinary action with written notice of allegations within 30 days after the appointing authority becomes aware of such allegations and before commencing any part of the investigation. The bill prohibits an appointing authority from dismissing, demoting or suspending a State employee if a determination of disciplinary action is not made within 90 days of the notice provided to the employee of the allegations.

The bill provides that the appointing authority must produce and allow the employee or his or her representative to inspect or receive a copy of any document or evidence related to the investigation leading to a disciplinary action upon request by the employee within five days of the request if an employee requests a hearing before the Personnel Commission to appeal his or her dismissal, demotion or suspension.

SENATOR SETTELMEYER:

The changes made by the Senate Committee on Finance did not go far enough. The concept that an individual would be required to have 30-day notice of being under investigation is not realistic. Sometimes these investigations take longer to find the evidence necessary to bring forward. Add to that the fact that within 90-days a determination needs to be made. I have known cases that have taken six months just to get the information. By saying they shall not take disciplinary action if they do not get out a determination within 90-days is problematic due to the timelines needed to gather evidence such as someone taking funds or equipment. This does not usually turn into a criminal case. In the cases I have seen, employment is terminated. Because of these things, I will be voting "no" on this bill.

SENATOR FORD:

We have heard a lot this Session about constitutional rights for constitutional protected activities, including Second Amendment rights. State workers, under the U.S. and *State Constitutions* have constitutional rights to due process. This bill helps to incorporate additional constitutional protections to due process to State workers in the same way people have argued you cannot deprive people of their Second Amendment right without due process. Intellectual honesty would require a "yes" vote on this.

Roll call on Senate Bill No. 478:

YEAS—16.

NAYS—Gansert, Gustavson, Hardy, Roberson, Settelmeyer—5.

Senate Bill No. 478 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Senate Parliamentary Rules and Procedures has approved the consideration of: Amendment No. 1003 to Senate Bill No. 244 and Amendment No. 1046 to Senate Bill No. 306.

KELVIN ATKINSON, *Chair*

SECOND READING AND AMENDMENT

Assembly Bill No. 52.

Bill read second time and ordered to third reading.

Assembly Bill No. 354.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 244.

Bill read third time.

The following amendment was proposed by Senator Ratti:

Amendment No. 1003.

SUMMARY—Revises provisions relating to historic preservation. (BDR 33-515)

AN ACT relating to historic preservation; requiring notice and consultation with Indian tribes with regard to native Indian human remains, funerary objects and other cultural items under certain circumstances; requiring the Museum Director of the Nevada State Museum and the Office of Historic Preservation of the State Department of Conservation and Natural Resources to adopt regulations concerning the process for repatriation of prehistoric native Indian human remains and funerary objects; revising the membership of certain related boards and commissions; increasing the penalties for the defacement of prehistoric sites, historic sites and Indian burial sites; making appropriations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the preservation of historic sites and prehistoric sites. Pursuant to these provisions a permit is generally required to investigate, explore or excavate a historic site or prehistoric site on federal or state lands or to remove any object from such a site. (NRS 381.197) For the purposes of these provisions, existing law provides that a "historic site": (1) dates from the middle of the 18th century until 50 years before the current year; and (2) is a site, landmark or monument of historical significance that pertains to the history of the settlement of Nevada, or Indian campgrounds, shelters, petroglyphs, pictographs and burials. Existing law further provides that a "prehistoric site": (1) dates from before the middle of the 18th century; and (2) is any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe. (NRS 381.195)

Section 6 of this bill: (1) prohibits a person from excavating a site on private lands located in this State that the person knows is a prehistoric Indian burial site unless the person first obtains a permit from the Museum Director of the Nevada State Museum; and (2) provides that a person is not required to obtain such a permit to engage in lawful activity on private lands if that activity is engaged in exclusively for purposes other than the excavation of a prehistoric Indian burial site. Section 6 requires the Museum Director to adopt regulations governing such a permit, including, without

limitation, regulations setting forth the procedures for obtaining and renewing such a permit.

Section 5.5 of this bill provides that notwithstanding any provision of chapter 381 of NRS to the contrary: (1) a person is not required to obtain a permit pursuant to section 6 if the person has obtained a permit pursuant to federal law for the same purpose; and (2) the Administrator of the Division of Museums and History of the Department of Tourism and Cultural Affairs, the Museum Director of the Nevada State Museum or the museum director of an institution of the Division are not required to comply with certain requirements concerning notice to, consultation with or returning items to an Indian tribe if the Administrator or a museum director, as applicable, provides such notice to or consultation with or returns items to the Indian tribe in accordance with the repatriation process required pursuant to federal law.

Sections 5 and 26 of this bill require both the Museum Director of the Nevada State Museum and the Office of Historic Preservation of the State Department of Conservation and Natural Resources to adopt regulations that set forth the process for repatriation of prehistoric native Indian human remains and funerary objects falling within the purview of each state agency.

Section 10 of this bill requires native Indian human remains or other cultural items of an Indian tribe to be returned to the closest culturally affiliated Indian tribe in accordance with the repatriation process provided in the regulations adopted pursuant to section 5 if the human remains or other items were deemed abandoned by the institution of the Division that held the property.

Sections 16 and 22 of this bill require prehistoric native Indian human remains or funerary objects to be returned to the closest culturally affiliated Indian tribe in accordance with the repatriation process provided in the regulations adopted pursuant to section 5 if the human remains or funerary objects were: (1) found or discovered pursuant to certain permits to investigate, explore or excavate historic or prehistoric sites; or (2) seized by law enforcement officers as taken or collected on historic or prehistoric sites without a required permit.

Section 19 of this bill requires the Museum Director to provide notice and consultation with the applicable Indian tribes with regard to certain reports made by a holder of certain permits to investigate, explore or excavate historic or prehistoric sites if work done, material collected or other pertinent data contained in the report pertains to prehistoric native Indian human remains or a funerary object.

Section 26.5 of this bill provides that notwithstanding any provision of chapter 383 of NRS to the contrary, the Office of Historic Preservation is not required to comply with certain requirements concerning notice to, consultation with or returning items to an Indian tribe if the Office provides such notice to or consultation with or returns items to the Indian tribe in accordance with the repatriation process required pursuant to federal law.

Section 33 of this bill: (1) revises the procedure that is required to take place upon the discovery of an Indian burial site on private or public land; and (2) provides that such procedure does not apply , under certain circumstances, to a permit issued pursuant to section 6 of this bill [.] or while a person is engaged in a lawful activity if that person is subject to certain agreements.

Sections 34 and 37 of this bill increase the penalties for: (1) the willful removal, mutilation, defacement, injury or destruction of a native Indian cairn or grave to $2,000 for the first offense and $4,500 for the second or subsequent offense; and (2) the knowing and willful removal, mutilation, excavation, defacement, injury or destruction of a historic or prehistoric site or the trafficking of cultural property obtained from state land without a permit to $1,000 for a first offense and $3,500 for a second or subsequent offense. Section 34 further provides that the penalty for the willful removal of a native Indian cairn or grave only applies to a person who removes such a cairn or grave without any required permit.

Sections 8 and 38 of this bill expand the membership of both the Board of Museums and History and the Commission for Cultural Centers and Historic Preservation to include a member on the Board and on the Commission who is appointed by the Governor after giving consideration to any recommendation of an enrolled member of a Nevada Indian tribe which is submitted by the Nevada Indian Commission, after consultation with the Inter-Tribal Council of Nevada, Inc., or its successor organization.

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

Section 1. Chapter 381 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *1. In providing notice and consultation with Indian tribes as required by this chapter, the museum director of an institution shall immediately notify, in writing, and initiate consultation with any Indian tribe:*

(a) Who is or is likely to be culturally affiliated with the applicable artifact or site;

(b) On whose aboriginal lands the applicable artifact was discovered or the site was located; or

(c) Who is reasonably known to have a direct cultural relationship to the applicable artifact or site.

2. The written notice must include a proposed time and place for the consultation with the museum director.

Sec. 3. *The museum director of an institution shall use the criteria for determining cultural affiliation set forth in 43 C.F.R. § 10.14 to determine which Indian tribe has the closest cultural affiliation, if any, with regard to particular artifact or site.*

Sec. 4. (Deleted by amendment.)

Sec. 5. *1. The Museum Director of the Nevada State Museum shall adopt regulations as necessary to carry out the provisions of sections 2 to 5.5, inclusive, of this act and NRS 381.195 to 381.227, inclusive, and section 6 of this act, including, without limitation, regulations which set forth the process for repatriation of prehistoric native Indian human remains and funerary objects.*

2. Any regulations adopted pursuant to this section must be developed in consultation with Indian tribes and incorporate the values, beliefs and traditions of the Indian tribes as determined and conveyed by the members of the Indian tribes during the consultation with the Museum Director.

Sec. 5.5. *Notwithstanding any provision of this chapter to the contrary:*

1. A person is not required to obtain a permit pursuant to section 6 of this act if the person has obtained a permit pursuant to federal law for the same purpose; and

2. The Administrator, Museum Director of the Nevada State Museum or the museum director of an institution are not required to provide notice to, consult with or return items to an Indian tribe as required pursuant to this chapter if the Administrator, Museum Director of the Nevada State Museum or the museum director, of the institution, as applicable, provides such notice to, consults with or returns items to the Indian tribe in accordance with the repatriation process required pursuant to federal law.

Sec. 6. *1. A person shall not excavate a site on private lands located within this State that the person knows is a prehistoric Indian burial site unless the person first obtains a permit issued by the Museum Director.*

2. A person is not required to obtain a permit pursuant to subsection 1 to engage in a lawful activity on private lands, including, without limitation, construction, mining, mineral exploration, logging, farming, ranching or a federally authorized activity conducted in compliance with the National Historic Preservation Act, 54 U.S.C. § 300100 et seq., if that activity is engaged in exclusively for purposes other than the excavation of a prehistoric Indian burial site.

3. The Museum Director shall adopt regulations governing a permit issued pursuant to subsection 1. The regulations must, without limitation:

(a) Set forth the process for obtaining and renewing a permit required pursuant to subsection 1;

(b) Set forth the qualifications of an applicant for such a permit;

(c) Require notice to and consultation with the applicable Indian tribes throughout the permitting process in the manner provided by section 2 of this act;

(d) Provide for the enforcement of the provisions of this section, including, without limitation, the examination of the permit of a person claiming privileges pursuant to this section; and

(e) Fully protect the constitutional rights of property owners.

4. Any regulations adopted pursuant to this section must be developed in consultation with Indian tribes and incorporate the values, beliefs and

traditions of the Indian tribes as determined and conveyed by the members of the Indian tribes during the consultation with the Museum Director.

5. As used in this section, "Indian burial site" has the meaning ascribed to it in NRS 383.150.

Sec. 7. NRS 381.001 is hereby amended to read as follows:

381.001 As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the Administrator of the Division.

2. "Board" means the Board of Museums and History.

3. *"Cultural affiliation" or "culturally affiliated" means that there is a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group which is associated with a particular artifact or site.*

4. "Department" means the Department of Tourism and Cultural Affairs.

~~[4.]~~ *5.* "Director" means the Director of the Department.

~~[5.]~~ *6.* "Division" means the Division of Museums and History of the Department.

~~[6.]~~ *7. "Funerary object" means an object that, as a part of the death rite or ceremony of an Indian tribe is reasonably believed to have been placed with individual prehistoric native Indian human remains either at the time of death or later.*

8. "Historic" has the meaning ascribed to it in NRS 381.195.

9. "Historic structures, buildings and other property of the Nevada State Prison" means the structures, buildings and other property described in paragraph (b) of subsection 1 of NRS 321.004.

~~[7.]~~ *10. "Indian tribe" has the meaning ascribed to it in NRS 383.011.*

11. "Institution" means an institution of the Division established pursuant to NRS 381.004.

~~[8.]~~ *12.* "Museum director" means the executive director of an institution of the Division appointed by the Administrator pursuant to NRS 381.0062.

13. "Prehistoric" has the meaning ascribed to it in NRS 381.195.

Sec. 8. NRS 381.002 is hereby amended to read as follows:

381.002 1. The Board of Museums and History, consisting of ~~[eleven]~~ *twelve* members appointed by the Governor, is hereby created.

2. The Governor shall appoint to the Board:

(a) Five representatives of the general public who are knowledgeable about museums.

(b) Six members representing the fields of history, prehistoric archeology, historical archeology, architectural history, and architecture with qualifications as defined by the Secretary of Interior's standards for historic preservation in the following fields:

(1) One member who is qualified in history;

(2) One member who is qualified in prehistoric archeology;

(3) One member who is qualified in historic archeology;

(4) One member who is qualified in architectural history;

(5) One member who is qualified as an architect; and

(6) One additional member who is qualified, as defined by the Secretary of Interior's standards for historic preservation, in any of the fields of expertise described in subparagraphs (1) to (5), inclusive.

(c) One member, after giving consideration to any recommendation of an enrolled member of a Nevada Indian tribe which is submitted by the Nevada Indian Commission, after consultation with the Inter-Tribal Council of Nevada, Inc., or its successor organization.

3. The Board shall elect a Chair and a Vice Chair from among its members at its first meeting of every even-numbered year. The terms of the Chair and Vice Chair are 2 years or until their successors are elected.

4. With respect to the functions of the Office of Historic Preservation, the Board may develop, review and approve policy for:

(a) Matters relating to the State Historic Preservation Plan;

(b) Nominations to the National Register of Historic Places and make a determination of eligibility for listing on the Register for each property nominated; and

(c) Nominations to the State Register of Historic Places and make determination of eligibility for listing on the Register for each property nominated.

5. With respect to the functions of the Division, the Board shall develop, review and make policy for investments, budgets, expenditures and general control of the Division's private and endowed dedicated trust funds pursuant to NRS 381.003 to 381.0037, inclusive.

6. In all other matters pertaining to the Office of Historic Preservation and the Division of Museums and History, the Board serves in an advisory capacity.

7. The Board may adopt such regulations as it deems necessary to carry out its powers and duties.

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 381.009 is hereby amended to read as follows:

381.009 1. Any property held by an institution for 3 years or more, to which no person has made claim, shall be deemed to be abandoned and , *except as otherwise provided in subsection 4,* becomes the property of the Division if the Administrator complies with the provisions of subsection 2.

2. The Administrator shall cause to be published in at least one newspaper of general circulation in the county in which the institution is located at least once a week for 2 consecutive weeks a notice and listing of the property. The notice must contain:

(a) The name and last known address, if any, of the last known owner of the property;

(b) A description of the property; and

(c) A statement that if proof of a claim is not presented by the owner to the institution and if the owner's right to receive the property is not established to the Administrator's satisfaction within 60 days after the date of

the second published notice, the property will be considered abandoned and become the property of the Division.

3. If no claim has been made to the property within 60 days after the date of the second published notice, title, including literary rights, to the property vests in the Division, free from all claims of the owner and of all persons claiming through or under the owner.

4. If property deemed to be abandoned pursuant to subsection 1 is native Indian human remains or another cultural item of an Indian tribe, the Administrator shall:

(a) Provide notice to and consult with each applicable Indian tribe in the manner provided by section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the human remains or other cultural item, in the manner provided by section 3 of this act; and

(c) Return the human remains or other cultural item to the closest culturally affiliated Indian tribe in the manner provided by the repatriation process adopted pursuant to section 5 of this act, if a request for repatriation is made.

5. To be deemed an object of cultural significance, an object must have ongoing historical, traditional or cultural importance central to an Indian tribe or culture itself, rather than property owned by a member of an Indian tribe, and which, therefore, cannot be alienated, appropriated or conveyed by any person, regardless of whether the person is a member of the Indian tribe. The object must have been considered inalienable by the Indian tribe at the time the object was separated from such group.

6. As used in this section:

(a) "Cultural item" means human remains, a funerary object, a sacred object or an object of cultural significance.

(b) "Object of cultural significance" means an object which meets the qualifications of subsection 5.

(c) "Sacred object" means a historic or prehistoric object that was or is needed by traditional religious leaders of an Indian tribe for the practice of the traditional religion of an Indian tribe.

Sec. 11. NRS 381.195 is hereby amended to read as follows:

381.195 As used in NRS 381.195 to 381.227, inclusive ~~[.]~~ *, and section 6 of this act:*

1. "Historic" means from the middle of the 18th century until 50 years before the current year.

2. "Historic site" means a site, landmark or monument of historical significance pertaining to the history of the settlement of Nevada, or Indian campgrounds, shelters, petroglyphs, pictographs and burials.

3. "Museum Director" means the Museum Director of the Nevada State Museum.

4. "Prehistoric" means before the middle of the 18th century.

5. "Prehistoric site" means any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe.

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 13.5. NRS 381.199 is hereby amended to read as follows:

381.199 1. An applicant is required to secure, from the Museum Director, or an agent designated by the Museum Director, a permit *described in NRS 381.197* for the investigation, exploration or excavation of any state or federal lands within the boundaries of the State of Nevada.

2. If the land to be investigated, explored or excavated is owned or held by the United States, the applicant is also required to secure a permit from the proper authorities in accordance with the provisions of 16 U.S.C. §§ 431 to 433, inclusive.

Sec. 14. NRS 381.201 is hereby amended to read as follows:

381.201 *1.* The Museum Director may designate any state board, state department, division of a state department or state institution as an agent for the purpose of issuing permits ~~[. The agency so designated may adopt regulations relating to investigations, explorations or excavations carried out pursuant to any permit issued by that agency.]~~ *pursuant to NRS 381.195 to 381.227, inclusive, and section 6 of this act.*

2. If the Museum Director designates an agent pursuant to subsection 1:

(a) The agent must act in the manner in which the Museum Director is required to act pursuant to provisions of NRS 381.195 to 381.227, inclusive, and section 6 of this act, and any regulations adopted pursuant thereto; and

(b) The Museum Director must ensure that the agent acts in the manner in which the Museum Director is required to act pursuant to provisions of NRS 381.195 to 381.227, inclusive, and section 6 of this act, and any regulations adopted pursuant thereto.

Sec. 15. NRS 381.203 is hereby amended to read as follows:

381.203 1. In order to qualify as the recipient of a permit ~~[,]~~ *described in NRS 381.197*, the applicant must show:

(a) That the investigation, exploration or excavation is undertaken for the benefit of a reputable museum, university, college or other recognized scientific or educational institution, with a view of increasing knowledge.

(b) That the gathering is made for permanent preservation in public museums or other recognized educational or scientific institutions.

(c) That the applicant possesses sufficient knowledge and scientific training to make such an investigation, exploration or excavation.

(d) The location of the site where the applicant proposes to investigate, explore or excavate.

2. The Museum Director may prescribe reasonable regulations for carrying out such investigations, explorations or excavations.

Sec. 15.5. NRS 381.205 is hereby amended to read as follows:

381.205 Upon granting ~~[the]~~ *a* permit ~~[,]~~ *described in NRS 381.197,* the Museum Director shall immediately notify the Office of Historic Preservation, the sheriff in the county in which the permit is to be exercised, and personnel of the Nevada Highway Patrol controlling the state roads of the district embracing the site in which the permit is to be exercised.

Sec. 16. NRS 381.207 is hereby amended to read as follows:

381.207 1. The holder of a permit ~~[,]~~ *described in NRS 381.197,* except as otherwise provided in subsections 2 and 3, who does work upon aboriginal mounds and earthworks, ancient burial grounds, prehistoric sites, deposits of fossil bones or other archeological and vertebrate paleontological features within the State shall give to the State 50 percent of all articles, implements and materials found or discovered ~~[,]~~ *of which the holder retained possession after completion of the process set forth in subsection 4,* to be deposited with the Nevada State Museum, for exhibition or other use within the State as determined by the Museum Director. The Museum Director may accept less than 50 percent of such items. Upon receipt of items pursuant to this subsection, the Museum Director shall notify the Office of Historic Preservation.

2. The holder of a permit *described in NRS 381.197* who does any such work within the State under the authority and direction of the Nevada Historical Society, the Nevada State Museum Las Vegas, or an institution or political subdivision of the State shall give 50 percent of all articles, implements and materials found or discovered *of which the holder retained possession after completion of the process set forth in subsection 4,* to the Society, institution or political subdivision. The holder of the permit may retain the other 50 percent.

3. If the Nevada Historical Society, the Nevada State Museum Las Vegas, or an institution or political subdivision of the State is the holder of the permit, it may retain all articles, implements and materials found or discovered ~~[,]~~ *of which it retained possession after completion of the process set forth in subsection 4.*

4. *If any of the articles, implements or materials found or discovered are prehistoric native Indian human remains or funerary objects, the Museum Director shall:*

(a) Provide notice to and consult with each applicable Indian tribe in accordance with section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects in accordance with section 3 of this act; and

(c) Return any prehistoric native Indian human remains or funerary objects discovered to the closest culturally affiliated Indian tribe in accordance with the repatriation process adopted pursuant to section 5 of this act, if a request for repatriation is made.

5. Whenever the Office of Historic Preservation acquires articles, implements and materials under the provisions of this section, they must be transferred to the Museum Director for exhibition or other use within the State as determined by the Museum Director.

Sec. 17. NRS 381.209 is hereby amended to read as follows:

381.209 The Museum Director may limit a permit *described in NRS 381.197* as to time and location. ~~[A]~~ *Such a* permit may not be granted:

1. For a period of more than 1 year.

2. For investigation, exploration or excavation in a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit set in the permit.

3. For the removal of any ancient monument, structure or site which can be permanently preserved under the control of the State of Nevada in situ, and remain an object of interest, if desired by the State, for a park, landmark or monument for the benefit of the public.

Sec. 18. NRS 381.211 is hereby amended to read as follows:

381.211 A permit *described in NRS 381.197* may be renewed for an additional period of time upon application by the permit holder, if the work contemplated by the permit has been diligently prosecuted.

Sec. 18.5. NRS 381.213 is hereby amended to read as follows:

381.213 Failure to begin work under the permit within 6 months after the effective date of ~~[the permit,]~~ *a permit described in NRS 381.197,* or failure to prosecute diligently such work after it is begun, shall render the permit void without any order from the Board.

Sec. 19. NRS 381.215 is hereby amended to read as follows:

381.215 *1.* After the close of each season's work, within a reasonable time designated in ~~[the]~~ *a* permit ~~[,]~~ *described in NRS 381.197,* every permit holder shall furnish to the Museum Director a report containing a detailed account of the work done, material collected and other pertinent data.

2. Except as otherwise provided in subsection 3, if any of the work done, material collected or other pertinent data pertains to prehistoric native Indian human remains or a funerary object, the Museum Director shall:

(a) Provide notice to and consult with each applicable Indian tribe in accordance with section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary object in accordance with section 3 of this act; and

(c) Furnish the report described in subsection 1 to the closest culturally affiliated Indian tribe, if any.

3. The Museum Director is not required to comply with the provisions of paragraph (a) of subsection 2 if the Museum Director has already obtained the information necessary to make the determination required pursuant to paragraph (b) of subsection 2 through the process set forth in NRS 381.195 to 381.227, inclusive.

Sec. 19.5. NRS 381.217 is hereby amended to read as follows:

381.217 A ~~[permit]~~ holder *of a permit described in NRS 381.197* may collect specimens of petrified wood, subject to the limitations of NRS 206.320.

Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 381.221 is hereby amended to read as follows:

381.221 The Division of State Parks of the State Department of Conservation and Natural Resources, and personnel thereof, the sheriffs in their respective counties, the Nevada Highway Patrol, and all other peace officers shall be charged with the enforcement of NRS 381.195 to 381.227, inclusive ~~[.]~~ *, and section 6 of this act.* Those persons charged with the enforcement of NRS 381.195 to 381.227, inclusive, *and section 6 of this act* may, ~~[at]~~ *within their established jurisdiction:*

1. At any time, examine the permit of any person claiming privileges granted under NRS ~~[381.195 to 381.227, inclusive,]~~ *381.197* and may fully examine all work done under the permit ~~[.]~~ *; and*

2. Examine the permit of a person claiming privileges under a permit issued pursuant to section 6 of this act in the manner set forth in the regulations adopted pursuant to that section.

Sec. 22. NRS 381.223 is hereby amended to read as follows:

381.223 *1.* Any object of antiquity taken, or collection made, on historic or prehistoric sites covered by NRS ~~[381.195 to 381.227, inclusive,]~~ *381.197* without a permit must be seized by the proper law enforcement officers, who shall notify the Museum Director of the action ~~[. The object or collection so taken must be forfeited to the State for exhibition or other use within the State as determined by the Museum Director.]~~ *and deposit the object or collection with the Museum Director for safekeeping.* Upon receipt of any ~~[forfeited]~~ item *seized* pursuant to this section the Museum Director shall notify the Office of Historic Preservation. *Except as otherwise provided in subsection 2, any object or collection so taken must be forfeited to the State for exhibition or other use within the State as determined by the Museum Director.*

2. If an object of antiquity or collection seized pursuant to subsection 1 is prehistoric native Indian human remains or a funerary object, the Museum Director shall:

(a) Provide notice to and consult with each applicable Indian tribe in accordance with section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary object in accordance with section 3 of this act; and

(c) Return the prehistoric native Indian human remains or funerary object to the closest culturally affiliated Indian tribe in accordance with the repatriation process adopted pursuant to section 5 of this act, if a request for repatriation is made.

Sec. 23. NRS 381.227 is hereby amended to read as follows:

381.227 Unless a greater penalty is provided by a specific statute and except as otherwise provided in NRS 381.225, any person violating any of the provisions of NRS 381.195 to 381.227, inclusive, *and section 6 of this act* is guilty of a misdemeanor.

Sec. 24. Chapter 383 of NRS is hereby amended by adding thereto the provisions set forth as sections 25, 26 and 26.5 of this act.

Sec. 25. (Deleted by amendment.)

Sec. 26. *The Office shall adopt regulations as necessary to carry out the provisions of this section and section 26.5 of this act and NRS 383.150 to 383.440, inclusive, including, without limitation, regulations which set forth the process for repatriation of prehistoric native Indian human remains and funerary objects. The regulations must be developed in consultation with Indian tribes and incorporate the values, beliefs and traditions of the Indian tribes as determined and conveyed by the members of the Indian tribes during the consultation with the Office.*

Sec. 26.5. *Notwithstanding any provision of this chapter to the contrary, the Office is not required to provide notice to or consult with an Indian tribe as required pursuant to this chapter if the Office provides such notice to or consultation with the Indian tribe pursuant to federal law.*

Sec. 27. NRS 383.011 is hereby amended to read as follows:

383.011 As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the Administrator of the Office.

2. "Advisory Board" means the Board of Museums and History.

3. "Commission" means the Commission for Cultural Centers and Historic Preservation created by NRS 383.500.

4. *"Cultural affiliation" has the meaning ascribed to it in NRS 381.001.*

5. "Cultural resources" means any objects, sites or information of historic, prehistoric, archeological, architectural or paleontological significance.

~~[5.]~~ *6.* "Department" means the State Department of Conservation and Natural Resources.

~~[6.]~~ *7.* "Director" means the Director of the Department.

~~[7.]~~ *8.* "Office" means the Office of Historic Preservation of the Department.

9. "Indian tribe" means any tribe, band, nation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to native Indians because of their status as native Indians.

10. "Prehistoric" has the meaning ascribed to it in NRS 381.195.

Sec. 28. NRS 383.021 is hereby amended to read as follows:

383.021 1. The Office of Historic Preservation is hereby created.

2. The Office shall:

(a) Encourage, plan and coordinate historic preservation and archeological activities within the State, including programs to survey, record, study and preserve or salvage cultural resources.

(b) *Carry out the provisions of section 26 of this act.*

(c) Compile and maintain an inventory of cultural resources in Nevada deemed significant by the Administrator.

~~[(c)]~~ *(d)* Designate repositories for the materials that comprise the inventory.

~~[(d)]~~ *(e)* Provide staff assistance to the Commission.

3. *An Indian tribe may be designated as a repository to receive prehistoric native Indian human remains or funerary objects pursuant to paragraph (d) of subsection 2 if agreed to by the Indian tribe.*

4. The Comstock Historic District Commission is within the Office.

Sec. 29. (Deleted by amendment.)

Sec. 30. NRS 383.121 is hereby amended to read as follows:

383.121 1. All departments, commissions, boards and other agencies of the State and its political subdivisions shall cooperate with the Office in order to salvage or preserve historic, prehistoric or paleoenvironmental evidence located on property owned or controlled by the United States, the State of Nevada or its political subdivisions. *The Office shall consult with Indian tribes in order to salvage or preserve prehistoric native Indian human remains or funerary objects located on such property.*

2. ~~[When]~~ *Except as otherwise provided in subsection 10, when* any agency of the State or its political subdivisions is preparing or has contracted to excavate or perform work of any kind on property owned or controlled by the United States, the State of Nevada or its political subdivisions which may endanger historic, prehistoric or paleoenvironmental evidence found on the property, or when any artifact, site or other historic or prehistoric evidence is discovered in the course of such excavation or work, the agency or the contractor hired by the agency shall notify the Office and cooperate with the Office to the fullest extent practicable, within the appropriations available to the agency or political subdivision for that purpose, to preserve or permit study of such evidence before its destruction, displacement or removal.

3. *Upon receiving notice pursuant to subsection 2 of the potential endangerment of or the discovery of prehistoric native Indian human remains or a funerary object, the Office shall immediately notify, in writing, and initiate consultation with any Indian tribe:*

(a) Who is or is likely to be culturally affiliated with the prehistoric native Indian human remains or funerary object;

(b) On whose aboriginal lands the prehistoric native Indian human remains or funerary object was discovered; or

(c) Who is reasonably known to have a direct cultural relationship to the prehistoric native Indian human remains or funerary object.

4. The written notice must include a proposed time and place for the consultation with the Office.

5. Except as otherwise provided in subsection 6, within 10 days after the notice is given by the Office, the Office shall, consult with the Indian tribe which has the closest cultural affiliation to the prehistoric native Indian human remains or funerary object as determined by the Office.

6. Failure of an Indian tribe to respond within 10 days after notice has been given to the Indian tribe pursuant to subsection 3 shall be deemed a waiver of the requirement for consultation with the Indian tribe.

7. After the period for consultation described in subsection 5, the ~~[agency of the State or its political subdivision described in subsection 2]~~ Office shall, to the fullest extent practicable, within the appropriations available to the agency of the State or its political subdivision ~~[,]~~ described in subsection 2, develop a resolution for the affected property that is consistent with the standard of preservation described in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as set forth in 48 Federal Register 44716 on September 29, 1983, and any amendments thereto.

8. The provisions of this section must be made known to all private contractors performing such excavation or work for any agency of the State or its political subdivisions.

9. The provisions of subsections 3 to 7, inclusive, do not apply to an agency of the State or its political subdivisions , with respect to prehistoric native Indian human remains or funerary objects, if the preparation or contract to excavate or perform work described in subsection 2 is subject to an existing agreement with:

(a) The closest culturally affiliated Indian tribe that relates to the discovery of prehistoric native Indian human remains or a funerary object; or

(b) A federal agency that was executed pursuant to federal law and that relates to the discovery of prehistoric native Indian human remains or a funerary object.

10. The requirements set forth in NRS 383.150 to 383.180, inclusive, apply if an Indian burial site, as defined in NRS 383.150, is disturbed.

Sec. 31. NRS 383.150 is hereby amended to read as follows:

383.150 As used in NRS 383.150 to 383.190, inclusive, unless the context otherwise requires:

1. "Cairn" means stones or other material placed in a pile as a memorial or monument to the dead.

2. *"Funerary object" has the meaning ascribed to it in NRS 381.001.*

3. "Grave" means an excavation for burial of a human body.

~~[3.]~~ *4.* "Indian burial site" means the area including and immediately surrounding the cairn or grave of a native Indian.

~~[4. "Indian tribe" means a Nevada Indian tribe recognized by the Secretary of the Interior.]~~

5. *"Nondestructive analysis" means analysis performed using scientific or technological techniques to evaluate the properties of a material, component or system without causing damage.*

6. "Professional archeologist" means a person who holds a graduate degree in archeology, anthropology or a closely related field as determined by the Administrator.

Sec. 32. NRS 383.160 is hereby amended to read as follows:

383.160 The Office shall:

1. Upon application by:

(a) An interested landowner, assist the landowner in ~~[negotiating an agreement with an Indian tribe for]~~ *contacting the Indian tribe which has the closest cultural affiliation to an Indian burial site and any artifacts and human remains associated with the site so that the landowner may directly consult with the Indian tribe, if any, concerning* the treatment and disposition of ~~[an]~~ *the* Indian burial site and any artifacts and human remains associated with the site; and

(b) Either party, mediate a dispute arising between a landowner and an Indian tribe relating to the treatment and disposition of an Indian burial site and any artifacts and human remains associated with the site.

2. In performing its duties pursuant to NRS 383.150 to 383.190, inclusive, endeavor to:

(a) Protect Indian burial sites and any associated artifacts and human remains from *excavation,* vandalism and destruction; and

(b) ~~[Provide]~~ *In consultation with the closest culturally affiliated Indian tribe, provide* for the sensitive treatment and disposition of Indian burial sites and any associated artifacts and human remains consistent with the planned use of land.

3. Determine which Indian tribe has the closest cultural affiliation to the Indian burial site and any artifacts and human remains associated with the site.

Sec. 33. NRS 383.170 is hereby amended to read as follows:

383.170 1. *Except as otherwise provided in ~~[subsection]~~ subsections 2 ~~[.]~~ and 3:*

(a) A person who disturbs the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity such as construction, mining, logging or farming or any other person who discovers the cairn or grave of a native Indian that has not been previously reported to the Office shall immediately report the discovery and the location of the Indian burial site to the Office. ~~[The]~~

(b) Upon receiving a report pursuant to paragraph (a), the Office shall immediately ~~[consult with the Nevada Indian Commission and notify the appropriate]~~ *notify, in writing, and initiate consultation with any* Indian tribe ~~[.]~~ *:*

(1) Who is or is likely to be culturally affiliated with the Indian burial site;

(2) On whose aboriginal lands the Indian burial site was discovered; or

(3) Who is reasonably known to have a direct cultural relationship to the Indian burial site.

(c) The written notice must include a proposed time and place for the consultation with the Office.

(d) Except as otherwise provided in paragraph (e), within 10 days after the notice is given by the Office, the landowner shall consult with the Indian tribe which has the closest cultural affiliation to the Indian burial site, as determined by the Office, concerning the treatment and disposition of the site and all artifacts and human remains associated with the site. The Indian tribe may, with the permission of the landowner, inspect the site . ~~[and]~~ *Within 10 days after the inspection, if any, the Indian tribe may* recommend an appropriate means for the treatment and disposition of the site and all artifacts and human remains associated with the site.

~~[2.]~~ *Those recommendations may include, without limitation, that any human remains or artifacts associated with the site are:*

(1) Preserved in place;

(2) Reinterred at another location that is determined in consultation with the Indian tribe which has the closest cultural affiliation to the human remains or artifacts associated with the site; or

(3) Returned to the closest culturally affiliated Indian tribe, in accordance with the repatriation process adopted pursuant to section 26 of this act, if a request for repatriation is made.

➥ *Within 10 days after receiving the recommendations, if any, for the treatment and disposition of the site and all artifacts and human remains associated with the site, the landowner may appeal the recommendations to the Office.*

(e) Failure of an Indian tribe to respond within 10 days after notice has been given to the Indian tribe pursuant to paragraph (b) shall be deemed a waiver of the requirement for consultation with the Indian tribe.

(f) If the Indian burial site is located on private land and:

~~[(a)]~~ *(1)* The *Office fails to identify the closest culturally affiliated* Indian tribe *or consultation with the closest culturally affiliated Indian tribe* ~~[fails to make a recommendation within 48 hours after it receives notification]~~ *is waived* pursuant to ~~[subsection 1;]~~ *paragraph (e);* or

~~[(b)]~~ *(2)* The landowner rejects the recommendation *made pursuant to paragraph (d)* and mediation conducted pursuant to NRS 383.160 fails to provide measures acceptable to the landowner,

➥ the landowner shall, at his or her own expense, reinter with appropriate dignity all artifacts and human remains associated with the site in a location not subject to further disturbance.

~~[3.]~~ *(g)* If the Indian burial site is located on public land and action is necessary to protect the burial site from immediate destruction, the Office may cause a professional archeologist to excavate the site and remove all artifacts and human remains associated with the site for subsequent

reinterment, ~~[following scientific study,]~~ under the supervision of the *closest culturally affiliated* Indian tribe ~~[.~~

~~— 4.]~~ *, if any.*

(h) Any other excavation of an Indian burial site may be conducted only:

~~[(a)]~~ *(1)* By a professional archeologist;

~~[(b)]~~ *(2)* After written notification to the Administrator; and

~~[(c)]~~ *(3)* With the prior written consent of the ~~[appropriate]~~ *closest culturally affiliated* Indian tribe ~~[.]~~ *, if any.* Failure of ~~[a]~~ *an Indian* tribe to respond to a request for permission within 60 days after its mailing by certified mail, return receipt requested, shall be deemed consent to the excavation.

➥ All artifacts and human remains removed during such an excavation must ~~[, following scientific study,]~~ be reinterred under the supervision of the *closest culturally affiliated* Indian tribe, *if any,* except that the Indian tribe may, by explicit written consent, authorize the public display of a particular artifact ~~[.]~~ *if the public display is respectful, as determined in consultation with the Indian tribe.* The archeologist, *closest culturally affiliated* Indian tribe, *if any,* and landowner shall negotiate an agreement to determine who will pay the expenses related to the interment.

(i) The Office shall determine which Indian tribe has the closest cultural affiliation to an Indian burial site and all artifacts and human remains associated with the site.

(j) Prehistoric native Indian human remains or funerary objects discovered at an Indian burial site:

(1) Must not be subjected to scientific study unless the Office reasonably determines that scientific study is necessary for the limited purpose of determining which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects; and

(2) Must not be separated when the prehistoric native Indian human remains and funerary objects are reinterred.

(k) Nondestructive analysis on any other artifacts removed from an Indian burial site may be conducted only with the explicit written consent of the closest culturally affiliated Indian tribe, if any.

2. The provisions of subsection 1 do not apply ~~*[:*~~

~~*— (a) To]*~~ *, with respect to prehistoric Indian burial sites, to a permit issued pursuant to section 6 of this act* ~~*. [; or*~~

~~*— (b) If]*~~

3. The provisions of subsection 1 do not apply, with respect to prehistoric native Indian human remains or funerary objects, if the person who disturbed the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity is subject to an existing agreement with:

~~*[(1)]*~~ *(a) The closest culturally affiliated Indian tribe that relates to the discovery of prehistoric native Indian human remains or a funerary object; or*

~~[(2)]~~ *(b) A federal agency that was executed pursuant to federal law and that relates to the discovery of prehistoric native Indian human remains or a funerary object.*

Sec. 34. NRS 383.180 is hereby amended to read as follows:

383.180 1. Except as otherwise provided in NRS 383.170, a person who willfully removes ~~[,]~~ *without obtaining any required permit,* mutilates, defaces, injures or destroys the cairn or grave of a native Indian is guilty of a gross misdemeanor and shall be ~~[punished]~~ *:*

(a) Punished by a fine of ~~[$500]~~ *$2,000* for the first offense, or by a fine of not more than ~~[$3,000]~~ *$4,500* for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 364 days ~~[.]~~ *; and*

(b) Ordered to pay for the costs to reinter with appropriate dignity all artifacts and human remains associated with the cairn or grave.

2. A person who fails to notify the Office of the discovery and location of an Indian burial site in violation of NRS 383.170 is guilty of a gross misdemeanor and shall be punished by a fine of $500 for the first offense, or by a fine of not more than $1,500 for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 364 days.

3. A person who:

(a) Possesses any artifact or human remains taken from the cairn or grave of a native Indian on or after October 1, 1989, in a manner other than that authorized by NRS 383.170;

(b) Publicly displays or exhibits any of the human remains of a native Indian, except during a funeral ceremony; or

(c) Sells any artifact or human remains taken from the cairn or grave of a native Indian,

➥ is guilty of a category D felony and shall be punished as provided in NRS 193.130.

4. This section does not apply to:

(a) The possession or sale of an artifact:

(1) Discovered in or taken from a location other than the cairn or grave of a native Indian; or

(2) Removed from the cairn or grave of a native Indian by other than human action; or

(b) Action taken by a peace officer in the performance of his or her duties.

Sec. 35. (Deleted by amendment.)

Sec. 36. NRS 383.430 is hereby amended to read as follows:

383.430 1. Upon request by any state agency or political subdivision, the Office may enter into an agreement with that state agency or political subdivision regarding any land which the state agency or political subdivision intends to acquire from an agency of the Federal Government. The agency of the Federal Government may be a party to the agreement. *If the land includes any prehistoric native Indian human remains or funerary*

objects, the Indian tribe which has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects may request that the Office enter into such an agreement.

2. An agreement made pursuant to subsection 1 must:

(a) *If the agreement involves land that includes any prehistoric native Indian human remains or funerary objects, include the Indian tribe which has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects, if any, as a party to the agreement;*

(b) Include provisions that are sufficient to ensure that the land, when acquired, will receive protection for any historic or prehistoric site at a level equivalent to the protection provided if the land had remained under federal ownership;

~~[(b)]~~ *(c)* Require the state agency or political subdivision to submit a proposal and consult with the Office before changing the use of the land or initiating a project on any portion of the land; and

~~[(c)]~~ *(d)* Require that any expenses associated with carrying out the agreement are the responsibility of the state agency or political subdivision.

3. If a state agency or political subdivision submits a proposal to change the use of the land or initiate a project on any portion of the land pursuant to paragraph ~~[(b)]~~ *(c)* of subsection 2, the state agency or political subdivision shall:

(a) Provide to the Office a written statement:

(1) Identifying any Indian tribes that may be concerned with the religious or cultural importance of the site and other interested persons for inclusion in the consultation required pursuant to paragraph ~~[(b)]~~ *(c)* of subsection 2;

(2) Identifying any historic or prehistoric sites in accordance with the requirements of the Office for recording and reporting for those sites;

(3) Evaluating any historic or prehistoric sites for inclusion in the State Register of Historic Places, including any text excavations or other research;

(4) Evaluating the effect of the change in use of the land or the project on a historic or prehistoric site that is eligible for inclusion in the State Register of Historic Places; and

(5) Evidencing the preparation and carrying out of treatment plans that comply with the requirements of the Office for those plans; and

(b) Any other information relating to the proposed change of use required by the Office.

4. The Office shall determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects.

Sec. 37. NRS 383.435 is hereby amended to read as follows:

383.435 1. Except as otherwise provided in this section, a person who knowingly and willfully removes, mutilates, defaces, excavates, injures or destroys a historic or prehistoric site or resource on state land or who receives, traffics in or sells cultural property appropriated from state land

without a valid permit, unless a greater penalty is provided by a specific statute:

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of ~~[$500.]~~ *$1,000.*

(b) For a second or subsequent offense, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 364 days or by a fine of not more than ~~[$3000,]~~ *$3,500,* or by both fine and imprisonment.

2. This section does not apply to any action taken:

(a) In accordance with an agreement with the Office entered into pursuant to NRS 383.430; or

(b) In accordance with the provisions of NRS 381.195 to 381.227, inclusive, *and section 6 of this act* by the holder of a permit issued pursuant to those sections.

3. In addition to any other penalty, a person who violates a provision of this section is liable for civil damages to the state agency or political subdivision which has jurisdiction over the state land in an amount equal to the cost or, in the discretion of the court, an amount equal to twice the cost of the restoration, stabilization and interpretation of the site plus any court costs and fees.

Sec. 38. NRS 383.500 is hereby amended to read as follows:

383.500 1. The Commission for Cultural Centers and Historic Preservation is hereby created. The Commission is advisory to the Department and consists of:

(a) The Chair of the Board of Trustees of Nevada Humanities or a member of the Board of Trustees of Nevada Humanities designated by the Chair;

(b) The Chair of the Board of the Nevada Arts Council of the Department of Tourism and Cultural Affairs or a member of the Board of the Nevada Arts Council designated by the Chair;

(c) The Chair of the Advisory Board or a member of the Advisory Board designated by the Chair;

(d) A member of the Advisory Board appointed by the Governor;

(e) *A member of the Advisory Board appointed by the Governor after giving consideration to any recommendation of an enrolled member of a Nevada Indian tribe which is submitted by the Nevada Indian Commission, after consultation with the Inter-Tribal Council of Nevada, Inc., or its successor organization;*

(f) One representative of the general public who has a working knowledge of the promotion of tourism in Nevada *and who is* appointed by the Governor; and

~~[(f)]~~ *(g)* The Chair of the State Council on Libraries and Literacy or a member of the State Council on Libraries and Literacy designated by the Chair.

2. The Commission shall:

(a) Elect from its membership a Chair who shall serve for a term of 2 years. A vacancy occurring in this position must be filled by election of the members of the Commission for the remainder of the unexpired term.

(b) Prescribe rules for its own management and government.

(c) Meet biannually, or at more frequent times if it deems necessary, and may, within the limitations of its budget, hold special meetings at the call of the Chair.

3. ~~[Three]~~ *Four* members of the Commission constitute a quorum, but a majority of the members of the Commission is necessary to consider particular business before it and to exercise the power conferred on the Commission.

4. The members of the Commission are not entitled to be paid a salary, but are entitled, while engaged in the business of the Commission, to receive the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 38.3. 1. There is hereby appropriated from the State General Fund to the Office of Historic Preservation of the State Department of Conservation and Natural Resources the sum of $1,390 for Fiscal Year 2018-2019 for the in-state travel costs for the member appointed to the Commission for Cultural Centers and Historic Preservation pursuant to paragraph (e) of subsection 1 of NRS 383.500, as amended by section 38 of this act.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 38.5. 1. There is hereby appropriated from the State General Fund to the Division of Museums and History of the Department of Tourism and Cultural Affairs the sum of $4,301 for Fiscal Year 2017-2018 and the sum of $288 for Fiscal Year 2018-2019 for expenses relating to the adoption of regulations required by the provisions of this act and in-state travel, per diem and compensation for the member appointed to the Board of Museums and History pursuant to paragraph (c) of subsection 2 of NRS 381.002, as amended by section 8 of this act.

2. Expenditure of $5,256 by the Division of Museums and History of the Department of Tourism and Cultural Affairs from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2017-2018 for the purpose set forth in subsection 1.

3. Expenditure of $352 by the Division of Museums and History of the Department of Tourism and Cultural Affairs from the Fund for the Promotion

of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2018-2019 for the purpose set forth in subsection 1.

4. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 21, 2018, and September 20, 2019, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 21, 2018, and September 20, 2019, respectively.

Sec. 38.7. 1. There is hereby appropriated from the State General Fund to the Nevada State Museum of the Division of Museums and History of the Department of Tourism and Cultural Affairs the sum of $25,517 for Fiscal Year 2017-2018 and the sum of $40,118 for Fiscal Year 2018-2019 for the costs associated with a full-time position to carry out the provisions of NRS 381.195 to 381.227, inclusive, and the provisions of this act.

2. Expenditure of $31,187 by the Nevada State Museum from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2017-2018 for the purpose set forth in subsection 1.

3. Expenditure of $49,033 by the Nevada State Museum from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2018-2019 for the purpose set forth in subsection 1.

4. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 21, 2018, and September 20, 2019, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 21, 2018, and September 20, 2019, respectively.

Sec. 39. 1. This section becomes effective upon passage and approval.

2. Sections 38.3, 38.5 and 38.7 of this act become effective on July 1, 2017.

3. Sections 1 to 38, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2018, for all other purposes.

Senator Ratti moved the adoption of the amendment.

Remarks by Senator Ratti.

Amendment No. 1003 to Senate Bill No. 244 was the result of conversations with the State Office of Historic Preservation. It makes it clear that certain pieces of Senate Bill No. 244 are narrowly focused on prehistoric human remains and funerary objects. This was to make sure that we were keeping their mission front of mind.

Amendment adopted

Bill read third time.

Remarks by Senator Ratti.

I have been proud to work with the Native American tribes of our State to move this bill forward. Senate Bill No. 244 provides that both the Museum Director of the Nevada State Museum and the Office of Historic Preservation of the State Department of Conservation and Natural Resources, in consultation with Indian tribes, must adopt regulations concerning the process for repatriation of native Indian human remains and other cultural items.

Senate Bill No. 244 prohibits a person from knowingly excavating a historic or prehistoric site on private lands located in this State without first obtaining a permit from the Museum Director of the Nevada State Museum, with the exception of a person who is engaging in lawful activity on private lands, including construction, mining, logging or farming activities.

This is important because it allows Native American tribes to have the opportunity to provide consultation when prehistoric remains or funerary objects are disturbed and to have some say about what happens after this occurs.

It also allows the tribes the opportunity to receive notice and to consult before items are sold through the museum system and makes sure the tribes have representation on both the Board of Museums and History and the Commission for Cultural Centers and Historic Preservation. This bill is about representation, consultation with tribes when consultation is called for and making sure there is a path forward for Native American tribes to regain control of items that are important to them. I am proud of this bill and urge you to support it.

Roll call on Senate Bill No. 244:

YEAS—21.

NAYS—None.

Senate Bill No. 244 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 306.

Bill read third time.

The following amendment was proposed by Senator Ford:

Amendment No. 1046.

SUMMARY—Revises provisions relating to offenders. (BDR 16-298)

AN ACT relating to offenders; ~~[expanding]~~ revising provisions governing the authorization for offenders to have access to telecommunications devices under certain circumstances; authorizing the Department of Corrections to create a pilot program governing certain uses of telecommunications devices by offenders; directing the Board of State Prison Commissioners to create a pilot program of education and training for certain offenders; setting forth the goals and functions of the pilot program ~~[;]~~ of education and training; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits offenders from having access to telecommunications

devices except under certain circumstances ~~[.]~~ , including pursuant to an agreement with the Department of Corrections. (NRS 209.417) Section 1 of this bill removes the authority to enter into such agreements and instead authorizes ~~[: (1) an offender to use a telecommunications device for visits and correspondence under certain circumstances; and (2)]~~ the Director of the Department ~~[of Corrections]~~ to adopt regulations, with the approval of the Board of State Prison Commissioners, governing the use of telecommunications devices for certain purposes related to education and employment. Section 1.7 of this bill provides for the development, creation and operation of a pilot program that will operate in this State from July 1, 2017, through June 30, 2019, for the purpose of authorizing the Department to allow certain offenders to use telecommunications devices for certain reentry programs and services.

Existing law requires the Board of State Prison Commissioners to adopt regulations to establish programs of general education, vocational education and training and other rehabilitation for offenders. (NRS 209.389) Section 3 of this bill provides for the development, creation and operation of a pilot program that will operate in this State from July 1, 2017, through June 30, 2019, and focus its efforts on a program of education and training for certain offenders.

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

Section 1. NRS 209.417 is hereby amended to read as follows:

209.417 1. Except as otherwise provided in this section, the warden or manager of an institution or facility shall ensure that no offender in the institution or facility, or in a vehicle of the Department, has access to a telecommunications device.

2. ~~*[An offender, if authorized pursuant to NRS 209.423, may use a telecommunications device for visits and correspondence between the offender and appropriate friends, relatives and others, subject to the limitations set forth in NRS 209.419.*~~

~~*3.]*~~ An offender may use a telephone or, for the purpose of communicating with his or her child pursuant to NRS 209.42305, any other approved telecommunications device subject to the limitations set forth in NRS 209.419.

3. ~~*[4.]*~~ The ~~[Department]~~ *Director* may ~~[enter into an agreement with]~~ , *with the approval of the Board, adopt regulations authorizing* an offender who is assigned to transitional housing, a center for the purpose of making restitution pursuant to NRS 209.4827 to 209.4843, inclusive, or a specific program of education or vocational training ~~[authorizing the offender]~~ to use a telecommunications device:

(a) To access a network, including, without limitation, the Internet, for the purpose of:

(1) Obtaining educational or vocational training that is approved by the Department;

(2) Searching for or applying for employment; or

(3) Performing essential job functions.

(b) For any other purpose if a telecommunications device is required by an employer of the offender to perform essential job functions.

4. ~~[5.]~~ As used in this section, "telecommunications device" means a device, or an apparatus associated with a device, that can enable an offender to communicate with a person outside of the institution or facility at which the offender is incarcerated. The term includes, without limitation, a telephone, a cellular telephone, a personal digital assistant, a transmitting radio or a computer that is connected to a computer network, is capable of connecting to a computer network through the use of wireless technology or is otherwise capable of communicating with a person or device outside of the institution or facility.

Sec. 1.5. ~~[NRS 212.165 is hereby amended to read as follows:~~

~~212.165 1. A person shall not, without lawful authorization, knowingly furnish, attempt to furnish, or aid or assist in furnishing or attempting to furnish to a prisoner confined in an institution or a facility of the Department of Corrections, or any other place where prisoners are authorized to be or are assigned by the Director of the Department, a portable telecommunications device. A person who violates this subsection is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~2. A person shall not, without lawful authorization, carry into an institution or a facility of the Department, or any other place where prisoners are authorized to be or are assigned by the Director of the Department, a portable telecommunications device. A person who violates this subsection is guilty of a misdemeanor.~~

~~3. A prisoner confined in an institution or a facility of the Department, or any other place where prisoners are authorized to be or are assigned by the Director of the Department, shall not, without lawful authorization, possess or have in his or her custody or control a portable telecommunications device. A prisoner who violates this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.~~

~~4. A prisoner confined in a jail or any other place where such prisoners are authorized to be or are assigned by the sheriff, chief of police or other officer responsible for the operation of the jail, shall not, without lawful authorization, possess or have in his or her custody or control a portable telecommunications device. A prisoner who violates this subsection and who is in lawful custody or confinement for a charge, conviction or sentence for:~~

~~(a) A felony is guilty of a category D felony and shall be punished as provided in NRS 193.130.~~

~~(b) A gross misdemeanor is guilty of a gross misdemeanor.~~

~~(c) A misdemeanor is guilty of a misdemeanor.~~

~~5. A sentence imposed upon a prisoner pursuant to subsection 3 or 4:~~

~~(a) Is not subject to suspension or the granting of probation; and~~

~~(b) Must run consecutively after the prisoner has served any sentences imposed upon the prisoner for the offense or offenses for which the prisoner was in lawful custody or confinement when the prisoner violated the provisions of subsection 3 or 4.~~

~~6. A person who was convicted and sentenced pursuant to subsection 4 may file a petition, if the underlying charge for which the person was in lawful custody or confinement has been reduced to a charge for which the penalty is less than the penalty which was imposed upon the person pursuant to subsection 4, with the court of original jurisdiction requesting that the court, for good cause shown:~~

~~(a) Order that his or her sentence imposed pursuant to subsection 4 be modified to a sentence equivalent to the penalty imposed for the underlying charge for which the person was convicted; and~~

~~(b) Resentence him or her in accordance with the penalties prescribed for the underlying charge for which the person was convicted.~~

~~7. A person who was convicted and sentenced pursuant to subsection 4 may file a petition, if the underlying charge for which the person was in lawful custody or confinement has been declined for prosecution or dismissed, with the court of original jurisdiction requesting that the court, for good cause shown:~~

~~(a) Order that his or her original sentence pursuant to subsection 4 be reduced to a misdemeanor; and~~

~~(b) Resentence him or her in accordance with the penalties prescribed for a misdemeanor.~~

~~8. No person has a right to the modification of a sentence pursuant to subsection 6 or 7, and the granting or denial of a petition pursuant to subsection 6 or 7 does not establish a basis for any cause of action against this State, any political subdivision of this State or any agency, board, commission, department, officer, employee or agent of this State or a political subdivision of this State.~~

~~9. As used in this section:~~

~~(a) "Facility" has the meaning ascribed to it in NRS 209.065.~~

~~(b) "Institution" has the meaning ascribed to it in NRS 209.071.~~

~~(c) "Jail" means a jail, branch county jail or other local detention facility.~~

~~(d) "Telecommunications device" has the meaning ascribed to it in subsection [4] 5 of NRS 209.417.]~~ (Deleted by amendment.)

Sec. 1.7. 1. The Department of Corrections may develop a pilot program authorizing offenders to use a telecommunications device, which may not include direct Internet access, for programs for reentry and direct correctional services.

2. An offender authorized to use a telecommunications device pursuant to this section must be determined to be eligible by the Department and meet the minimum criteria to be eligible for programs of reentry into the community, including any appropriate assessment based on the Nevada Risk Assessment Services instrument.

3. Any communication made by an offender pursuant to this section is subject to monitoring, security and the limitations set forth in NRS 209.419.

4. As used in this section:

(a) "Direct correctional service" means a service related to an internal grievance, or a request for medical or mental health.

(b) "Program for reentry" means a program for the rehabilitation of offenders for reentry into the community, including without limitation, programs for education, vocational education, mental health or substance abuse treatment.

(c) "Telecommunications device" has the meaning ascribed to it in NRS 209.417.

Sec. 2. The Legislature finds and declares that:

1. It is in the interest of the State to enhance the existing programs of education and training for certain offenders for the purpose of:

(a) Increasing employment and education opportunities for offenders who are released from custody; and

(b) Reducing the risk of recidivism.

2. Offenders convicted of a crime under the laws of this State and sentenced to imprisonment in the state prison:

(a) Should be offered education and training to prepare the offender for a seamless transition to higher education upon release from custody; and

(b) Who receive such education and training will improve his or her quality of life.

3. It is the intent of the Legislature that resources be provided for the operation of the pilot program described in section 3 of this act.

4. The purpose of the pilot program described in section 3 of this act is to reduce future costs to this State and increase the employability of offenders by enhancing the programs of education and training for certain offenders.

Sec. 3. 1. The Board in consultation with the College of Southern Nevada shall develop, create and administer a pilot program of education and training for certain offenders with a view towards increasing the employability of those offenders.

2. Under the auspices of the pilot program, the College of Southern Nevada shall, in cooperation with the Board:

(a) Expand opportunities for offenders in Clark County to:

(1) Successfully complete the high school equivalency assessment provided by the State Board of Education;

(2) Participate in programs related to college and career readiness;

(3) Receive vocational education and training; and

(4) Receive counseling related to the reentry of offenders;

(b) Provide job placement assistance to offenders upon release of custody; and

(c) Partner with the Department of Employment, Training and Rehabilitation, other local agencies and nonprofit organizations whose

purpose is to provide counseling, services and assistance relating to the reentry of offenders.

3. To the extent possible, the pilot program must:

(a) Establish the conditions under which an offender may be selected to participate in the pilot program; and

(b) Be conducted with the goal of selecting 50 female offenders and 50 male offenders to participate in the pilot program.

4. As used in this section:

(a) "Board" means the Board of State Prison Commissioners as defined by Section 21 of Article 5 of the Nevada Constitution.

(b) "Offender" means any person convicted of a crime under the laws of this State and sentenced to imprisonment in the state prison.

Sec. 4. There is hereby appropriated from the State General Fund to the Nevada System of Higher Education the sum of $300,000 to allow the College of Southern Nevada to carry out the pilot program of education and training for certain offenders pursuant to section 3 of this act.

Sec. 5. Any remaining balance of the appropriation made by section 4 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 6. 1. This act becomes effective upon passage and approval for the purpose of performing any preparatory administrative tasks necessary to carry out the provisions of this act, and on July 1, 2017, for all other purposes.

2. Sections 1.7, 2 and 3 of this act expire by limitation on June 30, 2019.

Senator Ford moved the adoption of the amendment.

Remarks by Senator Ford.

Amendment No. 1046 to Senate Bill No. 306 incorporates changes necessary to ensure the use of telecommunications devices added to this bill, at the behest of the Department of Corrections, is limited appropriately.

Amendment adopted.

Bill read third time.

Remarks by Senator Ford.

Senate Bill No. 306 provides for the creation of a pilot program directed by the Board of State Prison Commissioners in consultation with the College of Southern Nevada for 50-male and 50-female offenders who meet certain criteria to enhance educational and vocational programs for offenders who will soon be released from prison. A General Fund appropriation of $300,000 is appropriated to carry out the pilot program. The bill also allows for the Director of the Department of Corrections to adopt regulations with the approval of the Board of State Prison Commissioners on the expanded use of telecommunication devices for offenders who are

assigned to transitional housing, restitution centers or specific educational or vocational training programs.

Roll call on Senate Bill No. 306:
YEAS—21.
NAYS—None.

Senate Bill No. 306 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

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

Motion carried.

Senate in recess at 12:43 p.m.

SENATE IN SESSION

At 7:33 p.m.

President Hutchison presiding.

Quorum present.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which were referred Senate Bills Nos. 529, 530, 531, 532, 533, 537, 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 Finance, to which were re-referred Senate Bills Nos. 120, 317, 392; Assembly Bill No. 267, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOYCE WOODHOUSE, *Chair*

Mr. President:

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 303, 327, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

TICK SEGERBLOM, *Chair*

Mr. President:

Your Committee on Legislative Operations and Elections, to which were referred Assembly Bills Nos. 296, 343, 467, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Legislative Operations and Elections, to which was referred Assembly Concurrent Resolution No. 9, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

NICOLE J. CANNIZZARO, *Chair*

Mr. President:

Also, your Committee on Senate Parliamentary Rules and Procedures has approved the consideration of: Amendment No. 1051 to Senate Bill No. 235, Amendment No. 1005 to Senate Bill No. 317, Amendment No. 1043 to Senate Joint Resolution No. 6 and Amendment No. 972 to Assembly Bill No. 322.

KELVIN ATKINSON, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 31, 2017

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Assembly Bill No. 517.

CAROL AIELLO-SALA
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 9.

Senator Cannizzaro moved to adopt the resolution.

Remarks by Senator Cannizzaro.

Assembly Concurrent Resolution No. 9 directs the Legislative Commission to appoint an interim committee to study certain violations of traffic laws. The Committee shall also consider existing laws relating to licensing of drivers and registering and insuring motor vehicles. The committee shall consider existing laws that treat such violations as criminal offenses, the elements of a system that violations as civil infractions, and the anticipated fiscal impact on the State and its political subdivisions. The committee shall submit its report to the 2019 Session of the Legislature.

Resolution adopted.

Resolution ordered transmitted to the Assembly.

Senator Cannizzaro moved that Senate Joint Resolution No. 6 be taken from the Secretary's desk and placed on the General File.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 517.

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

Motion carried.

SECOND READING AND AMENDMENT

Senate Bill No. 120.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1032.

SUMMARY—Revises provisions relating to problem gambling. (BDR 40-810)

AN ACT relating to problem gambling; revising the membership and duties of the Advisory Committee on Problem Gambling; ~~[revising provisions relating to the deposits of money in the Revolving Account to Support Programs for the Prevention and Treatment of Problem Gambling;]~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Advisory Committee on Problem Gambling. (NRS 458A.060) The Advisory Committee reviews requests for a grant of money or a contract for services to provide programs and services related to problem gambling and performs certain other tasks relating to funding such

programs and services. (NRS 458A.070) The Chair of the Advisory Committee is authorized to appoint groups for certain purposes relating to the duties of the Advisory Committee. (NRS 458A.080) ~~[Sections 1-3 of this]~~ This bill ~~[revise]~~ revises the membership and duties of the Advisory Committee and the purposes for which the Chair may appoint groups.

~~[Existing law creates the Revolving Account to Support Programs for the Prevention and Treatment of Problem Gambling. The money in the Account must be expended to award grants of money or contracts for services to provide programs and services relating to problem gambling. (NRS 458A.090) Existing law requires the Nevada Gaming Commission to deposit quarterly into the Account an amount equal to $2 for each slot machine that is subject to certain license fees. (NRS 463.320) Section 4 of this bill instead requires the Commission to deposit into the account a portion of the total revenue collected from such license fees.]~~

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

Section 1. NRS 458A.060 is hereby amended to read as follows:

458A.060 1. The Advisory Committee on Problem Gambling, consisting of nine regular members, is hereby created within the Department.

2. The Governor shall appoint the following regular members to the Advisory Committee:

(a) One regular member who holds *or is a representative of an association of persons who hold* a restricted gaming license;

(b) Two regular members who ~~[hold nonrestricted gaming licenses;]~~ *are representatives of the association of gaming establishments whose membership collectively paid the most gross revenue fees to the State pursuant to NRS 463.370 in the last preceding year, from a list of nominees submitted by the association;*

(c) Two regular members who ~~[work in the area of mental health,]~~ *are qualified mental health professionals, at least one of whom is certified as a problem gambling ~~[counselors]~~ counselor pursuant to chapter 641C of NRS and ~~[are]~~ is currently practicing ; ~~[~~, at least one of whom has experience in the treatment of persons who are *is certified in the treatment of* problem gamblers ; *by a national or state organization;]*

(d) One regular member who represents ~~[the Nevada System of Higher Education and has experience in the prevention or treatment of]~~ *an organization that promotes awareness of problem gambling and provides assistance to persons affected by* problem gambling; *and*

(e) ~~[One regular member who represents an organization for veterans; and (f) Two]~~ *Three* regular members who ~~[represent organizations that provide assistance to persons who are problem gamblers.]~~ *are residents of this State and who have personal or professional knowledge and experience concerning problem gambling and related issues, including, without limitation, personal recovery, populations at risk of problem gambling, the*

assessment of needs, research and providing supportive services to problem gamblers.

3. Each regular member appointed pursuant to paragraph (a) or (b) of subsection 2 may appoint an alternate member to serve in his or her place if he or she is unable to attend a meeting or perform his or her duties.

4. After the initial terms, each regular member of the Advisory Committee serves for a term of 2 years. Each regular member of the Advisory Committee continues in office until his or her successor is appointed. Each alternate member appointed pursuant to subsection 3 serves during the term of the regular member who appointed him or her and may be reappointed.

5. The regular members and alternate members of the Advisory Committee serve without compensation, except that the regular members and alternate members are entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally while engaged in the business of the Advisory Committee.

6. A majority of the total membership of the Advisory Committee constitutes a quorum for the transaction of business, and a majority of a quorum present at any meeting is sufficient for any action taken by the Advisory Committee.

7. A regular member of the Advisory Committee who is an officer or employee of the State or a political subdivision of the State must be relieved from his or her duties without loss of his or her regular compensation so that he or she may prepare for and attend meetings of the Advisory Committee and perform any work necessary to carry out the duties of the Advisory Committee in the most timely manner practicable. A state agency or political subdivision of the State shall not require an officer or employee who is a regular member of the Advisory Committee to:

(a) Make up the time he or she is absent from work to carry out his or her duties as a regular member of the Advisory Committee; or

(b) Take annual leave or compensatory time for the absence.

8. The Advisory Committee shall:

(a) At its first meeting and annually thereafter, elect a Chair from among its regular members;

(b) Meet at the call of the Director, the Chair or a majority of its regular members as necessary, within the budget of the Advisory Committee, but not to exceed six meetings per year; and

(c) Adopt rules for its management and government.

Sec. 2. NRS 458A.070 is hereby amended to read as follows:

458A.070 The Advisory Committee shall:

1. ~~[Review each request received by the Department from a state agency or other political subdivision of the State or from an organization or educational institution for a grant of money or a contract for services to provide programs for the prevention and treatment of problem gambling or to provide services related to the development of data, the assessment of needs,~~

~~the performance of evaluations or technical assistance;~~] *Provide advice and information to the Governor, the Legislature, the Department and other state agencies on issues and trends in the area of problem gambling for the purposes of:*

(a) Assisting in the establishment of priorities and criteria for funding programs and services for the prevention and treatment of problem gambling;

(b) Providing services relating to the development of data, the assessment of needs, the performance of evaluations and technical assistance concerning problem gambling; and

(c) Recommending legislation, regulations or the adoption of public policy concerning problem gambling.

2. ~~[Recommend to the Director each request received pursuant to subsection 1 that the Advisory Committee believes should be awarded;~~] *Review recommendations made by the Department for granting money or contracting for services for the prevention and treatment of problem gambling and make recommendations to the Director concerning the award of such grants and contracts.*

3. ~~[Establish criteria for determining which state agencies and other political subdivisions of the State and organizations and educational institutions to recommend for grants of money or contracts for services pursuant to subsection 2;~~

~~4. Monitor each grant of money awarded by the Department to provide programs for the prevention and treatment of problem gambling or to provide services related to the development of data, the assessment of needs, the performance of evaluations or technical assistance; and~~

~~5. Assist the Department in determining the needs of local communities and in establishing priorities for funding~~] *Review reports compiled by the Department concerning the outcome and evaluation of* programs *and services funded by the Department* for the prevention and treatment of problem gambling and ~~[funding]~~ services *funded by the Department* related to the development of data, the assessment of needs, the performance of evaluations or technical assistance.

Sec. 3. NRS 458A.080 is hereby amended to read as follows:

458A.080 The Chair of the Advisory Committee may appoint groups consisting of members of the Advisory Committee, former members of the Advisory Committee and members of the public who have appropriate experience or knowledge to:

1. Consider specific ~~[problems or other]~~ *issues and policy* matters that are related to ~~[and within the scope of activities of the Advisory Committee;]~~ *the prevalence, impact, prevention and treatment of problem gambling;* and

2. ~~[Review requests for grants of money or contracts for services related to specific programs for the prevention and treatment of problem gambling or services related to the development of data, the assessment of needs, the performance of evaluations or technical assistance.]~~ *Assist in researching and*

developing strategic plans to fund and deliver comprehensive programs and services to prevent and treat problem gambling and make recommendations concerning such strategic plans.

Sec. 4. ~~[NRS 463.320 is hereby amended to read as follows:~~

~~463.320 1. All gaming license fees imposed by the provisions of NRS 463.370, 463.373 to 463.383, inclusive, and 463.3855 must be collected and disposed of as provided in this section.~~

~~2. All state gaming license fees and penalties must be collected by the Commission and paid over immediately to the State Treasurer to be disposed of as follows:~~

~~(a) Except as otherwise provided in paragraphs (c), (d) and (e), all state gaming license fees and penalties other than the license fees imposed by the provisions of NRS 463.380 must be deposited for credit to the State General Fund.~~

~~(b) All state gaming license fees imposed by the provisions of NRS 463.380 must, after deduction of costs of administration and collection, be divided equally among the various counties and transmitted to the respective county treasurers. Such fees, except as otherwise provided in this section, must be deposited by the county treasurer in the county general fund and be expended for county purposes. If the board of county commissioners desires to apportion and allocate all or a portion of such fees to one or more cities or towns within the county, the board of county commissioners shall, annually, before the preparation of the city or town budget or budgets as required by chapter 354 of NRS, adopt a resolution so apportioning and allocating a percentage of such fees anticipated to be received during the coming fiscal year to such city or cities or town or towns for the next fiscal year commencing July 1. After the adoption of the resolution, the percentage so apportioned and allocated must be converted to a dollar figure and included in the city or town budget or budgets as an estimated receipt for the next fiscal year. Quarterly, upon receipt of the money from the State, the county treasurer shall deposit an amount of money equal to the percentage so apportioned and allocated to the credit of the city or town fund to be used for city or town purposes, and the balance remaining must be deposited in the county general fund and must be expended for county purposes.~~

~~(c) One twenty fifth of the license fee imposed by the provisions of NRS 463.370 on gross revenue which exceeds $134,000 per calendar month that is paid pursuant to subsection 2 of NRS 464.045 by persons licensed to conduct off track pari mutuel wagering must, after the deduction of costs of administration and collection, be allocated pro rata among the counties in this State whose population is less than 100,000 in which on track pari mutuel wagering is conducted. The allocation must be based upon the amounts paid from each such county pursuant to subsection 2 of NRS 466.125 and transmitted to the respective county treasurers. Money received by a county treasurer pursuant to this paragraph must be deposited in the county general fund and expended to augment any stakes, purses or rewards which are~~

~~offered with respect to horse races conducted in that county by a state fair association, agricultural society or county fair and recreation board.~~

~~(d) Ten percent of the amount of the license fee imposed by the provisions of NRS 463.370 that is paid pursuant to subsection 2 of NRS 464.045 by persons licensed to conduct off track pari mutuel wagering which exceeds $5,036,938 per calendar year must, after the deduction of costs of administration and collection, be allocated pro rata among the counties in this State whose population is less than 100,000 in which on track pari mutuel wagering is conducted. The allocation must be based upon the amounts paid from each such county pursuant to subsection 2 of NRS 466.125 and must be transmitted to the respective county treasurers as provided in this paragraph. On March 1 of each year, the Board shall calculate the amount of money to be allocated to the respective county treasurers and notify the State Treasurer of the appropriate amount of each allocation. The State Treasurer shall transfer the money to the respective county treasurers. Money received by a county treasurer pursuant to this paragraph must be deposited in the county general fund and expended to augment any stakes, purses or rewards which are offered with respect to horse races conducted in that county by a state fair association, agricultural society or county fair and recreation board.~~

~~(e) [The]~~ *~~From the proceeds of the license fees imposed pursuant to NRS 463.373 and 463.375 and collected by the Commission, the~~* ~~Commission shall deposit quarterly in the Revolving Account to Support Programs for the Prevention and Treatment of Problem Gambling created by NRS 458A.090 [an amount equal to $2 for each slot machine that is subject to the license fee imposed pursuant to NRS 463.373 and 463.375 and collected by the Commission.] :~~

~~*(1) The sum of $722,500, as adjusted annually pursuant to this subsection; or*~~

~~*(2) The proceeds of the license fees for the calendar quarter last preceding the deposit,*~~

~~*whichever is less. Commencing on July 1, 2018, the amount of the quarterly deposit required by this subsection must be adjusted on July 1 of each year by an amount equal to the product of the amount applicable during the last preceding 12-month period, multiplied by the percentage of increase, if any, in the Consumer Price Index for West Urban Consumers for the last preceding calendar year.]~~ (Deleted by amendment.)

Sec. 5. 1. Notwithstanding any other provision of law, the terms of the members appointed to the Advisory Committee on Problem Gambling pursuant to NRS 458A.060, as that section exists on June 30, 2017, expire on that date.

2. As soon as practicable on or after July 1, 2017, the Governor shall appoint to the Advisory Committee on Problem Gambling created by NRS 458A.060, as amended by section 1 of this act:

(a) Four members to terms expiring on June 30, 2018; and

(b) Five members to terms expiring on June 30, 2019.

Sec. 6. 1. This section and section 5 of this act become effective upon passage and approval.

2. Sections 1 to 4, inclusive, of this act become effective on July 1, 2017.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse

Amendment No. 1032 to Senate Bill No. 120 further revises the membership of the Advisory Committee on Problem Gambling, established pursuant to NRS 458A.060 to require two members to be qualified mental-health professionals and at least one of those members to be a certified problem-gambling counselor. Amendment No. 1032 to Senate Bill No. 120 deletes section 4 of the bill as introduced, which proposed to change the funding mechanism for the treatment and prevention of problem-gambling program.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 529.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1022.

SUMMARY—Makes an appropriation to the Division of Emergency Management of the Department of Public Safety for the costs associated with emergency responses to flood events that occurred in 2017. (BDR S-1183)

AN ACT making an appropriation to the Division of Emergency Management of the Department of Public Safety for the costs associated with emergency responses to flood events that occurred in 2017; and providing other matters properly relating thereto.

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

Section 1. There is hereby appropriated from the State General Fund to the Division of Emergency Management of the Department of Public Safety the sum of ~~[$1,680,000]~~ $2,441,115 for the costs associated with emergency responses to flood events that occurred in 2017.

Sec. 2. Any remaining balance of the appropriation made by section 1 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 3. This act becomes effective upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1022 to Senate Bill No. 529 increases the appropriation from the State General Fund to the Division of Emergency Management of the Department of Public Safety from $1,680,000 to $2,441,115.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 530.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1023.

SUMMARY—Makes an appropriation to the Division of Health Care Financing and Policy of the Department of Health and Human Services for the completion of the Medicaid Management Information System modernization project and authorizes the expenditure of certain money for such a purpose. (BDR S-1196)

AN ACT making an appropriation to the Division of Health Care Financing and Policy of the Department of Health and Human Services for the completion of the Medicaid Management Information System modernization project; authorizing the expenditure of certain money by the Division for the same purpose; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby appropriated from the State General Fund to the Division of Health Care Financing and Policy of the Department of Health and Human Services the sum of ~~[$3,259,902]~~ $3,683,512 for the completion of the Medicaid Management Information System modernization project.

2. Expenditure of ~~[$20,558,384]~~ $24,370,876 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the Division for the same purpose as set forth in subsection 1.

Sec. 2. Any remaining balance of the appropriation made by section 1 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 3. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1023 to Senate Bill No. 530 increases the amount appropriated from the General Fund to the Division of Health Care Financing and Policy from $3,259,902 to $3,683,512; increases the amount authorized from non-General Fund or Highway Fund sources

to the Division of Health Care Financing and Policy from $20,558,384 to $24,370,876 and makes the bill effective upon passage and approval.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 531.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1024.

SUMMARY—Makes appropriations to the Aging and Disability Services Division of the Department of Health and Human Services for deferred maintenance projects at the Desert Regional Center and for changing the information system platform for early intervention services. (BDR S-1195)

AN ACT making appropriations to the Aging and Disability Services Division of the Department of Health and Human Services for deferred maintenance projects at the Desert Regional Center and for changing the information system platform for early intervention services; authorizing the expenditure of certain money by the Division for changing the information system platform for early intervention services; and providing other matters properly relating thereto.

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

Section 1. There is hereby appropriated from the State General Fund to the Aging and Disability Services Division of the Department of Health and Human Services the sum of $453,533 for deferred maintenance projects at the Desert Regional Center essential for the security and operation of the Center.

Sec. 2. 1. There is hereby appropriated from the State General Fund to the Aging and Disability Services Division of the Department of Health and Human Services the sum of $454,915 to move the early intervention services program to ~~[the Harmony Information System]~~ an information system platform that is used by other programs within the Division.

2. Expenditure of $221,825 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the Division for the same purposes as set forth in subsection 1.

Sec. 3. Any remaining balance of the appropriations made by sections 1 and 2 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 4. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1024 to Senate Bill No. 531 removes the vendor name of "Harmony Information System" from section 2 of the bill and only references an information system makes the bill effective upon passage and approval.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 532.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1025.

SUMMARY—Makes appropriations to the Division of Public and Behavioral Health of the Department of Health and Human Services for a laboratory information system and integrated medication management system. (BDR S-1197)

AN ACT making appropriations to the Division of Public and Behavioral Health of the Department of Health and Human Services for a laboratory information system for the Southern Nevada Adult Mental Health Services and for an integrated medication management system for the Department; and providing other matters properly relating thereto.

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

Section 1. There is hereby appropriated from the State General Fund to the Division of Public and Behavioral Health of the Department of Health and Human Services the sum of $293,774 for a laboratory information system to support on-site medical laboratory testing for the Southern Nevada Adult Mental Health Services.

Sec. 2. There is hereby appropriated from the State General Fund to the Division of Public and Behavioral Health of the Department of Health and Human Services the sum of $1,653,039 for an integrated medication management system for the Department.

Sec. 3. Any remaining balance of the appropriations made by sections 1 and 2 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 4. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1025 to Senate Bill No. 532 changes the effective date of the bill from July 1, 2017, to upon passage and approval.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 533.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1033.

SUMMARY—Makes appropriations to the Division of Welfare and Supportive Services of the Department of Health and Human Services for certain information system projects and authorizes the expenditure of certain money for such purposes. (BDR S-1198)

AN ACT making appropriations to the Division of Welfare and Supportive Services of the Department of Health and Human Services for certain information system projects; authorizing the expenditure of certain money by the Division for such purposes; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby appropriated from the State General Fund to the Division of Welfare and Supportive Services of the Department of Health and Human Services the sum of $127,500 for a master client index to develop a cross index of all databases of the Department.

2. Expenditure of $1,147,500 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the Division for the same purpose as set forth in subsection 1.

Sec. 2. 1. There is hereby appropriated from the State General Fund to the Division of Welfare and Supportive Services of the Department of Health and Human Services the sum of $1,000,000 for modernization of Access Nevada to provide clients of the Division with the opportunity to submit electronic applications for Medicaid, the Supplemental Nutrition Assistance program and Temporary Assistance for Needy Families.

2. Expenditure of $9,000,000 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the Division for the same purpose as set forth in subsection 1.

Sec. 3. 1. There is hereby appropriated from the State General Fund to the Division of Welfare and Supportive Services of the Department of Health and Human Services the sum of $407,673 for a case management system to allow for the "no wrong door" approach to serving clients throughout the Department.

2. Expenditure of $3,458,225 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the Division for the same purpose as set forth in subsection 1.

Sec. 4. 1. There is hereby appropriated from the State General Fund to the Division of Welfare and Supportive Services of the Department of Health and Human Services the sum of $9,304,699 for the second phase to modernize the automated processing system for the child support enforcement program.

2. Expenditure of $20,120,886 not appropriated from the State General Fund or the State Highway Fund is hereby authorized during Fiscal Year 2017-2018 and Fiscal Year 2018-2019 by the Division for the same purpose as set forth in subsection 1.

Sec. 5. Any remaining balance of the appropriations made by sections 1 to 4, inclusive, of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 6. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1033 to Senate Bill No. 533 changes the effective date of the bill from July 1, 2017, to effective upon passage and approval.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 537.

Bill read second time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1030.

SUMMARY—Makes appropriations to the Division of Forestry of the State Department of Conservation and Natural Resources for certain equipment ~~[and vehicles]~~ , a vehicle and certain deferred maintenance projects. (BDR S-1206)

AN ACT making appropriations to the Division of Forestry of the State Department of Conservation and Natural Resources for certain equipment ~~[and vehicles]~~ , a vehicle and certain deferred maintenance projects; and providing other matters properly relating thereto.

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

Section 1. 1. There is hereby appropriated from the State General Fund to the Division of Forestry of the State Department of Conservation and Natural Resources the sum of ~~[$313,280]~~ $314,008 for a rescue hoist for the Air Operations Program.

2. There is hereby appropriated from the State General Fund to the Division of Forestry of the State Department of Conservation and Natural Resources the sum of ~~[$1,152,932]~~ $149,249 for ~~[three wildland fire engines and]~~ a helitack mechanic truck to increase the likelihood of initial attack success during an ongoing drought.

3. There is hereby appropriated from the State General Fund to the Division of Forestry of the State Department of Conservation and Natural Resources the sum of $472,650 for deferred maintenance projects focused on life and safety issues and critical asset preservation.

4. There is hereby appropriated from the State General Fund to the Division of Forestry of the State Department of Conservation and Natural Resources for the forestry conservation camps the sum of $348,004 for deferred maintenance projects focused on life and safety issues and critical asset preservation.

Sec. 2. Any remaining balance of the appropriations made by section 1 of this act must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 3. This act becomes effective ~~[on July 1, 2017.]~~ upon passage and approval.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1030 to Senate Bill No. 537 increases the amount appropriated in subsection 1 of section 1 from $313,280 to $314,008 for a rescue hoist for the Air Operations Program. In addition, Amendment No. 1030 to Senate Bill No. 537 reduces the amount appropriated in subsection 2 of section 1 from $1,152,932 to $149,249 and eliminates the three wildland fire engines. The three wildland fire engines will instead be funded with County Participation Funds in reserves in the Wildland Fire Protection program budget.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 296.

Bill read second time and ordered to third reading.

Assembly Bill No. 303.
Bill read second time and ordered to third reading.

Assembly Bill No. 327.
Bill read second time and ordered to third reading.

Assembly Bill No. 343.
Bill read second time and ordered to third reading.

Assembly Bill No. 467.
Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 235.
Bill read third time.
The following amendment was proposed by the Committee on Finance:
Amendment No. 945.

SUMMARY—Provides for the regulation of ticket sales to an athletic contest or live entertainment event in certain circumstances. (BDR 52-672)

AN ACT relating to trade practices; making certain sales of tickets a deceptive trade practice; regulating the manner in which tickets to an athletic contest or live entertainment event may be sold in certain circumstances; requiring certain disclosures to be made by resellers of tickets to an athletic contest or live entertainment event; prohibiting the use of an Internet robot for certain purposes relating to ticket sales; limiting local governments and political subdivisions from certain regulation of ticket sales; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a number of deceptive trade practices, including, without limitation, pyramid schemes and violations of requirements relating to charitable solicitations, sales promotions, door-to-door sales and grant writing services. (NRS 598.110, 598.1305, 598.139, 598.2801, 598.595) Existing law authorizes the Attorney General, the Commissioner of Consumer Affairs and the Director of the Department of Business and Industry to investigate and prosecute deceptive trade practices, which may include, without limitation, criminal prosecution or the imposition of certain civil penalties. (NRS 598.0903-598.0999) Section 2 of this bill makes a knowing violation of the provisions of this bill relating to ticket sales a deceptive trade practice subject to enforcement as such. Section 18 of this bill requires the Bureau of Consumer Protection in the Office of the Attorney General to establish a toll-free statewide hotline and an Internet website by which a person may file a complaint relating to a suspected violation of this bill. Sections 19-29 of this bill make conforming changes.

~~[Sections 9, 10 and 13 of this bill limit the applicability of the provisions of this bill to a person who annually sells 25 or more tickets to an athletic contest or live entertainment event and has not been sanctioned to sell such tickets by certain authorized persons associated with the athletic contest or~~

~~live entertainment event. In addition, a person who advertises or sanctions the resale of such tickets is subject to the provisions of this bill. The provisions of this bill do not, however, apply to a person who is sanctioned to sell such tickets.]~~ Section 13 of this bill specifies which type of resellers are subject to the provisions of the bill. Section 14 of this bill requires a reseller who sells ~~[such]~~ tickets to an athletic contest or live entertainment event on an Internet website to inform a ticket purchaser that the reseller has not been sanctioned to resell tickets to the athletic contest or live entertainment event for which tickets are being offered by an authorized person associated with the contest or event. Section 14 also prohibits a reseller from displaying a trademarked or copyrighted Internet website address or a title, designation, image, mark or other symbol on the Internet website of the reseller without the consent of the trademark or copyright holder ~~[.]~~ and prohibits a reseller from creating an Internet website that is substantially similar to the Internet website of an entertainment facility, athletic contest or live entertainment event without permission.

Section 15 of this bill requires a reseller to make certain disclosures to a ticket purchaser before completing the resale, including: (1) the amount to be paid by the ticket purchaser for the ticket; (2) the location of any seat associated with the ticket; and (3) the right of the purchaser to a refund if an athletic contest or live entertainment event is cancelled and not rescheduled. Section 15 further authorizes a reseller to only resell tickets at his or her registered office, established place of business or Internet website and prohibits a reseller from reselling tickets to an athletic contest or live entertainment event before ~~[tickets to]~~ the date for such contest or event ~~[are made available to the public by an authorized person associated with the contest or event.]~~ has been officially announced. Section 15 prohibits a reseller from reselling a ticket unless the ticket is in the actual possession of the reseller and is immediately available for delivery to the ticket purchaser ~~[.]~~ , except in certain circumstances. Section 15 also ~~[prohibits: (1) a reseller from reselling more than one copy of the same ticket; and (2) a reseller from employing any person to wait in line to purchase tickets to an athletic contest or a live entertainment event for the purpose of offering such tickets for resale.]~~ places various other restrictions on the sale of tickets by a reseller. Section 15.5 of this bill prohibits a local government or political subdivision from further regulating the sale of tickets, except that a local government or political subdivision may require licensure, collect fees, limit the location of sales and provide for private enforcement.

Section ~~[16]~~ 6.5 of this bill defines "Internet robot" as a software application that attempts to complete or completes an automated transaction on an Internet website. Section 16 prohibits the use of an Internet robot for the purposes of circumventing the ticket purchasing process on an Internet website or to disguise the identity of the ticket purchaser in order to obtain a greater quantity of tickets than authorized. Section 16 also authorizes a person injured by the use of an Internet robot in violation of these provisions

to bring a civil action to seek: (1) declaratory and injunctive relief; and (2) actual damages or $100, whichever is greater.

Section 13 of this bill exempts a person from the requirements of this bill if such a person resells tickets which were obtained for personal use ~~.~~ or is authorized to do so pursuant to section 5 of this bill. Section 17 provides that a violation of any of the provisions of this bill is a misdemeanor unless a greater penalty is otherwise provided by law. Section 17.5 of this bill provides an enhanced penalty for the sale of a ticket in willful and knowing violation of the provisions of this bill to an entertainment facility which is operated by a governmental entity or a public-private partnership.

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

Section 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *A person engages in a "deceptive trade practice" when, in the course of his or her business or occupation, he or she knowingly violates a provision of sections 3 to 18, inclusive, of this act.*

Sec. 3. *As used in sections 3 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 12, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Athletic contest" means any contest, game or other event involving the athletic or physical skills of an amateur athlete, intercollegiate athlete or professional athlete held at an entertainment facility for which a ticket is required for admission.*

Sec. 4.5. *"Athletic team" means a group of persons who compete in a contest, game or other event in this State involving the athletic or physical skills of an amateur athlete, intercollegiate athlete or professional athlete or a person employed by such a group.*

Sec. 5. *1. "Authorized person" means a person who is responsible for directing, financing, managing, participating in, promoting, organizing, sponsoring or otherwise directly involved in the hosting, staging or presentation of an athletic contest or live entertainment event, or the affiliate or agent of any such persons.*

2. The term includes, without limitation, an athletic team or a person who controls or operates an entertainment facility. The term does not include a person whose initial purchase of a ticket was completed through the use of an Internet robot.

Sec. 6. *"Entertainment facility" means an indoor or outdoor area, including, without limitation, an arena, auditorium, museum, racetrack or stadium in which an athletic contest or live entertainment event is staged in this State and for which a ticket is required for admission.*

Sec. 6.5. "Internet robot" means a software application that attempts to complete or completes an automated transaction on an Internet website.

Sec. 7. (Deleted by amendment.)

Sec. 8. *"Live entertainment event" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person who is physically present when providing that activity to a group of patrons at an entertainment facility, including, without limitation, any lecture, exhibition of art, performance of comedy, dance, music, theater or any other entertainment event or show. The term includes, without limitation, any game, contest or event in which persons compete against each other through electronic, digital or virtual means.*

Sec. 9. *"Resale" or "resell" means an offer or completed transaction for the sale of a ticket to an athletic contest or a live entertainment event ~~[by a person who has not been sanctioned or otherwise authorized by an authorized person, including, without limitation, through a contract, to sell tickets for such contest or event.]~~ which occurs after the initial purchase of the ticket. The term includes, without limitation, the sale of a ticket made in person or by telephone, Internet website or any other means of communication or exchange.*

Sec. 10. *"Reseller" means any person who ~~[is subject to the provisions of sections 3 to 18, inclusive, of this act, as determined pursuant to subsection 1 of section 13 of this act.]~~ resells a ticket.*

Sec. 11. *"Ticket" means a certificate, document, token, voucher or other evidence, whether physical or electronic, which indicates that the bearer or other person who is entitled to possession of the ticket has the right or privilege of admission to an athletic contest or live entertainment event, to occupy or have access to a particular area or seat within an entertainment facility or to acquire such a right or privilege.*

Sec. 12. (Deleted by amendment.)

Sec. 13. ~~*[1. The provisions of sections 3 to 18, inclusive, of this act apply only to a person who, during a calendar year:*~~

~~*(a) Purchases and then offers for resale 25 or more tickets for admission to an athletic contest or live entertainment event; or*~~

~~*(b) Advertises for resale 25 or more tickets for admission to an athletic contest or live entertainment event or sanctions such resales or acts in concert with another person who engages in such resales of tickets on a regular basis.*~~

~~*2.]*~~ *The provisions of sections 3 to 18, inclusive, of this act do not apply to:*

~~*[(a)]*~~ *1. A person who resells a ticket obtained for personal use or for the use of another person who was known to the person that obtained the ticket before the purchase of such ticket.*

~~*[(b)]*~~ *2. An authorized person.*

3. A reseller who has actual possession of a ticket which is immediately available for delivery to the purchaser.

4. A labor organization as defined in NRS 613.230.

5. A nonprofit organization created for religious, charitable or educational purposes that meets the requirements set forth in NRS 372.3261.

Sec. 14. *1. A reseller who is not an authorized person and who resells a ticket to an athletic contest or live entertainment event on an Internet website shall disclose to a ticket purchaser in a clear and conspicuous manner before completing the transaction that the reseller has not been sanctioned by an authorized person to sell tickets for the athletic contest or live entertainment event associated with the ticket offered for resale.*

2. The Internet website of a reseller must not display a trademarked or copyrighted URL, title, designation, image or mark or other symbol without the written consent of the trademark or copyright holder.

3. The Internet website of a reseller, including, without limitation, an Internet website that offers the purchase and resale of tickets on a secondary basis, shall not use any combination of text, images, web designs, Internet addresses or any combination thereof which is substantially similar to the Internet website of an entertainment facility, athletic contest or live entertainment event without permission unless the reseller is an authorized person.

4. As used in this section : [,]

(a) "Substantially similar" means that a reasonable person would believe that the Internet website is that of the entertainment facility, athletic contest or live entertainment event.

(b) "URL" means the Uniform Resource Locator associated with an Internet website.

Sec. 15. *1. A reseller shall:*

(a) Post in a clear and conspicuous manner, at the registered office and established place of business of the reseller and on any Internet website maintained by the reseller, including, without limitation, an Internet website that offers the purchase and resale of tickets on a secondary basis, the terms and conditions of a resale, including, without limitation, any right of a ticket purchaser to cancel a purchase.

(b) Disclose to the ticket purchaser, before completing the resale of the ticket to the purchaser:

(1) That the ticket purchaser is entitled to a refund of any amount received from the purchaser if the athletic contest or live entertainment event associated with such ticket is cancelled and not rescheduled.

(2) The amount to be paid by the ticket purchaser for the ticket and the location of the seat, if any, assigned by the ticket which is offered for resale, including, without limitation, any section, row [, seat number] or area within an entertainment facility which is designated on the ticket.

(c) Refund any amount received from a ticket purchaser if the athletic contest or live entertainment event associated with such ticket is cancelled and not rescheduled.

(d) Resell tickets only at the registered office or established place of business of the reseller or on an Internet website maintained by the reseller [.] , including, without limitation, an Internet website that offers the purchase and resale of tickets on a secondary basis.

2. A reseller shall not:

(a) ~~[Resell]~~ Advertise for sale tickets to an athletic contest or live entertainment event until ~~[tickets are made available for purchase to the general public by an authorized person.~~

~~(b) Resell any ticket that is not in the actual possession of the reseller and immediately available for delivery to the ticket purchaser.~~

~~3. A reseller shall not, directly or indirectly, employ any person to wait in line to purchase tickets to an athletic contest or live entertainment event for the purpose of offering such tickets for resale.~~

~~4. A reseller who resells a ticket to an athletic contest or live entertainment event shall not offer more than one copy of the same ticket for resale.~~

~~5.]~~ the date for the athletic contest or live entertainment event has been officially announced.

(b) Accept any type of consideration for the sale of a ticket unless the ticket has been issued by a person authorized to issue tickets to the athletic contest or live entertainment event.

(c) Resell or offer for sale more than one copy of the same ticket to an athletic contest or live entertainment event.

(d) Offer for sale any counterfeit ticket to an athletic contest or live entertainment event.

(e) Employ another person directly or indirectly to wait in line to purchase tickets for the purpose of reselling the tickets if the practice is prohibited by the sponsor, organizer or promoter of the athletic contest or live entertainment event or if the venue at which the athletic contest or live entertainment event will occur has posted a policy prohibiting the practice.

3. Except as otherwise provided in subsection 4, a reseller shall not accept consideration for the sale of a ticket or accept a deposit for a ticket for which the reseller does not have possession unless:

(a) The reseller has an agreement to purchase the ticket for an established price from another person who has possession of the ticket; and

(b) The person to whom the reseller agrees to sell the ticket or from whom the reseller accepts a deposit will have the right to a refund if the reseller is not able to obtain or deliver the ticket.

4. If an athletic contest or live entertainment event is scheduled to take place within 14 days, the reseller may accept consideration for the sale of a ticket or a deposit for a ticket for which the reseller does not have possession if the reseller clearly discloses to the purchaser before entering into an agreement or accepting consideration that the reseller does not have possession of the ticket and the person is entitled to a refund if the reseller is not able to obtain and deliver the ticket.

5. As used in this section, the term "established place of business" does not include a temporary location on a sidewalk, parking lot or other public area in the vicinity of an entertainment facility which is vacated by a reseller after the conclusion of an athletic contest or a live entertainment event.

Sec. 15.5. *1. A local government or political subdivision shall not limit, prohibit or otherwise regulate the sale of tickets if the sale is carried out in compliance with the provisions of sections 14 and 15 of this act.*

2. The provisions of this section do not prohibit a local government or political subdivision from enacting an ordinance to require a reseller to obtain a license and pay applicable fees, determine where tickets may be sold and provide for the right to private enforcement.

Sec. 16. *1. A person shall not use an Internet robot to:*

(a) Circumvent any portion of the process for purchasing a ticket on an Internet website, including, without limitation, any security or identity validation measures or an access control system; or

(b) Disguise the identity of a ticket purchaser for the purpose of purchasing a number of tickets for admission to an athletic contest or live entertainment event which exceeds the maximum number of tickets allowed for purchase by an authorized person.

2. A person injured by a violation of this section may bring a civil action in ~~[a]~~ the appropriate district court ~~[of competent jurisdiction]~~ against the person who committed the violation to seek:

(a) Declaratory and injunctive relief.

(b) Actual damages or $100, whichever is greater.

~~*[3. As used in this section, "Internet robot" means a software application that attempts or completes an automated transaction on an Internet website.]*~~

Sec. 17. *Unless a greater penalty is provided in NRS 598.0999 or section 17.5 of this act, a person who violates the provisions of sections 3 to 18, inclusive, of this act is guilty of a misdemeanor.*

Sec. 17.5. *1. A person who willfully and knowingly violates the provisions of sections 3 to 18, inclusive, of this act relating to the sale of a ticket to an entertainment facility which is operated by a governmental entity or a public-private partnership is guilty of a:*

(a) Gross misdemeanor, if the total value of the tickets sold in violation of sections 3 to 18, inclusive, of this act is less than $1,000; or

(b) Category D felony and shall be punished as provided in NRS 193.130, if the total value of the tickets sold in violation of sections 3 to 18, inclusive, of this act is $1,000 or more.

2. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Public-private partnership" means a contract entered into by a person and a governmental entity for the support of an entertainment facility.

Sec. 18. *The Bureau of Consumer Protection in the Office of the Attorney General shall establish a toll-free statewide hotline and an Internet*

website by which a person may file a complaint relating to a suspected violation of sections 3 to 18, inclusive, of this act.

Sec. 19. NRS 598.0903 is hereby amended to read as follows:

598.0903 As used in NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* unless the context otherwise requires, the words and terms defined in NRS 598.0905 to 598.0947, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 20. NRS 598.0953 is hereby amended to read as follows:

598.0953 1. Evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

2. The deceptive trade practices listed in NRS 598.0915 to 598.0925, inclusive, *and section 2 of this act* are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this State.

Sec. 21. NRS 598.0955 is hereby amended to read as follows:

598.0955 1. The provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act* do not apply to:

(a) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.

(b) Publishers, including outdoor advertising media, advertising agencies, broadcasters or printers engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character.

(c) Actions or appeals pending on July 1, 1973.

2. The provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act* do not apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name or other trade identification which was used and not abandoned prior to July 1, 1973, if the use was in good faith and is otherwise lawful except for the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ *, and section 2 of this act.*

Sec. 22. NRS 598.0963 is hereby amended to read as follows:

598.0963 1. Whenever the Attorney General is requested in writing by the Commissioner or the Director to represent him or her in instituting a legal proceeding against a person who has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person on behalf of the Commissioner or Director.

2. The Attorney General may institute criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ *, and section 2 of this act.* The Attorney General is not required to obtain leave of the court before instituting criminal proceedings pursuant to this subsection.

3. If the Attorney General has reason to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person to

obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief.

4. If the Attorney General has cause to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may issue a subpoena to require the testimony of any person or the production of any documents, and may administer an oath or affirmation to any person providing such testimony. The subpoena must be served upon the person in the manner required for service of process in this State or by certified mail with return receipt requested. An employee of the Attorney General may personally serve the subpoena.

Sec. 23. NRS 598.0967 is hereby amended to read as follows:

598.0967 1. The Commissioner and the Director, in addition to other powers conferred upon them by NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* may issue subpoenas to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry and prescribe such forms and adopt such regulations as may be necessary to administer the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ *, and section 2 of this act.* Such regulations may include, without limitation, provisions concerning the applicability of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act* to particular persons or circumstances.

2. Except as otherwise provided in this subsection, service of any notice or subpoena must be made by certified mail with return receipt or as otherwise allowed by law. An employee of the Consumer Affairs Division of the Department of Business and Industry may personally serve a subpoena issued pursuant to this section.

Sec. 24. NRS 598.0971 is hereby amended to read as follows:

598.0971 1. If, after an investigation, the Commissioner has reasonable cause to believe that any person has been engaged or is engaging in any deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* the Commissioner may issue an order directed to the person to show cause why the Director should not order the person to cease and desist from engaging in the practice and to pay an administrative fine. The order must contain a statement of the charges and a notice of a hearing to be held thereon. The order must be served upon the person directly or by certified or registered mail, return receipt requested.

2. An administrative hearing on any action brought by the Commissioner must be conducted before the Director or his or her designee.

3. If, after conducting a hearing pursuant to the provisions of subsection 2, the Director or his or her designee determines that the person has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* or if the person fails to appear for the hearing after being properly served with the statement of charges and notice of hearing, the Director or his or her designee shall issue an order setting forth his or her findings of fact concerning the violation and cause to be served a copy

thereof upon the person and any intervener at the hearing. If the Director or his or her designee determines in the report that such a violation has occurred, he or she may order the violator to:

(a) Cease and desist from engaging in the practice or other activity constituting the violation;

(b) Pay the costs of conducting the investigation, costs of conducting the hearing, costs of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the Director or his or her designee free of charge, charges for providing an independent hearing officer, if any, and charges incurred for any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive ~~[;]~~ *, and section 2 of this act;*

(c) Provide restitution for any money or property improperly received or obtained as a result of the violation; and

(d) Impose an administrative fine of $1,000 or treble the amount of restitution ordered, whichever is greater.

➥ The order must be served upon the person directly or by certified or registered mail, return receipt requested. The order becomes effective upon service in the manner provided in this subsection.

4. Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection 3 or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.

5. If a person fails to comply with any provision of an order issued pursuant to subsection 3, the Commissioner or the Director may, through the Attorney General, at any time after 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his or her principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

6. If the court finds that:

(a) The violation complained of is a deceptive trade practice;

(b) The proceedings by the Director or his or her designee concerning the written report and any order issued pursuant to subsection 3 are in the interest of the public; and

(c) The findings of the Director or his or her designee are supported by the weight of the evidence,

➥ the court shall issue an order enforcing the provisions of the order of the Director or his or her designee.

7. An order issued pursuant to subsection 6 may include:

(a) A provision requiring the payment to the Consumer Affairs Division of the Department of Business and Industry of a penalty of not more than $5,000 for each act amounting to a failure to comply with the Director's or designee's order;

(b) An order that the person cease doing business within this State; and

(c) Such injunctive or other equitable or extraordinary relief as is determined appropriate by the court.

8. Any aggrieved party may appeal from the final judgment, order or decree of the court in a like manner as provided for appeals in civil cases.

9. Upon the violation of any judgment, order or decree issued pursuant to subsection 6 or 7, the Commissioner, after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.

Sec. 25. NRS 598.0985 is hereby amended to read as follows:

598.0985 Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, and notwithstanding the enforcement powers granted to the Commissioner or Director pursuant to NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any deceptive trade practice, knowingly or otherwise, he or she may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

Sec. 26. NRS 598.0993 is hereby amended to read as follows:

598.0993 The court in which an action is brought pursuant to NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

Sec. 27. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* upon a complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than $10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ *, and section 2 of this act.*

2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the Director, the district attorney of any county in this State or the Attorney General bringing the action may recover a civil penalty not to exceed $5,000 for each violation. The court in

any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

3. A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second offense, is guilty of a gross misdemeanor.

(c) For the third and all subsequent offenses, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

➥ The court may require the natural person, firm, or officer or managing agent of the corporation or association to pay to the aggrieved party damages on all profits derived from the knowing and willful engagement in a deceptive trade practice and treble damages on all damages suffered by reason of the deceptive trade practice.

4. Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act*, 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➥ The court may grant or deny the relief sought or may order other appropriate relief.

6. If a person violates any provision of NRS 228.500 to 228.640, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Attorney General may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➥ The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 28. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall

be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 29. NRS 41.600 is hereby amended to read as follows:

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

(a) An unlawful act as defined in NRS 119.330;

(b) An unlawful act as defined in NRS 205.2747;

(c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;

(d) An act prohibited by NRS 482.351; or

(e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive ~~[.]~~ *, and section 2 of this act.*

3. If the claimant is the prevailing party, the court shall award the claimant:

(a) Any damages that the claimant has sustained;

(b) Any equitable relief that the court deems appropriate; and

(c) The claimant's costs in the action and reasonable attorney's fees.

4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 945 to Senate Bill No. 235 redefines the term "resale" to mean an offer or completed transaction for the sale of a ticket to an athletic contest or live-entertainment event that occurs after the initial purchase of the ticket. Additionally, the amendment redefines a "reseller" to mean any person who resells a ticket and removes resale provisions relating to resellers based on the amount of tickets sold.

Amendment No. 945 revises for whom the provisions of the bill do not apply and provides requirements of resellers who are not authorized to sell tickets and places limitations on resellers who use an Internet website for the resale of tickets to an athletic contest or entertainment event. Further, the amendment requires that a ticket reseller shall not advertise for sale tickets for which a date of an athletic contest or entertainment event has not been announced, sell unauthorized tickets, sell more than one copy of a ticket or offer counterfeit tickets for sale.

Lastly, the amendment provides that a local government or political subdivision shall not limit or otherwise regulate the sale of tickets if the sale complies with the provisions of sections 14 and 15 of this bill.

Amendment adopted.

The following amendment was proposed by Senator Woodhouse:

Amendment No. 1051.

SUMMARY—Provides for the regulation of ticket sales to an athletic contest or live entertainment event in certain circumstances. (BDR 52-672)

AN ACT relating to trade practices; making certain sales of tickets a deceptive trade practice; regulating the manner in which tickets to an athletic contest or live entertainment event may be sold in certain circumstances; requiring certain disclosures to be made by resellers of tickets to an athletic contest or live entertainment event; prohibiting the use of an Internet robot for certain purposes relating to ticket sales; limiting local governments and political subdivisions from certain regulation of ticket sales; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a number of deceptive trade practices, including, without limitation, pyramid schemes and violations of requirements relating to charitable solicitations, sales promotions, door-to-door sales and grant writing services. (NRS 598.110, 598.1305, 598.139, 598.2801, 598.595) Existing law authorizes the Attorney General, the Commissioner of Consumer Affairs and the Director of the Department of Business and Industry to investigate and prosecute deceptive trade practices, which may include, without limitation, criminal prosecution or the imposition of certain civil penalties. (NRS 598.0903-598.0999) Section 2 of this bill makes a knowing violation of the provisions of this bill relating to ticket sales a deceptive trade practice subject to enforcement as such. Section 18 of this bill requires the Bureau of Consumer Protection in the Office of the Attorney General to establish a toll-free statewide hotline and an Internet website by

which a person may file a complaint relating to a suspected violation of this bill. Sections 19-29 of this bill make conforming changes.

~~[Sections 9, 10 and 13 of this bill limit the applicability of the provisions of this bill to a person who annually sells 25 or more tickets to an athletic contest or live entertainment event and has not been sanctioned to sell such tickets by certain authorized persons associated with the athletic contest or live entertainment event. In addition, a person who advertises or sanctions the resale of such tickets is subject to the provisions of this bill. The provisions of this bill do not, however, apply to a person who is sanctioned to sell such tickets.]~~ Section 13 of this bill specifies which type of resellers are subject to the provisions of this bill. Section 14 of this bill requires a reseller who sells ~~[such]~~ tickets to an athletic contest or live entertainment event on an Internet website to inform a ticket purchaser that the reseller has not been sanctioned to resell tickets to the athletic contest or live entertainment event for which tickets are being offered by an authorized person associated with the contest or event. Section 14 also prohibits a reseller from : (1) displaying a trademarked or copyrighted Internet website address or a title, designation, image, mark or other symbol on the Internet website of the reseller without the consent of the trademark or copyright holder ~~[.]~~ ; or (2) creating an Internet website that is substantially similar to the Internet website of an entertainment facility, athletic contest or live entertainment event without permission.

Section 15 of this bill requires a reseller to make certain disclosures to a ticket purchaser before completing the resale, including: (1) the amount to be paid by the ticket purchaser for the ticket; (2) the location of any seat associated with the ticket; and (3) the right of the purchaser to a refund if an athletic contest or live entertainment event is cancelled and not rescheduled. Section 15 further authorizes a reseller to only resell tickets at his or her registered office, established place of business or Internet website and prohibits a reseller from reselling tickets to an athletic contest or live entertainment event before ~~[tickets to]~~ the date for such contest or event ~~[are made available to the public by an authorized person associated with the contest or event.]~~ has been officially announced, except in certain circumstances. Section 15 prohibits a reseller from reselling a ticket unless the ticket is in the actual possession of the reseller and is immediately available for delivery to the ticket purchaser ~~[.]~~ , except in certain circumstances. Section 15 also ~~[prohibits: (1) a reseller from reselling more than one copy of the same ticket; and (2) a reseller from employing any person to wait in line to purchase tickets to an athletic contest or a live entertainment event for the purpose of offering such tickets for resale.]~~ places various other restrictions on the sale of tickets by a reseller. Section 15.5 of this bill prohibits a local government or political subdivision from further regulating the sale of tickets, except that a local government or political subdivision may require licensure, collect fees, limit the location of sales and provide for private enforcement.

Section ~~[16]~~ 6.5 of this bill defines "Internet robot" as a software application that attempts to complete or completes an automated transaction on an Internet website. Section 16 prohibits the use of an Internet robot for the purposes of circumventing the ticket purchasing process on an Internet website or to disguise the identity of the ticket purchaser in order to obtain a greater quantity of tickets than authorized. Section 16 also authorizes a person injured by the use of an Internet robot in violation of these provisions to bring a civil action to seek: (1) declaratory and injunctive relief; and (2) actual damages or $100, whichever is greater.

Section 13 of this bill exempts a person from the requirements of this bill if such a person : (1) resells tickets which were obtained for personal use ~~[.]~~ ; or (2) is authorized to do so pursuant to section 5 of this bill. Section 17 provides that a violation of any of the provisions of this bill is a misdemeanor unless a greater penalty is otherwise provided by law. Section 17.5 of this bill provides an enhanced penalty for the sale of a ticket in willful and knowing violation of the provisions of this bill to an entertainment facility which is operated by a governmental entity or a public-private partnership.

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

Section 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *A person engages in a "deceptive trade practice" when, in the course of his or her business or occupation, he or she knowingly violates a provision of sections 3 to 18, inclusive, of this act.*

Sec. 3. *As used in sections 3 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 12, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Athletic contest" means any contest, game or other event involving the athletic or physical skills of an amateur athlete, intercollegiate athlete or professional athlete held at an entertainment facility for which a ticket is required for admission.*

Sec. 4.5. *"Athletic team" means a group of persons who compete in a contest, game or other event in this State involving the athletic or physical skills of an amateur athlete, intercollegiate athlete or professional athlete or a person employed by such a group.*

Sec. 5. *1. "Authorized person" means a person who is responsible for directing, financing, managing, participating in, promoting, organizing, sponsoring or otherwise directly involved in the hosting, staging or presentation of an athletic contest or live entertainment event, or the affiliate or agent of any such persons.*

2. The term includes, without limitation, an athletic team or a person who controls or operates an entertainment facility. The term does not include a person whose initial purchase of a ticket was completed through the use of an Internet robot.

Sec. 6. *"Entertainment facility" means an indoor or outdoor area, including, without limitation, an arena, auditorium, museum, racetrack or stadium in which an athletic contest or live entertainment event is staged in this State and for which a ticket is required for admission.*

Sec. 6.5. "Internet robot" means a software application that attempts to complete or completes an automated transaction on an Internet website.

Sec. 7. (Deleted by amendment.)

Sec. 8. *"Live entertainment event" means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person who is physically present when providing that activity to a group of patrons at an entertainment facility, including, without limitation, any lecture, exhibition of art, performance of comedy, dance, music, theater or any other entertainment event or show. The term includes, without limitation, any game, contest or event in which persons compete against each other through electronic, digital or virtual means.*

Sec. 9. *"Resale" or "resell" means an offer or completed transaction for the sale of a ticket to an athletic contest or a live entertainment event ~~[by a person who has not been sanctioned or otherwise authorized by an authorized person, including, without limitation, through a contract, to sell tickets for such contest or event.]~~ which occurs after the initial purchase of the ticket. The term includes, without limitation, the sale of a ticket made in person or by telephone, Internet website or any other means of communication or exchange.*

Sec. 10. *"Reseller" means any person who ~~[is subject to the provisions of sections 3 to 18, inclusive, of this act, as determined pursuant to subsection 1 of section 13 of this act.]~~ resells a ticket.*

Sec. 11. *"Ticket" means a certificate, document, token, voucher or other evidence, whether physical or electronic, which indicates that the bearer or other person who is entitled to possession of the ticket has the right or privilege of admission to an athletic contest or live entertainment event, to occupy or have access to a particular area or seat within an entertainment facility or to acquire such a right or privilege.*

Sec. 12. (Deleted by amendment.)

Sec. 13. ~~*[1. The provisions of sections 3 to 18, inclusive, of this act apply only to a person who, during a calendar year:*~~

~~*(a) Purchases and then offers for resale 25 or more tickets for admission to an athletic contest or live entertainment event; or*~~

~~*(b) Advertises for resale 25 or more tickets for admission to an athletic contest or live entertainment event or sanctions such resales or acts in concert with another person who engages in such resales of tickets on a regular basis.*~~

~~*2.]*~~ *The provisions of sections 3 to 18, inclusive, of this act do not apply to:*

~~[(a)]~~ 1. A person who resells a ticket obtained for personal use or for the use of another person who was known to the person that obtained the ticket before the purchase of such ticket.

~~[(b)]~~ 2. An authorized person.

3. A reseller who has actual possession of a ticket which is immediately available for delivery to the purchaser.

4. A labor organization as defined in NRS 613.230.

5. A nonprofit organization created for religious, charitable or educational purposes that meets the requirements set forth in NRS 372.3261.

Sec. 14. 1. A reseller who is not an authorized person and who resells a ticket to an athletic contest or live entertainment event on an Internet website shall disclose to a ticket purchaser in a clear and conspicuous manner before completing the transaction that the reseller has not been sanctioned by an authorized person to sell tickets for the athletic contest or live entertainment event associated with the ticket offered for resale.

2. The Internet website of a reseller must not display a trademarked or copyrighted URL, title, designation, image or mark or other symbol without the written consent of the trademark or copyright holder.

3. The Internet website of a reseller, including, without limitation, an Internet website that offers the purchase and resale of tickets on a secondary basis, must not use any combination of text, images, web designs or Internet addresses, or any combination thereof, which is substantially similar to the Internet website of an entertainment facility, athletic contest or live entertainment event without permission unless the reseller is an authorized person.

4. As used in this section ~~[,]~~ :

(a) "Substantially similar" means that a reasonable person would believe that the Internet website is that of the entertainment facility, athletic contest or live entertainment event.

(b) "URL" means the Uniform Resource Locator associated with an Internet website.

Sec. 15. 1. A reseller shall:

(a) Post in a clear and conspicuous manner, at the registered office and established place of business of the reseller and on any Internet website maintained by the reseller, including, without limitation, an Internet website that offers the purchase and resale of tickets on a secondary basis, the terms and conditions of a resale, including, without limitation, any right of a ticket purchaser to cancel a purchase.

(b) Disclose to the ticket purchaser, before completing the resale of the ticket to the purchaser:

(1) That the ticket purchaser is entitled to a refund of any amount received from the purchaser if the athletic contest or live entertainment event associated with such ticket is cancelled and not rescheduled.

(2) The amount to be paid by the ticket purchaser for the ticket and the location of the seat, if any, assigned by the ticket which is offered for resale,

including, without limitation, any section, row ~~[, seat number]~~ or area within an entertainment facility which is designated on the ticket.

(c) Refund any amount received from a ticket purchaser if the athletic contest or live entertainment event associated with such ticket is cancelled and not rescheduled.

(d) Resell tickets only at the registered office or established place of business of the reseller or on an Internet website maintained by the reseller ~~[.]~~ , including, without limitation, an Internet website that offers the purchase and resale of tickets on a secondary basis.

2. A reseller shall not:

(a) ~~[Resell]~~ Except as otherwise provided in subsection 5, advertise for sale tickets to an athletic contest or live entertainment event until ~~[tickets are made available for purchase to the general public by an authorized person.~~

~~(b) Resell any ticket that is not in the actual possession of the reseller and immediately available for delivery to the ticket purchaser.~~

~~3. A reseller shall not, directly or indirectly, employ any person to wait in line to purchase tickets to an athletic contest or live entertainment event for the purpose of offering such tickets for resale.~~

~~4. A reseller who resells a ticket to an athletic contest or live entertainment event shall not offer more than one copy of the same ticket for resale.~~

~~5.]~~ the date for the athletic contest or live entertainment event has been officially announced.

(b) Accept any type of consideration for the sale of a ticket unless the ticket has been issued by a person authorized to issue tickets to the athletic contest or live entertainment event.

(c) Resell or offer for sale more than one copy of the same ticket to an athletic contest or live entertainment event.

(d) Offer for sale any counterfeit ticket to an athletic contest or live entertainment event.

(e) Employ another person directly or indirectly to wait in line to purchase tickets for the purpose of reselling the tickets if the practice is prohibited by the sponsor, organizer or promoter of the athletic contest or live entertainment event or if the venue at which the athletic contest or live entertainment event will occur has posted a policy prohibiting the practice.

3. Except as otherwise provided in subsection 4, a reseller shall not accept consideration for the sale of a ticket or accept a deposit for a ticket for which the reseller does not have possession unless:

(a) The reseller has an agreement to purchase the ticket for an established price from another person who has possession of the ticket; and

(b) The person to whom the reseller agrees to sell the ticket or from whom the reseller accepts a deposit will have the right to a refund if the reseller is not able to obtain or deliver the ticket.

4. If an athletic contest or live entertainment event is scheduled to take place within 14 days, the reseller may accept consideration for the sale of a

ticket or a deposit for a ticket for which the reseller does not have possession if the reseller clearly discloses to the purchaser before entering into an agreement or accepting consideration that the reseller does not have possession of the ticket and the person is entitled to a refund if the reseller is not able to obtain and deliver the ticket.

5. If a professional or collegiate athletic contest is a part of a playoff or tournament and the entity conducting the playoff or tournament has released a range of dates on which the athletic contest may take place, a reseller may advertise the sale and sell tickets for the athletic contest not more than 21 days before the earliest date on which the athletic contest may take place.

6. As used in this section, the term "established place of business" does not include a temporary location on a sidewalk, parking lot or other public area in the vicinity of an entertainment facility which is vacated by a reseller after the conclusion of an athletic contest or a live entertainment event.

Sec. 15.5. 1. A local government or political subdivision shall not limit, prohibit or otherwise regulate the sale of tickets if the sale is carried out in compliance with the provisions of sections 14 and 15 of this act.

2. The provisions of this section do not prohibit a local government or political subdivision from enacting an ordinance to require a reseller to obtain a license and pay applicable fees, determine where tickets may be sold and provide for the right to private enforcement.

Sec. 16. *1. A person shall not use an Internet robot to:*

(a) Circumvent any portion of the process for purchasing a ticket on an Internet website, including, without limitation, any security or identity validation measures or an access control system; or

(b) Disguise the identity of a ticket purchaser for the purpose of purchasing a number of tickets for admission to an athletic contest or live entertainment event which exceeds the maximum number of tickets allowed for purchase by an authorized person.

2. A person injured by a violation of this section may bring a civil action in ~~[a]~~ the appropriate district court ~~[of competent jurisdiction]~~ against the person who committed the violation to seek:

(a) Declaratory and injunctive relief.

(b) Actual damages or $100, whichever is greater.

~~*[3. As used in this section, "Internet robot" means a software application that attempts or completes an automated transaction on an Internet website.]*~~

Sec. 17. *Unless a greater penalty is provided in NRS 598.0999 or section 17.5 of this act, a person who violates the provisions of sections 3 to 18, inclusive, of this act is guilty of a misdemeanor.*

Sec. 17.5. *1. A person who willfully and knowingly violates the provisions of sections 3 to 18, inclusive, of this act relating to the sale of a ticket to an entertainment facility which is operated by a governmental entity or a public-private partnership is guilty of a:*

(a) Gross misdemeanor, if the total value of the tickets sold in violation of sections 3 to 18, inclusive, of this act is less than $1,000; or

(b) Category D felony and shall be punished as provided in NRS 193.130, if the total value of the tickets sold in violation of sections 3 to 18, inclusive, of this act is $1,000 or more.

2. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Public-private partnership" means a contract entered into by a person and a governmental entity for the support of an entertainment facility.

Sec. 18. *The Bureau of Consumer Protection in the Office of the Attorney General shall establish a toll-free statewide hotline and an Internet website by which a person may file a complaint relating to a suspected violation of sections 3 to 18, inclusive, of this act.*

Sec. 19. NRS 598.0903 is hereby amended to read as follows:

598.0903 As used in NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* unless the context otherwise requires, the words and terms defined in NRS 598.0905 to 598.0947, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 20. NRS 598.0953 is hereby amended to read as follows:

598.0953 1. Evidence that a person has engaged in a deceptive trade practice is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

2. The deceptive trade practices listed in NRS 598.0915 to 598.0925, inclusive, *and section 2 of this act* are in addition to and do not limit the types of unfair trade practices actionable at common law or defined as such in other statutes of this State.

Sec. 21. NRS 598.0955 is hereby amended to read as follows:

598.0955 1. The provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act* do not apply to:

(a) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state or local governmental agency.

(b) Publishers, including outdoor advertising media, advertising agencies, broadcasters or printers engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character.

(c) Actions or appeals pending on July 1, 1973.

2. The provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act* do not apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name or other trade identification which was used and not abandoned prior to July 1, 1973, if the use was in good faith and is otherwise lawful except for the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ *, and section 2 of this act.*

Sec. 22. NRS 598.0963 is hereby amended to read as follows:

598.0963 1. Whenever the Attorney General is requested in writing by the Commissioner or the Director to represent him or her in instituting a legal proceeding against a person who has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person on behalf of the Commissioner or Director.

2. The Attorney General may institute criminal proceedings to enforce the provisions of NRS 598.0903 to 598.0999, inclusive ~~.~~ *, and section 2 of this act.* The Attorney General is not required to obtain leave of the court before instituting criminal proceedings pursuant to this subsection.

3. If the Attorney General has reason to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may bring an action in the name of the State of Nevada against that person to obtain a temporary restraining order, a preliminary or permanent injunction, or other appropriate relief.

4. If the Attorney General has cause to believe that a person has engaged or is engaging in a deceptive trade practice, the Attorney General may issue a subpoena to require the testimony of any person or the production of any documents, and may administer an oath or affirmation to any person providing such testimony. The subpoena must be served upon the person in the manner required for service of process in this State or by certified mail with return receipt requested. An employee of the Attorney General may personally serve the subpoena.

Sec. 23. NRS 598.0967 is hereby amended to read as follows:

598.0967 1. The Commissioner and the Director, in addition to other powers conferred upon them by NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* may issue subpoenas to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry and prescribe such forms and adopt such regulations as may be necessary to administer the provisions of NRS 598.0903 to 598.0999, inclusive ~~.~~ *, and section 2 of this act.* Such regulations may include, without limitation, provisions concerning the applicability of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act* to particular persons or circumstances.

2. Except as otherwise provided in this subsection, service of any notice or subpoena must be made by certified mail with return receipt or as otherwise allowed by law. An employee of the Consumer Affairs Division of the Department of Business and Industry may personally serve a subpoena issued pursuant to this section.

Sec. 24. NRS 598.0971 is hereby amended to read as follows:

598.0971 1. If, after an investigation, the Commissioner has reasonable cause to believe that any person has been engaged or is engaging in any deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* the Commissioner may issue an order directed to the

person to show cause why the Director should not order the person to cease and desist from engaging in the practice and to pay an administrative fine. The order must contain a statement of the charges and a notice of a hearing to be held thereon. The order must be served upon the person directly or by certified or registered mail, return receipt requested.

2. An administrative hearing on any action brought by the Commissioner must be conducted before the Director or his or her designee.

3. If, after conducting a hearing pursuant to the provisions of subsection 2, the Director or his or her designee determines that the person has violated any of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* or if the person fails to appear for the hearing after being properly served with the statement of charges and notice of hearing, the Director or his or her designee shall issue an order setting forth his or her findings of fact concerning the violation and cause to be served a copy thereof upon the person and any intervener at the hearing. If the Director or his or her designee determines in the report that such a violation has occurred, he or she may order the violator to:

(a) Cease and desist from engaging in the practice or other activity constituting the violation;

(b) Pay the costs of conducting the investigation, costs of conducting the hearing, costs of reporting services, fees for experts and other witnesses, charges for the rental of a hearing room if such a room is not available to the Director or his or her designee free of charge, charges for providing an independent hearing officer, if any, and charges incurred for any service of process, if the violator is adjudicated to have committed a violation of NRS 598.0903 to 598.0999, inclusive ~~[;]~~ *, and section 2 of this act;*

(c) Provide restitution for any money or property improperly received or obtained as a result of the violation; and

(d) Impose an administrative fine of $1,000 or treble the amount of restitution ordered, whichever is greater.

➥ The order must be served upon the person directly or by certified or registered mail, return receipt requested. The order becomes effective upon service in the manner provided in this subsection.

4. Any person whose pecuniary interests are directly and immediately affected by an order issued pursuant to subsection 3 or who is aggrieved by the order may petition for judicial review in the manner provided in chapter 233B of NRS. Such a petition must be filed within 30 days after the service of the order. The order becomes final upon the filing of the petition.

5. If a person fails to comply with any provision of an order issued pursuant to subsection 3, the Commissioner or the Director may, through the Attorney General, at any time after 30 days after the service of the order, cause an action to be instituted in the district court of the county wherein the person resides or has his or her principal place of business requesting the court to enforce the provisions of the order or to provide any other appropriate injunctive relief.

6. If the court finds that:

(a) The violation complained of is a deceptive trade practice;

(b) The proceedings by the Director or his or her designee concerning the written report and any order issued pursuant to subsection 3 are in the interest of the public; and

(c) The findings of the Director or his or her designee are supported by the weight of the evidence,

➥ the court shall issue an order enforcing the provisions of the order of the Director or his or her designee.

7. An order issued pursuant to subsection 6 may include:

(a) A provision requiring the payment to the Consumer Affairs Division of the Department of Business and Industry of a penalty of not more than $5,000 for each act amounting to a failure to comply with the Director's or designee's order;

(b) An order that the person cease doing business within this State; and

(c) Such injunctive or other equitable or extraordinary relief as is determined appropriate by the court.

8. Any aggrieved party may appeal from the final judgment, order or decree of the court in a like manner as provided for appeals in civil cases.

9. Upon the violation of any judgment, order or decree issued pursuant to subsection 6 or 7, the Commissioner, after a hearing thereon, may proceed in accordance with the provisions of NRS 598.0999.

Sec. 25. NRS 598.0985 is hereby amended to read as follows:

598.0985 Notwithstanding the requirement of knowledge as an element of a deceptive trade practice, and notwithstanding the enforcement powers granted to the Commissioner or Director pursuant to NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* whenever the district attorney of any county has reason to believe that any person is using, has used or is about to use any deceptive trade practice, knowingly or otherwise, he or she may bring an action in the name of the State of Nevada against that person to obtain a temporary or permanent injunction against the deceptive trade practice.

Sec. 26. NRS 598.0993 is hereby amended to read as follows:

598.0993 The court in which an action is brought pursuant to NRS 598.0979 and 598.0985 to 598.099, inclusive, may make such additional orders or judgments as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any deceptive trade practice which violates any of the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* but such additional orders or judgments may be entered only after a final determination has been made that a deceptive trade practice has occurred.

Sec. 27. NRS 598.0999 is hereby amended to read as follows:

598.0999 1. Except as otherwise provided in NRS 598.0974, a person who violates a court order or injunction issued pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* upon a

complaint brought by the Commissioner, the Director, the district attorney of any county of this State or the Attorney General shall forfeit and pay to the State General Fund a civil penalty of not more than $10,000 for each violation. For the purpose of this section, the court issuing the order or injunction retains jurisdiction over the action or proceeding. Such civil penalties are in addition to any other penalty or remedy available for the enforcement of the provisions of NRS 598.0903 to 598.0999, inclusive ~~[.]~~ *, and section 2 of this act.*

2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to the provisions of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* if the court finds that a person has willfully engaged in a deceptive trade practice, the Commissioner, the Director, the district attorney of any county in this State or the Attorney General bringing the action may recover a civil penalty not to exceed $5,000 for each violation. The court in any such action may, in addition to any other relief or reimbursement, award reasonable attorney's fees and costs.

3. A natural person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice:

(a) For the first offense, is guilty of a misdemeanor.

(b) For the second offense, is guilty of a gross misdemeanor.

(c) For the third and all subsequent offenses, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

➥ The court may require the natural person, firm, or officer or managing agent of the corporation or association to pay to the aggrieved party damages on all profits derived from the knowing and willful engagement in a deceptive trade practice and treble damages on all damages suffered by reason of the deceptive trade practice.

4. Any offense which occurred within 10 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of subsection 3 when evidenced by a conviction, without regard to the sequence of the offenses and convictions.

5. If a person violates any provision of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act,* 598.100 to 598.2801, inclusive, 598.305 to 598.395, inclusive, 598.405 to 598.525, inclusive, 598.741 to 598.787, inclusive, or 598.840 to 598.966, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Commissioner or the district attorney of any county may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➥ The court may grant or deny the relief sought or may order other appropriate relief.

6. If a person violates any provision of NRS 228.500 to 228.640, inclusive, fails to comply with a judgment or order of any court in this State concerning a violation of such a provision, or fails to comply with an assurance of discontinuance or other agreement concerning an alleged violation of such a provision, the Attorney General may bring an action in the name of the State of Nevada seeking:

(a) The suspension of the person's privilege to conduct business within this State; or

(b) If the defendant is a corporation, dissolution of the corporation.

➥ The court may grant or deny the relief sought or may order other appropriate relief.

Sec. 28. NRS 11.190 is hereby amended to read as follows:

11.190 Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

(a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

(d) An action against a person alleged to have committed a deceptive trade practice in violation of NRS 598.0903 to 598.0999, inclusive, *and section 2 of this act*, but the cause of action shall be deemed to accrue when the aggrieved party discovers, or by the exercise of due diligence should have discovered, the facts constituting the deceptive trade practice.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which

has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without the owner's fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable person upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230 and 166.170, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.750 for damages sustained by a financial institution or other lender because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution or other lender of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his or her official capacity and in virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

(f) An action to recover damages under NRS 41.740.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his or her official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his or her official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 29. NRS 41.600 is hereby amended to read as follows:

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, "consumer fraud" means:

(a) An unlawful act as defined in NRS 119.330;

(b) An unlawful act as defined in NRS 205.2747;

(c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;

(d) An act prohibited by NRS 482.351; or

(e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive ~~[.]~~ *, and section 2 of this act.*

3. If the claimant is the prevailing party, the court shall award the claimant:

(a) Any damages that the claimant has sustained;

(b) Any equitable relief that the court deems appropriate; and

(c) The claimant's costs in the action and reasonable attorney's fees.

4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1051 to Senate Bill No. 235 is a result of additional negotiations with various parties on this measure and is conforming to the other changes that have been made in this bill.

Amendment adopted.

Bill read third time.

Remarks by Senators Woodhouse and Settelmeyer.

SENATOR WOODHOUSE:

Senate Bill No. 235 revises existing deceptive trade laws to include resellers of tickets to an athletic contest or entertainment event. The bill defines a reseller of tickets and includes the amount to be paid for the ticket, refund information and the place where the resale of a ticket may occur. Additionally, the bill provides that a reseller shall not advertise the sale of a ticket for which the date of an athletic contest or entertainment event has not been announced; sell more than one copy of a ticket; offer counterfeit tickets; employ another person to wait in line to purchase tickets; use a robot to circumvent any portion of the process for purchasing a ticket on an Internet website, or disguise the identity of a ticket purchaser in order to purchase an amount of tickets exceeding the maximum allowable amount of tickets authorized.

Senate Bill No. 235 requires that a person who willfully and knowingly violates the provisions of the bill would be guilty of a gross misdemeanor if the value of the tickets sold is less than $1,000 or a category D felony if the value of the tickets sold is $1,000 or more.

Lastly, the bill requires the Office of the Attorney General to establish a toll-free hotline and an Internet website for the filing of a complaint related to a suspected violation. Many people worked together to come up with this bill to address the fraudulent selling of tickets in Nevada. I urge your support of this bill.

SENATOR SETTELMEYER:

I applaud the work that has been done on Senate Bill No. 235 and am hoping the other House can address my main concern which is that of having a felony for ticket sales. Someone, for example, could make fake a few tickets, sell them and have that used against them in a child-custody case under this legislation. This seems like a high bar. I could see this if it

happened on several occasions, but with the current language, if a person does this once, it becomes felonious ticket sales. It needs to be a much higher crime to be considered a felony.

Roll call on Senate Bill No. 235:
YEAS—18.
NAYS—Gustavson, Hardy, Settelmeyer—3.

Senate Bill No. 235 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Farley moved that Senate Bill No. 315 be taken from the General File and placed on the General file for the next legislative day.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 317.

Bill read third time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1002.

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR ~~[27-936)]~~ 28-936)

AN ACT relating to ~~[procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada-based businesses for state purchasing;]~~ public works; revising provisions relating to preferences in bidding for contracts for certain public works projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~[Existing law grants a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a local business owned and operated by a veteran with a service-connected disability. (NRS 333.3361-333.3369) Sections 2-8 of this bill create a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a Nevada-based business. To qualify for this preference, section 3 requires such a business to certify that: (1) at least 50 percent of all workers employed for the state purchasing contract will hold a valid Nevada driver's license or identification card; (2) all vehicles used primarily for the state purchasing contract will be either registered in this State or partially apportioned to this State; and (3) certain records will be maintained and made available for inspection within this State. Section 5 establishes that a bid which qualifies for the preference will be deemed to cost 5 percent less than the actual cost of the bid and a proposal which qualifies for the preference will be deemed to have a score 5 percent higher than the actual score of the proposal. Section 6 imposes certain penalties and restrictions upon a business that makes a material misrepresentation or commits a fraudulent act in applying for a preference or fails to comply with the requirements for a preference.]~~

Existing law requires that a contractor ~~[, applicant to serve as a construction manager at risk]~~ or design-build team that wishes to receive a preference in bidding for a contract for a public work submit an affidavit to the public body sponsoring or financing the public work certifying that: (1) at least 50 percent of all workers employed on the public work will hold a valid Nevada driver's license or identification card; (2) all vehicles used primarily for the public work will be either registered in this State or partially apportioned to this State; (3) at least 50 percent of all design professionals working on the public work will hold a valid Nevada driver's license or identification card; and (4) certain records will be maintained and made available for inspection within this State. (NRS 338.0117) Section 11 of this bill requires a contractor ~~[, applicant]~~ or design-build team which is awarded a contract for a public work as a result of such a preference to submit an affidavit confirming compliance with these requirements ~~[quarterly and]~~ upon substantial completion of the public work. Sections ~~[12-16]~~ 12-17of this bill ~~[revise]~~ increase the bidding preference that a contractor ~~[, applicant to serve as a construction manager at risk]~~ or design-build team who meets these requirements receives commencing July 1, 2018, for certain public works contracts from 5 percent to ~~[10]~~ 7 percent ~~[.]~~ until July 1, 2021.

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

Section 1. ~~[Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.]~~ (Deleted by amendment.)

Sec. 2. ~~*[As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.]*~~ (Deleted by amendment.)

Sec. 3. ~~*[*"Nevada-based business" means a business which certifies that, for the duration of a state purchasing contract, collectively, and not on any specific day:*~~

~~*1. At least 50 percent of the workers employed by the business for the state purchasing contract will hold a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada;*~~

~~*2. All vehicles used primarily for the state purchasing contract will be:*~~

~~*(a) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or*~~

~~*(b) Registered in this State; and*~~

~~*3. The business will maintain and make available for inspection within this State its records concerning payroll relating to the state purchasing contract.]*~~ (Deleted by amendment.)

Sec. 4. ~~*[*"State purchasing contract" means a contract awarded pursuant to the provisions of this chapter.]*~~ (Deleted by amendment.)

Sec. 5. ~~[1. For the purposes of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if a business qualifies as a Nevada-based business and submits a bid or proposal and is a responsive and responsible bidder, the cost of the bid shall be deemed to be 5 percent lower than the cost of the bid actually submitted, and the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.~~

~~2. The preference described in subsection 1 may not be combined with any other preference.]~~ (Deleted by amendment.)

Sec. 6. ~~[1. In addition to any other remedy or penalty provided by law, if the Purchasing Division determines that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 5 of this act or has failed to comply with the requirements of that section, the business:~~

~~(a) Shall pay to the Purchasing Division, if awarded a state purchasing contract, a penalty in the amount of 1 percent of the cost of the state purchasing contract;~~

~~(b) Shall not bid on a state purchasing contract or a contract awarded by any local government for 1 year after the date upon which the Purchasing Division makes such a determination; and~~

~~(c) Shall not apply for or receive a preference described in section 5 of this act for 5 years after the date upon which the Purchasing Division makes such a determination.~~

~~2. If the Purchasing Division determines, as described in subsection 1, that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 5 of this act or has failed to comply with the requirements of that section, the business may apply to the Administrator to review the decision pursuant to chapter 233B of NRS.]~~ (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. ~~[The Purchasing Division may adopt such regulations as it determines to be necessary or advisable to carry out the provisions of sections 2 to 8, inclusive, of this act. The regulations may include, without limitation, provisions setting forth:~~

~~1. The method by which a business may apply to receive a preference described in section 5 of this act;~~

~~2. The documentation or other proof that a business must submit to demonstrate that it qualifies for a preference described in section 5 of this act; and~~

~~3. Such other matters as the Purchasing Division deems relevant.]~~ (Deleted by amendment.)

Sec. 9. ~~[NRS 333.310 is hereby amended to read as follows:~~

~~333.310 1. An advertisement must contain a general description of the classes of commodities or services for which a bid or proposal is wanted and must state:~~

~~(a) The name and location of the department, agency, local government, district or institution for which the purchase is to be made.~~

~~(b) Where and how specifications and quotation forms may be obtained.~~

~~(c) If the advertisement is for bids, whether the Administrator is authorized by the using agency to be supplied to consider a bid for an article that is an alternative to the article listed in the original request for bids if:~~

~~(1) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;~~

~~(2) The purchase of the alternative article results in a lower price; and~~

~~(3) The Administrator deems the purchase of the alternative article to be in the best interests of the State of Nevada.~~

~~(d) Notice of the [preference] *preferences* set forth in NRS 333.3366 [.] *and section 5 of this act.*~~

~~(e) The date and time not later than which responses must be received by the Purchasing Division.~~

~~(f) The date and time when responses will be opened.~~

~~3. The Administrator or a designated agent of the Administrator shall approve the copy for the advertisement.~~

~~2. Each advertisement must be published:~~

~~(a) In at least one newspaper of general circulation in the State. The selection of the newspaper to carry the advertisement must be made in the manner provided by this chapter for other purchases, on the basis of the lowest price to be secured in relation to the paid circulation; and~~

~~(b) On the Internet website of the Purchasing Division.]~~ (Deleted by amendment.)

Sec. 9.5. ~~[NRS 333.3366 is hereby amended to read as follows:~~

~~333.3366 1. For the purpose of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if:~~

~~(a) A local business owned and operated by a veteran with a service-connected disability submits a bid or proposal for a contract for which the estimated cost is more than $50,000 but not more than $250,000 and is a responsive and responsible bidder, the *cost of the* bid [or proposal] shall be deemed to be 5 percent lower than the *cost of the* bid [or proposal] actually submitted [.] *, and the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.*~~

~~(b) A local business owned and operated by a veteran with a service-connected disability which is determined to be 50 percent or more by the United States Department of Veterans Affairs submits a bid or proposal for a contract for which the estimated cost is more than $250,000 but less than $500,000 and is a responsive and responsible bidder, the *cost of the* bid [or proposal] shall be deemed to be 5 percent lower than the *cost of the* bid [or proposal] actually submitted [.] *, and the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.*~~

~~2. The preferences described in subsection 1 may not be combined with any other preference.~~] (Deleted by amendment.)

Sec. 10. ~~[NRS 333.340 is hereby amended to read as follows:~~

~~333.340 1. Every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the Administrator:~~

~~(a) Shall consider, if applicable:~~

~~(1) The granting of the preference described in NRS 333.3366.~~

~~*(2) The granting of the preference described in section 5 of this act.*~~

~~*(3)* The required standards adopted pursuant to NRS 333.4611.~~

~~(b) May consider:~~

~~(1) The location of the using agency to be supplied.~~

~~(2) The qualities of the articles to be supplied.~~

~~(3) The total cost of ownership of the articles to be supplied.~~

~~(4) Except as otherwise provided in subparagraph (5), the conformity of the articles to be supplied with the specifications.~~

~~(5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:~~

~~(I) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;~~

~~(II) The purchase of the alternative article results in a lower price; and~~

~~(III) The Administrator deems the purchase of the alternative article to be in the best interests of the State of Nevada.~~

~~(6) The purposes for which the articles to be supplied are required.~~

~~(7) The dates of delivery of the articles to be supplied.~~

~~2. If a contract or an order is not awarded to the lowest bidder, the Administrator shall provide the lowest bidder with a written statement which sets forth the specific reasons that the contract or order was not awarded to him or her.~~

~~3. As used in this section, "total cost of ownership" includes, but is not limited to:~~

~~(a) The history of maintenance or repair of the articles;~~

~~(b) The cost of routine maintenance and repair of the articles;~~

~~(c) Any warranties provided in connection with the articles;~~

~~(d) The cost of replacement parts for the articles; and~~

~~(e) The value of the articles as used articles when given in trade on a subsequent purchase.~~] (Deleted by amendment.)

Sec. 11. NRS 338.0117 is hereby amended to read as follows:

338.0117 1. To qualify to receive a preference in bidding pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a contractor, an applicant or a design-build team, respectively, must submit to the public body sponsoring or financing a public

work a signed affidavit which certifies that, for the duration of the project, collectively, and not on any specific day:

(a) At least 50 percent of the workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will hold a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada;

(b) All vehicles used primarily for the public work will be:

(1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(2) Registered in this State;

(c) If applying to receive a preference in bidding pursuant to subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, at least 50 percent of the design professionals working on the public work, including, without limitation, employees of the design-build team and of any subcontractor or consultant engaged in the design of the public work, will have a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada; and

(d) The contractor, applicant or design-build team and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.

2. Any contract for a public work that is awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 as a result of the contractor, applicant or design-build team receiving a preference in bidding described in subsection 1 must:

(a) Include a provision in the contract that substantially incorporates the requirements of paragraphs (a) to (d), inclusive, of subsection 1; and

(b) Provide that a failure to comply with any requirement of paragraphs (a) to (d), inclusive, of subsection 1 entitles the public body to a penalty only as provided in subsections 5 and 6.

3. A person who submitted a bid on the public work or an entity who believes that a contractor, applicant or design-build team has obtained a preference in bidding as described in subsection 1 but has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 may file, before the substantial completion of the public work, a written objection with the public body for which the contractor, applicant or design-build team is performing the public work. A written objection authorized pursuant to this subsection must set forth proof or substantiating evidence to support the belief of the person or entity that the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1.

4. If a public body receives a written objection pursuant to subsection 3, the public body shall determine whether the objection is accompanied by the

proof or substantiating evidence required pursuant to that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection. If the public body determines that the objection is accompanied by the required proof or substantiating evidence or if the public body determines on its own initiative that proof or substantiating evidence of a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 exists, the public body shall determine whether the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and the public body or its authorized representative may proceed to award the contract accordingly or, if the contract has already been awarded, seek the remedy authorized in subsection 5. ~~[A]~~ *In addition to any other remedy or penalty provided by law, a* public body may recover, by civil action against the party responsible for a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1, a penalty as described in subsection 6 for a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1. If a public body recovers a penalty pursuant to this subsection, the public body shall report to the State Contractors' Board the date of the failure to comply, the name of each entity which failed to comply and the cost of the contract to which the entity that failed to comply was a party. The Board shall maintain this information for not less than 6 years. Upon request, the Board shall provide this information to any public body or its authorized representative.

6. If a contractor, applicant or design-build team submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded the contract as a result of that preference, the contract between the contractor, applicant or design-build team and the public body, each contract between the contractor, applicant or design-build team and a subcontractor and each contract between a subcontractor and a lower tier subcontractor must provide that:

(a) If a party to the contract causes the contractor, applicant or design-build team to fail to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to the public body for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

(b) The right to recover the amount determined pursuant to paragraph (a) by the public body pursuant to subsection 5 may be enforced by the public body directly against the party that caused the failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1; and

(c) No other party to the contract is liable to the public body for a penalty.

7. *A contractor, applicant or design-build team that submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded a contract as a result of that preference shall submit to the public body that awarded the contract* , *upon substantial completion of the public work, an affidavit from a certified public accountant*

setting forth that the contractor, applicant or design-build team has complied with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 [.

~~*(a) On each January 1, April 1, July 1 and October 1 while engaged on the public work, for the preceding calendar quarter; and*~~

~~*(b) Upon completion of the public work,]~~ *for the duration of the public work.*

8. A public body that awards a contract for a public work to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1 shall, on or before July 31 of each year, submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Commission. The report must include information on each contract for a public work awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1, including, without limitation, the name of the contractor, applicant or design-build team who was awarded the contract, the cost of the contract, a brief description of the public work and a description of the degree to which the contractor, applicant or design-build team and each subcontractor complied with the requirements of paragraphs (a) to (d), inclusive, of subsection 1.

~~[8.]~~ *9.* As used in this section:

(a) "Lower tier subcontractor" means a subcontractor who contracts with another subcontractor to provide labor, materials or services to the other subcontractor for a construction project.

(b) "Vehicle used primarily for the public work" does not include any vehicle that is present at the site of the public work only occasionally and for a purpose incidental to the public work including, without limitation, the delivery of materials. Notwithstanding the provisions of this paragraph, the term includes any vehicle which is:

(1) Owned or operated by the contractor or any subcontractor who is engaged on the public work; and

(2) Present at the site of the public work.

Sec. 12. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a responsive and responsible contractor who:

(1) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(2) At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works

issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(3) Within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than ~~[5 *10*]~~ 7 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➥ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes that were paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes that were paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~[, at the time for the renewal of his or her contractor's license pursuant to NRS 624.283,]~~ *annually* submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless the contractor reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) Submits false information to the Board regarding the required payment of taxes ~~[,]~~ *or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117,* the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information ~~[,]~~ *or the failure to submit the affidavit;* or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds $5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body not later than 3 business days after the opening of the bids by the public body or its authorized representative.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.

Sec. 12.5. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a responsive and responsible contractor who:

(1) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(2) At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(3) Within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than ~~[7]~~ 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➥ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who

is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes that were paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes that were paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall annually submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless the contractor reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) Submits false information to the Board regarding the required payment of taxes or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information or the failure to submit the affidavit; or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds $5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body not later than 3 business days after the opening of the bids by the public body or its authorized representative.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.

Sec. 13. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection 10 and NRS 338.143, 338.1442 and 338.1446, a local government or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a contractor who:

(1) Has been found to be a responsible and responsive contractor by the local government or its authorized representative;

(2) At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(3) Within 2 hours after the completion of the opening of the bids by the local government or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than ~~[5 *10]*~~ *7* percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➥ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~[, at the time for the renewal of his or her contractor's license pursuant to NRS 624.283,]~~ *annually* submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless the contractor reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) Submits false information to the Board regarding the required payment of taxes ~~[,]~~ *or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117,* the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information ~~[,]~~ *or the failure to submit the affidavit;* or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds $5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding

on public works may challenge the validity of the certificate by filing a written objection with the local government to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the local government not later than 3 business days after the opening of the bids by the local government or its authorized representative.

14. If a local government receives a written objection pursuant to subsection 13, the local government shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the local government determines that the objection is not accompanied by the required proof or substantiating evidence, the local government shall dismiss the objection and the local government or its authorized representative may proceed immediately to award the contract. If the local government determines that the objection is accompanied by the required proof or substantiating evidence, the local government shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the local government or its authorized representative may proceed to award the contract accordingly.

Sec. 13.5. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection 10 and NRS 338.143, 338.1442 and 338.1446, a local government or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a contractor who:

(1) Has been found to be a responsible and responsive contractor by the local government or its authorized representative;

(2) At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(3) Within 2 hours after the completion of the opening of the bids by the local government or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than ~~[7]~~ 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works

issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➥ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the

boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall annually submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless the contractor reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) Submits false information to the Board regarding the required payment of taxes or willfully and intentionally fails to submit an affidavit as required by subsection 7 of NRS 338.0117, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information or the failure to submit the affidavit; or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds $5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the local government to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the local government not later than 3 business days after the opening of the bids by the local government or its authorized representative.

14. If a local government receives a written objection pursuant to subsection 13, the local government shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the local government determines that the objection is not accompanied by the required proof or substantiating evidence, the local government shall dismiss the objection and the local government or its authorized representative may proceed immediately to award the contract. If the local government determines that the objection is

accompanied by the required proof or substantiating evidence, the local government shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the local government or its authorized representative may proceed to award the contract accordingly.

Sec. 14. ~~[NRS 338.1693 is hereby amended to read as follows:~~

~~338.1693 1. The public body or its authorized representative shall appoint a panel consisting of at least three but not more than seven members, a majority of whom must have experience in the construction industry, to rank the proposals submitted to the public body by evaluating the proposals as required pursuant to subsections 2 and 3.~~

~~2. The panel appointed pursuant to subsection 1 shall rank the proposals by:~~

~~(a) Verifying that each applicant satisfies the requirements of NRS 338.1691; and~~

~~(b) Evaluating and assigning a score to each of the proposals received by the public body based on the factors and relative weight assigned to each factor that the public body specified in the request for proposals.~~

~~3. When ranking the proposals, the panel appointed pursuant to subsection 1 shall assign a relative weight of [5]~~ *10* ~~percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.~~

~~4. After the panel appointed pursuant to subsection 1 ranks the proposals, the public body or its authorized representative shall, except as otherwise provided in subsection 8, select at least the two but not more than the five applicants whose proposals received the highest scores for interviews.~~

~~5. The public body or its authorized representative may appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. If a separate panel is appointed pursuant to this subsection, the panel must consist of at least three but not more than seven members, a majority of whom must have experience in the construction industry.~~

~~6. During the interview process, the panel conducting the interview may require the applicants to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, but in no event shall the proposed amount of compensation exceed 20 percent of the scoring for the selection of the most qualified applicant. All presentations made at any interview conducted pursuant to this subsection or subsection 5 may be made only by key personnel employed by the applicant, as determined by the applicant, and the employees of the~~

~~applicant who will be directly responsible for managing the preconstruction and construction of the public work.~~

~~7. After conducting such interviews, the panel that conducted the interviews shall rank the applicants by using a ranking process that is separate from the process used to rank the applicants pursuant to subsection 2 and is based only on information submitted during the interview process. The score to be given for the proposed amount of compensation, if any, must be calculated by dividing the lowest of all the proposed amounts of compensation by the applicant's proposed amount of compensation multiplied by the total possible points available to each applicant. When ranking the applicants, the panel that conducted the interviews shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.~~

~~8. If the public body did not receive at least two proposals, the public body may not contract with a construction manager at risk.~~

~~9. Upon receipt of the final rankings of the applicants from the panel that conducted the interviews, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to the provisions of this section for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation submitted by the applicant must be the amount offered for the contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.~~

~~10. The public body or its authorized representative shall:~~

~~(a) Make available to all applicants and the public the following information, as determined by the panel appointed pursuant to subsection 1 and the panel that conducted the interviews, as applicable:~~

~~(1) The final rankings of the applicants;~~

~~(2) The score assigned to each proposal received by the public body; and~~

~~(3) For each proposal received by the public body, the score assigned to each factor that the public body specified in the request for proposals; and~~

~~(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.~~] (Deleted by amendment.)

Sec. 15. NRS 338.1727 is hereby amended to read as follows:

338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals must:

(a) Set forth the factors that the public body will use to select a design-build team to design and construct the public work, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the public body.

2. If one or more of the finalists selected pursuant to NRS 338.1725 is disqualified or withdraws, the public body may select a design-build team from the remaining finalist or finalists.

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of [~~5 10~~] 7 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team if the contractors submit signed affidavits that meet the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team, and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to a preference in bidding on public works, or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

4. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly and be responsive to the criteria that the public body will use to select a design-build team to design and construct the public work described in subsection 1. A design-build team that submits a final proposal which is not responsive shall not be awarded the contract and shall not be eligible for the partial reimbursement of costs provided for in subsection 7.

5. A final proposal is exempt from the requirements of NRS 338.141.

6. After receiving and evaluating the final proposals for the public work, the public body or its authorized representative shall enter into negotiations with the most qualified applicant, as determined pursuant to the criteria set forth pursuant to subsections 1 and 3, and award the design-build contract to

the design-build team whose proposal is selected. If the public body or its authorized representative is unable to negotiate with the most qualified applicant a contract that is determined by the parties to be fair and reasonable, the public body may terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

7. If a public body selects a final proposal and awards a design-build contract pursuant to subsection 6, the public body shall:

(a) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (j) of subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(b) Make available to the public the results of the evaluation of final proposals that was conducted and the ranking of the design-build teams who submitted final proposals. The public body shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

8. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive.

(b) Must specify:

(1) An amount that is the maximum amount that the public body will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

(c) May set forth the terms by which the design-build team agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design-build team.

(d) Except as otherwise provided in paragraph (e), must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers and agents of the public body.

(e) May require the design-build team to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design-build team or the employees or agents of the design-build team in the performance of the contract.

(f) Must require that the design-build team to whom a contract is awarded assume overall responsibility for ensuring that the design and construction of the public work is completed in a satisfactory manner.

9. Upon award of the design-build contract, the public body shall make available to the public copies of all preliminary and final proposals received.

Sec. 16. NRS 408.3886 is hereby amended to read as follows:

408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the Department shall provide to each finalist a request for final proposals for the project. The request for final proposals must:

(a) Set forth the factors that the Department will use to select a design-build team to design and construct the project, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the Department.

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of ~~[5 *10]*~~ *7* percent to the design-build team's possession of both a certificate of eligibility to receive a preference in bidding on public works by the prime contractor on the design-build team, if the design-build team submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team, and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the Department will use to select a design-build team to design and construct the project described in subsection 1 and comply with the provisions of NRS 338.141.

4. After receiving the final proposals for the project, the Department shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to subsections 1 and 2;

(b) Reject all the final proposals; or

(c) Request best and final offers from all finalists in accordance with subsection 5.

5. If the Department determines that no final proposal received is cost-effective or responsive and the Department further determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project. In conjunction with preparing a request for best and final offers pursuant to this subsection, the Department may alter the scope of the project, revise the estimates of the costs of designing and constructing the project, and revise the selection factors and relative weights described in paragraph (a) of subsection 1. A request for best and final offers prepared pursuant to this subsection must set forth the date by which best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:

(a) Select the most cost-effective and responsive best and final offer, using the criteria set forth in the request for best and final offers; or

(b) Reject all the best and final offers.

6. If the Department selects a final proposal pursuant to paragraph (a) of subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection 5, the Department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(c) Make available to the public a summary setting forth the factors used by the Department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals and, if applicable, best and final offers. The Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

7. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive; and

(b) Must specify:

(1) An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding

any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the Department will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

8. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the workforce of the prime contractor on the design-build team to construct at least 15 percent of the project.

Sec. 16.5. 1. The amendatory provisions of sections 11, 12, 13, 15 and 16 of this act do not apply to a public work for which bids were advertised or solicited or which was awarded before July 1, 2018.

2. As used in this section, "public work" has the meaning ascribed to it in NRS 338.010.

Sec. 17. 1. This section and sections 1 to 12, inclusive, 13 and 14 to 16.5, inclusive, of this act ~~[becomes]~~ become effective:

~~[1.]~~ (a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

~~[2.]~~ (b) On July 1, 2018, for all other purposes.

2. Sections 15 and 16 of this act expire by limitation on June 30, 2021.

3. Sections 12.5 and 13.5 of this act become effective on July 1, 2021.

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

Motion carried.

Senate in recess at 7:54 p.m.

SENATE IN SESSION

At 7:58 p.m.

President Hutchison presiding

Quorum present

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1002 makes several changes to Senate Bill No. 317. For public-works projects of $250,000 or more, it increases the existing bidding preference from 5-percent to 7-percent for the period of July 1, 2018, through June 30, 2021. Effective July 1, 2021, the bidding preference would revert back to 5 percent. It requires a contractor, applicant, or design-build team that received a bidding preference and which was awarded a contract for a public-work to submit, upon substantial completion of the public-work, an affidavit from a certified public accountant confirming the entity has complied for the duration of the public-work with the existing requirements that at least 50 percent of all workers employed for

the State purchasing contract will hold a valid Nevada driver's license or identification card; all vehicles used primarily for the State purchasing contract will be either registered in this State or partially apportioned to this State, and certain records will be maintained and made available for inspection within this State.

It also requires as a condition of maintaining its eligibility to receive a bidding preference a contractor shall annually submit to the Nevada State Contractors' Board an affidavit from a certified public accountant indicating the contractor has paid all applicable sales, use and governmental services tax. If a contractor willfully and intentionally fails to submit the required annual affidavit, then, they are ineligible for bidding preference for a five-year period.

Amendment adopted.

The following amendment was proposed by Senator Cannizzaro:

Amendment No. 1005.

SUMMARY—Revises provisions relating to preferences in bidding for certain contracts for businesses based in this State. (BDR 27-936)

AN ACT relating to procurement; establishing provisions relating to preferences in bidding for certain contracts with Nevada-based businesses for state purchasing; revising provisions relating to preferences in bidding for contracts for certain public works projects; revising provisions relating to construction projects of the Nevada System of Higher Education; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law grants a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a local business owned and operated by a veteran with a service-connected disability. (NRS 333.3361-333.3369) Sections 2-8 of this bill create a preference of 5 percent for a bid or proposal for a state purchasing contract which is submitted by a Nevada-based business. To qualify for this preference, section 3 requires such a business to certify that: (1) at least 50 percent of all workers employed for the state purchasing contract will hold a valid Nevada driver's license or identification card; (2) all vehicles used primarily for the state purchasing contract will be either registered in this State or partially apportioned to this State; and (3) certain records will be maintained and made available for inspection within this State. Section 5 establishes that a bid which qualifies for the preference will be deemed to cost 5 percent less than the actual cost of the bid and a proposal which qualifies for the preference will be deemed to have a score 5 percent higher than the actual score of the proposal. Section 6 imposes certain penalties and restrictions upon a business that makes a material misrepresentation or commits a fraudulent act in applying for a preference or fails to comply with the requirements for a preference.

Existing law requires that a contractor, applicant to serve as a construction manager at risk or design-build team that wishes to receive a preference in bidding for a contract for a public work submit an affidavit to the public body sponsoring or financing the public work certifying that: (1) at least 50 percent of all workers employed on the public work will hold a valid Nevada driver's license or identification card; (2) all vehicles used primarily for the public

work will be either registered in this State or partially apportioned to this State; (3) at least 50 percent of all design professionals working on the public work will hold a valid Nevada driver's license or identification card; and (4) certain records will be maintained and made available for inspection within this State. (NRS 338.0117) Section 11 of this bill requires a contractor, applicant or design-build team which is awarded a contract for a public work as a result of such a preference to submit an affidavit confirming compliance with these requirements quarterly and upon completion of the public work. Sections 12-16 of this bill revise the bidding preference that a contractor, applicant to serve as a construction manager at risk or design-build team who meets these requirements receives for certain public works contracts from 5 percent to 10 percent.

Existing law pertaining to public works applies to any project which is financed in whole or in part from public money for the new construction, repair or reconstruction of publicly owned works and properties. (NRS 338.010) Section 10.5 of this bill provides that a building for the Nevada System of Higher Education is a public work only if 25 percent or more of the costs of the building as a whole are paid from money appropriated by the State or from federal money.

Section 10.3 of this bill requires the Nevada System of Higher Education to disclose to the State Public Works Division the name of each contractor or design professional selected to provide design and construction work on a building financed using less than 25 percent public money within 30 days after entering into a contract for such work.

Existing law restricts a public body, including the State, its local governments, school districts and any public agency thereof which sponsors or finances a public work, from entering into a contract for a public work in which any construction materials or goods to be used on the public work are purchased or supplied by the public body, a contractor who is a constituent part of the public body or a contractor who is not a constituent part of the public body acting on behalf of the public body. (NRS 338.1423) Section 12.5 of this bill provides that these restrictions also apply to any contract for construction work of the Nevada System of Higher Education, even if the construction work does not qualify as a public work.

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

Section 1. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Nevada-based business" means a business which certifies that, for the duration of a state purchasing contract, collectively, and not on any specific day:*

1. At least 50 percent of the workers employed by the business for the state purchasing contract will hold a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada;

2. All vehicles used primarily for the state purchasing contract will be:

(a) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(b) Registered in this State; and

3. The business will maintain and make available for inspection within this State its records concerning payroll relating to the state purchasing contract.

Sec. 4. *"State purchasing contract" means a contract awarded pursuant to the provisions of this chapter.*

Sec. 5. *1. For the purposes of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if a business qualifies as a Nevada-based business and submits a bid or proposal and is a responsive and responsible bidder, the cost of the bid shall be deemed to be 5 percent lower than the cost of the bid actually submitted, and the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.*

2. The preference described in subsection 1 may not be combined with any other preference.

Sec. 6. *1. In addition to any other remedy or penalty provided by law, if the Purchasing Division determines that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 5 of this act or has failed to comply with the requirements of that section, the business:*

(a) Shall pay to the Purchasing Division, if awarded a state purchasing contract, a penalty in the amount of 1 percent of the cost of the state purchasing contract;

(b) Shall not bid on a state purchasing contract or a contract awarded by any local government for 1 year after the date upon which the Purchasing Division makes such a determination; and

(c) Shall not apply for or receive a preference described in section 5 of this act for 5 years after the date upon which the Purchasing Division makes such a determination.

2. If the Purchasing Division determines, as described in subsection 1, that a business has made a material misrepresentation or otherwise committed a fraudulent act in applying for a preference described in section 5 of this act or has failed to comply with the requirements of that section, the business may apply to the Administrator to review the decision pursuant to chapter 233B of NRS.

Sec. 7. (Deleted by amendment.)

Sec. 8. *The Purchasing Division may adopt such regulations as it determines to be necessary or advisable to carry out the provisions of*

sections 2 to 8, inclusive, of this act. The regulations may include, without limitation, provisions setting forth:

1. The method by which a business may apply to receive a preference described in section 5 of this act;

2. The documentation or other proof that a business must submit to demonstrate that it qualifies for a preference described in section 5 of this act; and

3. Such other matters as the Purchasing Division deems relevant.

Sec. 9. NRS 333.310 is hereby amended to read as follows:

333.310 1. An advertisement must contain a general description of the classes of commodities or services for which a bid or proposal is wanted and must state:

(a) The name and location of the department, agency, local government, district or institution for which the purchase is to be made.

(b) Where and how specifications and quotation forms may be obtained.

(c) If the advertisement is for bids, whether the Administrator is authorized by the using agency to be supplied to consider a bid for an article that is an alternative to the article listed in the original request for bids if:

(1) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(2) The purchase of the alternative article results in a lower price; and

(3) The Administrator deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(d) Notice of the ~~[preference]~~ *preferences* set forth in NRS 333.3366 ~~[.]~~ *and section 5 of this act.*

(e) The date and time not later than which responses must be received by the Purchasing Division.

(f) The date and time when responses will be opened.

➥ The Administrator or a designated agent of the Administrator shall approve the copy for the advertisement.

2. Each advertisement must be published:

(a) In at least one newspaper of general circulation in the State. The selection of the newspaper to carry the advertisement must be made in the manner provided by this chapter for other purchases, on the basis of the lowest price to be secured in relation to the paid circulation; and

(b) On the Internet website of the Purchasing Division.

Sec. 9.5. NRS 333.3366 is hereby amended to read as follows:

333.3366 1. For the purpose of awarding a formal contract solicited pursuant to subsection 2 of NRS 333.300, if:

(a) A local business owned and operated by a veteran with a service-connected disability submits a bid or proposal for a contract for which the estimated cost is more than $50,000 but not more than $250,000 and is a responsive and responsible bidder, the *cost of the* bid ~~[or proposal]~~ shall be deemed to be 5 percent lower than the *cost of the* bid ~~[or proposal]~~ actually submitted ~~[.]~~ *, and the score assigned to the proposal pursuant to*

NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.

(b) A local business owned and operated by a veteran with a the United States Department of Veterans Affairs submits a bid or proposal for a contract for which the estimated cost is more than $250,000 but less than $500,000 and is a responsive and responsible bidder, the *cost of the* bid ~~[or proposal]~~ shall be deemed to be 5 percent lower than the *cost of the* bid ~~[or proposal]~~ actually submitted ~~[.]~~ *, and the score assigned to the proposal pursuant to NRS 333.335 shall be deemed to be 5 percent higher than the score actually awarded.*

2. The preferences described in subsection 1 may not be combined with any other preference.

Sec. 10. NRS 333.340 is hereby amended to read as follows:

333.340 1. Every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the Administrator:

(a) Shall consider, if applicable:

(1) The granting of the preference described in NRS 333.3366.

(2) *The granting of the preference described in section 5 of this act.*

(3) The required standards adopted pursuant to NRS 333.4611.

(b) May consider:

(1) The location of the using agency to be supplied.

(2) The qualities of the articles to be supplied.

(3) The total cost of ownership of the articles to be supplied.

(4) Except as otherwise provided in subparagraph (5), the conformity of the articles to be supplied with the specifications.

(5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:

(I) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(II) The purchase of the alternative article results in a lower price; and

(III) The Administrator deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(6) The purposes for which the articles to be supplied are required.

(7) The dates of delivery of the articles to be supplied.

2. If a contract or an order is not awarded to the lowest bidder, the Administrator shall provide the lowest bidder with a written statement which sets forth the specific reasons that the contract or order was not awarded to him or her.

3. As used in this section, "total cost of ownership" includes, but is not limited to:

(a) The history of maintenance or repair of the articles;

(b) The cost of routine maintenance and repair of the articles;

(c) Any warranties provided in connection with the articles;

(d) The cost of replacement parts for the articles; and

(e) The value of the articles as used articles when given in trade on a subsequent purchase.

Sec. 10.3. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

For any building of the Nevada System of Higher Education for which less than 25 percent of the costs of the building as a whole are paid from money appropriated by this State or from federal money, the Nevada System of Higher Education shall disclose to the State Public Works Division the name of each contractor and design professional selected to perform the design and construction work on the building within 30 days after entering into a contract for such work.

Sec. 10.5. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.

2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

3. "Contractor" means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.

5. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

6. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;

(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

8. "Division" means the State Public Works Division of the Department of Administration.

9. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

10. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

11. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

12. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a person who has been designated by the governing body of a local government to serve as its authorized representative.

13. "Offense" means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;

(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

(d) Comply with subsection 5 or 6 of NRS 338.070.

14. "Prime contractor" means a contractor who:

(a) Contracts to construct an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his or her own workforce to perform all or a part of the public work; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

➥ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

15. "Public body" means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

16. "Public work" means any project for the new construction, repair or reconstruction of *:*

(a) Except as otherwise provided in paragraph (b), a project financed in whole or in part from public money for:

~~[(a)]~~ *(1)* Public buildings;

~~[(b)]~~ *(2)* Jails and prisons;

~~[(c)]~~ *(3)* Public roads;

~~[(d)]~~ *(4)* Public highways;

~~[(e)]~~ *(5)* Public streets and alleys;

~~[(f)]~~ *(6)* Public utilities;

~~[(g)]~~ *(7)* Publicly owned water mains and sewers;

~~[(h)]~~ *(8)* Public parks and playgrounds;

~~[(i)]~~ *(9)* Public convention facilities which are financed at least in part with public money; and

~~[(j)]~~ *(10)* All other publicly owned works and property.

(b) A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.

17. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

18. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,

➥ that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

19. "Subcontract" means a written contract entered into between:

(a) A contractor and a subcontractor or supplier; or

(b) A subcontractor and another subcontractor or supplier,

➥ for the provision of labor, materials, equipment or supplies for a construction project.

20. "Subcontractor" means a person who:

(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant to chapter 624 of NRS; and

(b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

21. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

22. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.

23. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

Sec. 10.7. NRS 338.0115 is hereby amended to read as follows:

338.0115 1. Except as otherwise provided in subsection 2, the provisions of this chapter and chapters 332 and 339 of NRS do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension and any related appurtenances:

(a) Which qualify as a public work pursuant to NRS 338.010; and

(b) For which the developer will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the provisions of NRS 338.0117, 338.013 to 338.090, inclusive, and 338.1373 to 338.148, inclusive, *and section 10.3 of this act* apply to the contract.

Sec. 11. NRS 338.0117 is hereby amended to read as follows:

338.0117 1. To qualify to receive a preference in bidding pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, subsection 3 of NRS 338.1693, subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a contractor, an applicant or a design-build team, respectively, must submit to the public body sponsoring or financing a public work a signed affidavit which certifies that, for the duration of the project, collectively, and not on any specific day:

(a) At least 50 percent of the workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will hold a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada;

(b) All vehicles used primarily for the public work will be:

(1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(2) Registered in this State;

(c) If applying to receive a preference in bidding pursuant to subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, at least 50 percent of the design professionals working on the public work, including, without limitation, employees of the design-build team and of any subcontractor or consultant engaged in the design of the public work, will have a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada; and

(d) The contractor, applicant or design-build team and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.

2. Any contract for a public work that is awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 as a result of the contractor, applicant or design-build team receiving a preference in bidding described in subsection 1 must:

(a) Include a provision in the contract that substantially incorporates the requirements of paragraphs (a) to (d), inclusive, of subsection 1; and

(b) Provide that a failure to comply with any requirement of paragraphs (a) to (d), inclusive, of subsection 1 entitles the public body to a penalty only as provided in subsections 5 and 6.

3. A person who submitted a bid on the public work or an entity who believes that a contractor, applicant or design-build team has obtained a preference in bidding as described in subsection 1 but has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 may file, before the substantial completion of the public work, a written objection with the public body for which the contractor, applicant or design-build team is performing the public work. A written objection authorized pursuant to this subsection must set forth proof or substantiating evidence to support the belief of the person or entity that the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1.

4. If a public body receives a written objection pursuant to subsection 3, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to that subsection. If the public body determines that the objection is not accompanied by the required

proof or substantiating evidence, the public body shall dismiss the objection. If the public body determines that the objection is accompanied by the required proof or substantiating evidence or if the public body determines on its own initiative that proof or substantiating evidence of a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 exists, the public body shall determine whether the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1 and the public body or its authorized representative may proceed to award the contract accordingly or, if the contract has already been awarded, seek the remedy authorized in subsection 5.

5. ~~[A]~~ *In addition to any other remedy or penalty provided by law, a* public body may recover, by civil action against the party responsible for a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1, a penalty as described in subsection 6 for a failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1. If a public body recovers a penalty pursuant to this subsection, the public body shall report to the State Contractors' Board the date of the failure to comply, the name of each entity which failed to comply and the cost of the contract to which the entity that failed to comply was a party. The Board shall maintain this information for not less than 6 years. Upon request, the Board shall provide this information to any public body or its authorized representative.

6. If a contractor, applicant or design-build team submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded the contract as a result of that preference, the contract between the contractor, applicant or design-build team and the public body, each contract between the contractor, applicant or design-build team and a subcontractor and each contract between a subcontractor and a lower tier subcontractor must provide that:

(a) If a party to the contract causes the contractor, applicant or design-build team to fail to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1, the party is liable to the public body for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

(b) The right to recover the amount determined pursuant to paragraph (a) by the public body pursuant to subsection 5 may be enforced by the public body directly against the party that caused the failure to comply with a requirement of paragraphs (a) to (d), inclusive, of subsection 1; and

(c) No other party to the contract is liable to the public body for a penalty.

7. *A contractor, applicant or design-build team that submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded a contract as a result of that preference shall submit to the public body that awarded the contract an affidavit from a certified public accountant setting forth that the contractor, applicant or*

design-build team has complied with the requirements of paragraphs (a) to (d), inclusive, of subsection 1:

(a) On each January 1, April 1, July 1 and October 1 while engaged on the public work, for the preceding calendar quarter; and

(b) Upon completion of the public work, for the duration of the public work.

8. A public body that awards a contract for a public work to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1 shall, on or before July 31 of each year, submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Commission. The report must include information on each contract for a public work awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1, including, without limitation, the name of the contractor, applicant or design-build team who was awarded the contract, the cost of the contract, a brief description of the public work and a description of the degree to which the contractor, applicant or design-build team and each subcontractor complied with the requirements of paragraphs (a) to (d), inclusive, of subsection 1.

~~[8.]~~ *9.* As used in this section:

(a) "Lower tier subcontractor" means a subcontractor who contracts with another subcontractor to provide labor, materials or services to the other subcontractor for a construction project.

(b) "Vehicle used primarily for the public work" does not include any vehicle that is present at the site of the public work only occasionally and for a purpose incidental to the public work including, without limitation, the delivery of materials. Notwithstanding the provisions of this paragraph, the term includes any vehicle which is:

(1) Owned or operated by the contractor or any subcontractor who is engaged on the public work; and

(2) Present at the site of the public work.

Sec. 12. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a responsive and responsible contractor who:

(1) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(2) At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works

issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(3) Within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than ~~[5]~~ *10* percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➥ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes that were paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes that were paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~[, at the time for the renewal of his or her contractor's license pursuant to NRS 624.283,]~~ *annually* submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless the contractor reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) Submits false information to the Board regarding the required payment of taxes ~~[,]~~ *or fails to submit an affidavit as required by subsection 7 of NRS 338.0117,* the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information ~~[.]~~ *or the failure to submit the affidavit;* or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds $5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body not later than 3 business days after the opening of the bids by the public body or its authorized representative.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.

Sec. 12.5. NRS 338.1423 is hereby amended to read as follows:

338.1423 1. Except as otherwise provided in this section, a public body shall not enter into an express or implied contract for a public work which provides that any construction materials or goods to be used on the public work will be purchased or otherwise supplied by:

(a) The public body or a contractor who is a constituent part of the public body; or

(b) A contractor who is not a constituent part of the public body but is acting on behalf of the public body.

2. A public body may enter into an express or implied contract for a public work which provides that any construction materials or goods to be used in the public work will be purchased or supplied by the public body, a contractor who is a constituent part of the public body or a contractor who is not a constituent part of the public body but is acting on behalf of the public body if:

(a) The contract requires the payment of any state or local taxes that would otherwise have been due for the purchase and use of the construction materials or goods if the construction materials or goods had been purchased and used by a contractor who was not a constituent part of the public body and who was not otherwise exempt from the taxes pursuant to state or local law; and

(b) The public body sends an itemized list of the construction materials or goods to be purchased or otherwise provided by the public body or a contractor who is a constituent part of the public body, to the Department of Taxation. The itemized list must include the amount paid for each item.

3. An express or implied contract entered into in violation of subsection 1 is void.

4. A person who enters into an express or implied contract that violates the provisions of subsection 1 is guilty of a gross misdemeanor.

5. The right to enforce the provisions of this section vests exclusively in the Attorney General, who shall institute and prosecute the appropriate proceedings to enforce the provisions of this section.

6. If an express or implied contract for a public work is entered into in violation of subsection 1, the Attorney General shall forward to the Department of Taxation a list of construction materials or goods purchased in violation of this section by the public body or the contractor who is a constituent part of the public body. The Department shall calculate the applicable state and local taxes on the purchase and use of the construction materials or goods which would have been due but for the tax exemption of the public body or the contractor who is a constituent part of the public body, and shall deduct from the money otherwise payable from the proceeds of any tax distribution to the public body twice the amount of the applicable taxes.

7. The provisions of this section do not apply to an express or implied contract for a public work for which the construction materials or goods purchased by the public body are:

(a) Devices, equipment or hardware purchased in compliance with chapter 332 or 333 of NRS which are needed on a recurring basis and used to protect the health, safety or welfare of the public, including, without limitation, official traffic control devices; or

(b) Specialized components purchased in compliance with chapter 332 or 333 of NRS which are specific to a particular project and are not commonly used in public works projects.

➥ If a public body enters into such a contract, the public body must provide annually to the Department of Taxation an itemized list of the construction materials or goods purchased pursuant to the contract and the amount paid for each item.

8. If a public body is going to perform the public work itself in accordance with NRS 338.13864, the public body is not required to:

(a) Pay any state or local taxes for the purchase and use of construction materials or goods.

(b) Send to the Department of Taxation an itemized list of construction materials or goods to be purchased by the public body for the public work.

9. *The provisions of this section apply to any contract for construction work of the Nevada System of Higher Education even if the construction work does not qualify as a public work, as defined in NRS 338.010.*

10. As used in this section, "construction materials or goods" means all materials, equipment or supplies which are intended to be used in a public work.

Sec. 13. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection 10 and NRS 338.143, 338.1442 and 338.1446, a local government or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a contractor who:

(1) Has been found to be a responsible and responsive contractor by the local government or its authorized representative;

(2) At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(3) Within 2 hours after the completion of the opening of the bids by the local government or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and

(b) Not more than ~~[5]~~ *10* percent higher than the bid submitted by the lowest responsive and responsible bidder who:

(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

(2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

➥ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall ~~[, at the time for the renewal of his or her contractor's license pursuant to NRS 624.283,]~~ *annually* submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless the contractor reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, the contractor must submit a separate application for each license pursuant to which the contractor wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works:

(a) Submits false information to the Board regarding the required payment of taxes ~~[,]~~ *or fails to submit an affidavit as required by subsection 7 of NRS 338.0117,* the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information ~~[;]~~ *or the failure to submit the affidavit;* or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds $5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding

on public works may challenge the validity of the certificate by filing a written objection with the local government to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the local government not later than 3 business days after the opening of the bids by the local government or its authorized representative.

14. If a local government receives a written objection pursuant to subsection 13, the local government shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the local government determines that the objection is not accompanied by the required proof or substantiating evidence, the local government shall dismiss the objection and the local government or its authorized representative may proceed immediately to award the contract. If the local government determines that the objection is accompanied by the required proof or substantiating evidence, the local government shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the local government or its authorized representative may proceed to award the contract accordingly.

Sec. 14. NRS 338.1693 is hereby amended to read as follows:

338.1693 1. The public body or its authorized representative shall appoint a panel consisting of at least three but not more than seven members, a majority of whom must have experience in the construction industry, to rank the proposals submitted to the public body by evaluating the proposals as required pursuant to subsections 2 and 3.

2. The panel appointed pursuant to subsection 1 shall rank the proposals by:

(a) Verifying that each applicant satisfies the requirements of NRS 338.1691; and

(b) Evaluating and assigning a score to each of the proposals received by the public body based on the factors and relative weight assigned to each factor that the public body specified in the request for proposals.

3. When ranking the proposals, the panel appointed pursuant to subsection 1 shall assign a relative weight of ~~[5]~~ *10* percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

4. After the panel appointed pursuant to subsection 1 ranks the proposals, the public body or its authorized representative shall, except as otherwise provided in subsection 8, select at least the two but not more than the five applicants whose proposals received the highest scores for interviews.

5. The public body or its authorized representative may appoint a separate panel to interview and rank the applicants selected pursuant to subsection 4. If a separate panel is appointed pursuant to this subsection, the panel must consist of at least three but not more than seven members, a majority of whom must have experience in the construction industry.

6. During the interview process, the panel conducting the interview may require the applicants to submit a preliminary proposed amount of compensation for managing the preconstruction and construction of the public work, but in no event shall the proposed amount of compensation exceed 20 percent of the scoring for the selection of the most qualified applicant. All presentations made at any interview conducted pursuant to this subsection or subsection 5 may be made only by key personnel employed by the applicant, as determined by the applicant, and the employees of the applicant who will be directly responsible for managing the preconstruction and construction of the public work.

7. After conducting such interviews, the panel that conducted the interviews shall rank the applicants by using a ranking process that is separate from the process used to rank the applicants pursuant to subsection 2 and is based only on information submitted during the interview process. The score to be given for the proposed amount of compensation, if any, must be calculated by dividing the lowest of all the proposed amounts of compensation by the applicant's proposed amount of compensation multiplied by the total possible points available to each applicant. When ranking the applicants, the panel that conducted the interviews shall assign a relative weight of 5 percent to the applicant's possession of a certificate of eligibility to receive a preference in bidding on public works if the applicant submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that work.

8. If the public body did not receive at least two proposals, the public body may not contract with a construction manager at risk.

9. Upon receipt of the final rankings of the applicants from the panel that conducted the interviews, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to the provisions of this section for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation submitted by the applicant must be the amount offered for the

contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

10. The public body or its authorized representative shall:

(a) Make available to all applicants and the public the following information, as determined by the panel appointed pursuant to subsection 1 and the panel that conducted the interviews, as applicable:

(1) The final rankings of the applicants;

(2) The score assigned to each proposal received by the public body; and

(3) For each proposal received by the public body, the score assigned to each factor that the public body specified in the request for proposals; and

(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

Sec. 15. NRS 338.1727 is hereby amended to read as follows:

338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals must:

(a) Set forth the factors that the public body will use to select a design-build team to design and construct the public work, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the public body.

2. If one or more of the finalists selected pursuant to NRS 338.1725 is disqualified or withdraws, the public body may select a design-build team from the remaining finalist or finalists.

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of ~~[5]~~ *10* percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team if the contractors submit signed affidavits that meet the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team, and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public

work because of the provisions of this subsection relating to a preference in bidding on public works, or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

4. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly and be responsive to the criteria that the public body will use to select a design-build team to design and construct the public work described in subsection 1. A design-build team that submits a final proposal which is not responsive shall not be awarded the contract and shall not be eligible for the partial reimbursement of costs provided for in subsection 7.

5. A final proposal is exempt from the requirements of NRS 338.141.

6. After receiving and evaluating the final proposals for the public work, the public body or its authorized representative shall enter into negotiations with the most qualified applicant, as determined pursuant to the criteria set forth pursuant to subsections 1 and 3, and award the design-build contract to the design-build team whose proposal is selected. If the public body or its authorized representative is unable to negotiate with the most qualified applicant a contract that is determined by the parties to be fair and reasonable, the public body may terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

7. If a public body selects a final proposal and awards a design-build contract pursuant to subsection 6, the public body shall:

(a) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (j) of subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(b) Make available to the public the results of the evaluation of final proposals that was conducted and the ranking of the design-build teams who submitted final proposals. The public body shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

8. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive.

(b) Must specify:

(1) An amount that is the maximum amount that the public body will pay for the performance of all the work required by the contract, excluding

any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

(c) May set forth the terms by which the design-build team agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design-build team.

(d) Except as otherwise provided in paragraph (e), must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers and agents of the public body.

(e) May require the design-build team to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design-build team or the employees or agents of the design-build team in the performance of the contract.

(f) Must require that the design-build team to whom a contract is awarded assume overall responsibility for ensuring that the design and construction of the public work is completed in a satisfactory manner.

9. Upon award of the design-build contract, the public body shall make available to the public copies of all preliminary and final proposals received.

Sec. 16. NRS 408.3886 is hereby amended to read as follows:

408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the Department shall provide to each finalist a request for final proposals for the project. The request for final proposals must:

(a) Set forth the factors that the Department will use to select a design-build team to design and construct the project, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the Department.

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of ~~[5]~~ *10* percent to the design-build team's possession of both a certificate of eligibility to receive a preference in bidding on public works by the prime contractor on the design-build team, if the design-build team submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when

competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team, and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the Department will use to select a design-build team to design and construct the project described in subsection 1 and comply with the provisions of NRS 338.141.

4. After receiving the final proposals for the project, the Department shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to subsections 1 and 2;

(b) Reject all the final proposals; or

(c) Request best and final offers from all finalists in accordance with subsection 5.

5. If the Department determines that no final proposal received is cost-effective or responsive and the Department further determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project. In conjunction with preparing a request for best and final offers pursuant to this subsection, the Department may alter the scope of the project, revise the estimates of the costs of designing and constructing the project, and revise the selection factors and relative weights described in paragraph (a) of subsection 1. A request for best and final offers prepared pursuant to this subsection must set forth the date by which best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:

(a) Select the most cost-effective and responsive best and final offer, using the criteria set forth in the request for best and final offers; or

(b) Reject all the best and final offers.

6. If the Department selects a final proposal pursuant to paragraph (a) of subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection 5, the Department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of

reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(c) Make available to the public a summary setting forth the factors used by the Department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals and, if applicable, best and final offers. The Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

7. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive; and

(b) Must specify:

(1) An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the Department will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

8. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the workforce of the prime contractor on the design-build team to construct at least 15 percent of the project.

Sec. 17. This act becomes effective:

1. Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

2. On July 1, 2018, for all other purposes.

Senator Cannizzaro moved the adoption of the amendment.

Remarks by Senator Cannizzaro.

Amendment No. 1005 to Senate Bill No. 317 does a couple of things. It adds language back in that was taken out of chapter 338 from the NRS last Session in Assembly Bill 332, to address an unintended consequence which prevents major donors for higher education from engaging in capital improvements and their ability to select their design team. The amendment ensures that the sales tax on construction materials are still paid and that these jobs are still prevailing wage. There is also transparency in the selection of the contractor which the University or other entity in the Nevada System of Higher Education would have to disclose. This will also enable our higher education system to continue fund raising for capital improvement projects.

Amendment adopted.

Bill read third time.

Remarks by Senators Cannizzaro and Kieckhefer.

SENATOR CANNIZZARO:

Senate Bill No. 317 revises the State's existing law regarding bidding preferences which will allow for public-works projects of $250,000 or more to increase the existing bidding preference from 5-percent to 7 percent for the period of July 1, 2018, through June 30, 2021. This is to ensure that with the increase in the bidding preference, work would be awarded to Nevada-based businesses, and we are enacting policy that is good for our businesses. It is ensuring we are hiring Nevadans. The expiration will allow us to take a look at the 4 year period for the award of any contracts based upon a preference for Nevada-based businesses and make educated decisions thereafter about whether or not this is a policy we should continue or whether the sunset should take effect.

This bill will ensure that when we are awarding public dollars on public-works projects, those jobs are going to Nevada businesses who are employing Nevada workers. This is important for this Legislature to take into account. We have Nevadans who do not have their jobs back. This will allow for those Nevada-based businesses to have priority in bidding on public-works contracts.

The amendment also addresses an unintended consequence of cooling the abilities of the Nevada System of Higher Education (NSHE) to fund raise for capital improvement projects. The language corrects that unintended consequence but still provides for sales tax to be paid on the materials, transparency for selection of a design team and that the project be subject to prevailing wages, much like all other public-works contracts. The amendment is an important step in allowing NSHE to continue to grow and get private donors to help with capital-improvement projects. I urge your support.

SENATOR KIECKHEFER:

I rise against Senate Bill No. 317. I respect the sponsor of the bill, her work and her intentions, and I like the amendment that addresses the needs of NSHE. But, there will be unintended consequences with the elevation of the bidders preference to 7 percent. There is no state that has a bidders preference above 5 percent and our surrounding states have reciprocity in their bidders preference laws so that when a Nevada company tries to do work outside of Nevada, the in-state companies will get a bidders preference commensurate with what we have in our State. This will put our companies at a disadvantage when they try to get work out of state. This is particularly prevalent in northern Nevada with companies that do work in California and Utah, and companies that do work in Arizona will face the same challenge. It is a well-intended bill, but I have concerns about the long-term implications for Nevada companies, particularly when our economy may change, and there may be less work here in our State.

Roll call on Senate Bill No. 317:

YEAS—17.

NAYS—Gansert, Gustavson, Kieckhefer, Settelmeyer—4.

Senate Bill No. 317 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Ratti moved that Assembly Bill No. 322 be taken from the Secretary's desk and placed at the bottom of the General File.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 392.

Bill read third time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1020.

SUMMARY—Revises provisions relating to energy. (BDR 58-663)

AN ACT relating to energy; revising provisions relating to payment of incentives to certain participants in the Solar Energy Systems Incentive Program, the Wind Energy Systems Demonstration Program and the Waterpower Energy Systems Demonstration Program; requiring the Public Utilities Commission of Nevada to adopt regulations establishing standards for the operation of community solar gardens; requiring a subscriber to a community solar garden to receive a credit on the subscriber's monthly utility bill for the subscriber's share of the electricity generated by the community solar garden; authorizing a utility to charge a net metering adjustment charge to subscribers under certain circumstances; setting forth the contractual requirements for a subscription to a community solar garden; requiring a utility to purchase the unsubscribed electricity of a community solar garden; requiring the Commission to issue portfolio energy credits to a subscriber organization that installs a community solar garden; providing that such portfolio energy credits are the property of the subscriber organization; repealing provisions requiring an electric utility to create a Lower Income Solar Energy Pilot Program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Solar Energy Systems Incentive Program, the Wind Energy Systems Demonstration Program and the Waterpower Energy Systems Demonstration Program. Existing law further establishes the amount of incentives that may be authorized for payment by the Public Utilities Commission of Nevada to each Program. (NRS 701B.005, 701B.010-701B.290, 701B.400-701B.650, 701B.700-701B.880) Section 1 of this bill combines the amount of existing incentives available for payment to each Program into a single pool of money from which the Commission may authorize the payment of an incentive to a Program. Section 1 further requires the Commission, for the period beginning on January 1, 2018, and ending on December 31, 2023, to authorize the payment of incentives in an amount of not more than $1,000,000 per year for the installation of solar energy systems, community solar gardens and distributed generation systems at locations throughout the service territories of electric utilities in this State which benefit low-income and moderate-income customers. Section 2 of this bill authorizes that such incentives be made available to a participant for the installed cost of a community solar garden.

Sections 4-15 of this bill enact provisions governing community solar gardens in this State. Section 5 defines a community solar garden as a solar energy system that: (1) has a nameplate capacity of not more than ~~[15]~~ 12 megawatts; (2) is owned or operated by a subscriber organization; and (3) generates electricity for subscribers of the community solar garden. Section 11 requires the Commission to adopt regulations establishing standards for the operation of community solar gardens in this State. The regulations adopted pursuant to section 11 must: (1) establish goals for the generation of electricity by community solar gardens in this State; (2)

establish eligibility requirements for subscriber organizations, including, without limitation, a requirement that a subscriber organization have at least 20 subscribers; (3) authorize any customer in any rate class to become a subscriber of a community solar garden; and (4) establish standards, charges, fees and processes for the interconnection of a community solar garden. ~~[Section]~~ Sections 12 ~~[entitles]~~ and 12.2 entitle a subscriber who participates in a community solar garden to a kilowatt-hour credit on the subscriber's monthly utility bill for the subscriber's share of the electricity generated by the community solar garden. Section 12 authorizes a utility to charge the net metering adjustment charge established by section 28 of Assembly Bill No. 405 of this session to each subscriber to a community solar garden. If Assembly Bill No. 405 of this session is not enacted or does not become effective, sections 12.2 and 17 of this bill provide that a net metering adjustment charge will not be charged by a utility. Sections 12.4-12.8 of this bill set forth the requirements for the cover page, provisions and summary disclosure statement for a subscription to a community solar garden.

Section 13 requires a utility to purchase the unsubscribed electricity of a community solar garden located in the utility's service territory. Section 14 requires the Commission to issue portfolio energy credits for community solar gardens and provides that: (1) such credits must be the property of the subscriber organization that owns or operates the community solar garden; and (2) the subscriber organization is authorized to assign such credits to the utility. Section 15 exempts community solar gardens, subscriber organizations and subscribers from regulation as public utilities unless a community solar garden, subscriber organization or subscriber otherwise constitutes a public utility.

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

Section 1. NRS 701B.005 is hereby amended to read as follows:

701B.005 1. For the purposes of carrying out the Solar Energy Systems Incentive Program created by NRS 701B.240, and subject to the limitations prescribed by ~~[subsection 2,]~~ *subsections 2 and 3,* the Public Utilities Commission of Nevada shall set incentive levels and schedules, with a goal of approving solar energy systems totaling at least 250,000 kilowatts of capacity in this State for the period beginning on July 1, 2010, and ending on December 31, 2021.

2. ~~[The]~~ *Subject to the limitations prescribed by subsection 3, the* Commission shall not authorize the payment of an incentive pursuant to ~~[:~~ ~~(a) The]~~ *the* Solar Energy Systems Incentive Program *created by NRS 701B.240, the Wind Energy Systems Demonstration Program created by NRS 701B.580 or the Waterpower Energy Systems Demonstration Program created by NRS 701B.820* if the payment of the incentive would cause the total amount of incentives paid by all utilities in this State for the installation of solar energy systems *, community solar gardens* and solar distributed

generation systems to exceed ~~[$255,270,000]~~ *$295,270,000* for the period beginning on July 1, 2010, and ending on December 31, 2025.

~~[(b) The Wind Energy Systems Demonstration Program created by NRS 701B.580 and the Waterpower Energy Systems Demonstration Program created by NRS 701B.820 if the payment of the incentive would cause the total amount of incentives paid by all utilities in this State for the installation of wind energy systems and waterpower energy systems to exceed $40,000,000 for the period beginning on July 1, 2009, and ending on December 31, 2025. The Commission shall by regulation determine the allocation of incentives for each Program.]~~

3. *For the period beginning on January 1, 2018, and ending on December 31, 2023, the Commission shall, from the money authorized for the payment of incentives pursuant to subsection 2, authorize the payment of incentives in an amount of not more than $1,000,000 per year for the installation of solar energy systems, community solar gardens and distributed generation systems at locations throughout the service territories of the utilities in this State which benefit low- and moderate-income customers, including, without limitation, homeless shelters, low-income housing developments, Indian reservations, Indian colonies and public entities, other than municipalities, that serve significant populations of low-income and moderate-income residents.*

4. The Commission may, subject to the limitations prescribed by ~~[subsection 2,]~~ *subsections 2 and 3,* authorize the payment of performance-based incentives for the period ending on December 31, 2025.

~~[4.]~~ *5.* A utility may file with the Commission one combined annual plan which meets the requirements set forth in NRS 701B.230, 701B.610 and 701B.850. The Commission shall review and approve any plan submitted pursuant to this subsection in accordance with the requirements of NRS 701B.230, 701B.610 and 701B.850, as applicable.

~~[5.]~~ *6.* As used in this section:

(a) *"Community solar garden" has the meaning ascribed to it in section 5 of this act.*

(b) "Distributed generation system" has the meaning ascribed to it in NRS 701B.055.

~~[(b)]~~ *(c)* "Utility" means a public utility that supplies electricity in this State.

Sec. 2. NRS 701B.200 is hereby amended to read as follows:

701B.200 The Commission shall adopt regulations necessary to carry out the provisions of NRS 701B.010 to 701B.290, inclusive, including, without limitation, regulations that:

1. Establish the type of incentives available to participants in the Solar Program and the level or amount of those incentives. The incentives must be market-based incentives that:

(a) Do not exceed 50 percent of the installed cost of a solar energy system , *community solar garden* or distributed generation system, as

determined by using the average installed cost of the solar energy systems , *community solar gardens* or distributed generation systems, as applicable, installed in the immediately preceding year;

(b) Are designed to maximize the number of customer categories participating in the Solar Program based on demographics and location, including, without limitation, categories for public entities, customers of lower socioeconomic status, nonprofit organizations and commercial, industrial and residential customers; and

(c) Provide for a sustainable Solar Program that maintains sufficient customer participation and that provides for the measured award of incentives to as many participants as possible on or before December 31, 2021.

2. Establish the requirements for a utility's annual plan for carrying out and administering the Solar Program. A utility's annual plan must include, without limitation:

(a) A detailed plan for advertising the Solar Program;

(b) A detailed budget and schedule for carrying out and administering the Solar Program;

(c) A detailed account of administrative processes and forms that will be used to carry out and administer the Solar Program, including, without limitation, a description of the application process and copies of all applications and any other forms that are necessary to apply for and participate in the Solar Program;

(d) A detailed account of the procedures that will be used for inspection and verification of a participant's solar energy system and compliance with the Solar Program;

(e) A detailed account of training and educational activities that will be used to carry out and administer the Solar Program;

(f) Any other information that the Commission requires from the utility as part of the administration of the Solar Program; and

(g) Any other information required by the Commission.

3. Authorize a utility to recover the reasonable costs incurred in carrying out and administering the installation of distributed generation systems.

Sec. 3. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 15, inclusive, of this act.

Sec. 4. *As used in sections 4 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 5. *"Community solar garden" mans a facility or energy system that uses a solar photovoltaic device to generate electricity which:*

1. Has a nameplate capacity of not more than ~~[15]~~ 12 megawatts; and

2. Is owned or operated by a subscriber organization.

Sec. 6. *"Subscriber" means a customer of a utility who subscribes to a community solar garden that is located in the service territory of the utility.*

Sec. 7. *"Subscriber organization" means an entity that owns or operates a community solar garden, which may include, without limitation, a public utility.*

Sec. 8. *"Subscription" means a contract between a subscriber organization and a subscriber setting forth the subscriber's proportional interest in a community solar garden.*

Sec. 9. *"Unsubscribed electricity" means electricity, measured in kilowatt-hours, generated by a community solar garden that is not allocated to a subscriber.*

Sec. 10. *"Utility" means a public utility that supplies electricity in this State.*

Sec. 11. *1. The Commission shall adopt regulations establishing standards for the operation of community solar gardens. The regulations must:*

(a) Establish goals for the procurement of electricity from community solar gardens in this State, including, without limitation:

(1) A goal that, by 2023, community solar gardens in this State generate at least 200 megawatts of electric energy.

(2) A goal for the number of megawatts of electric energy in this State to be generated by community solar gardens in each year after 2023.

(b) Establish requirements for community solar gardens and subscriber organizations, which must:

(1) Require a community solar garden to have at least 20 subscribers;

(2) Prohibit a subscriber organization from allowing a subscriber to have a subscription that exceeds 40 percent of a proportional interest in a community solar garden owned or operated by the subscriber organization; ~~*[and]*~~

(3) Require a subscriber organization to make at least 40 percent of the total generating capacity of the community solar garden available in subscriptions to the community solar garden that are 25 kilowatts or less ~~*[.]*~~ *;*

(4) Prohibit the location of one or more community solar gardens with a combined total nameplate capacity of more than 12 megawatts on a single parcel of land; and

(5) Require each community solar garden to be separately metered and interconnected, unless a utility grants a waiver to authorize joint metering or interconnection.

(c) Authorize a subscriber organization to enter into leases, sale-and-leaseback transactions, operating agreements and ownership arrangements with third parties.

(d) Require at least 10 percent of the total generating capacity of community solar gardens in this State be available for use by low-income residential customers of a utility or by persons providing services which benefit low-income customers, including, without limitation, homeless

shelters, low-income housing developments, Indian reservations, Indian colonies and schools with a significant population of low-income pupils.

(e) Authorize any customer of a utility in any rate class of a utility to be a subscriber.

(f) Prohibit a utility from placing a subscriber into a different rate class because the subscriber has subscribed to a community solar garden.

(g) Provide for the transferability of subscriptions.

(h) Establish standards, charges, fees and processes for the interconnection of a community solar garden that allow the utility to recover reasonable interconnection costs for each community solar garden.

2. The regulations adopted by the Commission pursuant to subsection 1 must not impose different requirements for a community solar garden that is not owned or operated by a utility than the requirements imposed for a community solar garden owned or operated by a utility.

3. On or before September 1 of each year, each subscriber organization shall submit a report to the Commission demonstrating its compliance with the regulations adopted pursuant to subparagraph (2) of paragraph (b) of subsection 1.

Sec. 12. *1. For a period of 25 years after a community solar garden owned or operated by a subscriber organization begins generating electricity, a subscriber is entitled to a kilowatt-hour credit on the subscriber's monthly utility bill for the proportional output of the community solar garden attributable to that subscriber for the preceding month. Except as otherwise required by the Commission, a utility may apply the credit to the subscriber's monthly utility bill as a reduction in metered use or a monetary credit to the total amount due for the bill. Any excess credit must be carried over to subsequent billing periods. Except as otherwise provided in subsection 2, any monetary credit applied on a subscriber's monthly utility bill pursuant to this subsection shall be not less than the value of the credit had it been applied as a kilowatt-hour credit on the subscriber's monthly utility bill.*

2. ~~[Subject to the provisions of subsection 3, the]~~ The Commission ~~[may appropriately increase or reduce the value of a kilowatt-hour credit earned by a subscriber to a community solar garden pursuant to subsection 1 if the Commission determines that a community solar garden:~~

~~(a) Relieves loading on the transmission or distribution system and reduces the long-term cost of transmission or distribution capacity; or~~

~~(b) Increases loading on the transmission or distribution system and imposes incremental increases on the long-term cost of transmission or distribution capacity.]~~ shall authorize a utility to charge a subscriber an adjustment charge for each kilowatt-hour of electricity credited to the subscriber. The adjustment charge must equal the net metering adjustment charge in effect pursuant to section 28 of Assembly Bill No. 405 of this session at the time that the community solar garden was allocated capacity pursuant to section 4 to 15, inclusive, of this act.

3. ~~[The Commission shall ensure that any increase or reduction in the value of a kilowatt hour credit does not duplicate a cost that has already been credited by or paid to a utility from a subscriber or subscriber organization.~~

~~4.]~~ A subscriber organization shall, on a monthly basis and at other reasonable times determined by the utility in the service territory in which the community solar garden owned or operated by the subscriber organization is located, provide to the utility information necessary to determine the proportional share of each subscription.

Sec. 12.2. 1. For a period of 25 years after a community solar garden owned or operated by a subscriber organization begins generating electricity, a subscriber is entitled to a kilowatt-hour credit on the subscriber's monthly utility bill for the proportional output of the community solar garden attributable to that subscriber for the preceding month. Except as otherwise required by the Commission, a utility may apply the credit to the subscriber's monthly utility bill as a reduction in metered use or a monetary credit to the total amount due for the bill. Any excess credit must be carried over to subsequent billing periods. Except as otherwise provided in subsection 2, any monetary credit applied on a subscriber's monthly utility bill pursuant to this subsection shall be not less than the value of the credit had it been applied as a kilowatt-hour credit on the subscriber's monthly utility bill.

2. Except as otherwise provided in subsection 3, the Commission may appropriately increase or reduce the value of a kilowatt-hour credit earned by a subscriber to a community solar garden pursuant to subsection 1 if the Commission determines that a community solar garden:

(a) Relieves loading on the transmission or distribution system and reduces the long-term cost of transmission or distribution capacity; or

(b) Increases loading on the transmission or distribution system and imposes incremental increases on the long-term cost of transmission or distribution capacity.

3. The Commission shall ensure that any increase or reduction in the value of a kilowatt-hour credit does not duplicate a cost that has already been credited by or paid to a utility from a subscriber or subscriber organization.

4. A subscriber organization shall, on a monthly basis and at other reasonable times determined by the utility in the service territory in which the community solar garden owned or operated by the subscriber organization is located, provide to the utility information necessary to determine the proportional share of each subscription.

Sec. 12.3. A subscription to a community solar garden must be in writing and comply with the requirements of sections 12.4, 12.6 and 12.8.

Sec. 12.4. A subscription to a community solar garden must include a cover page that provides the following information in writing in at least 10-point font:

1. The amount due at the signing of the subscription.

2. An estimated timeline for the month in which the subscriber will begin receiving kilowatt-hour credits on the subscriber's monthly utility bill.

3. The estimated amount of any monthly payments due under the subscription for the first year of operation of the community solar garden and any known increases in monthly payments for the term of the subscription.

4. The length of the term of the subscription.

5. A description of any guarantees relating to the performance of the community solar garden.

6. The rate of any payment increases.

7. The estimated production of the community solar garden attributable to the subscription in the first year of operation.

8. A description of the terms for renewal or any other options available at the end of the term of the subscription.

Sec. 12.6. A subscription to a community solar garden must include, without limitation, the following information in writing in at least 10-point font:

1. The name, mailing address and telephone number of the subscriber organization.

2. An estimated timeline for the month in which the subscriber will begin receiving kilowatt-hour credits on the subscriber's monthly utility bill.

3. The length of the term of the subscription.

4. A general description of the community solar garden to which the subscription is applied.

5. The amounts, if any, of the:

(a) Monthly payments due under the subscription; and

(b) Total payments due under the subscription, excluding taxes.

6. A description of any other one-time or recurring charges, including, without limitation, a description of the circumstances that trigger any late fees.

7. A description of any obligation the subscriber organization has regarding the installation, repair or removal of the community solar garden.

8. A description of any guarantees relating to the performance of the community solar garden.

9. A description of any:

(a) Taxes due at the commencement of the subscription; and

(b) Estimation of taxes known to be applicable during the term of the subscription, subject to any change in the state or local tax rate or tax structure.

10. A disclosure notifying the subscriber of the transferability of the obligations under the subscription to a subsequent subscriber.

11. The identification of any state or federal tax incentives that are included in calculating the amount of the monthly payments due under the lease.

12. A description of the ownership of any tax credits, tax rebates, tax incentives or portfolio energy credits in connection with the community solar garden.

13. Any terms for renewal of the subscription.

14. A description of all options available to the subscriber in the event of a change of the subscriber's location or residence:

(a) Within the same service territory; or

(b) To another service territory.

15. An estimate of the amount of electricity that could be generated by the community solar garden attributable to the subscription in the first year of operation.

16. The granting to the subscriber of the right to rescind the subscription for a period ending not less than 3 business days after the subscription is signed.

17. A signature block that is signed and dated by the subscriber and the subscriber organization.

Sec. 12.8. 1. The subscription to a community solar garden must include a written disclosure that is not more than 3 pages in length and is in at least 10-point font.

2. The disclosure described in subsection 1 must be separate from the cover page and subscription described in sections 12.4 and 12.6 of this act.

3. The disclosure described in subsection 1 must include, without limitation:

(a) The name, mailing address, telephone number and electronic mail address of the subscriber organization;

(b) The length of the term of the subscription;

(c) The amount due at the signing of the subscription;

(d) The estimated amount of the monthly payments due under the subscription;

(e) The estimated amount of the total payments due under the subscription;

(f) A description of any one-time or recurring fees, including, without limitation, a description of the circumstances that trigger:

(1) Any late fees; and

(2) Any cancellation fees;

(g) The total number of payments to be made under the subscription;

(h) The due date of any payment and the manner in which the subscriber will receive an invoice for such payments;

(i) The rate of any payment increases and the date on which the first increase in the rate may occur, if applicable;

(j) Assumptions concerning the design of the community solar garden, including, without limitation:

(1) The size of the community solar garden;

(2) The estimated amount of production for the community solar garden in the first year of operation;

(3) The estimated annual degradation to the community solar garden; and

(4) As specified by the subscription at the time of installation of the community solar garden, whether or not an electric utility must credit a subscriber for any excess energy that is generated by the community solar garden attributable to the subscription;

(k) A disclosure notifying the subscriber if maintenance and repairs of the community solar garden are included in the subscription;

(l) A disclosure describing the transferability of the subscription;

(m) A description of any guarantees relating to the performance of the community solar garden;

(n) A description of the basis for any estimates of savings that were provided to the subscriber, if applicable; and

(o) A disclosure concerning the retention of any portfolio energy credits, if applicable.

Sec. 13. *A utility shall purchase unsubscribed electricity generated by a community solar garden within the service area of the utility. Compensation for unsubscribed energy must be provided to the subscriber organization at the rate offered for short-term purchases from qualifying facilities set forth in regulations adopted pursuant to NRS 704.210.*

Sec. 14. *1. After a subscriber organization installs a community solar garden, the Commission shall issue portfolio energy credits for use within the system of portfolio energy credits adopted by the Commission pursuant to NRS 704.7821 and 704.78213.*

2. The Commission shall designate the portfolio energy credits issued pursuant to this section as portfolio energy credits generated, acquired or saved from solar renewable energy systems for the purposes of the portfolio standard.

3. Notwithstanding any other provision of law, portfolio energy credits issued for a community solar garden installed pursuant to the regulations adopted pursuant to section 11 of this act must be considered the property of the subscriber organization. The subscriber organization may assign such portfolio energy credits to the utility for the service territory of the community solar garden generating the portfolio energy credits.

Sec. 15. *Notwithstanding any other provision of law, a community solar garden, subscriber organization or subscriber is not a public utility and is not subject to regulation as a public utility by the Commission, other than regulation under sections 4 to 15, inclusive, of this act, unless the community solar garden, subscriber organization or subscriber constitutes a public utility and is subject to regulation by the Commission under the provisions of this chapter other than sections 4 to 15, inclusive, of this act.*

Sec. 16. NRS 704.786 is hereby repealed.

Sec. 17. 1. This section and sections 1 to 11, inclusive, and 12.4 to 16, inclusive, of this act ~~[becomes]~~ become effective:

(a) Upon passage and approval for the purpose of adopting any regulations or performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

(b) On July 1, 2017, for all other purposes.

2. If, and only if, Assembly Bill No. 405 of this session is enacted and becomes effective, section 12 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting any regulations or performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

(b) On July 1, 2017, for all other purposes.

3. If, and only if, Assembly Bill No. 405 of this session is not enacted or does not become effective, section 12.2 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting any regulations or performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

(b) On July 1, 2017, for all other purposes.

4. Sections 1 and 2 of this act expire by limitation on December 31, 2025.

TEXT OF REPEALED SECTION

704.786 Lower Income Solar Energy Pilot Program: Creation required by each electric utility in State.

1. Each electric utility in this State shall create a Lower Income Solar Energy Pilot Program for the purpose of installing, before January 1, 2017, distributed generation systems with a cumulative capacity of at least 1 megawatt at locations throughout its service territory which benefit low-income customers, including, without limitation, homeless shelters, low-income housing developments and schools with significant populations of low-income pupils. Each electric utility shall submit the Program as part of its annual plan submitted pursuant to NRS 701B.230. The Commission shall approve the Program with such modifications and upon such terms and conditions as the Commission deems necessary or appropriate to enable the Program to meet the purposes set forth in this subsection.

2. The Office of Energy shall advise the Commission and each electric utility regarding grants and other sources of money available to defray the costs of the Program.

3. As used in this section, "distributed generation system" has the meaning ascribed to it in NRS 701B.055.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senator Woodhouse.

Amendment No. 1020 to Senate Bill No. 392 revises the nameplate capacity of a community solar garden from 15-megawatts to 12-megawatts and requires each community solar garden to be separately metered unless a waiver is granted. Additionally, the amendment requires that the Public Utilities Commission of Nevada allow a utility to assess an adjustment charge established by section 28 of Assembly Bill No. 405 of this Session on each kilowatt hour credited to a subscriber, which must equal the net-metering adjustment charge in effect at the time that the community solar garden was allocated capacity. The amendment requires a subscription to a

community solar garden be subject to a written agreement containing various provisions. Additionally, the amendment revises the effective date of the bill pursuant to Assembly Bill No. 405 becoming enacted and effective.

Amendment adopted.

Bill read third time.

Remarks by Senators Denis, Settelmeyer, Hardy and Spearman.

SENATOR DENIS:

Senate Bill No. 392 increases the total amount of incentives paid by utilities in this State for the installation of various solar-energy systems and authorizes the Public Utilities Commission of Nevada to pay incentives of not more than $1 million per year for the installation of solar-energy systems, community solar gardens and distributed-generation systems located throughout the service territories of utilities in this State, to benefit low- and moderate-income customers. Additionally, the bill requires the Commission to adopt regulations establishing standards for the operation of community solar gardens to include various requirements. The bill requires that for a period of 25 years after a community solar garden begins generating electricity, a subscriber of the solar garden is entitled to a kilowatt-hour credit proportionally related to the amount of energy attributed to that subscriber.

Senate Bill No. 392 requires the Commission to allow a utility to assess an adjustment charge on each kilowatt-hour credited to a subscriber that must equal the net-metering adjustment charge in effect pursuant to section 28 of Assembly Bill No. 405 of this Session at the time the community solar garden was allocated capacity. The bill requires a subscriber organization to provide monthly reporting to the utility regarding the proportional share of each subscription. The bill requires a utility to purchase unsubscribed electricity generated by a solar garden within the service area of the utility and requires the Commission to issue and designate portfolio energy credits generated, acquired or saved from solar renewable-energy systems. Further, the bill requires a subscription to a community solar garden be subject to a written agreement containing various provisions and repeals NRS 704.786 relating to the Lower Income Solar Energy Pilot Program.

SENATOR SETTELMEYER:

I appreciate that we are trying to pair up the language in this bill with that in another bill, Assembly Bill No. 405, but I am uncomfortable because the hearing on that bill did not go so well. The concept of having another Public Utility Commission (PUC) hearing is costly, a political nightmare and did not go well the last time. This bill gives non-contiguous individuals the ability to have net metering, something we have always said should at least cost and something the individual should have to help pay for regarding transmission and distribution from one property to another. This bill would allow someone to purchase a share of a solar garden in the middle of Clark County and move it to a service area in Reno, taking it between two companies. I find this troublesome, and it would be costly for the ratepayers once it is amortized.

SENATOR HARDY:

I rise in opposition to Senate Bill No. 392 but not to the concept. We have three bills related to NVEnergy's obligation to accept energy and send it around, and I do not have a good feel for how this will affect the consumers of NVEnergy. We are trying to do things that are well-meaning, and we need to look at these three bills together.

SENATOR DENIS:

Language was added related to the contiguous factor. The purpose of Senate Bill No. 392 was to create something in the community that people could rally around. The community solar garden concept allows those who cannot currently implement solar, those who live in an apartment or condo or other structure that would not support solar, to have an opportunity to participate in solar. This is partially tied to Assembly Bill No. 405, and the Commission would set some rates.

There are also provisions that switch it to the retail rate. It allows for low-income individuals to participate in a program where they might not have been able to under the other bill. This group is often neglected as people fail to realize that some people cannot get solar on their roofs. It is a good first step, and we have the ability to benefit not only individuals but also nonprofits and small businesses and others who could participate in solar where they might not previously have had the opportunity.

SENATOR SPEARMAN:

I rise in strong support of Senate Bill No. 392. In the subcommittee, we learned this is being done in other states such as Minnesota. For the last two years, we have heard from people that rooftop solar is economically unfair to people with older homes and to people who do not have the FICO score or cash to purchase renewable energy. We now have the opportunity to correct that and level the playing field and still there are complaints that it is not fair. This bill allows people in older homes that are not architecturally strong enough to have rooftop solar, those who live in apartments or condos, senior citizens and others the opportunity to do the same thing as those who have high FICO scores or thousands of dollars to purchase solar. This is a part of economic and environmental justice. I encourage my colleagues to support this bill.

Roll call on Senate Bill No. 392:

YEAS—17.

NAYS—Gustavson, Hardy, Roberson, Settelmeyer—4.

Senate Bill No. 392 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 6.

Resolution read third time.

The following amendment was proposed by Senator Ford:

Amendment No. 970.

SUMMARY—Proposes to amend the Nevada Constitution to provide for certain increases in the minimum wage. (BDR C-867)

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for certain increases in the minimum wage.

Legislative Counsel's Digest:

Section 16 of Article 15 of the Nevada Constitution requires each employer to pay a certain minimum wage to each employee. This wage is $5.15 per hour worked if the employer provides certain health benefits or $6.15 per hour worked if the employer does not provide such benefits. Each year, the wage must be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), except the CPI adjustment for any 1-year period greater than 3 percent. (Nev. Const. Art. 15, § 16)

This joint resolution proposes to amend the Nevada Constitution to increase the minimum wage to $9.00 per hour. Beginning on January 1, 2022, the minimum wage must be increased by $0.75 each year until the minimum wage is $12. However, if, at any time, the federal minimum wage is greater than the amount calculated under this joint resolution, the minimum wage in this State must equal the federal minimum

wage. This joint resolution further authorizes the Legislature to increase the minimum wage to an amount higher than the minimum wage calculated under this joint resolution.

~~[This joint resolution also proposes to amend the Nevada Constitution to remove provisions authorizing an employer and an employee to waive the minimum wage requirement in a collective bargaining agreement. Thus, under this joint resolution, a collective bargaining agreement entered into, extended or renewed on or after the effective date of this amendment could not waive the requirement to pay the minimum wage set forth in this joint resolution.]~~

Finally, this joint resolution: (1) authorizes an action against an employer for violating the minimum wage requirement to be brought as a class action; (2) provides that an employee who prevails in an action for a violation of the minimum wage requirement is entitled to damages in an amount equal to three times the amount which the employee would have been paid if the employer had complied with the minimum wage requirement.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 16 of Article 15 of the Nevada Constitution be amended as follows:

Sec. 16. ~~[A. Each]~~

1. Except as otherwise provided in this section, each employer shall pay a wage to each employee of not less than the hourly ~~[rates]~~ *rate* set forth in this ~~[section.]~~ *subsection.* The rate ~~[shall]~~ *must* be ~~[five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in]~~ *nine dollars ($9.00) per hour worked. Beginning on January 1, 2022, this rate must be increased on January 1 of each year by seventy-five cents ($0.75) per hour worked until the rate is twelve dollars ($12.00) per hour worked.*

2. If, at any time, the federal minimum wage ~~[over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take~~

~~effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin.]~~ *is higher than the rate set forth in subsection 1, each employer must pay a wage to each employee of not less than the hourly rate set forth in the federal minimum wage.*

3. The Legislature may establish by law a minimum wage that an employer must pay to each employee that is higher than the hourly rate set forth in subsection 1 or 2.

4. Tips or gratuities received by employees shall not be credited as being any part of or offset against the *minimum* wage ~~[rates]~~ *rate* required by this section.

~~[B.]~~ *5.* ~~[The]~~ *Except as otherwise provided in this subsection, the* provisions of this section may not be waived by agreement between ~~[an individual]~~ *any* employee and ~~[an]~~ *his or her* employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section.

6. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section ~~[.]~~ *in any manner.* An employee claiming *a* violation of this section ~~[may]~~ *is entitled to* bring an action against his or her employer in the courts of this State *, either in his or her individual capacity or as a representative of a class of similarly situated individuals,* to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section . ~~[, including but not limited to back pay, damages, reinstatement or injunctive relief.]~~ An employee who prevails in any action to enforce this section ~~[shall]~~ *must* be awarded *damages in an amount equal to three times the amount which the employee would have been paid if his or her employer had complied with the provisions of this section and* his or her reasonable attorney's fees and costs.

~~[C. 6.]~~ *7.* As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age,

employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

~~[D. 7.]~~ *8.* If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

~~[And be it further~~

~~Resolved, That the provisions of Section 16 of Article 15 of the Nevada Constitution, as amended by this joint resolution:~~

~~1. Apply to any collective bargaining agreement entered into, extended or renewed on or after the effective date of this amendment.~~

~~2. Do not apply to any collective bargaining agreement entered into before the effective date of this amendment during the current term of the agreement.]~~

Senator Atkinson moved the adoption of the amendment.

Remarks by Senator Atkinson.

Amendment No. 970 to Senate Joint Resolution No. 6 removes the provision that proposes to amend the *Nevada Constitution* to remove provisions authorizing an employer and an employee to waive the minimum-wage requirement in a collective-bargaining agreement.

Amendment adopted.

The following amendment was proposed by Senator Cancela:

Amendment No. 1043.

SUMMARY—Proposes to amend the Nevada Constitution to provide for certain increases in the minimum wage. (BDR C-867)

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for certain increases in the minimum wage.

Legislative Counsel's Digest:

Section 16 of Article 15 of the Nevada Constitution requires each employer to pay a certain minimum wage to each employee. This wage is $5.15 per hour worked if the employer provides certain health benefits or $6.15 per hour worked if the employer does not provide such benefits. Each year, the wage must be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), except the CPI adjustment for any 1-year period greater than 3 percent. (Nev. Const. Art. 15, § 16) Because of increases in the federal minimum wage, the minimum wage in Nevada is currently $7.25 if the employer provides certain health benefits and $8.25 if the employer does not provide such benefits.

This joint resolution proposes to amend the Nevada Constitution to ~~[increase]~~ provide for certain annual increases in the minimum wage. ~~[to $9.00]~~ Under this joint resolution, beginning on January 1, 2021, the minimum wage would be $9.40 per hour. Beginning on January 1, 2022, the minimum wage must be increased by ~~[$0.75]~~ $1.15 each year until the minimum wage is ~~[$12.]~~ $14. However, if, at any time, the federal minimum wage is greater than the amount calculated under this joint resolution, the minimum wage in this State must equal the federal minimum wage. This joint resolution further authorizes the Legislature to increase the minimum wage to an amount higher than the minimum wage calculated under this joint resolution.

This joint resolution also proposes to amend the Nevada Constitution to remove provisions authorizing an employer and an employee to waive the minimum wage requirement in a collective bargaining agreement. Thus, under this joint resolution, a collective bargaining agreement entered into, extended or renewed on or after the effective date of this amendment could not waive the requirement to pay the minimum wage set forth in this joint resolution.

Finally, this joint resolution: (1) authorizes an action against an employer for violating the minimum wage requirement to be brought as a class action; and (2) provides that an employee who prevails in an action for a violation of the minimum wage requirement is entitled to damages in an amount equal to three times the amount which the employee would have been paid if the employer had complied with the minimum wage requirement.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 16 of Article 15 of the Nevada Constitution be amended as follows:

Sec. 16. ~~[A. Each]~~

1. Except as otherwise provided in this section, each employer shall pay a wage to each employee of not less than the hourly ~~[rates]~~ *rate* set forth in this ~~[section.]~~ *subsection.* ~~[The]~~ *Beginning on January 1, 2021, the* rate ~~[shall]~~ *must* be ~~[five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in]~~ *nine dollars ~~[($9.00)]~~ and forty cents ($9.40) per hour worked. Beginning on January 1, 2022, this rate must be increased on January 1 of each year by ~~[seventy five]~~ one dollar and fifteen cents ~~[($0.75)]~~ ($1.15) per hour worked until the rate is ~~[twelve]~~ fourteen dollars ~~[($12.00)]~~ ($14.00) per hour worked.*

2. If, at any time, the federal minimum wage ~~[over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin.]~~ *is higher than the rate set forth in subsection 1, each employer must pay a wage to each employee of not less than the hourly rate set forth in the federal minimum wage.*

3. The Legislature may establish by law a minimum wage that an employer must pay to each employee that is higher than the hourly rate set forth in subsection 1 or 2.

4. Tips or gratuities received by employees shall not be credited as being any part of or offset against the *minimum* wage ~~[rates]~~ *rate* required by this section.

~~[B.]~~ *5.* The provisions of this section may not be waived by agreement between ~~[an individual]~~ *any* employee and ~~[an]~~ *his or her* employer. ~~[All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section.]~~ An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section ~~[.]~~ *in any manner.* An employee claiming *a* violation of this section ~~[may]~~ *is entitled to* bring an action against his or her employer in the courts of this State *, either in his or her individual capacity or as a representative of a class of similarly situated individuals,* to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section . ~~[, including but not limited to back pay,~~

~~damages, reinstatement or injunctive relief.]~~ An employee who prevails in any action to enforce this section ~~[shall]~~ *must* be awarded *damages in an amount equal to three times the amount which the employee would have been paid if his or her employer had complied with the provisions of this section and* his or her reasonable attorney's fees and costs.

~~[C.]~~ *6.* As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

~~[D.]~~ *7.* If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

And be it further

RESOLVED, That the provisions of Section 16 of Article 15 of the Nevada Constitution, as amended by this joint resolution:

1. Apply to any collective bargaining agreement entered into, extended or renewed on or after the effective date of this amendment.

2. Do not apply to any collective bargaining agreement entered into before the effective date of this amendment during the current term of the agreement.

Senator Atkinson moved the adoption of the amendment.

Remarks by Senator Atkinson.

Amendment No. 1043 to Senate Joint Resolution No. 6 provides that beginning on January 1, 2021; the minimum wage would be $9.40 per hour. Beginning on January 1, 2022, the minimum wage must be increased by $1.15 each year until the minimum wage is $14 per hour. If at any point the federal minimum wage is greater than the amount calculated under this joint resolution. The minimum wage in this State must equal

Amendment adopted.

Resolution read third time.

Remarks by Senators Cancela and Settelmeyer

SENATOR CANCELA:

Senate Joint Resolution No. 6 proposes to amend the *Nevada Constitution* by increasing the minimum wage to $9.40 per hour and beginning on January 1, 2021, the minimum wage must be increased by $1.15 each year until the minimum wage is $14 per hour. If at any point, the federal minimum wage is greater than the amount calculated under this joint resolution, the minimum wage in this state must equal the federal minimum wage. The Legislature is authorized to

increase the minimum wage to an amount higher than the minimum wage calculated under this joint resolution.

Additionally, the joint resolution authorizes an action against an employer for violating the minimum wage requirements to be brought as a class action, and provides in it an employee who prevails in an action for a violation of the minimum wage requirement, is entitle to the amount in damages equal to 3 times the amount the employee would have been paid if the employer had complied with the minimum wage requirement.

If approved, an identical form during the 2019 Legislative Session proposal will be submitted to the voters for approval or at the 2020 General Election.

SENATOR SETTELMEYER:

I appreciate the discussion on Senate Joint Resolution 6. Earlier, today, we had a discussion about only 22,000 out of 1 million working people in the State of Nevada are currently earning minimum wage. The concept of the last amendment actually exempted the unions from having to pay minimum wage, the very unions that came and discussed the concept of raising the minimum wage, I find very problematic. In fact, by raising the minimum wage up higher it actually gives them more incentive to unionize work places. In that respect, I do not believe that the language that we are putting in front of the voters is adequate and I urge your "no" vote.

Roll call on Senate Joint Resolution No. 6:

YEAS—12.

NAYS—Gansert, Goicoechea, Gustavson, Hammond, Hardy, Harris, Kieckhefer, Roberson, Settelmeyer—9.

Senate Joint Resolution No. 6 having received a constitutional majority, Mr. President declared it passed, as amended.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 267.

Bill read third time.

The following amendment was proposed by the Committee on Finance:

Amendment No. 1031.

SUMMARY—Revises provisions governing industrial insurance. (BDR 53-650)

AN ACT relating to industrial insurance; revising provisions governing prohibitions on the payment of compensation for disability caused by certain occupational diseases under certain circumstances; restricting the dissemination and use of the results of certain physical examinations required of certain firefighters, arson investigators and police officers for insurance coverage of cancer, lung disease and heart disease; ~~[providing for]~~ authorizing the Administrator of the Division of Industrial Relations of the Department of Business and Industry to order the payment of a benefit penalty ~~[and]~~ ; providing for the payment of a claimant's medical costs under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the payment of compensation under chapter 617 of NRS for temporary or permanent disability or death for the occupational diseases of lung disease and heart disease for certain firefighters, arson investigators and police officers. Existing law provides that these occupational diseases are conclusively presumed to have arisen out of and in

the course of the employment under certain circumstances. (NRS 617.455, 617.457) Sections 4 and 5 of this bill provide that if an employer, insurer or third-party administrator denies a claim for compensation for these occupational diseases and the claimant ultimately prevails, the Administrator of the Division of Industrial Relations of the Department of Business and Industry is ~~[required]~~ authorized to order the employer, insurer or third-party administrator to pay the claimant a benefit penalty of not more than $200 for each day that the claim is under appeal. Sections 4 and 5 ~~[further]~~ require the employer, insurer or third-party administrator to pay all medical costs that are associated with the occupational disease and incurred by the claimant on or after the date of the hearing before the hearing officer but provide for the recovery of such amounts paid if the employer, insurer or third-party administrator ultimately prevails. Sections 4 and 5 additionally require the Administrator to review a claim for the occupational disease that has been in the appeals process for longer than 6 months to determine the circumstances causing the delay in processing the claim.

Existing law requires certain tests when administering certain physical examinations to firefighters, arson investigators and police officers regarding the occupational diseases of lung and heart disease for the purposes of industrial insurance coverage. (NRS 617.454) Section 3 of this bill restricts: (1) to whom the results of such physical examinations may be disseminated; and (2) the use of such results. Section 3 additionally authorizes the employer's officer who is responsible for risk management or human resources or his or her designee to release to certain persons a report only containing certain information based on the results of a physical examination.

Existing law prohibits the payment of compensation for disability because of an occupational injury or disease which does not incapacitate the employee for at least 5 cumulative days within a 20-day period from earning full wages. (NRS 616C.400, 617.420) Section 1 of this bill exempts a claim for compensation under chapters 616A to 616D of NRS for disability for the occupational diseases of cancer, lung disease and heart disease from that prohibition. Section 2 of this bill: (1) revises the prohibition as it relates to occupational diseases to apply exclusively to compensation for temporary total disability; and (2) clarifies that the prohibition does not apply to medical benefits for the occupational diseases of cancer, lung disease or heart disease.

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

Section 1. NRS 616C.400 is hereby amended to read as follows:

616C.400 1. Temporary compensation benefits must not be paid under chapters 616A to 616D, inclusive, of NRS for an injury which does not incapacitate the employee for at least 5 consecutive days, or 5 cumulative days within a 20-day period, from earning full wages, but if the incapacity extends for 5 or more consecutive days, or 5 cumulative days within a 20-day period, compensation must then be computed from the date of the injury.

2. The period prescribed in this section does not apply to:

(a) Accident benefits, whether they are furnished pursuant to NRS 616C.255 or 616C.265, if the injured employee is otherwise covered by the provisions of chapters 616A to 616D, inclusive, of NRS and entitled to those benefits.

(b) Compensation paid to the injured employee pursuant to subsection 1 of NRS 616C.477.

(c) A claim which is filed pursuant to NRS 617.453, 617.455 or 617.457.

Sec. 2. NRS 617.420 is hereby amended to read as follows:

617.420 *1.* No compensation may be paid under this chapter for *temporary total* disability which does not incapacitate the employee for at least 5 cumulative days within a 20-day period from earning full wages, but if the incapacity extends for 5 or more days within a 20-day period, the compensation must then be computed from the date of disability.

2. The limitations in this section do not apply to medical benefits, *including, without limitation, medical benefits pursuant to NRS 617.453, 617.455 or 617.457,* which must be paid from the date of application for payment of medical benefits.

Sec. 3. NRS 617.454 is hereby amended to read as follows:

617.454 1. Any physical examination administered pursuant to NRS 617.455 or 617.457 must include:

(a) A thorough test of the functioning of the hearing of the employee; and

(b) A purified protein derivative skin test to screen for exposure to tuberculosis.

2. Except as otherwise provided in subsection 8 of NRS 617.457, the tests required by this section must be paid for by the employer.

3. Except as otherwise provided by the provisions governing privacy in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations, or an employee's collective bargaining agreement, whichever is more restrictive:

(a) The results of a physical examination administered pursuant to NRS 617.455 or 617.457 may only be provided to:

(1) The examining physician;

(2) The employee;

(3) The employer's officer who is responsible for risk management or human resources or his or her designee; and

(4) If the employee has filed a claim pursuant to NRS 617.455 or 617.457, the insurer.

(b) A person who receives the results of a physical examination pursuant to paragraph (a) may only use the results for the purposes of:

(1) Complying with the requirements of NRS 617.455 or 617.457, as applicable; or

(2) Creating a report pursuant to paragraph (c).

(c) The employer's officer who is responsible for risk management or human resources or his or her designee may create and release a report that is based on the results of a physical examination administered pursuant to

NRS 617.455 or 617.457 to any person whom the employer's officer determines has a need to know the information in the report. The report must only contain the following information:

(1) The name of the employee who was the subject of the physical examination; and

(2) A statement that the employee, as applicable:

(I) Satisfies the physical qualifications required for his or her employment; or

(II) Does not satisfy the physical qualifications required for his or her employment.

Sec. 4. NRS 617.455 is hereby amended to read as follows:

617.455 1. Notwithstanding any other provision of this chapter, diseases of the lungs, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by exposure to heat, smoke, fumes, tear gas or any other noxious gases, arising out of and in the course of the employment of a person who, for 2 years or more, has been:

(a) Employed in this State in a full-time salaried occupation of fire fighting or the investigation of arson for the benefit or safety of the public;

(b) Acting as a volunteer firefighter in this State and is entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145; or

(c) Employed in a full-time salaried occupation as a police officer in this State.

2. Except as otherwise provided in subsection 3, each employee who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to a physical examination, including a thorough test of the functioning of his or her lungs and the making of an X-ray film of the employee's lungs, upon employment, upon commencement of the coverage, once every 2 years until the employee is 40 years of age or older and thereafter on an annual basis during his or her employment.

3. Each volunteer firefighter who is to be covered for diseases of the lungs pursuant to the provisions of this section shall submit to:

(a) A physical examination upon employment and upon commencement of the coverage; and

(b) The making of an X-ray film of the volunteer firefighter's lungs once every 3 years after the physical examination that is required upon commencement of the coverage,

➥ until the volunteer firefighter reaches the age of 50 years. Each volunteer firefighter who is 50 years of age or older shall submit to a physical examination once every 2 years during his or her employment. As used in this subsection, "physical examination" includes the making of an X-ray film of the volunteer firefighter's lungs but excludes a thorough test of the functioning of his or her lungs.

4. All physical examinations required pursuant to subsections 2 and 3 must be paid for by the employer.

5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer, firefighter or arson investigator for 2 years or more before the date of disablement if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

➥ Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

6. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 5.

7. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after a physical examination required pursuant to subsection 2 or 3 excludes the employee from the benefits of this section if the correction is within the ability of the employee.

8. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a firefighter, police officer or arson investigator,

➥ may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

9. A person who files a claim for a disease of the lungs specified in this section after he or she retires from employment as a police officer, firefighter or arson investigator is not entitled to receive any compensation for that disease other than medical benefits.

10. The Administrator shall review a claim filed by a claimant pursuant to this section that has been in the appeals process for longer than 6 months to determine the circumstances causing the delay in processing the claim. As used in this subsection, "appeals process" means the period of time that:

(a) Begins on the date on which the claimant first files or submits a request for a hearing or an appeal of a determination regarding the claim; and

(b) Continues until the date on which the claim is adjudicated to a final decision.

11. Except as otherwise provided in this subsection, if an employer, insurer or third-party administrator denies a claim that was filed pursuant to this section and the claimant ultimately prevails, the Administrator ~~[shall]~~ may order the employer, insurer or third-party administrator, as applicable, to pay to the claimant a benefit penalty of not more than $200 for each day from the date on which an appeal is filed until the date on which the claim is adjudicated to a final decision. Such benefit penalty is payable in addition to any benefits to which the claimant is entitled under the claim and any fines and penalties imposed by the Administrator pursuant to NRS 616D.120. If a hearing before a hearing officer is requested pursuant to NRS 616C.315 and held pursuant to NRS 616C.330, the employer, insurer or third-party administrator, as applicable, shall pay to the claimant all medical costs which are associated with the occupational disease and are incurred from the date on which the hearing is requested until the date on which the claim is adjudicated to a final decision. If the employer, insurer or third-party administrator, as applicable, ultimately prevails, the employer, insurer or third-party administrator, as applicable, is entitled to recover the amount paid pursuant to this subsection in accordance with the provisions of NRS 616C.138.

Sec. 5. NRS 617.457 is hereby amended to read as follows:

617.457 1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for 2 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

➥ Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

2. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person

within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 1.

3. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this State by continuously maintaining an active status on the roster of a volunteer fire department.

4. Except as otherwise provided in subsection 5, each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his or her employment.

5. During the period in which a volunteer firefighter is continuously on active status on the roster of a volunteer fire department, a physical examination for the volunteer firefighter is required:

(a) Upon employment;

(b) Upon commencement of coverage; and

(c) Once every 3 years after the physical examination that is required pursuant to paragraph (b),

➥ until the firefighter reaches the age of 50 years. Each volunteer firefighter who is 50 years of age or older shall submit to a physical examination once every 2 years during his or her employment.

6. The employer of the volunteer firefighter is responsible for scheduling the physical examination. The employer shall mail to the volunteer firefighter a written notice of the date, time and place of the physical examination at least 10 days before the date of the physical examination and shall obtain, at the time of mailing, a certificate of mailing issued by the United States Postal Service.

7. Failure to submit to a physical examination that is scheduled by his or her employer pursuant to subsection 6 excludes the volunteer firefighter from the benefits of this section.

8. The chief of a volunteer fire department may require an applicant to pay for any physical examination required pursuant to this section if the applicant:

(a) Applies to the department for the first time as a volunteer firefighter; and

(b) Is 50 years of age or older on the date of his or her application.

9. The volunteer fire department shall reimburse an applicant for the cost of a physical examination required pursuant to this section if the applicant:

(a) Paid for the physical examination in accordance with subsection 8;

(b) Is declared physically fit to perform the duties required of a firefighter; and

(c) Becomes a volunteer with the volunteer fire department.

10. Except as otherwise provided in subsection 8, all physical examinations required pursuant to subsections 4 and 5 must be paid for by the employer.

11. Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to a physical examination required pursuant to subsection 4 or 5 excludes the employee from the benefits of this section if the correction is within the ability of the employee.

12. A person who is determined to be:

(a) Partially disabled from an occupational disease pursuant to the provisions of this section; and

(b) Incapable of performing, with or without remuneration, work as a firefighter, arson investigator or police officer,

➥ may elect to receive the benefits provided under NRS 616C.440 for a permanent total disability.

13. Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

14. A person who files a claim for a disease of the heart specified in this section after he or she retires from employment as a firefighter, arson investigator or police officer is not entitled to receive any compensation for that disease other than medical benefits.

15. The Administrator shall review a claim filed by a claimant pursuant to this section that has been in the appeals process for longer than 6 months to determine the circumstances causing the delay in processing the claim. As used in this subsection, "appeals process" means the period of time that:

(a) Begins on the date on which the claimant first files or submits a request for a hearing or an appeal of a determination regarding the claim; and

(b) Continues until the date on which the claim is adjudicated to a final decision.

16. Except as otherwise provided in this subsection, if an employer, insurer or third-party administrator denies a claim that was filed pursuant to this section and the claimant ultimately prevails, the Administrator ~~[shall]~~ may order the employer, insurer or third-party administrator, as applicable, to pay to the claimant a benefit penalty of not more than $200 for each day from the date on which an appeal is filed until the date on which the claim is

adjudicated to a final decision. Such benefit penalty is payable in addition to any benefits to which the claimant is entitled under the claim and any fines and penalties imposed by the Administrator pursuant to NRS 616D.120. If a hearing before a hearing officer is requested pursuant to NRS 616C.315 and held pursuant to NRS 616C.330, the employer, insurer or third-party administrator, as applicable, shall pay to the claimant all medical costs which are associated with the occupational disease and are incurred from the date on which the hearing is requested until the date on which the claim is adjudicated to a final decision. If the employer, insurer or third-party administrator, as applicable, ultimately prevails, the employer, insurer or third-party administrator, as applicable, is entitled to recover the amount paid pursuant to this subsection in accordance with the provisions of NRS 616C.138.

Sec. 6. The amendatory provisions of sections 1, 2, 4 and 5 of this act apply only to claims filed on or after October 1, 2017.

Senator Woodhouse moved the adoption of the amendment.

Remarks by Senators Woodhouse and Hardy.

SENATOR WOODHOUSE:

Amendment No. 1031 to Assembly Bill No. 267 authorizes, but does not require the Administrator of the Division of Industrial Relations to order an employer, insurer or third-party administrator who denies a claim to a firefighter, police officer or arson investigator for an occupational disease of the lung or heart, to pay a penalty of not more than $200 per day and all medical costs incurred when the claimant ultimately prevails. The amendment also requires the Administrator of the Division of Industrial Relations to review a claim filed by a claimant that has been in the appeals process for longer than six months.

SENATOR HARDY:

I reached out to Clark County, and they had concerns about things, as local governments with their structured programs plan coverages and budget according to benefits and benefit and predictability also impact premiums and insurance rates for employers, among other things.

Amendment adopted.

Bill read third time.

Remarks by Senator Segerblom.

Assembly Bill No. 267 makes technical changes to occupational diseases that do not occur by accident but occur over time such as cancer, lung disease and heart disease. It also deals with the heart-lung program for firefighters and police. I urge your support.

Roll call on Assembly Bill No. 267:

YEAS—15.

NAYS—Goicoechea, Gustavson, Hammond, Hardy, Kieckhefer, Settelmeyer—6.

Assembly Bill No. 267 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 322.

Bill read third time.

The following amendment was proposed by Senator Ratti:

Amendment No. 972.

SUMMARY—Revises provisions governing driver authorization cards. (BDR 43-955)

AN ACT relating to driver authorization cards; revising provisions governing the administration of driver authorization cards; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Motor Vehicles to adopt regulations prescribing the period for which a driver's license is valid. (NRS 483.380) Those regulations specify that a driver's license expires on the eighth anniversary or fourth anniversary of the birthday of the licensee, depending upon certain circumstances. (NAC 483.043) Under existing law a driver authorization card expires on the anniversary of its issuance or renewal. (NRS 483.291) Section 1 of this bill removes the annual expiration requirement for a driver authorization card, and ~~[section 2 of this bill]~~ requires instead that ~~[the regulations which prescribe the date of expiration of a driver's license also prescribe the date of expiration of a driver authorization card and that they must be valid for the same period, unless otherwise required by federal law.]~~ such a card expires on the fourth anniversary of the holder's birthday, measured from the birthday nearest the date of issuance or renewal.

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

Section 1. NRS 483.291 is hereby amended to read as follows:

483.291 1. An application for an instruction permit or for a driver authorization card must:

(a) Be made upon a form furnished by the Department.

(b) Be verified by the applicant before a person authorized to administer oaths. Officers and employees of the Department may administer those oaths without charge.

(c) Be accompanied by the required fee.

(d) State the name, date of birth, sex and residence address of the applicant and briefly describe the applicant.

(e) State whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for the suspension, revocation or refusal.

(f) Include such other information as the Department may require to determine the competency and eligibility of the applicant.

2. Every applicant must furnish proof of his or her name and age by displaying an original or certified copy of:

(a) Any one of the following documents:

(1) A birth certificate issued by a state, a political subdivision of a state, the District of Columbia or any territory of the United States;

(2) A driver's license issued by another state, the District of Columbia or any territory of the United States which is issued pursuant to the standards established by 6 C.F.R. Part 37, Subparts A to E, inclusive, and which contains a security mark approved by the United States Department of Homeland Security in accordance with 6 C.F.R. § 37.17;

(3) A passport issued by the United States Government;

(4) A military identification card or military dependent identification card issued by any branch of the Armed Forces of the United States;

(5) For persons who served in any branch of the Armed Forces of the United States, a report of separation;

(6) A Certificate of Degree of Indian *or Alaska Native* Blood issued by the United States Government;

(7) A Certificate of Citizenship, Certificate of Naturalization, Permanent Resident Card or Temporary Resident Card issued by the United States Citizenship and Immigration Services of the Department of Homeland Security;

(8) A Consular Report of Birth Abroad issued by the Department of State; or

(9) Such other documentation as specified by the Department by regulation; or

(b) Any two of the following documents:

(1) A driver's license issued by another state, the District of Columbia or any territory of the United States other than such a driver's license described in subparagraph (2) of paragraph (a);

(2) A passport issued by a foreign government;

(3) A birth certificate issued by a foreign government;

(4) A consular identification card issued by the Government of Mexico or a document issued by another government that the Department determines is substantially similar; or

(5) Any other proof acceptable to the Department.

➥ No document which is written in a language other than English may be accepted by the Department pursuant to this subsection unless it is accompanied by a verified translation of the document in the English language.

3. Every applicant must prove his or her residence in this State by displaying an original or certified copy of any two of the following documents:

(a) A receipt from the rent or lease of a residence located in this State;

(b) A record from a public utility for a service address located in this State which is dated within the previous 60 days;

(c) A bank or credit card statement indicating a residential address located in this State which is dated within the previous 60 days;

(d) A stub from an employment check indicating a residential address located in this State;

(e) A document issued by an insurance company or its agent, including, without limitation, an insurance card, binder or bill, indicating a residential address located in this State;

(f) A record, receipt or bill from a medical provider indicating a residential address located in this State; or

(g) Any other document as prescribed by the Department by regulation.

4. Except as otherwise provided in subsection 5, a driver authorization card or instruction permit obtained in accordance with this section must:

(a) Contain the same information as prescribed for a driver's license pursuant to NRS 483.340 and any regulations adopted pursuant thereto;

(b) Be of the same design as a driver's license and contain only the minimum number of changes from that design that are necessary to comply with subsection 5; and

(c) Be numbered from the same sequence of numbers as a driver's license.

5. A driver authorization card or instruction permit obtained in accordance with this section must comply with the requirements of section 202(d)(11) of the Real ID Act of 2005, Public Law 109-13, Division B, Title II, 119 Stat. 302, 312-15, 49 U.S.C. § 30301 note.

6. Notwithstanding the provisions of NRS 483.380, every ~~*[Every]*~~ driver authorization card ~~[expires on the anniversary of its issuance or renewal. Every driver authorization card is]~~ *:*

(a) Expires ~~*[as provided in regulations adopted by the Department pursuant to NRS 483.380.]*~~ *on the fourth anniversary of the holder's birthday, measured in the case of initial issuance or renewal from the birthday nearest the date of issuance or renewal.*

(b) Is renewable at any time before its expiration upon application and payment of the required fee. The Department may, by regulation, defer the expiration of the driver authorization card of a person who is on active duty in the Armed Forces of the United States upon such terms and conditions as it may prescribe. The Department may similarly defer the expiration of the driver authorization card of the spouse or dependent son or daughter of that person if the spouse or child is residing with the person.

7. A driver authorization card shall not be used to determine eligibility for any benefits, licenses or services issued or provided by this State or its political subdivisions.

8. Except as otherwise provided in this section or by specific statute, any provision of this title that applies to drivers' licenses shall be deemed to apply to a driver authorization card and an instruction permit obtained in accordance with this section.

Sec. 2. ~~[NRS 483.380 is hereby amended to read as follows:~~

~~483.380 1. Except as otherwise provided in NRS 483.283, every driver's license *and driver authorization card* expires as prescribed by regulation.~~

~~2. The Department shall adopt regulations prescribing when a driver's license [expires.] *and a driver authorization card expire*. The Department~~

~~may, by regulation, defer the expiration of the driver's license or *driver authorization card* of a person who is on active duty in the Armed Forces upon such terms and conditions as it may prescribe. The Department may similarly defer the expiration of the *driver's* license or *driver authorization card* of the spouse or dependent son or daughter of that person if the spouse or child is residing with the person.~~

~~*3. Except as otherwise required by federal law, the regulations required pursuant to subsection 2 must ensure that the period between the issuance and expiration of a driver authorization card is equal to the period between the issuance and expiration of a driver's license.]~~ (Deleted by amendment.)

Sec. 3. ~~[As soon as practicable after July 1, 2017, the Department of Motor Vehicles shall adopt the regulations required pursuant to NRS 483.380, as amended by section 2 of this act.]~~ (Deleted by amendment.)

Sec. 4. This act becomes effective on July 1, 2017.

Senator Ratti moved the adoption of the amendment.

Remarks by Senator Ratti.

Amendment No. 972 to Assembly Bill No. 322 changes the date from the date of issuance to the date of birth.

Amendment adopted.

Bill read third time.

Remarks by Senator Atkinson.

Assembly Bill No. 322 provides that a driver authorization card expires on the fourth anniversary of the holder's birthday, measured from the birthday nearest the date of issuance or renewal.

Roll call on Assembly Bill No. 322:

YEAS—12.

NAYS—Gansert, Goicoechea, Gustavson, Hammond, Hardy, Harris, Kieckhefer, Roberson, Settelmeyer—9.

Assembly Bill No. 322 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS
CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Joint Resolution No. 17 of the 78th Session.

The following Assembly amendment was read.

Amendment No. 894.

SUMMARY—Proposes to amend the Nevada Constitution to expand the rights guaranteed to victims of crime. (BDR C-952)

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to expand the rights guaranteed to victims of crime by adopting a victims' bill of rights.

Legislative Counsel's Digest:

Under the Nevada Constitution, the Legislature is required to provide by law for certain rights of the victims of crimes, in particular, the right to be

informed of the status of criminal proceedings concerning those crimes, the right to be present at public hearings concerning those crimes and the right to be heard at all proceedings for the sentencing or release of persons convicted of those crimes. (Nev. Const. Art. 1, § 8)

This resolution proposes to amend the Nevada Constitution to eliminate the existing provisions of Article 1, Section 8, concerning victims' rights and to add a new section that sets forth an expanded list of such rights in the form of a victims' bill of rights. The new section is modeled after the victims' bill of rights set forth in the California Constitution as it was amended in 2008 by what is commonly referred to as Marsy's Law. (Cal. Const. Art. 1, § 28)

Under the Nevada Constitution, in order for the Legislature to submit a resolution proposing state constitutional amendments to the voters for approval and ratification: (1) the Legislature must pass the resolution for a first time; and (2) the next Legislature also must pass the same resolution, without any legislative amendments, for a second time. (Nev. Const. Art. 16, § 1; *Selzer v. Synhorst*, 113 N.W.2d 724, 733 (Iowa 1962) ("A constitutional amendment so initiated by the legislature must be passed in the same form by two successive sessions of the legislature and then approved by a vote of the people."); *State ex rel. Owen v. Donald*, 151 N.W. 331, 342 (Wis. 1915) ("At the next session of the legislature each of the two houses must agree to the precise proposal agreed to at the previous session.")) If the next Legislature amends the resolution and passes it as amended, the legislative amendments start anew the process of amending the Nevada Constitution. (*Coleman v. Pross*, 246 S.E.2d 613, 620 (Va. 1978))

This resolution was initially passed by the 2015 Legislature during the 78th Session and returned for consideration by the 2017 Legislature during the 79th Session to determine whether to pass the same resolution, without any legislative amendments, for a second time. (Nev. Const. Art. 16, § 1; NRS 218D.800) However, the 2017 Legislature amended this resolution. Therefore, if the 2017 Legislature passes this resolution as amended, it also must be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 23, be added to Article 1 of the Nevada Constitution to read as follows:

Sec. 23. 1. Each person who is the victim of a crime is entitled to the following rights:

(a) To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal or juvenile justice process.

(b) To be reasonably protected from the defendant and persons acting on behalf of the defendant.

(c) To have the safety of the victim and the victim's family considered as a factor in fixing the amount of bail and release conditions for the defendant.

(d) To prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim's family.

(e) To refuse an interview or deposition request, unless under court order, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

(f) To reasonably confer with the prosecuting agency, upon request, regarding the case.

(g) To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other postconviction release proceedings, and to be present at all such proceedings.

(h) To be reasonably heard, upon request, at any public proceeding, including any delinquency proceeding, in any court involving release or sentencing, and at any parole proceeding.

(i) To the timely disposition of the case following the arrest of the defendant.

(j) To provide information to any public officer or employee conducting a presentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant and the release of or the escape by the defendant from custody.

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

(n) To be informed of all postconviction proceedings, to participate and provide information to the parole authority to be considered before the parole of the offender and to be notified, upon request, of the parole or other release of the offender.

(o) To have the safety of the victim, the victim's family and the general public considered before any parole or other postjudgment release decision is made.

(p) To have all monetary payments, money and property collected from any person who has been ordered to make restitution be first applied to pay the amounts ordered as restitution to the victim.

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

2. A victim has standing to assert the rights enumerated in this section in any court with jurisdiction over the case. The court shall promptly rule on a victim's request. A defendant does not have standing to assert the rights of his or her victim. This section does not alter the powers, duties or

responsibilities of a prosecuting attorney. A victim does not have the status of a party in a criminal proceeding.

3. Except as otherwise provided in subsection 4, no person may maintain an action against this State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of this section or any statute enacted by the Legislature pursuant thereto. No such violation authorizes setting aside a conviction.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by this section or any statute enacted by the Legislature pursuant thereto.

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims. A parole authority shall extend the right to be heard at a parole hearing to any person harmed by the offender.

6. The Legislature shall by law provide any other measure necessary or useful to secure to victims of crime the benefit of the rights set forth in this section.

7. In interpreting and applying the provisions of this section, a court may balance the rights of the victim set forth in this section against the needs of society for effective, efficient and orderly judicial administration of the criminal or juvenile justice process.

8. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

And be it further

RESOLVED, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. ~~[The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:~~

~~(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;~~

~~(b) Present at all public hearings involving the critical stages of a criminal proceeding; and~~

~~(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.~~

~~3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.~~

~~4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.~~

~~5.]~~ No person shall be deprived of life, liberty, or property, without due process of law.

~~[6.]~~ *3.* Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

Senator Segerblom moved that the Senate do not concur in Assembly Amendment No. 894 to Senate Joint Resolution No. 17 of the 78th Session.

Motion carried.

Resolution ordered transmitted to the Assembly.

UNFINISHED BUSINESS

SIGNING OF BILL AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 65, 84, 149, 162, 199, 251, 268, 270, 283, 291, 320, 350, 352, 357, 398, 399, 400, 415, 452, 460, 468, 516; Senate Joint Resolutions Nos. 1, 3.

Senator Ford moved that the Senate adjourn until Thursday, June 1, 2017, at 11:00 a.m.

Motion carried.

Senate adjourned at 8:29 p.m.

Approved:

MARK A. HUTCHISON
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate