Policy and Program Report

2006-2007

Nevada Legislative Counsel Bureau
Research Division

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BUSINESS ENTITIES AND ECONOMIC DEVELOPMENT

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One of the historic functions of government is to regulate and promote commerce, with the goal of enhancing the community's wealth while protecting its consumers. Nevada's economy is driven by approximately 2.5 million people and the businesses that employ them. For the past 20-plus years, Nevada has been the fastest growing state in the nation, due in large part to quality of life and the encouragement of business expansion and job development. Nevada has long considered itself the "Delaware of the West" for its attractive business climate with a tax structure that promotes commerce and encourages businesses to relocate to our state. This policy brief explores topics relating to commerce, including business entities and economic development.

BUSINESS ENTITIES: CORPORATIONS AND PARTNERSHIPS

Corporations

The corporation is a form of business ownership that has advantages and disadvantages over other forms of business ownership. A corporation is a distinct legal entity, separate from its owners, and the creation of such an entity usually requires filing certain documents with the Office of the Secretary of State and the payment of certain fees. Typically, the general benefits and characteristics of forming a corporation include:

- Limited liability for owners;
- Centralized management
- Free transferability of ownership;
- Continuity (perpetuity) of life; and
- Tax Advantages.

Generally, Chapter 78 of the *Nevada Revised Statutes* (NRS) governs private corporations and provides that "one or more persons may establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose . . . by: (a) signing and filing in the Office of the Secretary of State articles of incorporation; and (b) filing a certificate of acceptance of appointment, signed by the resident agent of the corporation, in the Office of the Secretary of State" (NRS 78.030). Every corporation must have a resident agent, who resides and has an actual street address within the State of Nevada, for service of process on behalf of the corporation.

Nevada recognizes different kinds of corporations, including: domestic (incorporated within Nevada) and foreign (incorporated in another state or country) corporations; close corporations (all stock must be held by one person or no more than 30); professional corporations, nonprofit corporations, corporations sole (for religious purposes); and limited liability companies. Each type of corporation may be treated differently under the law for purposes of legal liability and tax implications, among other things.

According to Nevada's Secretary of State, there are several reasons why one should consider incorporating in business-friendly Nevada:

- No state corporate income tax;
- No taxes on corporate shares;
- No personal income tax;
- No Internal Revenue Service information-sharing agreement;
- Nominal annual fees;
- Minimal reporting and disclosure requirements;
- Stockholders are not public record;
- Stockholders, directors, and officers need not live or hold meetings in Nevada, or even be citizens of the United States;
- Directors need not be stockholders;
- Officers and directors of a Nevada corporation can be protected from personal liability for lawful acts of the corporation;
- Nevada corporations may purchase, hold, sell, or transfer shares of their own stock; and
- Nevada corporations may issue stock in return for capital, services, personal property, or real estate, including leases and options. The directors may determine the value of any of these transactions, and their decision is final.

Partnerships

Generally, NRS Chapters 87 and 88 govern partnerships. A partnership is an association of two or more persons, formed to carry on as co-owners of a business for profit. Nearly all states, including Nevada, have adopted the Uniform Partnership Act.

One major difference between corporations and partnerships is in the area of taxation. Generally, partnerships are treated as a conduit, and are therefore not subject to taxation at the partnership level. The various items of partnership income and losses flow through to the individual partners and are reported on their individual tax returns. Additionally, it should be noted that individual partners do not enjoy the benefits of limited liability as do corporate entities.

Nevada recognizes many types of partnerships, each with its own characteristics and issues relating to membership and liability. To form a partnership, the persons must file the proper paperwork, register, and pay the appropriate fees with the Secretary of State. The various types of partnerships, including domestic and foreign, recognized in Nevada include:

- General partnerships;
- Limited partnerships;
- Limited liability partnerships; and
- Limited liability limited partnerships.

Within the partnership structure there are differences between a general partnership and a limited partnership. While Nevada recognizes both entities, a general partnership is typically one in which all of the partners share the profits and losses and management responsibilities equally, though their individual capital contributions may not be equal. On the other hand, a limited partnership usually consists of one or more "general" partners, who are jointly and severally liable and through whom the primary business is conducted, and one or more "limited" partners, who contribute capital to the partnership, but who are not liable for the debts of the partnership beyond the funds contributed.

2005 LEGISLATION IMPACTING BUSINESS ENTITIES

2005 Legislation

Each session, the Legislature considers several omnibus measures to update Nevada's business laws. During the 2005 Legislative Session, Senate Bill 338 was introduced at the request of the Business Law Section of the State Bar of Nevada. The bill enacts provisions that facilitate the formation of real estate investment trusts and revises provisions governing voting rights and the use of proxies to clarify that a proxy governs unless revoked or extinguished. The measure also clarifies the rules governing treatment of fractional shares of stock and defines procedures pertaining to dissenters' rights.

In response to several recent large-scale land transactions in southern Nevada, S.B. 338 also imposes new disclosure requirements on domestic or foreign limited liability companies that engage in land transactions with local governments.

The second major business bill of the 2005 Session, S.B. 453, was introduced on behalf of the Secretary of State. The bill generally revises provisions concerning the timing, form, and contents of various business filings. Additionally, S.B. 453 provides that a person who knowingly files a forged or false record may be subject to civil liability. Finally, the measure establishes certain fees, including an expedited one-hour service fee charged by the Secretary of State for services provided to business entities.

In addition, during the 2005 Session, several measures were introduced at the recommendation of the National Conference of Commissioners on Uniform State Laws (NCCUSL). The NCCUSL, now in its 114th year, is composed of practicing lawyers, judges, legislators and legislative staff, and law professors, who have been appointed by their respective state governments. Its goal is to provide states with nonpartisan legislation that brings clarity and stability to critical areas of state law.

At the recommendation of the NCCUSL, S.B. 198 revises Article 3 (Negotiable Instruments) and Article 3 (Bank Deposits and Collections) of the Uniform Commercial Code (UCC). The revisions govern: (1) the transfer and enforcement of a lost, destroyed, or stolen negotiable instrument to clarify that the party seeking to enforce such an instrument did not have to be in possession of the instrument at the time it was lost; (2) the payments by a person on a negotiable instrument after the instrument has been transferred when the person has not received notice of the transfer; and (3) the responsibilities of banks with respect to telephonically generated checks.

Additionally, S.B. 201 repeals and replaces provisions of Article 1 (General Provisions) and Article 7 (Warehouse Receipts, Bills of Lading, and other Documents of Title) of the UCC by enacting new general provisions and by providing rules for electronic documents of title. The new provisions relating to Article 1 of the UCC have been adopted in nine states (including Nevada), and are pending in ten other states. The new provisions relating to Article 7 have also been adopted by 9 states (including Nevada) and are pending in 11 other states

As to partnerships, S.B. 199 adopts the Revised Uniform Partnership Act, which has been adopted in at least 30 other states. The original Uniform Partnership Act was first adopted by the NCCUSL in 1914 and, with revisions from time to time, has provided the basic law governing partnerships in the United States.

Senate Bill 199 allows an existing partnership or a future partnership to elect to be governed by the provisions of the existing Partnership Act or the provisions of the newly revised Act. The bill also establishes a partnership as a separate legal entity, not merely an aggregate of partners, and also expands the fiduciary duties of partners to each other by providing for express obligations of loyalty, due care, and good faith.

ECONOMIC DEVELOPMENT

Nevada's unique business environment has contributed to the state's exceptional growth. Nevada's tax structure continues to be one of the least burdensome in the country, allowing both businesses and employees to flourish.

The tax advantages in the State of Nevada include:

- No corporate income tax;
- No personal income tax;
- No franchise tax on income;
- No inheritance or gift tax;
- No admissions tax;
- No unitary tax;
- No estate tax;
- Competitive sales and property tax rates; and
- Minimal employer payroll tax (0.7 percent of gross wages with deductions for employer-paid health insurance).

Incentive Programs

The state operates a number of incentive programs designed to enhance and maintain a strong and vibrant economy in Nevada. More information on these programs can be found on Nevada's Commission on Economic Development Web site: http://www.expand2nevada.com. Specific incentive programs include:

Sales and Use Tax Abatement: An abatement of sales and use tax on eligible machinery and equipment is available to businesses with operations consistent with Nevada's state plan for economic diversification and development. Qualifying criteria include a commitment to doing business in Nevada, minimum job creation, employee health plans, and wage requirements.

Sales Tax Deferral: Nevada offers a sales and use tax deferment program to qualified industries that purchase specific types of capital equipment in excess of $100,000. Taxes can be deferred interest-free for up to five years.

Sales Tax Exemptions: Certain aircraft engaged in air transportation are exempt from taxes imposed on gross receipts from the sale of aircraft and major components of aircraft.

Personal Property Tax Abatement: An abatement of personal property tax is available to businesses with operations consistent with Nevada's state plan for economic diversification and development. Qualifying criteria include a commitment to doing business in Nevada, minimum job creation, employee health plans, minimum capital investment, and wage requirements.

Property Tax Abatement: Real and personal property tax abatement is available to qualified recycling businesses. At least 50 percent of the material or product must be recycled on site. Fifty percent of real and personal property tax can be abated for up to ten consecutive years. A five-year commitment on behalf of the company is required as well as acknowledgement from local government.

Property Tax Exemptions: The following are exempt from property tax:

1. All personal property stored, assembled, or processed for interstate transit;

2. All raw materials and supplies utilized in the manufacturing process;

3. Inventories held for sale within Nevada; and

4. All real and personal property that qualifies and is used for the purpose of air and/or water pollution control.

Job Training: Nevada offers a customized job training program to qualified businesses that meet established criteria. This program may be used prior to a plant opening and up to 90 days following.

Industrial Development Bonds: Nevada is authorized to use tax-exempt industrial development bonds to provide low-interest financing of new construction, improvements, rehabilitation, or redevelopment of qualified projects, which include manufacturing facilities and certain other projects organized under Section 501 of the Internal Revenue Service Code. Over the past 12 years, 41 bonds have been issued representing financing of $125 million and the creation of 4,000 jobs.

Renewable and Energy Storage Abatements: For those companies involved in the production of energy from renewable sources such as wind, solar, and others, or a facility for the production of an energy storage device, there is a package of abatements available including sales/use tax and property tax.

Technical and Support Services: The Procurement Outreach Program provides bid information and direct technical assistance to businesses selling goods and services to the government. Nevada's Commission on Economic Development works with a network of Development Authorities (DAs). These DAs are experts regarding local political climates, business opportunities, and real estate costs and availability. The following table lists the local DAs and their coverage areas:

Regional Economic Development Authorities

Development Authority	Coverage Area
Churchill Economic Development Authority	Church County
Economic Development Authority of Western Nevada	Washoe County
Economic Development Authority of Esmeralda/Nye	Esmeralda and Nye Counties
Elko County Economic Diversification Authority	Elko County
Eureka County Economic Development Program	Eureka County
Humboldt Development Authority	Humboldt County
Lander Economic Development Authority	Lander County
Lyon County Development Authority	Lyon County
Mineral County Economic Development Authority	Mineral County
Nevada Development Authority	Clark County
Northern Nevada Development Authority	Carson City, Douglas, and Storey Counties
Pershing County Economic Development Authority	Pershing County
White Pine Economic Diversification Council	White Pine County

Current Issues in Economic Development

DaimlerChrysler vs. Cuno Case

In March of 2006, the Supreme Court heard arguments in the DaimlerChrysler vs. Cuno Case, the landmark economic development investment tax credit case from Ohio. Several businesses and residents of Ohio and Michigan sued DaimlerChrysler and the city of Toledo over tax incentives the city gave the automaker to build a new Jeep plant. The city of Toledo gave DaimlerChrysler $280 million in tax incentives in exchange for the automaker spending $1.2 billion to build the plant.

In 2004, the Sixth Circuit Court of Appeals ruled that the economic development investment tax credits violated the Commerce Clause of the U.S. Constitution because the credits hinder free trade among the states.

However, the Supreme Court did not consider the Constitutional question, instead finding that the taxpayers did not have the right to sue over tax breaks given to DaimlerChrysler to lure the

Jeep plant to Toledo, Ohio. Chief Justice John Roberts said in the ruling that the court has in the past rejected cases brought by federal taxpayers against the government for similar claims of misusing tax funds and that the taxpayers in this case could not prove they had been harmed by the incentives.

According to a study by the National Education Association, 36 states and many local governments use property tax credits to attract businesses and keep existing ones from moving to lower-cost states or out of the country. With the larger question of whether the tax incentives are Constitutional still unanswered, this issue is one that State's and local governments will be watching.

CONTACT INFORMATION

Commission on Economic Development
Carson City (775) 687-4325
Las Vegas (702) 486-2700
http://www.expand2nevada.com

Division of Industrial Relations
Carson City (775) 684-7260
http://dirweb.state.nv.us

Department of Taxation
Carson City (775) 684-2000
Las Vegas (702) 486-2300
http://tax.state.nv.us/

Department of Business and Industry
Carson City (775) 687-4250
Las Vegas (702) 486-2750
http://dbi.state.nv.us/

Nevada Small Business Development Center
Carson City (775) 882-1565
Las Vegas (702) 895-4270
http://www.nsbdc.org

Office of the Secretary of State
Carson City (775) 684-5703
http://www.sos.state.nv.us

FREQUENTLY ASKED QUESTIONS

Q: How do I get a business license?

A: If you are selling products or marketing your business in Nevada, contact Nevada's Department of Taxation at (775) 687-4892. If you are starting a local business, contact the county or city office where your business will be located.

Q: Where do I file for incorporation in the State of Nevada?

A: If you are trying to incorporate in the State of Nevada, contact the Secretary of State at (775) 684-5703.

Q: What services are offered for small businesses, women, and minority-owned businesses?

A: Contact the Small Business Development Center in Reno at (775)784-1717 or Las Vegas at (702) 734-7575.

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LABOR AND EMPLOYMENT

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EMPLOYERS AND EMPLOYEES

At-Will Employment

Nevada is an "at-will" employment state. In this context, the term "at-will" means an employment relationship that can be terminated by an employer whenever and for whatever cause without liability for wrongful discharge if the employment is not for a definite period and if there is no contractual or statutory restrictions on the right of discharge. However, an employer cannot terminate an employee on the basis of race, religion, natural origin, or age. Nor can an employer discharge an employee in retaliation for exercising a right such as filing a workers' compensation claim.

The Supreme Court of Nevada has considered the issue of "at-will" employment on numerous occasions. For example, in the case of *Vancheri vs. GNLV Corp*., 105 Nev. 417, 777 P.2d 366 (1989), the Court stated, "Employment 'at-will' is a contractual relationship and thus governed by contract law. An employer can dismiss an at-will employee with or without cause, so long as the dismissal does not offend a public policy of this state." Similarly, in the case of *American Bank Stationery vs. Farmer*, 106 Nev. 698, 799 P.2d 1100 (1990), the Court noted, "all employees in Nevada are presumed to be at-will employees. An employee may rebut this presumption by proving by a preponderance of the evidence that there was an express or implied contract between his employer and himself that his employer would fire him only for cause."

Right-to-Work

Nevada's right-to-work law is found in Chapter 613 of *Nevada Revised Statutes* (NRS). The law prohibits any requirement that an employee become or remain a member of a labor union as a condition of employment. It also makes it unlawful to compel a person to join a union against his will. Penalty provisions are included for violations of the law.

The law was enacted by an initiative of the people and became effective after canvass of the vote by the Nevada Supreme Court in 1953. In the 1950s, three subsequent initiatives aimed at repeal of the right-to-work law were defeated at the polls, and a fourth was removed from the ballot for lack of sufficient signatures. Between 1959 and 1979, eight legislative efforts to amend or repeal the law were rejected. The decade of the 1980s saw no such legislative proposals and a 1991 bill was not voted out of committee. No proposals to amend the law were introduced during the 1993 Legislative Session. According to press reports, a 1994 effort to repeal the law did not obtain enough signatures to be placed on the ballot. A legislative proposal in 1995 would have specified that the right to work includes the right to join a labor organization. The measure failed a vote on the Senate floor. No proposals to amend the right-to-work laws were considered during the 1997-2005 Sessions. In 2003 and 2005, bills were introduced to require non union employees in bargaining units to pay service fees to labor organizations under certain conditions, but both measures failed.

LABOR STANDARDS

Employment of Minors

Nevada law imposes certain restrictions on the employment of minors under 16 years of age. For example, no child under 16 years of age can legally be employed to work in any capacity in connection with:

- The preparation of any composition in which dangerous or poisonous acids are used;
- The manufacture of paints, colors, or white lead;
- Dipping, drying, or packing matches;
- The manufacture of goods for immoral purposes;
- Any mine, coal breaker, quarry, smelter, ore reduction works, laundry, tobacco warehouse, cigar factory, or other factory where tobacco is manufactured or prepared;
- Any distillery, brewery, or any other establishment where malt or alcoholic liquors are manufactured, packed, wrapped, or bottled;
- Any glass furnace, smelter, the outside erection and repair of electric wires, the running or management of elevators, lifts or hoisting machines, or oiling hazardous or dangerous machinery in motion; or
- Switch tending, gate tending, or track repairing.

Additionally, no child under 16 years of age can legally be employed as a brakeman, fireman, engineer, motorman, or conductor upon any railroad in or about establishments where certain explosives (e.g., dynamite, nitroglycerin, and so on) are manufactured or stored. The Labor Commissioner has authority to declare other employments to be dangerous or injurious to the health or morals of children under 16 years of age, thus, prohibiting the employment of children in those lines of work as well.

Nevada does not have many limitations on minors age 16 to 18. Minors of this age are not allowed to work in casinos, bars, or in an occupation dangerous to health. Additionally, in incorporated cities and towns, no person under the age of 18 years can be employed as a messenger to distribute or deliver goods or messages before 5 a.m. or after 10 p.m. of any day.

With certain exceptions, no child under 16 years of age may work more than 48 hours in a week or eight hours in a day. The law also provides that no child under 14 years of age may be employed unless written permission is secured from a district court judge, or from a juvenile master, referee, or probation officer authorized to sign a permit by a judge. Finally, except for employment as a performer in a motion picture, it is unlawful for any person to employ any child under 14 years of age during the hours in which school is in session, unless the child has been excused from attendance by the school district or by order of the juvenile court for the purpose of employment.

Nevada law was amended in 2003 to provide for the judicial approval of a contract involving a minor who agrees to render artistic, athletic, creative, or intellectual property services. If the court grants the petition, the court must immediately appoint a special guardian to receive and hold a specified percentage of the minor's net earnings. When the contract is terminated, the net earnings amount must be transferred to the minor if he has been emancipated, or to the minor's guardian.

Minimum Wage

The federal Fair Labor Standards Act (FLSA) requires employers to pay nonexempt employees at least a minimum wage for all hours they work. The current federal minimum wage is $5.15 per hour. The FLSA does not supersede any state or local laws that are more favorable to employees. Therefore, if a state has a minimum wage that is higher than the federal minimum, employers are obligated to pay the higher rate to employees working in that state.

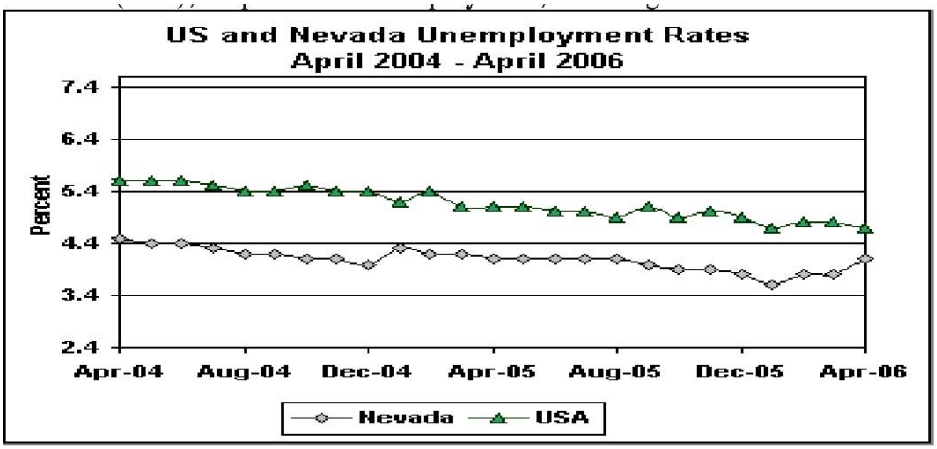
The State of Nevada enacted a minimum wage law in 1937, a year before the federal minimum wage was set. However, the 1937 legislation regulated the wage, hours, and working conditions only of females employed in private employment. In 1965, the law was amended by adding males and minors in private employment to the minimum wage provisions. The last significant change to Nevada's minimum wage law occurred in 1989, when it was amended to require the Labor Commissioner to prescribe increases in the minimum wage in accordance with those prescribed by federal law.

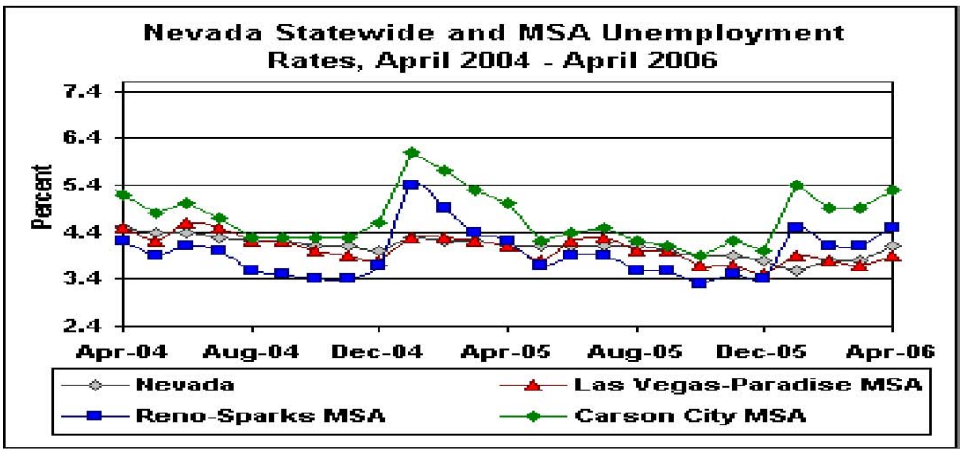
State Question No. 6 on the November 2, 2004, General Election Ballot proposed adding a new section to the *Nevada Constitution* requiring employers to pay a minimum wage of $5.15 per hour to any employee for whom the employer provides health care benefits or $6.15 per hour to any employee for whom the employer does not provide health care benefits. In addition, the minimum wage would be adjusted annually thereafter to the level of the federal minimum wage or by the cumulative increase in the cost-of-living index, whichever results in a higher amount. Since Question No. 6 proposes to amend the *Constitution of the State of Nevada*, it must be approved in identical form (including the same question number) at the next General Election in 2006 (November 7, 2006) before it would become effective. If the voters approve Question

No. 6 again in 2006, it would become effective on the fourth Tuesday of November (November 28, 2006) when the Supreme Court must meet to officially certify the election results.

UNEMPLOYMENT INSURANCE

The unemployment insurance (UI) system was created in 1935 by the federal Social Security Act to alleviate personal hardship and stabilize the economy by providing insured workers with partial replacement of wages lost by involuntary unemployment. Nevada's UI program is administered by the Employment Security





Source: Nevada's Department of Employment, Training and Rehabilitation

To qualify for UI benefits, a person must: (1) be fully or partially unemployed; (2) have earned enough wages to establish a monetary entitlement; and (3) be unemployed through no fault of the worker. The person also must be able to work, available for work, and actively seeking work. The amount of benefits to which a person may be entitled depends on the wages earned during a base period. The base period is defined as the first four of the last five completed calendar quarters immediately preceding the person's initial claim for benefits. The weekly benefit amount is 4 percent of the employee's highest quarterly earnings during the base period. However, the minimum weekly benefit is $16 and the maximum weekly benefit is 50 percent of the statewide average weekly wage. Benefits are generally limited to a period of 26 weeks unless extended by law.

Generally, any employer who pays wages of $225 or more during any calendar quarter for services performed in Nevada must register with ESD and pay unemployment taxes on those wages. There is no UI tax paid by employees. The UI tax rate for new employers is 2.95 percent of taxable wages. There is an additional tax of 0.05 percent for the Career Enhancement Program, an unemployment training program established to foster job creation, minimize unemployment cost for employers, and meet the needs of employers for skilled workers by providing training to unemployed persons.

After an employer has been in business for approximately 3.5 to 4 years, the employer's tax rate will be determined by the employer's unemployment experience during that time, and can range from as low as 0.25 percent to a maximum of 5.4 percent. Previous experience is measured by each employer's "reserve ratio," which is the excess of taxes paid over benefit charges divided by average taxable payroll for the prior three years. The average tax rate for all Nevada employers is estimated by ESD to be 1.29 percent.

WORKERS' COMPENSATION

Workers' compensation insurance is specialized insurance purchased by employers to provide medical care, disability compensation (indemnity) payments, and rehabilitation services for workers who are injured on the job or who contract occupational diseases in the course of their employment. Nevada's original Industrial Insurance Act was adopted in 1913 and has been amended during every regular legislative session since then. The fundamental principle in worker's compensation is that an employee is entitled to benefits no matter who was at fault (with a few limited exceptions such as where drug or alcohol use causes the accident). In exchange for covering all work injuries and diseases regardless of fault, employers are protected by the so-called "exclusive remedy" provision. This means an injured worker cannot sue an employer in tort even if the employer in fact was responsible for the injury or disease (except if the employer can be shown to have intentionally injured the employee).

Self-insurance was authorized for qualified employers in 1979 and became effective on January 1, 1980. Prior to that time, the Nevada Industrial Commission (NIC) had been the only provider of workers' compensation insurance in Nevada. The 1979 Legislature also removed the hearings process for contested claims from the NIC and placed it in a new Hearings Division within the Department of Administration.

In 1981, the Legislature completely revised the structure of the NIC. Effective July 1, 1982, the NIC ceased to exist and the State Industrial Insurance System (SIIS) began operation as the state-run workers' compensation insurance carrier. Also on that date, the Division of Industrial Relations began operation as the primary regulator of the state's workers' compensation program.

The 1999 Legislature authorized the privatization of SIIS. On January 1, 2000, SIIS, doing business as Employers Insurance Company of Nevada (EICON), became a private domestic mutual insurance company and thus Nevada currently operates in a "two way" market composed of private carriers and self-insured employers.

The Commissioner of Insurance reviews and approves premium rates and is responsible for certifying self-insured employers and associations of self-insured public and private employers who meet certain statutory qualifications. The Commissioner also regulates third-party administrators of self-insured programs and managed care organizations.

The Nevada Attorney for Injured Workers is a state agency that represents claimants free of charge at the Hearings Division's appeals level, in the state's district courts, and before the Supreme Court of Nevada.

Benefits under Nevada's workers' compensation system are specified in statutes and generally fall into three major categories: indemnity, medical, and rehabilitation:

1. Indemnity benefits are payments to injured workers to replace a portion of lost wages. Eligibility requirements, the amount of benefits, and the duration of benefits are mandated by Nevada's statutes. Generally, the amount of these benefits is limited to 66 2/3 of the wages of a person at the time of his industrial injury, but is subject to a maximum amount. These benefits may be paid for temporary total disabilities (TTD) or temporary partial disabilities (TPD). In addition, benefits may be paid for permanent partial disabilities (PPD). The amount of a PPD award is based on several factors including the person's wage at the time of injury and the severity of the injury. Finally, a worker who is determined to be permanently and totally disabled as a result of an occupational injury or disease may receive a pension for life.

2. Medical benefits are paid by the insurer for all medically necessary procedures and devices that are related to the injured worker's claim, without any deductible or copayment. Health care providers are not allowed to seek payment from the injured worker for any portion of the costs of providing the medical care.

3. Rehabilitation expenses may be paid by insurers in cases where the nature of the injury precludes the injured worker from returning to pre-injury employment. Rehabilitation plans can include educational or vocational training, compensation payments (known as rehabilitation maintenance), or a lump sum payment in lieu of rehabilitation.

Before the 1993 Session began, the Legislature learned SIIS was insolvent, with an unfunded liability of $2.2 billion. Recognizing the urgent need to address this financial crisis, the Legislature enacted a comprehensive measure designed to reform Nevada's workers' compensation program and to implement cost savings provisions to deal with the financial situation faced by SIIS. The bill included provisions for implementation of a managed care program, imposition of employer deductibles, and more aggressive pursuit of fraud perpetrated by employees, employers, and health care providers. In addition the bill included provisions that reduced injured workers' benefits. Some examples of these benefit reductions include:

- A limitation on stress as a compensable injury; and

- A limitation on eligibility and the amount of payments for rehabilitation.

In 1995, the Legislature took further action to reform the workers' compensation program by prohibiting civil lawsuits against an insurer or a third-party administrator who in bad faith violates the provisions of the workers' compensation statutes. Instead of allowing such lawsuits, the Legislature created a benefit penalty to be paid directly to an injured worker and authorized the Commissioner of Insurance to withdraw the certificate of self-insurance if a self-insured employer violates certain provisions of the law that are intended specifically to protect injured workers from unreasonable actions by insurers.

POTENTIAL LEGISLATIVE ISSUES IN 2007

As the financial condition of SIIS improved, and as competition in the workers' competition insurance market has flourished, the reforms enacted in the 1990s have been subject to reevaluation. Several issues that have been raised in recent legislative sessions may be topics of discussion in the future, including:

- Repeal of the provision that bans civil suits against an insurer or a third-party administrator who violates workers' compensation statutes;

- Revision of the managed care provisions that prevent some health care providers who are willing to abide by the terms of a managed care contract from providing services; and

- Revision of the presumptive medical and disability benefits statutorily granted to certain police officers and firefighters.

GLOSSARY OF TERMS AND ABBREVIATIONS

At-will
An employment relationship that can be terminated by an employer whenever and for whatever cause without liability for wrongful discharge under certain circumstances.

EICON
Employers Insurance Company of Nevada.

ESD
Employment Security Division of the Department of Employment, Training and Rehabilitation.

FLSA
The federal Fair Labor Standards Act, which requires employers to pay certain employees at least a minimum wage.

Minor
For employment purposes, a person under 18 years of age.

NIC
Nevada Industrial Commission.

PPD
Permanent partial disability.

Right-to-work
A law that prohibits any requirement that an employee become or remain a member of a labor union as a condition of employment.

SIIS
State Industrial Insurance System.

SUTA Dumping
SUTA (State Unemployment Tax Act) dumping is a tax evasion scheme where shell companies are formed and creatively manipulated to obtain low UI tax rates. When a low rate is obtained, payroll from another entity with a high UI tax rate is shifted to the account with the lower rate. The entity with the higher rate is then "dumped." Such schemes leave other employers making up for the unpaid tax.

TPD
Temporary partial disability.

TTD
Temporary total disability.

UI
Unemployment insurance.

ADDITIONAL REFERENCES

- Employment Security Division: http://detr.state.nv.us/es/es_index.htm
- Division of Industrial Relations: http://dirweb.state.nv.us/
- Office of Labor Commissioner: http://www.laborcommissioner.com/

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OCCUPATIONAL AND PROFESSIONAL LICENSING

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2006

PROFESSIONS REGULATED IN NEVADA

Many types of businesses, occupations, and professions are regulated by government. Most of the laws regulating occupations in this state are found in Title 54 of *Nevada Revised Statutes* (NRS) which contains provisions governing 49 professions, occupations, and businesses. Of these, 34 occupations are regulated by independent boards or commissions, 8 are administered through state agencies or officials, and 7 professions or businesses have regulatory provisions that rely on local officials or civil action for enforcement.

In discharging these functions, regulatory bodies are mandated to enforce the provisions of state law for the protection and benefit of the public. For this reason, lawmakers in recent legislative sessions have required regulatory bodies to make more information about professional disciplinary proceedings readily available to the public.

The following list indicates the 34 professions in Title 54 that are regulated by independent boards.

Title 54—Professions in Nevada Regulated By Independent Boards

Architecture, Interior Design and Residential Design (NRS 623)
Landscape Architects (NRS 623A)
Contractors (NRS 624)
Professional Engineers and Surveyors (NRS 625)
Environmental Health Specialists (NRS 625A)
Accountants (NRS 628)
Physicians, Physician Assistants and Practitioners of Respiratory Care (NRS 630)
Homeopathic Medicine (NRS 630A)
Dentistry and Dental Hygiene (NRS 631)
Nursing (NRS 632)
Osteopathic Medicine (NRS 633)
Chiropractic (NRS 634)
Oriental Medicine (NRS 634A)
Podiatry (NRS 635)
Optometry (NRS 636)

Dispensing Opticians (NRS 637)
Hearing Aid Specialists (NRS 637A)
Audiologists and Speech Pathologists (NRS 637B)
Veterinarians (NRS 638)
Pharmacists and Pharmacy (NRS 639)
Physical Therapists (NRS 640)
Occupational Therapists (NRS 640A)
Athletic Trainers (NRS 640B)
Massage Therapists (NRS 640C)
Psychologists (NRS 641)
Marriage and Family Therapists (NRS 641A)
Social Workers (NRS 641B)
Alcohol, Drug and Gambling Counselors and Detoxification Technicians (NRS 641C)
Funeral Directors, Embalmers and Operators of Cemeteries and Crematories (NRS 642)
Barbers and Barbering (NRS 643)
Cosmetology (NRS 644)
Private Investigators, Private Patrolmen, Polygraphic Examiners, Process Servers, Repossessors and Dog Handlers (NRS 648)
Administrators of Facilities for Long-Term Care (NRS 654)
Certified Court Reporters (NRS 656)

CREATION AND OPERATION OF INDEPENDENT BOARDS

The Legislature creates occupational and professional licensing boards and sets public policy governing them. The boards are invested with authority to adopt regulations regarding licensing and practice of the various professions, subject to review by the Legislative Commission. Members are appointed by the Governor to fixed terms, generally running three or four years. Some boards have limits on the number of terms, or at least consecutive terms, a member may serve. A number of boards have statutes providing the Governor may remove a member for cause. Many, but not all, boards have public members in addition to members of the regulated profession or occupation. Some boards utilize the Office of the Attorney General for legal counsel; other boards retain private counsel and a few boards use a combination of both.

Independent boards are funded by fees charged to licensees and do not receive State General Fund support. However, each board must submit financial accounting documents every fiscal year to the Legislative Auditor and the Director of the Budget Division of the Department of Administration. The Legislative Auditor may audit the fiscal records of any independent board when directed to do so by the Legislative Commission.

BUSINESSES AND PROFESSIONS REGULATED BY STATE AGENCIES

The following table indicates the eight businesses or professions in Title 54 that are regulated by state agencies, along with the NRS chapter and the agency with the regulatory authority:

Title 54—Professions in Nevada Regulated By State Agencies	
Profession	**Regulatory Authority**
Real Estate Brokers and Salesmen (NRS 645)	Real Estate Division and Real Estate Commission
Escrow Agencies and Agents (NRS 645A)	Commissioner of Mortgage Lending
Mortgage Brokers and Mortgage Agents (NRS 645B)	Commissioner of Mortgage Lending
Appraisers of Real Estate (NRS 645C)	Administrator of Real Estate Division, Commission of Appraisers of Real Estate
Inspectors of Structures (NRS 645D)	Administrator of Real Estate Division
Mortgage Bankers (NRS 645E)	Commissioner of Mortgage Lending
Collection Agencies (NRS 649)	Commissioner of Financial Institutions, Collection Agency Advisory Board
Medical Laboratories (NRS 652)	State Board of Health

PURSUITS REGULATED BY GOVERNMENT OFFICIALS OR PRIVATE LEGAL ENFORCEMENT

The following table lists the seven businesses or occupations in Title 54 that are not regulated by a board or agency but rely on local officials or civil action for enforcement:

Title 54—Professions in Nevada Not Regulated by an Agency or Board	
Profession	**Enforcement Authority**
Construction Controls (NRS 627)	Civil Action
Financial Planners (NRS 628A)	Civil Action
Pawnbrokers (NRS 646)	District Attorney, Sheriff, Chief of Police
Dealers in Junk and Secondhand Materials (NRS 647)	Sheriff, Police Department, or local government officials
Public Accommodations (NRS 651)	Criminal or Civil Action
Locksmiths and Safe Mechanics (NRS 655)	Permit from County Sheriff
Interpreters (NRS 656A)	District Attorney or Attorney General

There are numerous other business pursuits regulated to a greater or lesser extent by statute that are not generally considered under the occupational and professional title. These include such diverse enterprises as telemarketing, sellers of travel, and insurance agents.

LICENSING REQUIREMENTS

The majority of regulatory bodies establish some type of minimum qualifications for professional licensing. These qualifications can include minimum age limits; educational requirements; written, oral, or practical examinations; and background checks to ensure the applicant has not been disciplined or denied a license in another jurisdiction. Many bodies also require completion of annual or biannual continuing education courses to maintain and enhance skills. In general, boards do not provide for reciprocal licensing, i.e., issuing a license to a practitioner who is already licensed in another jurisdiction.

DISCIPLINARY POWERS OF REGULATORY BODIES

Each licensing board or commission has the authority to suspend or revoke the license or certificate that permits a person to practice the regulated profession. Boards also have authority to impose a fine or civil penalty; place a member on probation; issue a public reprimand; and recover the costs of an investigation, hearing, or prosecution from a member of the profession. Regulatory bodies have specific procedures for conducting investigations and disciplinary hearings to ensure licensees are accorded due process before any penalties are imposed. Once disciplinary action is initiated by an independent board, all proceedings must be conducted in public. Additionally, results of proceedings conducted by independent boards must be reported quarterly to the Legislature, which then posts them on the Internet so the public has ready access to the records.

A number of boards also have specific authority to refuse issuance of a new license or renewal of an existing license or to impose limits or conditions on the use of a license or a member's practice. Only a few licensing boards have authority to take other disciplinary actions, such as requiring certain competency examinations, training requirements, or supervision of a person's practice. These actions are limited to the more specialized fields like physicians, dentists, and veterinarians.

Most licensing bodies have detailed statutory grounds for discipline. These grounds range from general prohibitions against fraud, deceit, habitual intoxication, repeated acts of malpractice, or conduct involving moral turpitude to profession-specific provisions such as falsifying an entry on a patient's medical chart concerning a controlled substance (nurses), willful failure to pay for materials or services when due (contractors), or using a towel on one patron that has already been used on someone else unless the towel has been laundered (barbers).

ADDITIONAL RESOURCES

A list of members and contact information for Nevada's occupational and professional licensing boards may be viewed at:

http://www.leg.state.nv.us/lcb/research/2005LegManual/Directory2005.pdf

Please note that the list is updated manually and may be out of date.

Copies of disciplinary records of the independent occupational and professional boards may be viewed at:

http://www.leg.state.nv.us/general/occupational/reports.cfm

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HOUSING

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

There are a number of important issues that impact housing in Nevada. In recent years, some of these issues have commanded considerable legislative attention; several are likely to continue to do so in the next legislative session.

COMMON-INTEREST COMMUNITIES

Over the last several decades, common-interest communities (CICs), often referred to as homeowners' associations, have become an important feature of everyday life in Nevada. In many ways these organizations resemble small local governments. The Nevada Legislature adopted the Uniform Common-Interest Ownership Act (UCIOA) in 1991, which has been codified in Chapter 116 of the *Nevada Revised Statutes* (NRS). Chapter 116 extends to most CICs created within the State of Nevada.

After addressing the initial legal establishment of CICs, the Legislature was confronted with operational issues regarding the conduct of association business. Legislators were presented with many complaints regarding disputes over the proper interpretation and application of Covenants, Conditions, and Restrictions (CC&Rs) and provisions in association bylaws. In an attempt to provide a simple, inexpensive, and expeditious mechanism for resolving such controversies, the Legislature required that any civil action based on a claim relating to the bylaws, rules, or procedures for changing assessments in a CIC must be submitted to mediation or arbitration before the action is filed with a court.

Association members are supposed to have direct control over the executive board. Regrettably, legislators learned of instances where members were prevented from effectively participating in the governance process. Some boards never met or only met at very infrequent intervals. On occasion, critical association business was handled privately by individual board members without input from the homeowners who ultimately had to live with and pay for those

decisions. Lawmakers felt strongly that democratic principles should apply even in private associations because such organizations so directly affect individuals in their most expensive and cherished possession—their homes.

As a result, the Legislature made changes regarding notification of matters relating to homeowners' association meetings and other CIC ownership proceedings. Lawmakers increased the number of association meetings that must be held each year from at least one to a minimum of two. Additionally, legislation required an association to provide owners with a 21-day written notice of a meeting at which an assessment for a capital improvement is to be considered.

The Legislature also established procedures for filing an action to recover damages resulting from defects in residential construction and authorized the claimant to recover attorney's fees and certain costs incurred as a result of the damage. These complex lawsuits, which frequently involve homeowners' associations, were becoming increasingly common and expensive. The Legislature wanted to encourage parties to settle disputes without resorting to litigation and enacted procedures requiring parties to specify what defects were at issue and provide opportunities to effect repairs rather than seek damages.

The Legislature continued to monitor developments with CICs. As a result of further input from affected parties, lawmakers recognized the need to modify and expand certain protections previously created to ensure members retained ultimate control of their associations. The rights of association members are greatly diminished if they do not have an opportunity to attend meetings and be informed of the matters of business to be addressed. The result of this concern for individual homeowner's rights was the enactment of further legislation authorizing a member to attend any meeting of the association or the executive board, except when the executive board meets in executive session. Meetings of the association must be held at least once a year and the executive board must meet at least once every 90 days. Further, legislation prescribed requirements for the content of meeting agendas.

Lawmakers also established requirements for a reserve account for common area repairs and imposed preconditions before the association can commence certain civil actions. In addition, the Legislature created restrictions on an association's ability to foreclose a lien assessed for a violation of association rules. Further, an association may not apply any assessment, fee, or other charge paid by a member toward a fine imposed against the owner, without specific consent. Also, an association is prohibited from exercising the power of eminent domain.

Additionally, the Legislature created the Office of the Ombudsman for Owners in Common-Interest Communities and provided a mechanism to fund the ombudsman. Although the ombudsman has no real power to regulate associations, such an official can be effective through superior knowledge of the applicable laws, education of board members and homeowners, and facilitation of private dispute resolution.

When lawmakers heard testimony that indicated problems still existed with, among other issues, obtaining access to association information and with proper financial management, they required an association to prepare and distribute operating and reserve budgets and required the

executive board to conduct a study of the reserves at least once every five years. Notice requirements for board meetings were revised and the term of office for board members was limited to two years. In addition, the Legislature required that the election of board members be conducted by secret written ballot and the votes be counted in public. Only secret written ballots may be counted to determine whether a quorum is present for the election of board members. Additional requirements were established for proxy voting and voting by proxy for the election of board members was prohibited.

The Legislature granted authority to the Real Estate Commission to subpoena records, books, and other information of an association. The Legislature also required that a board, upon request by an association member, make available books, records, and other papers of the association. Finally, lawmakers required the commission to establish standards of practice and disciplinary procedures for persons engaged in property management for associations.

In 2003, the Legislature passed three bills addressing CIC issues. In order to give homeowners an expeditious and inexpensive forum for resolving disputes with CICs, the first bill creates a five-member Commission for Common-Interest Communities appointed by the Governor. Commissioners serve three-year terms and must meet certain qualifications. At least three must come from Clark County since it has the greatest concentration of CICs. The measure also contains provisions relating to a variety of issues such as executive board conflict of interest prohibitions, access to CIC documents, voting procedures, fines, and penalties.

Lawmakers enacted the second CIC measure to reinforce the Legislature's concern about due process for association members. The measure requires an owner to adhere to a schedule required by a CIC for the completion of the design, commencement, completion of construction, or issuance of a permit for a unit or an improvement to a unit. The bill also authorizes an association to impose and enforce a construction penalty if an owner fails to adhere to the schedule, as long as the CIC complies with certain notice and hearing requirements. The third measure protects the ability of association members to display the national flag without unreasonable restrictions. There is a "Frequently Asked Questions" section at the end of this brief that addresses some specific issues regarding CICs.

CONSTRUCTION DEFECTS

Constructional problems with a home can be extremely expensive and disruptive to people's lives. In extreme cases, defects in a house can pose a threat to the health and safety of the occupants. Given the rapid growth in home building in Nevada, constructional defect issues have become a major concern. Numerous homeowners have complained in legislative hearings that some builders are nonresponsive when contacted about such defects. In addressing these issues, the Legislature has had one basic goal: fixing defects for homeowners in the quickest manner possible while ensuring quality repairs. Failure to act decisively could expose the state to a crisis in the construction industry due to difficulties in obtaining liability insurance for builders.

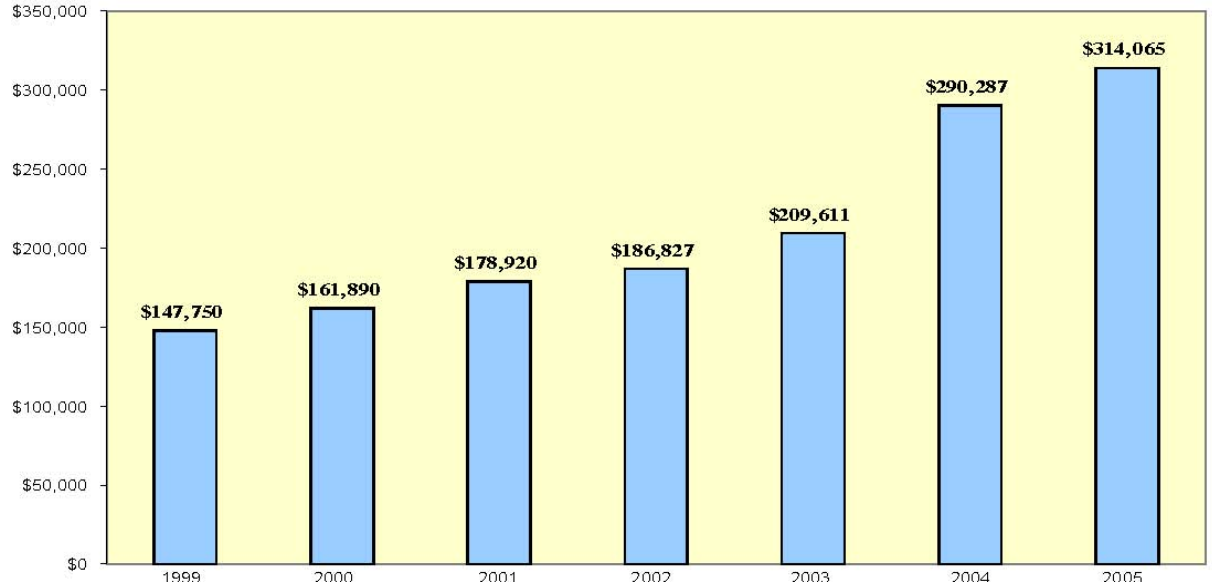
About half the companies that used to write construction insurance in southern Nevada have withdrawn from the market. Even when coverage is available, some contractors are discovering

their premiums are increasing by 30 to 60 percent even if no claims have been filed against them and 200 to 300 percent for those who do have claims. Reportedly, some 60 or more home builders and subcontractors have left the industry in southern Nevada in recent years because of high insurance costs.

About 18 percent of Clark County's sales tax is generated from construction materials. Some 10 percent of Nevada's work force is employed in construction. For nearly a decade, the yearly valuation of building permits in Las Vegas has exceeded $1 billion. The importance of building is highlighted by the fact that the local as well as the national economies were in a slump for several years, and one of the primary factors mitigating the slowdown was construction spending.

Without insurance, companies cannot continue to build. The consequences for employment and revenue could be significant. Additionally, as costs to builders rise, they are passed on to consumers. The median price of a new home in Las Vegas is now $310,000. It is estimated that 1,400 potential home buyers are priced out of the market for every $1,000 increase in home prices.

Median Price of a New Home Clark County Nevada 1999 -2005



Source: Southern Nevada Home Builders Association

Equally as significant, multifamily housing, which is generally the most affordable, has declined from 21 percent of the local market in 1995 to 14 percent in 2001. In California, condominium construction fell 84 percent from 1994 to 1999, down to 2,945 units from 18,691. Builders attributed much of the California decline to concern over lawsuits.

While a number of causes for this construction insurance crisis have been identified, one factor that has drawn considerable attention is the number of lawsuits filed against builders and the size of settlements and verdicts. Currently, there are about 200 construction defect cases pending in southern Nevada with about four new ones filed each month. These cases can

involve millions of dollars: in February 2000, a suit in North Las Vegas was settled for $16.2 million while another in August of the same year was settled for $16.25 million. However, the number of new construction defect cases has declined from 63 last year to a projected rate of about 50 for the current year.

In July 2002, the Commissioner of Insurance held a hearing to determine the availability of liability insurance for residential contractors. As a result of that hearing, the Commissioner found that while insurance was still available, the costs had "escalated substantially," many insurers had left the market for this product, and underwriting standards had become more restrictive. On September 4, 2002, Nevada Governor Kenny Guinn requested the Commissioner to form a Construction Liability Task Force to propose solutions. The Commissioner prepared a report of the Task Force findings and recommendations on February 24, 2003, and this document was considered by the Legislature during the 2003 Session.

To promote early resolution of disputes without resort to litigation, the Legislature established procedures and time lines under which notice of constructional defects is provided to contractors, who are then required to notify the appropriate subcontractors, suppliers, and design professionals. Builders are granted a right to inspect the alleged defects. If a contractor, subcontractor, supplier, or design professional elects to repair the defect, they must be given a reasonable opportunity to do so under specified conditions, which include performing the repairs in compliance with generally accepted standards of care in the industry. Procedures are established to allow inspection and repair of common constructional defects to residences or appurtenances within a single development.

Additionally, in 1999 the Legislature created a statutory Recovery Fund administered by the State Contractors' Board to provide reimbursement to owners of single-family residences who have been damaged by the failure of a contractor to perform qualified services adequately. Contractors pay an annual assessment to support this fund. An owner who secures a court judgment against a contractor or who receives a favorable determination from the Contractors' Board is eligible for up to $35,000 from the fund. No more than $400,000 may be paid for claims against any one contractor.

MANUFACTURED AND MOBILE HOMES

Manufactured homes are a major source of affordable housing for low-and moderate-income families. According to the AARP, around 2.8 million or 41 percent of manufactured homes occupied as a primary residence are owned or rented by a person age 50 or older. The Legislature has declared that manufactured and mobile homes may pose hazards to life, safety, and health if not properly manufactured, transported, and installed. To that end, extensive regulation of the industry has been provided in Nevada law, under the administration of the Manufactured Housing Division of the Department of Business and Industry. The Division has adopted regulations consistent with federal construction and safety standards. Dealers, salesmen, installers, rebuilders, and servicemen must all be licensed by the Division and numerous grounds exist for disciplining licensees, such as deceptive advertising, misrepresentation or failure to disclose, using unlicensed personnel, substandard or unsafe

workmanship, and failure to honor warranties. Civil penalties of not more than $1,000 for each violation may be assessed, to a maximum of $1 million for any related series of violations occurring within one year.

There is a $500,000 Account for Education and Recovery Relating to Manufactured Housing derived from licensing fees. The fund is designed to reimburse owners who have been harmed by a licensee and who have obtained a court judgment against the licensee. Actual damages of up to $25,000 may be paid from the fund upon order of the court issuing the judgment.

The Division has authority to inspect mobile home parks and approve or disapprove specifications and alterations. Additionally, the Division must adopt regulations governing the use and occupancy of mobile homes and the abatement of any substandard, unsafe, or unsanitary condition of a park. The Division may determine a mobile home to be a nuisance and order its repair, demolition, or removal.

The relationship between a manufactured home park owner and a tenant is also regulated by the Division and subject to statute. Approved applicants for residency have certain rights, such as the right to review the rental agreement for 72 hours as well as park rules and other residency documents. Certain provisions in rental agreements are prohibited such as waivers of rights and remedies, confessions of judgment, exculpatory clauses favoring the landlord, and additional charges for children or pets, unless some special service in that regard is provided. A park owner must also provide certain information about applicable laws and how to contact the Division, as well as the resident park manager. Managers and assistants must complete prescribed continuing education classes annually.

Parks may adopt rules concerning tenant use but they must be reasonably related to the purpose for which adopted, sufficiently explicit to inform a tenant of what can or cannot be done, adopted in good faith and not to avoid a legal obligation, and uniformly enforced. While parks may require the sale of a home to be approved by the park, consent to the sale cannot be unreasonably withheld. Furthermore, parks must allow tenants to display the national flag and political signs, within certain limitations.

If a park is changed to allow older persons only, existing tenants who no longer qualify to remain in the park are entitled to have the landlord pay to relocate their homes to a new location within 50 miles. Similarly, if a park is closed or condemned, tenants are entitled to relocation assistance or to the fair market value of the home if the tenant chooses not to move the unit, it cannot be moved without structural damage, or there is no park within 50 miles that will accept the unit.

Each for-profit park must pay the Division $12 per lot annually for the Fund for Low-Income Owners of Manufactured Homes. This fund is used to assist qualifying owners with rental payments.

LANDLORD/TENANT

In addition to specific statutes addressing tenancy issues involving manufactured housing, Nevada has a general law regarding discrimination in housing known as the Nevada Fair

Housing Law (NFHL) which establishes the rights and obligations of landlords and tenants. The NFHL is administered by the Nevada Equal Rights Commission. Among other matters, the NFHL:

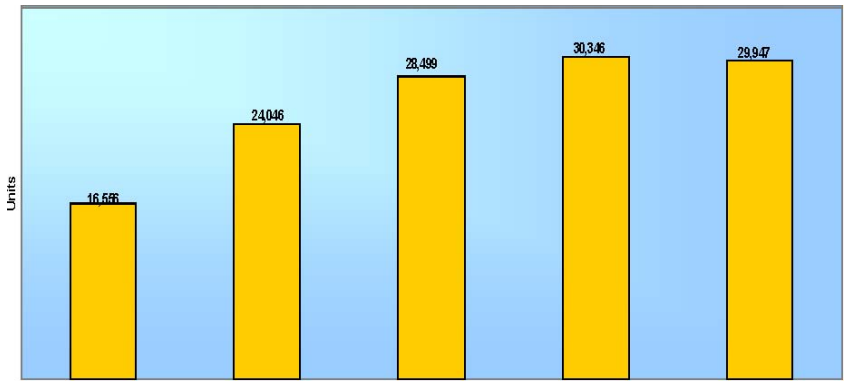
- Defines certain prohibited acts and practices involving discrimination on the basis of race, religion, creed, color, national origin, disability, ancestry, familial status, or sex;
- Requires disclosure of the property tax portion of rent; and
- Provides rules governing the abandonment of real property by a tenant.

There are also numerous federal enactments aimed at preventing discrimination in housing. Among these are: Title VI of the Civil Rights Act of 1964; The Fair Housing Act of 1968; Title VIII of the Civil Rights Act of 1968; the Rehabilitation Act of 1973; the Housing and Community Development Act of 1974; the Community Reinvestment Act of 1977; the Equal Credit Opportunity Act; and the Older Persons Act of 1995. These acts and their attendant regulations address discrimination on the basis of race, color, religion, sex, national origin, handicap, and family status. They prohibit denial of access to housing, blockbusting and discrimination in regard to access, membership, or participation in multiple listing services and other real estate-related services or organizations.

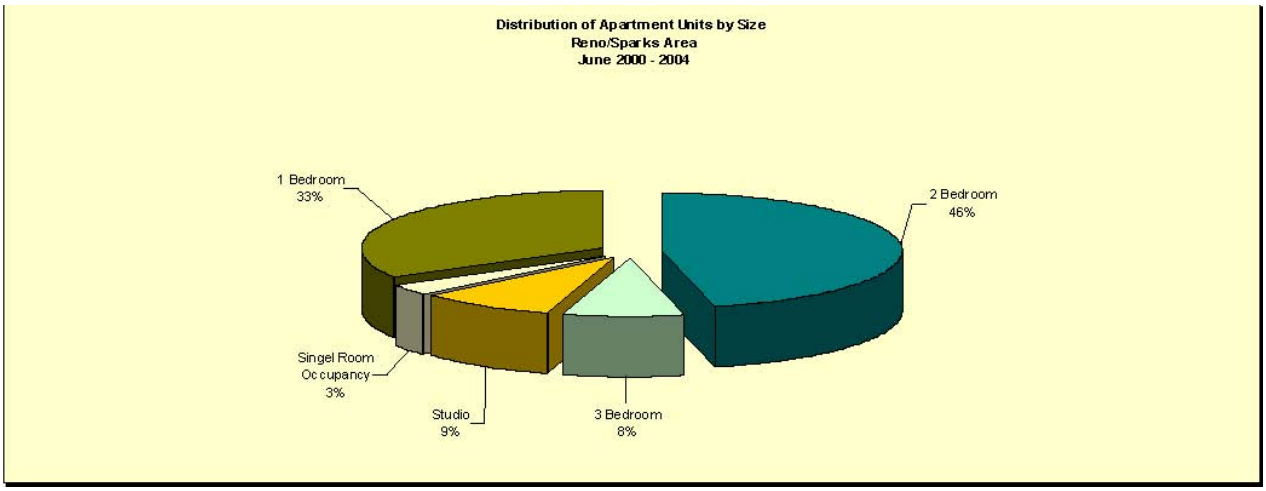
Nevada also has specific provisions addressing landlord/tenant issues arising from rental of dwellings including:

- Content of rental agreements and prohibited provisions;
- Obligations of landlords, including rules about security deposits, contact disclosure requirements for owners and managers, habitability, and advance notice of rent increases;
- Rights of landlords and tenants such as landlord's right to access the dwelling, tenants' rights to display the United States flag, and surviving spouse's right to terminate lease; and
- Remedies for violations by a landlord or a tenant.

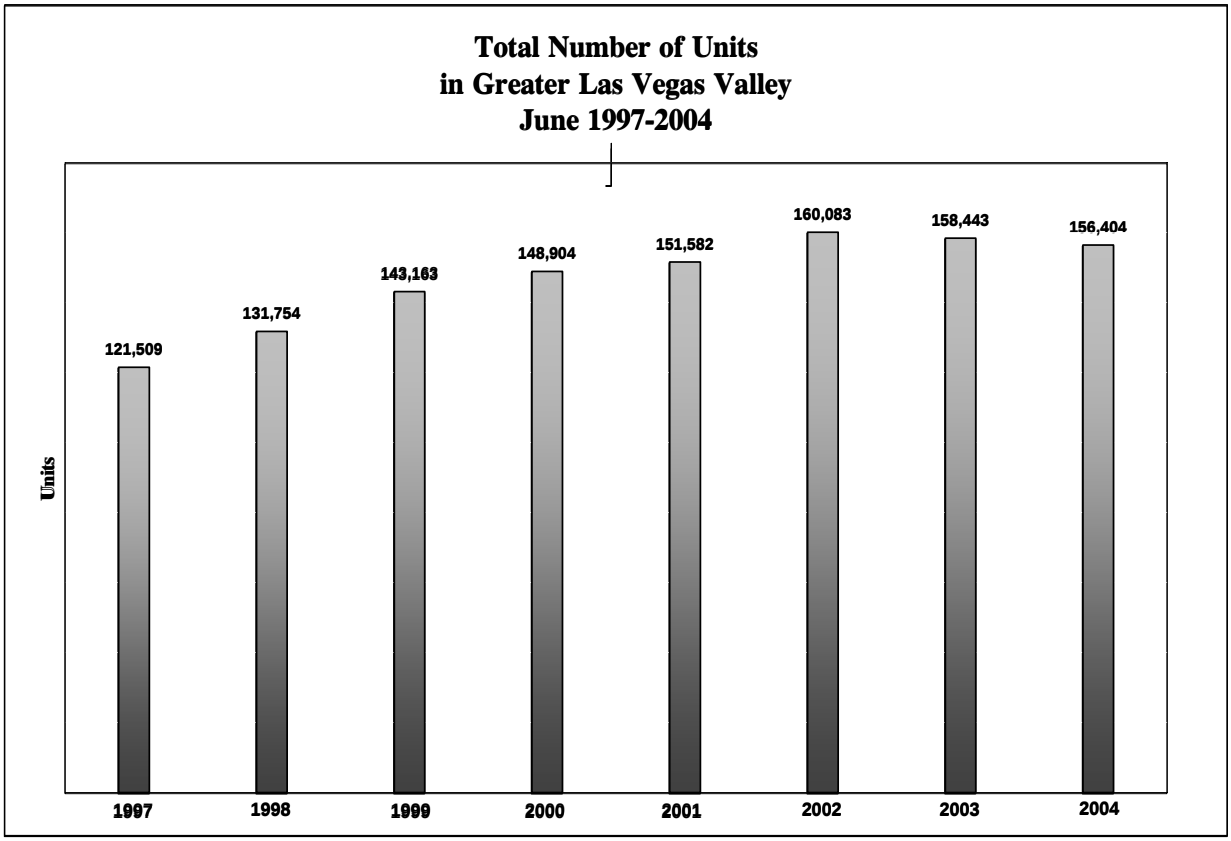
Total Number of Units Reno/Sparks Area June 2000 -2004



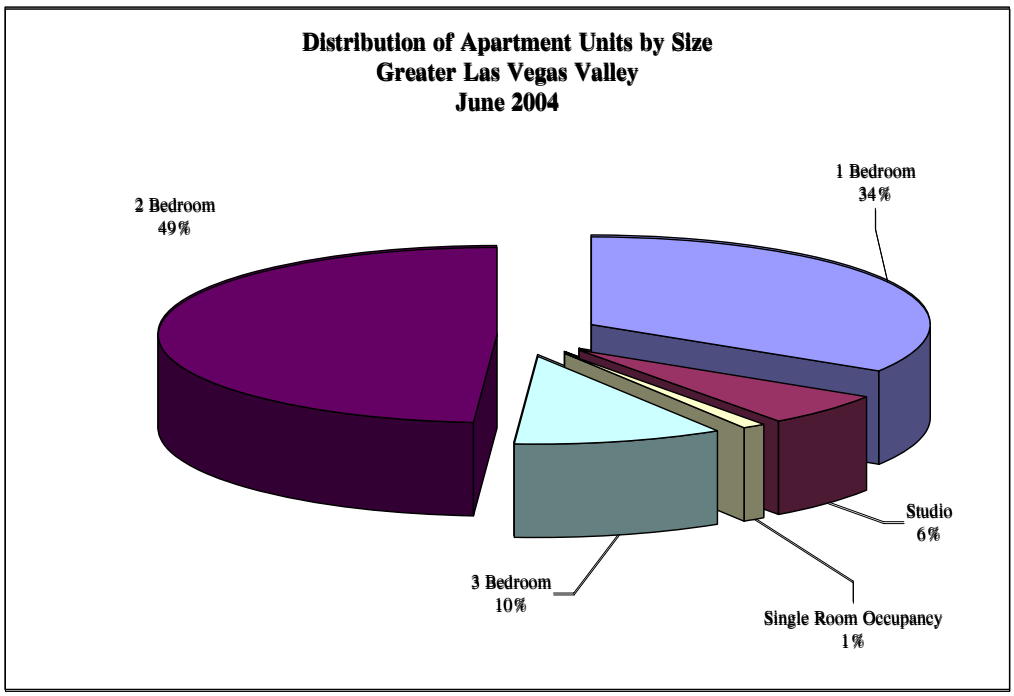
Source: Nevada's Department of Business and Industry Housing Division



Source: Nevada's Department of Business and Industry Housing Division. Note: Four-Bedroom size units represent less than 1 percent of the total number of apartment units in the Reno/Sparks Area; there, that number is not shown.



Source: Nevada's Department of Business and Industry Housing Division
Note: Due to demolition, conversion to condominiums, and refusal to participate in the survey, total units in database is less for the year 2004.



Source: Nevada's Department of Business and Industry Housing Division Note: Four-bedroom size units represent less than 1 percent of the total number of apartment units in the Greater Las Vegas Valley; therefore, that number is not shown.

HOMESTEAD LAW

The *Nevada Constitution*, which was adopted in 1864, provided for the exemption of homesteads from forced sale. The current version of this law is found in Chapter 115 of NRS.

To be eligible for the homestead exemption, state law requires a person to declare a homestead and to record that declaration with the county recorder. The protection afforded by the homestead exemption does not apply to a mortgage used to purchase or improve the property, prior liens, or legal taxes imposed on the property. If a person accumulates other debts, defaults on a loan, or if a judgment is entered against the person in a suit, the exemption protects the homeowner. The exemption covers up to $350,000 equity in the property. Furthermore, Federal Bankruptcy Law acknowledges that a state law providing for a homestead exemption, such as Nevada's, will be honored in any proceeding.

FREQUENTLY ASKED QUESTIONS REGARDING COMMON-INTEREST COMMUNITIES

What are the Governing Documents?

Every CIC is required to have certain documents that govern the community. These documents include a valid declaration and bylaws. The declaration is the instrument that creates a CIC and is prepared by the developer, who is referred to as the "declarant." If any change is made to the governing documents of an association, the secretary or other officer specified in the bylaws

must, within 30 days of the change, prepare and either hand deliver or mail a copy of the changes to each unit owner.

What are the Powers of a Common-Interest Community?

Unless otherwise provided by the association's governing documents, the association may:

- Adopt and amend bylaws, rules, and regulations;
- Adopt and amend budgets and collect assessments for common expenses;
- Hire and discharge managing agents, employees, or independent contractors;
- Institute, defend, or intervene in litigation;
- Make contracts and incur liabilities;
- Regulate the use, maintenance, repair, replacement, and modification of common elements;
- Make additional improvements as a part of the common elements;
- Impose and receive payments, fees, or charges for the use, rental, or operation of common elements;
- Impose charges for late payment of assessments. After notice and opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations;
- Provide indemnification of its officers and executive board;
- Assign rights to future income, including assessments for common expenses; and
- Exercise any other powers conferred in the declaration or bylaws and all other powers that may be exercised by legal entities of the same type of association in Nevada.

The association is responsible for maintaining, repairing, and replacing the common elements. Each unit owner is responsible for the maintenance, repair, and replacement of the owner's own unit. The developer of the property is liable for all expenses in connection with real estate subject to developmental rights.

What are the Limitations on CIC Powers?

In addition to limitations contained in the governing documents, CICs are prohibited from taking certain actions. For example, a CIC may not unreasonably restrict or impede the lawful rights of an owner to have reasonable access to the owner's unit. Furthermore, except as

otherwise provided in the declaration, a CIC may not require a unit owner to obtain approval in order to rent or lease a unit (although a CIC may enforce provisions which govern renting or leasing contained in Chapter 116 of NRS or other local, state, or federal laws and regulations. Non-gated CICs where access is unrestricted may not regulate moving vehicles on roads dedicated to state or local government as public thoroughfares. An association must give 48 hours notice before towing an improperly parked vehicle unless it is blocking a fire hydrant, fire lane, is in a handicapped parking space, or poses an imminent threat of substantial adverse effect on health, safety, or welfare of the CIC residents or owners. A CIC is also prohibited from unreasonably restricting or withholding approval for improvements such as ramps, railings, or elevators necessary to improve access for owners with disabilities, additional locks to improve security, or shutters to improve security or reduce energy costs. Such improvements that are visible from any other portion of the CIC must be installed in accordance with procedures in the governing documents and must be designed to the maximum extent practicable to be compatible with the style of the CIC. Similarly, any provisions that prohibit or unreasonably restrict an owner from using a solar energy system is void and unenforceable. Additionally, a CIC may not prohibit a unit owner from installing or maintaining drought tolerant landscaping. Such landscaping must, however, be submitted for architectural review and must be compatible with the style of the common-interest community.

Can Restrictions be Placed on Flying the American Flag?

A CIC may not prohibit an owner from displaying the flag of the United States in a noncommercial manner on property the owner has an exclusive right to occupy and use. The flag must be made of cloth, fabric or paper and displayed on a pole, staff, or in a window in a manner consistent with the Federal Flag Code. A CIC may, however, impose reasonable restrictions on the placement and manner of displaying the flag.

Can Restrictions be Placed on Displaying Political Signs?

A CIC may not prohibit the display of a political sign within the confines the unit owner has the right to exclusively occupy if the sign is not larger than 24 x 36 inches. A political sign is defined to mean a sign that expresses support for or opposition to a candidate, political party, or ballot question.

What Rules Govern the Election of Executive Board Members?

No later than the termination of the declarant's control, association members shall elect an executive board. The board must consist of a minimum of three members, at least a majority of whom must be unit owners. Unless the governing documents provide otherwise, the remaining members do not have to be unit owners. Terms may not exceed two years, except for members appointed by the declarant. However, a board member may be elected to successive terms. Terms must be staggered in such a manner that, to the extent possible, an equal number of members are elected at each election, unless the terms are for a year or less. Again, members appointed by the declarant are exempt from this requirement.

Each candidate for election to the board must make a good faith effort to disclose any financial, business, professional, or personal relationship or interest that would result, or would appear to

a reasonable person to result, in a potential conflict of interest. The disclosure must be made in writing to the CIC, which in turn must distribute them with the ballot to each member of the CIC in the manner established in the bylaws.

Additionally, unless appointed by the declarant, a person may not be a board member or officer of a CIC if their spouse, parent, or child, whether by blood, marriage, or adoption, is a community manager for that CIC. The same rule applies to serving on a master association or any association subject to the governing documents of that master association.

At least 30 days before the preparation of a ballot, the secretary, or other specified officer, must give notice to association members of their eligibility to serve as an executive board member. The election must be conducted by secret written ballot unless the declaration provides for voting by delegates or representatives. If the election is conducted by secret ballot, the secretary, or other officer, must mail a secret ballot and a return envelope to the mailing address of each association member or to any other mailing address designated in writing by the member**.** Each member must be given at least 15 days to return the ballot and only returned ballots may be counted.

The ballots must be opened and counted in public at an association meeting. No quorum is required for the election or for the meeting to count the ballots. Neither incumbent members nor candidates may possess or have access to the ballots prior to their opening and counting or participate in their opening or counting.

Within 90 days after election or appointment, each board member must certify in writing to the association on a form approved by the Administrator of the Real Estate Division that the member has read and understands the CIC's governing documents and the provisions of the UCIOA, to the best of their ability.

Notwithstanding any provision of the governing documents to the contrary, the owners may remove any member of the executive board with or without cause, other than a member appointed by the declarant, by a two-thirds vote of all persons who are entitled to vote at any meeting of the owners at which a quorum is present. The removal must be accomplished by secret written ballot unless the declaration provides for voting by delegates or representatives.

What are the Powers and Responsibilities of the Executive Board?

General Powers

Each member of the executive board must, within 90 days after taking office, certify in writing that they have read and understand the association's governing documents and the provisions of Chapter 116 of NRS.

Unless otherwise provided by the declaration, the bylaws, or the NRS, the executive board may act in all instances on behalf of the association. The executive board cannot amend the declaration, terminate the CIC, elect members of the executive board, or determine their qualifications, powers, duties, or terms of office. The executive board may fill vacancies for the unexpired portion of any term. Additionally, the board elects the association officers.

Standards of Conduct for Board Members

Members of the board must exercise the same ordinary and reasonable care as directors of a corporation. Executive board members are subject to the business-judgment rule. Essentially, this standard requires that, in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest.

Avoiding Conflicts of Interest

Each candidate for election to the board must make a good faith effort to disclose any financial, business, professional, or personal relationship or interest that would result in or appear to a reasonable person to result in a potential conflict of interest. The disclosure must be made in writing to each member of the CIC in the manner established in the bylaws.

Additionally, a member of the board, an officer, or a community manager is prohibited from soliciting or accepting any compensation or gratuity that would improperly influence or appear to a reasonable person to improperly influence them or result in a conflict of interest. An executive board member or officer is also prohibited from entering into certain contracts for goods or services with the CIC.

Prohibition on Retaliatory Action

A board, member of the board, officer, employee, or agent is prohibited from taking any retaliatory action against a unit's owner because the owner complained in good faith about an alleged violation or requested to review the CIC's books and records.

Employment of a Community Manager

A homeowners' association may employ a community manager to handle matters for the community. With certain exceptions, the community manager must have a permit or a certificate to act as a community manager and be certified by the Real Estate Division.

Imposition of Fines and Penalties

In 2003, the Legislature created a distinction between a fine and a construction penalty. The executive board has authority to impose fines and other sanctions for violations of the governing documents, including, but not limited to:

- Prohibiting an association member from voting on matters related to the CIC for a reasonable time; and

- Prohibiting an association member, guest, or tenant from using the common elements for a reasonable time, except for streets, sidewalks, and parking areas.

A fine may be imposed for each violation. The fine must be commensurate with the severity of the violation but must not exceed $100 for each violation, or a total amount of $500, whichever

is less. Further, if a violation is not cured within 14 days or any longer period set by the board, the violation is deemed to be a continuing violation and additional fines may be imposed for each seven-day period that the violation is not cured.

Fines bear interest at the rate set by the CIC but not to exceed the legal rate per annum. Costs of collecting an unpaid fine may also be collected according to a schedule established by the CIC, with certain limitations established by statute for violations that do not threaten the health, safety, or welfare of other residents.
A board may not impose a fine unless:

- Not less than 30 days before the violation, the person to be fined has been provided with written notice of the applicable provisions of the governing documents;

- Within a reasonable time after the violation, the person to be fined has been given a written notice specifying the details of the violation, the amount of the fine, and the date, time, and location for a hearing; and

- The person to be fined has been given a reasonable opportunity to contest the violation at the hearing.

What Happens if a Fine, Penalty, or an Assessment is Not Paid?

A board must hold a hearing before it can impose a fine unless the person to be fined pays the fine, waives the right to a hearing in writing, or fails to appear after proper notice of the hearing. Additionally, a board may appoint a committee of not less than three members to conduct hearings on violations if the governing documents so provide. These provisions only establish minimum procedural requirements for imposing fines and do not preempt provisions of the governing documents that provide greater procedural protections.

A board is also authorized to impose a construction penalty against an owner who fails to adhere to a construction schedule if the penalty and schedule are set forth in the declaration, another document recorded before the owner acquired title to the unit, or in a contract between the owner and the CIC. The owner must receive notice of the violation and be informed of the right to a hearing. A construction penalty is not a fine for purposes of Chapter 116 of NRS.

An association has a lien against any unit for any penalty, assessment, or fine imposed against the owner. Unless the declaration provides otherwise, penalties, fees, charges, late charges, fines, and interest charged for items such as the use, rental, or operation of common elements are also enforceable by liens.

The lien may then be recorded and foreclosed by sale after certain notices required by law are given to the owner. However, an association may not foreclose a lien that results from a fine for a violation of the governing documents unless the violation is one that threatens the health, safety, or welfare of the residents of the association or, the lien is for a construction penalty. Proceedings to foreclose a lien for unpaid assessments must be instituted within three years or the lien is extinguished. An association may bring an action in court to recover the assessment

or fine instead of filing and foreclosing a lien. In either case, the prevailing party must be awarded costs and reasonable attorney's fees.

How Must Executive Board Meetings Be Conducted?

Time for and Notice of Meetings

An executive board meeting must be held at least once every 90 days. Except in an emergency or if the bylaws require a longer period, notice of each meeting must be given not less than ten days before the meeting by notice sent to the mailing address of each unit or any other address or electronic mailing address designated in writing by the unit's owner. Alternatively, notice may be published in a newsletter that is circulated to each association member. The notice must state the time and place of the meeting and include a copy of the agenda or the date and locations where copies of the agenda may be conveniently obtained. The notice must also include notification of a member's right to have a copy of the minutes or a summary of the minutes of the meeting upon payment of the cost of providing the copy and to speak to the association or executive board, unless the executive board is meeting in executive session. The agenda must identify items that the executive board may take action on at the meeting.

Contents of Agendas

An executive board must place a subject on the agenda of the next regularly scheduled meeting if the board receives a written complaint from a unit's owner alleging the board has violated any provision of the chapter or the governing documents and action is required by the board.

An Owner's Right to Address Board

A member may attend any meeting of the association members or of the executive board and speak at the meeting, except executive sessions. However, the executive board may establish reasonable limitations on the time a member may speak at such a meeting.

Association and Board Minutes

The secretary of the CIC or other designated officer must take minutes at each association meeting of unit owners and at each executive board meeting. The minutes must contain certain specified items. Minutes must be retained until the CIC terminates and owners may record meetings if they provide notice prior to the start of the meeting that they intend to record the proceedings, except when the board meets in executive session. Minutes or a summary must be prepared within 30 days after the meeting and a copy must be given to any member who requests one, although the board may charge for the cost of providing the copy.

Executive Board Sessions

Executive sessions are closed meetings of the board. Association members are not allowed to attend executive sessions unless they are the subject of a hearing on an alleged violation of the governing documents. They may, however, be excluded during deliberations.

A board may meet in executive session to discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or employee of the CIC. The board may also meet in executive session to discuss the failure of an owner to adhere to a construction schedule or a violation of the governing documents. Additionally, a board may meet to discuss litigation. A board may not meet in executive session to take action on contracts, unless the contract is between the CIC and an attorney.

Are Association Members Permitted to Review Association Books and Records?

The executive board must make available the books, records, and other papers of the association for review during the regular working hours of the CIC, upon written request. This includes, without limitation, contracts to which the CIC is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. However, certain records are not open to inspection. These include contracts between the CIC and an attorney and personnel records of CIC employees, except for records relating to hours worked and salaries and benefits. Records relating to another CIC member are not open to inspection.

The executive board must also maintain a general record concerning each violation of the governing documents for which a fine, construction penalty, or other sanction has been imposed, other than a failure to pay an assessment. The record must contain a general description of the nature of the violation and the type of sanction imposed, including the amount of any fine or construction penalty levied. The record must not contain the name or address of the person who was the subject of the sanction or fine or any other information that could be used to identify them. The record must be organized in such a manner that it is convenient for members to access.

The board must maintain and make available for review at the business office of the association or other suitable location within the county where the CIC is located, the financial statement of the association, budgets of the association, and the reserve study.

All of the records of a CIC must be maintained for at least ten years (except minutes, which must be kept as long as the CIC exists). An executive board is prohibited from requiring payment of more than $10 per hour to review books, records, contracts, or other papers. A fee may be charged to cover the actual costs of preparing a copy, but not to exceed 25 cents per page. Further, if the board refuses to allow an association member to review these documents, the ombudsman may request to review the records during the regular working hours of the association. If access is denied, the ombudsman may request the commission to issue a subpoena for their production.

What Can Homeowners Do if They Feel Their Rights Have Been Violated?

A person aggrieved by an alleged violation of the laws relating to CICs may file a written affidavit with the Real Estate Division not later than one year after the person discovers or reasonably should have discovered the violation. The affidavit must set forth the facts constituting the violation. However, the affidavit may not be filed unless the aggrieved person has provided the respondent with written notice sent by certified mail on at least two occasions

mailed at least 15 days apart. The written notice must specify in reasonable detail the alleged violation, any actual damages suffered, and any proposed corrective action. The commission or a hearing panel may impose a fine of not more than $1,000 if someone knowingly files a false or fraudulent affidavit.

Upon receipt of the affidavit, the division refers it to the ombudsman who assists the parties with resolving the dispute. If the parties cannot resolve the matter, the ombudsman provides the division with a report and the division conducts an investigation to determine whether good cause exists to proceed with a hearing. If the division determines there is good cause for a hearing, the administrator of the division files a complaint with the commission and schedules a hearing.

What Happens After A Complaint is Filed?

The commission or a panel must hold a hearing not later than 90 days after the complaint is filed by the division unless good cause is shown to continue the matter. The division must give the respondent at least 30 days' notice of the hearing and provide a copy of the complaint and all relevant information in the possession of the division.

The respondent must file an answer not later than 30 days after the division's notice is delivered or mailed and must contain an admission or denial of the allegations in the complaint and any defenses the respondent will rely upon. If the respondent fails to answer, the commission may enter a default decision after giving the respondent notice.

What Can the Commission Do If It Finds A Violation Has Occurred?

If the commission or a panel finds a violation was committed, it may do any or all of the following: order the respondent to cease and desist; order the respondent to take affirmative action to correct the violation; or impose an administrative fine of not more than $1,000. The commission or panel may also remove an executive board member or officer if they have knowingly and willfully committed a violation and their removal is in the best interests of the CIC. If a respondent violates an order of the commission or panel, it may impose a fine of not more than $1,000 for each violation after notice and hearing.

The commission or panel is also authorized to order a respondent to pay the costs of the proceedings incurred by the division, including investigation costs and reasonable attorney's fees. If the respondent is a board member or officer, the CIC is responsible for all fines and costs imposed on the respondent and the respondent may not be held personally liable, unless the respondent knowingly and willfully committed the violation.

Additionally, if the commission or panel finds the board of a CIC or someone acting on behalf of a board has committed a violation, after notice and hearing, it may order an audit of the CIC or require the board to hire a community manager or both. The commission or division may also bring an action in district court to enjoin further violations if it has reasonable cause to believe such violations will continue. If the commission or division has reasonable cause to believe a person will commit, or continue to commit, a violation, either may seek an injunction

in court. Under certain specified conditions, the commission may petition a court to appoint a receiver for a CIC.

ADDITIONAL RESOURCES

Commission for Common-Interest Communities

Pursuant to Chapter 116 of NRS service of process and other communications upon the Commission may be made at the principal office of the Real Estate Division. The following is the proper routing for service of process and other communication upon the Commission:

Legal Administrative Officer
Real Estate Division
Department of Business and Industry
2501 East Sahara Avenue, Suite 102
Las Vegas, Nevada 89104-4137
Telephone: (702) 486-4033, Ext. 222
Fax: (702) 486-4067
Web site: http://www.red.state.nv.us/CIC_comm.htm

Ombudsman for Owners In Common-Interest Communities

The Department of Business and Industry has published a document titled *Handbook for Common-Interest Communities,* which contains chapters of the *Nevada Revised Statutes* and the *Nevada Administrative Code* relevant to common-interest communities. The publication may be obtained by contacting the Real Estate Division.

Office of the Ombudsman for Owners in Common-Interest Communities
Real Estate Division
Department of Business and Industry
2501 East Sahara Avenue, Suite 102
Las Vegas, Nevada 89104-4137
Telephone: (702) 486-4480
E-mail: realest@govmail.state.nv.us
Web site: http://www.red.state.nv.us

Office of the Attorney General

The Office of the Attorney General has published a pamphlet titled *Rules for Homeowners' Associations,* which may be obtained by contacting that office.

100 North Carson Street
Carson City, Nevada 89701-4717
Telephone: (775) 684-1100
E-mail: aginfo@ag.state.nv.us
Web site: http://ag.state.nv.us

555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3420

Legislative Counsel Bureau

The Uniform Common-Interest Ownership Act (UCIOA), Chapter 116 of NRS, may be viewed in its entirety at: http://www.leg.state.nv.us/NRS/NRS-116.html. Chapter 116 of the NAC may be viewed in its entirety at: http://www.leg.state.nv.us/NAC/NAC-116.html.

401 South Carson Street
Carson City, Nevada 89701-4747
Telephone: (775) 684-6825
E-mail: research@lcb.state.nv.us
Web site: http://www.leg.state.nv.us

555 East Washington Avenue, Room 4400
Las Vegas, Nevada 89101-1071
Telephone: (702) 486-2800

Nevada State Contractors' Board

9670 Gateway Drive, Suite 100
Reno, Nevada 89521-3953
Telephone: (775) 688-1141
Web site: http://nscb.state.nv.us/

2310 Corporate Circle, Suite 200
Henderson, Nevada 89074-7728
Telephone: (702) 486-1100

Manufactured Housing Division—Department of Business and Industry

2501 East Sahara, Suite 204
Las Vegas, Nevada 89104-4137
Telephone: (702) 486-4135
E-mail: nmhd@mhd.state.nv.us
Web site: http://mhd.state.nv.us/locations.htm

59 East Winnie Lane
Carson City, Nevada 89706-2244
Telephone: (775) 687-4298

Titling Department, Las Vegas (702) 486-4135
Codes and Compliance, Las Vegas (702) 486-4138
Inspections, Las Vegas (702) 486-4311
Licensing, Las Vegas (702) 486-4590
Landlord/Tenant Investigator, Las Vegas (702) 486-4310; Carson City (775) 687-4298
Lot Rent Subsidy Program, Las Vegas (702) 486-4578
Education, Las Vegas (702) 486-4592

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INSURANCE REGULATION

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

REGULATING INSURANCE

Historically, states have exercised their inherent "police power" to protect the public health, safety, and welfare when regulating insurance. Congress affirmed the states' authority in 1945 when it passed the McCarran-Ferguson Act. Further, 15 U.S.C. §1011 provides that the continued regulation and taxation by the several states of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states. This phrase has been interpreted to mean that the operations of the insurance industry are so vital to society they require public oversight and regulation.

State legislatures are responsible for establishing the rules under which this complex industry must operate. States have their own boards of commissioners to oversee companies doing business within their borders.

Regulating Insurance in the State of Nevada

The Nevada Insurance Code (Title 57 of the *Nevada Revised Statutes* [NRS]) sets forth the provisions that govern insurance regulation in the State of Nevada. The purpose of the Nevada Insurance Code as defined by NRS 679A.140 is to:

- Protect policyholders and all having an interest under insurance policies;
- Implement the public interest in the business of insurance;
- Provide adequate standards of solidity of insurers, and of integrity and competence in conduct of their affairs in the home offices and in the field;
- Improve and thereby preserve state regulation of insurance;

- Ensure that policyholders, claimants, and insurers are treated fairly and equitably;
- Encourage full cooperation of the Office of Commissioner with other regulatory bodies, both of this and other states and of the Federal Government;
- Insure that the State has an adequate and healthy insurance market characterized by competitive conditions and the exercise of initiative;
- Prevent misleading, unfair, and monopolistic practices in insurance operations; and
- Continue to provide the State of Nevada with a comprehensive, modern, and adequate body of law, in response to the McCarran Act (Public Law 15, 79th Congress, 15 U.S.C. §§ 1011 to 1015, inclusive), for the effective regulation and supervision of insurance business transacted within, or affecting interests of the people of this state.

Division of Insurance

Contact Information:
Alice A. Molasky-Arman, Commissioner, Division of Insurance
Telephone:
(775) 687-4270 Carson City
(702) 486-4009 Las Vegas
Web site: http://doi.state.nv.us/

The Division of Insurance, under the auspices of the Department of Business and Industry, is charged with protecting the rights of the consumer and the public's interest in dealings with the insurance industry and ensuring the financial solvency of insurers. The Division regulates and licenses insurance agents, brokers, and other professionals; sets ethical and financial standards for insurance companies; and reviews rates. The Division also reviews programs operated by self-insured employers for workers' compensation, and investigates claims of insurance fraud. There are eight sections within the Division of Insurance. The following table lists the Division of Insurance Section and the contact telephone number.

DIVISION SECTIONS	DIVISION CONTACT
Captive Insurance Section	Peggy Willard-Ross (775) 687-4270 Ext. 241
Consumer Services Section	(775) 687-4270 Carson City (702) 486-4009 Las Vegas
Corporate and Financial Section	Peggy Willard-Ross (775) 687-4270 Ext. 241
Health Insurance Portability and Accountability Section (HIPAA)	Terri Chambers (775) 687-4270 Ext. 247
Life and Health Section	Nanci Hoffman (775) 687-4270 Ext. 253
Producer Licensing Section	(775) 687-4270 Carson City
Property and Casualty Section	Erin Summers (775) 687-4270 Ext. 249
Self-Insured Workers Compensation Section	Erin Summers (775) 687-4270 Ext. 249

Consumer Services

Consumers with questions concerning insurance policies, claims, companies or with complaints can contact the Consumer Services Section. The Consumer Services Section answers questions regarding all types of insurance problems, including health insurance, auto insurance, homeowners insurance, title insurance, bail bonds, and pre-need and funeral plans. In addition, the Section advises insurance companies and agents of their obligations and ensures compliance with the Nevada Insurance Code.

If a consumer has a complaint, a complaint form can be obtained by contacting the Consumer Services Section. Once the written complaint is received by the Insurance Division, the Consumer Services staff will act as a liaison and work with the complainant and the company or agent to resolve the grievance.

Nevada Life And Health Insurance Guaranty Association Act

Insurance companies licensed in Nevada are members of the Nevada Life and Health Insurance Guaranty Association (Guaranty Association). The purpose of this association is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this should happen, the Guaranty Association assesses its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force.

FEDERAL REGULATION

Possible Federal Preemption of State Laws

The State Modernization and Regulatory Transparency Act

Draft legislation is currently being sponsored by House Financial Services Committee Chairman Mike Oxley (R-Ohio), and Capital Markets Subcommittee Chairman Richard Baker (Louisiana) that would end state approval of insurance rates and require all states to adopt competitive rating for most types of insurance. Currently, insurance companies must seek individual state approval for product filing, which creates a complicated and timely process for insurers to bring a new product to the market.

The draft legislation, nicknamed SMART after its full title, the State Modernization and Regulatory Transparency Act, would require states to stop approval or prior review of rates, and comply with this new system of nationwide competitive pricing within two years of enactment of the legislation.

The nationwide competitive rating system would be phased in using a flex-band approach. The flex-band would allow up to a 7 percent increase or decrease in rates for the first 12-month period and a 12 percent increase or decrease during the second 12-month period. Credit insurance, title insurance, mortgage insurance, gap insurance, and medical malpractice insurance would be exempt from the national rating system.

The draft legislation would allow states to continue to regulate the use of all underwriting or rating factors or classifications. The legislation would also create a new federal and state partnership regulatory oversight panel. The panel would be responsible for identifying whether uniformity requirements have been met by the states, resolve conflicts, and facilitate financial and international trade issues that affect insurance.

The proposal gives all states three years to implement coordinated insurance company market, conduct exams, and adopt standardized agent licensing and eligibility standards, including continuing education requirements. States would have two years to implement reciprocal licensing for agents and brokers. For insurer licensing, states would be required to develop a single point-of-entry based on adequate standards and using uniform electronic filing systems.

Terrorism Risk Insurance Act

The Terrorism Risk Insurance Act (TRIA) of 2002 is a federal insurance guarantee mechanism intended to serve as a "backstop" for the insurance industry in the event of future terrorist attacks. The law was designed to be a temporary stabilizer in the property and casualty and life insurance markets following the events of September 11, 2001. It is currently set to expire in December of 2007.

Interstate Insurance Regulation Compact

In an attempt to preserve sovereign state regulation of the nation's insurance industry, the National Conference of State Legislatures (NCSL) is endorsing model legislation called the Interstate Insurance Product Regulation Compact.

The purpose of the Compact is to develop a streamlined and simplified system of product regulation that would allow insurers to market their products nationally more quickly and efficiently. Without such a standard, Congress may preempt state authority by stepping in to regulate the industry with legislation such as SMART.

Once enacted by 26 states or states representing 40 percent of the nation's insurance premiums, the Interstate Insurance Product Regulation Compact would create a national multi state public authority to receive, review, and quickly make regulatory decisions on insurance product filings according to national uniform standards created by the Compact's member states. The insurance compact would cover life insurance, annuity, disability income, and long-term care insurance products but not those for health or property and casualty insurance. More information on the Compact can be found at the NCSL Web site: http://www.ncsl.org/ programs/insur/ ncslcompact.htm.

POTENTIAL ISSUES FOR THE 2007 LEGISLATIVE SESSION

Though traditionally governed by state commissioners of insurance, the insurance industry is currently being scrutinized by an increasing number of outside actors, such as states' attorneys general, the Securities and Exchange Commission, and the United States Congress. The National Association of Insurance Commissioners (NAIC) is committed to ensuring that

regulation of the insurance industry remains at the state level. To that end, legislation that may be introduced in the coming session could include:

- Increased oversight of compensation provided to insurance brokers;
- Consideration of the Interstate Insurance Product Regulation Compact; and
- Consideration of new laws and rules governing finite reinsurance products.

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PUBLIC UTILITIES AND ENERGY

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

PUBLIC UTILITY REGULATION

American business in general is operated by private enterprise. However, in some instances, a product or service is of such fundamental importance to the welfare of citizens that it is deemed to be "affected with a public interest" and therefore subjected to pervasive governmental regulation to ensure availability at reasonable prices. The hallmark of this type of regulation is generally the granting of an exclusive geographical franchise to a single provider, coupled with a duty to serve all customers within the assigned territory. In exchange, the provider, normally referred to as a "utility," is allowed the opportunity to earn a reasonable rate of return on "prudent" operations, the return being set by the regulators after administrative hearings. Usually, public utilities include energy, water, waste disposal, and transportation industries.

Since the 1970s, there has been a movement to "deregulate" segments of certain utility industries. The motivating idea has been a belief among some public policymakers that market forces are more efficient than governmental regulation in securing lower prices and fostering innovative new technologies. While results have varied from industry to industry, some critics have pointed to instances of increased price volatility and manipulation as well as a tendency towards consolidation rather than competition as reasons to retain governmental regulation.

The nature and extent of regulation varies from industry to industry. Generally, there is a certain amount of shared jurisdiction over public utilities by federal and state (and sometimes local) governmental bodies. The authority of these entities may overlap and lines of demarcation between them may become blurred. Electric utilities are one of the most important types of public utility. They have traditionally been highly regulated but, in recent decades, have experienced varying degrees of deregulation.

FEDERAL REGULATION OF ENERGY COMPANIES

Federal Power Act of 1935

In the energy industry, regulation is largely divided along wholesale and retail lines. The federal government primarily regulates wholesale transactions while states generally oversee retail operations. Until 1927, state utility commissions regulated most aspects of electric utilities, including establishment of rates for interstate sales of electricity. In that year, the United States Supreme Court handed down a decision prohibiting state regulation of interstate electric rates on the ground that such regulation created a burden on interstate commerce. However, no federal authority over interstate electric sales existed and, therefore, the ruling resulted in a regulatory gap. The Federal Power Act of 1935 (FPA) was enacted to address this situation. The FPA gave the federal government jurisdiction over transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce.

In the 1970s, recessionary and inflationary pressures reduced electricity demand, and the resultant excess capacity in existing generation plants contributed to price increases to cover fixed operating costs. Additionally, foreign oil embargoes drove up the price of oil, the principal fuel used by many electrical utilities. Finally, environmental concerns, the prohibition of new natural gas usage for power generation, and nuclear power plant costs all led to increasing electricity prices for the first time in the industry's history.

Additionally, alternative sources such as geothermal, solar, and wind were encouraged. Some state commissions began mandating that specific percentages of new power come from these renewable sources, even though the cost per kilowatt hour was higher. States also began implementing integrated resource planning programs to coordinate demand side management (DSM) and supply side management techniques with environmental projects and renewable energy initiatives.

Public Utility Regulatory Policies Act of 1978

In 1978, Congress passed the Public Utility Regulatory Policies Act of 1978 (PURPA) in response to an ongoing energy crisis. Its goal was to reduce dependence on expensive foreign oil and to avoid repetition of the 1977 natural gas shortage by encouraging utilities to conserve gas and oil. This enactment created a new category of electric business: independent, unregulated companies known as qualifying facilities (QFs). These entities are permitted to build cogeneration plants that produce electricity and use otherwise wasted heat to generate steam. Facilities may also qualify by meeting specific energy requirements such as using prescribed types of renewable energy, e.g., biomass, geothermal, solar, or wind. These QFs were granted the legal right to sell electricity to utilities at avoided cost. Avoided cost is the cost for the utility to self-generate or purchase power elsewhere.

About the time PURPA was enacted, traditional utilities were becoming reluctant to build new power plants due to declining demand, environmental concerns, and nuclear power problems. Concurrently, technological advances that utilize combined cycle natural gas turbines and

circulating fluidized bed boilers, allowed newer, smaller generating plants to be brought on-line more economically and with shorter lead times. Such conditions led to the rise of independent power producers (IPPs). These entities, also referred to as merchant power companies, build power plants for a fee and then sell the electricity to utilities at wholesale.

Energy Policy Act of 1992

Early in the 1990s, proponents of the competitive market approach initiated steps to extend it to the electric industry. Congress responded by establishing a new national energy policy embodied in the Energy Policy Act (EPAct). The intent was for the electric industry to move toward a fully competitive market system, with the Federal Energy Regulatory Commission (FERC) being responsible for most of the implementation. The EPAct granted exemptions from certain federal requirements for a corporation whose exclusive business is ownership and operation of a generating plant that sells its power at wholesale. Such an entity is known as an exempt wholesale generator. Thus, EPAct created the potential for significant deviations from the traditional vertically integrated pattern that had characterized the electric utility industry for many decades. The evolution beyond the traditional, vertically integrated industry structure has also fostered the growth of wholesale power marketers and brokers. Marketers purchase electricity from generators and then resell it to a utility; brokers do not actually take title to power but instead match wholesale buyers and sellers for a fee.

However, for all these new entities, generators, and middlemen alike, to effectively compete in the wholesale market, they need access to the nationwide transmission grid, which is generally owned by the vertically integrated utilities. Therefore, EPAct authorized FERC to order transmission-owning utilities to open their lines to parties who desire to buy or sell electricity at wholesale. Thus, EPAct greatly expands FERC's jurisdiction over wholesale transactions. At the same time, however, EPAct provides that, "Nothing in this subsection shall affect any authority of any state or local government under state law concerning the transmission of electric energy directly to an ultimate consumer."

This array of federal actions prompted debate at the state level on how to promote greater wholesale and retail competition among power producers and led to steps in many states to authorize retail electric competition. However, in the aftermath of the problems experienced in California in 1999-2000, a number of states, including Nevada, largely abandoned deregulation at the retail level. Litigation over potential refunds for alleged market manipulation is still ongoing following the bankruptcy of ENRON and the resultant virtual collapse of the energy trading markets.

Energy Policy Act of 2005

Facing renewed political instability in the Middle East that affects energy fuel supplies, Congress has been attempting to craft an updated national energy policy. Until recently, however, efforts to produce a comprehensive bill have been unsuccessful, in part due to competing regional demands and concerns that some segments of the energy sector are seeking subsidies that are too generous. During the 2005 term, Congress finally passed a measure which was signed by the President on August 8, 2005. Some critics maintain the legislation

does little to decrease the demand for foreign fuels while supporters point to increased incentives for domestic energy production and tax credits to encourage development of renewable energy.

STATE REGULATION OF ENERGY COMPANIES

In Nevada, public utilities are under the jurisdiction of the Public Utilities Commission of Nevada (PUCN). The commission consists of three commissioners appointed to four-year terms by the Governor. The commissioners are assisted by professional staff consisting of attorneys, engineers, analysts, and economists. The PUCN sets retail rates for natural gas and electricity. Decisions of the PUCN are appealable to the courts. The Consumer's Advocate of the Bureau of Consumer Protection within the Office of the Attorney General represents consumer interests before the PUCN.

The PUCN is charged with regulating public utilities in order to:

- Provide for fair and impartial regulation of public utilities;
- Provide for the safe, economic, efficient, prudent, and reliable operation and service of public utilities; and
- Balance the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.

The commission is funded by a charge called the "mill assessment" on the gross operating revenues derived from intrastate operations of each public utility. A mill is one-tenth of one cent. The maximum mill assessment for the commission is 3.50 mills; an additional assessment of 0.75 mills for the Consumer's Advocate is also authorized.

STATE ENERGY POLICY

Nevada has a statutorily enacted energy policy statement that provides as follows:

1. The Legislature finds that:

(a) Energy is essential to the economy of the State and to the health, safety and welfare of the people of the State.

(b) The State has a responsibility to encourage the maintenance of a reliable and economical supply of energy at a level which is consistent with the protection of environmental quality.

(c) The State has a responsibility to encourage the utilization of a wide range of measures which reduce wasteful uses of energy resources.

(d) Planning for energy conservation and future energy requirements should include consideration of state, regional and local plans for land use, urban expansion, transportation systems, environmental protection and economic development.

(e) Government and private enterprise need to accelerate research and

development of sources of renewable energy and to improve technology related to the research and development of existing sources of energy.

(f) While government and private enterprise are seeking to accelerate research and development of sources of renewable energy, they must also prepare for and respond to the advent of competition within the electrical energy industry and are, therefore, encouraged to maximize the use of indigenous energy resources to the extent competitively and economically feasible.

(g) Prevention of delays and interruptions in providing energy, protecting environmental values and conserving energy require expanded authority and capability within State Government.

2. It is the policy of this state to encourage participation with all levels of government and private enterprise in cooperative state, regional and national programs to assure adequate supplies of energy resources and markets for such energy resources.

3. It is the policy of this state to assign the responsibility for managing and conserving energy and its sources to agencies whose other programs are similar, to avoid duplication of effort in developing policies and programs for energy.

To implement this policy, the Legislature has created a number of programs and entities; including:

- Requirement of a comprehensive state energy plan developed by the Director of the Office of Energy in the Governor's Office that promotes energy projects to enhance economic development in the state, encourages use of renewable energy and fosters conservation of energy;

- Triennial integrated resource planning requirements designed to increase supply and decrease demand based on forecasts of future power usage while providing for the best combination of sources to meet those projected needs;

- A renewable energy portfolio standard (RPS) that requires power suppliers to gradually increase the percentage of electricity derived from renewable sources and energy efficient measures from 5 percent in 2004 to 20 percent in 2015;

- A net metering program that allows customers to use renewable energy systems to generate up to 150 kilowatts of power for which the customer receives credit from the utility; and

- An 11-member Task Force for Renewable Energy and Energy Conservation that assists with development of the state energy plan and expends funds for education about renewables and conservation as well as for creation of incentives for deployment of renewable energy and conservation systems.

In 1997, the Legislature authorized a transition to a competitive retail environment which was refined in 1999. In the aftermath of the western energy crisis in 1999-2000, that process was first delayed and then largely reversed in 2001. However, large customers who use more than

one megawatt (MW) of power can secure their own power sources if they meet certain conditions. One MW is enough electricity to supply approximately 750 average homes.

Recently several mining companies have announced plans to build their own power plants. Newmont Mining Corporation wants to build a 200 MW coal-fired facility near Battle Mountain while Barrick Gold is pursuing a 115 MW combined cycle natural gas plant 10 miles east of Reno.

Other large users such as gaming resorts have also begun exploring the possibility of purchasing power from wholesale merchants. Despite the brief experiment with retail competition, several new generation facilities were built as a result and are now coming online. These new plants will help ensure the state has an adequate supply of electricity in the near term.

STATE ENERGY UTILITIES

There are two major electric utilities in the state, Nevada Power Company (NPC) in the southern portion of the state and Sierra Pacific Power Company in the north. These two companies are subsidiaries of investor-owned Sierra Pacific Resources. Southwest Gas Corporation supplies natural gas in the south, as does Sierra Pacific in the north. Additionally, there are several rural electrical cooperatives and power districts. Formation of cooperatives and power districts must be approved by the PUCN but thereafter the commission has little authority over these entities; instead, they are answerable to their members through an election process.

Sierra Pacific Power Company

Headquartered in Reno, Sierra Pacific Power Company covers a service territory of approximately 50,000 square miles in western, central, and northeastern Nevada and the Lake Tahoe area of California. The company has about 343,000 electric customers and provides natural gas to some 135,000 consumers. The utility owns 18,420 miles of electric transmission and distribution lines, and 1,795 miles of gas pipelines. The all-time peak electric usage occurred on July 18, 2005, at 1,744 MWs.

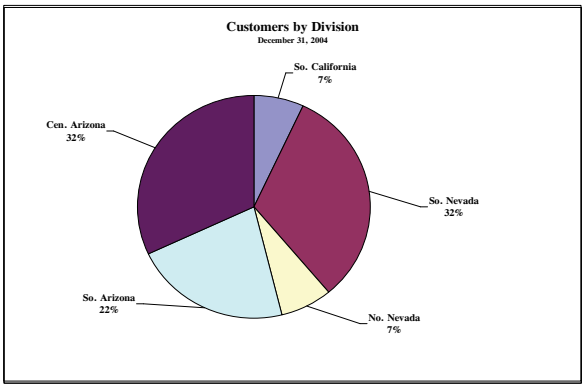
Nevada Power Company

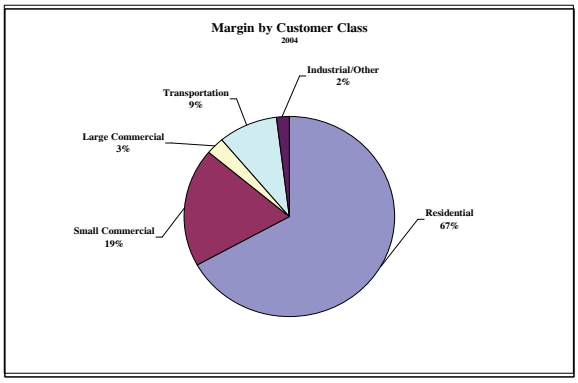
Nevada Power Company is headquartered in Las Vegas and provides electric service to over 709,000 customers in a 4,500-square-mile territory. The utility owns more than 9,600 miles of transmission and distribution lines. Peak usage of 5,587 MW occurred on the afternoon of July 18, 2005.

Source: Sierra Pacific Resources

Southwest Gas Corporation

Southwest Gas Corporation is an investor-owned natural gas enterprise headquartered in Las Vegas serving over 1.5 million customers in Arizona, Nevada, and parts of northeastern and southeastern California. About 39 percent of the customers are located in Nevada.





Source: Southwest Gas Corporation 2004 Report

POTENTIAL ENERGY ISSUES FOR THE FUTURE

Generation Facilities

While Nevada and the rest of the western states presently enjoy adequate power supplies, concerns have already surfaced about the need for additional generation in the region. Nevada remains one of the fastest growing states in the country. Economic recovery following the tragic events of September 11, 2001, and a continuing drought which has reduced the amount of hydroelectric power that is normally a large component of the western system, have caused planners to stress the need for development of new sources.

Some projects that were mothballed during the collapse of the energy markets following the ENRON scandal are being revived. In 2004, Nevada Power Company acquired Duke Energy Corporation's half-completed 1,200 MW Moapa Energy plant located at Apex near Las Vegas. The plant is now complete and operational.

One MW can provide power for approximately 750 average size houses, giving the plant capacity for some 900,000 homes. Additionally, NPC purchased a 75 percent interest in the 570 MW natural gas fired Silverhawk plant north of Las Vegas in June 2005.

PROPOSED GENERATION PLANTS IN NEVADA (JANUARY 2006)

NAME/OWNER	MW	LOCATION	PERMITS	CONSTRUCTION	PROPOSED ONLINE DATE
Desert Peak 2 Ormat http://www.ormat.com	25 Geothermal	Desert Peak KGRA Churchill County 50 miles northeast of Reno	Complete	Complete	June 2006
Burdette 1 Ormat http://www.ormat.com	20 Geothermal	Steamboat KGRA Washoe County 9 miles south of Reno	Complete	Complete	Online
Galena 21 Ormat http://www.ormat.com	13 Geothermal	Steamboat KRGA Washoe County 9 miles south of Reno	Ongoing	Drilling	Late 2006
Boulder City Solar Project 2 Solargenix Energy http://www.solargenix.com	50 Solar	El Dorado Valley Clark County 20 miles southeast of Las Vegas	Ongoing	Under Construction	Early 2007
Ely Wind Generation Facility 3 Carlson & Associates LS Power Associates	50 Wind	Ruth White Pine County 5 miles east of Ely	Ongoing	Expected 206	2007
Chuck Lenzie Generating Station 4 Nevada Power Company http://www.nevadapower.com	1200 Combined Cycle	Moapa Valley Clark County 20 miles north of Las Vegas	Complete	Complete	Mid 2006 (ahead of schedule)
Harry Allen Unit 4 Nevada Power Co. http://www.nevadapower.com Blue Mountain Geothermal Nevada Geothermal Power http://www.continentalridge.com Granite Fox Power Project Sempra Energy	80 Peaking 30 Geothermal 1450 Coal	Harry Allen Plant Clark County 20 miles north of Las Vegas Blue Mountain Humboldt County 20 miles west of Winnemucca Gerlach Washoe County 100 miles north of Reno	Ongoing Ongoing Delayed	Under Construction Drilling	Summer 2006 - 2007

1 Project location was changed from Desert Peak to Steamboat.
2 Project has applied for participation in the Temporary Renewable Energy Development Program.
3 Project has applied for participation in the Temporary Renewable Energy Development Program. Expansion phases planned.
4 Nevada Power acquired the partially constructed power plant from Duke Energy.

Source: Public Utilities Commission of Nevada

TRANSMISSION AND DISTRIBUTION FACILITIES

Adequate development of transmission capacity is another issue of concern for utilities. Since Nevada's IOUs do not generate all the electricity they use, power lines are needed to transport additional supplies into the state. Additionally, merchant generation plants need access to the interstate transmission system in order to sell their power in other states. Currently, northern and southern Nevada have no direct transmission interconnections. This situation makes it difficult to transfer power between the regions when there is excess capacity in one and greater demand in the other. However, a 250-mile transmission interconnection between the two regions was recently proposed by the utilities. The state also has significant renewable energy generation potential from sources such as geothermal, wind, and solar. However, the sites of these resources are not always in the immediate vicinity of existing power lines, which poses an obstacle to development of this potential.

Several large transmission lines have been completed recently or are under construction in Nevada. On May 24, 2004, the 180-mile Falcon to Gonder transmission line was put into service in eastern Nevada. The 345 kilovolt transmission lines runs from the Gonder Substation near Ely to the Falcon Substation west of Carlin. The project cost $110 million.

In March 2003, NPC completed two portions of the 100-mile Centennial Project. This project is scheduled for completion in 2007 and will allow Nevada Power to supply roughly 3,750 MW of new power to southern Nevada. The projected cost for the project is some $500 million or about $750,000 per mile.

In 2005, the Western Governors' Association established a protocol that was activated by four states, including Nevada, designed to promote cooperation in siting transmission lines among the various states in the Western Interconnection. Pursuant to the protocol, the four states signed a compact for development of the "Frontier Line," a 1,300-mile transmission line running from Wyoming to southern California, with a 12,000 MW capacity. Power would come from coal-mouth generation plants in Wyoming, as well as renewable energy sources such as wind, solar, and geothermal along the route. Project costs are estimated at $3 billion.

So-called distributed generation is a concept with impacts on transmission issues that is gaining support. This technology involves smaller power generators located on or near the site of power usage, thus reducing the need for new or upgraded transmission facilities to serve an increasing load. Distributed generation can be small natural gas-fired micro-generators, diesel or gasoline generators, or any of a variety of renewable energy generators such as wind, solar, or geothermal. In some instances, small hydroelectric generators can be installed as well.

One of the newest types of distributed generation involves fuel cells. These devices can be powered by a variety of fossil fuels such as natural gas, methane from landfills, and propane. Fuel cells are scalable from sizes that can power a cell phone to units that can supply an entire building. The ultimate goal of many researchers is to produce cost-competitive hydrogen powered fuel cells. Hydrogen fuel cells produce virtually no emissions except carbon dioxide and water. Most observers agree it will be many years before large scale production of fuel cells drives the cost of production to levels competitive with fossil fuel generation and adequate systems for producing and distributing hydrogen fuel are available.

AIR QUALITY AND OTHER ENVIRONMENTAL ISSUES ASSOCIATED WITH ELECTRIC GENERATION FACILITIES

Electric generation plants have increasingly come under criticism for their role in air quality problems and related health issues. In April 2004, the Environmental Protection Agency identified the Las Vegas Valley as exceeding new tougher federal standards for ground-level ozone, a component of smog. Ultimately, a region that violates air quality standards after a grace period for compliance faces federal sanctions. Although the new power plants in the Las Vegas area are cleaner, more efficient natural gas-fired units, they still contribute to overall air quality issues. Continued residential and commercial growth increases the need for electricity, which puts further pressure on air quality. This situation requires planning to ensure future power demands can be met within acceptable environmental limits.

Additionally, even the newer efficient gas-fired plants require water for cooling purposes. Given the prolonged drought in the west, water consumption in connection with electric power production is an increasingly important consideration. The proposed Sempra plant near Gerlach would use 25,000 acre-feet of water per year. An acre-foot of water is 325,851 gallons of water, approximately enough to serve a family of five people for one year. While generation plants can be designed to use air cooling technology, this lowers their efficiency and hence increases the cost of operation in hot weather.

FUEL DIVERSITY ISSUES

A variety of sources are commonly used for electric production. These include coal, oil, natural gas, nuclear, and hydropower. Concerns about air quality, drought, environmental impacts on rivers and aquatic life, nuclear waste disposal, and terrorism have all become considerations for electric generation. Additionally, the price and availability of fossil fuels has become increasingly problematic given geopolitical developments during the last decade.

Natural gas, the most environmentally benign fossil fuel and historically one of the cheaper generation fuels, is declining in terms of domestic production and increasing in price. Once selling for around $2 per million British thermal units (mmBtu) in the 1990s, recent prices have fluctuated between $6 and $9 per mmBtu with spikes above $15 during certain periods. Nearly 95 percent of new generating plants built in recent years have been designed to use natural gas. This development has raised the specter of making generation facilities too dependent on a single fuel source. Technologies for importing foreign natural gas in liquefied form (LNG) via shipping have improved but concerns about safety and the location of terminals near populated areas make the large-scale use of LNG doubtful in the near future.

The foregoing issues have increased interest in renewable energy sources like wind, solar, geothermal, and hydrogen. Nevada is among the leading states in terms of potential for the first three categories. However, as noted above, distance from transmission facilities as well as relative production cost factors have retarded widespread development of renewable resources despite one of the nation's most progressive legislative renewable energy portfolio standards.

Additionally, the weakened financial status of Nevada's electric utilities has increased the difficulty of arranging financing for renewable energy providers. Lenders have expressed

reservations about advancing money for renewable projects because of lingering concerns the utilities might be forced to seek bankruptcy protection. A bankruptcy court could abrogate or reform contracts between the renewable project developers and the utilities, thus potentially impairing the source of repayment to lenders. This situation led to the inability to meet the 2004 RPS requirement of 5 percent renewable energy.

In September 2004, the PUCN adopted a set of regulations known as the Temporary Renewable Energy Development (TRED) rules. These regulations create a trust mechanism to collect a special charge as part of customers' utility bills and use the proceeds to pay renewable energy suppliers. The trust is designed to reassure lenders that they will in fact be repaid for investments in renewable energy projects in Nevada. A bill was passed during the 2005 Legislative Session reinforcing the TRED program. These actions, along with congressional renewal of certain incentives for wind and geothermal development, have rekindled interest in pending projects.

Finally, rising fuel prices and environmental concerns are also reviving consideration of DSM programs. These include such diverse approaches as improved insulation and windows in buildings, more efficient lighting, load management and off-peak usage of power, interruption of air conditioning for certain periods of time on hot days, and other energy saving techniques. Part of the rationale underlying DSM is that a megawatt that is not needed can reduce the size of new power plants and transmission facilities as well as reduce environmental consequences since less fuel is burned to meet power needs.

LOW INCOME ENERGY ASSISTANCE PROGRAMS

In 2001, the Legislature established the Universal Energy Charge (UEC) to provide assistance with rising power bills to low-income consumers. The UEC is a charge of 3.30 mills on each therm of natural gas sold at retail for consumption within Nevada, and 0.39 mills on each kilowatt-hour of electricity that the retail customer purchases for consumption within Nevada. The UEC does not apply to natural gas sold as a source of energy to generate electricity, or to any kilowatt of electricity used in electrolytic-manufacturing processes. Furthermore, the charges do not apply to public and municipal utilities, rural cooperatives, or general improvement districts. A quarterly cap of $25,000 is placed on the charges for each single retail customer or customers under common ownership and control. This cap affects commercial and industrial retail customers, not smaller residential customers.

The proceeds are remitted to the PUCN each quarter. The commission is authorized to retain up to 3 percent of the amount collected as an administrative charge. Utilities may pass the charge through to ratepayers, provided it is set forth as a separate item on the utility bill. The average monthly UEC incurred by a typical residential customer is approximately $.60 to $1.

DISTRIBUTION OF UEC REVENUES

Seventy five percent of the amount collected is distributed to the Welfare Division to assist eligible households in paying for electricity and natural gas. The Division is authorized to use not more than 5 percent of the funds distributed to it for administrative expenses. The

remaining 25 percent of the money is distributed to the Housing Division for programs of energy conservation, weatherization, and energy efficiency. The Housing Division may use not more than 6 percent of the money distributed to it for administrative expenses. Both the Welfare Division and the Housing Division limit eligibility for assistance to households with incomes less than 150 percent of the federally designated poverty level.

By June 2004, $17.46 million was available to assist low-income consumers but only about 7,000 people applied in the current year out of an estimated 200,000 potential recipients. As a result, expenditures for 2004 will probably total about $4.4 million.

RELATED PROGRAMS

The Welfare Division also administers the federally funded Low Income Home Energy Assistance (LIHEA) Program. This program is likewise available to households with incomes less than 150 percent of the federally designated poverty level. Assistance is available from July 1 through May 31 and a new application must be submitted each year. Additionally, the utilities have established funds composed of voluntary contributions from customers and matching company donations for the assistance of low-income consumers.

LIST OF ACRONYMS

Acronyms are a convenient shorthand developed in many subject areas. The following list contains some of the most common acronyms encountered in the energy field.

BCP	Bureau of Consumer Protection
CRC	Colorado River Commission
DOE	United States Department of Energy
DSM	demand side management
EPAct	Energy Policy Act of 1992
F&PP	fuel and purchase power
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act of 1935
IOU	investor owned utility
IPP	independent power producer
ISO	independent system operator
kW	kilowatt
kWh	kilowatt hour
Btu	British thermal units
MW	megawatt
MWh	megawatt hour
NERC	North American Electric Reliability Council
NPC	Nevada Power Company
NOPR	Notice of Proposed Rulemaking
OASIS	Open Access Same-Time Information System
PUCN	Public Utilities Commission of Nevada
PUHCA.	Public Utility Holding Company Act of 1935

PURPA	Public Utility Regulatory Policies Act of 1978
QF	qualifying facility
REC	Renewable Energy Credit
RPS	Renewable Energy Portfolio Standard
RTO	Regional Transmission Organization
SNWA	Southern Nevada Water Authority
SPR	Sierra Pacific Resources
SPPCO	Sierra Pacific Power Company
TMWA	Truckee Meadows Water Authority
TRED	Temporary Renewable Energy Development Program
UEC	Universal Energy Charge
WSCC	Western Systems Coordinating Council

ADDITIONAL REFERENCES

- Nevada Public Utilities Commission Web site: http://www.puc.state.nv.us/
- Nevada State Office of Energy Web site: http://www.energy.state.nv.us/
- Federal Energy Regulatory Commission Web site: http://www.ferc.fed.us/
- Federal Energy Information Administration Web site: http://www.eia.doe.gov/

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REGULATION OF FINANCIAL AND LENDING INSTITUTIONS

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

There are three major types of depository institutions in the United States. They are commercial banks, thrifts, and credit unions.

1. Commercial banks are generally stock corporations whose principal obligation is to make a profit for their shareholders. Basically, banks receive deposits, and hold them in a variety of different accounts; extend credit through loans and other instruments; and facilitate the movement of funds.

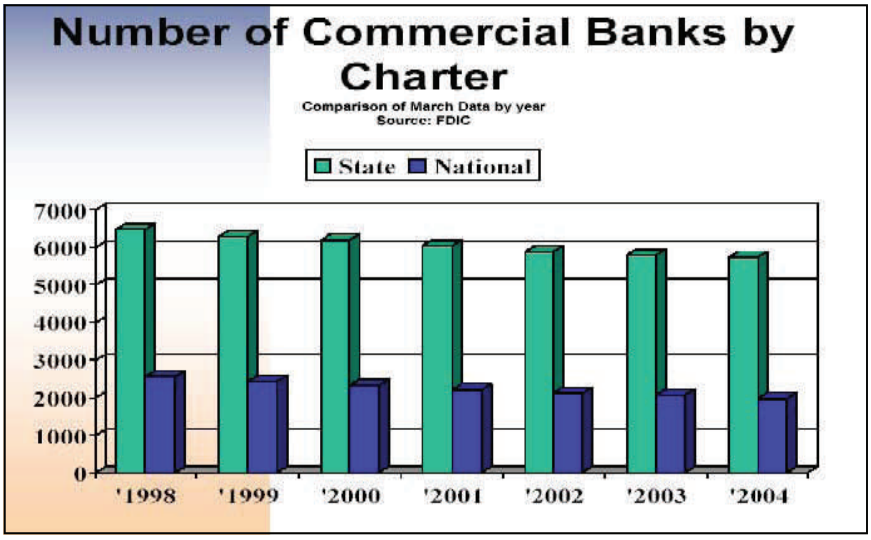
2. Thrifts, such as savings and loan associations and savings banks, specialize in real estate lending, particularly loans for single-family homes and other residential properties.

3. Credit unions are cooperative financial institutions, formed by groups of people with a "common bond." These groups of people pool their funds to form the institution's deposit base; the group owns and controls the institution together.

These three types of institutions have become more like each other in recent decades, and their unique identities have become less distinct. However, they still differ in specialization and emphasis, and in their regulatory and supervisory structures.

Dual Banking System

The first American banks appeared early in the 18th Century, to provide currency to colonists who needed a means of exchange. Originally, banks only made loans and issued notes for money deposited. Today, banks compete with credit unions, financing companies, investment banks, insurance companies, and many other financial service providers by offering a range of financial services such as, credit cards, automatic teller machines, individual retirement accounts, and home equity loans.



The U.S. operates with a dual banking system, where banks can be chartered by either a state or federal agency. A charter is an agreement that governs the manner in which the bank is regulated and operates. State charters and federal charters typically do not differ in the way the bank conducts business. The Office of the Comptroller of the Currency (OCC) charters national banks, and state banking departments charter state banks.

Chartering agencies ensure that new banks have the necessary capital and management expertise to meet the public's financial needs. In addition, the agency is responsible for protecting the public from unsafe banking practices, by conducting on-site examinations to make sure the bank's financial condition is good and that the bank is complying with banking laws.

FEDERAL REGULATORY AGENCIES

The federal regulation of financial and lending institutions in the U.S. involves five federal agencies.

Office of the Comptroller of the Currency

The OCC charters, regulates, and supervises all national banks. It also supervises the federal branches and agencies of foreign banks. Headquartered in Washington, D.C., the OCC has four district offices plus an office in London to supervise the international activities of national banks.

In regulating national banks, the OCC has the power to:

- Examine the banks.
- Approve or deny applications for new charters, branches, capital, or other changes in corporate or banking structure.

- Take supervisory actions against banks that do not comply with laws and regulations or that otherwise engage in unsound banking practices. The agency can remove officers and directors, negotiate agreements to change banking practices, and issue cease and desist orders as well as civil money penalties.

- Issue rules and regulations governing bank investments, lending, and other practices.

ENTITY	JURISDICTION	CONTACT INFORMATION
Office of the Comptroller of the Currency	Regulates national banks.	Web site: http://www.occ.treas.gov Consumer Assistance: 800-613-6743
Office of Thrift Supervision	Regulates federal savings and loans and federally chartered savings banks.	Web site: http://www.ots.treas.gov Telephone: 202-906-6000
Federal Reserve Board	Regulates state banks that are members of the Federal Reserve System.	Web site: http://www.federalreserve.gov Telephone: 202-452-3000
Federal Deposit Insurance Corporation (FDIC)	Regulates federally insured state banks that are not members of the Federal Reserve System.	Web site: http://www.fdic.gov Ombudsman: 877-275-3342
National Credit Union Administration	Regulates federal credit unions.	Web site: http://www.ncua.gov Ombudsman: 703-518-6510
Division of Financial Institutions	Regulates state chartered banks, credit unions, thrifts, and check cashing companies.	Web site: http://www.fid.state.nv.us Telephone: 775-684-1830

Office of Thrift Supervision

The Office of Thrift Supervision (OTS) is the primary regulator of all federally chartered and many state-chartered thrift institutions, which include savings banks and savings and loan associations. Established as a bureau of the U.S. Department of the Treasury in August 1989, the OTS has four regional offices located in Atlanta, Dallas, Jersey City, and San Francisco. The OTS is funded by assessments and fees levied on the institutions it regulates.

Federal Reserve Board

The Federal Reserve System controls the flow of money in and out of banks by raising or lowering its requirements for bank reserves and by buying and selling federal securities. It lends money to banks at low interest rates to help banks meet their short-term liquidity needs, and is known as the "lender of last resort" for banks experiencing liquidity crises. Together, the FDIC and the Federal Reserve form the federal safety net that protects depositors when banks fail.

The Federal Reserve is the federal regulator of about 1,000 state-chartered member banks, and cooperates with state bank regulators to supervise these institutions. Membership in the Federal Reserve System is required for national banks and is optional for state banks. While many large state banks have become Federal Reserve members, most state banks have chosen not to join.

The Federal Reserve also regulates all bank holding companies. Holding companies must apply to the Federal Reserve to acquire new subsidiaries or to engage in new activities. The Federal Reserve monitors the capital condition and general financial health of holding companies, and may take enforcement actions against them. The Federal Reserve is also responsible for federal oversight of foreign banks operating in the U.S.

Federal Deposit Insurance Corporation

The FDIC insures the deposits of banks up to a maximum of $100,000 per account holder. It cooperates with state banking departments to supervise and examine these banks, and has considerable authority to intervene to prevent unsafe and unsound banking practices. Under the 1991 Federal Deposit Insurance Corporation Improvement Act, both state-chartered and national banks must apply to the FDIC for deposit insurance

The FDIC directly examines and supervises about 5,300 banks and savings banks, more than half of the institutions in the banking system. Banks chartered by states also have the choice of whether to join the Federal Reserve System. The FDIC is the primary federal regulator of banks that are chartered by the states that do not join the Federal Reserve System. In addition, the FDIC is the back-up supervisor for the remaining insured banks and thrift institutions.

To protect insured depositors when a bank or thrift institution fails, the institutions generally are closed by their chartering authority – the state regulator, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision. In addition, the FDIC deals with the failed institutions by either liquidating them or selling the institutions to redeem insured deposits.

National Credit Union Administration

The National Credit Union Administration is the federal agency that charters and supervises federal credit unions and insures savings in federal and most state-chartered credit unions across the country through the National Credit Union Share Insurance Fund. This federal fund is backed by the full faith and credit of the U.S. government, insuring the savings of 80 million account holders in all federal credit unions and many state-chartered credit unions.

REGULATION OF FINANCIAL INSTITUTIONS IN NEVADA

In Nevada, the Financial Institutions Division (FID), Department of Business and Industry, enforces regulations and licenses 15 types of financial entities. In general, most financial entities are covered under the NRS definition (NRS 657.037) of "depository institution," which means any bank, savings and loan association, savings bank, thrift company, credit union or other institution, whether chartered by this state, another state or the Federal Government, which:

- Holds or receives deposits, savings or share accounts;

- Issues certificates of deposit; or

- Provides to its customers other depository accounts which are subject to withdrawal by checks, drafts or other instruments or by electronic means to effect payment to a third party.

Background investigations are conducted on financial entities and individuals having substantial control of a licensed company's activities. Laws governing each type of license set different percentage controlling factors, which determine the requirements to perform a background investigation. Various provisions in NRS or *Nevada Administrative Code* (NAC) prohibit certain entities from using within a company's name or advertising, the words Bank, Banking, Banker (or foreign language equivalent), Trust, Credit Union, or Deposit. In addition, the Secretary of State, Counties, Cities, and Municipalities have been requested not to permit incorporation authorization, issuance of business licenses or fictitious business names, where the name of the company or the type of activities the company will engage in, indicates that it may be subject to FID licensing, without first having the potential activities of the company reviewed by FID. The 15 entities regulated by FID are the following:

Financial Entities Regulated

The following is a list of financial entities regulated:

Banks
A bank is a corporation or limited-liability company that is chartered by this state, another state, or the U.S., and conducts the business of receiving money as demand deposits or otherwise carries on a banking or banking and trust business.

Check Cashing/Deferred Deposit Services
A check cashing or deferred deposit service is considered to be any party who engages in the business of cashing checks for a fee, service charge, or other consideration; or provides to another person an amount of money that is equal to the amount of a check presented, less any fee charged for the transaction, and agrees not to cash the check for a specified period. These financial entities are required to register with the FID, post a $50,000 surety bond, and undergo a background investigation.

Credit Unions
A credit union is a cooperative, nonprofit corporation, organized for the purposes of promoting thrift among its members and creating a source of credit for members at a fair and reasonable rate of interest. According to statute, a credit union may not pay out dividends until "regular reserves" equal 7.5 percent of outstanding loans and risk assets. Thereafter transfers from gross income must be made annually until 6 percent of loans and risk assets are achieved. A fidelity bond covering officer and employees, in an amount prescribed by the NAC, must be maintained by the credit union.

Collection Agency (NRS and NAC 649)
A "collection agency" means and includes all persons engaging, directly or indirectly, and as a primary or a secondary object, business or pursuit, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another. A physical office is required in Nevada for a collection agency. A license is required for solicitation by telephone or mail to attempt to collect a debt in Nevada on behalf of a Nevada client.

An out-of-Nevada collection agency attempting to collect in Nevada on behalf of an out-of-state client is exempt from licensing, provided its activities are limited to interstate communication (i.e., telephone, fax, or mail). A background investigation is required on the principal owning or acquiring control of a company. A surety bond must be filed with the commissioner.

Collection Manager
Every collection agency must have a licensed collection agency manager available to oversee the day-to-day activities. The manager must have at least two years prior collection agency experience, pass a written test covering the NRS and NAC 649, Federal Fair Debit Collection Practices Act, allowable interest (NRS Chapter 99), trust account maintenance, and statement balancing.

Debt Adjuster
A debt adjuster covers arrangements by a third-party between debtor and creditor for repayment of debt. A debt adjuster must furnish a surety bond to the commissioner of $10,000 to $50,000, as determined by monthly amounts processed. Background investigations are required on all principals owning or acquiring control of the company. A trust account is required to be maintained in a Nevada bank. A debt adjustor may not operate a collection agency.

Depository Institutions
A depository institution is any bank, savings and loan association, savings bank, thrift company, credit union, or other institution, whether chartered by this state, another state, or the Federal Government Bank. Banks may not directly engage in sale of insurance (other than sale of credit insurance, credit property insurance, and annuities) or security brokerage activities. Savings and loan licensees must have their deposits insured by the FDIC. Thrift companies and credit unions have the option of having their deposits insured by the FDIC, National Credit Union Association, or a "private deposit insurer" that has been approved by the FID Commissioner. Interstate branching is permitted under certain conditions.

Development Corporation
A development corporation provides credit for rehabilitation of existing business and industry. A minimum capital of $500,000 is needed.

Economic Revitalization Corporation
Economic revitalization corporations are classified as ventures by Nevada banks, savings and loans, credit unions, and Nevada corporations with assets over $20 million to prorate credit for economic revitalization and diversification.

Installment Loan Company

Installment loan companies are engaged in the making of, or arranging, a loan other than those secured by real estate that require an installment loan license. The company must have a solvent financial condition, at least $50,000 in liquid assets for use in the operation of the business, and the principals must demonstrate an ability to conduct installment loan lending activities. Companies providing the financing of the sale of their own product through a "retail installment sales contract" are not required to obtain an installment loan license. Those entities purchasing existing retail installment sales contracts (not secured by real estate) do not need to obtain a license.

Money Transmitter

A money transmitter includes instruments for, and electronic transmission of, money. A certified company financial statement reflecting a net worth of over $100,000 is required. Background investigations are required of principals owning or seeking control of a company. A surety bond to the commissioner is required for $10,000 to $250,000, depending on the number of offices/agents. The trust account must be in a Nevada bank.

Savings and Loan Associations

Savings and Loans Associations are depository financial institutions that obtain the bulk of their deposits from consumers and hold the majority of their assets as home mortgage loans. In addition to matters listed under banks, savings and loans are required to provide the Commissioner of the FID with a surety bond equal to 5 percent of total assets, not to exceed $3,000,000 covering all employees.

Surety or Fidelity Bond

A Surety or Fidelity Bond is required by a licensee to pledge either a bond to the Commissioner of FID, a "letter of credit" or "cash in lieu of bond." When a surety bond is issued, or renewed by an out-of-state insurance company, the bond must be "countersigned" by a Nevada registered insurance agent.

Thrift Company

Thrifts were originally established to promote personal savings through savings accounts and home ownership through mortgage lending, but now provide a range of services similar to many commercial banks, such as consumer and business lending. In addition to requirements listed for banks, thrifts must provide the FID with a fidelity bond on each officer, director, and employee for at least $100,000. Officers and majority of directors must be citizens of Nevada. The president must have at least ten years' experience in a regulated financial institution and the manager must have at least two years' experience.

Trust Company

According to NRS, a trust company is defined as a corporation or limited-liability company engaged in the holding out by a person, by advertising, solicitation, or other means, that it is available to act as a fiduciary in this state and undertaking to act as a fiduciary in the regular course of its business. A trust company must have an initial minimum capitalization of $300,000 actually paid in, and maintain a fidelity bond of $25,000 or more on all officers and employees. Banks and savings and loans qualifying to operate in Nevada do not need a

separate trust company license. Some provisions of state banking law apply to a licensed trust company.

REGULATION OF MORTGAGE LENDING INSTITUTIONS IN NEVADA

Background on the Mortgage Lending Division

MORTGAGE LENDING DIVISION

During the 1999 interim, the Subcommittee to Investigate Regulation of Mortgage Investments reviewed the facts surrounding problems involving a failed mortgage company, Harley L. Harmon Mortgage Company. The Subcommittee also investigated the regulatory role of the Division of Financial Institutions, with respect to mortgage investments. Recommendations were made to the 70th Session of the Nevada Legislature regarding how to improve regulation of mortgage investments.

Assembly Bill 490 (Chapter 516, *Statutes of Nevada*) was enacted during the 2003 Legislative Session with the intention to further improve the regulation of the mortgage lending industry. This bill creates a self-funded Division of Mortgage Lending within the Department of Business and Industry.

The Mortgage Lending Division (MLD) is charged with the enforcement of regulations and licensing of Mortgage Bankers, Mortgage Brokers, and Escrow Agencies. Additionally, certain individuals operating as Mortgage Agents or Escrow Agents within these licensed entities are themselves required to be licensed or subject to personal background investigations.

Contact Information
Mortgage Lending Division
Web site: http://www.mld.nv.gov
Telephone: 775-684-7060

The MLD regulates the following entities:

Mortgage Brokers
Anyone who holds himself out as being able to make or arrange loans secured by real estate, or as being able to buy or sell notes secured by real estate in, into, or from Nevada, and the activity includes "brokering" noncommercial loans to third-party lenders must have a mortgage broker license, or be specifically exempted from that license. An out of state mortgage broker location cannot be licensed, or do business in this state.

Mortgage Agents
Mortgage Agents must be licensed by the MLD. Mortgage agents may only be associated with one mortgage broker at one time. The division must be notified and approve any changes in employment if an agent terminates with a broker, regardless if they move between brokers or cease working as an agent. All mortgage agents conducting loan origination business in Nevada must be located in Nevada.

Mortgage Bankers

A mortgage banker is anyone who limits his mortgage activities to only making loans or selling notes, secured by real property using his own money buying; or only brokers "commercial mortgage loans" to "institutional investors" and does not maintain client trust accounts. This license is more restrictive than a mortgage broker license. An out of Nevada mortgage company location may be licensed so long as the mortgage banker maintains at least one office in Nevada.

Escrow Agencies

Certain escrow agency activity in the State of Nevada is regulated by the MLD. Escrow activity includes facilitating a transaction for the purpose of affecting the sale, transfer, encumbering, or leasing of real or personal property from one person to another person. Escrow activity also includes third-party loan servicing. Some escrow activity is permissible without an escrow license and is regulated by another agency.

Escrow Agents

An escrow agent is any person engaged in the business of administering escrows for compensation. Individuals conducting escrow activity within an escrow agency and are authorized to sign for the agency in the closing of escrows or sign the remittance of payments for serviced accounts must be licensed as an escrow agent. Individuals may not serve as an agent for more than one agency.

FEDERAL REGULATION

Preemption of State Laws

In January of 2004, the OCC implemented two controversial rules exempting national banks and their diverse range of operating subsidiaries from state consumer protection laws and enforcement actions:

1. The first OCC rule preempts virtually all state laws that apply to the activities of national banks and their operating subsidiaries. The OCC takes this action despite 140 years of congressional actions and Supreme Court decisions that subject national banks to state consumer protection and fair lending laws. Additionally, the rule goes beyond national banks to bar states from licensing, examining, and regulating state-chartered non-bank subsidiaries of national banks.

2. The second rule gives the OCC the exclusive visitatorial rights for national banks. This action effectively bars states from identifying wrongdoing on the part of national banks and their subsidiaries and keeps states from bringing enforcement actions in either state or federal court.

Several national organizations, including the Conference of State Bank Supervisors, the National Governors Association, the National Association of Attorneys General, the National Conference of State Legislatures, and the North America Securities Administrators Association,

have voiced their opposition to the OCC's proposed rule that would effectively preempt all state laws that apply to the activities of national banks and their state-licensed subsidiaries. The groups are asking OCC to withdraw the controversial proposal.

On October 7, 2004, a bill (H.R. 5251) was introduced in the House of Representatives titled, "The Preservation of Federalism in Banking Act." The Act clarifies congressional intent regarding state authority to protect consumers against unfair and deceptive practices. The proposed legislation is in response to national organizations' opposition to the OCC rules.

Privacy Rights

In 1999 the federal government enacted a law called the Gramm-Leach Bliley Act, also known as the Financial Services Modernization Act. It removes most of the legal barriers that previously existed between the banking, insurance, and securities industries.

The law establishes consumer privacy standards, including notice requirements, limits on information sharing, and requirements to protect the confidentiality and security of personal information. Banks, credit unions, mortgage companies, finance companies, insurance companies, insurance agents, and investment firms are all subject to Gramm-Leach-Bliley. The law also applies to some retailers and automobile dealers that collect and share information about consumers to whom they extend credit or for whom they arrange credit.

The law requires certain institutions to send customers a notice regarding privacy rights informing customers what information they collect about them and with whom they share that information. Further, the company must offer customers an opportunity to "opt-out" of having information shared beyond exceptions provided by law.

2005 LEGISLATION IMPACTING FINANCIAL INSTITUTIONS

In an effort to protect the consumer, the 2005 Legislature enacted two bills aimed at regulating establishments that offer small, unsecured, high interest, short-term cash loans. Assembly Bill 384 impacts check-cashing services, deferred deposit loan services, short-term loan services, and title loan services. Assembly Bill 340 creates a new chapter in title 52 of NRS to regulate "refund anticipation loans," which are loans based on a customer's anticipated federal income tax refund.

The most infamous type of high interest loan is the so called "payday loan," usually used by persons who need money before their next paycheck. In most cases, borrowers write a post-dated, personal check for a cash advance, plus a fee. Typical loan amounts are between $250 and $500, usually for periods of one to four weeks. If the borrower does not pay off the loan within the agreed amount of time, the lender renews the loan and adds late fees. Interest rates on these types of loans can be as high as 1000 percent.

Assembly Bill 384 establishes a new chapter of the *Nevada Revised Statutes* (NRS) that regulates loan services, including check-cashing, deferred deposit loans, short-term high interest loans, and title loans. Any person offering these types of loans must be licensed with the Commissioner of Financial Institutions.

Licensed businesses offering loan services are prohibited from filing a lawsuit to recover a loan, unless they have given the customer an opportunity to enter into a repayment plan. The loan service business cannot charge a greater interest rate than what was in the original contract and is prohibited from adding any other fee. In addition, if a customer does default, the lender is limited on the amount that can be collected from the customer. Lenders are prohibited from threatening borrowers with criminal prosecution, unless the district attorney determines that the person intended to commit fraud by issuing a check on a deposit account that the person knew was closed or did not exist.

Another measure, Senate Bill 431 impacts all licensees of the State of Nevada Financial Institutions Division. Senate Bill 431 was proposed by the FID to modify the requirements for a license to operate a financial institution. The Commissioner of Financial Institutions may deny licensure if an applicant has committed an act that would be grounds for suspension or revocation of the license. The Commissioner of Financial Institutions may also revoke a license or otherwise punish a licensee for violations pertaining to financial institutions.

Senate Bill 431 authorizes the Commissioner to charge a penalty if a licensee fails to submit any required report on time, and also explicitly allows the Commissioner to assess fines on numerous businesses or unlicensed persons engaging in certain activities for which a license is required. The Commissioner may also investigate certain financial businesses and examine their books, accounts, and records.

Lastly, S.B. 391 changes the definition of a financial institution for the purpose of the Modified Business Tax on Financial Institutions. This measure allows the Administrator of the Securities Division and the Commissioner of Financial Institutions to impose various penalties if a person fails to pay the Modified Business Tax on Financial Institutions, including revoking, suspending, or denying a license. The bill also allows the Administrator of the Securities Division to provide information or evidence obtained in connection with an investigation to the Department of Taxation.

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TELECOMMUNICATIONS AND COMMUNICATION TECHNOLOGY

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

HISTORY OF TELECOMMUNICATIONS REGULATION

In the United States, federal and state governments are authorized to intervene in the telecommunications marketplace when the market is considered inadequate to ensure supply and demand of products and services. At the federal level, regulation involves the Communications Act of 1934 (as amended) that is administered by the rulings of the Federal Communications Commission (FCC). State regulatory bodies such as public utility commissions handle state-level regulation.

Telecommunication deregulation has its roots in the courtroom based on a 1974 antitrust case against AT&T. In 1984, when AT&T accepted the restructuring agreement, also known as the Modification of Final Judgment, the company was divested into seven Regional Bell Operating Companies. The purpose of the divestiture was to separate the competitive long-distance market from the local market where incumbent telephone companies faced no competition. This was the first step in a policy trend towards deregulating telecommunications by replacing regulations with market forces of competition.

In 1996, on the national level, Congress enacted the Telecommunications Act of 1996. The Act dramatically changed the ground rules for competition and regulation within the telecommunications industry. The legislation required the Regional Bell Operating Companies to open their networks to competitors and sought to open local markets to a host of potential competitors, including cable companies, utilities, and wireless service providers.

Prior to the Telecommunications Act of 1996, the FCC had the authority to regulate interstate telecommunication services and the states had the authority to regulate intrastate telecommunication services. The Act gave the FCC the general authority to set rules

and policies for local competition, while assigning the states the responsibility of implementing the statutory and federal regulatory requirements of the Act.

Universal Service Programs

The Communications Act of 1934 states that all people in the United States shall have access to "rapid, efficient, nationwide . . . communications service with adequate facilities at reasonable charges." Prior to the Telecommunications Act of 1996, the Universal Service Fund operated as a mechanism by which interstate long-distance carriers were assessed to subsidize telephone service to low-income households and high-cost areas. The Telecommunications Act of 1996 expanded the traditional definition of universal service—affordable, nationwide telephone service—to include among other things rural health care providers and eligible schools and libraries. Today, the FCC provides universal service support through the following four mechanisms:

1. The high-cost support mechanism provides support to telephone companies that serve high-cost areas, thereby making phone service affordable for the residents of these regions;

2. The low-income support mechanism assists low-income customers by helping to pay for monthly telephone charges as well as connection charges to initiate service;

3. The rural health care support mechanism allows rural health care providers to pay rates for telecommunications services similar to those of their urban counterparts, making telehealth services affordable; and

4. The schools and libraries support mechanism, popularly know as the "E-Rate," provides telecommunication services (e.g., local and long-distance calling, high-speed lines), Internet access, and internal connections (the equipment to deliver these services).

TELECOMMUNICATIONS IN NEVADA

In Nevada, the regulation of telephone service is under the jurisdiction of the Public Utilities Commission of Nevada (PUCN). The PUCN's role as delineated by the Legislature is to regulate just and reasonable rates for consumers of utility services, taking into mind the interests of the consumers and the shareholders of the utilities that are regulated.

The PUCN consists of three commissioners appointed to four-year terms by the Governor. The commissioners are assisted by professional staff consisting of analysts, attorneys, economists, and engineers. The PUCN sets retail rates for natural gas and electricity. Decisions of the PUCN are appealable to the courts. The Consumer's Advocate of the Bureau of Consumer Protection exists within the Office of the Attorney General to represent consumer interests before the PUCN.

Universal Service Programs in Nevada

Universal Service Programs of Lifeline Telephone Service ("Lifeline") and Link-Up Telephone Service ("Link-Up") services are governed by *Nevada Revised Statutes* (NRS) 707.400 through

NRS 707.500. The Lifeline program provides a discount on the basic local service charge and on the federal end-user charge to residential customers.

The Link-Up program allows for a reduction in the carrier's customary charge for connecting telecommunications service for a single telecommunications connection at a consumer's principal place of residence. Both programs are available to customers who meet the income eligibility requirements established by the PUCN. In 1999, the Legislature passed Senate Bill 487 (Chapter 120, *Statutes of Nevada 1999*) to automatically allow qualified low-income resident to receive Lifeline service. In Nevada, the usage of Lifeline and Link-Up continues to increase. According to SBC Communications, in 2003 the use of Lifeline services by customers increased 32 percent.

Plan of Alternative Regulation

In 1989, the Nevada Legislature enacted several pieces of legislation that directed the PUCN to adopt rules to allow alternatives to the existing form of regulation. This plan of alternative regulation, or PAR, allows the flexibility to provide competitive and discretionary services while preserving customer benefits of basic telephone service. The first company to enter into a PAR was Nevada Bell in 1991. In 1994, there were some revisions to the PAR, and subsequently, Sprint entered into a similar price cap regulation. In the 1999 Legislative Session, the passage of S.B. 440 (Chapter 313, *Statutes of Nevada 1999)* continued the regulatory reform by modifying the plan for alternative regulation. This bill required the PUCN to establish regulations for determining whether a service should be reclassified. It also authorized pricing flexibility and provided that if a carrier is regulated under a PAR, it is not subject to review of earnings, monitoring of rate base, or any other regulation relating to its net income or rate of return.

In 2003, S.B. 400 (Chapter 479, *Statutes of Nevada 2003)* was passed after much vigorous discussion. This bill enacts provisions relating to the regulation of telecommunication and broadband services. The measure revises provisions relating to incumbent local exchange carriers regulated under a PAR and amends requirements and procedures relating to those carriers. It also revises provisions relating to the classification of certain services and authorizes flexibility in the pricing and terms of certain services. Additionally, the legislation prohibits the PUCN from regulating broadband service under certain circumstances.

In response to the questions brought forth by the discussion on S.B. 400, the Legislature also passed Assembly Concurrent Resolution No. 2 (File No. 10, *Statutes of Nevada 2003*) during the 20th Special Session. As directed in the resolution, the study must include an evaluation of telecommunications services in Nevada. In passing this resolution, the Legislature acknowledged that the availability and development of telecommunications services in Nevada not only affects the quality of life of the residents of this state, but also is essential for maintaining a strong and vibrant economy.

Long-Distance Service

As required by the Telecommunications Act of 1996, the PUCN has been investigating Section 271 applications (Title 47, *United States Code),* which relate to competition and the

long-distance market. This application filed by companies, like Nevada Bell, a Regional Bell Operating Company in Nevada, request the PUCN sign off that competition exists in the local market in order to allow them to provide long-distance services. The PUCN, through its review in December 2002, granted Nevada Bell's application request. That review was then forwarded on to the FCC, who did its own investigation, and in April 2003, Nevada Bell, now SBC Communications, was granted authority to provide long-distance service as well as local service.

Cellular Technology

In 1985 cellular technology was not yet available or offered in Nevada. Today, wireless phones have become an indispensable part of many people's lives. In an effort to provide consistent service and to prevent the development of a patchwork system of conflicting regulations, the 2003 Legislature passed S. B. 10 (Chapter 237, *Statutes of Nevada 2003)*, which prohibits an agency, board, commission, or political subdivision of the state from regulating the use of a cellular phone, or other portable phone, by a person operating a motor vehicle and S.B. 426 (Chapter 329, *Statutes of Nevada 2003)*, which establishes statewide procedures for approval of applications for placement or construction of facilities for personal wireless communications.

In addition, Assembly Bill 138 (Chapter 79, *Statutes of Nevada 2003)* was also passed requiring school district boards of trustees to adopt a policy concerning students' use of pagers, cellular phones, or other similar devices on school property, or at school-sponsored activities. The bill repealed a section of state law that currently prohibits a student from carrying or possessing such devices on school property.

Nevada's Do Not Call Registry

In June of 2003, the Legislature passed A.B. 232 (Chapter 464, *Statutes of Nevada 2003)* requiring the Attorney General to establish and maintain a registry of telephone numbers of persons who do not wish to receive unsolicited calls from telemarketers.

The measure prohibits a telephone solicitor from making an unsolicited telephone call for the sale of goods or services to a telephone number included in the registry, except in certain circumstances. Making an unsolicited telephone call in violation of the provisions of A.B. 232 is a deceptive trade practice. The bill also makes it a deceptive trade practice to place an unsolicited telephone call that does not allow a service to identify the caller. Furthermore, automated dialing calls are prohibited between 8 p.m. and 9 a.m.

Telemarketing Regulation

National Do Not Call Registry

The National Do Not Call Registry is managed by the Federal Trade Commission (FTC), the nation's consumer protection agency. The FTC began enforcing the National Do Not Call Registry on October 1, 2003.

The law requires telemarketers to search the registry every three months and avoid calling any telephone numbers that are on the registry. Organizations with which a person has an established business relationship can call for up to 18 months after the last purchase, payment, or delivery. Companies to which a person has made an inquiry or submitted an application can call for up to three months. Calls from or on behalf of political organizations, charities, and telephone surveyors are still permitted.

Frequently Asked Questions

Q: Is Nevada's law different from the federal do not call law?

A: Yes. The Nevada and federal do not call laws offer different protections in certain circumstances. For instance, a charitable organization may be considered a telemarketer in limited circumstances under Nevada's law and be unable to call a registered phone number, but not be similarly prohibited under the federal law. Nevada residents, however, will receive the protection of both laws.

Q: Will these laws stop all telemarketing calls?

A: No. The Nevada and federal do not call laws prohibit most telemarketing calls to registered Nevada phone numbers. However, the Nevada law still permits some types of calls, including:

- Telemarketing calls from companies that have had a direct, preexisting business relationship with you within 18 months of the call.
- Telemarketing calls from political, religious, or tax-exempt charitable organizations that are made by an actual employee or volunteer of that organization.
- Calls that do not involve the sale of goods or services, for example, telephone survey calls.
- Calls from a telemarketer you have given express permission to call you.
- Calls from a telemarketer when you have a debt and the call's purpose is to collect payment or performance, or to extend credit to make the payment.
- Calls from a company that has an established business relationship with you (regardless of the relationship's length) and the call's sole purpose is to verify whether you want to terminate the business relationship.

Q: How do I file a complaint if I am still receiving telemarketing calls?

A: Once you have verified that you can file a complaint, visit the national do not call registry's Web site at www.donotcall.gov and select the "File a Complaint" button. You can also file a complaint by calling toll free (888) 382-1222. The hearing impaired may call toll free (866) 290-4236.

Electronic Commerce

The face of commerce has changed dramatically because of the Internet. The Internet has made it possible to purchase goods easily from a nearby state or from a country in a different hemisphere. The use of the Internet for electronic commerce holds the promise of economic growth, more and better jobs, and global trade. With the burgeoning global economy, the sales and use tax that local and state governments rely on for revenue has not kept pace with technology.

Under current law, only vendors who are physically present in the state are required to collect and remit the tax on taxable sales in that state. As a result, states cannot compel remote vendors, such as catalogue or Internet companies, to collect and remit these taxes so long as those vendors do not have any physical presence in the purchaser's state. In an effort to modernize the existing sales and use tax rules, there is a nationwide project underway by state governments to encourage state participation in the Streamlined Sales and Use Tax Agreement.

Streamlined Sales and Use Tax Agreement

The Streamlined Sales and Use Tax Agreement provides states with a blueprint to create a simplified sales and use tax collection system that removes the burden and cost from sellers. The agreement is designed to facilitate the collection of sales taxes on Internet purchases and other forms of remote sales. To date, 35 states and the District of Columbia have enacted legislation to develop an interstate agreement.

Nevada became a participating state in the Streamlined Sales and Use Tax Agreement upon passage of A.B. 514 (Chapter 400, *Statutes of Nevada 2003)* from the 2003 Session. This measure revises existing statutes and adds new provisions relating to sales and use taxes. The measure allows for electronic registration of sellers and for electronic payment of taxes. In addition, A.B. 514 establishes requirements for determining the place of sale and for claiming an exemption from taxes.

New Technologies

THE TELECOMMUNICATIONS AND COMMUNICATION TECHNOLOGY MARKET TODAY

The core arguments surrounding telecommunications have centered on whether or not competition exists in the marketplace and whether or not regulation is needed to foster the development of competition or if regulation, in fact, is hindering the development of competition. Alongside this argument is the undercurrent of a blurring distinction between different communication technologies with the convergence of telephone, wireless, internet telephony, satellite, and other forms of communication. Many of the new technologies that deliver telecommunication services do not fall under the traditional regulatory framework for telecommunications. Yet, despite these services competing with one another, some services are heavily regulated while others are not regulated at all.

Broadband Deployment

Across America, the availability of ubiquitous, reliable, high-speed broadband access is changing the way we work and live. Computer ownership and Internet access have grown remarkably. According to the Pew Internet and American Life Project, nearly two-thirds (63 percent) of American adults use the Internet and that figure climbs to nearly 75 percent of those between the ages of 12 and 17. Nielsen Net Ratings recently reported that 50 million Americans now access the Internet from home using high-speed connections.

Advances in broadband services, offered over telephone and cable wires, licensed and unlicensed wireless connections, satellite, digital television, and over electrical power lines provide the opportunity to improve the quality of life in rural America. The availability of broadband access is critical in attracting new businesses to rural areas and giving existing businesses the availability to compete with firms in more urban settings. In addition, broadband can be used to further advances in educational tools and medical availability.

The FCC has put a high priority on making sure that Americans living and working in rural communities have access to the same kind of high quality infrastructure that is available in urban and suburban America. In August of 2003, Michael K. Powell, Chairman, FCC, announced the Rural Action Plan to spur the deployment of advanced telecommunications.

The plan seeks to encourage broadband deployment in rural areas. According to the National Conference of State Legislatures (NCSL), the following seven states passed broadband regulation in 2003: (1) Idaho; (2) Maryland; (3) Mississippi; (4) Nevada; (5) Oregon; (6) South Carolina; and (7) Virginia. The Nevada Legislature in 2003 passed S.B. 400, which prohibits the PUCN from regulating any broadband service, including imposing requirements relating to the terms, conditions, rates, or availability of broadband service.

The convergence of services offered by telecommunications, cable, satellite, wireless, Internet telephony or Voice over Internet Protocol (VoIP), et cetera, offer a challenge to the existing regulatory and tax system. The regulated and taxed market of voice telecommunication is colliding with new technology that is unregulated and minimally taxed.

Voice over Internet Protocol

One of the fastest growing consumer trends is the use of VoIP services and broadband phones. Voice over Internet Protocol is the technology that allows secure calls made with an internet connection rather than routing through standard phone lines. However, VoIP is not simply just voice, but supports converged multimedia applications that transmit voice, data, and video. The voice signal converts to data packets and travels across the internet through a VoIP platform, and then converts back to voice at the receiving end of the communication exchange. Leading telecom experts are projecting that 75 percent of the world's communications will be done on VoIP within the next several years.

The impact of this new technology is the dramatic lowering of costs of maintaining networks and placing calls. There is some speculation that VoIP could displace phone companies by providing low-cost or no cost local and long-distance dialing.

Broadband over Power Lines

Broadband over Power Lines (BPL) offers high-speed access Internet to your home through the common electrical outlet. By combining the technological principles of radio, wireless networking, and modems, developers have created a way to send data over power lines and into homes at speeds between 500 kilobits and 3 megabits per second (equivalent to Digital Subscriber Line [DSL] and cable broadband service).

The system would allow current power companies to become internet service providers to much of the country with most of their customers living in rural areas that are currently not being serviced by existing DSL or cable broadband services. This technology is already being tested in several cities around the U.S.

A concern over BPL has been brought forward by the amateur radio community. According to radio amateurs, BPL represents a potential interference source for all radio services using the 2 Megahertz (Mhz) to 80 Mhz frequency range. Both the internet signal and radio services are transmitted through the electrical lines at this frequency. Overhead electrical power lines and residential wiring act as antennas that unintentionally radiate the broadband signals as radio signals throughout entire neighborhoods and along roadsides. Interference has been observed nearly one mile from the nearest BPL source.

Wi-Fi

"Wireless fidelity" is used to describe products that follow the 802.11 set of standards developed by the Institute of Electrical and Electronic Engineers. The most popular of these standards is 802.11b, which operates in the same frequency band as a microwave oven or cordless telephone.

In most cases, enterprises use Wi-Fi to link data networks together instead of using wires. According to Gartner Inc., 50 percent of Fortune 1,000 companies will have extensively deployed wireless local area networks (WLANs) using Wi-Fi to support standard wired local area networks by 2005. In the home, WLANs are becoming a popular way of networking multiple computers to a broadband Internet connection. This technology has a range of about 300 feet.

Data rates for Wi-Fi continue to improve. The emerging 802.11a standard operates in the 5 GHz band and can transfer data up to 54 Mbps. The 802.11g standard, the newest, is compatible with 802.11b and operates in the same 2.4 GHz band, but it can transfer up to 54 Mbps like 802.11a. In the near future, data rates may reach levels as high as 100 Mbps. In the meantime, Wi-Fi chipsets will be embedded in more and more devices, such as cars, cameras, and, of course, computers.

Hotspots

A hotspot is a wireless access point where users can log onto a network or the Internet. Hotspots are found in various public places for free or for a fee, provided the users' devices

(such as laptops, or Personal Digital Assistants [PDAs]) have Wi-Fi chipsets. Many airports and hotels have hotspots. Also, the retail chain Starbucks has hotspots at more than 1,000 locations in the U.S.

CURRENT ISSUES IN TELECOMMUNICATIONS AND COMMUNICATION TECHNOLOGY

Municipalities Offering Broadband

An emerging issue in telecommunications is whether municipalities should act as their own utility to provide broadband Internet access to their residents. Proponents argue that cable and telephone companies have failed to provide affordable broadband service in some cities and municipalities leading them to implement their own service. Opponents stress that municipalities and governments should not compete with private enterprise.

Regulation of New Technology

Another major issue facing telecommunications is whether or not to regulate new technologies such as VoIP. Internet telephony, or VoIP, which is rapidly growing in popularity, allows people to make calls using a computer and broadband connection by breaking the conversation into digital packets, similar to how electronic mail (e-mail) is sent. On February 12, 2004, the FCC found that an entirely Internet-based VoIP service was an unregulated information service. On the same day, the FCC began a broader proceeding to examine what its role should be in this new environment of increased consumer choice and what it can best do to meet its role of safeguarding the public interest.

Tax Structure and Rights-of-Way

Local governments and municipalities often charge a utility company a fee for the use of public rights-of-way. There has been debate concerning a municipality's right to compensation for the use of public rights-of-way. Proponents of franchise fees contend that the Telecommunications Act of 1996 was drafted to balance the interests of federal, state, and local governments, and to protect local management of public rights-of-way. Opponents of franchise fees contend that the fees restrict competition.

The NCSL Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce passed a policy encouraging states to work together with local governments and providers to simplify and modernize state and local taxes on telecommunications based upon the following principles:

Tax Efficiency:
State and local taxes and fees imposed on telecommunications services should be substantially simplified and modernized to minimize confusion and ease the burden of administration on taxpayers and governments.

Competitive Neutrality:
State and local transaction taxes and fees imposed on telecommunications services should be applied uniformly and in a competitively neutral manner upon all providers, without regard to the historic classification or regulatory treatment of the entity.

Tax Equity:
Under a uniform, competitively neutral system, industry-specific telecommunications taxes are no longer justified.

Local Government Impacts:
States need to include provisions to mitigate potential local government revenue impacts associated with telecommunications tax reform.

Economic Development:
States need to simplify and modernize state and local telecommunications tax systems to encourage economic development, reduce impediments to entry, and ensure access to advanced telecommunications infrastructure and services throughout the states.

Internet Fraud

"Phishing" is a term used to describe the illegal creation and use of e-mails and Web sites that are designed to look like the e-mails and Web sites of legitimate businesses, financial institutions, and government agencies in order to deceive Internet users into disclosing personal information. The "phishers" then use the personal information, which often includes financial account information, usernames, and passwords for criminal purposes, such as identity theft and fraud.

"Spyware" is often considered a form of software that covertly accesses a user's hard drive during Internet connection, without the user's knowledge or consent, and secretly tracks and relays information on the person's Web surfing habits. However, the term "spyware" has also been applied to Web cookies—programs designed to help provide security patches directly to users—and predominantly to free downloads that contain piggyback applications to gain access to a person's computer.

"Spoofing" allows an attacker to create a "shadow copy" of a legitimate website. Access to the shadow web is funneled through the attacker's machine, allowing the attacker to monitor all of the victim's activities, including any passwords or account numbers the victim enters. The attacker can also cause false or misleading data to be sent to web servers in the victim's name, or to the victim in the name of any web server. In "spoofing," an attacker gains unauthorized access to a computer or a network by making it appear that a malicious message has come from a trusted machine by "spoofing" the address of that machine.

FREQUENTLY USED TELECOMMUNICATIONS TERMS AND ACRONYMS

3g Wireless
Third generation wireless technologies; a group of wireless technologies, such as Internet-enabled Palm Pilots, that move from circuit-switched communications to wireless broadband,

high-speed, packet-based networks. These technologies are preceded by first generation analog and second generation digital, communication technologies.

802.11
A family of wireless specifications developed by a working group of the Institute of Electrical and Electronics Engineers. The 802.11 specifications are used to manage packet traffic over a network and ensure that packets do not "collide" when traveling from the point of origin to the destination.

ADSL
Asymmetrical Digital Subscriber Line; a technology for transmitting digital information at a high bandwidth on existing telephone lines to homes and businesses.

ATM
Asynchronous Transfer Mode; a cell based switching technology that supports multimedia networking; ATM allows the class of service for information/data on the network to be specified and can emulate other telecommunications services. The ATM is often used in conjunction with SONET, but may operate at any transmission rate.

Bluetooth
A wireless system operating in the 2.4 GHz ISM band intended initially as a short-range cable replacement technology.

bit
Abbreviation for binary digit; in binary notation either of the characters 0 or 1.

BPl
Broadband over Power Lines; offers high-speed access Internet to homes through the common electrical outlet by combining the technological principles of radio, wireless networking, and modems. Data can be sent over power lines and into homes at speeds between 500 kilobits and 3 megabits per second (equivalent to DSL and cable broadband service).

bps
Bits per Second; a measurement of data rate, generally excluding the contributions or effects of error correction, encryption, framing, synchronization, and similar such signals.

Broadband
High capacity digital data services, generally 200 kilobytes per second or faster.

byte
A sequence of adjacent bits (usually 8) considered as a unit.

CLEC
Competitive Local Exchange Carrier; a new firm providing telecommunications service to the subscriber's location that enters the market in competition with an ILEC.

Digital Switch
A computer-based machine for establishing and managing on-demand telecommunications such as a telephone call.

DS-1
Digital System 1 digital carrier service, or telecommunications link; DS-1 provides 1.544 megabytes per second or 24 phone calls.

DS-3
Digital System 3 digital carrier service, or telecommunications link; DS-3 is equivalent to 28 DS-1s or 45 megabytes per second of capacity.

DSL
Digital Subscriber Line; a broadband connection provided over telephone lines.

FCC
Federal Communications Commission; U.S. body regulating, approving, and licensing radiated electromagnetic signals including broadcasting and telecommunications.

GHz
Gigahertz; a unit of frequency denoting 10^9 Hz.

HFC
Hybrid Fiber-Coax; cable television network system that uses optical fiber in core of the network and copper coaxial cable in the periphery of the network to the subscriber. The HFC is typically used to enable two-way traffic in order to provide "cable modem" broadband service.

Hz
Hertz; a unit of frequency which is equivalent to one cycle per second.

ILEC
Incumbent Local Exchange Carrier; the established telephone company that provides telecommunications service to the subscriber's location.

IP
Internet Protocol; the core technologies of the Internet that specify how devices are addressed and how connections between these devices are set up/maintained.

ISM
Industrial, scientific, and medical applications of radio frequency energy. The operation of equipment or appliances designed to generate and use locally radio-frequency energy for industrial, scientific, medical, domestic, or similar purposes, excluding applications in the field of telecommunications.

ISP
Internet Service Provider; any firm that sells Internet services such as access, Web hosting, or

electronic mail. The ISPs may own their own network infrastructure or may lease it from other telecommunications providers.

IXC
Inter-exchange Carrier; a long-distance company.

LAN
Local Area Network; a private computer network that physically connects devices within a building.

LATA
Local Access and Transport Area; a telecommunications tariff aspect in the U.S.

Latency
The amount of delay in a LAN or WAN. For basic data where a small delay can be tolerated, latency is usually not an issue. However, for communications services used for videoconferencing or VoIP for example, latency can interfere with the audio and/or visual communications. In shared bandwidth transmission environments, it is possible to encounter latency which varies dynamically, caused by perhaps a single user accessing or originating multi-megabyte-sized files or accessing high bandwidth streaming signals.

LEC
Local Exchange Carrier; a local telecommunications company, any firm that provides telecommunications service to the subscriber's location (also CLEC or ILEC).

Multimedia
Anything using more than one medium; graphics, sound animation, text and/or video generated by a computer.

OS
Operating System; the software program that manages the basic operation of a computer system.

Packet
A form of data transmission breaking information into many small packets, each including information such as source, destination, protocol, and packet length information. The concept is used for the Internet where a given transmission facility is shared by many different users, with packets removed or added as appropriate at different locations.

PAR
Plan of Alternative Regulation; rules adopted by the PUCN to allow alternatives to the existing form of regulation and are designed to reduce barriers to entry in the marketplace and allow more competition.

PCS
Personal Communications Services.

PDAs
Personal digital assistants; handheld devices originally designed as personal organizers, but became much more versatile over the years. A basic PDA usually includes a clock, date book, address book, task list, memo pad, and a simple calculator. One major advantage of using PDAs is their ability to synchronize data with desktop, notebook, and desknote computers.

POP
Point of Presence; an interconnection point between a LEC and an IXC or ISP. The common carrier physical location in a city, for example.

POTS
Plain Old Telephone Service; Jargon.

PSTN
Public Switched Telephone Network.

PUCN
Public Utilities Commission of Nevada.

RBOC
Regional Bell Operating Company; one of seven U.S. telephone companies that resulted from the break up of AT&T.

Redundancy
Alternative and/or duplicate transmission paths, routes, equipment, and power in various combinations to enhance the reliability of a telecommunications infrastructure.

SONET
Synchronous Optical Network; very high capacity, optical fiber-based telecommunications network system. SONET has a ring architecture which makes it very reliable; typically used in the core network of telecommunications service providers.

Spread Spectrum
A "frequency-less" (as opposed to traditional radio) wireless telecommunications technology that allows wireless connections to be very clear and secure.

T-1
A digital telecommunications link that supports 24 voice-grade channels and provides 1.544 megabytes per second of bandwidth. The T-1 is equivalent to DS-1, but is specifically carried over copper twisted pair wire.

Telephony
The term used to describe the science of transmitting voice over a telecommunications network.

Unbundling
The term used to describe the access provided by local exchange carriers so that other service

providers can buy or lease portions of its network elements, such as interconnection loops, to serve subscribers.

Universal Service
The financial mechanism which helps compensate telephone companies or other communications entities for providing access to telecommunications services at reasonable and affordable rates throughout the country, including rural, insular and high-cost areas, and to public institutions. Companies, not consumers, are required by law to contribute to this fund. The law does not prohibit companies from passing this charge on to customers.

VoIP
Voice over Internet Protocol; a series of techniques permitting transmission of telephony over the Internet.

WAN
Wide Area Network; typically an inter-city network.

Wi-Fi
Wireless Fidelity; refers to any type of 802.11 network, whether 802.11b, 802.11a, dual-band, et cetera.

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Public Utilities Commission of Nevada
Telephone: Carson City (775) 687-6001
Telephone: Las Vegas (702) 486-2600
Web site: http://puc.state.nv.us/index.htm

Federal Communications Commission
Telephone: 888-CALL-FCC
Web site: http://www.fcc.gov/

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TRANSPORTATION

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Convenient and efficient transportation is imperative to the economic well-being of Nevada. Nevada is the seventh largest state in the nation encompassing some 110,540 square miles of diverse geographic topography. Conversely, Nevada is the 39th largest state with respect to population. Nevada continues to be the nation's fastest-growing state with over 85 percent of the population living within a metropolitan area. The diverse characteristics of the state are served by a transportation system that extends from the interstate level to the back country byway (gravel), and from high-speed, eight-lane thoroughfares to non-motorized trails and paths just mere feet wide.

NEVADA'S DEPARTMENT OF TRANSPORTATION

Nevada's Department of Transportation (NDOT) is responsible for the planning, construction, promotion, and protection of transportation systems within the state. Its major responsibilities involve highways, railroads, and mass transit. Additionally, NDOT is responsible for, but not limited to, improving safety along roadways, maintaining the highways, replacing and rehabilitating bridges, establishing recreational trails, funding eligible airport improvement projects, and assisting with rail service.

The NDOT mission is to "Efficiently plan, design, construct, and maintain a safe and effective seamless transportation system for Nevada's economic, environmental, and social needs." Each year, NDOT identifies transportation projects, programs, and funding sources for transportation facilities. Most of the projects are developed in cooperation with other transportation providers such as the metropolitan planning organizations, local airport authorities, and local governments.

The responsibility for roads and highways is divided between local governments and the state. The NDOT is responsible for the construction, improvement, and maintenance of the state's

5,472-mile highway system, which includes interstate highways and frontage roads, U.S. highways, state highways, and farm-to-market roads. In addition, local governments maintain 32,473 miles of country roads and city streets, bringing the total number of public road miles in Nevada to an estimated 37,945 miles. Nevada's maintained, functionally-classified roads contain 2,176 miles of principal arterials, 882 miles of minor arterials, and 2,059 miles of collectors. In addition to the roadway system, there are approximately 1,623 bridges in Nevada. The NDOT maintains 1,005 bridges with 610 bridges being maintained by county, city, or other governmental agencies. Eight bridges are privately maintained.

Funding for the State of Nevada's transportation systems is derived from a variety of revenue sources, including federal, state, and local option resources. The revenues are collected through a variety of mechanisms including, but not limited to, fuel taxes, vehicle privilege taxes, licenses, registrations, and motor carrier fees.

State highways maintained by NDOT are financed with dedicated highway-user revenue and federal funds. No General Fund (general tax) revenue is used. State and federal highway funds are principally derived from vehicle fuel tax and registration fees. In addition, Section 5, Article 9 of the *Constitution of the State of Nevada* requires that the revenues from fuel taxes and other fees and charges for the operation of a motor vehicle be used for highway construction, maintenance, repair, and administration.

The following comprise the State Highway Revenue sources:

- Federal Highway Trust Fund – Fuel tax and other highway-user revenue collected by the Federal Government is placed in the Federal Highway Trust Fund. The federal gasoline tax is 18.4 cents per gallon. Congress allocates these funds to the states per provisions in the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act for the 21st Century—A Legacy for the Users" (SAFETEA-LU) and annual appropriations bills. Federal funds are available only for reimbursement of expenditures on approved projects. Federal aid is not available for routine maintenance, administration, or other non-project related costs. To acquire federal funds, the state generally must pay 5 percent to 20 percent of the project's cost.

- State Highway Fund – The fund was established pursuant to *Nevada Revised Statutes* (NRS) 408.235. It is a special revenue fund established to account for the receipt and expenditure of dedicated highway-user revenue. The NDOT is the major activity financed by the Highway Fund. However, the bulk of the operating costs of the Department of Motor Vehicles (DMV) and the Department of Public Safety are also financed by appropriations from the Highway Fund. Typically, there are also minor appropriations or transfers to other agencies for their services, including the Department of Administration, Office of the Attorney General, the State Public Works Board, and the Transportation Services Authority.

The fund is composed of the following taxes and fees:

- Gasoline Tax—The Nevada Legislature first enacted a gasoline tax in 1923. The balance of these revenues went to the counties and was based upon the number of

licensed vehicles in each county. Today, the statewide tax on gasoline is 24.75 cents per gallon, with 17.65 cents going to the State Highway Fund, 6.35 cents to the cities and counties, and .075 cents to the State Petroleum Clean-up Trust Fund. Additionally, there is up to 9 cents per gallon of optional fuel taxes in certain counties, with a slightly higher rate in Washoe County where the rate is indexed to inflation.

- Special-Fuel Tax—Taxes on special fuels are distributed to the State Highway Fund. Currently, the State taxes special fuels at the following rates: diesel fuel is 27.75 cents per gallon; propane (liquefied petroleum gas) is 22 cents per gallon; and methane (compressed natural gas) is 21 cents per gallon.

- Vehicle Registration and Permit Taxes—The annual registration rate for a vehicle varies depending principally on the weight of the vehicle. The rate is $33 for passenger cars, and $17 per 1,000 pounds of declared gross vehicle weight for large commercial trucks.

- Driver's License Fees—$21.75 for passenger cars and $86.25 for operating commercial vehicles.

- Governmental Services Taxes—The basic tax rate is 4 percent of the vehicle's depreciated assessed valuation. (Initial valuation of the vehicle is 35 percent of the manufacturer's suggested retail price, without accessories). There is an optional supplemental rate of 1 percent of the vehicle's depreciated assess valuation in Churchill and Clark Counties; 0.2 percent in Washoe County (effective July 1, 2004). For vehicles registered at a DMV office, 94 percent is distributed to local governments and 6 percent to the State Highway Fund as a collection commission. For vehicles registered at a County Assessor's office, 99 percent is distributed to local governments and the State Highway Fund receives 1 percent. In Clark County, the supplemental rate is used for highway projects and in Washoe and Churchill Counties as general revenue.

DEPARTMENT OF MOTOR VEHICLES

The State controls the manner and use of the highways by the public through Nevada's DMV. The DMV is organized into the following eight divisions:

- Division of the Office of the Director;
- Division of Compliance Enforcement;
- Division of Field Services;
- Division of Central Services and Records;
- Division of Management Services and Programs;
- Division of Motor Carriers;
- Division of Information Technology; and
- Division of Administrative Services.

Nevada's motor vehicle laws are primarily contained in Chapters 481 through 486 of NRS, which address vehicle registration; vehicle titles; consignment of vehicles; licensing and regulation of vehicle manufacturers, rebuilders, distributors, dealers, brokers, salesmen, and lessors; special license plates; antitheft laws; operators' licenses; vehicular accidents and financial responsibility; civil and criminal liability with regard to vehicle operators; vehicle size, weight, and load restrictions and limits; vehicles and the powers of state and local authorities; driving schools and driving instructors; body shops; garages; and salvage vehicles. Included in Chapter 484 of NRS, entitled "Rules of the Road," are provisions that relate to rights-of-way, bicyclists, pedestrians, stopping, parking, speeding, and reckless and drunk driving.

Under Chapter 483 of the *Nevada Administrative Code*, 12 or more demerit points in any 12-month period will result in suspension of operating privileges for 6 months. Demerit points are assessed for moving traffic convictions based on the violation conviction date. When 12 months have elapsed from the date of a conviction, the demerits for that violation are deleted from the total demerits accumulated. Convictions remain part of a person's permanent driving record.

LICENSING OF DRIVERS

To obtain a Nevada driver's license, it is necessary to be at least 16 years old and have completed an approved driver education course. A person is exempted from this requirement if a driver education course is not offered within a 30-mile radius of his residence, in which case an additional 50 hours of supervised driving experience may be substituted. Driver education is <u>not</u> required for a beginning driver 18 years of age or older. A person 18 years of age must obtain an instruction permit before taking a skills test; complete the application form and provide proof of full legal name, age, and Social Security number; and pass the knowledge, vision, and skills test. New drivers are issued a driver's license valid for four years, which expires on the person's birthday.

Nevada uses the graduated driver licensing (GDL) system for new drivers under the age of 18. The GDL system is a program that allows novice drivers to gain knowledge and driving experience while under the supervision of an experienced mentor as they progress through the learning stages of driving. Under the GDL system, a novice driver needs to be accompanied by a qualified instructor, parent, or legal guardian over 21 years of age. A person must complete a course in driver education. In addition, 50 hours of behind-the-wheel experience, which must include 10 hours of night driving, is required prior to applying for a license. Finally, a number of passenger restrictions and instructional permit holding periods are required for drivers under the age of 18.

NEVADA'S DRUNK DRIVING LAWS

The drinking age in Nevada is 21 years of age. It is *illegal per se* (presumed illegal) to drive a motor vehicle with a blood alcohol concentration (BAC) at or above .08 percent in Nevada. In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21), a new federal incentive grant program was created to encourage states to adopt a .08 percent BAC illegal

per se level. In October 2000, Congress passed .08 percent BAC as the national standard for impaired driving as part of a law providing appropriations to the U.S. Department of Transportation for Fiscal Year (FY) 2001. States that did not adopt .08 percent BAC by October 1, 2003, will have 2 percent of certain highway construction funds withheld each year, with the penalty increasing 8 percent by FY 2007. States adopting the standards by 2007 will be reimbursed for any lost funds.

In 2003, the Nevada Legislature lowered the legal blood alcohol limit for drivers from .10 percent to .08 percent as a condition to receiving federal funding for the construction of highways in this state.

Driving Under the Influence

Nevada's driving under the influence (DUI) laws and their respective penalties range from fine or forfeiture, jail or imprisonment, suspension or revocation of driving privileges, alcohol assessment, and demerit points. Commonly, a combination of these penalties is imposed for a specific offense. The following table summarizes Nevada's basic penalties for DUI.

NEVADA BASIC PENALTIES FOR DUI		
OFFENSE	**JAIL OR PRISON TIME**	**FINE**
First without injury (misdemeanor)	2 days to 6 months in jail or 48 to 96 hours of community service	$400 to $1,000
Second within 7 years without injury (misdemeanor)	10 days to 6 months in jail or residential confinement	$750 to $1,000
Third or subsequent within 7 years without injury (category B Felony)	1 to 6 years in prison	$2,000 to $5,000
Any offense resulting in death or substantial bodily harm (category B Felony)	2 to 20 years in prison	$2,000 to $5,000
Any subsequent offense following a felony offense of DUI	2 to 15 years in prison	$2,000 to $5,000

In Nevada, there is no differentiation between a third or subsequent (fourth, fifth, et cetera) offense. Also, the time period for a subsequent DUI offense to added to an earlier DUI offense is seven years. Nevada law does not provide for enhanced penalties if the subsequent offense occurs earlier within the seven-year period, unless a person has been convicted of a felony offense of DUI in Nevada or another state. Under this circumstance, any subsequent DUI

offense is punishable as a felony regardless of whether the subsequent offense occurred within the last seven years.

Recently, vehicular homicide was added as a crime in Nevada. Vehicular homicide is defined as a person who has previously committed at least three offenses of DUI or a controlled or prohibited substance and drives while under the influence and proximately caused the death of another person. The crime is a category A felony punishable by imprisonment in the state prison for life with the possibility of parole or a definite term of 25 years. The number of offenses is determined in the same manner as DUI, however the offenses are not restricted to offenses committed within the immediately preceding seven years. "Homicide by vessel" was also established as a crime. It is defined as a person who has previously committed at least three offenses of operating a vessel under the influence and who operates a vessel under the influence in violation of law and proximately the death of another person. This crime is a category A felony and is punishable in the same manner prescribed for vehicular homicide.

Implied Consent

Nevada has an implied consent statute (NRS 484.383) for an individual who refuses a lawful request by a police officer to submit to an evidentiary test of his blood, urine, breath, or other bodily substance. In Nevada, a person driving or in actual physical control of a vehicle is deemed to have given his consent to breath or blood testing. Refusal is grounds for an arrest. A police officer may use reasonable force to obtain blood samples from the person.

MOTOR CARRIERS

Motor carrier laws are generally contained in Chapter 706 of NRS. In Nevada, the Transportation Services Authority regulates fully regulated carriers, operators of tow cars, brokers of regulated services, and operators of taxicabs outside of Clark County. The Taxicab Authority regulates taxicabs operating within Clark County.

MAJOR POLICY ISSUES OF THE 2005 LEGISLATIVE SESSION

Motor Vehicle Tax Rebate—With $300 million in surplus state tax revenue, the 2005 Legislature and Governor Kenny C. Guinn authorized through the passage of Assembly Bill 572 (Chapter 432, *Statutes of Nevada 2005*), the issuance of a rebate check to each owner of a vehicle registered in Nevada in calendar year 2004. Also, each person 65 years or older on or before January 1, 2005, who held a valid Nevada identification card on or before that date received a rebate check.

The rebate check for owners of registered vehicles was for $275 or the amount of the basic governmental services tax and registration fees paid on the vehicle during the 2004 calendar year, whichever was less. However, no rebate check was for less than $75. Rebates were issued on a per-vehicle basis but did not include utility trailers or vehicles with a gross weight in excess of 26,000 pounds. Rebate checks were issued no later than December 31, 2005, and had to be cashed within 180 days of issuance.

***Graduated Drivers' Licenses*—**Beginning in 1997, various laws have been implemented for graduated drivers' licenses (GDL) for teens. The 2005 Legislature enhanced the existing GDL law for young people driving in Nevada. New additions to the GDL law include: (1) prohibiting a person under 16 years of age from obtaining a driver's license; (2) requiring a person who is under age 18 to hold an instruction permit for at least six months before applying for a driver's license; (3) submitting a log book, signed by a parent or guardian, containing the dates and time of supervised driving experience; (4) requiring a person who is 16 or 17 years of age to complete a driver education course (if a driver education course is not offered within a 30-mile radius of a person's residence, an additional 50 hours of supervised driving experience may be substituted); (5) prohibiting a person who is 16 or 17 years of age from driving between the hours of 10 p.m. and 5 a.m. unless driving to or from a scheduled event; and (6) prohibiting a person who is 16 or 17 years of age from transporting any passenger who is under 18 years of age, except for immediate family members, for the first three months after the license has been issued.

FUTURE POLICY ISSUES THAT MAY BE ADDRESSED BY THE 2007 LEGISLATURE

***Real ID Act of 2005*—**On May 11, 2005, President George W. Bush signed into law the "REAL ID Act of 2005," which was attached to the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005" (H.R. 1268, P.L. 109-13). Title II of REAL ID—"Improved Security for Drivers' Licenses and Personal Identification Cards"—repeals the provisions of a December 2004 law that established a cooperative state-federal process to create federal standards for drivers' licenses and instead imposes prescriptive federal driver's license standards. Among the many provisions of REAL ID are sections that place federal requirements on all state drivers' licenses. The REAL ID Act will have an impact on every person applying for a driver's license in the entire U.S. All states, Puerto Rico, and the District of Columbia will have to change their driver's license laws to comply with REAL ID. While the REAL ID Act is now law, the driver's license provisions are not in effect yet. All current drivers' licenses remain valid. Current licenses are likely to remain valid until their renewal date, even if state laws change in the meantime. States have three years to comply with the REAL ID Act, and each state will follow a different timeline.

***Freeway Congestion in the Reno/Sparks and Las Vegas Areas*—**Several areas of concern regarding this issue may be addressed during the upcoming session, including the following:

- The possible need for rail or other public transit options;
- Continued funding of the California-Nevada Super Speed Ground Transportation Commission;
- Method of prioritizing (and funding) certain highway improvements in Nevada; and
- SAFETEA-LU (primary federal surface transportation legislation).

FREQUENTLY ASKED QUESTIONS

Q: What is the Graduated Driver Licensing (GDL) system?

A: The GDL system is a program that allows novice drivers to gain knowledge and driving experience while under the supervision of an experienced mentor as they progress through the learning stages of driving. Under the GDL, a novice driver needs to be accompanied by a qualified instructor, parent or legal guardian, or a licensed person over the age of 21 who has been licensed for at least one year.

Q: When and how can one get an instruction driver's permit?

A: A person can apply for an instruction driver's permit when he is 15 years and six months old or older. A person must present proof of name, date of birth, and Social Security number to the DMV. A parent or legal guardian must be present to sign a financial responsibility statement. He must also pass the vision and knowledge test and pay a licensing fee of $21.75.

Q: Who qualifies for disabled parking license plates?

A: Disabled parking license plates are available to persons with a permanent disability as certified by a physician. However, disabled persons with reversible conditions may obtain a placard from the DMV, which is valid for up to two years. There are no fees other than the normal registration fees for disabled parking license plates. Plates are assigned to a specific vehicle. A placard can be used on any vehicle but must be used only by the disabled individual.

ADDITIONAL RESOURCES

Nevada's Department of Transportation has prepared a number of publications that describe programs and services under the jurisdiction of the Department. These may be accessed at: http://www.nevadadot.com/.

The Department of Motor Vehicles prepares a number of forms and publications regarding programs and services under its jurisdiction. These may be found at: http://www.dmvnv.com/index.htm.

Some of the specific forms and publications prepared by the DMV are as follows:

- Drivers Handbook available in English and Spanish: http://www.dmvnv.com/pdfforms/dlbook.pdf
- Driver License Forms, Frequently Asked Questions, and Publications: http://www.dmvnv.com/nvdl.htm
- Graduated Driver Licensing: http://www.dmvnv.com/nvdlteens.htm
- Motor Vehicle Registration: http://www.dmvnv.com/nvreg.htm

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ELEMENTARY-SECONDARY EDUCATION

Policy and Program Report

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Research Division

2006

The State supervises and regulates public elementary and secondary education through Nevada's Department of Education (NDOE), headed by the Superintendent of Public Instruction. The Department is responsible for regulating and supporting the State's 17 school districts and 552 public schools. In Nevada, the responsibility for the education of elementary and secondary students is divided or shared among local school districts, charter schools, and the state.

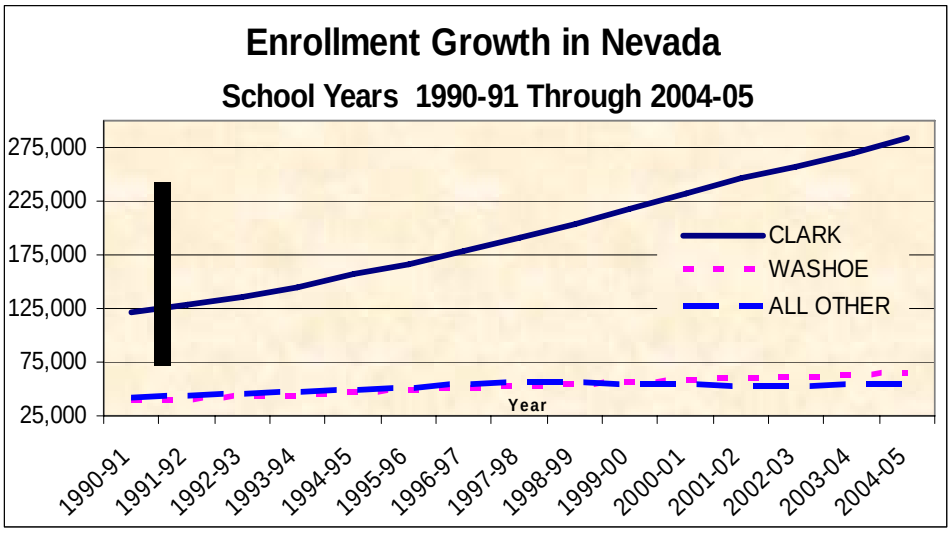
CONSTITUTIONAL BASIS AND HISTORY

The *Nevada Constitution* in Article XI, Section 2, makes the State Legislature responsible for the establishment of the public school system. Specifically, the *Constitution* states:

> The legislature shall provide for a uniform system of common schools * * *

In general, the Nevada Legislature has four primary responsibilities for public education: (1) providing for a uniform system of common schools; (2) prescribing the manner of appointment and duties of the Superintendent of Public Instruction; (3) indicating specific programs and courses of study; and (4) maintaining overall budget authority and establishing guaranteed per pupil funding.

Over the years, the Nevada Legislature has adopted a body of law within the *Nevada Revised Statutes* (NRS) (Title 34) regarding the system of public schools. Sections of Title 34 specify local administrative organization; financial support of the school system; the system of public instruction; courses of study; textbooks; personnel; pupils; school property; and the education of pupils with disabilities.



During its biennial sessions, the Legislature acts upon numerous policy and fiscal measures dealing with public education. The two standing committees dealing with policy matters are the Senate Committee on Human Resources and Education and the Assembly Committee on Education. Bills requiring substantive funding are processed by the two appropriations committees–the Senate Committee on Finance and the Assembly Committee on Ways and Means. During the interim period between legislative sessions, fiscal matters related to education are processed by the Interim Finance Committee (IFC); education policy issues are discussed by the joint Legislative Committee on Education.

SCHOOL DISTRICT CHARACTERISTICS AND ENROLLMENT

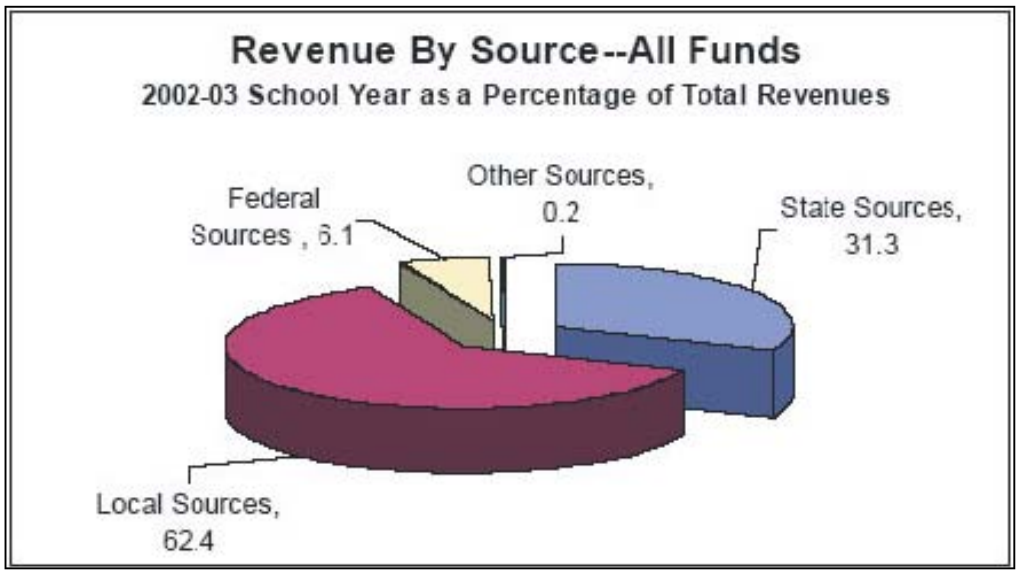
For the past three decades a primary focus of the state and many local governments has been the impact of Nevada's explosive growth. The effect of this growth upon government services has been significant, and the associated increase in student enrollment upon public schools is an important part of that overall picture. From 1970 to 2000, Nevada's school age population grew by 188 percent, leading the western states and the nation. For the past 15 years, growth in student enrollment in Nevada public schools has averaged about 5 percent a year, nearly four times the national average. Most of this increase is fueled by the two largest school districts, Clark and Washoe, with Clark outpacing most of the districts nationwide. Part of that growth involves an increase in ethnic minority student populations. The number of students classified as English Language Learners has increased over 325 percent in the last ten years. Approximately 95 percent of Nevada's limited English proficient students speak Spanish as their first language.

The National Center for Education Statistics (NCES) has issued projections for the next decade that show Nevada continuing to lead the nation in enrollment growth, with a significant increase in the number of high school students; a projected increase of approximately 38 percent, the highest in the nation. Such growth will have a profound impact upon both district staffing and infrastructure, especially in Clark County. At the same time, many rural districts have seen declining enrollments that, in some cases, have had a negative impact on staffing and programs. It is likely that this pattern will continue into the near future in many of the rural districts.

There are several areas of concern with regard to Nevada's student population. The State's dropout rate is one of the highest in the country. Additionally, nearly 31 percent of Nevada's fourth graders and over 40 percent of the eighth graders scored "below basic" on the 2003 mathematics tests of the National Assessment of Educational Progress (NAEP). These scores take on added significance in light of student growth, as the more populated districts are devoting much of their resources and attention to keeping up with that growth.

FINANCING

The *Nevada Plan* is the system used to finance elementary and secondary education in the State's public schools. The State develops a guaranteed amount of funding for each school district; the revenue, which provides the guaranteed funding, is derived both from State and local sources. *Nevada Plan* funding for the districts consists of State support received through the Distributive School Account (DSA) and locally collected revenues from the 2.25-cent Local School Support Tax (LSST) (sales tax) and 25 cents of the Ad Valorem Tax (property tax).



Basic Support

To determine the level of guaranteed funding for each district, a Basic Per-Pupil Support Rate is established. The rate is produced by a formula that considers the demographic characteristics of the school districts. Transportation costs are included using 85 percent of the actual costs adjusted for inflation. The formula also includes a Wealth Adjustment, based on a district's ability to generate revenues in addition to the guaranteed funding. Each district then applies its Basic Per-Pupil Support Rate to the number of students enrolled on a specified "count day". The number of kindergarten children and handicapped 3- and 4-year-olds is multiplied by 0.6 and added to the total number of all other enrolled children, creating the Weighted Enrollment. Each district's Basic Per-Pupil Support Rate is multiplied by its Weighted Enrollment to determine the guaranteed level of funding, called the Total Basic Support.

Hold Harmless and State Aid

The *difference* between total guaranteed support and local resources is State aid, which is funded by the Distributive School Account (DSA). If local revenues from the district's portion of the LSST and property taxes are less than anticipated, State aid is increased to cover the total guaranteed support. If these two local revenues come in higher than expected, State aid is reduced.

To protect districts from decreases in enrollment, the *NRS* contains a "hold harmless" provision. If a district's enrollment decreases, the guaranteed level of funding is based on the largest of the previous two years' enrollment. An additional provision assists school districts that experience significant growth within the school year.

Special Education and Categorical Funding

Special Education is funded on a "unit" basis, with the amount per unit established by the Legislature. A "unit" includes the full-time services of licensed personnel providing a program of instruction in accordance with minimum standards prescribed by the State Board of Education. Special education unit funding is provided in addition to the Basic Per-Pupil Support Rate.

School districts also receive additional revenue considered "outside" the *Nevada Plan*. Revenues outside the formula are not part of the guarantee but are considered when calculating each school district's relative wealth. Local districts also receive funding from the DSA for Adult High School Diploma (AHSD) programs. The maximum funding for the AHSD programs in the school districts and in the State's prisons is established by the Legislature. In addition to revenues recognized by the *Nevada Plan*, school districts receive "categorical" funds from the State, Federal Government, and private organizations. Examples include the State-funded Class-Size Reduction program, remediation programs, and student counseling services. Federally funded programs include the Title I program for disadvantaged youngsters, No Child Left Behind Act of 2001 (NCLB), the National School Lunch program, and Individuals with Disabilities Education Act (IDEA). Funding for capital projects, which may come from the sale of general obligation bonds, "Pay-as-you-go" tax levies or fees imposed on the construction of new residential units are also accounted for in separate funds (Capital Projects Fund, Debt Service Fund).

(***Source: Fiscal Analysis Division, Legislative Counsel Bureau. More detailed information concerning the Nevada Plan may be found at http://www.leg.state.nv.us/lcb/fiscal/NevadaPlan/NevadaPlan2003.pdf)***

GOVERNANCE AND PROGRAM REQUIREMENTS

Nevada follows a basic structural model for its system of education governance that is shared by eight other states; that is, the State Board of Education (SBE) is elected by the citizenry and the Board itself appoints the chief State school officer.

State Board of Education

Nevada's State Board of Education consists of ten members chosen statewide in non-partisan elections. The term of office is four years, and vacancies are filled by the Governor until the next General Election. Members may not be elected to office more than three times. Board meetings are subject to the Nevada Open Meeting Law with compensation set at no more than $80 per day for attendance, as established by the Board. In addition to the general authority to regulate its own activities, the SBE has certain legal powers with regard to setting education policy. The Board establishes statewide public school policy not delegated to other entities by law; appoints the Superintendent of Public Instruction; prescribes and enforces courses of study for public and private schools; and maintains the authority to suspend or revoke a teaching license for cause.

State Superintendent

The *Nevada Constitution* also establishes the position of Superintendent of Public Instruction and requires the Legislature to prescribe, by statute, the manner of appointment, term of office, and duties of the position. The Legislature, in turn, enacts statutes specifying that the Superintendent be appointed by the SBE for a three-year renewal term (in the unclassified service of the State); further, the Board is authorized to fill any vacancies occurring within that office.

School Districts

Under the authority granted to it by the *Nevada Constitution*, the Legislature established a system of school districts to provide for a mechanism of local control. The Nevada Legislature, in a Special Session held in 1956, made extensive changes to the structure of Nevada's public school system. Among other changes, the Legislature eliminated the 208 legally-active local school districts that had existed in Nevada and replaced them with just 17 districts, each of which was coterminous with county boundaries. Under current law, boards of trustees are composed of either five or seven members; districts with more than 1,000 pupils have seven-member boards. Members serve four years and vacancies are filled by the remaining trustees at a public meeting with the appointee serving until the next General Election. Except in certain circumstances, members of Nevada's 17 local school boards are elected "at large" in each school district. Members may be from a specific zone or precinct within the district, and requirements are made concerning their residency, but the residents of the county vote for all school board candidates. Nevada school district boards of trustees carry out a number of policy roles which include: establishing district policies and procedures; enforcing courses of study prescribed by statute and administering the State system of public instruction; approving curriculum; and providing oversight of the school district's funds and budget.

(Additional information about the structure of Nevada's public school system may be found in LCB Background paper No. 95-12, in the Research Library or at the following Web site: http://www.leg.state.nv.us/lcb/research/Bkground/BP95-12.pdf.)

GRADUATION STANDARDS

There are currently four types of high school diplomas granted in Nevada: (1) standard; (2) advanced; (3) adult; and (4) adjusted. Under the new regulations adopted in 2000, a standard diploma is awarded upon successful completion of 22.5 units and passage of the High School Proficiency Examination (HSPE). An advanced diploma requires completion of a minimum of 24 credits including all requirements for a Standard Diploma plus 1 additional credit of science. In addition, the advanced diploma requires a minimum 3.0 GPA, weighted or unweighted, which includes all credits applicable toward graduation. An adult diploma may be granted to a student who withdrew from high school before his graduation, but has completed 20.5 units in a program of adult education or an alternative program for the education of pupils at risk of dropping out of high school, and passed the HSPE. An adjusted diploma may be earned by any handicapped student who meets the standards prescribed by his Individualized Education Plan (as prepared by the student's local school district).

Required Courses for a Standard Diploma			
English/Language	4 credits	American History	1 credit
Arts Mathematics	3 credits	U.S. Government	1 credit
Science	2 credits	Arts/Humanities	1 credit
Physical Education	2 credits	Computer Literacy	1/2 credit
World History	1 credit	Health	1/2 credit

A "Certificate of Attendance" may be awarded that documents a student has satisfied all the requirements for graduation from high school or completion of a program of adult education except that a pupil has not passed one or more of the high school proficiency examinations. The certificate of attendance is not equivalent to nor does it replace or include a standard diploma, advanced diploma, adjusted diploma or adult standard diploma.

TESTING AND ASSESSMENT

Nevada Education Reform Act

The 1997 Nevada Education Reform Act (NERA) increased testing requirements as a part of increased accountability for public schools. An additional grade 10 standardized test was added, as was a writing test for grade 4. Science was added as a subject to be tested at grades 4, 8, 10, and 11. The NERA also established a policy linkage between the proficiency testing program and school accountability by creating a procedure for ranking schools on the basis of their average test scores. Schools designated "in need of improvement" were required to prepare plans for improvement and to adopt proven remedial education programs based upon needs identified using the average test scores. In the 1999 Session, the Legislature added a requirement for criterion-referenced tests (CRTs) linked to the academic standards for selected grades and required that the HSPE be revised to measure the performance of students on the newly adopted academic standards starting with the class graduating in 2003.

CURRENT TESTING SCHEDULE FOR STATEWIDE ACCOUNTABILITY PROGRAM										
	3	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Norm-Referenced Test - currently Iowa Test of Basic Skills		●			●			●		
National Assessment of Education Progress (NAEP) [sample]		●				●				●
Writing Exam		●			●				●	●
High School Proficiency Exam								●	●	●
Nevada Criterion-Referenced Test	●	●	●	●	●	●				
Bolding indicates tests (all or part) to be used to determine Adequate Yearly Progress (AYP) under Federal No Child Left Behind Act (H.R. 1).										

No Child Left Behind Act of 2001

To comply with the NCLB, the 2003 Legislature enacted Senate Bill 1 of the 19th Special Session (Chapter 1, *Statutes of Nevada*). The measure modified the NERA to add tests aligned to the State academic standards in reading and mathematics for grades 3 through 8. Further, the 2003 Legislature made substantive revisions to the linkage between these tests and the State accountability system to meet federal requirements for making Adequate Yearly Progress (AYP) and imposing sanctions on schools and school districts that are consistently unsuccessful in meeting their target increases in student progress.

The new standards-based CRTs required by NCLB are linked to the school accountability program, and will be considered "high stakes" for schools and districts. The High School Proficiency Exam remains a "high stakes" test for individual students since a passing score in all three components is required as a condition for high school graduation and for eligibility for the State's Millennium Scholarship Program.

EDUCATIONAL PERSONNEL

As of 2004, Nevada employed nearly 21,000 full time equivalent (FTE) licensed classroom teachers, 2,450 FTE pupil and school service personnel, and 9282 FTE principals or vice principals. In 2004-2005, the average salary of a Nevada teacher was approximately $43,394, not including the 10.25 percent "employee portion" of the retirement contribution which local school districts pay for employees. Over 68 percent have zero to five years of prior Nevada

teaching experience (this figure does not include prior teaching experience in another state). The beginning salary of a teacher is approximately $33,198 (with retirement contribution paid) per year. Although the State budget often includes funding for raises for education personnel, salary increases that are utilized by the Legislature to construct the budget are not necessarily what is passed on to the school district employees. Through bargaining at the school district level, different classes of school district personnel may receive differing amounts. The salary increases are not controlled by the percentage included in the budget.

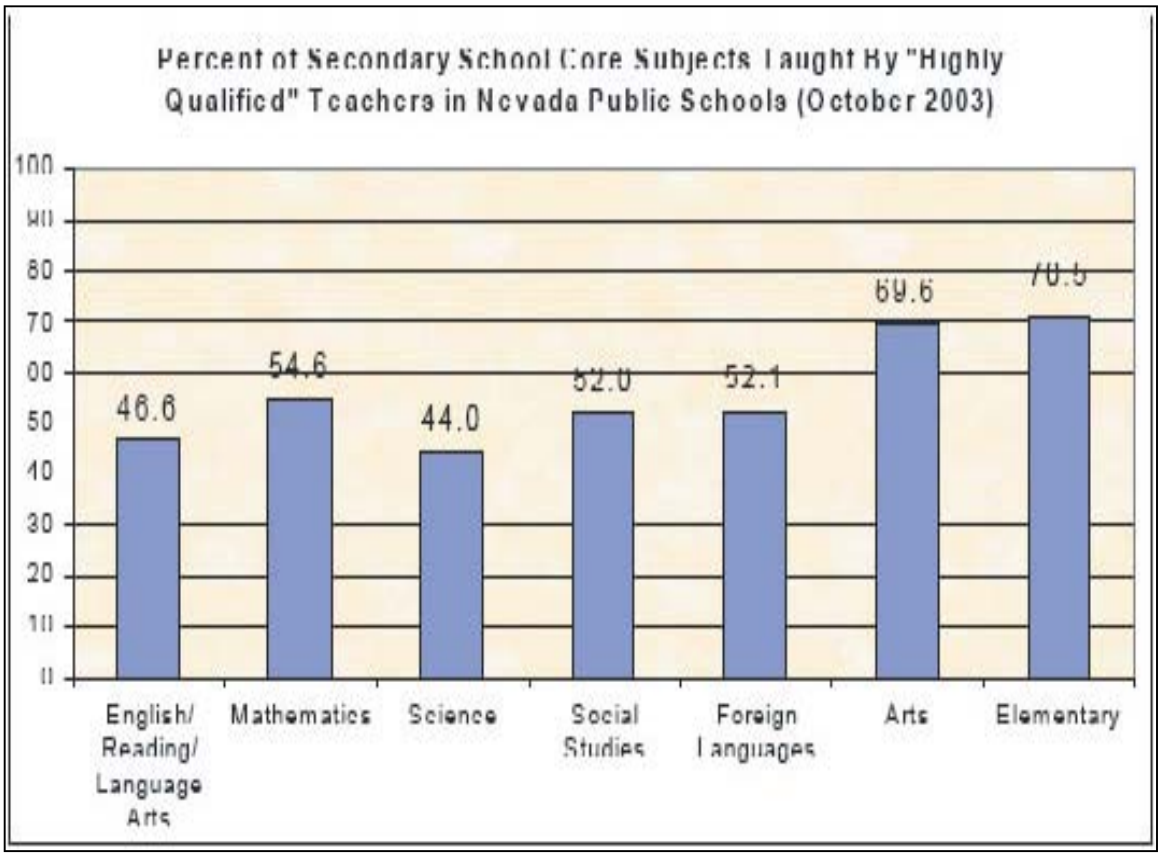
(Sources: Survey and Analysis of Teacher Salary Trends 2003, American Federation of Teachers, July 2004, Rankings & Estimates 2004 and 2005, National Education Association, June 2005; 2005 Research Bulletin, Nevada Department of Education, 2005)

Collective Bargaining

Salaries for teachers are set at the school district level utilizing the collective bargaining process outlined in Chapter 288 of the NRS. Following the lead of other states, the Nevada Legislature adopted the Local Government Employees-Management Relations Act in 1969 to regulate collective bargaining between local units of government and their employees, including school districts and teachers. The requirements for recognition of an employee organization and definitions of bargaining units are set forth in Chapter 288. There is only one recognized employee organization for each bargaining unit. There are 17 organizations representing teachers; one in each school district. With respect to the total number of school district employee organizations, there are 44 such organizations. The additional 27 organizations represent bargaining units consisting of supervisory employees, classified school employees, support or clerical staff, health care workers, bus drivers, and school police.

Highly Qualified Teachers

A key focus of NCLB is the importance of highly qualified teachers. Under the new federal law, all teachers of core academic subjects must be highly qualified by the 2005-2006 school year. A highly qualified teacher must have: (1) a Bachelor's degree; (2) full State certification or licensure; and (3) proof that they know each subject they teach. Certain Nevada teachers who were licensed in Nevada prior to September 1, 1989, were not required to demonstrate subject knowledge and teaching skills through a required teacher assessment for Nevada licensing. In order to satisfy the third requirement of the NCLB definition for "highly qualified," these teachers must either pass the Praxis II – Specialty Area Tests, or meet the criteria of Nevada's High Objective Uniform State Standard of Evaluation (HOUSSE). Nevada's HOUSSE rules approved by the SBE in May 2003 require that a teacher must have three years of full-time teaching experience by the end of the 2005-2006 school year, and obtain a graduate degree, professional license, national board certification, or complete 150 contact hours of approved coursework from a college or university, Nevada's Department of Education, a regional professional development program, or the school district. On March 15, 2004, the United States Department of Education announced a new policy, giving teachers in eligible rural school districts who teach multiple subjects greater flexibility in demonstrating that they meet the highly qualified teacher requirements. Churchill, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Mineral, Nye, Pershing, Storey, and White Pine Counties are considered "eligible rural school districts".



CLASS-SIZE REDUCTION PROGRAM

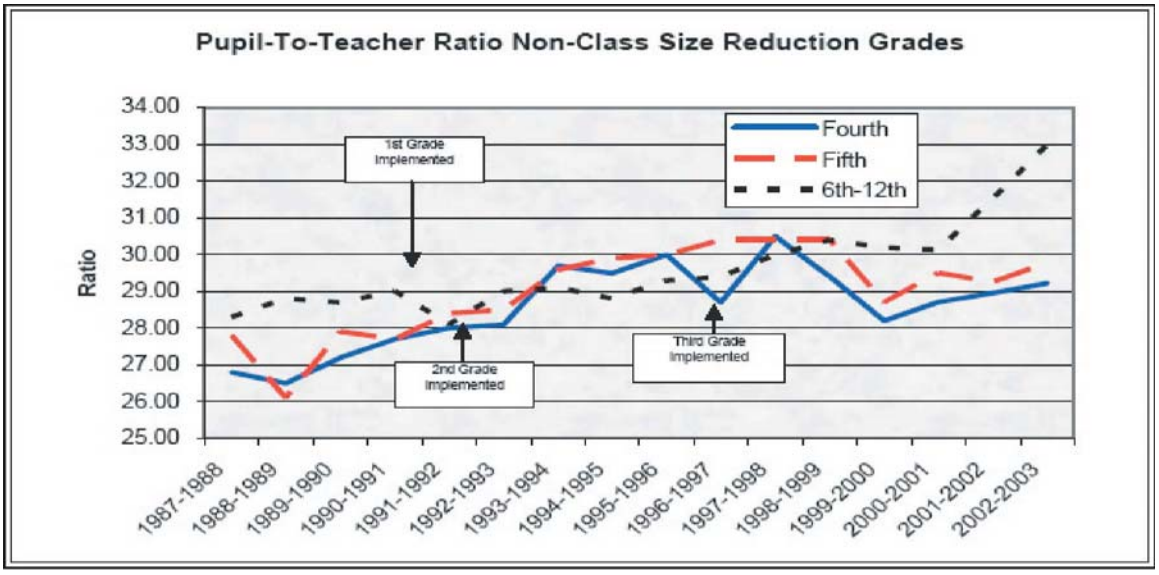
A key reform initiative for the past 13 years is Nevada's program to reduce pupil-to-teacher ratios, commonly known as the Class-Size Reduction Program (CSR). The Nevada Legislature enacted the Class-Size Reduction Act in 1989. The measure was designed to reduce the pupil-to-teacher ratio in the public schools, particularly in the earliest grades and in classrooms where the core curriculum is taught.

Grades K-3

The first phase reduced the ratio in selected kindergartens and grade 1 for the 1990-1991 school year. The next phase was designed to improve grade 2 ratios, followed by grade 3 reductions and broadening kindergarten assistance. Beginning in 1991, the Nevada Legislature made funds available to reduce the ratios in grades 1 and 2 and selected kindergartens to a 16:1 ratio. Due to budget shortfalls late in 1991 and continuing State fiscal needs, the grade 3 phase was delayed until the 1996-1997 Fiscal Year when partial funding was provided at a 19:1 ratio. These funding formulas continued through the 2003 to 2005 biennium. Under current requirements, districts also have flexibility in the use of the grade 3 funding for CSR. School districts are allowed to carry out alternative programs for reducing the ratio of pupils per teacher or to implement remedial programs that have been found to be effective in improving pupil achievement.

Grades 4 and Up

After achieving the target ratio of 15 pupils to 1 teacher in the primary grades, the original program proposed that the ratio be reduced to 22 pupils per class in grades 4, 5, and 6, followed by a reduction to no more than 25 pupils per class in grades 7 through 12. Until a 1999 pilot program in Elko County (in which a 22:1 ratio was implemented in grades K-6), only grades K-3 had been addressed. With initial successes with that pilot program, other districts asked for flexibility in applying the funding over elementary grades. As a result, the 2003 Legislature authorized flexibility in implementing pupil-to-teacher ratios in grades 1 through 6 for rural school districts. Under this option, pupil-to-teacher ratios are limited to not more than 22:1 in grades 1 through 3, and not more than 25:1 in grades 4 through 6. The 2005 Legislature made this alternative a permanent option for the rural districts.



For the other 15 school districts, concerns have been raised by members of the SBE and others concerning the effect of the CSR Program on grades other than the targeted primary grades. The previous graph illustrates the changes in pupil-to-teacher ratios in the grades immediately above the target CSR grades. When ratios for grades 4 and 5 are reviewed, a definite increase can be seen across time as the CSR program was implemented in the primary grades. The same holds for grade 6 through grade 12 ratios. Although additional analysis would be needed to identify any direct correlation, it appears from the data that the ratios in the upper grades have increased when new CSR grades have been funded.

Teaching and Classroom Configuration

By the 2004-2005 school year, about 98 percent of kindergarten classrooms were self-contained (that is, one teacher per classroom); for grade 1 the percentage was 73 percent; for grade 2 it was 72 percent; and for grade 3 it was 95.7 percent of the classrooms that were self-contained. According to 2004-2005 data from Nevada's Department of Education, most of the "team taught" classrooms occur in the school districts with significant student enrollments: Carson, Clark, Douglas, and Washoe.

Funding

The legislatively approved funding for CSR during the 2005-2007 biennium was over $263 million, $125,552,187 for 2005-2006, and $137,922,619 for 2006-2007. By the end of the 2005-2006 Fiscal Year, Nevada will have over $1 billion for the direct costs of funding the CSR program since its inception, excluding any local capital expenditures or other local costs.

CHARTER SCHOOLS

In Nevada, charter schools are independent public schools, responsible for their own governance and operation. In exchange for this independence there is increased accountability for their performance. Charter schools are one of several reform options for public schools, along with magnet schools, alternative schools, open enrollment, and other forms of school choice. The first such school was founded in Minnesota in 1992, and by 2005, 40 states had charter school legislation and nearly 3,400 charter schools were in operation across the U.S. The first charter school legislation in Nevada was enacted in 1997, and Nevada's charter school law was substantially amended in subsequent sessions.

There were 18 charter schools operating in Nevada, enrolling 3,861 students for school year 2004-2005. All but three of the current charter schools are sponsored by their local school boards. Five schools are located in the Clark County School District (CCSD), nine in the Washoe County School District, two in Carson City, and one each in the Carson and Douglas School Districts. Four schools are sponsored by Nevada's SBE. The initial limits on the number of charter schools set forth in statute are still in effect with a sunset date of July 1, 2006. While private schools can "convert" to a charter school, home schools may not.

Sponsors

The local school boards and Nevada's Department of Education are authorized to be sponsors of charter schools. The Department was added as a potential sponsor in the 2001 Session, and as of the 2005-2006 school year, four State-sponsored schools are in their second year of operation.

Application Process

A committee to form a charter school must have at least three licensed teachers and may include members of the public, and representatives of nonprofit organizations, businesses, or higher education institutions. In 2001, a requirement was added that a majority of the committee must be Nevada residents. The statutes also define a "teacher" as a person holding a current license to teach and who has at least two years of employment experience as a teacher (does not include substitute teaching).

The Department reviews applications for completeness. If the Department denies the application, it must give notice and provide 30 days to correct the deficiencies. Upon approval by the Department, the application is then submitted to the local school board for its review. If the local school board denies an application, it must also give notice of the deficiencies and

30 days to correct them. If the application is denied the second time by the local school board, then the applicant may apply to the State Board for sponsorship. Under changes made by the 2005 Legislature, the State Board may approve an application if it is in compliance with the applicable statutes and regulations. Beginning in 2005, charter schools may apply directly to the State Board.

Charters are valid for six years and may be renewed. Changes made in 2005 allow charter schools to transfer to another sponsor. Charters may also be revoked for a number of reasons, including failure to comply with the terms and conditions of the charter or applicable statutes and regulations, failure to comply with standards of accounting and fiscal management, due to bankruptcy, or threats to the health and safety of pupils or personnel.

Governance

Charter schools are overseen by a governing body that must consist of at least three licensed teachers and may include parents, or representatives of nonprofit organizations, businesses, or higher education institutions. Governing bodies are considered public bodies and subject to the open meeting law requirements. In addition, governing bodies are similar to school boards and enjoy statutory protection against certain liabilities. A majority of the members of the governing body must be Nevada residents.

Funding

Charter schools receive the full per-pupil funding for their students. School districts are obligated to share any state or federal funds, such as for special education students, on a proportional basis.

Education Program

Students may enroll in a charter school anywhere in the State; however, district-sponsored charter schools must first enroll applicants from within the district. Although charter schools may not discriminate based on race, gender, ethnicity, or disability status, charter schools may be formed to exclusively serve students classified as: special education, at-risk, or severe discipline problems.

At a minimum, charter schools must provide instruction in the core academic subjects and the courses of study required for promotion to the next grade or high school graduation. However, charter schools have some flexibility in setting graduation standards and determining other aspects of the educational program. Charter schools are required to participate in the Statewide accountability and assessment system, and to file certain reports with their sponsors.

Personnel

Charter schools have certain exemptions from the requirement to employ licensed teachers and administrators. School districts must grant a leave of absence of up to three years for teachers wishing to work at a charter school. Teachers on a leave of absence from a school district are

covered by the collective bargaining agreement for three years. Otherwise, the charter school makes all employment decisions and employees of the charter schools are eligible to collectively bargain under Chapter 288. Applicants for employment at a charter school must submit fingerprints for the purpose of obtaining the applicant's criminal history. Additionally, university or college faculty members are authorized to teach distance education courses in charter schools in the State's core academic subjects.

(Additional information about charter schools may be found in LCB Background Paper No. 03-03 *Charter Schools*, in the Research Library or at the following Web site: http:// www.leg.state.nv.us/lcb/research/Bkground/BP03-03.pdf)

ACTIONS OF THE 2005 SESSION

Education matter commanded much of the Legislature's attention again in 2005. Of the $3.11 billion in the State General Fund earmarked for education over the biennium, over $1.96 billion was allocated for elementary and secondary schools. Funds were set aside for full-day kindergarten, remedial education, and innovative education programs, as well. The 2005 Legislature also addressed a number of important issues ranging from the recruitment and retention of highly effective teachers to the enhancement of career and technical education.

EDUCATION ISSUES FOR THE 2005-2006 INTERIM PERIOD

One of the most important ongoing statutory committees is the Legislative Committee on Education. The 2005 Legislature, through Assembly Bill 388, directed the Legislative Committee on Education to appoint a subcommittee to study the effectiveness of career and technical high schools in Nevada. In add, Assembly Concurrent Resolution No. 10 establishes an interim committee to study the adequacy of Nevada's system of school finance. The committee is authorized to contract with a consultant to study the costs of providing adequate educational opportunity to all public school pupils in Nevada, and to recommend legislation to correct any identified inadequacies or inequities.

FREQUENTLY ASKED QUESTIONS

Q: At what age is compulsory attendance enforced?

A: Any person having under his or her control or charge a child who is between the ages of 7 and 17 years shall send the child to a public school during the time school is in session in the school district of residence [NRS 392.040].

Q: What are the age requirements for admitting a child to kindergarten or first grade?

A: Under NRS 392.040, a child must be five by September 30 to be admitted into kindergarten and a child must be six by September 30 to be admitted into first grade. Further, kindergarten is required before a student can go on to grade 1. If a child does not complete kindergarten in a public school program, a licensed private school, an exempt private school, or have on file with the school district a notification of intent to provide home instruction, then the child must pass a developmental screening test for grade 1 readiness.

Q: Is there any way around the September 30 age cutoff?

A: Under most circumstances, there are no provisions for a parent to seek a waiver from these age requirements. However, local districts may waive the age requirement of a child who becomes a Nevada resident after completing a public kindergarten or beginning grade 1 in another state and there has been no intent to circumvent the law [NRS 392.040, subsection 8].

Q: Who determines if an absence is excused?

A: NRS 392.122 requires that each school district board of trustees establish a minimum attendance requirement for promotion to the next grade or for earning academic credit. The school principal or teacher is authorized to approve up to ten days of absences per year; these approved absences do not count against the attendance requirement if the pupil has completed coursework requirements. Although each school district's policy is different, examples of reasons for these types of absences include religious holidays, bereavement, family emergencies, and so on. Each district has requirements for parents to notify the school regarding the student's absence. Parents must sign a statement acknowledging that they understand the policies concerning attendance and promotion for kindergarten and grade 1.

School districts may also adopt policies to exempt from the 10-day rule absences due to physical or mental inability to attend school so long as the pupil completes course work requirements for promotion to the next grade.

Attendance is also excused if a child has a physical or mental condition that prevents attendance or renders such attendance inadvisable [NRS 392.050]. A physician's certificate is required in such circumstances, and eligible children must be offered free appropriate public education under the Federal Individuals with Disabilities Act.

Q: May parents home school their children instead of sending them to school?

A: Yes. A family wishing to home school its child(ren) must provide written evidence of equivalent instruction each year with its local school district board of trustees [NRS 392.070]. Additionally, attendance at a private school constitutes attendance under the compulsory statute. [Nevada Attorney General Opinion No. 320, 1954]

Q: What is the High School Proficiency Test and what are the options for students who have failed to achieve a passing score?

A: Adopted by the Legislature in the late 1970s, Nevada was one of the first states to require students to pass a statewide test to obtain a high school diploma. As of 2002, at least 25 other states require high school exit exams in order to receive a diploma or to graduate. Since the first test was administered in Nevada, the State Board of Education has been raising the bar, both with the difficulty of the test and with the passing score. The current test is based upon Nevada's statewide academic standards, adopted by the State Board of Education in 1998. Beginning with the class of 2003, the exam shifted from being a minimum competency test to a proficiency exam. At present, there are three parts to the exam–mathematics, reading, and writing.

A student who does not pass one or more parts of the exam the first time has multiple opportunities throughout each school year to retake those part(s). The State Board of Education sets the testing schedule for the HSPE; currently each student in grade 10 has one opportunity in the spring; students in grade 11 have two chances in spring and summer; and students in grade 12 have five opportunities throughout the school year and in the summer. A grade 12 student would still receive a diploma from his or her high school of attendance if the HSPE is passed by the end of summer school following grade 12. A certificate of attendance is also available to students who have otherwise completed all required credits for graduation, but have not passed the exit exam.

Although it is not the same as graduating from high school, a student may obtain the equivalent of a high school diploma by passing the General Educational Development (GED) test. Students also have an opportunity to obtain an adult standard diploma through an adult education program or an alternative program established by school districts for pupils at risk of dropping out.

ADDITIONAL REFERENCES

The Legislative Counsel Bureau has produced a number of documents related to K-12 education. The 2005 Bulletin of the Legislative Committee on Education, the joint education oversight committee meeting during the interim period, may be ordered from LCB's Publications Office (Bulletin No. 05-15).

Data concerning Nevada's public education system, including national and western states comparisons may be found in the *Nevada Education Data Book*, available through LCB's Publications Office, or on-line at: http://www.leg.state.nv.us/lcb/research/EducationDataBook/2005EDB.cfm). Additional data, specific to Nevada schools and districts may be found within the state accountability tables and at http://www.leg.state.nv.us/lcb/fiscal/LeBeape/accountabilitytableshomepage.cfm and from the Nevada Department of education accountability Web site ("Nevada report card"): http://www.nevadareportcard.com/.

Additionally, policy reviews of various education topics may be found in the following background papers. Physical copies may be obtained from the Research Library:

Background Paper 95-14: *Public School Accountability* (also available on-line at: http://www.leg.state.nv.us/lcb/research/Bkground/BP95-14.pdf)

Background Paper 95-12: *School Governance* (also available on-line at: http://www.leg.state.nv.us/lcb/research/Bkground/BP95-12.pdf)

Background Paper 97-4: *School Construction* (also available on-line at: http://www.leg.state.nv.us/lcb/research/Bkground/BP97-04.pdf)

Background Paper 01-4: *Distance Education At The Elementary And Secondary School Levels* (also available on-line at: http://www.leg.state.nv.us/lcb/research/Bkground/BP01-04.pdf)

Background Paper 01-2: *Nevada's Class-Size Reduction Program: Program Data And Summary Of Evaluation Reports* (also available on-line at: http://www.leg.state.nv.us/lcb/research/Bkground/BP01-02.pdf**)**

Background Paper 03-03: *Charter Schools* (also available on-line at: http://www.leg.state.nv.us/lcb/research/Bkground/BP03-03.pdf)

Selected Education Web Sites	
American Association of School Administrators	http://www.aasa.org/
American Federation of Teachers	http://www.aft.org/
Center for Education Reform (Charter Schools)	http://www.edreform.com/
Council of Chief State School Officers	http://www.ccsso.org/
Department of Education - Nevada	http://www.nde.state.nv.us/
Department of Education – Federal	http://www.ed.gov/
Education Commission of the States	http://www.ecs.org/
Education Trust	http://www.edtrust.org/
Education Week	http://www.edweek.org/
ERIC (Online Searching)	http://www.eric.ed.gov/
National Assoc. of State Boards Of Education	http://www.nasbe.org/
National Board for Professional Teaching Standards	http://www.nbpts.org/
National Education Association	http://www.nea.org/
National School Boards Association	http://www.nsba.org/
NCES	http://nces.ed.gov/
2005 Nevada Education Data Book	http://www.leg.state.nv.us/lcb/research/EducationDataBook/2005EDB.cfm
Nevada School Districts	http://www.doe.nv.gov/schools.html
Nevada State Education Association	http://www.nsea-nv.org/
No Child Left Behind	http://www.nochildleftbehind.gov/

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Washoe County School District	Paul Dugan Superintendent Reno, Nevada Telephone: (775) 348-0200 Fax: (775) 348-0304
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Nevada State Education Association Kenneth Lang, Executive Director Reno, Nevada Telephone: (775) 828-6732 Fax: (775) 828-6745	**Nevada Association of School Boards** Randy Robison, Executive Director Carson City, Nevada Telephone: (775) 885-7466 Fax: (775) 883-7898

GLOSSARY OF SELECTED TERMS AND ABBREVIATIONS

AYP Adequate Yearly Progress
The Federal No Child Left Behind Act (see entry below), requires schools and districts to measure and report students' annual academic progress toward proficiency in English/ language arts and mathematics by 2013-2014. AYP is the minimum level of progress that schools, districts, and states must achieve each year. Progress is based on whether the school or district met its Annual Measurable Objectives and demonstrated 95 percent participation on standardized tests, achieved its target on the Academic Performance Index and, for high schools, met target graduation rates.

CRTs Criterion-Referenced Tests
In general, tests of academic achievement linked to specific standards or criteria. Such tests measure whether the individual (or group) demonstrate a specific level of skill-either they meet the performance standard or they do not meet it. An example of this type of test would be the Nevada Proficiency Examination. The criteria that are tested are done on a pass-fail basis determining whether or not the student passed the test by meeting a proficiency target cut score. The extent of any comparative data between schools and districts is a report of the percentage of students who passed the test.

NRTs Norm-Referenced Tests
In general, tests of academic achievement that measure the skill level of an individual (or the average scores of groups), along a continuum. The well-known bell-curve is an example of how persons score along this scale, with a few showing minimal skills, a few demonstrating advanced understanding, and the great majority falling within a bulge on either side of the middle.

NDOE Nevada's Department of Education
NDOE is the administrative arm of the State Board of Education. While the Board maintains a policy role, the Department is responsible for carrying out the provisions of State statutes, implementing Board policies, administering the teacher licensure system, and administering federal and State educational programs. The Department's chief executive officer is the Superintendent of Public Instruction.

Nevada Plan
The *Nevada Plan* is the system used to finance elementary and secondary education in the State's public schools.

NERA Nevada Education Reform Act
The 1997 Legislature passed a sweeping reform package called the Nevada Education Reform Act (NERA). The major components of the Act include: requirements for establishing academic standards and assessments; strengthening school accountability standards; funding for classroom technology; and legislative oversight of the process.

NCLB No Child Left Behind
The name for the 2001 reauthorization of the federal Elementary and Secondary Education Act. Signed into law on January 8, 2002, the No Child Left Behind Act requires each state to have a single, statewide system of accountability and challenging academic standards, taught by highly qualified teachers that will ensure that by 2014 all public school children will reach a minimum level of proficiency on state examinations.

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POSTSECONDARY EDUCATION

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Postsecondary education in Nevada is provided chiefly by the institutions of the public Nevada System of Higher Education (NSHE). One nonprofit, private four-year college and several for-profit, two-year and four-year institutions as well as numerous proprietary institutions comprise the higher education sector in Nevada.

NEVADA SYSTEM OF HIGHER EDUCATION

The NSHE consists of two research universities, one state college, four community colleges, and one research institute. It is governed by the University of Nevada Board of Regents, which has stated the following vision:

> The Board of Regents wishes to advance student learning to the highest level, foster the expansion of knowledge through teaching and research, encourage community service, and enrich the lives of our students, our communities, our state, and the nation. In fulfillment of this purpose, we hold the following values at the center of our endeavor: integrity, excellence, accountability, inclusiveness, creativity, and innovation.

Campuses

The four-year institutions include the University of Nevada, Reno (UNR), and the University of Nevada, Las Vegas (UNLV), which are classified in the Carnegie System as doctoral research universities. Nevada State College (NSC) in Henderson offers baccalaureate degrees with special emphasis in nursing and teacher education.

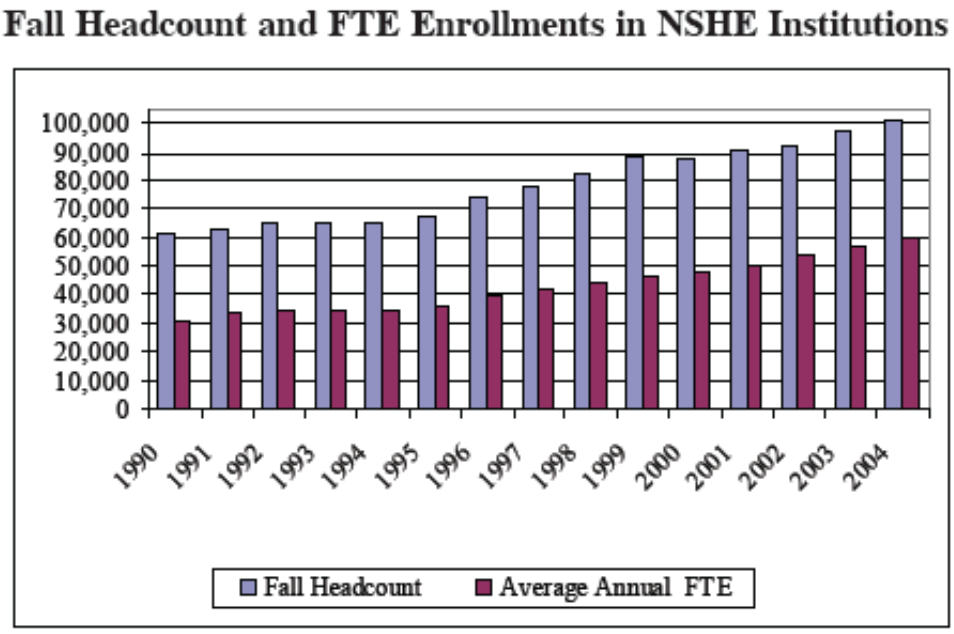
The two-year institutions include the Community College of Southern Nevada (CCSN) with three campuses in Las Vegas and Henderson and four technology centers located in Green Valley,

Pahrump, Summerlin, and Las Vegas. Truckee Meadows Community College (TMCC), includes the main campus and three satellite sites in Reno. Western Nevada Community College (WNCC) maintains the main campus in Carson City and satellite centers in Fallon and Douglas County. Great Basin College (GBC), Elko, is authorized to offer selected baccalaureate degrees.

Finally, the Desert Research Institute (DRI) is the nonprofit research campus of the NSHE, which is overseen by the chancellor and the Board of Regents.

The following graph displays the fall headcount and average annual full-time equivalent (FTE) enrollments for the system institutions since 1990.

Fall Headcount and FTE Enrollments in NSHE Institutions



Source: Nevada System of Higher Education, Office of Academic and Student Affairs

Headcount enrollment for the NSHE in Fall 2004 approximated 100,000 students at all institutions, including all divisions and degree levels. According to the NSHE Office of Academic and Student Affairs, between the Fall 1994 and Fall 2004 semesters headcount enrollments overall increased by 53 percent. Community college headcount growth exceeded 67 percent; university headcounts increased by approximately 39 percent.

Governance of the NSHE

The NSHE is governed by an elected 13-member Board of Regents. Article 11 of the *Nevada Constitution* provides for the establishment and administration of the University of Nevada Board of Regents. Section 4 of the *Constitution* provides that the state university shall be controlled by a Board of Regents whose duties shall be prescribed by law. Section 5

authorizes the Legislature to establish normal schools (teacher training institutions) and other grades from primary level to university as needed. Section 6 directs the Legislature to appropriate revenues for the support and maintenance of the schools and university. Finally, Section 7 provides that the Board of Regents is to control and manage the affairs and funds of the university under such regulations as may be provided by law.

Because of the constitutional status of the Board of Regents, the Nevada Supreme Court has ruled on the question of the freedom of Regents from legislative control. The first major opinion stems from a 1947 act of the Legislature, establishing a board of advisory regents. The Court ruled that the advisory board violated the constitutional provision that the state university should be controlled by the Board of Regents. Legislative Counsel has stated:

> The Nevada Supreme Court has interpreted the Nevada constitution as vesting the Board of Regents with exclusive executive and administrative control of the university subject to the "right of the legislature to prescribe duties and other well-recognized legislative rights." [*King vs. Board of Regents*, 65 Nev. 533, 565, 569 (1948)]

The second opinion resulted from a 1979 Board policy, enacting mandatory faculty retirement. Since *Nevada Revised Statutes* (NRS) 281 370 prohibits the discharge of a person because of age, a suit was brought by a university professor. In 1981, the Court modified the *King* ruling somewhat. Legislative Counsel stated:

> The Nevada Supreme Court subsequently carved out an exception to its holdings in *King* when it required the [NSHE] to comply with policies that are imposed on a statewide basis. In *Oakley*, the Court held that a state statute . . . may be applied constitutionally to the [NSHE] because the statute "reasonably and properly impose[d] . . . the same obligation that it impose[d] on other state, county and municipal boards." However, the Court noted that "the legislature may not invade the constitutional powers of the Board through legislation which directly interferes with essential functions of the University." [*Board of Regents v Oakley*, 97 Nev. 605 (1981)]

Most statutes relating specifically to the Regents and NSHE are codified in Chapter 396 of the NRS. In addition to the overall control of the NSHE interpreted by the Supreme Court, the Board of Regents by statute may:

- Direct the NSHE, composed of branches and facilities as the Regents deem appropriate;
- Prescribe rules for its own government;
- Employ a chancellor of the system and establish personnel contract policies;
- Receive and disburse state appropriations to the NSHE;
- Accept property in the name of the NSHE;
- Admit students without discrimination; and
- Determine the courses of study and issue diplomas

Admission

The Board of Regents' general admission policy encourages member institutions to increase student participation and completion of degrees by minority groups, women, and members of other protected classes. Online application to the institutions is available through their individual Web sites.

Universities

To qualify for admission to the two universities, an applicant must be a graduate of an accredited or approved high school with a minimum of 13 high school credits in specified subjects and at least an overall 2 5 GPA (grade point average). This GPA requirement will be increased to 2 75 (weighted) in Fall 2006 and 3 0 (weighted) in Fall 2010. Students with a transferable associate degree from a NSHE community college will be admitted into the universities regardless of their GPA at the community college. The high school requirements may be waived for the following students:

- Students with a minimum GPA of 3 0 in academic courses.
- Students with a minimum GPA of 2 5 in academic courses combined with an ACT score of 21 or higher or SAT scores of 990 or higher.
- Transfer applicants with 12 or more acceptable credits and a GPA of 2 0 or higher.
- Students officially excused from compulsory high school attendance (home schooled) who possess a high school diploma with either a minimum GPA of 3 0 in academic courses or an ACT score of 21 or higher or SAT scores of 990 or higher.
- Alternative Admissions Program applicants.

Applicants denied admission due to inadequate high school course preparation must complete remedial courses to be reconsidered for admission

Nevada State College

Incoming freshmen must have graduated from an accredited high school with a minimum GPA of 2.0 plus a minimum of 12 high school credits in specified subjects An admissions review committee may permit admission of students not meeting these requirements, including students with a GED. High school students who are at least 15 years of age may be enrolled as non degree students in a maximum of six undergraduate credits or equivalents per semester. Students who have completed the junior year of high school with at least a 2.0 GPA may be provisionally admitted.

Four Community Colleges

The four community colleges are open enrollment institutions; however, specific programs or classes may have admission requirements.

Tuition and Fees

Pursuant to NRS 396 540, tuition at all NSHE institutions is free to legal residents of Nevada; however, registration fees apply. Nonresident students pay tuition in addition to the registration fees that are required of residents. The Board of Regents establishes the tuition and fee rates for all NSHE institutions, and the Legislature concurs in the rates used to establish General Fund Appropriations as part of the NSHE budget.

The following tables provide the registration fees and nonresident tuition rates for 2005-2007

NSHE Registration Fees Schedule per Credit		
	2005-2006	**2006-2007**
Universities (undergraduate)	$98.00	$105.25
Universities (graduate)	$136.00	$149.75
NSC	$74.50	$79.00
GBC (upper-division)	$74.50	$79.00
Community Colleges	$50.75	$52.50
Nonresident tuition is assessed on the basis of full-time or part-time enrollment. Full-time students pay a specified amount for seven or more credit hours per semester. Part-time students pay on the basis of credit hour enrollment .		

NSHE Nonresident Tuition Assessed in Addition to Registration Fees		
	2005-2006	**2006-2007**
Full-time*, Universities	$9,467 per year	$9,911 per year
Full-time*, NSC	$7,191 per year	$7,437 per year
Full-time*, Community Colleges	$4,915 per year	$4,962 per year
*Full-time nonresident tuition rates are assessed to students enrolled in seven or more credits.		

Articulation

Articulation refers to the process whereby individual higher education institutions agree to accept for transfer the academic credits earned at other higher education institutions. The Board of Regents has established a NSHE Articulation Board to review and to evaluate current articulation policies and formulate additional policies. A NSHE transfer guide must be maintained by the Office of the Chancellor and published on the Web; the guide is to include updated requirements for each program leading to the bachelor's degree at each state college and university. In addition, each institution must include in its official catalog of undergraduate courses a section setting out all lower-division prerequisites for each upper-division program

The NSHE general credit transfer policy for all campuses provides that students who transfer with a NSHE associate degree of arts, business, or science are considered to have satisfied lower-division curricular requirements necessary for admission to upper-division study with full junior status. Students who complete baccalaureate level credits without receiving an associate degree may transfer the credits to the state college and universities at a minimum as general elective credit

Financial Aid

All state-supported institutions are accredited by organizations recognized by the United States Department of Education and, therefore, are eligible to participate in federal financial aid programs, which include grants, loans, and work-study. The State of Nevada has allocated 40 percent of its annual revenues from the Tobacco Master Settlement Agreement to fund the Governor Guinn Millennium Scholarship, which is overseen by the State Treasurer. Any qualifying Nevada high school graduate who has resided in this state for a minimum of two years may use the scholarship funds to attend a state institution or a nonprofit accredited institution organized in Nevada. To be eligible, a student must obtain a specified high school GPA and apply for the scholarship within a designated period of years following graduation. A postsecondary student must maintain a certain GPA to retain the scholarship. Nevada does not have a statewide need-based student financial aid program similar to the merit-based Millennium Scholarship, although the institutions allocate state appropriations and revenues from student registration fees according to Board of Regents policies and institutional procedures. In addition, the institutions allocate some of their resources to financial aid in the form of scholarships, grants, employment, and loans.

Financing NSHE

According to the National Center for Higher Education Management Systems (NCHEMS), institutions of higher education acquire their resources from many different sources, including state appropriations, student tuition and fees, federal grants and contracts, private donors, and institutional foundations. In Nevada, the state-supported operating budgets depend primarily on state appropriations and student tuition and fees.

The Western Interstate Commission for Higher Education (WICHE) also reports that in Fiscal Year (FY) 2003 (the most recent data available) Nevada's universities were among those that relied more heavily on state appropriations (36 percent) and tuition and fee revenues (15 percent) than the WICHE states averages (state appropriations at 22 percent and tuition and fees at 11 percent). Seventeen percent of Nevada universities' revenues are derived from federal grants and contracts, while the average among the WICHE states was 19 percent.

For FY 2005-2007, the Legislature appropriated a total of $1.527 billion, an increase of $243.1 million over the total appropriation for the FY 2003-2005 biennium. The total includes $1.149 billion in State General Fund appropriations and $372.7 million in student fees, tuition, and other NSHE revenues. The following table displays the summary of appropriations for the NSHE for the 2005-2007 biennium.

NSHE Appropriations for 2005-2007 Biennium			
	2005-2006	2006-2007	Total
General Fund	$557,374,664	$591,813,068	$1,149,187,732
Federal Fund	2,495,369	2,497,454	4,992,823
Other	174,817,332	197,885,033	372,702,365
Total	**$734,687,365**	**$792,195,555**	**$1,526,882,920**

Source: Fiscal Analysis Division, Legislative Counsel Bureau

The existing higher education funding formula for the distribution of state aid to the NSHE was revised following the recommendations of the Committee on the Financing of Higher Education, 1999-2000. The formula is driven by a cost reimbursement model. The report of the Committee may be found at the following Web site: http://www.leg.state.nv.us/lcb/research/01InterimReports/Bulletin01-04 pdf.

As the consultant to the Committee to Evaluate Higher Education Programs in the 2003-2005 interim, the NCHEMS observed that the formula is not currently linked to the achievement of the goals set forth in the Board of Regents' Master Plan. The NCHEMS also stated that without incentives for performance funding, the formula encourages competition among the institutions, rather than cooperation.

NONPUBLIC INSTITUTIONS

Most postsecondary education in Nevada is provided by state-supported institutions. A number of two-year and four-year nonpublic institutions in Nevada are regionally accredited by organizations recognized by the United States Department of Education. Nevada's Commission on Postsecondary Education is the sole authority for licensing a proprietary postsecondary educational institution in this state.

Regionally Accredited Colleges and Universities

Nevada has one private, nonprofit four-year degree-granting university, Sierra Nevada College, which was founded in 1969. Sierra Nevada College is located in Incline Village. Since the college's inception, many academic programs have been integrated with the environment of Lake Tahoe.

Five private, for-profit, four-year institutions operate in Nevada: Art Institute of Las Vegas, Devry University-Nevada, ITT Technical Institute, and University of Phoenix-Nevada operate in the Las Vegas area; Morrison University is located in Reno.

Private, for-profit, two-year institutions in Nevada include: Career College of Northern Nevada in Reno; Heritage College, High-Tech Institute-Las Vegas, and Las Vegas College in Las Vegas and Henderson.

Proprietary Schools

Proprietary schools may be distinguished from other educational entities based largely on their for-profit education and training services. According to data obtained from the Commission on Postsecondary Education (http://www.cpe.state.nv.us/), there are approximately 185 proprietary schools licensed in Nevada. Many of these for-profit schools provide training in a variety of occupational fields including, but not limited to, bartending, construction, culinary arts, and real estate.

COLLEGE SAVINGS PLANS

Nevada's two college savings plans are codified in Chapter 353B of the NRS.

Nevada Prepaid Tuition Program

In 1997, the Legislature enacted Senate Bill 271 (Chapter 687, *Statutes of Nevada*), providing for a prepaid tuition program to be administered by the State Treasurer. Purchasers may contract for either two years or four years of credit hour fees. The contract may be used at any accredited university, college, or community college in the nation. Additional information may be obtained at the Web site of the State Treasurer at http://nevadatreasurer.gov/College/prepaid.asp. The purchaser does not have to pay federal tax on any interest or the increased contract value each year

Nevada College Savings Program

The Legislature provided for a college savings program in 2001 with the enactment of Assembly Bill 554 (Chapter 445, *Statutes of Nevada*). The State Treasurer was authorized to adopt regulations to establish a qualified program pursuant to 26 *United States Code* § 529. To implement this program, the State Treasurer has contracted with the Vanguard Group, which manages the Upromise College Fund 529 Plan. Additional information may be obtained at http://nevadatreasurer.gov/College/upromise.asp.

ACTIONS OF THE 2005 LEGISLATIVE SESSION

Nevada System of Higher Education

As the result of the establishment of Nevada State College at Henderson, the Board of Regents requested a new name for the state's system of higher education. Assembly Bill 527 (Chapter 119, *Statutes of Nevada 2005*) changed the name of the University and Community College System of Nevada to the Nevada System of Higher Education.

Additional changes to the Board of Regents will occur if the voters approve a proposed constitutional amendment. Assembly Joint Resolution No. 11 of the 72nd Session of the Nevada Legislature passed the 73rd Session in identical form. It proposes to amend the *Nevada Constitution* to provide that the Board of Regents consist of nine members. One member shall be elected from each of Nevada's three congressional districts. The remaining members are to

be appointed by the Governor. This resolution will appear as a ballot question at the 2006 General Election

Academic Standards

The Legislature enacted A.B. 395 (Chapter 194, *Statutes of Nevada 2005*) to prohibit the use of false or misleading degrees, including honorary degrees, to obtain employment, to be admitted to an educational institution, or to seek public office. Assembly Bill 280 (Chapter 319, *Statutes of Nevada 2005*) requires all credits earned toward an associate degree at a community college in the NSHE system to transfer to another NSHE institution, and provides that a student with an associate degree will be enrolled as a junior, pursuant to the policy of the Board of Regents.

Millennium Scholarship

The Legislature adopted S.B. 4 of the 22nd Special Session (Chapter 10, *Statutes of Nevada 2005, 22nd Special Session*) which changed the name of the scholarship to the Governor Guinn Millennium Scholarship. The measure also made the following changes:

- The Board of Regents must establish criteria that exempt students with previously documented physical or mental disabilities, or who previously had an individualized education program, from the six-year limitation on application for the scholarship and from the minimum credit-hour enrollment provisions;
- Students may use the scholarship during the summer academic term;
- Financial assistance is limited to a maximum of 12 credits per semester;
- No student may use the scholarship to pay for remedial courses; and
- A student who fails to maintain the required grade point average for two semesters will forfeit the scholarship.

GLOSSARY OF ACRONYMS

ACT—college entrance and placement examination produced by American College Testing, Inc.

ECS—Education Commission of the States

GED—General Educational Development credential

GPA—grade point average

ICR—indirect cost recovery

IPEDS—Integrated Postsecondary Education Data Systems

NCES—National Center for Education Statistics

NCHEMS—National Center for Higher Education Management Systems

NSHE—Nevada System of Higher Education

SAT—Scholastic Assessment Test, college entrance and placement examination produced by the Educational Testing Service

SHEEO—State Higher Education Executive Officers

WICHE—Western Interstate Commission for Higher Education

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GAMING

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

The Legislature has declared that "the gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants." Nevada has developed a comprehensive system designed to regulate many of the aspects of gaming, including the taxation of gaming establishments. *Nevada Revised Statutes* (NRS) 463.0129 sets forth the State's policy concerning gaming. The statute stresses strict regulation of the gaming industry by means of licensing, controlling, and assisting activities related to gaming. In 1991, the Legislature directed the Legislative Commission to conduct an interim study of gaming. Excerpts from the Subcommittee's report to the Legislature regarding the history and regulatory structure of gaming in Nevada follow ("The Study of Gaming" Legislative Counsel Bureau Bulletin No. 93-4).

HISTORY OF GAMING IN NEVADA

Gaming has always played a significant role in the history of Nevada. Gaming was widespread during the state's frontier days, particularly in the mining camps. With the discovery of the Comstock Lode in 1859 came a population explosion in western Nevada. The Comstock Lode was the largest and wealthiest gold and silver deposit in the United States. The money and people that invaded the area were accompanied by one of the few forms of recreation available to the miners—gambling. The gambler held a respected position in society. One of the most famous residents of Nevada, Mark Twain (then known as Samuel Clemens), described the role of the gambler in his book *Roughing It*, as follows:

> **In Nevada, for a time, the lawyer, the editor, the chief desperado, the chief gambler, and the saloon keeper, occupied the same level in society, and it was the highest.**

Gaming has also been controversial to one degree or another. In 1863, just one year prior to Nevada's statehood, the third Territorial

Legislature prohibited all forms of gaming and provided criminal penalties. Conducting a gambling game was a felony punishable by a fine of not more than $5,000 and up to 2 years' imprisonment. Betting was punishable by a fine of not more than $500 and up to 6 months' imprisonment. The law was generally ignored and various forms of gaming, particularly faro, poker, and roulette, were widely and openly played.

The Initial Legalization of Gaming

In 1869, the Legislature, notwithstanding Governor Henry Blasdel's veto, passed a bill legalizing gaming and providing for its regulation. The fee for a gaming license was set at $1,000 in counties with fewer than 2,000 registered voters and $1,600 in more populous counties. The State and the counties split the license fees evenly. Although gaming could not be conducted in the front room of a saloon, and minors under 17 years of age could not participate, the State did little to regulate gaming. Revenues generated from gaming-license activities were an insignificant part of the overall State budget.

In 1879, the Legislature prohibited cheating in licensed games. Until that time, the problem of cheating had been settled privately between the participants. In 1905, in response to falling gaming license revenues, Nevada legalized nickel slot machines. Although gaming was tolerated during the heyday of mining, Nevada later began to develop an economy that was not entirely dependent upon mining. Also, anti-gaming movements began to strengthen.

The Prohibition of Gaming

The Women's Civil League and the Anti-Gambling League of Reno lobbied feverishly to repeal the gaming laws. Their persistence paid off when, in 1909, the Legislature enacted a law prohibiting all forms of gaming after October 1, 1910. In 1911, the prohibition was briefly repealed but was reimposed in 1913. From 1913 to 1931, gaming was illegal in Nevada. However, the ban was unevenly enforced, and illegal gaming establishments continued to operate in many cities.

The year 1931 was an eventful year throughout the United States. It was a tough year in Nevada as a severe drought gripped the state. Mining had plunged to a new low, cattle were selling for 3 cents a pound, and the nation was in the throes of the worst economic depression the country had ever seen. With the Federal Government owning approximately 86 percent of the land in Nevada, there was little room for further development of agriculture and the property tax base was limited.

The Re-Legalization of Gaming

Seventeen Senators and 37 Assemblymen gathered in the old Nevada Capitol for the 35th Legislative Session. Phil Tobin, a freshman Republican Assemblyman from Humboldt County in northern Nevada, introduced the gambling bill which would change the face and fate of Nevada. The opposing sides of the gambling question conducted a brief but furious debate before the Committee on Public Morals. The bill's supporters backed Assemblyman Tobin's stand that gambling was too common to ignore and that it went untaxed. Anti-gambling groups

argued that gambling was a vice, pure and simple, and would attract gangsters and bring shame to the State.

The supporters of Assembly Bill 98 were victorious as it was passed by the Legislature (Senate vote: 13 to 3; Assembly vote: 24 to 1) and signed by Governor Fred B. Balzar on March 19, 1931. Nevada would never be the same.

Between 1931 and 1945, the State left the regulation of gaming up to the local governments and did not attempt to directly tax gaming establishments. As tourists began traveling to the renowned Las Vegas areas and full service casinos began springing up at a rapid rate, the State (in 1945) required licenses for casinos and imposed a 1 percent tax on gross revenues. During the decade between 1945 and 1955, however, there were acknowledged shortcomings in the State's ability to regulate the burgeoning industry.

The Modern Regulation of Gaming

In 1955, the Legislature organized the State Gaming Control Board to regulate the industry. Comprehensive background checks of license applicants were also instituted. The Nevada Gaming Commission, which is responsible for overseeing the activities of the Board, was organized in 1959. In 1961, the Legislature created the Gaming Policy Committee, which has the authority to hold hearings on gaming policy and make recommendations to the Board and the Commission. (These entities are discussed in more detail in the next section of this brief.)

Throughout the early years of gaming, the State continuously revised the gaming regulatory scheme. Perhaps one of the most important steps taken by the State occurred in 1967 when the Legislature approved a bill that was signed by Governor Paul Laxalt which allowed publicly held corporations to own gaming facilities. Until then, each stockholder had been subject to a background investigation. This change made it much easier for the industry to raise capital and paved the way for the enormous expansion of gaming in recent years.

The history of gaming in Nevada is a colorful one. Much of the success of gaming can be attributed to a unique balance that has been reached in regulating the industry. The State has consistently sought to balance competing interests. The need for tax revenue is balanced with the need to create an economic and tax environment that promotes gaming. The need to ensure that gaming is conducted fairly is balanced with the need to avoid over-regulation.

THE REGULATION OF GAMING IN NEVADA

As the history of gaming demonstrates, the regulation of gaming is vital to the success of gaming. The Nevada Legislature has provided the framework to regulate gaming by establishing a complex statutory system.

The Role of NRS

To effectuate this State's policy on gaming under NRS 463.0129, the Legislature has adopted various laws that strictly control gaming. Chapter 463 of NRS, referred to as the "Nevada

Gaming Control Act," is the principal authority in gaming regulation. The Act addresses ownership, operation, licensing, financing, financial practices, penalties, fees, and taxes of gaming establishments. Supplementing this central program, Chapter 462 addresses "Lotteries"; Chapter 463A, "Gaming Employees' Labor Organizations"; Chapter 463B, "Supervision of Certain Gaming Establishments"; Chapter 464, "Pari-Mutuel Wagering"; Chapter 465, "Crimes and Liabilities Concerning Gaming"; Chapter 466, "Horse and Dog Racing"; and Chapter 467, "Unarmed Combat" (boxing and wrestling).

In order to implement these laws, the Legislature has created a regulatory scheme. Various agencies have been created and authorized to adopt regulations to further the laws that generally regulate the gaming industry.

State Gaming Agencies

The principal State agencies concerned with gaming control are the Nevada Gaming Commission (Commission) and the State Gaming Control Board (Board). The three primary responsibilities of these agencies are to assure that: (1) gaming is conducted honestly; (2) the industry is free from organized crime and corruption; and (3) the State receives its full entitlement of gaming tax revenues. In addition, a Gaming Policy Board was created to discuss matters of gaming policy and make recommendations to the Commission and Board.

The following is a description of the three State agencies created to regulate and tax Nevada's gaming industry:

1. Gaming Policy Committee

Created in 1961, the Nevada Gaming Policy Committee is an administrative body consisting of government, public, and industry representatives who are charged with the responsibility of recommending gaming policy. The committee consists of 11 members: the Governor (chairman), a Commission member, a Board member, a State Senator, an Assemblyman, two members of the general public, two representatives of nonrestricted gaming licensees, one representative of restricted gaming licensees, and one enrolled member of a Nevada Indian tribe appointed by the Inter-Tribal Council of Nevada. In general, only the Governor may call meetings of the Gaming Policy Committee. After discussing matters of gaming policy, the Committee may make recommendations. These recommendations are advisory only and are not required to be implemented by the Board or Commission. In 1997, the Gaming Policy Committee received the statutory responsibility to hear appeals of decisions by local governing bodies to grant or deny a petition to designate certain locations as gaming enterprise districts.

2. State Gaming Control Board

The State Gaming Control Board, which is comprised of three individuals appointed by the Governor, was established in 1955 as the agency charged with the full-time administration of the Gaming Control Act and its corresponding regulations. In addition, the Board establishes rules and regulations for all tax reports submitted to the State by gaming licensees.

In terms of the gaming license application process, the Board conducts a thorough investigation of the qualifications of each applicant before any license is issued or other required approval is granted. After completing the investigation, the Board recommends that the Nevada Gaming Commission deny, limit, condition, restrict, or approve any license, registration, or finding of suitability. Investigations are conducted by the Board's staff. The Board's staff is divided into seven divisions: (1) Administration; (2) Tax and License; (3) Enforcement; (4) Investigations; (5) Audit; (6) Corporate Securities; and (7) Electronic Services.

3. Nevada Gaming Commission

The Nevada Gaming Commission was created by the 1959 Nevada Legislature. It is a five-member lay body appointed by the Governor. The primary responsibilities of the Commission include acting on recommendations of the State Gaming Control Board in licensing matters and ruling over work permit appeal cases. The Commission is the State's final administrative authority and is empowered to accept, deny, or modify the recommendations of the Board on any particular license application. The Commission also has the power to approve, restrict, limit, condition, deny, revoke, or suspend any current gaming license.

In addition, the Commission is required to pass regulations, including those prescribing the method and form of applications, information required, fingerprinting of applicants, and the procedure for a licensing hearing.

GAMING LICENSES

Two types of gaming licenses are issued in Nevada – a "nonrestricted license" and a "restricted license." A "nonrestricted license" or a "nonrestricted operation" means one of the following:

1. A state gaming license for, or an operation consisting of, 16 or more slot machines;
2. A license for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one establishment;
3. A license for, or the operation of, a slot machine route; or
4. A license for, or the operation of, an inter-casino linked system.

A "restricted license" or "restricted operation" means a state gaming license for, or an operation consisting of, not more than 15 slot machines and no other game or gaming device at an establishment in which the operation of slot machines is incidental to the primary business of the establishment.

Gaming Work Permit

The Gaming Control Board also administers the newly-created statewide Gaming Employee Registration Program. In Nevada, a person cannot be employed as a gaming employee unless the person has registered as a gaming employee. Applications for registration are filed through

the licensee for whom the applicant will start working, unless otherwise filed with the Gaming Control Board as prescribed by regulation (NRS 463.335 for additional information.).

The Gaming Control Board must conduct an investigation of each applicant to determine eligibility, including a criminal history background check. Fees charged for the issuance of a work permit are limited to the equivalent of actual investigation and administration costs.

TAXES AND REVENUE

Gaming taxes and sales tax are the state's two largest revenue sources. In the 2003-2004 biennium, state gaming taxes comprised approximately 29.7 percent of the State's General Fund revenue ($714.7 million). As projected by the State's Economic Forum, with adjustments for the actions of the Legislature in 2003, State gaming tax revenue for the 2003-2005 biennium is projected to be approximately $1,386 million, or 29.4 percent of the State's General Fund revenue.

The largest source of gaming revenue is the monthly percentage fee based on gross gaming revenue. The rate of the fee is 3.5 percent for the first $50,000 during the month, plus 4.5 percent of the next $84,000, plus 6.74 percent of revenue exceeding $134,000 (NRS 463.370). In Fiscal Year 2003-2004 alone, this fee is projected to bring in approximately $639,150,000. Other sources of gaming revenue include license fees, quarterly fees on games, slot fees, and gaming penalties.

Gaming/Live Entertainment Tax

As of January 1, 2004, the Legislature (in 2003) repealed the Casino Entertainment Tax and replaced the tax with the Live Entertainment Tax. This tax is not limited to gaming establishments. The rate of the tax is 5 percent of the admission price if the entertainment is in a facility with 7,500 or more seats. If the maximum seating is less than 7,500 seats, a 10 percent tax is imposed on the admission price, plus a 10 percent tax on food, refreshments, and merchandise purchased.

Exemptions from the tax include: (1) non-gaming establishments with maximum seating less than 300; (2) gaming establishments with maximum seating less than 300 and with less than 51 slots or 6 games or any combination within those limits; (3) nonprofit organizations; (4) boxing matches; (5) private events; and (6) certain accessory entertainment in venues such as trade shows or shopping malls.

ISSUES FOR 2007

Each session, the Legislature considers numerous proposals involving the regulation of the gaming industry. Recent legislation has included measures designed to revamp the process for regulating gaming employees, authorize international gaming salons under certain circumstances, and limit the expansion of gaming into neighborhoods in Clark County. As the state continues to grow, issues in 2007 may include, for example, the ability of gaming establishments to expand into nontraditional gaming locations (neighborhoods) in other areas of the state, and a review of emerging technology issues relating to gaming.

Other ongoing issues that may be considered in future sessions include the impact on Nevada's gaming market of competition from the spread of gaming in other states, on tribal lands (particularly in California), and on the Internet. In the past, these issues have contributed to the passage of legislation designed to enhance the types of gaming offered in Nevada. For example, the 2001 Legislature authorized the operation of international gaming salons for the purpose of attracting high-limit patrons. The competition from other markets has also been a factor in the Legislature's consideration of methods encouraging other types of businesses to locate in Nevada, which is often referred to as the "Delaware of the West" because of its business-friendly environment.

GLOSSARY OF TERMS

Following is a glossary of gaming terms that includes citations to relevant state laws or regulations.

ADDITIONAL INFORMATION

Extensive information regarding the gaming industry in Nevada is available through its regulatory bodies:

Gaming Commission Members	Gaming Control Board Members
Peter C. Bernhard (Chairman) Arthur Marshall Sue Wagner Radha Chanderraj Raymond D. Rawson	Dennis K. Neilander (Chairman) Bobby L. Siller Mark A. Clayton

Office Address
1919 East College Parkway
Carson City, Nevada 89706-7941

Mailing Address
P.O. Box 8003
Carson City, Nevada 89702-8003

Telephone Numbers
(775) 684-7750 – Nevada Gaming Commission
(775) 684-7700 – State Gaming Control Board

Web Site
http://gaming.nv.gov/
(Includes links to other state, federal, and international bodies involved in the regulation of gaming.)

Gaming Associations

A great deal of information regarding gaming in Nevada and throughout the country is available through the industry itself. Two examples of gaming organizations follow:

American Gaming Association
555 13th Street, N.W.
Suite 1010 East
Washington, D.C. 20004
Telephone: (202) 637-6500
Fax: (202) 637-6507
http://www.americangaming.org/

Nevada Resort Association
3773 Howard Hughes Parkway Suite 320
North Las Vegas, Nevada 89109-5947
Telephone (702) 735-4888
http://www.nevadaresorts.org/nra.html

GLOSSARY OF GAMING TERMS*

***Note: While the terms in the Glossary are based on the definitions used in the statutes and the regulations of the Nevada Gaming Commission and State Gaming Control Board, the definitions are not always verbatim reproductions of the legal definitions. Always consult the actual statute or regulation for technical purposes**.

Ante
A player's initial wager or predetermined contribution to the pot prior to the dealing of the first hand. (Reg. 23.020[1]))

Banking game
Any gambling game in which players compete against the licensed gaming establishment rather than against one another. (NRS 463.01365)

Black book
A term used in popular parlance for the list of excluded persons established by NRS 463.151. (See "Excluded person.")

Call
A wager made in an amount equal to the immediately preceding wager. (Reg. 23.020[2])

Candidate
Any person who the Board believes should be placed on the list of persons who are to be excluded or ejected from licensed establishments. (Reg. 28.020[1])

Card game shill
An employee engaged and financed by the licensee as a player for the purpose of starting and/or maintaining a sufficient number of players in a card game. (Reg. 23.020[3])

Casino
The room or rooms wherein gaming is conducted and includes any bar, cocktail lounge or other facilities housed therein as well as the area occupied by the games, except restricted gaming operations as defined by NRS 463.0189. (Reg. 1.065)

Cheat
To alter the elements of chance, method of selection or criteria which determine the result of a game, the amount or frequency of payment in a game, the value of a wagering instrument or the value of a wagering credit. (NRS 465.015)

Chip
A non-metal or partly metal representative of value issued by a licensee for use at table games or counter games at the licensee's gaming establishment. (Reg. 12.010[2])

Daily double
A wager requiring the selection of the winners of two separate program events designated by the licensee as a daily double. (Reg. 26.030[3])

Disseminator
Any person who furnishes an operator of a race book, sports pool or gambling game with information relating to horse racing or other racing which is then used to determine winners of, or payoffs on, wagers accepted by the operator. The term does not include a person who provides a televised broadcast without charge to any person who receives the broadcast. (NRS 463.0147)

Drop
1. For table games, total amount of money, guaranteed drafts, chips, tokens, and wagering vouchers contained in the drop boxes and any electronic money transfers made to the game through the use of a cashless wagering system.
2. For slot machines, the total amount of money, tokens and wagering vouchers contained in the drop box, and any electronic money transfers made to the slot machine through the use of a cashless wagering system. (Reg. 1.095)

Drop box
1. For table games, a locked container permanently marked with the game, shift, and a number corresponding to a permanent number on the table.
2. For slot machines, a container in a locked portion of the machine or its cabinet used to collect the money and tokens retained by the machine that is not used to make automatic payouts from the machine. (Reg. 1.100)

Excluded person
Any person who has been placed upon the list of persons who are to be excluded or ejected from licensed establishments by the Board and who has failed to timely request a hearing as provided in NRS 463.153, or who remains on the list after a final determination by the commission. (NRS 463.151) (Reg. 28.020[2]) (See "Black Book.")

Event
An individual race, game or contest wherein pari-mutuel wagering is conducted upon the competing entrants. (Reg. 26.030[15])

Exacta
The selection, in order of finishing, of the entrants finishing first and second in a given event. (Reg. 26.030[5])

Foreign gaming
The conduct of gaming outside this state. (NRS 463.680)

Gaming or gambling
To deal, operate, carry on, conduct, maintain or expose for play any game as defined in NRS 463.0152, or to operate an inter-casino linked system. (NRS 463.0153)

Gaming device
Any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss. (NRS 463.0155)

Gaming enterprise district
An area that has been approved by a county, city or town as suitable for operating an establishment that has been issued a nonrestricted license. (NRS 463.0158)

Hand
One game in a series, one deal in a card game, or the cards held by a player. (Reg. 23.020[7])

Independent agent
Any person who:

1. Approves or grants the extension of gaming credit on behalf of a state gaming licensee or collects a debt evidenced by a credit instrument; or
2. Contracts with a state gaming licensee or its affiliate to provide services outside of Nevada consisting of arranging complimentary transportation, food, lodging or other services, or any combination thereof, whose combined retail price per person exceeds $1,000 in any 7-day period for guests at a licensed gaming establishment. (NRS 463.0164)

Information service
A person who sells and provides information to a licensed sports pool that is used primarily to aid the placing of wagers on events of any kind. The term includes, without limitation, a person who sells and provides any:

1. Line, point spread or odds;
2. Information, advice or consultation considered by a licensee in establishing or setting any line, point spread or odds; or
3. Advice, estimate or prediction regarding the outcome of an event. (NRS 463.01642)

Inter-casino linked system
A network of electronically interfaced similar games which are located at two or more licensed gaming establishments that are linked to conduct gaming activities, contests or tournaments. (NRS 463.01643)

Layoff bets
Books may accept wagers placed by other books. Books may place wagers only with other books. A book that places a wager shall inform the book accepting the wager that the wager is being placed by a book and shall disclose its identity. (Reg. 22.110)

Nonrestricted license or nonrestricted operation

1. A state gaming license for, or an operation consisting of, 16 or more slot machines;
2. A license for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one establishment;
3. A license for, or the operation of, a slot machine route; or
4. A license for, or the operation of, an inter-casino linked system. (NRS 463.0177)

Off-track pari-mutuel system
A computerized system, or component of such a system, that is used with regard to a pari-mutuel pool to transmit information such as amounts wagered, odds and payoffs on races. (NRS 464.005)

Off-track pari-mutuel wagering
Any pari-mutuel system of wagering approved by the Nevada Gaming Commission for the acceptance of wagers on races which take place outside of this state or sporting events. (NRS 464.005)

Operator of an inter-casino linked system
A person who, under any agreement whereby consideration is paid or payable for the right to place an inter-casino linked system, engages in the business of placing and operating an inter-casino linked system upon the premises of two or more licensed gaming establishments, and who is authorized to share in the revenue from the linked games without having been individually licensed to conduct gaming at the establishment. (NRS 463.01805)

Operator of a slot machine route
A person who, under any agreement whereby consideration is paid or payable for the right to place slot machines, engages in the business of placing and operating slot machines upon the business premises of others at three or more locations. (NRS 463.018)

Operator of a system
A person engaged in providing an off-track pari-mutuel system. (NRS 464.005)

Pari-mutuel system of wagering
Any system whereby wagers with respect to the outcome of a race or sporting event are placed in a wagering pool conducted by a person licensed or otherwise permitted to do so under state

law, and in which the participants are wagering with each other and not against that person. The term includes off-track pari-mutuel wagering. (NRS 464.005) (See next entry.)

Pari-mutuel wagering
(For purposes of Chapter 466 of NRS) means a system of placing wagers on a horse race whereby the wager is placed at a window and equipment is used to pay a person's winnings in the precise amount of money wagered by persons who did not win, after deducting taxes owed and commissions charged by the race track. (NRS 466.028) (See previous entry.)

Pot
The total amount anted and wagered by players during a hand. (Reg. 23.020[8])

Preferred guest
Any person, 21 years of age or older, who receives complimentary transportation, food, lodging, or other consideration with a retail price over $1,000 in any 7-day period from a licensed establishment as an inducement to gamble. (Reg. 25.010[3])

Progressive payoff schedule
A game or machine payoff schedule, including those associated with contests, tournaments or promotions, that increases automatically over time or as the game(s) or machine(s) are played. (Reg. 5.110)

Qualified organization
A bona fide charitable, civic, educational, fraternal, patriotic, political, religious or veterans' organization that is not operated for profit. (NRS 463.4093)

Quinella
The selection of the entrants finishing first and second in any order in any given event. (Reg. 26.030[13])

Race book
The business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering. (NRS 463.01855)

Rake-off
A percentage of the total amount anted and wagered by players during a hand in a card game. (Reg. 1.150)

"Registered as a gaming employee"
Authorized to be employed as a gaming employee in this state or to serve as an independent agent. (NRS 463.01858)

Representative of value
Any instrumentality used by a patron in a game whether or not the instrumentality may be redeemed for cash. (NRS 463.01862)

Resort hotel (For purposes of Chapter 463 of the NRS) any building or group of buildings maintained as a hotel where sleeping accommodations are furnished to the transient public and that has:

1. More than 200 rooms (1,000 for purposes of Chapter 466 "Horse Racing") available for sleeping accommodations;
2. At least one bar with permanent seating capacity for more than 30 patrons that serves alcoholic beverages sold by the drink for consumption on the premises;
3. At least one restaurant with permanent seating capacity for more than 60 patrons that is open to the public 24 hours each day and 7 days each week; and
4. A gaming area within the building or group of buildings. (NRS 463.01865)

Restricted license or restricted operation
A State gaming license for, or an operation consisting of, not more than 15 slot machines and no other game or gaming device at an establishment in which the operation of slot machines is incidental to the primary business of the establishment. (NRS 463.0189)

Slot machine
Any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or any thing of value, whether the payoff is made automatically from the machine or in any other manner. (NRS 463.0191)

Sports pool
Accepting wagers on sporting events by any system or method of wagering. (NRS 463.0193)

"Temporarily registered as a gaming employee"
Authorized to be employed as a gaming employee in this state or serve as an independent agent from the date of submitting a complete application for registration or renewal of registration for a period not to exceed 120 days following receipt of the complete application by the Gaming Control Board, including classifiable fingerprints, unless otherwise suspended. (NRS 463.01955)

Tilt condition
Programmed error state for a gaming device. A tilt condition has occurred when the device detects an internal error, malfunction, or attempted cheating, and it disallows further play until the error is resolved. (Technical Standard 1.010)

Token
A metal representative of value issued by a licensee for use in slot machines or for use in slot machines and at table games or counter games at the licensee's gaming establishment. (Reg. 12.010[3])

Tournament
A series of contests. (NRS 463.0196)

User
An operator of a race book, sports pool or gambling game who is licensed in this state and receives and displays a live broadcast within this state and uses information contained in the broadcast to determine winners of or payoffs on wagers he accepts. (NRS 463.4218)

Wager
A sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain. (NRS 463.01962)

Wagering credit
A representative of value, other than a chip, token or wagering instrument, that is used for wagering at a game or gaming device and is obtained by the payment of cash or a cash equivalent, the use of a wagering instrument or the electronic transfer of money. (NRS 463.01963)

Wagering instrument
A representative of value, other than a chip or token, that is issued by a licensee and approved by the board for use in a cashless wagering system. (NRS 463.01967)

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ELECTIONS

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Voting stands at the root of our democracy. Franklin D. Roosevelt captured this sentiment and the importance of direct elections in a 1936 speech in Worcester, Massachusetts, when he said:

> **Inside the polling booth, every American man and woman stands as the equal of every other American man and woman. There they have no superiors. There they have no masters save their own minds and consciences.**

Indeed, the act of voting is a privilege that is coveted in areas of the world where dictatorship and oppressive rule have suppressed this important civic activity. Recent developments in the Middle East and in Afghanistan have certainly brought the magnitude of elections and voting to the forefront of worldwide discussion.

VOTER ELIGIBILITY, REGISTRATION, AND TURNOUT

Qualified Electors and Applications to Register to Vote

In Nevada, qualifications to register to vote and cast a ballot are set forth in the *Constitution of the State of Nevada* and in the *Nevada Revised Statutes* (NRS). Specifically, Article 2, Section 1 of the *Constitution* sets forth the "right of suffrage" by declaring:

> All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; provided, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector.

Several provisions in the NRS discuss the question of residency—when it is gained or lost—and how qualified electors residing outside of Nevada (such as military personnel) may register to vote. Nevada law also requires the Secretary of State to prescribe a standard form for voter registration purposes, and sets forth the contents of the application to register to vote. The county election officer provides a voter registration card to the applicant to register to vote after the form is received and processed by the county election office.

Recent attention has focused on the distribution of voter registration application forms and the registration of voters by outside interest groups. In fact, in a recent instance in northern Nevada, an outside interest group allegedly failed to submit to the county election office several completed voter registration applications. Nevada law (NRS 293.5235) provides that county election officers must make mail-in voter registration applications available at various public places in their respective counties. Similarly, *Nevada Administrative Code* 293.425 requires county clerks and voter registrars to make voter registration applications available to individual candidates, political parties, civic groups, and groups organized for or against questions on a ballot. Groups requesting more than 50 applications must complete a request form setting forth the intended distribution of the forms. On this form, the county clerk records "control numbers" from the voter registration applications. While some rural Nevada counties use this control number as the voter's identification number with the county (to identify the voter in the poll book during an election), most counties only use the control numbers to track which applications are distributed to voter registration groups.

To ensure that the applications of newly registered voters are adequately processed, Nevada law requires the following notice to be placed on applications to register to vote by mail:

> NOTICE: You are urged to return your application to register to vote to the County Clerk in person or by mail. If you choose to give your completed application to another person to return to the County Clerk on your behalf, and the person fails to deliver the application to the County Clerk, you will not be registered to vote. Please retain the duplicate copy or receipt from your application to register to vote.

This language was added to the statutes in 2001 to remind voters of the risks involved with not registering to vote in person and relying on another person to return the voter registration application. In 2005, the Legislature approved legislation requiring that a receipt be included on all voter registration applications. The provisions require anyone who assists a voter in completing the application and retains the form for later submission to the county election office to record his or her name on the duplicate copy retained by the voter.

NATIONAL VOTER REGISTRATION ACT OF 1993

Many of Nevada's provisions concerning voter registration were added to the NRS in 1993 and 1995 in response to the National Voter Registration Act of 1993 (NVRA), commonly known as the "Motor Voter Act." The response to the NVRA was widespread, and all states approved legislation in the mid-1990s to comply with the NVRA requirements. The Act provided, on a national scale, a set of voter registration standards designed to enhance voter registration opportunities and established a national mail-in voter registration application. Many of the

NVRA requirements were incorporated into two comprehensive election and voter registration measures in Nevada—Senate Bill 250, which was approved by the Legislature on July 12, 1993 (Chapter 523, *Statutes of Nevada*), and Assembly Bill 619 of the 1995 Legislative Session (Chapter 608, *Statutes of Nevada*). These measures set forth new requirements authorizing voter registration not only at the Department of Motor Vehicles (DMV), but also at "offices that provide public assistance as are designated by the Secretary of State" and at "each office that receives money from the State of Nevada to provide services to persons in this State who are disabled."

STATEWIDE VOTER REGISTRATION SYSTEM

In October 2002, the Help America Vote Act (HAVA) (Public Law 107-252) was passed by the United States Congress and signed into law by President George W. Bush. This Act requires states, among other things, to implement statewide voter registration lists. In 2003, the Nevada Legislature set forth this requirement in Chapter 293 of NRS. Pursuant to NRS 293.675, the Secretary of State's office has been charged with establishing and maintaining this statewide list in consultation with each county and city clerk and voter registrar. The Secretary of State's office and Nevada's county election officials are currently implementing this statewide system, which will ultimately serve as a uniform, centralized, and computerized voter registration list.

NEVADA VOTERS' BILL OF RIGHTS
(NRS 293.2546)

The Legislature hereby declares that each voter has the right:

1. To receive and cast a ballot that:
   (a) Is written in a format that allows the clear identification of candidates; and
   (b) Accurately records the voter's preference in the selection of candidates.
2. To have his questions concerning voting procedures answered and to have an explanation of the procedures for voting posted in a conspicuous place at the polling place.
3. To vote without being intimidated, threatened or coerced.
4. To vote on election day if the voter is waiting in line at his polling place to vote before 7 p.m. and he has not already cast his vote in that election.
5. To return a spoiled ballot and is entitled to receive another ballot in its place.
6. To request assistance in voting, if necessary.
7. To a sample ballot which is accurate, informative and delivered in a timely manner.
8. To receive instruction in the use of the equipment for voting during early voting or on election day.
9. To have nondiscriminatory equal access to the elections system, including, without limitation, a voter who is elderly, disabled, a member of a minority group, employed by the military or a citizen who is overseas.
10. To have a uniform, statewide standard for counting and recounting all votes accurately.
11. To have complaints about elections and election contests resolved fairly, accurately and efficiently.

In late November 2004, the Secretary of State awarded a $4.6 million contract to Convansys Global Technology Services and PCC Technology Group to build and install a statewide voter registration system. Pursuant to NRS 293.675, county and city clerks and voter registrars will be required to electronically enter voter registration information into this statewide system. Under the new system, a person will be able to register to vote anywhere in Nevada and registration information will be available on election department computers in all 17 counties. The new centralized database will be will be linked to the Department of Motor Vehicles and the Social Security Administration to help verify the accuracy of information contained in the voter registration application. The Office of Vital Records will also provide death record information to the Secretary of State's office to assist in maintaining the statewide voter registration list. The statewide voter registration list will serve as official list of registered voters for the conduct of all elections in the State.

VOTER REGISTRATION FIGURES

Total voter registration in the State of Nevada has increased by over 200,000 voters since the 2002 election cycle. As of March, 2006, a total of 1,196,544 people were registered to vote in Nevada. This includes 481,203 Democrats and 474,833 Republicans (a difference of 6,390 voters or one-third of one percent). In addition, 184,366 were registered as Nonpartisans, 39,845 as Independent Americans, and 7,378 as Libertarians.

VOTER TURNOUT

A notable increase in the number of registered Nevada voters who actually voted was observed at the 2004 General Election as compared to the 2002 General Election. The 2004 voter turnout of 77.4 percent was well over the 2002 voter turnout of 59 percent and was significantly greater than the previous presidential election in 2000 where 69.9 percent of registered voters cast ballots. Overall, voter turnout in Nevada at the 2004 General Election ranged from a high of 92 percent in Douglas County to a low of 68.2 percent in Washoe County.

VOTER TURNOUT GENERAL ELECTIONS—1980 THROUGH 2004		
General Election	***Voter Turnout***	***Percent of Registered Voters Who Voted***
1980*	251,584	84.6
1982	242,578	75.3
1984*	294,413	82.6
1986	264,365	71.9
1988*	354,261	79.6
1990	325,959	63.1
1992*	513,387	79.0
1994	386,582	61.7
1996*	467,657	60.1
1998	440,042	49.0
2000*	612,685	69.9
2002	513,370	59.0
2004*	831,563	77.4
**presidential election year*		

VOTING, ABSENTEE BALLOTS, AND EARLY VOTING

Nevada operates under a "closed primary" election system. In a fully closed primary election system, voters must register with a political party in advance of the primary election. Members of political parties can vote only for candidates on their party's ballot and any nonpartisan offices appearing on the primary election ballot. The party's election is closed to members of other political parties. Independent candidates and candidates representing minor political parties only appear on the general election ballot. Nonpartisan offices include judicial offices, school board members, county sheriff, members of the University Board of Regents, members of the State Board of Education, city and town officers, and members of boards of hospital trustees for public hospitals.

For over 80 years, (with exception of 1954), primary elections have been held on the first Tuesday of September in each even-numbered year. Beginning in 2006, primary elections in Nevada will be held on the twelfth Tuesday before the general election (NRS 293.175). The 2005 Legislature voted to approve this date change because local election officials were finding it increasingly difficult to meet an ever-growing list of important federal and state election deadlines relating to ballot preparation and voting by overseas military personnel. Statewide and county general elections in Nevada are held on "the first Tuesday after the first Monday of November in each even-numbered year" (NRS 203.12755). Polls for all primary and general elections must open at 7 a.m. and close at 7 p.m.

Most incorporated cities in Nevada hold municipal elections in the spring of each odd-numbered year. The cities of Reno and Sparks, however, have amended their city charters and ordinances to coincide their elections with the state and county election schedule. Other incorporated cities have also expressed an interest in amending their charters and ordinances to hold elections on the same schedule as county and state elections. However, recent legislative efforts to shift the city election schedule to the state and county election time frames have been unsuccessful. Currently, primary city elections are held "on the first Tuesday after the first Monday in April" (NRS 293C.175), and general elections for cities are held "on the first Tuesday after the first Monday in June" (NRS 293C.140).

ABSENTEE BALLOTS AND ACCOMMODATIONS FOR THE ELDERLY AND DISABLED

Absentee Ballots Generally

Nevada, like other states, offers voting using absentee ballots. Any registered voter who provides sufficient written notice may request an absentee ballot any time before 5 p.m. on the seventh day preceding any election. Unlike some states, no reason for requesting an absentee ballot is required of the applicant. A Nevada registered voter living overseas may also request an absentee ballot via facsimile machine. The county clerk or registrar of voters shall use a facsimile machine to send an absentee ballot to an overseas registered voter who, in turn, shall mail his or her absentee ballot back to the county election office. Nevada law specifically declares it unlawful for a person to fraudulently request an absentee ballot in the name of another person or to induce or coerce another person to request an absentee ballot in the name of another person.

Absentee Ballots and Special Accommodations for the Elderly and Disabled

Nevada law makes numerous accommodations for elderly and physically disabled persons to receive absentee ballots. For example, NRS 293.313 permits a registered voter who is at least 65 years of age or has a physical disability or condition which prevents him or her from going to the polls to request an absentee ballot for the entire election year. Options are also available should a voter fall ill or become disabled and is unable to go to the polls on election day. Specifically, NRS 293.316 provides that:

Any registered voter who is unable to go to the polls:

> **(a) Because of an illness or disability resulting in his confinement in a hospital, sanatorium, dwelling or nursing home; or**
>
> **(b) Because he is suddenly hospitalized, becomes seriously ill or is called away from home after the time has elapsed for requesting an absent ballot as provided in NRS 293.315, may submit a written request to the county clerk for an absent ballot. The request may be submitted at any time before 5 p.m. on the day of the election.**

If the request contains all the required information, the county clerk or voter registrar shall deliver an absent ballot to the registered voter. Such a request must be made, and the ballot delivered, marked, and returned to the county clerk or voter registrar no later than 7 p.m. on election day. Finally, NRS 293.3165 provides that "a registered voter who, because of a physical disability, is unable to mark or sign a ballot or use a voting device without assistance may submit a written statement . . . requesting that he receive an absent ballot . . ." for all elections occurring in the following year. The statement must designate the person who will assist the voter in marking and signing the absentee ballot and include a statement from a licensed physician certifying that the voter's disability renders him or her unable to mark or sign a ballot or use a voting device.

Accommodations at Polling Places for the Elderly and Disabled

Polling places in Nevada must be completely accessible to the elderly and disabled. Nevada law provides that the county clerk or voter registrar must establish at least one polling place for a precinct in any residential development exclusively for seniors, provided that: (1) more than 100 residents of the development are registered to vote; (2) there is a common area which is adequate for a polling place; and (3) the owner of the development consents to establishing a polling place on the property. While separate polling places may be established in senior communities, it should be noted that all polling places "must be accessible to a voter who is elderly or disabled." Each polling place must have at least one voting booth designated for use by a voter who is elderly or disabled that is designed to allow a voter in a wheelchair to cast his or her ballot. The voting booth must also allow any voter who is elderly or disabled to vote with the same privacy as a voter who is not elderly or disabled.

At each polling place, the county clerk or voter registrar is encouraged to post in a visible location instructions for voting printed in at least 12-point type and provide ballots in alternative audio and visual formats. Finally, any registered voter who is unable, by reason of a physical disability or an inability to read or write English, to mark a ballot or cast a vote without assistance is entitled to assistance from a consenting person of his or her own choice. The voter may not, however, utilize the assistance of his or her employer or an agent of his or her labor organization.

EARLY VOTING BY PERSONAL APPEARANCE

Since its inception in 1993, early voting by personal appearance in Nevada has become increasingly popular. At the 2004 General Election, nearly 42 percent of all votes were cast during early voting. This is an increase of 9 percent since 2002, when 33 percent of voters voted early at the general election. In 2000, 34 percent of voters cast ballots early. The period for early voting by personal appearance begins on the third Saturday preceding a primary or general election and extends through the Friday before election day (Sundays and holidays excepted). The locations, dates, and hours of early voting must be published in a newspaper of general circulation during the week before the early period.

Indeed, early voting aims to maximize the opportunity to vote by making voting convenient and easy. All voters may cast their ballots during this 14-day period before election day at one of many early voting sites. Typically, cities and counties will establish a permanent early voting site within the election office. Any permanent early voting location must be open during the first week of early voting from 8 a.m. to 6 p.m., and until 8 p.m. during the second week, if required by the county clerk or voter registrar. The permanent early voting location must be open from 10 a.m. to 6 p.m. during any Saturday that falls within the early voting period. Larger cities and counties will often set up additional temporary early voting locations in shopping malls, supermarkets, libraries, and community centers. Hours of operation for these satellite early voting locations are set by each individual county. County and city clerks must adopt rules or regulations setting forth the criteria for selecting permanent and temporary early voting polling places and inform the local governing body of the location of each polling place for early voting.

FILING OFFICER AND DEADLINES FOR DECLARING AND WITHDRAWING CANDIDACY

Running for Office

The Secretary of State is the filing officer for statewide offices, and those offices that are elected from districts comprised of more than one county. The county clerk or registrar of voters is the filing officer for those offices which are elected from districts comprising only one county or part of one county. Meanwhile, the city clerk is the filing officer for offices that are elected at municipal elections.

The first day of candidate filing for all candidates in statewide and county elections begins on the first Monday in May and ends at 5 p.m. on the second Friday after the first Monday in May. Any declaration of candidacy that is mailed must be received by the appropriate filing officer by 5 p.m. on the last day to file for office. The candidate filing period for city elections extends from 70 days before the primary city election through 5 p.m. on the 60th day before the primary city election. A candidate for state or county office may withdraw his or her candidacy in writing within seven days (excluding weekends and holidays) after the last day for filing. Candidates for city offices may withdraw from the election within two days after the last day to file.

Requirement for Filing for Elective Office

All candidates for elective office must file a declaration of candidacy form. This form primarily asks the candidate to provide his or her name and physical residence and requires the candidate to affirm, under penalty of perjury, that he or she qualifies for the elective office and "will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this State." Candidates for the office of State Senator or State Assembly Member must also complete a "declaration of residency," which requires the candidate to list his or her residences since November 1 of the year preceding the election.

CANDIDATE FILING FEES (NRS 293.193) **Fees for filing declarations of candidacy or acceptances of candidacy must be paid to the filing officer by cash, cashier's check, or certified check.**	
Office Filing	**Fee**
United States Senator	$500
Representative in Congress	$300
Governor	$300
Justice of the Supreme Court	$300
Any State Office, other than Governor or Justice of the Supreme Court	$200
District Judge	$150
Justice of the Peace	$100
Any County Office	$100
State Senator	$100
Assemblyman	$100
Any District Office other than District Judge	$30
Constable or other Town or Township Office	$30
University Board of Regents	0
State Board of Education	0
No filing fee is required from a candidate for an office the holder of which receives no compensation (NRS 293.193).	

<u>Using a Nickname on the Ballot</u>

A nickname of not more than ten letters may be used on the ballot; however, it must be in quotation marks and appear immediately before the candidate's surname. A nickname must not indicate any political, economic, social, or religious view or affiliation and must not be the name of any person, living or dead, whose reputation is known on a statewide, nationwide, or

worldwide basis. The nickname must not, in any way, deceive a voter regarding the person or principles for which he or she is voting (NRS 293.2565).

Deadline for Changing Political Party Affiliation Prior to Declaring Candidacy

A person may not run for partisan office of a major political party if he or she has changed from one political party to another or has changed his or her designation from nonpartisan to a designation of a political party affiliation in the State of Nevada or in any other state beginning on December 31 of the year prior to the election and ending on the date of the election.

CAMPAIGN PRACTICES

The activities and behavior of political candidates are governed primarily in Chapter 294A of NRS. Candidates are reasonably expected to conduct campaign activities in a professional and ethical manner and are encouraged to sign and file a "Code of Fair Campaign Practices." In addition to requiring the reporting of campaign contributions and expenses, Nevada's Campaign Practices law provides guidance on the proper use of campaign funds and sets forth procedures for appropriate campaign activity.

CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

In the State of Nevada, all candidates for state, district, county or township offices are statutorily required to file Campaign Contributions and Expenses Reports. Reports must be filed with the filing officer with whom the candidate filed his or her declaration of candidacy or acceptance of candidacy. The due dates for contributions and expenses reports for the 2006 election cycle are:

Annual Report: Due January 15, 2006
Report Number 1: Due August 8, 2006
Report Number 2: Due October 31, 2006
Report Number 3: Due January 15, 2007
Annual Report: Due January 15, 2007

All reports must be received no later than midnight. A candidate may submit the filing in person, via facsimile, or by mail. If certified mail is used, the date of the postmark shall be deemed the date of filing. If sent via U.S. mail, the date received shall be considered the date of filing.

Campaign Accounts

Every candidate for state, district, county, city, or township office shall open and maintain a separate account in a financial institution for the deposit of any campaign contributions, within one week of receiving a minimum of $100. The candidate shall not commingle the money in the account with money collected for other purposes. Additionally, it is unlawful for a candidate to spend money received as a campaign contribution for his or her personal use.

Campaign Contribution Limits

A person shall not make a contribution to a candidate for any office, except a federal office, in an amount that exceeds $5,000 for the primary election or primary city election, and $5,000 for the general election or general city election. There are no constitutional or statutory limits of contributions made to groups such as political parties, committees sponsored by political parties, or committees for political action.

Every candidate for a state, district, county, city, or township office who is defeated at a primary or primary city election and received a contribution from a person in excess of $5,000 shall, not later than the 15th day of the second month after his or her defeat, return any money in excess of $5,000 to the contributor.

Contributions in Excess of $10,000 Report

Every candidate who receives contributions in excess of $10,000 in any year before the year of an election is required to file a Contributions and Expenses Report for that year and every year thereafter up to the election. This "off-year" report must be filed with the appropriate filing officer on or before January 15 of the year immediately after the year for which the report is made. The report must include all contributions received and expenditures made in that year.

Restrictions on Receipt of Campaign Contributions Prior to Legislative Session

A legislative caucus, legislator, governor, governor-elect, lieutenant governor, and lieutenant governor-elect may not receive or solicit a contribution during the period beginning 30 days before and ending 30 days after a regular session of the Legislature (January 6, 2007, through July 4, 2007). If a special session is called, a legislative caucus, legislator, governor, governor-elect, lieutenant governor, and lieutenant governor-elect may not receive or solicit a campaign contribution during the period beginning the day after the governor issues a proclamation calling for a special session and ending 15 days after the final adjournment of a special session.

Disposition of Unspent Contributions Report

Candidates who are elected or defeated, or who withdraw from a race, must file with the appropriate filing officer a Contributions and Expenses Report that shows how any remaining funds were disposed of or used. State law specifically limits the manner in which unspent contributions may be disposed

Penalties for Failure to File or For Filing a Late Report

The Secretary of State may impose civil penalties on any candidate who fails to file his or her campaign contributions and expenses report, or who files the report late.

Each violation is subject to a civil penalty of up to $5,000 and payment of court costs and attorney's fees. The amounts of the civil penalties are as follows: (a) if the report is 1 to 7 days late, $25 for each day the report is late; (b) if the report is 8 to 15 days late, $50 for each day the report is late; (c) if the report is more than 15 days late, $100 for each day the report is late—up to a maximum of $5,000.

Most states require some form of personal financial disclosure for public officers. In Nevada, the Financial Disclosure Statement includes information regarding general income sources,

Code of Fair Campaign Practices

There are basic principles of decency, honesty and fair play which every candidate for public office in the State of Nevada has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, the voters may exercise their constitutional right to vote for the candidate of their choice and that the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

1. I will conduct my campaign openly and publicly and limit attacks against my opponent to legitimate challenges to his voting record or qualifications for office.
2. I will not use character defamation or other false attacks on a candidate's personal or family life.
3. I will not use campaign material which misrepresents, distorts or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which are intended to create or exploit doubts, without justification, about the personal integrity of my opposition.
4. I will not condone any dishonest or unethical practice which undermines the American system of free elections or impedes or prevents the full and free expression of the will of the voters.

I, the undersigned, as a candidate for election to public office in the State of Nevada, hereby voluntarily pledge myself to conduct my campaign in accordance with the principles and practices set forth in this Code.

_____
Signature of Candidate

_____
Date

debt, business ventures, real estate, and contributions of certain gifts. The following individuals must file Financial Disclosure Statements: (1) every candidate for public office who, if elected, is entitled to receive compensation of $6,000 or more annually for serving in the office in question; (2) every elected public officer; and (3) every appointed public officer who is entitled to receive compensation of $6,000 or more annually for serving in the office in question. In 2005, the Nevada Legislature approved legislation exempting any elected supervisor of a conservation district from the requirement to file a financial disclosure statement.

FINANCIAL DISCLOSURE STATEMENT

Financial Disclosure Statements for elected public officers and candidates for public office must be filed with the Office of the Secretary of State. All other public officers must file the statement with the Commission on Ethics. Candidates for public office must file the statement no later than the tenth day after the last day to qualify for office (ten days after the close of candidate filing). Meanwhile, elected public officers must file the statement on or before January 15 of each year of their term and appointed public officers must file within 30 days of their appointment and annually thereafter on or before January 15. Finally, elected and appointed public officers who leave office on a day other than the expiration of their term must file the statement within 60 days of leaving office.

Failure to File a Financial Disclosure Statement	Civil Penalties*
1 to 10 days late	$25
11 to 20 days late	$50
21 to 30 days late	$100
31 to 45 days late	$250
45 or more days late (or not filed)	$2,000

As amended by the 2003 Nevada State Legislature.

RECALL OF PUBLIC OFFICERS

Nevada is one of 18 states and the District of Columbia that authorizes the recall of public officers. Recall is a procedure that allows citizens to remove and replace a public official before the end of a term of office. Historically, recall has been used most frequently at the local level. Indeed, by some estimates, three-fourths of recall elections nationwide are at the city council or school board level. Recall differs from another method for removing officials from office, impeachment, in that it is a political device while impeachment is a legal process. The recall started as a local phenomenon—in Los Angeles, California—in 1903. Michigan and Oregon, in 1908, were the first states to adopt recall procedures for state officials, while Minnesota was the most recent (1996). Nevada's recall provisions were added to the *Constitution of the State of Nevada* in 1912 by a vote of the people after being proposed and approved during the 1909 and 1911 Legislative Sessions.

Proponents of the recall process maintain it provides a way for citizens to retain control over elected officials who are not representing the best interests of their constituents, or who are unresponsive or incompetent. Meanwhile, opponents argue that: (1) it can lead to an excess of democracy; (2) the threat of a recall election lessens the independence of elected officials; (3) it undermines the principle of electing good officials and giving them a chance to govern until the next election; and (4) that it can lead to abuses by well-financed special interest groups.

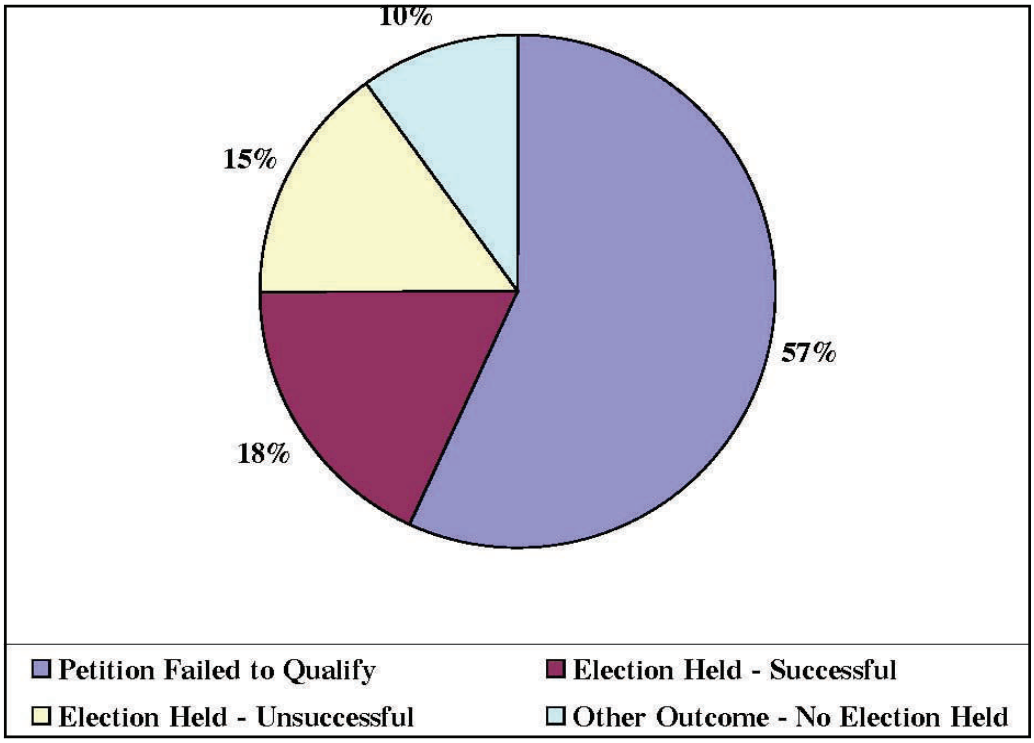
THE USE OF THE RECALL IN NEVADA

The use of recall in Nevada tracks with national trends. It has been used more often at the local level and a majority of these efforts have been unsuccessful. Prior to the 1990s, recall drives were quite rare in Nevada. However, beginning in the early 1990s, the number of recall efforts increased dramatically. Despite the increased use of recalls over the past decade, the success rate has been relatively low. For example, over the past 12 years, 115 "notices of intent" to recall have been filed against elected officials in Nevada. Of these, 68 recall efforts failed for lack of petition signatures, 2 recall groups did not submit petitions, 11 recalls were either dismissed by the courts or the recall subject resigned, and no recalls are currently "in-progress." The remaining recall efforts resulted in 34 elections, 21 of which were successful.

The Recall Process in Nevada

The first step in the recall process is the filing of a "notice of intent" to recall a public officer with the same filing officer with whom the public officer to be recalled filed his or her declaration of candidacy. Following the filing of the notice of intent, a recall petition may be circulated for signatures. The petition must contain the signatures of at least 25 percent of the number of persons who actually voted in the state, county, or district, which the public officer represents at the election in which he or she was elected. *Nevada Revised Statutes* 306.015 stipulates that recall petitions circulated for signatures must be submitted to the filing officer "within 90 days after the date on which the notice of intent was filed." These signatures are then examined and verified to determine the sufficiency of the petition.

Outcome of Recall Efforts in Nevada 1994-2004



Upon completion of the signature verification, the results of the examination are forwarded to the Secretary of State who makes the finding that the petition is either sufficient or insufficient.

The "Call" for a Recall Election

Not sooner than ten days nor more than 20 days after the Secretary of State gives notification that the petition is sufficient, the filing officer must issue a call (an announcement of the date) for the special recall election. The recall election must take place within 30 days after the filing officer issues the call.

Ballot Form in a Recall Election

A ballot for the recall of a public officer may vary in form depending on several circumstances. If the public officer who is the subject of the recall chooses not to resign his or her position and

there are no other candidates to appear on the ballot for the recalled office, the words "For Recall" and "Against Recall" must be placed on the ballot as voting choices. If there are other candidates to appear on the ballot, the name of the public officer subject to the recall and any other authorized candidate Article 2, Section 9, of the *Constitution of the State of Nevada*, provides that statements be placed on the ballot from the petitioners and the public officer who is the subject of the recall:

> **On the ballot at said election shall be printed verbatim as set forth in the recall petition, the reasons for demanding the recall of said officer, and in not more than two hundred (200) words, the officer's justification of his course in office.**

However, NRS 306.060 stipulates that if a mechanical voting system is used for the recall election, such statements need not be printed on the ballot, but rather on the sample ballots.

Candidates in a Recall Election

A person may be nominated as a candidate for the office involved in the recall through a petition process. This petition must be signed by at least 25 percent of the registered voters who actually voted for the office in question at the last general election. The petition forms, an acceptance of candidacy, and the appropriate candidate filing fee must be filed with the filing officer at least 20 days before the special recall election.

INITIATE AND REFERENDUM (I&R) IN NEVADA AND OTHER STATES

A BRIEF HISTORY

Initiative and Referendum

The I&R process was popularized in the late 19th and early 20th century during a wave of Populist feelings that swept the country during that time. During the late 1890s, the Populist Party was gaining influence in the American political scene. Their platform included women's suffrage, direct election of United States Senators, and the use of initiative and referendum. In 1897, Nebraska became the first state to allow initiative and referendum for city elections. In 1898, South Dakota became the first state to adopt a statewide initiative and referendum. Utah became the second state to adopt statewide initiative and referendum, followed by Oregon in 1902, which was the first state to place a statewide initiative measure on the ballot in 1904. By 1905, Nevada adopted its popular referendum. However, it was not until 1912 that Nevada adopted its statewide initiative process. With a few exceptions, this process remains the same today as it did in the early 1900s.

The popularity of the initiative and referendum was so great during the early part of the 20th Century that by 1918, 19 of the 24 states that currently have initiative and referendum had adopted the process. Mississippi was the last state to adopt I&R in 1992. Interestingly enough, most of the states that have adopted initiative and referendum are west of the Mississippi River. Some theorize that the expansion of I&R in the West fits more with Westerners' independent, populist belief system. For the most part, initiative and referendum operated quietly in the background of state politics for much of the 20th century. However, during the last decade, it has come back into vogue.

The I&R Process in Nevada

Today, more initiatives are circulated, more qualify for the ballot, and more money is spent on the process than ever before. Since its inception in 1898, there have been nearly 2,000 initiative measures on ballots in the 24 I&R states. Nearly half of these initiative measures (about 900) appeared on the ballot in the last 30 years.

The initiative is a procedure and method whereby citizens, through a petition process, place measures on the ballot proposing changes or additions to laws or state constitutions. There are two types of initiatives – direct and indirect. In Nevada, an initiative can be crafted to make an amendment to the *Constitution of the State Nevada* (a direct initiative) or change or amend an existing statute (an indirect initiative). The direct initiative involves a petition process which, if successful, goes *directly* on the ballot at the next general election. The indirect initiative, however, involves the input and consideration of the Legislature. In other words, an initiative proposal to change Nevada state law *does not* go directly to the ballot. In the indirect initiative process, a proposed initiative (if the petition has enough qualified signatures) is first referred to the Legislature.

During the 2005 Legislative Session, the Legislature passed measures requiring initiative and referendum petitions to address only one subject and matters necessarily connected with that subject. An explanation of the effect of the petition must also appear on each signature page of the petition. These new provisions further require the Secretary of State to post a copy of the initiative or referendum petition, the description of the effect of the petition proposal, and the fiscal note on his or her Internet Web site.

The *Nevada Constitution* and various provisions in Chapter 295 of NRS law also provide for I&R at the city and county level, although the filing, signature requirements, approval process, and time frames vary from the statewide I&R process.

<u>Constitutional Amendments</u>

An initiative petition to amend the *Constitution of the State of Nevada* must be signed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last statewide general election. Before any initiative petition to amend the Constitution may be circulated for signatures, a copy of the petition must be filed with the Secretary of State not earlier than September 1 of the year prior to the election. The petition may then be circulated for signatures until the third Tuesday in June of the following year (the election year), at which time, it must be submitted to the appropriate county election offices for signature verification. Upon completion of the signature verification process, all petitions must be filed by the county election officer with the Secretary of State no later than 90 days before the general election. If it is determined that the petition contains a sufficient number of valid signatures, the initiative question will appear on the general election ballot. An initiative petition to amend the *Constitution of the State of Nevada* must be approved in identical form at two successive elections before becoming law.

Over the years, numerous initiative proposals amending the *Nevada Constitution* have been considered by the voters. Key proposals that have been approved address a number of different

topics, including taxation, term limits, the definition of marriage, medical marijuana, and minimum wage.

INITIATIVE PROPOSALS TO AMEND THE *NEVADA CONSTITUTION*
Action by the Voters: 1908 - 2004

YEAR OF ELECTION AND TOPIC	ELECTION RESULT
1956 Prohibits Right-to-Work Laws	Failed
1958 Revises Initiative Process	Passed
1960 Reinstates biennial, instead of annual, legislative sessions	Passed
1968 Repeals Lottery Prohibition	Failed
1978 Limits Property Taxes	Passed (First vote of people)
1980 Limits Property Taxes	Failed 1 (Second vote of people)
1980 Exempts Household Goods from Taxation	Passed (First vote of people)
1980 Exempts Food (Restaurant Meals) from Taxation	Passed (First vote of people)
1982 Exempts Household Goods from Taxation	Passed (Second vote of people)
1982 Exempts Food (Restaurant Meals) from Taxation	Failed (Second vote of people)
1984 Taxes and Fees of State and Local Governments	Failed (First vote of people)
1988 Prohibits State Personal Income Tax	Passed (First vote of people)
1990 Prohibits State Personal Income Tax	Passed (Second vote of people
1994 Term Limits for Members of Congress	Passed 2 (First vote of people)
1994 Term Limits for Certain State and Local Officers in Executive, Judicial, and Legislative Branches	Passed (First vote of people)
1994 Establishes, Limits, and Defines Campaign Contributions	Passed (First vote of people
1994 Requires two-thirds vote in both houses of Legislature to approve a measure that generates or increases taxes or fees	Passed (First vote of people)
1996 Term Limits for Certain State and Local Officers in Executive and Legislative branches	Passed 3 (Second vote of people)
1996 Term Limits for Nevada Justices and Judges	Failed 3 (Second vote of People)
1996 Establishes, Limits, and Defines Campaign Contributions	Passed (Second vote of people)
1996 Requires two-thirds vote in both house of Legislature to approve a measure that generates or increases taxes or fees	Passed (Second vote of people)
1996 Instructs Nevada's congressional Delegation and Members of the Legislature to provide term limits for the Members of Congress	Passed (First vote of people)
1998 Instructs Nevada's Congressional Delegation and Member of the Legislature to provide term limits for the Members of Congress	Passed (Second vote of people)
1998 Authorizes possession and use of marijuana for certain medical purposes	Passed (First vote of people)
2000 Authorizes possession and use of marijuana for certain medical purposes	Passed (Second vote of people)
2000 Recognizes marriages only between persons of the opposite sex	Passed (First vote of people)
2002 Recognizes marriage only between persons of the opposite sex	Passed (Second vote of people)
2002 Allows for the use and possession of three ounces or less of marijuana	Failed (First vote of people)
2004 Requires funding public education before funding any other budget item	Passed (First vote of people)
2004 Requires that the funding per pupil in Nevada's public schools meets or exceeds the national average	Failed (First vote of people
2004 Adds provisions regarding insurance rates and practices in Nevada	Failed (First vote of people
2004 Authorizes penalties for lawyers participating in frivolous law suits and prohibits changes to limits on monetary damage awards	Failed (First vote of people)
2004 Raises the minimum wage for working Nevadans	Passed (First vote of people)

[1] This measure appeared on the ballot a second time because, after 1962, affirmative votes of the people at two successive General Elections are required to amend the Constitution through the initiative process.
[2] Removed from 1996 Ballot following the United States Supreme Court decision, *U.S. Term Limits vs. Thornton,* and Nevada Attorney General Opinion No. 95-17.
[3] Question No. 9 from the 1994 Ballot was split into two separate parts on the 1996 Ballot.

Enacting or Amending a State Statute

An initiative petition may also be used to enact a new statute or to amend an existing law. The same number of registered voters that are required to sign a constitutional initiative must also sign a statutory initiative. Proponents must first file a copy of the petition with the Secretary of State not earlier than January 1 of the year prior to the next legislative session. The petition may then be circulated for signatures until the second Tuesday in November, at which time, it

must be submitted to the county election offices for signature verification. Upon completion of the signature verification, all petitions to amend or create a statute must be filed by the county with the Secretary of State no later than 30 days before the start of the next legislative session. If the petition contains a sufficient number of valid signatures, the Secretary of State shall transmit the initiative proposal to the Legislature as soon as it convenes. The Legislature must either enact or reject the petition without amendment within the first 40 days of the legislative session. Depending on the Legislature's action, the proponents may continue the process by placing it on the ballot. If the Legislature defeats or fails to act on the initiative proposal within the first 40 days, it is automatically placed on the ballot at the next general election for consideration by the voters. Some states, including Nevada, allow the Legislature to place an alternative measure (regarding the same subject) on the ballot to be considered along with the initiative questions.

If the Legislature enacts the statute proposed in the petition and it is approved by the Governor, it becomes law. It should be noted that a statutory initiative approved by the voters shall not be amended, annulled, or repealed by the Legislature within three years from the date it takes effect.

INITIATIVE PROPOSALS TO AMEND OR ENACT A STATE STATUTE
Action by the Voters: 1908 - 2004[1]

YEAR OF ELECTION AND TOPIC	RESULT
1918 Prohibition	Passed
1922 Divorce	Failed
1922 Divorce (Legislative Substitute for Divorce Initiative)	Passed
1934 Bounties on Predatory Animals	Passed
1936 Old Age Pensions	Failed
1938 Bounties on Predatory Animals	Failed
1944 Old Age Pensions	Passed
1952 Right-to-Work	Passed
1954 Repeal Right-to-Work	Failed
1956 Repeal right-to-Work	Failed
1956 Public School Finance	Failed[2]
1982 Consumer's Advocate Public Utilities	Failed
1982 Consumer's Advocate Public Utilities (Legislative Substitute for Consumer's Advocate Initiative)	Passed
1990 Corporate Tax for Education	Failed
1996 Consideration and Approval Twice of Increase in Tax (Legislative substitute for two-thirds vote initiative)	Passed but not enacted[3]
2004 Limits the fees an attorney could charge a person seeking damages against a negligent health care provider in a medical malpractice case	Passed

[1] During the 2004 election cycle, three statutory initiatives were successfully circulated and submitted to the Nevada Legislature. the Legislature did not take action on these initiative proposals and did not offer alternative ballot questions. Therefore, these three initiative proposals–two addressing smoking and tobacco use and one concerning the possession, use, sale, and taxation of marijuana–will appear on the November 7, 2006 General Election ballot.

[2] In 1955, the Legislature considered an initiative concerning the question of public school finance. Although the Legislature did not adopt the initiative petition, salient provisions of the measure were included in a new school code enacted in the special session of 1956. However, the initiative petition had to be included on the 1956 General Election Ballot, even though the issue was moot, because the Constitution does not contain any provisions to remove it from the ballot.

[3] The proposed amendment to state law would have required each house of the Nevada Legislature to consider and approve twice any bill that imposes or increases a tax or assessment. Additionally, the measure would have required a period of ten calendar days to elapse between the first and second votes in each house on any such bill, with the final vote taking place at least ten days before the adjournment of a regular legislative session. The proposed amendment would have become effective only if a majority of the voters rejected the initiative proposal (1996 Ballot Question No. 11) that required a two-thirds vote of both legislative houses to pass a measure increasing a tax, fee, assessment, rate or public revenue.

Geographic Distribution Requirement for Petition Signatures

Until recently (August 2004), Nevada was one of ten states to require a "geographic distribution" signature requirement, whereby signatures had to be gathered in 75 percent of Nevada's counties (13 out of 17 counties). In a recent challenge to this provision, a federal judge agreed with plaintiffs who argued that requiring the collection of signatures in different areas of the state gave added weight or influence to voters' signatures in rural areas and diminished the relative weight of voters' signatures in urban centers. In making his ruling, the federal judge relied heavily upon an earlier Ninth Circuit Court of Appeals ruling declaring unconstitutional similar signature requirements in Idaho.

The 2005 Nevada Legislature discussed and debated the geographic distribution requirement following the federal ruling. In response, the Legislature approved Assembly Joint Resolution No. 1 of the 22nd Special Session (File No. 8, Statutes of Nevada), which proposes to remove the provisions in the Nevada Constitution that were declared unconstitutional. Instead of the existing geographic distribution requirement, an initiative petition would have to be signed by a number of registered voters from each of the three congressional districts in this State equal to ten percent or more of the number of voters who voted at the last General Election in the congressional district.

The *Nevada Constitution* provides the number of signatures of registered voters necessary for statewide initiative and referendum petitions must equal 10 percent of the voters who voted in the *last preceding general election* (emphasis added). During the 2004 election cycle, the final day to submit statewide statutory initiative petitions to the various county election offices fell after the date of the general election. When petitioners for one such petition filed their petition after the date of the general election, it was interpreted that the total voter turnout for the 2004 General Election (which was significantly higher than the 2002 turnout) was the basis by which the number of signatures would be determined. However, a subsequent court ruling allowed the use of the 2002 voter turnout figures for purposes of the petition signatures.

In 2005, the Legislature approved Assembly Joint Resolution No. 8 (File No. 86, *Statutes of Nevada*), which proposes to amend the Nevada Constitution to specify that the number of signatures required on a petition for statewide initiative or referendum will be determined *when a copy of the petition is filed* with the Secretary of State before circulating the petition for signatures (emphasis added). If approved in identical form during 2007 Session of the Legislature, the proposal will be submitted to the voters for final approval or disapproval at the 2008 General Election.

The Referendum in Nevada

A referendum typically allows the citizens to register, through a vote of the people, their support or disapproval of a current law or statute. In some states, the referendum is advisory in nature and does not create or abolish any laws. However, in Nevada, a referendum is binding and serves to either "set in stone" a particular statute (except by another vote of the people) or render a law or resolution void.

Signature Requirements for I&R Petitions

The first day a statewide referendum can be filed is August 1 in the year prior to the next election. In order to qualify for the ballot, a statewide referendum must be signed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last statewide general election. The petition may be circulated for signatures until the third Tuesday in May of the following year, at which time, it must be submitted to the appropriate county election office for signature verification. Upon completion of the signature verification, the petitions must be filed with the Secretary of State who shall, if there are enough valid signatures, place the referendum to approve or disapprove a current state law on the general election ballot.

REFERENDUM ON EXISTING STATE LAW
Action by the Voters: 1908 – 2004

Year of Election	Topic	Election Result
1908	Police Bill	Passed
1930	Rabies Commission Law	Failed
1934	Fish and Game Law	Passed
1956	Sales and Use Tax Act	Passed
1990	Abortion Law	Passed

While many view the I&R process as a just and fair way for citizens to actively and directly influence the law making process, others believe that I&R diminishes the political strength and traditional power of legislative bodies. In recent years, others have also observed that I&R has become a popular method for well-financed, special interests to influence their agendas in state and local politics. Advocates for I&R, however, say that the recent resurgence of the initiative process is positive—it means that citizens are using it as a tool to implement new laws and reforms that the Legislature is unable or unwilling to enact. Meanwhile, others have noted that the initiative process asks voters to make simple, yes-no decisions about complex issues without full consideration by an elected body, detailed expert analysis, and without asking voters to balance competing needs with limited resources. Opposing interests, some believe, are often not fully contemplated in the initiative process.

Current I&R Issues and Concerns—Pros and Cons

On the other hand, proponents argue that the I&R process not only results in policy changes, but also increases citizen involvement with government—people are not only more aware of policy issues, but they are also more likely to vote. Finally, the I&R process has brought forth a number of concerns in recent years. Some state legislatures seem to be struggling to find ways to: (1) prevent fraud in the signature gathering process; (2) disclose information about who pays for initiative campaigns; and (3) add flexibility to the process to accommodate more debate, deliberation, and compromise.

KEY ELECTION OFFICIALS IN NEVADA

Many elected officials and other individuals are involved in the daily administration of election-related activities at the state and county level in Nevada. Listed below are the primary officials responsible for election administration in this state:

ELECTION ADMINISTRATION Primary Officials	
Ross Miller **Secretary of State** **101 North Carson Street** **Carson City, Nevada 89701-4786** **(775) 684-5708**	**Matthew M. Griffin** **Deputy Secretary of State for Elections** **101 North Carson Street, Suite 3** **Carson City, Nevada 89701-4786** **(775) 684-5705**
Alan Glover Carson City Clerk/Recorder 885 East Musser Street, Suite 1025 Carson City, Nevada 89701-4475 (775) 887-2087	Kelly G. Helton Churchill County Clerk/Treasurer 155 North Taylor Street, Suite 110 Fallon, Nevada 89406-2748 (775) 423-6028
Larry Lomax Clark County Registrar of Voters 965 Trade Drive, Suite A North Las Vegas, Nevada 89030-7802 (702) 455-8683	Barbara J. Griffin Douglas County Clerk/Treasurer 1594 Esmeralda Street Post Office Box 218 Minden, Nevada 89423-0218 (775) 782-9023
Winifred (Win) Smith Elko County Clerk 571 Idaho Street, Third Floor Elko, Nevada 89801-3700 775) 753-4600	LaCinda (Cindy) Elgan Esmeralda County Clerk/Treasurer Post Office Box 547 Goldfield, Nevada 89013-0547 (775) 485-6367
Jackie Berg Eureka County Clerk/Treasurer County Courthouse, Main Street Post Office Box 677 Eureka, Nevada 89316-0677 (775) 237-5262	Tami Rae Spero Humboldt County Clerk 50 West 5th Street, Courthouse No. 207 Winnemucca, Nevada 89445-3199 (775) 623-6343

ELECTION ADMINISTRATION Primary Officials	
Gladys Burris Lander County Clerk 315 South Humboldt Street Battle Mountain, Nevada 89820-9998 (775) 635-5738	Lisa C. Lloyd Lincoln County Clerk 1 North Main Street Post Office Box 90 Pioche, Nevada 89043-0090 (775) 962-5390
Nikki A. Bryan Lyon County Clerk/Treasurer 27 South Main Street Yerington, Nevada 89447-2571 (775) 463-6501	Cherrie A. George Mineral County Clerk/Treasurer 105 South A Street, Suite 1 Post Office Box 1450 Hawthorne, Nevada 89415-1450 (775) 945-2446
Sandra L. (Sam) Merlino Nye County Clerk 101 Radar Road Post Office Box 1031 Tonopah, Nevada 89049-1031 (775) 482-8127	Donna Giles Pershing County Clerk/Treasurer 398 Main Street Post Office Box 820 Lovelock, Nevada 89419-0820 (775) 273-2208
Doreen Bacus Storey County Clerk/Treasurer Drawer "D" Virginia City, Nevada 89440-0139 (775) 847-0969	Daniel Burk Washoe County Registrar of Voters 1001 East Ninth Street Post Office Box 11130 Reno, Nevada 89520-0027 (775) 328-3670
Donna M. Bath White Pine County Clerk 801 Clark Street, No. 4 Ely, Nevada 89301-1994 (775) 289-2341	

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HOMELAND SECURITY

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Following the events of September 11, 2001, the Federal Government created the United States Department of Homeland Security to provide a unifying core for the vast national network of organizations and institutions involved in keeping our nation safe. Additionally, in order to facilitate coordination between federal, state, and local emergency management and law enforcement agencies, the Governor of Nevada created the Office of Homeland Security.

The Governor also created the Joint Information Center within the Nevada Public Information Officers Committee, to ensure quick and effective response to catastrophic events within the state. During times of disaster, communicating accurate and timely information to the public saves lives. Public information officers from virtually every state agency provide this service through the Joint Information Center, which is activated on the authority of the Governor only during times of crisis.

Homeland Security Commission

As an additional resource in the fight against terrorism, the Nevada Commission on Homeland Security was created by the Nevada Legislature in 2003. According to the enabling legislation, the Governor must appoint to the Commission a number of members he determines to be appropriate (currently there are 16 members of the Commission). Those members must include at least one person who represents Nevada law enforcement and one who is not employed or affiliated with law enforcement. The Governor or his designee serves as the chairman, and he must appoint a Commission member to serve as vice chairman. The Senate Majority Leader and the Speaker of the Assembly each appoint one legislator from their respective houses who is a nonvoting member of the Commission.

The duties of the Commission include:

- Making recommendations to the Governor, Legislature, state agencies, local governments, businesses, and private citizens about actions to be taken to protect against terrorism;

- Proposing goals and programs to counteract acts of terrorism;

- Ensuring the safety of Nevada's residents and the critical infrastructures of the state by identifying the susceptibility of those infrastructures to terrorist acts;

- Examining the use and deployment of response agencies;

- Reviewing the interoperability of the state's communications systems and the efficacy of emergency (9-1-1) telephone systems. In particular, establishing a state plan for the compatibility and interoperability of the state's information and communication systems for response agencies;

- Coordinating between government agencies to avoid duplicative emergency response programs and policies; and

- Conducting other activities to protect and enhance the safety of the State of Nevada, its residents, and its visitors.

2005 Legislation

The Nevada Legislature meets once every two years, in odd years, and had already concluded the 2001 Session when the terrorist attacks occurred. Thus, by 2003 the Legislature had time to carefully review the Federal Patriot Act, the recommendations of the National Conference of State Legislatures' Task Force on Protecting Democracy, and the laws of other states to craft legislation specifically tailored to Nevada's needs. The 2005 Legislature approved several measures that enhance or modify the comprehensive homeland security package passed during the 2003 Session.

- Senate Bill 380 was requested by the Nevada Homeland Security Commission in order to improve the Commission's efficiency and oversight of the State's emergency response and homeland security-related agencies. The bill authorizes the Department of Public Safety to employ necessary staff to carry out duties of the Nevada Commission on Homeland Security, to be paid from the State General Fund, federal grant money, or both. The measure further requires the Governor to appoint 14 voting members to the Commission including the sheriffs and fire chiefs of Clark and Washoe Counties, the head of Nevada's office of the Federal Bureau of Investigation, a representative of the United States Department of Homeland Security, and a representative of the Clark County medical community. The bill also requires the Commission's chairman to appoint certain committees, and authorizes the appointment of others as necessary, each of which is subject to the Open Meeting Law. The bill further provides that emergency

response agencies must submit funding applications relating to acts of terrorism for the Commission's review and approval, and must report on the use of those funds. These agencies must also adopt and implement certain national systems administered by the United States Department of Homeland Security.

- Senate Bill 194 requires the Nevada Commission on Homeland Security to advise and make recommendations to the Governor on the compatibility and interoperability of communication systems, with special emphasis on public safety radio systems used by the State's response agencies.

- Senate Bill 365 requires the Nevada Commission on Homeland Security, to the extent money is made available, to establish a statewide system for mapping public buildings for use by emergency response agencies in the event of an emergency or act of terrorism. The software that comprises the system must include: floor plans, fire protection information, evacuation plans, utility information, known hazards, and emergency personnel contact information. The Commission must prescribe the manner in which information will be transferred to the system by a participating State agency or political subdivision, and must develop software standards for participating entities, conditions for response agency use of the system, and guidelines for the accessibility of system information. A State agency or political subdivision utilizing its own mapping system before the Commission establishes the statewide system can continue to use that system unless money is provided to update or modify the system. Each participating entity shall submit a progress report to the Commission, and a summarized overview of these reports shall be submitted to the Legislative Commission before October 1 of each year, beginning in 2006.

POTENTIAL HOMELAND SECURITY ISSUES IN 2007

Potential Homeland Security Issues in 2007

Real ID Act of 2005

On May 11, 2005, President George W. Bush signed into law the "REAL ID Act of 2005," which was attached to the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005" (H.R. 1268, P.L. 109-13). Title II of REAL ID—"Improved Security for Driver's License' and Personal Identification Cards"—repeals the provisions of a December 2004 law that established a cooperative state-federal process to create federal standards for driver's licenses and instead imposes prescriptive federal driver's license standards. Among the many provisions of REAL ID are sections that place federal requirements on all state driver's licenses. The REAL ID Act will have an impact on every person applying for a driver's license in the U.S. All states, Puerto Rico, and the District of Columbia will have to change their driver's license laws to comply with REAL ID. While the REAL ID Act is now law, the driver's license provisions are not in effect yet and may be revised by Congress before the Nevada Legislature meets in 2007. Regardless of any future changes that may be made to REAL ID, however, driver's licenses and other forms of identification will almost certainly be addressed during the 2007 Session in relation to homeland security.

Emergency Response, Disaster Preparedness

In late August 2005, Hurricane Katrina devastated the Gulf Coast, focusing the brunt of its destructive power on New Orleans, Louisiana. While there is no indication that Nevada is ill-prepared to respond to an equally challenging situation, the startling inadequacy of governmental response to Hurricane Katrina at the federal, state and local levels may well bring about legislative review of Nevada's emergency response planning and preparedness.

ADDITIONAL REFERENCES

State of Nevada's Homeland Security: http://homelandsecurity.nv.gov/
United States Department of Homeland Security: http://www.dhs.gov/dhspublic/index.jsp

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LEGISLATURE

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

The State Legislature is Nevada's political institution closest to the people. Not only does it enact laws, the Nevada Legislature also creates the machinery for carrying out those enactments. The Legislature establishes departments, boards, commissions, and bureaus and defines the scope of their powers and the extent of their responsibilities. It also regulates the activities of these state agencies by granting or denying them the authority to hire employees and expend public funds. In addition, the Legislature sets down the fundamental rules of government in Nevada in the form of administrative procedures acts, civil service rules, and election laws.

LEGISLATIVE STRUCTURE

Nevada has a two-house (bicameral) Legislature consisting of a Senate and an Assembly. The two houses jointly are designated by the state constitution as "The Legislature of the State of Nevada." The Legislature is one of three separate and distinct branches of government at the state level, the other two being the executive branch (headed by the Governor) and the judicial branch (with the Nevada Supreme Court at the top of the structure). According to the *Nevada Constitution*, ". . . no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others . . ." except in certain specified instances.

Size and Apportionment

Unlike some states, Nevada does not fix the number of its Senators and members of the Assembly in its constitution. Instead, the constitution sets a maximum limit of 75 legislators from the combined total of the two houses. No minimum limit is set on the size of the Legislature, but the *Nevada Constitution* provides ". . . the number of senators shall not be less than one-third nor more than one-half of that of the members of the assembly." The actual size of the Legislature is set by statute. Since 1983, the Nevada Legislature has had a 21-member Senate and a 42-member Assembly.

The *Nevada Constitution* states that Senators and members of the Assembly must be apportioned among the several counties of the state or among legislative districts in accordance with law. The United States Supreme Court has held that both houses of state legislatures must be apportioned on a population basis under the principle of one person, one vote. Membership in both houses of the Legislature is geographically apportioned throughout the state on the basis of population. Normally, the Legislature redistricts once every ten years during the session next following the federal decennial census, as required by the state constitution.

Membership Qualifications

To be eligible to serve as a Senator or member of the Assembly, a person must be at least 21 years of age, a qualified elector in the respective county and district, and an actual citizen resident of Nevada for a minimum of one year next preceding the election. However, the *Nevada Constitution* declares that "each House shall judge of the qualifications, elections and returns of its own members . . . and with the concurrence of two-thirds of all the members elected, expel a member."

No person holding a federal office of profit (with the exception of postmasters earning less than $500 per year or commissioners of deeds) or a lucrative office under any other power may serve as a legislator. Persons are also disqualified from holding legislative office if they have been convicted of embezzlement of public funds or bribery in the procurement of election or appointment to office. A legislator may not be appointed to any civil office of profit in the state that was created, or the salary for which was raised, during the legislator's term of office, for a period of one year after the expiration of the term.

Members of the Assembly are elected every two years by the qualified electors in their respective districts. Senators, on the other hand, serve four-year terms, which are staggered so that, as near as possible, one-half of the number of Senators is elected every two years. A constitutional amendment approved by the voters in 1996 limits legislators to 12 years of service in any one house (six terms for Assemblymen and three terms for Senators). An opinion issued by Nevada's Attorney General concludes that "only periods of service commencing after November 27, 1996, will be counted as a term for limitation purposes." As applied to members of the Legislature, term limits will first have a potential impact during the 2010 election cycle.

Members of both houses are elected on the first Tuesday after the first Monday in November of even-numbered years, at intervals of two or four years, depending upon the house in question. Their terms of office begin on the day following their election, but members are not typically sworn in by oath of office until the first day of the legislative session (first Monday of the following February for a regular session).

Legislator Compensation and Allowances

Legislators are paid a salary for the first 60 days of a regular session and up to 20 days for a special session. The daily salary for each is currently $130. Thus, for a regular session, a legislator may receive a maximum salary of $7,800; for a special session, the maximum salary is $2,600.

Legislators receive additional payments for their travel and per diem during a legislative session. The per diem, which is intended to cover the legislator's lodging, meals, and incidental expenses, is equal to the federal rate for the Carson City area, which is currently $91. This per diem amount is paid each day that the Legislature is in session.

For travel to and from Carson City for the legislative session and for a presession orientation conference, each legislator is entitled to one day's per diem plus reimbursement of actual travel expenses. Each legislator whose permanent residence is more than 50 miles from Carson City, and who enters into a lease or other agreement for housing during session, is also entitled to a supplemental housing allowance during the session. This allowance is equal to the fair market rent for a one bedroom unit in Carson City, as published, and revised each year, by the United States Department of Housing and Urban Development. The most recent rate for the Carson City area is $616 per month. Costs associated with travel during a session (moving expenses, housing and furniture rental, and travel related to legislative business) are reimbursed, subject to an overall limit of $10,000 during a regular session and $1,200 during a special session.

In addition to these amounts, each legislator is entitled to a communications allowance of $2,800 and a postage allowance of $60. Legislators who are chairmen of standing committees or hold leadership positions are entitled to an additional $900 allowance. Each member also is entitled to a certain number of business cards, stationery, and envelopes from the State Printing Office of the Legislative Counsel Bureau. The Speaker of the Assembly and the Lieutenant Governor receive an additional $2 per day during the time of their actual attendance as presiding officer.

When the Legislature is not in session, each Senator and Assemblyman is entitled to receive a salary and the per diem allowance (up to $84) and travel expenses provided by law for each day of attendance at a conference, meeting, seminar, or other gathering at which the legislator officially represents the State of Nevada or its Legislature. The salary is $130 per day.

Senate Joint Resolution No. 11 of the 72nd (File No. 87) Session proposes to amend the *Nevada Constitution* to pay legislators for each day of service during both regular and special sessions. In addition, S.J.R. 11 proposes another amendment to provide "reasonable allowances" to legislators for expenses incurred for postage, express charges, newspapers, telecommunications, and stationery. This measure will be on the 2006 General Election Ballot for approval or disapproval by the voters.

Ethics and Conflicts of Interest

The *Nevada Revised Statutes* (NRS) expands upon what constitutes legislators' and other public officers' breaches of ethics and conflicts of interest in the "Nevada Ethics in Government Law." This law contains a code of ethical standards for public officer relative to accepting gifts, services, favors, employment, or honoraria; negotiating or executing contracts in which the public officer has a significant pecuniary interest; accepting compensation from private sources for the performance of public duties; using information acquired through public duties to further the pecuniary interests of himself or other persons or business; suppressing any governmental

report that might tend to affect unfavorably the officer's pecuniary interests; and using government time, property, or equipment for the private benefit of the public officer.

In addition to the general requirements of the code of ethical standards, the Nevada Ethics in Government Law requires the disclosure of any significant pecuniary interest in matters under consideration. The law further specifies that a public officer of the legislative branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in, the consideration of a matter with respect to which the independence of judgment of a reasonable person in the same position would be materially affected by: (1) acceptance of a gift or loan; (2) pecuniary interest; or (3) commitment in a private capacity to the interest of others.

The Standing Rules of both houses also address legislators' ethics. A Committee on Ethics is usually established under Assembly Rule 23 as the Committee on Elections, Procedures, Ethics and Constitutional Amendments. This rule states in part that "a legislator who determines that he has a conflict of interest may vote upon, advocate or oppose any measure as to which a potential conflict exists if he makes a general disclosure of the conflict." Senate Rule 44 provides that the Senate Committee on Legislative Operations and Elections shall, among other things, hear complaints and questions regarding alleged breaches of ethics and conflicts of interest.

Financial Disclosure

Every candidate for the Legislature is required to file financial disclosure statements with the Secretary of State. Such statements must be filed no later than the tenth day after the last day to qualify as a candidate for the office and then once a year thereafter, including the year that the term expires, on or before January 15.

Under the law, statements of financial disclosure are required to contain specified information concerning the candidate's: length of residence in Nevada and the legislative district; sources of income; real estate holdings valued at $2,500 or more (except for a personal residence); specified creditors to whom the candidate or members of the candidate's household owe more than $5,000; certain gifts received by the candidate with a value of $200 or more; and a list of all business entities in which the candidate or a member of the candidate's household is involved as a trustee, beneficiary, director, officer, owner, partner, or shareholder of at least 1 percent of the stock. A legislator who fails to file the statement of financial disclosure in a timely manner is subject to a civil penalty and payment of court costs and attorney's fees.

Officers and Employees

Each house of the Legislature employs such staff as is necessary to its operation. During the legislative session, this staff expands to approximately 230 committee secretaries, committee assistants, bill clerks, and others who ensure that the session functions smoothly. Several positions are permanent and full-time when the Legislature is not in session: the Secretary of the Senate, the Chief Clerk of the Assembly, and at least one executive assistant and one technical assistant for each house.

The legislative employees are under the supervision of the elected officer of each house. In the Senate, this is the Secretary; in the Assembly, the Chief Clerk. The Secretary of the Senate and the Chief Clerk of the Assembly are elected as officers by the members of the houses they serve. They, in turn, supervise the work of the legislative employees.

The Secretary and Chief Clerk perform many varied duties. They are present at each daily session of their respective houses, and during those sessions they "read" each bill and resolution—though in greatly abbreviated form—to the members of The Secretary and Chief maintain all records of the Senate Assembly, supervise compilation daily journals and histories of respective houses, and advise the officer of each house on matters parliamentary procedure or the house addition, the Secretary serves officio member of the Senate on Legislative Operations Elections, and the Chief Clerk is officio member of the Assembly Committee on Elections, Procedures, Ethics and Constitutional Amendments.

When the Legislature is not in session, the permanent legislative officers and employees assist legislative leaders with administrative matters that arise during the interim, oversee the publication of the final certified journals and histories, speak with school and civic groups about the legislative process, represent the state at national conferences of legislative officers, and prepare for the next session. Although the legislative officers and employees are not part of the Legislative Counsel Bureau, their offices are located in the Legislative Building and they regularly attend staff meetings of the Bureau's Director and Division Chiefs.

PRESS

Media and Interest Groups

The news corps is an important adjunct to the Legislature. Public awareness is vital to the democratic process, and it is the function of the press to present, analyze, and interpret the news so that the public is informed and can, therefore, more effectively express itself to and through its elected representatives. Press representatives are granted official accreditation in each chamber through adoption of a simple motion to accredit named individuals at the beginning of the session or at selected times during the session. Space in each chamber is provided for members of the news media to televise or otherwise cover legislative proceedings.

Lobbyists

Legislative agents or representatives, commonly known as lobbyists, represent various organizations, interests, and causes before the Legislature. Like the news media, they are important to the legislative process as sources of information, channels of communication between constituents and their representatives, and major protagonists in efforts to influence legislation. They frequently point out faults in bills, suggest amendments, provide valuable testimony, and in general assist the Legislature in assessing the merits of proposed legislation.

The activities of lobbyists in Nevada are controlled by the "Nevada Lobbying Disclosure Act." The law requires lobbyists to register with the Director of the Legislative Counsel Bureau and provide various information about themselves and the groups or individuals they represent.

A lobbyist must file a report each month during a legislative session and within 30 days after the close of a session concerning his or her lobbying activities. Each report must include the total expenditures for the month and, if the lobbyist had expenditures of $50 or more during the month, the report must itemize expenses in connection with any event hosted by an organization that sponsors the registrant; expenditures for entertainment, gifts, and loans; and other expenditures directly associated with legislative action. With the exception of expenditures associated with a function to which every legislator was invited, the reports must identify the legislators on whose behalf the expenditures were made. Data on personal expenditures for food, lodging, and travel expenses or membership dues are not required in the monthly reports. Violation of the act is a misdemeanor.

Other sections in the NRS also address improper influence exerted upon legislators. For example, any person who interferes with the legislative process is guilty of a gross misdemeanor. Any person who improperly obtains money or other things of value to influence a member of a legislative body in regard to any vote or legislative action is also guilty of a gross misdemeanor. It is a misdemeanor to misrepresent any fact knowingly when testifying or otherwise communicating to a legislator, though witnesses are absolutely privileged to publish defamatory material that is relevant to a proceeding. Moreover, both the giving of a bribe to a legislator and receiving a bribe are crimes against the legislative power and are subject to severe punishments under the law. Although lobbying activities are customarily prohibited on the floor of both chambers, lobbyists may appear before any committee of the Legislature.

LEGISLATIVE PROCEDURE

Regular sessions of the Nevada Legislature are held biennially in odd-numbered years. They convene on the first Monday in February next ensuing the election of members of the Senate and Assembly unless the Governor, by proclamation, convenes a special session at another time.

Legislative activities, including committee hearings, are open to the public. The *Nevada Constitution* also stipulates that neither house may, without the consent of the other, adjourn for more than three days nor move to any place other than where it is holding its session. The Joint Rules of the Senate and Assembly specify that one or more adjournments, for a duration of more than three days, may be taken to the Legislative to prepare the entrusted to them for the consideration of the Legislature as a whole. The total such adjournments is not to exceed 20 days during the regular session. The 1991, 1993, and 1995 Legislatures adjourned for two weeks early in the session to allow the Senate Committee on Finance and Assembly Committee on Ways and Means to work full-time on the review of proposed state agency budgets. During this same period, the remaining "morning" committees of the Legislature held hearings on bills and other legislative matters in the Las Vegas area. Beginning in 1999, the two "money" committees have conducted informational hearings in Carson City during the two weeks immediately preceding the start of session.

In the case of a disagreement between the two houses with respect to the time of the Legislature's final adjournment, the Governor is constitutionally empowered to adjourn the Legislature to such a time as deemed proper, but not, however, beyond the time fixed for the meeting of the next Legislature.

Assembly Joint Resolution No. 13 of the 72nd Session (File No. 74) proposes to amend the *Nevada Constitution* to allow the Legislature to convene a special session on extraordinary occasions by a petition signed by two-thirds of the members of each house. In addition, A.J.R. 13 limits special sessions called by the Legislature or the Governor to 20 calendar days. This proposal will be submitted to the voters for their approval or disapproval at the 2006 General Election.

Legislator Duties

The *Nevada Constitution* vests the lawmaking authority for the state in the Nevada Legislature. Generally, the Legislature is empowered to enact the laws of the state; levy taxes on individuals, businesses, property, and sales; appropriate the funds collected for the support of public institutions and the administration of state government; propose amendments to the constitutions of the U.S. and Nevada; and consider legislation proposed by initiative petitions. In addition, the Legislature is directed to establish a state university; a public school system; and a statewide, uniform system of county and township government. The Legislature also has the power to create, revise, or abolish certain county positions; determine the compensation of legislative officers and employees, certain state officials, Supreme and District Court judges, and specified county officers; decide the winner of a tied election for a district or state office or the office of U.S. Senator or Representative; impeach the Governor, other state official, or any judge, except a justice of the peace; and pardon, reprieve, or compel the enforcement of a sentence for the conviction for treason. The Legislature also provides oversight of the executive and judicial branches of government through the budget and audit processes and reviews the regulations developed by state agencies.

The majority of the Legislature's work, however, consists of generating, revising, and occasionally repealing the laws of the state. Through a process defined by the *Nevada Constitution*, state law, and legislative rules, the members of the Legislature consider over 1,100 bills and resolutions throughout each regular session. The regular sessions of the Senate and Assembly are required to be held during each odd-numbered year, beginning on the first Monday of February. At other times, the Governor may, for a specific purpose, call the Legislature into special session.

During the session, legislators have several responsibilities. They shepherd the measures they introduce through the legislative process by providing testimony at hearings, working with others to improve the legislation, and encouraging their colleagues to vote in favor of their bills. Legislators also serve on the committees that review each piece of legislation. Each legislator is typically assigned to three standing committees. As committee members, legislators listen to and question witnesses about the provisions of a measure, participate in subcommittees created to focus on a specific bill or issue, and vote on whether the bill or resolution should be transmitted to the full house.

At times, all legislators may be required to participate in a committee of the whole. Such a committee is formed only once or twice during a session. Much more common are the conference committees, formed to resolve differences between amendments proposed by each house to the same bill. Occasionally, legislators may be assigned to a joint committee of the

two houses. Legislators are also required to attend the daily meetings of their respective houses, commonly referred to as "floor sessions."

When not on the floor or in meetings, legislators confer with constituents who call or visit, with lobbyists who represent organizations or certain opinions, and with staff who provide assistance and requested information. Legislators are frequently asked to speak to various groups and attend numerous community functions, most often when the Legislature is not in session.

When the session ends, legislators continue to make speeches, assist constituents, serve on special legislative committees, and compile information in preparation for the next session. Often, legislators serve as facilitators among various groups. For example, a legislator might contact a government agency on behalf of a constituent or bring opposing factions together to solve a problem. In addition, legislators monitor the implementation of certain bills passed during the preceding session. In this capacity, a legislator might attend a hearing conducted by a state agency formulating pertinent regulations.

Between sessions, a legislator may serve on one or more interim committees. Some of these committees study a specific subject, provide oversight of ongoing issues, or are part of national organizations that bring together legislators from the various states to discuss similar problems. Permanent committees of the Legislature are created through statute. Temporary committees usually originate in concurrent resolutions passed in one session and are dissolved by the beginning of the next.

The foregoing description of legislative responsibilities is not comprehensive. Like employees in the private sector, legislators are often responsible for other duties as assigned. Any legislator who chairs a committee or assumes a leadership role conducts those duties in addition to the ones mentioned. Legislators are also expected by their political parties and communities to perform certain functions, such as attending party caucuses and important local events. In addition, most legislators hold full-time jobs and must fulfill their responsibilities to their employers. Although Nevada prides itself on having a citizen Legislature, it demands a significant commitment of time and effort from each of its citizen representatives.

The 2005 Legislature enacted legislation requiring each legislator to disclose his or her name on the list of bill draft requests prepared by the Legislative Counsel. Previously, legislators did not have to disclose their names for this list.

Session Deadlines

Sessions are limited to 120 calendar days following the approval by voters of a constitutional amendment in 1998. Previous sessions were unlimited in length following the repeal in 1958 of a constitutional provision setting a 60-day maximum limit on the duration of a session. Since 1958, there has been only one regular session of less than 60 days, that being the single annual session of 1960, which lasted 55 days. Between 1975 and 1997, regular sessions in Nevada ran between 113 and 169 days.

Prior to each session, the Legislative Commission's Committee to Consult with the Director considers methods of improving the operation of the session. The recommendations of the Committee to the next Legislature may affect many procedural rules, including limitations on the number of bills that may be requested; deadlines for the submission, introduction, and passage of legislation; and the procedure for obtaining waivers. These procedures are generally contained in the Joint Rules of the Senate and Assembly, the Senate Standing Rules, and the Assembly Standing Rules, which are adopted at the beginning of each session.

Measures within the jurisdiction of the Senate Committee on Finance or the Assembly Committee on Ways and Means; bills required to carry out the business of the Legislature; and concurrent, or simple resolutions are generally exempted from these limitations. Also exempt are emergency requests submitted by the Majority Leader of the Senate, the Speaker of the Assembly, and the Minority Leaders in the Senate and the Assembly.

LEGISLATIVE COUNSEL BUREAU

In March of 1945, the Nevada Legislature recognized a need for more information and assistance in order to deal with increasingly complex tasks as described in the preamble to the bill creating the Legislative Counsel Bureau:

> At each biennial session of the legislature, that body is confronted by requests for legislation expanding and changing the functions of and increasing the appropriations of numerous offices, departments, institutions, and agencies of the state government; and . . . not withstanding the information provided by the messages and budgets of the governor and the reports of public officers, it is impossible for the legislature or its committees to secure sufficient information to act advisedly on such requests in the time limited for its sessions.

The 1945 law establishing the bureau charged it with assisting the Legislature to find facts concerning government, proposed legislation, and various other public matters.

During the next several years, the duties of the bureau and its staff were modified and expanded. In 1963, the Nevada Legislature reorganized the Legislative Counsel Bureau, giving it structure and responsibilities similar to those it has today. One part of this change was the incorporation of the Statute Revision Commission into the Legislative Counsel Bureau as the Legal Division. The Statute Revision Commission was originally created by the Supreme Court in 1951 and became involved in bill drafting as an adjunct to its statute revision work. The 1963 legislation also added a Fiscal and Auditing Division and a Research Division.

Today, the Legislative Counsel Bureau consists of the Legislative Commission, an Interim Finance Committee, a Director, and five divisions (Administrative, Audit, Fiscal Analysis, Legal, and Research). The divisions are made up of highly professional nonpartisan staff who provide a variety of services to legislators. The following sections describe activities of these units.

Legislative Commission

The Legislative Counsel Bureau is supervised by the Legislative Commission, which also takes actions on behalf of the legislative branch of government when the full Legislature is not in session. At every regular session of the Legislature, the Senate and the Assembly each designate six members and their alternates to serve on the Commission. Between sessions, the Commission meets every few months to provide guidance to staff of the Legislative Counsel Bureau and to deal with other interim matters. A prominent subcommittee to the Commission reviews the permanent administrative regulations of Executive Branch agencies.

A primary responsibility of the Commission is to provide oversight to and establish the priorities for interim studies. During each regular session, the Legislature passes several bills and resolutions directing the Legislative Commission to study particular subjects and report when the Legislature reconvenes. The Commission accomplishes its tasks by creating subcommittees drawn from the entire membership of the Legislature and assigning staff resources to the subcommittees. The interim subcommittees hold hearings, direct research, and deliberate on proposed legislation for the next session of the Legislature.

Typically, every member of the Legislature is involved in interim subcommittee work between sessions. In addition, several ongoing statutory committees meet regularly, including the Committees on Education, Health Care, High-Level Radioactive Waste, and Public Lands.

Interim Finance Committee

In 1969, the Legislature created the Interim Finance Committee to function within the Legislative Counsel Bureau between sessions and administer a contingency fund. This fund was set up to provide provisional funds for state agencies when the Legislature is not in session. The Interim Finance Committee also reviews state agency requests to accept certain gifts and grants, to modify legislatively approved budgets, and to reclassify state merit system positions in certain circumstances. Composed of the members of the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means who served during the preceding session, the Interim Finance Committee makes final decisions for the Legislature during the period between regular sessions and endeavors to maintain an adequate fund balance to meet unforeseen financial emergencies.

Director

The Director is the Chief Executive Officer of the Legislative Counsel Bureau and supervises all of its daily administrative and technical activities. The Legislative Commission appoints the Director and, in turn, the Director, with the Commission's approval, appoints the chiefs of the various divisions. The Director serves as Secretary to the Legislative Commission, has the statutory responsibility of registering lobbyists, and must consult with a committee of the Legislative Commission concerning the general management, organization, and function of the Legislative Counsel Bureau and the necessary preparations for the next regular legislative session.

Administrative Division

The Administrative Division provides support to the other divisions of the Legislative Counsel Bureau and to the Legislature. The division is responsible for accounting; communications equipment; videoconferencing; control of inventory; data processing; janitorial services; maintenance of buildings, grounds, and vehicles; purchasing; police; shipping and receiving; photocopying; and utilities and warehouse operations.

The Director of the Legislative Counsel Bureau, with assistance from the Operations Manager for the Administrative Division, supervises the various administrative units managed by the Chief Accountant, the Manager of Information Technology Services, the Building Chief, the General Services Chief, the Broadcast and Production Services Chief, Janitorial Supervisor, the Grounds and Janitorial Chief, and the Legislative Police Chief.

Las Vegas Office of the Legislative Counsel Bureau

The Administrative Division includes the Legislative Counsel Bureau office in Las Vegas at the Grant Sawyer State Office Building. The Las Vegas office provides complete assistance to legislators with full access to all Legislative Counsel Bureau information and services. Similar assistance is provided to the public, subject to legislative priorities. Meeting rooms are also available at this location for viewing and participating in videoconferenced hearings during the session and the interim. Under the direct supervision of the Legislative Counsel Bureau's Director, the Legislative Services Officer manages the Las Vegas office and its employees.

Audit Division

The Audit Division performs audits of the executive and judicial branches of state government. The Audit Division also performs special audits of local governments as required by legislation or at the direction of the Legislative Commission. The purpose of the legislative audits is to improve state government by providing independent and reliable information to the Legislature about the operations of state agencies, programs, and functions. The findings of the Audit Division are published in audit reports, which include constructive suggestions for improvements.

Audit reports are presented to the Audit Subcommittee of the Legislative Commission, and later to the full Commission, at public meetings. After becoming a public document, the reports are distributed to legislators, state officials, and the public. The Legislative Auditor is the chief of the Audit Division.

Fiscal Analysis Division

The Fiscal Analysis Division provides the Legislature with the capability for independent review and analysis of budgetary, tax, and fiscal matters. The division examines the Governor's Executive Budget and suggests possible changes; provides expenditure and revenue analyses to aid the legislative budget and tax committees; and assists the Legislature in the interpretation of factual data related to fiscal aspects of the operation of state and local

governments. The division is headed by the Assembly Fiscal Analyst and the Senate Fiscal Analyst. The division serves as the primary staff to the Interim Finance Committee, the Senate Standing Committee on Finance, the Assembly Standing Committee on Ways and Means, any standing tax committees created during legislative sessions, and interim studies relating to budget or tax issues.

Legal Division

The Legal Division, with a staff of lawyers, paralegals, editors, and document technicians, drafts bills and resolutions, reviews administrative regulations, and provides certain other legal assistance when requested. The division is headed by the Legislative Counsel. The Legislative Counsel is the legal adviser to the Legislative Branch of Government and provides legal counsel for legislative committees. Just as the Attorney General responds to requests within the Executive Branch, the Legislative Counsel issues opinions during the Legislative Sessions and the interim upon the request of a member or committee of the Legislature, the Legislative Commission, or Legislative Counsel Bureau staff. The Legislative Counsel also represents the interests of the Legislature in court.

Indexers within the Legal Division create and publish the "Bill Index and Tables" during legislative sessions and create the indexes that are contained in the publications produced by the Legal Division, including the *Advance Sheets to Nevada Statutes*, *Statutes of Nevada*, *Nevada Revised Statutes* with Annotations, *Nevada Administrative Code*, and various other compilations of Nevada law, as well as aiding the public to find current and proposed laws. As part of the Legal Division, the State Printing Office prints copies of bills, statutes, and other legislative publications, and provides printing services to the divisions of the Legislative Counsel Bureau and other state agencies. The Publications Unit sells and provides customer service for these publications as well as souvenirs of the Nevada Legislature and the State of Nevada in the Gift Shop.

Research Division

The Research Division functions as the general information arm of the Legislature. The division's primary responsibilities include responding to legislators requesting information and policy analysis; serving as lead staff (committee policy analysts) to standing committees of both houses (except appropriations and revenue committees); functioning as the primary administrative and policy staff for most interim study committees between legislative sessions; and assisting legislators in responding to their constituents' problems with state and local government agencies. Legislative documents and research materials are available through the division's Legislative Research Library.

The Research Division also answers requests for information from national organizations, government agencies in Nevada and other states, and the public. In addition, the Division prepares numerous publications, reports, and background papers relating to public policy. The Research Director administers the Division.

SUMMARY

The staff services of the Legislative Counsel Bureau are furnished throughout the year for any legislator. Legal advice, fiscal information, and background research are furnished upon request. Services of a more extensive nature are executed when the Legislature so orders by means of a law or resolution. Between sessions, such projects may be requested through the Legislative Commission.

SELECTED PUBLICATIONS OF THE LEGISLATIVE COUNSEL BUREAU

Background or Issue Papers on issues determined to be of interest during next legislative session: http://www.leg.state.nv.us/lcb/research/background.cfm

Bulletins–reports from interim committees:
http://www.leg.state.nv.us/lcb/research/DivStudyLegReport.cfm

End of Session Speech (not available online)

Summary of Legislation (This entire publication is not available online; however, summaries of individual bill are online)**:** http://search.leg.state.nv.us/billsum/isyssearchbillsum.html

Legislative Manual: http://www.leg.state.nv.us/lcb/research/2005LegManual/legmanual.cfm

Directory of State and Local Government:
http://www.leg.state.nv.us/lcb/research/sandlgov.cfm

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Nevada Legislature Online: http://www.leg.state.nv.us/
Research Library: http://www.leg.state.nv.us/lcb/research/library/
Nevada Secretary of State Elections Division: http://secretaryofstate.biz/nvelection/index.htm
Nevada Commission on Ethics: http://ethics.nv.gov/

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OPEN MEETING LAW

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

The famous orator and politician William Jennings Bryant said:

> The government being the people's business, it necessarily follows that its operations should be at all times open to the public view. Publicity is therefore as essential to honest administration as freedom of speech is to representative government.

A cornerstone of American government is the people's trust in their government. One way to achieve and protect the public trust, is by ensuring that the public can monitor, observe, and participate in decision-making by governmental entities.

Most, if not all, states have open meeting laws (also known as sunshine laws).

OPEN MEETING LAW

The Open Meeting Law (OML) in Nevada was first enacted in 1960 and is codified in Chapter 241 of *Nevada Revised Statutes* (NRS). Nevada has one of the strongest open meeting laws in the United States because there are so few exceptions to the general rule that all meetings of public bodies must be open to the public.

Public Policy for Nevada's Open Meeting Law

The statement of legislative intent in NRS 241.010 declares that: ***". . . all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."***

To that end, the provisions of the OML are liberally construed in favor of the public and the courts will not imply exceptions to the general rule. To assist public bodies in complying with the open meeting law provisions, the Nevada Attorney General's office publishes the *Open Meeting Law Manual (OML Manual)* containing checklists, sample agendas, and guidance on interpreting and applying the OML.

DEFINITIONS

Definitions of terms are critical to the application of the open meeting provisions, especially the definitions of "public bodies" and "meeting."

The term "public bodies" is broadly defined in NRS 241.015(3) to include:

> . . . any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405.

What is a meeting under the Open Meeting Law?

As defined in subsection 2 of NRS 241.015, a "meeting" is:

"The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power."

A meeting also includes,

"Any series of gatherings of members of a public body at which: (I) Less than a quorum is present at any individual gathering; (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter."

Excluded from the definition of "meeting" is a:

"gathering or series of gatherings of members of a public body [. . .] at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory powers; and (2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory powers and to deliberate toward a decision on the matter, or both."

Thus, in Nevada, subcommittees and advisory committees are subject to the open meeting provisions in the same way as the public body that created them. Executive directors and the staff of executive or other governmental agencies are not subject to the OML and most private nonprofit organizations are not considered public bodies.

Attendance of a quorum of a particular public body at a social gathering or seminar does not necessarily violate the OML as long as the members of the public body do not discuss business matters or otherwise exhibit the characteristics of a meeting. Since open government is the goal of the OML, formal or informal polling of members to reach a decision, whether by telephone, mail, electronically, or through a group of meetings attended by less than a full quorum, is considered a violation of the OML.

EXCEPTIONS

There are specific statutory exceptions for certain entities from the open meeting requirements, including the Legislature, certain meetings of the State's Commission on Ethics, Nevada Commission on Homeland Security, hearings by school boards to expel students, certain labor negotiations, and investigative hearings of the State Gaming Control Board. Closed sessions may also be held, for limited purposes by the Certified Court Reporters' Board of Nevada, the Public Employees' Retirement Board, the State Board of Pharmacy, the Nevada Tax Commission, and public housing authorities. Portions of disciplinary hearings conducted by occupational and licensing boards are exempt from the OML unless the licensee requests an open meeting.

There may also be other situations in which an agency or board is receiving information that is confidential by law and therefore that portion of the meeting may be closed. The OML authorizes, but does not require, the conduct of closed sessions by a public body to consider the character, alleged misconduct, professional competence, or the physical or mental health of a person. The 2005 Session resulted in several changes to the OML. Senate Bill 267 (Chapter 466, *Statutes of Nevada 2005*) allows the subject of such a closed meeting to waive closure of the meeting and to require the public body to honor such a request. Further, S.B. 267 eliminates the authority for closing a meeting to discuss the character, conduct, or competence of an appointed public officer or a person who serves at the pleasure of a public body as a chief executive or administrative officer. These categories include persons such as city and county managers, school district superintendents, or university and college presidents. Senate Bill 83 (Chapter 467, *Statutes of Nevada 2005*), along with S.B. 267, further clarifies who may attend closed meetings. During a closed session, a public body generally may not take action of any sort and minutes must still be made for closed sessions. Finally, judicial proceedings are exempt from the open meeting requirements but Nevada law requires sitting courts to be open to the public, with some exceptions.

In 2001, Assembly Bill 225 (Chapter 378, *Statutes of Nevada*) amended Nevada's OML to provide a limited exemption for communications between a public body and its legal counsel on potential or existing litigation. However, according to the most recent edition of the

OML Manual (2001), a public body may only take action on potential or existing litigation matters in an open meeting; the exemption stops short of allowing a public body to make a decision on litigation in a closed session or in a nonmeeting.

LEGISLATURE

Although the Legislature is specifically exempted from the OML in subsection 3 of NRS 41.015, the Legislature has a long-standing tradition of voluntary compliance. When the Legislature is not in session, all of the interim standing committees and all of the interim standing committees and interim studies or task forces voluntarily comply with the OML. During legislative sessions, the standing rules of the Senate and Assembly require all legislative committees to comply with the OML. However, due to the 120-day limitation on legislative sessions, the rules related to prior notice and agendas may be suspended near the end of the session to ensure that committees are able to process and move bills to the Senate or Assembly floor for action in public. However, even if the rules are suspended, legislative committees continue to meet and take action only in public

NOTICE OF MEETINGS

In order to give the public an opportunity to observe or participate in meetings of state and local government entities, the law requires that notice must be given no less than three full working days prior to the meeting. Thus, if a meeting is to be held on a Wednesday, notice must be given no later than 9 a.m. on the preceding Friday. Notice is given by posting notice in at least four places, one of which should be the principal office of the public body, and by mailing copies of the notice to any person who requests notification of meetings.

Notice must include the time, location, and date of the meeting, and the agenda for the meeting. The agenda shall consist of a clear and complete statement of the topics scheduled to be considered at the meeting, including the designation of those items on which action may be taken. In addition, all meetings must provide an opportunity for public comment. If a meeting will be closed to consider the character, conduct, competence or health of a person, or if administrative action may be taken against a person during a meeting, the agenda must include the name of any such person. The public body must also provide, upon request and at no charge to the requestor, a copy of the agenda and any ordinances or regulations or other supporting materials to be discussed at the meeting. Special notice requirements apply in certain situations, such as a meeting to acquire property by eminent domain or a closed meeting to consider the character, alleged misconduct, professional competence, or the physical or mental health of a person.

Emergencies sometimes arise that necessitate either a meeting on less than three days' notice or the late addition of an agenda item to an already scheduled meeting. The statutes do not define "emergency" but the guidance provided by the Attorney General through the *OML Manual* limits emergencies to those situations where:

- The need to discuss or act on an item is truly unforeseen at the time the agenda was posted or the meeting was called; and

- The item is truly of such a nature as to require immediate action.

Although not required by law, the *OML Manual* recommends providing as much advance supplementary notice of emergency meetings or agenda additions as possible to the public and news media to comply with the spirit of the law.

MEETING RECORDS

For the members of the public who cannot attend a meeting, the OML requirements to maintain records of meetings provide an important substitute. Minutes must be prepared for all meetings of a public body and must include the: (1) date, time, and place of the meeting; (2) names of the members present and absent; and (3) substance of all matters proposed, discussed, or decided. Upon the request of a member, the minutes shall also include a record of the vote taken on a matter and any other information the member wishes to include. Similarly, at the request of a member of the public, the minutes shall include the substance of remarks made by the member of the public or a copy of prepared written remarks if submitted for inclusion.

Beginning October 1, 2005, public bodies must make either an audio recording of a meeting or provide a transcript prepared by a certified court reporter. However, if a public body makes a good faith effort to comply with these requirements but is prevented from doing so due to factors beyond its control, such as power outages or mechanical breakdowns, the failure will not be considered a violation of the OML. Recordings and transcripts must be preserved for at least one year and made available to the public.

PENALTIES FOR VIOLATION

The OML recommends corrective action for violations of the law to mitigate the effect of a violation. For example, improper notice can be corrected by rescheduling the meeting and discussion of an item not properly listed on the agenda can be stopped and noticed for a later meeting. The law states that actions taken in violation of the OML are void. Suits alleging violations may be brought by private citizens or the Attorney General. The Attorney General is also required to investigate complaints filed with his office alleging violations of the OML.

Any member of a public body who <u>knowingly</u> violates the open meeting statutes, or wrongfully excludes a person from a meeting, is subject to misdemeanor criminal sanctions (up to six months in jail and/or a fine of not more than $1,000). Finally, a member of a public body who is convicted of a violation of the OML must vacate their office.

WEB SITES AND CONTACTS

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Web site: http://www.ag.state.nv.us

FREQUENTLY ASKED QUESTION

Open Meeting Law

Q: Who can request an opinion from the Attorney General about the Open Meeting Law?

A: A member of the public who believes that the OML has been violated may file a complaint, subject to certain deadlines, with Nevada's Attorney General's Office. The Attorney General will investigate the complaint and provide the person with an opinion as to whether the OML was violated. However, Attorney General opinions are advisory, not binding, and only a court can determine whether or not a violation of the OML has occurred. If the Attorney General is of the opinion that a violation has occurred, he may file litigation against the public body to enforce the OML. In addition, a public body may ask the Attorney General for an advisory opinion relating to compliance with, or interpretation of, the OML.

Because the Legislature is not subject to the OML and because the Legislature has its own legal counsel, requests for legal opinions related to legislative compliance with the OML or with Senate or Assembly rules about open meetings, should be directed to the Legislative Counsel of the Legislative Counsel Bureau at (775) 684-6830.

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PUBLIC RECORDS

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

PUBLIC RECORDS

Throughout the country, lawmakers must strike the delicate balance between protecting access to government documents and restricting the availability of certain personal and sensitive information included in those documents. Recent concerns regarding homeland security and identity theft coupled with the public's "right to know" make this balance particularly difficult to achieve.

Nevada's Public Records Law—What is a Public Record?

Chapter 239 of *Nevada Revised Statutes* (NRS) governs the handling of public records for state and local governments in Nevada. The original public records law was created by the 1911 Nevada Legislature and for many years, the law simply stated that "all books and records of the state and county officers . . . shall be open at all times during office hours to inspection by any person, and the same may be fully copied." While the law stated that records were to be open and publicly accessible, no definition existed explaining precisely what constituted a public record. Indeed, since 1913, over two dozen Attorney General's Opinions have attempted to clarify the intent of the public records law, determine whether a particular document constitutes a public record, and define when a public record should be stored and preserved.

Years of legal opinions, court rulings, and interpretations finally led to some clarification of the law in the 1960s when the 1965 Legislature passed Assembly Bill 19 (Chapter 46, *Statutes of Nevada*), which provided that all public records are open except those "declared by law to be confidential." Even today, no broad definition of "public record" is provided in Chapter 239 of NRS. Therefore, provisions throughout NRS set forth a host of documents that are considered confidential. These range from documents at the Department of Motor Vehicles containing personal information, blood bank data, and certain work permit information, to data

contained in welfare assistance documents, well owner records, and some occupational licensing documents.

> ***The issues involved with public records are difficult ones. There are few areas of public policy that have as many competing interests. The government's need for information, the people's right to have access to that information, and the fundamental right to privacy must be delicately balanced.***
>
> ***Gene T. Porter, Former Assemblyman and Majority Floor Leader***
> ***April 1993***

Defining precisely what constitutes a public record has been a difficult debate for quite some time. Two interim studies—one during the 1981-1982 legislative interim and one during the 1991-1992 legislative interim—tackled this complex issue. Much of what was discussed during these interim studies (especially during the latter study) has shaped Chapter 239 of NRS in its current form. The current law stipulates that:

> ***All public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public.***

The law goes on to say that public records must be supplied in any format in which the record is "readily available." Also provided in the law are legal protections for requesters of public records who may be denied the inspection or copy of a record. In such cases, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it.

REPRODUCTION OF RECORDS AND ASSOCIATED FEES

Chapter 239 of NRS also sets forth requirements for the microfilming of records prior to their destruction and permits a governmental entity to charge a fee for copies of records, not exceeding the actual cost of the copy, unless a specific statute or regulation provides a different fee. In addition, the law requires the entity to prepare, maintain, and post a list of its fees or provide notice as to where a list of fees may be obtained. A governmental entity is also permitted to recover the cost of extraordinary use of personnel or resources related to a request for a copy of a public record.

In addition, Chapter 239 of NRS authorizes a fee, based upon reasonable costs, for the provision of information from a geographic information system. For transcripts of administrative proceedings, a governmental entity must charge the fee per page established by its contract with the court reporter and remit that fee to the court reporter.

RECORDS RETENTION AND DISPOSAL

In 1993, the Nevada Legislature created the Committee to Approve Schedules for the Retention and Disposition of Official State Records. Membership on this Committee includes the Secretary of State (who also serves as the chairman), the Attorney General, the Director of the Department of Administration, the Administrator of the Division of State Library and Archives, and the Director of the Department of Information Technology. The Committee is charged with reviewing and approving (or disapproving) the records retention and disposal schedules which must be developed by each state agency, board, and commission. Prior to 1993, the State Board of Examiners reviewed and approved records retention schedules. Such retention and disposal schedules apply to the following "official state records" as defined in NRS 239.080:

1. Papers, unpublished books, maps, and photographs;

2. Information stored on magnetic tape or computer, laser, or optical disc;

3. Materials which are capable of being read by a machine, including microforms and audio/visual materials; and

4. Materials which are made or received by a state agency and preserved by that agency or its successor as evidence of the organization, operation, policy, or any other activity of that agency or because of the information contained in that material.

Provisions also exist to protect documents that have historic or unique value as determined by the submitting state or local government agency and the Division of State Library and Archives. Chapter 239 of NRS further provides for both the preservation and disposal of judicial records as well as records in the custody of local governments. Local governments are further authorized in NRS to "establish a program for the management of records, including the adoption of schedules for the retention of records and procedures for microfilming." These procedures must be approved by the local governing body and comply with the applicable provisions in Chapter 239 of NRS. Local governments are also further permitted under NRS 239.123 to submit historical records to the Division for safekeeping. Finally, the law sets forth procedures for replicating and restoring important lost or destroyed public records and provides a category C felony for anyone found guilty of stealing, forging, defacing, falsifying, or obliterating a public record.

HOMELAND SECURITY AND PUBLIC RECORDS

Since the tragic attacks on September 11, 2001, legislators across the country have grappled with the growing need to limit public exposure to sensitive documents, while at the same time, protecting the public's right to know. Many Nevada lawmakers were immediately concerned that the amount and specificity of the information available under public records provisions could lead to a disruptive or disastrous attack on the state's infrastructure. In response to these and other concerns, the Nevada Legislature, along with over two dozen other states, passed laws limiting access to the most sensitive documents that could be used to plan and coordinate terrorist attacks. Specifically, Assembly Bill 441 of the 2003 Legislative Session (Chapter 402,

Statutes of Nevada) provides for the confidentiality of certain documents or records, including, among other things, drawings, maps, or plans of security systems and important public buildings and facilities.

Computerized and electronic records were also addressed in A.B. 441. Nevada law now stipulates that records and portions of records assembled by the Department of Information Technology that would, if in the wrong hands, create a substantial likelihood of threatening the safety of the general public are confidential and not subject to inspection by the general public. These records include: (1) information regarding the infrastructure and security of information systems, including access codes, passwords, and programs; (2) assessments and plans that relate to the vulnerability of an information system; and (3) results from security tests of information systems that may reveal specific vulnerabilities. The Director of the Department must maintain a list of each record that he has determined to be confidential. The list must be prepared and maintained so as to indicate the existence of a particular record without revealing its contents. At least once each biennium, the Director shall review the list of confidential documents to determine whether records should remain on the list, no longer be deemed confidential, or be considered obsolete. Provisions in A.B. 441 relating to the confidentiality of these records were set to expire in June 2007; however, Senate Bill 130 of the 2005 Legislative Session (Chapter 96, *Statutes of Nevada*) removed this expiration date.

PROTECTION OF PERSONAL INFORMATION IN GOVERNMENT RECORDS

In recent years, lawmakers have become increasingly concerned over the use and possible dissemination of personal information held by state and local governments. Particular focus has been given to the protection of Social Security numbers, addresses, telephone numbers, and electronic mail addresses. In the late 1990s, legislation was approved prohibiting some state government agencies from requiring the use of Social Security numbers on certain documents and forms, including identification cards, drivers' licenses, and voter registration applications.

Several measures approved during the 2005 Legislative Session set forth further protections and guidelines relating to the use and access of personal information. Specifically, A.B. 334 (Chapter 486, *Statutes of Nevada*) provides that if the Social Security number of a person is required on government documents filed after January 1, 2007, it must be kept confidential by the government agency except as necessary to carry out a specific law, for the administration of a public program, or for use on a grant application. The measure also requires government agencies, by 2017, to eliminate Social Security numbers in documents filed prior to 2007. Meanwhile, A.B. 31 (Chapter 304, *Statutes of Nevada*) prohibits, with some limited exceptions, the disclosure of names, addresses, telephone numbers, and other personal information collected by local governments in connection with the registration for a recreational or instructional activity, event, or facility. The bill also expressly prohibits a local government from requiring a Social Security number for such purposes.

Two other measures approved in 2005 addressed the confidentiality of information contained in local government records. Of particular concern to the law enforcement community was A.B. 142 (Chapter 384, *Statutes of Nevada*), which allows peace officers and judges to request a court order directing that their personal information contained in county assessor records be

made confidential. Finally, the release of personal information contained in government records is also covered in A.B. 188 (Chapter 307, *Statutes of Nevada*). The bill requires a government entity to maintain a secure database of electronic mail addresses and telephone numbers of persons who provide such information to the entity. Under this measure, the database is not considered a public record. However, the database may be disclosed in response to a court order or by the governmental entity upon a finding that such disclosure is necessary to protect the public safety or to assist in a criminal investigation. Moreover, an *individual* electronic mail address or telephone number may be disclosed under certain circumstances.

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ETHICS IN GOVERNMENT AND WHISTLE-BLOWER LAWS

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

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The issue of governmental ethics is complex and often controversial. Indeed, maintaining public trust in our process of representative democracy is vital to the success of our governing system. In a message to congress in April 1961, President John F. Kennedy said:

> The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.

Assuring the public's confidence in government requires elected officials and all who work in public service to place the public's interest over personal interests and exhibit the highest levels of ethical standards and behavior. Laws exist in all 50 states to clarify ethical matters such as personal financial disclosures, honoraria, conflicts of interest, gifts, and unwarranted privileges.

ETHICS IN GOVERNMENT

Nevada's Ethics in Government Law is set forth in *Nevada Revised Statutes* (NRS) 281.411 through NRS 281.581. These provisions were created by the Legislature in the mid-1970s to separate the roles of persons who are both public servants and private citizens and ensure that public officers and employees exercise their duties for the sole benefit of Nevada residents. These statutes also govern policies regarding personal financial disclosure, abstentions in voting by elected public officers, and the operations of Nevada's Commission on Ethics.

Code of Ethical Standards

In Nevada, public officers and public employees are governed by a "Code of Ethical Standards" that is intended to prevent abuse of public office by prohibiting situations in which conflicts of interest may arise.

Public Policy for Nevada's Ethics in Government Provisions (*NRS 281.421*)

1. It is hereby declared to be the public policy of this state that:

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

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

2. The Legislature finds that:

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

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

(c) Members of the Legislature serve as "citizen Legislators" who have other occupations and business interests. Each Legislator has particular philosophies and perspectives that are necessarily influenced by the life experiences of that Legislator, including, without limitation, professional, family and business experiences. Our system assumes that Legislators will contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. The law concerning ethics in government is not intended to require a member of the Legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.

<u>Gifts</u>

A public officer or employee shall not seek or accept any gift, service, favor, or employment which would improperly influence a reasonable person to depart from the faithful and impartial discharge of his public duties.

<u>Unwarranted privileges</u>

A public officer or employee shall not use his position in government to secure unwarranted privileges, preferences, exemptions, or advantages for himself, a family members, or for a business entity in which he has a significant interest.

<u>Contracting with government</u>

A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant interest. Certain exceptions apply to those public officers who operate as a "sole-source" provider of a particular service in the area served by the governing body. A member of a board, commission, or similar body who is engaged in a business regulated by that

board or commission may, in the ordinary course of his business, bid or enter into a contract with a governmental agency (other than the board) if the member has not taken part in developing the contract plans and he will not be personally involved in opening, considering, or accepting offers. Finally, certain public officers or employees may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding and the sources of supply are limited. The public officer or employee must not take part in developing the contract plans or specifications and he may not be personally involved in opening, considering, or accepting offers.

Private compensation for performing public duties

A public officer or employee shall not accept any salary, retainer, or other compensation from any private source for the performance of his duties as a public officer or employee.

Private use of confidential information

A public officer or employee who acquires, through his public duties, any information which by law or practice is not at the time available to the people generally, shall not use the information to further the pecuniary interests of himself or any other person or business entity.

Suppressing information for pecuniary interests

A public officer shall not suppress any governmental report or other document because it might tend to affect unfavorably on his pecuniary interests.

Misuse of government resources (non-legislator)

A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment, or other facility to benefit his personal or financial interest. However, a limited use of governmental property and equipment is permissible if: (1) a policy allowing that use in emergency situations has been established; (2) the use does not interfere with the performance of his duties; (3) the cost or value related to the use is nominal; and (4) the use does not create the appearance of impropriety. If a government agency incurs a cost as a result of a use specified above or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

Misuse of government resources (legislator)

A member of the Legislature shall not use governmental time, property, or equipment for a nongovernmental purpose or the private benefit of himself or another person. However, a limited use of state property and resources is permissible if: (1) the use does not interfere with the performance of his duties; (2) the cost or value related to the use is nominal; and (3) the use does not create the appearance of impropriety. Ethics laws do not prohibit legislators to use, for nongovernmental purposes, mailing lists, computer data, or other information lawfully obtained from a governmental agency if the lists, data, and information are also available to members of the general public. The use of telephones and other means of communication are permitted if there is not a special charge for that use. Furthermore, a member of the Legislature shall not require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except in rare situations where the employee's service is necessary for the legislator or employee to perform his duties or when the service has been established as

legislative policy. Finally, a legislator shall not attempt to benefit personally or financially through the influence of a subordinate or seek other employment or contracts through the use of his official position.

Honoraria

Nevada Revised Statutes 281.553 prohibits a public officer or employee from accepting or receiving an honorarium, which is defined as "the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or employee." Certain things are excluded from the definition of "honorarium," such as: (1) payment of the actual and necessary costs incurred by the public officer or his spouse or staff for transportation, meals, and lodging while away from residence; (2) compensation which would otherwise be earned in the normal course of the public officer's office or employment; (3) a fee for a speech that is related to the public officer's outside occupation; and (4) a fee for a speech or presentation delivered to an organization of legislatures, legislators, or other elected officials.

Financial Disclosure Statement

Most states require some form of personal financial disclosure for public officers. In Nevada, the Financial Disclosure Statement includes information regarding general income sources, debt, business ventures, real estate, and contributions of certain gifts. The following individuals must file Financial Disclosure Statements: (1) every candidate for public office who, if elected, is entitled to receive compensation of $6,000 or more annually for serving in the office in question; (2) every elected public officer; and (3) every appointed public officer who is entitled to receive compensation of $6,000 or more annually for serving in the office in question. In 2005, the Nevada Legislature approved legislation exempting any elected supervisor of a conservation district from the requirement to file a financial disclosure statement.

Failure to File a Financial Disclosure Statement	Civil Penalties*
1 to 10 days late	$25
11 to 20 days late	$50
21 to 30 days late	$100
31 to 45 days late	$250
45 or more days late (or not filed)	$2,000

*As amended by the 2003 Nevada Legislature.

Financial Disclosure Statements for elected public officers and candidates for public office must be filed with the Office of the Secretary of State. All other public officers must file the statement with the Commission on Ethics. Candidates for public office must file the statement no later than the tenth day after the last day to qualify for office (ten days after the close of

candidate filing). Meanwhile, elected public officers must file the statement on or before January 15 of each year of their term and appointed public officers must file within 30 days of their appointment and annually thereafter on or before January 15. Finally, elected and appointed public officers who leave office on a day other than the expiration of their term must file the statement within 60 days of leaving office.

What are the standards for disclosure and abstention by legislators and other public officers?

Abstention: In addition to the requirements of the "Code of Ethical Standards," a legislator or public officer is prohibited from voting upon or advocating the passage or failure of a matter if the legislator or public officer, in the "judgment of a reasonable person in his [the public officer's] situation," would be materially affected by:

- his acceptance of a gift or a loan;
- his pecuniary interest; or
- his commitment to a person who is a member of his household, a person related by blood (within the third degree of consanguinity), a person employed by him or a member of his household, a person with whom he has a substantial and continuing business relationship, or any other commitment or relationship that could be affected by his voting or advocating on a particular matter.

It should be noted that even if a legislator must abstain, he may provide factual information to colleagues as long as the legislator remains a provider of facts and does not engage in statements of advocacy regarding the matter.

Disclosure: Subsection 4 of NRS 281.501 provides that a legislator, public officer, or public employee:

> shall not approve, disapprove, vote, abstain from voting, or otherwise act up any matter:
> (a) Regarding which he has accepted a gift or loan;
> (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
> (c) In which he has a pecuniary interest,
> without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest."

A public officer must make such a disclosure at the time and each time the matter is considered unless the public officer, as member of the Legislature, has filed a written disclosure statement with the Director of the Legislative Counsel Bureau.

Opinions issued by the Commission on Ethics have stated that the burden is appropriately on the public officer to disclose private commitments and the effect those private commitments have on the decision-making process. The public officer should make a proper determination regarding abstention where a reasonable person's independence of judgment would be materially affected by those private commitments. It should be noted that NRS provides some minor exceptions and parameters to the abstention requirements for certain local policy-making boards.

False Statement in Campaigns and Impeding the Success of a Campaign

In 1997, the Legislature amended Nevada's campaign practices law to include provisions prohibiting a person from making a false statement of fact concerning a candidate or a ballot question and prohibiting a person from willfully impeding the success of a candidate's campaign or the passage or defeat of a ballot question. Nevada's Commission on Ethics was charged with accepting complaints and opinion requests relating to these provisions and authorized to impose a civil penalty of up to $5,000 for each violation. On March 26, 2005, the United States District Court in Las Vegas rendered a decision declaring these statutes, sometimes referred to as the "truth squad" provisions, unconstitutional. In response to this ruling, the 2005 Legislature approved Assembly Bill 499 (Chapter 469, *Statutes of Nevada*), which repeals these statutes in Nevada's campaign practices act and related provisions in Chapter 281 of the NRS. While these statutes were popular with some candidates who believed they were subject to negative political campaigning, others opined the provisions hampered free speech and the right to campaign freely.

Nevada's Commission on Ethics

Nevada's Commission on Ethics is responsible for the enforcement of the Code of Ethical Standards summarized above. The mission of the Commission on Ethics is "to enhance the faith and confidence that the people of the State of Nevada have in the integrity and impartiality of public officers and employees." The Commission enforces guidelines set forth by the Legislature to separate the roles of persons who are both public servants and private citizens, while at the same time, ensures that public officers and public employees retain the public trust by exercising their powers and duties for the sole benefit of the people of the state.

Established by the Nevada Legislature in 1975, the Commission on Ethics is an independent legislative-executive commission of State Government and serves in a "quasi-judicial" capacity. The Commission has a staff of four—an Executive Director, a Commission counsel, a Senior Investigator/Legal Analyst, and an Office Manager. The Attorney General may appoint a deputy to act in place of the Commission's counsel or employ outside legal counsel if the Commission counsel is unable to act on a particular matter. The Commission has eight members, four of whom are appointed by the Legislative Commission and four of whom are appointed by the Governor. Commission members serve four-year terms. Four main functions are performed by the Commission:

1. Interpreting and providing guidance to public officers and employees on Nevada's "Ethics in Government" laws;

2. Investigating and adjudicating third-party ethics complaints against public officers and employees for violating certain ethics provisions;

3. Educating public officers and employees regarding ethical provisions and prohibitions under Nevada law; and

4. Accepting financial disclosure statements of certain public officers.

Willful Violations of Ethics Laws

Until 2005, the Commission, upon finding a violation of ethics law, deliberated on the willfulness of an ethics violation. Assembly Bill 64 of the 2005 Legislative Session (Chapter 402, *Statutes of Nevada*) now requires a public officer or employee to establish by sufficient evidence that he or she satisfied all three of the following requirements to overcome the statutory presumption that his or her actions were willful:

1. The public officer or employee relied in good faith upon the advice of the legal counsel retained by the public body that the public officer represents or upon the manual published by Nevada's Commission on Ethics;

2. The public officer or employee was unable, through no fault of his or her own, to obtain an opinion from Nevada's Commission on Ethics before the action was taken; and

3. The public officer or employee took action that was not contrary to a prior published opinion issued by Nevada's Commission on Ethics.

Whistle-Blower Statutes

First enacted in 1991, the Nevada "whistle-blower" statutes originally provided protection only for State Government employees who report government waste or wrongdoing. Whistle-blower protection was expanded in 2001 to include local government employees. The Legislature has declared that the public policy of the state is to encourage state and local officers and employees to disclose improper governmental action and that the Legislature will protect the rights of persons making such disclosures.

Separate and apart from the whistle-blower statutes in Chapter 281 of NRS, other provisions of the law protect police officers who report improper governmental action. In addition, certain types of disclosures of wrongdoing are protected; for example, specific protection is provided for school personnel reporting testing irregularities, persons reporting violations of occupational health and safety laws, and persons filing complaints against long-term care facilities.

Nevada whistle-blower statutes define "improper governmental action" as actions taken in the performance of official duties, whether or not the action is within the scope of employment, that are:

- In violation of state law or regulation;

- For local government officers and employees, in violation of local ordinances;

- In abuse of authority;

- A substantial and specific danger to public health or safety; or

- A gross waste of money.

What is a Public Officer?

NRS 281.4365 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which is established by the Constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:

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

(b) The expenditure of public money; and

(c) The administration of laws and rules of the State, a county or a city.

2. "Public officer" does not include:

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

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

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

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

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

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

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

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

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

State or local officers or employees are prohibited from using their position to prevent disclosure of an improper government action by another officer or employee. Government officers or employees who report improper governmental action are protected from "reprisal or retaliatory action" by their employer for two years after the disclosure.

What types of conduct are considered retaliation or reprisal in Nevada?

Examples of conduct considered a reprisal or retaliatory action include:

- **refusal to assign meaningful work;**
- **issuance of reprimands or poor evaluations;**
- **demotions or reductions in pay;**
- **denial of promotions;**
- **suspension, transfer or dismissal; or**
- **conditions creating an adverse working environment.**

Officers or employees who believe that they have been subject to reprisal or retaliatory action within two years of a disclosure of improper government action must file a written appeal with either Nevada's Department of Personnel or the entity designated by the local ordinance, as applicable. State law requires local governments to adopt procedures for hearing appeals of local government officers and employees alleging reprisal or retaliatory action, subject to certain minimum state standards.

For state appeals, if the appeal is filed within ten days of the alleged reprisal or retaliatory action, a hearing is scheduled before a hearing officer to take evidence and testimony. If the hearing officer finds that the whistle-blower has been subjected to reprisal or retaliation, then the hearing officer may issue an order directing the person responsible for the reprisal to refrain from such action. The hearing officer shall also file a copy of his decision with the Governor or elected state person who supervises the person found responsible. Details of the appeal process for state officers and employees are spelled out in the *Nevada Administrative Code*.

Although not traditionally considered whistle-blower protection, any person who in good faith communicates information or a complaint to a legislator, officer, or employee of the federal or state government in Nevada, on a matter reasonably of concern to that entity, is protected from personal or civil liability by NRS 41.635 to 41.670.

WEB SITES AND CONTACTS

Ethics in Government
Commission on Ethics
Telephone: (775) 687-5469
Web site: http://ethics.nv.gov

Whistle-blower Law
Department of Personnel
Telephone: (775) 684-0141
Web site: http://dop.nv.gov/whistleblower.html

FREQUENTLY ASKED QUESTIONS

Ethics in Government

Q: How can I request an opinion concerning an ethics issue?
A: Legislators may contact either the Commission on Ethics or the Legal Division of the Legislative Counsel Bureau for assistance with ethics-related matters. Clarification on legislator conflicts of interest and abstentions are generally handled by the Legal Division. Other public officers are encouraged to contact the Commission on Ethics regarding alleged ethics violations. The Executive Director of the Commission on Ethics is also authorized to conduct training on Nevada's ethics laws for public agencies.

Q: Where can I get copies of ethics opinions?
A: Previously issued opinions of the Commission on Ethics can be found on the Commission's Web site, organized by number and also by the statutory provision the opinion is interpreting. There are also annotations to recent ethics opinions in the NRS following the pertinent sections.

Q: Who are the members of Nevada's commission on Ethics?

Governor Appointees	Legislature Appointees
Mark A. Hutchinson, Esq. (Vice Chair)	Caren Jenkins, Esq. (Chair)
Timothy Cashman	Randall V. Capurro
William Flangas, P.E.	George M. Keele, Esq.
Rick R. Hsu, Esq.	James Kosinski, Esq.

Q: Does Nevada have a "cooling off" period?
A: Yes. The *Nevada Constitution* sets forth a one-year cooling off period for legislators. Specifically, Article 4, Section 8, provides that:

> No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

A "cooling off" period for some former public officers and employees in certain agencies is set forth in NRS 281.236. A "cooling off" period limits a business or industry from hiring, for a specified period of time, a former public officer or employee of an agency which regulates that business or industry. The provision primarily affects former members of the Public Utilities Commission of Nevada, former members of the State Gaming Control Board, and any public officer or employer who seeks employment in a business for which the officer or employee: (1) formulated policy contained in state administrative regulations; (2) had control over an audit, decision, or investigation affecting the business; or (3) possesses knowledge of trade secrets of a direct business competitor.

Whistle-Blower Law

Q: What advice should I give to someone who has or may have a whistle-blower complaint?

A: If the person is a state employee, that person should be immediately directed to the Nevada's Department of Personnel for assistance in obtaining the correct forms and filing the complaint. Because state employees only have ten days after an act of reprisal or retaliation in which to file a complaint, any potential whistle-blower should be advised about the short deadline for filing a complaint and the need for prompt action. It may also be advisable to suggest that the employee consider consulting a private attorney or the Nevada State Employees' Association (NSEA) for assistance.

If the person is a local government employee, that person should immediately contact their human resources department for assistance with filing a complaint. Each local jurisdiction is required to adopt procedures for whistle-blower complaints and each local jurisdiction may have a different deadline and procedures. Again, it may also be advisable to suggest that the employee consider consulting a private attorney or a representative of the employee's collective bargaining unit for assistance.

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STATE AND LOCAL GOVERNMENT

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Nevada has the distinction of being the fastest growing state over the past decade with more than a 66 percent increase in population since 1990 and a current population of over 2 million. Although Nevada ranks 43rd in the nation in the density of population (20.4 persons per square mile), paradoxically it ranks 10th in the percentage of persons living in metropolitan areas and is one of the most urbanized states in the nation. One reason for the high level of urbanization is that 87 percent of Nevada is owned by the federal government and so most of the State's population is concentrated in its cities and towns. Clark County accounts for almost 75 percent of the State's entire population and Washoe County accounts for just under 20 percent, leaving less than 10 percent of the population in the remaining 15 counties.

Like the federal system, Nevada state government has three branches: executive, judicial, and legislative. The executive branch, primarily directed by the Governor, is responsible for carrying out the laws enacted by the Legislature and providing statewide services to the people of Nevada. In addition to state government, Nevada has a wide range of local forms of government that also provide services, some of which overlap state services. Nevada's 17 counties, along with over two dozen cities and towns, provide additional services and governance at the local level. Other forms of local government include school districts, general improvement districts, and local improvement districts.

EXECUTIVE BRANCH

The executive branch consists of elected offices created by the *Nevada Constitution*: Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, and Attorney General. The persons who hold these offices may also be referred to as constitutional officers.

Constitutional Officers

Constitutional officers are elected for four-year terms and their duties are set forth in the *Constitution* and statute. The duties of the constitutional officers can be summarized as follows:

- Governor—chief executive of the state.
- Lieutenant Governor—presides over the Nevada Senate and casts a vote in the case of tie, fills any vacancy during the term of the Governor, and chairs the Commissions on Tourism and Economic Development.
- Secretary of State—responsible for overseeing elections, commercial recordings, securities, and notaries.
- State Treasurer—oversees state treasury, sets investment policies for state funds, and administers the Unclaimed Property Division and the Millennium Scholarship Program along with the other college savings programs.
- State Controller—responsible for paying the state's debts, including state employees' salaries; maintains the official accounting records; and prepares the annual statement of the state's financial status and public debt.
- Attorney General—acts as the chief law enforcement officer, provides legal services to the state and state agencies, and defends or prosecutes litigation involving the state or state agencies.

The Governor, Secretary of State, and Attorney General sit on the State Board of Examiners whose duties include review of tort claims, independent contracts, leases, and requests for payments from specified state accounts.

GOVERNOR AND EXECUTIVE DEPARMENTS

As the head of the executive branch, the Governor oversees a number of statutorily created departments to carry out the laws. Many of the departments are further divided into divisions with specialized duties and expertise. The departments with directors appointed by the Governor are:

- Administration;
- Agriculture;
- Business and Industry;
- Conservation and Natural Resources;

- Corrections;
- Cultural Affairs;
- Employment, Training and Rehabilitation;
- Health and Human Services;
- Information Technology;
- Motor Vehicles;
- Personnel;
- Public Safety;
- Taxation; and
- Wildlife.

The Governor also appoints the director of the Offices of State Climatologist and Military and Veterans' Services. The director of the Department of Transportation is selected by the Board of Directors of the Department, of which the Governor is a member. In addition to these executive departments, the Governor also has appointing authority for ten agencies or commissions, as well as over 80 independent boards, commissions, councils and professional occupational licensing boards. The Directory of State and Local Governments on the Legislature's Web site contains a listing of these state entities.

Two state entities have separate elected boards. The State Board of Education consists of elected members and oversees the Department of Education and appoints the Superintendent of Public Instruction. The budget for the State Board and Department of Education is part of the *Executive Budget*. The Nevada System of Higher Education (NSHE) is governed by a 13-member elected Board of Regents that oversees the NSHE and appoints the Chancellor. Although the NSHE operates as part of the Executive Branch in many ways, it has a unique hybrid status due to a certain level of independence granted to the NSHE by the *Nevada Constitution*.

Many of the departments, boards, and commissions have authority to adopt regulations to carry out their duties. These regulations are codified and compiled in the *Nevada Administrative Code*. The process for review and adoption of regulations is controlled by the Nevada Administrative Procedures Act in Chapter 233B of the *Nevada Revised Statutes* (NRS).

The Governor plays a pivotal role in the legislative process. One of the Governor's most important duties is to prepare and present the two-year (biennial) *Executive Budget* to the Legislature for its consideration and action each session. The *Nevada Constitution* gives the Governor the power to veto a bill, but the Governor does not have line item veto powers. After

a veto by the Governor, the bill is returned to the Legislature for a possible vote to override the veto. If the Governor fails to sign or veto a bill within a certain number of days after delivery, the bill becomes law without his signature. Historically, very few bills are vetoed. The 2003 Session was the first session since 1975 in which no bills were vetoed. In 2005, the Governor vetoed three bills.

LOCAL GOVERNMENTS

Home Rule Limits

Home rule refers to the concept of local self-government and the powers granted to the citizens of a local area to structure, organize, and empower their local government. The *Constitution of the State of Nevada*, in Article 8, Section 8, states:

> ***The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; provided, however, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town. [Emphasis in original.]***

The *Constitution of the State of Nevada* requires the Legislature to establish a uniform system of county government (Article 4, Section 25); requires the Legislature to provide for the election of boards of county commissioners and to prescribe by law their duties and compensation (Article 4, Section 26); and gives the Legislature power to prescribe, among other things, the duties and compensation of certain county officers, including county clerks, recorders, auditors, sheriffs, district attorneys, and public administrators (Article 4, Section 32). However, there are no constitutional or statutory provisions in Nevada relating to home rule authority for county governments and so Nevada is considered a state without home rule for local governments. In other words, the county and city governments generally have only those powers that are granted to them by the Legislature.

Often debated is the effect of Dillon's Rule on Nevada's counties and other local governments. Without home rule, the general application of Dillon's Rule is to limit the powers of counties, cities, and towns. According to *Black's Law Dictionary*, Sixth Edition, Dillon's Rule is a rule from an 1868 Iowa case that is used in interpreting statutes delegating authority to local government. The rule states:

> ***[A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable.***

It should be noted that the effect of Dillon's Rule on specific fact situations is not always clear and is often a subject of debate. The lack of home rule in Nevada generates a significant amount of legislation each session as cities and counties seek to expand or clarify their powers.

COUNTY GOVERNMENTS

With the admission of Nevada as a state in 1861, the *Nevada Constitution* declared that existing counties, towns, and cities shall continue. However, the continued existence of the counties, including their boundaries, county seats, and powers, is within the control of the Legislature. The names, county seats, and boundaries of the 17 counties are set by statute. Counties may be abolished by an act of the Legislature, but such an act does not become effective until approved by a majority of the voters in the affected county. The creation of the county commissions, and provisions relating to ordinances, general and financial powers, regulatory powers, and other matters, are found in Chapter 244 of the NRS. Counties are granted the authority to levy taxes for the purposes prescribed by law and to the extent authorized by law.

Because laws cannot be written to apply to a particular county or group of counties, certain provisions of the NRS may apply only to certain subsets of counties based on the population of the county:

POPULATION RANGE	COUNTY	POPULATION (2000)
Over 400,000	Clark	1,375,765
Under 400,000 – Over 100,000	Washoe	339,486
Under 100,000 – Over 40,000	Carson City	52,457
	Douglas	41,259
	Elko	45,291
Under 40,000 – Over 10,000	Churchill	23,982
	Humboldt	16,106
	Lyon	34,501
	Nye	32,485
Under 10,000	Esmeralda	971
	Eureka	1,651
	Lander	5,794
	Lincoln	4,165
	Mineral	5,071
	Pershing	6,693
	Storey	3,399
	White Pine	9,181

CITIES AND TOWNS

Nevada law also provides for the creation of cities and towns. Cities can be incorporated by a special act (often called "charter cities") or incorporated by general law through the petition process as set forth in Chapter 266 of the NRS. There are 12 charter 229 cities: Boulder City, Caliente, Carlin, Carson City, Elko, Henderson, Las Vegas, North Las Vegas, Reno, Sparks, Wells, and Yerington. General law cities include: Ely, Fallon, Lovelock, Mesquite, West Wendover, and Winnemucca. Cities must have at least 1,000 residents to incorporate and a city will be automatically disincorporated if the population drops below 150.

The Legislature sets the structure and powers of city councils, and grants various powers as codified in Chapter 268 of the NRS. Cities are categorized for different purposes as follows:

Categories of Cities (NRS 266.055)	**Population**
I	50,000 or more
II	5,000 up to 49,999
III	4,999 or less

Nevada law also provides for the formation of two types of unincorporated towns: those with a town board form of government and those formed under the Unincorporated Town Government Law. In Clark and Washoe Counties, unincorporated towns may be formed only under the provisions of the Unincorporated Town Government Law. Other counties may choose to operate under either type.

The town board form of government allows the unincorporated town to be governed by an independent governing board whose powers are granted by state law rather than county ordinance. According to the Nevada League of Cities and Municipalities, only two unincorporated towns (Fernley and Round Mountain) have been formed under the provisions governing a town board form of government. Towns established under the Unincorporated Town Government Law, however, are governed by the board of county commissioners rather than by an independent town board. A town board is established to assist the county commission by acting as a liaison between the commissioners and the residents of the town.

LAND USE AND PLANNING

The Nevada model for planning and land use decisions assigns primary responsibility to the local jurisdictions, generally the counties. In NRS 321.640, the Legislature finds that unregulated growth and development will harm the public safety, health, comfort, and general welfare and that cities and counties have responsibilities for guiding development within their boundaries while coordinating with other planning processes. State participation is to be limited to coordinating information and data, acquiring and using federal lands and, if requested, providing assistance in areas of critical environmental concern and resolving inconsistencies between local plans.

Nevertheless, due to the lack of home rule for cities and counties, state law sets many of the parameters and requirements related to land use and zoning matters. Still, most of the substantive decision-making regarding development approvals and land use designations are made at the local level. Chapters 277 through 279B of the NRS set forth the general requirements for land use and planning by local governments and cover such topics as: (1) cooperative agreements among local and state governments, subdivisions, tentative and final maps, planning commissions, regional and master plans, variances, enforcement, planned development; (2) regional planning commissions, impact fees; (3) redevelopment; and (4) the rehabilitation of property and abandoned property in residential neighborhoods.

Regional Planning

In response to specific areas of concern and to facilitate coordination among local governments, the Legislature has authorized three major regional planning entities and set forth the required elements of the required regional plans in statute:

- The Southern Nevada Regional Planning Coalition (Coalition) within Clark County has a ten-member board consisting of representatives from Clark County and the Clark County School District, and the Cities of Boulder, Henderson, Las Vegas, and North Las Vegas. The Coalition was created in 1999 and its regional plan was approved by the Legislature in March 2001. In order to address the demands of continued urbanization, the comprehensive regional policy plan must include elements related to conservation, population, land use and development, transportation, public facilities and services, air quality, and strategies to promote the interspersion of new housing and businesses in established neighborhoods. Further, the Coalition must define a "project of regional significance" and is required to review local master or facility plans for conformance with regional plan policies not less than every five years. The local air pollution control agency and regional transportation commission are required to coordinate with the Coalition to achieve integrated long-range air quality planning. Regional plan requirements and other provisions governing the Coalition are set forth in Chapter 278 of the NRS.

  In conjunction with the creation of regional planning for Clark County, Section 2 of Senate Bill 191 (Chapter 481, *Statutes of Nevada 1999*) requires a person proposing to develop a project of significant impact within the Las Vegas urban growth zone, as defined in NRS 463.3094, to prepare an impact statement for the local government with authority over the project.

- Through a bi-state compact with California as ratified by the U.S. Congress, the Tahoe Regional Planning Agency (TRPA) has jurisdiction over the California and Nevada portions of the Tahoe Basin. The Tahoe Regional Planning Compact was first enacted in 1969 but the California and Nevada Legislatures, with the approval of Congress, agreed upon extensive amendments to the Compact in 1980. The TRPA has a 14-member appointed board, with 7 members from California and 7 members from Nevada. The Tahoe Regional Planning Compact is codified in NRS 277.200.

The Truckee Meadows Regional Planning Agency (TMRPA) within Washoe County has a ten-member governing board consisting of representatives from Washoe County and the Cities of Reno and Sparks. The TMRPA was created in 1989 and the regional plan requirements and other provisions are codified in Chapter 278 of the NRS. The regional plan, as adopted and updated by TMRPA, focuses on the coordination of local government planning as it relates to land use, infrastructure, resource management, and implementation strategies. After the 2002 update of the regional plan, litigation between the member entities of the TMRPA resulted in a settlement agreement and judicial oversight of the settlement. Key elements of the settlement include adjustments to spheres of influence and service areas, cooperative planning, and regional plan amendments.

OTHER FORMS OF LOCAL GOVERNMENT

In addition to counties, cities, and towns, there are other types of local government. The NRS authorizes the creation of general improvement districts, local improvement districts, and special districts. Upon creation by the county commission, these districts are governed by elected boards of trustees as set forth in statute depending upon the type of district. General improvement districts (also called GIDs) can be created by a resolution of the county commission or by a petition presented by an owner of property in the district. Services provided by GIDs may include utilities, water, sewer, sanitation, cemeteries, recreation facilities, television and radio, sidewalks, storm drainage, fire protection, and emergency medical services. Funding for GIDs can come from special assessments, connection and usage fees, and ad valorem taxes. Such districts also have borrowing powers and may issue revenue bonds and securities, in addition to other forms of financing.

Special districts can also be created by the county commission or by petition filed with the county commission. Special districts include GIDs as well as water and sanitation districts, swimming pool districts, municipal power districts, or any other quasi-municipal districts with the exception of local improvement districts. Local improvement districts are governed by Chapter 309 of the NRS and may be proposed by a majority of the owners of land to be benefited by the construction of power plants and distribution of electrical energy, sewer systems, or the acquisition or construction of water systems. School districts are also considered local governments in Nevada and the boundaries of the 17 school districts are the same as county boundaries. The size and election procedures for school boards are set in statute and are based, in part, upon the size of the county school district.

UNFUNDED MANDATES

Unfunded mandates are a continuing concern of Nevada's local governments. Just as the Federal Government imposes unfunded mandates on the states, the Legislature may require local governments to provide new services or to expand existing programs without identifying a source of funding. The Nevada Legislature enacted legislation relating to unfunded mandates in 1993 and 1999. Assembly Joint Resolution No. 8 (File No. 190) in 1993 urged Congress not to require the states to provide services or benefits unless it provides related funding. Senate Bill 381 (Chapter 419) in 1993 required that a source of revenue be authorized by statute

if the Legislature mandates a local government to take an action which requires additional funding, and this requirement is codified in NRS 354.599. However, the Legislature sometimes exempts bills from this statutory requirement. In 1999, the Legislature enacted S.B. 471 (Chapter 282) requiring a disclosure on the face of each legislative measure that contains an unfunded mandate placed upon a local government, as codified in NRS 218.2479.

STATE AND LOCAL EMPLOYEES

The executive branch of state government employs over 15,000 people and is one of the largest single employers in Nevada. The combined employment figure for state and local governments (full- and part-time employees) is over 100,000 persons. To provide health insurance and other benefits to state employees, the Legislature created the Public Employees' Benefits Program (PEBP). The PEBP is self-funded and governed by a nine-member board appointed by the Governor. Local governments may also elect to join PEBP and state and local retirees may elect to participate, subject to certain limitations. The state also provides retirement benefits for its employees in conjunction with local governments. Retirement benefits for state and local employees are provided by the Public Employees' Retirement System (PERS) and participation in PERS is mandatory for all state and local government employers and employees. The Governor appoints the seven members of the PERS Board that oversees the retirement system within the parameters set by the Legislature.

ADDITIONAL REFERENCES

WEB SITES AND CONTACTS

State of Nevada: http://www.nv.gov (includes links to all constitutional officers and state agency sites)

STATE GOVERNMENT	
Governor of the State of Nevada The Honorable Jim Gibbons 101 North Carson Street, Suite 1 Carson City, Nevada 89701 (775) 684-5670	Lieutenant Governor Brian K. Krolicki 101 North Carson Street, Suite 2 Carson City, Nevada 89701 (775) 684-5637
Secretary of State Ross Miller 101 North Carson Street, Suite 3 Carson City, Nevada 89701 (775) 684-5708	Treasurer Kate Marshall 101 North Carson Street, Suite 4 Carson City, Nevada 89701 (775) 684-5600
Controller Kim Wallin 101 North Carson Street, Suite 5 Carson City, Nevada 89701 (775) 684-5750	Attorney General Catherine Cortez Masto 100 North Carson Street Carson City, Nevada 89701 (775) 684-1100

LOCAL GOVERNMENT ASSOCIATIONS	
Nevada Association of Counties Jeff Fontaine, Executive Director 201 South Roop Street, Suite 101 Carson City, Nevada 89701 (775) 883-7863	Nevada League of Cities J. David Fraser, Executive Director 310 South Curry Street Carson City, Nevada 89703 (775) 882-2121
REGIONAL PLANNING ENTITIES	
Tahoe Regional Planning Agency John Singlaub, Executive Director 128 Market Street P.O. Box 5310 Stateline, Nevada 89449 (775) 588-4547	Southern Nevada Planning Coalition Edward Probyn James, Senior Regional Director P.O. Box 551741 Las Vegas, Nevada 89155 (702) 455-5520
Truckee Meadows Regional Planning Agency Rosanna Coombes, Interim Director One East First Street, Suite 900 Reno, Nevada 89501-1625 (775) 321-8390	

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REVENUE AND BUDGET

Policy and Program Report

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EXECUTIVE BUDGET

The major fiscal document used by legislators in Nevada is the *Executive Budget*, which is prepared by the Budget and Planning Division, Department of Administration. The *Executive Budget* contains actual appropriation and expenditure figures for past fiscal years, agency requests for the upcoming biennium, and the gubernatorial recommendations that endorse or modify agency budgetary requests. Included in the *Executive Budget* are program statements that preface the detailed fiscal information for the various departments, boards, commissions, and other agencies of the state. Starting in 1993, the budget segregated each account into base and current services level budgets, and all requested program enhancements were separately identified. In addition, quantitative indicators of each program's performance were added to the budget document in 1993. The *Executive Budget* is organized functionally, by agency, with summaries relating to personnel, operating expenses, travel, and requests for equipment.

The introductory materials located at the front of the budget document provide general interest data relating to the Nevada economy, taxation, revenue, personal income, population, and fiscal trends. This information is useful in understanding the factors involved in calculating budget projections, and it is also useful as a statistical reference on the State of Nevada.

FISCAL ANALYSIS DIVISION

The Fiscal Analysis Division of the Legislative Counsel Bureau provides the Legislature with the capability for independent review and analysis of budgetary and fiscal matters. It examines the *Executive Budget* and suggests possible changes, provides expenditure and revenue projections to aid the Senate Committee on Finance and the Assembly Committee on Ways and Means, and assists the Legislature in the interpretation of factual data related to the fiscal aspects of the operation of state and local government.

Other duties of the Fiscal Analysis Division are:

- Analyzing the past history and probable future trends of the State's financial position in order that a sound fiscal policy may be developed and maintained;

- Analyzing appropriations bills, revenue bills, and bills having a fiscal impact upon the operation of the government of the State of Nevada or its political subdivisions; and

- Compiling and disseminating budget and financial information on local governments within the State.

The Fiscal Analysis Division prepares a *Fiscal Report* each session, which summaries the financial status of the State and the Governor's budget recommendations for the next biennium. The report contains general information, including highlights of the various governmental functions, and focuses on changes and expansion of existing programs and recommended new programs.

After each legislative session, the Division prepares and publishes *The Appropriations Report*, which describes in detail the fiscal actions of the Legislature, all appropriation and authorization acts, and changes to the state tax and revenue structure. This report highlights legislative budget actions and serves as a valuable reference document.

ECONOMIC FORUM

The Economic Forum is a five-member committee from the private sector directed to provide a forecast of future State General Fund revenue by December 1 of even-numbered years (*Nevada Revised Statutes* 353.226 through 353.229). The Governor appoints three members to the forum, and the Majority Floor Leader of the Senate and the Speaker of the Assembly each appoint a member. The Forum is assisted in preparing the forecast by a seven-member Technical Advisory Committee made up of the State Budget Director, Senate and Assembly fiscal analysts, the State Demographer, the Director of Research for the Employment Security Division, the Vice Chancellor for Finance of the Nevada System of Higher Education (NSHE), and the chairman of the Committee on Local Government Finance.

The forecast prepared by the Economic Forum is based on the existing revenue structure and must be used by the agencies, the Governor, and the Legislature in recommending and approving the new budget. A second written report must be submitted by the Economic Forum to the Governor and the Legislature by May 1 of odd-numbered years that confirms or revises the projections contained in the December 1 forecast.

BUDGET CALENDAR

Budget preparation typically begins in the spring of an even-numbered year when the Budget Division issues instructions to Executive Branch agencies. Agency budgets must be submitted for review to the Budget Division and the Fiscal Analysis Division by September 1. On or before December 1, the Economic Forum must prepare a written report of its projections of

economic indicators and estimate of future State revenue and present the report to the Governor and the Legislature. This estimate of revenue must be used by the Budget Division in preparing a final version of the proposed budget, which must be submitted to the Legislature not later than 14 calendar days before the commencement of the regular Legislative Session. During Session, the Senate Committee on Finance and the Assembly Committee on Ways and Means hold hearings to consider budget requests. Often, these committees meet jointly to hear testimony concerning agency budgets. On or before May 1 during the Legislative Session, the Economic Forum must prepare a written report confirming or revising its earlier projections of economic indicators and estimate of future state revenue.

INTERIM FINANCE COMMITTEE

In 1969, the Legislature created the Interim Finance Committee to function between sessions and to administer a contingency fund. This fund was set up to provide monies for state agencies to address unforeseen needs or emergencies when the Legislature is not in session. The Interim Finance Committee also reviews state agency requests to accept certain gifts and grants, to modify legislatively approved budgets, and to reclassify state merit system positions in certain circumstances. The Interim Finance Committee is composed of the members of the Senate Committee on Finance and the Assembly Committee on Ways and Means who served during the preceding session.

STATE GENERAL FUND

The 2005 Legislature approved a State General Fund operating budget for the 2005-2007 biennium of approximately $5.8 billion. Chart 1 illustrates revenue sources and the relative share of the total each source represents. Together, Sales and Use Taxes and Gaming Taxes represent approximately 60 percent of the General Fund revenues. Chart 2 illustrates the use of the General Fund. Education (NSHE and K-12) receives approximately 54 percent of General Fund monies.

Chart 1: Sources of State General Fund Revenue (FY 2005-2007)

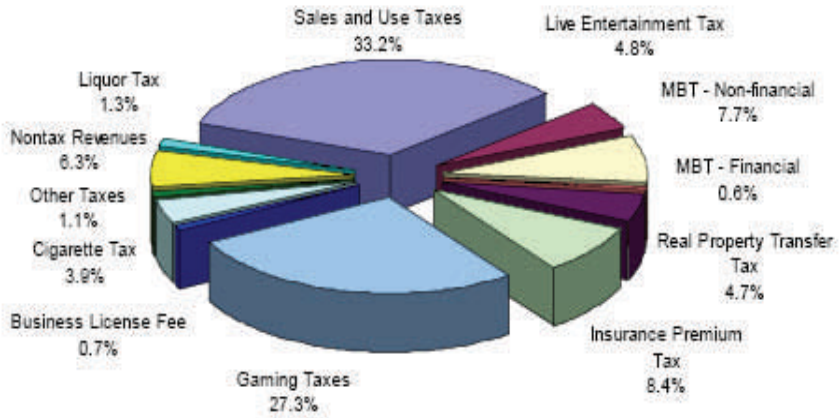
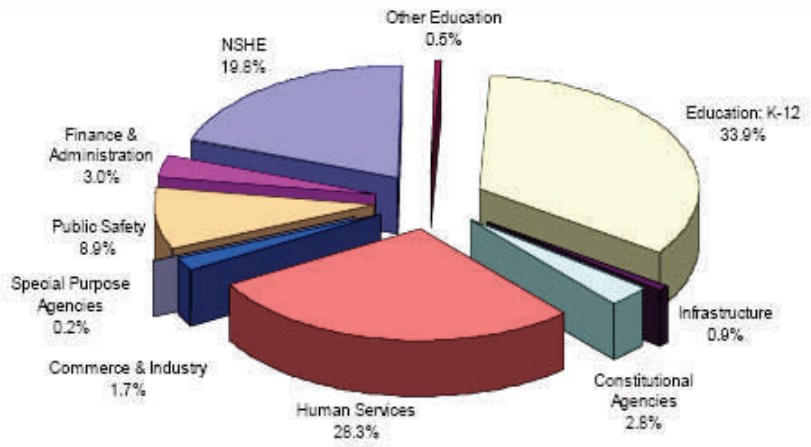


Chart 2: Uses of State General Fund Appropriations (FY 2005-2007)



BUDGET STABILIZATION FUND

In 1991, the Legislature created a "Fund to Stabilize the Operation of the State Government" (NRS 353.288). This fund—often referred to as the "rainy day fund"—is a source of money that can be used only if the total actual revenue of the State falls short by 5 percent or more of the total anticipated revenue for the biennium in which the appropriation is made, or if the Legislature and the Governor declare that a fiscal emergency exists. In 2003, the Legislature transferred $135 million from the rainy day fund to the State General Fund to cover shortfalls in anticipated revenue due to the downturn in the economy following the September 11, 2001, terrorist attacks that had an adverse effect on Nevada's tourist-based economy.

APPROPRIATIONS MEASURES

The General Appropriations Act is one of the most significant and comprehensive bills the Legislature passes during a Regular Session. This act establishes the biennial spending plan and makes appropriations from the State General Fund and the State Highway Fund for all State agencies and the NSHE. In addition, the Legislature enacts other appropriation bills, including a bill that establishes the maximum salaries for state employees in the unclassified service, a bill to fund the cost of conducting the legislative session, and bills to appropriate money to cover unanticipated shortfalls in budgets of various agencies and funds.

GLOSSARY OF TERMS

Appropriation
A legislative grant of money for a specific purpose.

Biennial
Occurring every two years; applied to the scheduled Regular Session of the Legislature.

Biennium
A two-year period beginning on July 1 of an odd-numbered year and ending on June 30 of the next odd-numbered year (e.g., July 1, 2005, through June 30, 2007).

Budget
Estimate of the receipts and expenditures needed to carry out programs for a fiscal period.

Fiscal Year
A period beginning on July 1 of a calendar year and ending on June 30 of the next calendar year (e.g., July 1, 2006, through June 30, 2007).

General Appropriations Act
An omnibus act appropriating funds for government departments or programs, from the State General Fund or State Highway Fund.

ADDITIONAL REFERENCES

Budget and Planning Division, Department of Administration:
http://www.budget.state.nv.us/

Fiscal Analysis Division, Legislative Counsel Bureau:
http://www.leg.state.nv.us/lcb/fiscal/index.cfm

Department of Taxation: http://tax.state.nv.us/

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PUBLIC EMPLOYEES' BENEFITS PROGRAM

Policy and Program Report

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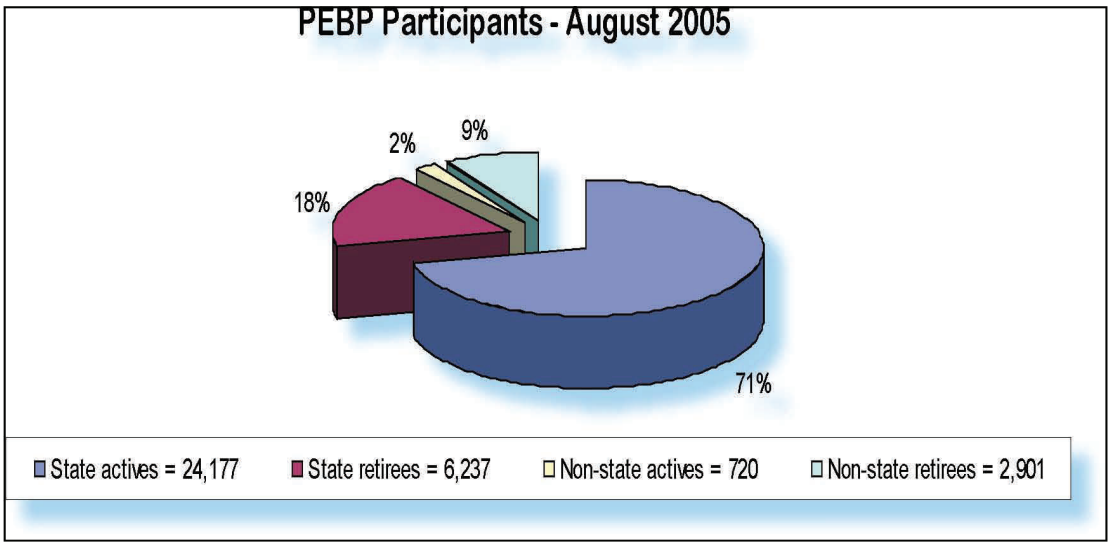
The State of Nevada, like most states, offers certain benefits for its employees. Along with retirement benefits, the State of Nevada also offers its employees various health benefits. Over time, the State's health insurance program, known as the Public Employees' Benefits Program (PEBP), has evolved into a self-funded program that is also open to local governments that wish to join. The Legislature oversees the program although it has an independent board with an executive director who handles the day-to-day operations.

PUBLIC EMPLOYEES' BENEFITS PROGRAM

The PEBP is a state agency that administers the health plan for State and other public employees. The PEBP is legislatively mandated to offer health, pharmacy, dental, and vision benefits, life insurance, accidental death and dismemberment insurance, and long-term disability insurance. The agency has the responsibility to ensure the long-term viability of the program. The first group insurance program was created in 1963 and restructured into the PEBP in 1999 by Senate Bill 544 (Chapter 573).

The program serves over 34,000 participants, including:

- State employees and their families;
- State retirees, their families, and survivors;
- State Senators and members of the Nevada State Assembly;
- Nevada System of Higher Education (NSHE) professional employees under annual contracts and their families;
- Non-state participating public agency (municipalities and special districts) employees and their families; and
- Non-state participating public agency retirees and certain Public Employees' Retirement System (PERS) retirees and their survivors.



A non-state active participant is a person who is currently employed by a local government that has opted to join PEBP pursuant to NRS 287.045. A non-state retiree is a retired public employee from a participating local government or a retired employee from a local government that does not participate in the PEBP who opted into the PEBP individually. Prior to 1969, only school districts with 25 or less employees were eligible to join the State health insurance plan. In the 1969 Legislative Session, the Legislature enacted a bill allowing all school districts, counties, municipal corporations, and political subdivisions to negotiate with the State's group insurance for inclusion. Prior to 1993, separate treatment of retirees and the division of rating pools were not addressed in the statutes. Senate Bill 278 in the 1993 Legislative Session (Chapter 304, *Statutes of Nevada*) allowed participation by those retirees who were employed by local governments that did not take part in the State's group insurance program. The 1993 legislation stated that the claims experience of non-state retirees could not be "commingled" with other groups when setting insurance rates. Then, in 2001, Assembly Bill 564 (Chapter 546, *Statutes of Nevada*) required the commingling of State active employees and State retirees for purposes of rate-setting. Due to large rate increases for non-state retirees, A.B. 286 (Chapter 493, *Statutes of Nevada*) in the 2003 Session dictated that non-state active employees and non-state retirees shall be commingled for purposes of rate-setting.

Currently, ten local governments and political subdivisions with active employees participate in PEBP including:

City of Caliente	**Odyssey Charter School**
Clark County Conservation District	**Round Hill GID**
Clark County Health District	**Town of Fernley**
Elko County Agricultural Association	**Washoe Conservation District**
Kingsbury GID	**White Pine County School District**

FUNDING

The operations of the PEBP are funded through legislative appropriation as part of the biennial budget process. Insurance plans within the PEBP are funded through contributions of program participants or their employers. State employee participants, for example, are subsidized by their respective State agencies for their health insurance coverage. For Fiscal Year (FY) 2006-2007, the average subsidy for an active State employee is $558.07. State agencies must build the cost of providing this subsidy to their active employees into their budgets. Meanwhile, State retirees are also subsidized by the State based on the number of years employed in State service. The average subsidy in FY 2006-2007 for a retired State employee is $346.52 which equates to 16 years of State service. Many non-state PEBP members receive a subsidy from their participating local government while they are actively employed. As required by A.B. 286 (2003), local government employees, with at least five years of service, who join PEBP upon retirement from the local government employer, now receive a subsidy from their local government employer proportionate to the subsidy paid by the State for State retirees.

PLAN OPTIONS AND RULES

Several insurance plan options are available for PEBP participants, including a self-funded preferred provider organization (PPO) and Health Maintenance Organizations (HMOs) in both southern and northern Nevada. The health insurance plans include vision and dental benefits, while life and disability insurance policies are made available for an additional premium. A majority of the PEBP members (74 percent) participate in the self-funded PPO network.

Over the past few years, there has been growing concern about the increased insurance premiums paid by PEBP participants. These rate increases have stemmed from a number of factors, but primarily are due to the rising costs of health care. The non-state retirees experienced large rate increases in 2003 due, in part, to the law requiring that the rates for this group be set separately from other groups and be based on the "full actuarial costs." However, A.B. 286 (2003) changed this requirement and now the claims histories of non-state actives and non-state retirees must be commingled for rate-setting.

Since 2003, rates have been more stable and some benefits, such as vision, have been restored.

In the 2005 Session, the Governor recommended, and the Legislature approved, additional funding ($3.1 million) to increase the subsidy for those categories of Medicare-eligible retirees whose premiums were substantially increased due to commingling. The additional funding is intended to fully offset the impact of commingling on the premium costs to those retirees. For FY 2006-2007, the Legislature appropriated $1.8 million to offset approximately one-half of the premium increases for certain Medicare-eligible retirees.

Although legislation was passed in 1999 permitting applications by groups of 300 or more public employees to "opt-out" of PEBP, subject to certain conditions, the PEBP Board has not yet granted any such applications.

During the 2003 Session, Assembly Concurrent Resolution No. 10 (File No. 91) created a subcommittee to study the issue of public employee benefits. The A.C.R. 10 Subcommittee held several hearings during the 2003-2004 interim and will hold additional hearings in the 2005-2006 interim prior to making its final report to the Legislature in 2007.

***NOTE: The PEBP Web site www.pebp.state.nv.us contains the 2005-2006 rates, plan benefits, and plan comparisons.*

ADDITIONAL RESOURCES

Public Employees' Benefits Program Web site: www.pebp.state.nv.us

CONTACT INFORMATION

PEBP: Executive Director, R. Forrest "Woody" Thorne (775) 684-7000

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PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

The State of Nevada, like most states, offers certain benefits for its employees. The Public Employees' Retirement System (PERS) provides retirement and disability benefits to state workers as well as other public employees. Participation in PERS is mandatory for public employees and provides retirement portability for persons in government service—an important incentive in attracting and retaining public employees. The Legislature oversees both programs although both have independent boards with executive directors who handle the day-to-day operations.

PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The PERS is a statewide entity that administers the retirement plans for state and other public employees. Originally established in 1947, PERS was substantially restructured in 1971 in response to a legislatively commissioned study. Based on recommendations from the 1971 study, PERS moved to full actuarial funding and the Nevada Constitution was amended to create a trust fund and independent board.

Article 9, Section 2 of the Nevada Constitution reads, in relevant part:

> 2. Any money paid [. . .] for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.
>
> 3. Any money paid for the purpose of funding and administering a public employees' retirement system must not be loaned to the state or invested to purchase any obligations of the state.
>
> 4. The public employees' retirement system must be governed by a public employees' retirement board. The board shall employ an executive officer who serves at the pleasure of the board. In addition to any other employees authorized by the board, the board shall employ an independent actuary. The board shall adopt actuarial assumptions based upon the recommendations made by the independent actuary it employs.

To provide legislative oversight, the Interim Retirement Committee was created in 1977. Renamed the Interim Retirement and Benefits Committee in 1999 by Senate Bill 544 (Chapter 573, *Statutes of Nevada*), the committee covers both PERS and the Public Employees' Benefits Program.

Declaration of State Policy for PERS: NRS 286.015

It is the policy of this state to provide, through PERS:

(1) a reasonable base income to qualified employees who have been employed by a public employer and whose earning capacity has been removed or has been substantially reduced by age or disability;

(2) An orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure, which is available to employees at retirement or upon becoming disabled; and

(3) A system which will make government employment attractive to qualified employees [...] and which will encourage these employees to remain in government service for such period of time as to give the public employer full benefit of the training and experience gained by these employees while employed by public employers.

Today PERS is run by a seven-member board in conformance with the *Nevada Constitution* and Chapter 286 of *Nevada Revised Statutes* (NRS), as well as applicable federal law, including Internal Revenue Service (IRS) regulations. The PERS provides a tax-qualified defined benefit plan for public employees in Nevada. The PERS is a consolidated system with two sub-funds (regular and Police and Firefighters' Retirement Fund) that are pooled for investment purposes. Assets total approximately $16 billion and PERS is 82 percent funded with total funding targeted for 2024.

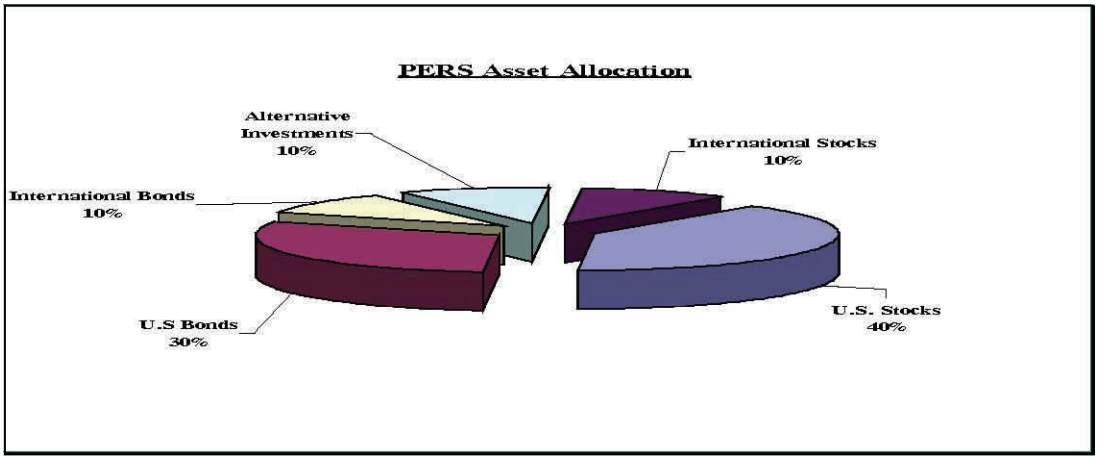
Investment Strategy

It is the investment objective of the PERS to:

- Generate 78.7 percent by producing a long-term total return from investments which exceeds the rate of inflation (Consumer Price Index) by 4.5 percent by capturing market returns within each asset class;

- Invest so the short-term volatility of returns will not cause the System to alter its long-term strategy; and

- Structure an investment program which is sufficiently uncomplicated to control the ability to consistently meet return and risk objectives for all participating public and non-public employees, retirees, and dependents in a cost-effective, fiscally responsible and actuarially sound manner ensuring long-term viability of the program



According to PERS, the fund has met its 8 percent actuarial funding goal. Further, it surpassed 93 percent of its peers over the past 20 years, on a risk-adjusted basis. In Fiscal Year 2004, PERS generated a positive 12 percent return, net of fees.

Membership

With roughly 159 public employers participating in the system, PERS serves over 90,200 active members and 28,700 benefit recipients, including:

- State employees;

- Police and firefighters;

- Non professional staff at the Nevada System of Higher Education (NSHE); and

- County, city, and school and other local district employees.

Separate retirement programs have been created for state legislators and state and local judges. The Board of Regents of the NSHE are required by statute (NRS 286.802) to provide a separate retirement and death benefits program for its professional staff.

PLAN FOR REGULAR MEMBERS

PERS Contributions

Depending upon their employer, public employees may have a choice of two contribution plans: employee/employer joint contributory plan or employer pay plan. The majority of employees are under the employer pay plan. For 2005, the contribution rate under the employee/employer plan is 10.50 percent from each, while the rate is 20.25 percent under the employer pay plan. These rates are adjusted biennially based on the preceding year's actuarial valuation. Employees who contribute under the employer/employee plan may withdraw their contributions upon termination from state service; thereby forfeiting any retirement benefits. Members are fully vested after five years of service and are then eligible to purchase up to five years of service credit. As provided in S.B. 122 (Chapter 268, *Statutes of Nevada 2005*) eligible members with active military service in operations Desert Storm, Enduring or Iraqi Freedom, may purchase up to three additional years of service credit depending upon the number of months served. The cost of a year of service credit is approximately one-third of annual pay.

PERS Benefits

Determination of benefits is calculated based on years of service, age at retirement, and compensation. First, a percentage is derived by multiplying the number of years of service times a multiplier (2.5 percent or 2.67 percent for service after July 1, 2001). This percentage is then applied to the average monthly compensation from the highest 36 consecutive months of earnings to determine the monthly benefit at retirement. For members who choose to retire early, the monthly benefit is reduced by 4 percent for each full year prior to regular retirement age. The retirement plan also offers survivor benefits and disability benefits to qualified persons. Retirees may choose one of seven benefit options and the option selected may change the monthly benefit amount.

Sample Calculation of Determination of Benefits
20 years x 2.5 percent = 50 percent 50 percent x $2000 (monthly salary) = $1000 (monthly benefit)

Plan for Police and Firefighters

The Police and Firefighters Retirement Fund was created in 1977 and has lower age eligibility requirements for retirement. Contribution rates are also different: 28.5 percent under the employer pay plan and 14.75 percent under the employer/ employee plan.

Legislative Retirement System

The Legislative Retirement System (LRS) was created in 1967 and, although overseen by PERS, is a separate retirement system. The LRS is 70 percent funded with full funding targeted for 2024. Legislators contribute 15 percent of their pay each session (approximately $1,170) and the employer contribution is determined actuarially. Legislators must serve at least ten years to vest in the system.

The LRS defined benefit is calculated by multiplying $25 by the years of service to determine the monthly benefit. For example, a legislator with ten years of service would receive a monthly retirement benefit of $250.

RETIREMENT AGE ELIGIBILITY

PERS and JRS

30 years ..... At any age
10 years .....Age 60
5 years.....Age 65

Police/Firefighters

25 years ..... At any age
20 years .....Age 50
10 years .....Age 55
5 years.....Age 65

LRS

10 years .....Age 60

NOTE: The PERS Web site (http://www.nvpers.org) offers several calculators that can be used to determine monthly benefits depending upon a number of variables, including age, years of service, and average compensation. The information on retirement benefits and calculations is for general information purposes only.

The LRS has survivor (but not disability) benefits. If a legislator leaves the Legislature before vesting, he or she is given the option of withdrawing their contributions.

Judicial Retirement System

Members of the Judicial Retirement System (JRS) include Supreme Court and District Court Judges. In 2001, the JRS replaced a prior judicial retirement plan and some judges are still members of either PERS or have vested under the prior judicial retirement program. The JRS plan and benefits are essentially the same as PERS; however, benefit calculations are made using a higher multiplier and contributions are made by the employer at an amount determined by the System's actuary to pay the normal costs of benefits. The JRS is 44 percent funded and should be fully funded in 2037. Senate Bill 328 (Chapter 312, *Statutes of Nevada 2005*) directs the Administrative Office of the Courts to conduct a study on judicial salaries and retirement contribution and to report to the Legislature before the 2007 Session.

Reemployment of Retirees

In 2001, legislation permitting the rehiring of retired employees, in positions designated as "critical labor shortages," without loss of retirement benefits was enacted. These statutes were originally set to sunset in June 2005. Senate Bill 458 (Chapter 382, *Statutes of Nevada 2005*) extends the sunset date to June 2007 and also extends the study of the impact on PERS of the reemployment of retirees.

ADDITIONAL RESOURCES

Public Employees' Retirement System Web site: http://www.nvpers.org

CONTACT INFORMATION

PERS: Executive Director, Dana Bilyeu (775) 687-4200

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HEALTH CARE AND HEALTH INSURANCE

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

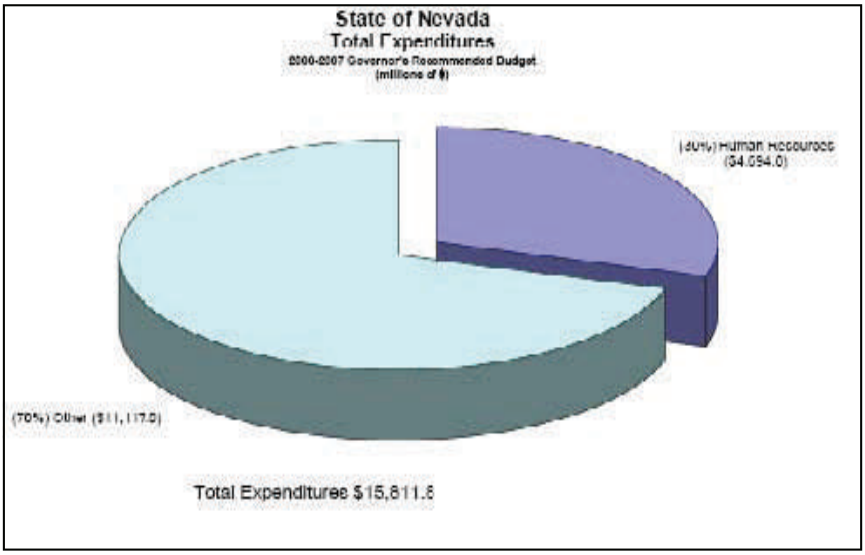
2006

The state's involvement in health care and health insurance issues is primarily through two agencies: the Department of Health and Human Services (DHHS) and the Division of Insurance in the Department of Business and Industry.

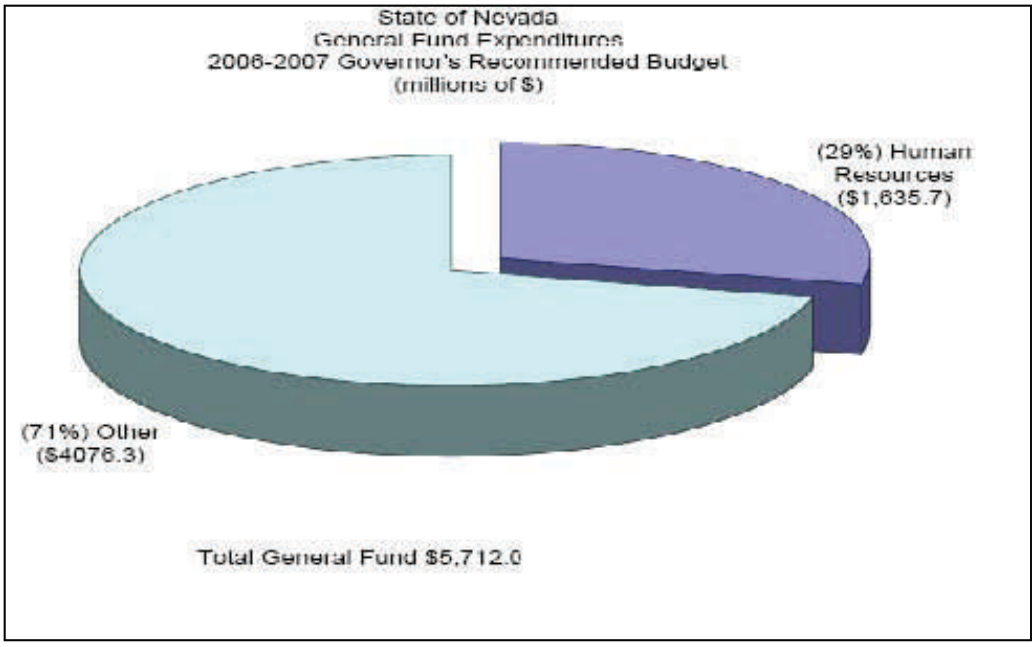
DEPARTMENT OF HEALTH AND HUMAN SERVICES

The DHHS "promotes the health and well-being of Nevadans through the delivery or facilitation of essential services to ensure families are strengthened, public health is protected, and individuals achieve their highest level of self-sufficiency."

The DHHS projected expenditures of approximately $4.7 billion for Fiscal Years (FY) 2006 and 2007, which is approximately 30 percent of the state budget. Projected General Fund expenditures were $5.7 billion with the expenditures for the DHHS projected at $1.6 billion, or 29 percent of the General Fund.



Source: January 26, 2005, presentation to the Legislative Commission's Budget Subcommittee.



Source: January 26, 2005, presentation to the Legislative Commission's Budget Subcommittee

The following major divisions and offices, with administrators and chiefs listed, are within the jurisdiction of the DHHS:

Aging Services Division
Carol Sala, Administrator

Division of Child and Family Services
Fernando Serrano, Administrator

Office of Disability Services
Todd Butterworth, Chief

Health Division
Alex Haartz, Administrator

Division of Health Care Financing and Policy
Charles Duarte, Administrator

Division of Mental Health and Developmental Services
Carlos Brandenburg, Administrator

Office of the State Public Defender
Steve G. McGuire, State Public Defender

Division of Welfare and Supportive Services
Nancy K. Ford, Administrator

In addition to these divisions and offices, the DHHS administers a variety of other programs and grants, including grants from the Fund for a Healthy Nevada, which is a fund established by the state's Master Settlement Agreement with the tobacco industry. The Fund must be used for tobacco cessation programs, improvements in health services for children and for persons with disabilities; prescription drugs and pharmaceutical services for senior citizens and for eligible persons with disabilities; certain dental and vision benefits for senior citizens to the extent revenues are available; and services to assist senior citizens with independent living. Information about Healthy Nevada programs and grants may be obtained from the DHHS's Web site at http://healthynevada.state.nv.us. Some grants are approved by members of the Task Force for the Fund for a Healthy Nevada. The Task Force consists of legislators, representatives of nonprofit organizations, and persons who have experience with and knowledge of matters relating to health care. More information about the Task Force membership and its meetings may be found on the Nevada Legislature's Web site at http://www.leg.state.nv.us/72nd/Interim/StatCom/HealthyNV.

Division of Insurance

The mission of the Division of Insurance, Department of Business and Industry, is to "protect the rights of Nevada consumers in dealing with the insurance industry and to ensure the financial solvency of insurers. In order to fulfill its mission, the Division will advance a sound regulatory environment that is responsive to the insurance needs in Nevada."

The following seven sections are available to assist consumers and insurers in conducting business in Nevada:

1. Captive Insurance;
2. Consumer Services;
3. Corporate and Financial;
4. Life and Health (including Health Insurance Portability and Accountability Act);
5. Producer Licensing;
6. Property and Casualty; and
7. Self-Insured Workers' Compensation.

MAJOR COVERAGE PROGRAMS

Medicaid

The Nevada Medicaid Program is administered by the Division of Health Care Financing and Policy, DHHS. The program makes health care services available to low-income persons who are aged, blind, or disabled and to women and children. Medicaid is the largest low-income

health care program in the State, and the program is financed through a combination of money from the State General Fund, local governments, and the Federal Government.

The Federal Government through the Centers for Medicare and Medicaid Services (CMS) provides matching funds, known as Federal Medical Assistance Percentage, or FMAP, to support state-administered Medicaid medical services. The average FMAP rates for the next fiscal biennium are projected at 55.5 percent for State Fiscal Year (SFY) 2006, and 54.26 percent for SFY 2007. The current average FMAP rate for SFY 2005 is 55.9 percent. In addition to the FMAP for medical services, there are different FMAP rates for other types of services: administrative services are funded by CMS at an FMAP rate of 50 percent; direct care services provided by skilled professional medical personnel employed by the State of Nevada receive an FMAP rate of 75 percent; information systems design, development, and implementation costs are reimbursed at an FMAP rate of 90 percent; and operations of a federally certified Medicaid Management Information System are funded at 75 percent. All of these FMAP rates are defined by federal regulation

Nevada Medicaid administers both fee-for-service and managed care programs. Mandatory Medicaid managed care requires certain persons who receive Medicaid to obtain their medical care from health maintenance organizations (HMOs) For the Division of Health Care Financing and Policy to require persons who receive Medicaid assistance to enroll in a managed care program, there must be at least two managed care companies in a region Both Clark and Washoe Counties require that medical services to Medicaid recipients be delivered via HMOs In the other areas of the State, because of a lack of managed care companies, health care providers are paid on a fee-for-service basis when they treat a patient who is enrolled in Medicaid

Medicaid services and the policies that govern these services can be found in the chapters of the Medicaid Services Manual, which may be reviewed on the Internet at http://dhcfp.state.nv.us. In addition, a brochure intended for use by the public, which contains an explanation of the Medicaid and Nevada Check-Up programs and information on where and how to apply, is available on the Internet at http://dhcfp.state.nv.us/pdf%20forms/Welcome%20Manual%202004.pdf.

Issues Concerning the Nevada Medicaid Program

Advocates for poor and low-income persons continually campaign for Medicaid expansions that would increase the number of people who are eligible for Medicaid or that would expand the types of services that are provided through the program. Expansion options include providing "presumptive eligibility" to certain persons, so they may receive immediate services while awaiting a formal determination of eligibility; easing asset and income requirements for senior citizens who need long-term care assistance; and having a "Medically Needy" Medicaid program rather than a "Categorically Eligible" Medicaid program.

In 2005, the Legislature passed legislation requiring the DHHS to apply for a Medicaid Health Insurance Flexibility and Accountability (HIFA) waiver to provide health care benefits through Medicaid for certain pregnant women and people with high medical expenses who are

otherwise ineligible for Medicaid, and to provide a $100 subsidy per month toward an insurance policy purchased by employees or spouses under certain circumstances. If the State's HIFA waiver application receives timely approval by the federal government, the DHHS may begin accepting applications for the new benefits as early as July 1, 2006.

In addition, the Legislature maintains its ongoing implementation and oversight of the state strategic plan under *Olmstead*, which is a federal case requiring states to ensure that persons who need long-term nursing care or assistance due to a disability are placed in the least restrictive environment feasible for their care.

Finally, in the transition to a new Medicaid Management Information System administered under contract with Nevada's fiscal intermediary for Medicaid, First Health Services Corporation, many health care providers who receive reimbursement from the Nevada Medicaid Program have experienced lengthy delays for payment. Although many problems contributing to these delays have been resolved, the Legislature continues to monitor this issue because some health care providers will no longer accept Medicaid patients due to the payment delays.

Medicare

Medicare is the nation's health insurance program for people 65 years of age or older, certain younger people with disabilities, and people with End-Stage Renal Disease, or ESRD, which is permanent kidney failure requiring dialysis or a transplant. Unlike the Medicaid program, Medicare eligibility is not based upon low income, nor does Medicare generally cover long-term care. The U.S. Social Security Administration is responsible for the application and eligibility processes, and the CMS also administers the Medicare program. Medicare is the country's largest health insurance program, providing coverage to approximately 42 million Americans and more than $250 billion annually in health care benefits in recent years. Federal expenditures for Medicare are anticipated to increase when the new "Medicare Part D" prescription drug benefit is implemented (see below).

A more in-depth description of the federal Medicare program, including the new Medicare Part D prescription drug component, is included in the "Senior Citizens Issue Brief."

Medicare Prescription Drug Improvement and Modernization Act of 2003

Although most Medicare changes do not directly affect states, adoption of the Medicare Prescription Drug Improvement and Modernization Act of 2003 will have an impact on states. If the new law is implemented as scheduled beginning January 2006, constituents over the age of 65 will have access to prescription drugs once they select one of the many discount options that are available. This new program is also known as "Medicare Part D." The Nevada Legislature enacted provisions in 2005 authorizing the DHHS to coordinate implementation of the Medicare Part D prescription drug benefit with State programs providing medical or pharmaceutical assistance to persons in Nevada. For example, a state like Nevada that developed a prescription drug program to assist seniors in purchasing prescription drugs will need to restructure its current program, called "Senior Rx," to accommodate the new Medicare

program. Additionally, there may be an impact on the Nevada Medicaid program because people who seek access to the new Medicare program may ultimately be eligible for certain services from Medicaid, which will increase Medicaid's caseloads.

Nevada Check-Up

The Nevada Check-Up Program is the state's children's health insurance program, or SCHIP, and it is the second largest health care delivery program administered by the Division of Health Care Financing and Policy. According to the Division, the mission of the Nevada Check-Up Program is "to provide low-cost, comprehensive health care coverage to low income, uninsured children (birth through 18) who are not covered by private insurance or Medicaid, while: (1) promoting health care coverage for children; (2) encouraging individual responsibility; and (3) working with public and private health care providers and community advocates for children."

This program also is jointly funded by federal and state funds and is overseen by the federal agency, CMS. The FMAP rate for SFY 2006 is 68.53 percent federal and 31.47 percent state. The rate for SFY 2007 is 67.98 percent federal and 32.02 percent state.

Medical care to children enrolled in Nevada Check-Up also is delivered by HMOs. Where there is insufficient HMO coverage, health care providers are paid on a fee-for-service basis.

A toll-free telephone number (1-800-360-6044) is available for families to determine their eligibility for the program. Additional details about the program are available on the Division's Web site at http://dhcfp.state.nv.us or on the Nevada Check-Up Web site at http://nevadacheckup.state.nv.us/.

Senior Prescription Drug Program

Senior Rx is funded with a portion of Nevada's share of tobacco settlement funds. The program is administered by the DHHS and was enacted during the 1999 Legislative Session. The program provides up to $5,000 in prescription drug benefits per year to eligible seniors. Currently, many of the most commonly prescribed drugs are available through Senior Rx for a co-payment of $10 per drug. The following table identifies the co-payment requirements of the program for a maximum 30-day supply of a drug dispensed by a retail pharmacy.

Amount	*Type of Drug*
$10	Generic
$25	Non generic preferred drugs
$25	Non preferred name brand drugs if authorized as medically necessary

Additionally, for prescription drugs that are not covered or not authorized as medically necessary, there is an opportunity for the senior to purchase that drug at a discounted rate. Further, enrollees who take certain drugs on a regular basis may experience savings by arranging for mail-order purchases of larger quantities of their medication.

Beginning in January 2006, benefit is implemented on schedule, many Senior Rx beneficiaries became eligible for coverage under the new Medicare program. The 2005 Legislature enacted provisions requiring the DHHS to integrate the implementation of Medicare Part D with State programs providing medical and prescription benefits. This process is anticipated to involve restructuring of the Senior Rx program.

More information about Senior Rx may be found on the DHHS's Web site at http://nevadaseniorrx.nv.gov; by calling 775-687-8711 from the Reno, Carson City, or Gardnerville areas; or by calling toll-free at 1-866-303-6323 if outside these areas

HEALTH INSURANCE ISSUES

Access to Health Insurance

The federal Medicare program is available for most persons over age 65 and for people with certain disabilities. In addition, Nevada has programs that provide health coverage to persons who are poor or low-income. However, people who work are often not eligible for this coverage because of their income, and they may find it difficult to buy health insurance due to the cost of individual coverage or group coverage through their employers.

In Nevada, approximately 20 percent of the population is without health insurance. Further, for approximately 83 percent of uninsured Nevadans under age 65, at least one person in the family works either full-time or part time, and 57 percent of uninsured Nevadans have family members who work full time all year long. While most Nevadans get their health insurance through some employment relationship, small employers are much less likely than large firms to offer health insurance to their workers, and lower-paid workers are less likely to have health insurance than higher-paid workers. Further, individual insurance in the private market is more expensive than comparable insurance in the group market. Small business owners want to offer health insurance to their employees, but they are often unable to find affordable group coverage for their employees, and individual coverage is costly.

In 2005, the Legislature addressed the issue of access to health insurance by enacting legislation requiring the DHHS to apply for a Medicaid HIFA waiver. If the Federal Government grants timely approval to this waiver application, provisions may be implemented as early as July 1, 2006, authorizing use of Medicaid funds for several additional purposes. One purpose is payment of a $100 subsidy per month toward a health insurance policy purchased by an eligible employee or spouse of an eligible employee. Eligibility criteria include having a household income of less than 200 percent of the federal poverty level and working for a business that employs between 2 and 50 people.

Regulation of Health Insurance

Division of Insurance

As noted in preceding text, the Division of Insurance regulates the business of health insurance in Nevada. The Division's Web site (http://doi.state.nv.us) has information for consumers as well as companies that do business in Nevada. The Life and Health Section link has a complaint form that consumers may use concerning health insurance companies. Additional information may be obtained from the Division by calling (775) 687-4270 in Carson City or (702) 486-4009 in Las Vegas.

The office also will assist Medicare consumers through its State Health Insurance Advisory Program, or SHIP, and it can provide assistance with certain aspects of supplemental insurance for Medicare

Office for Consumer Health Assistance

For assistance when a health insurance claim is denied or with other problems with a person's individual or group policy, questions may be directed to the Governor's Office for Consumer Health Assistance at 1-888-333-1597. This office acts as "a single point of contact for consumers and injured workers to assist them in understanding their rights and responsibilities under Nevada law and health care plans, including industrial insurance policies." The Office also will assist Medicaid consumers.

HMOs and "Medical Necessity"

On June 21, 2004, the U.S. Supreme Court unanimously ruled that a 1974 federal law, the Employee Retirement Income Security Act (ERISA), preempts lawsuits brought in state court by patients who seek damages from their HMOs over the denial of medical care. In its ruling, the Court said a law "that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore preempted."

The Supreme Court case resulted from two Texas lawsuits. In those cases, patients sued under a Texas law that allows patients to use state courts to challenge decisions of HMOs. The Court blocked such state lawsuits, ruling that the insurers are shielded from damage actions in state court under ERISA. However, patients may sue insurers in federal court, but only for the cost of the medical services they were denied, not for pain and suffering that may have resulted from the denial of coverage.

According to the National Conference of State Legislatures, Texas and nine other states had "right to sue" laws that were affected by the Supreme Court ruling, but Nevada is not among those states. Instead, Nevada enacted legislation in 2003 that provides for external review of certain determinations made by managed care organizations (MCOs) or HMOs. Assembly Bill 79 (Chapter 138, *Statutes of Nevada 2003*) allows an insured person to obtain an external review of a final adverse determination made by an MCO or an HMO. An adverse determination is

defined in the bill as a decision to deny a health care service on the basis that the service either is not medically necessary or appropriate or is experimental or investigational. A decision of an external review organization in favor of an insured person is final and binding.

HEALTH CARE SERVICES AND FACILITIES

Health Care Services

For the most part, people who have health insurance have access to high quality health care services. However, there is limited access to providers for persons who do not have health insurance. Without health insurance, access to specialist physicians is particularly limited.

Nevada consistently ranks at or near the bottom nationally on major indicators of health status for the State's population. In addition, the Great Basin Primary Care Association (GBPCA) reports that the health status of some groups falls far below the State mean. Some populations in Nevada have mortality and morbidity rates that are among the highest in the nation. Native Americans, immigrants, homeless people, uninsured individuals, and low-income families tend to have chronic and acute health problems worse than the norm. In addition, oral health and behavioral health problems are severe for the State's overall population, due in part to limited health care resources for underserved people.

Community health centers fill the void for many who do not have health insurance. Community health centers are local, non profit, community-owned health care providers that serve low-income and medically underserved communities. Community and tribal clinics in the state provide high-quality, affordable primary care and preventive services, and often provide on-site dental, pharmaceutical, and mental health and substance abuse services. Also known as Federally Qualified Health Centers, they are located in areas where care is needed but scarce.

More information about the State's community and tribal clinics may be obtained from GBPCA's Web site at http://www.gbpca.org. Additionally, information on all Nevada public health policymaking organizations and population-based health service providers, including their missions, duties, and jurisdictions, may be accessed on the Web site of the Nevada Public Health Foundation at www.nphf.org.

Major hospitals in Nevada are required to reduce or discount the total billed charge of a hospital stay by at least 30 percent for hospital services provided to an inpatient who:

1. Has no insurance or other contractual provision for the payment of the charge by a third party;

2. Is not eligible for coverage by a state or federal program of public assistance that would provide for the payment of the charge; and

3. Makes reasonable arrangements within 30 days after discharge to pay his hospital bill.

Reduction of Billed Charges for Major Hospitals

A major hospital or patient who disputes the reasonableness of arrangements made pursuant to Item No 3, above, may submit the dispute to the Bureau for Hospital Patients in the Office for Consumer Health Assistance for resolution. In addition, the 2005 Legislature enacted provisions requiring every hospital to provide written disclosure upon discharge to a patient or his legal representative regarding any discount the hospital must provide by law or provides voluntarily.

The Bureau may be contacted toll free at 1-888-333-1597, or at (702) 486-3587 in Las Vegas.

Health Care Facilities

Health care facilities such as hospitals and nursing homes are regulated in Nevada by the Bureau of Licensure and Certification (BLC) in the Health Division, DHHS. Additionally, entities such as assisted living facilities and group homes are regulated by the BLC. Complaints about the quality of care in these facilities may be directed to the BLC by calling the following numbers: in Carson City, (775) 687-4475; and in Las Vegas, (702) 486-6515.

The Aging Services Division of the DHHS is able to assist consumers in locating information about nursing homes. It also assists seniors with complaints about quality of care issues. The following table provides contact information for the Division. Consumers may obtain additional information about the Division's services at http://www.nvaging.net.

Carson City	**Telephone: (775) 687-4210**	**E-mail: dascc@aging state nv us**
Reno	**Telephone: (775) 688-2964**	**E-mail: dasreno@aging state nv us**
Elko	**Telephone: (775) 738-1966**	**E-mail: daselko@aging state nv us**
Las Vegas	**Telephone: (775) 486-3545**	**E-mail: dasvegas@aging state nv us**

Complaints about the quality of care provided by individual employees in the facilities may be directed to the employee's licensing board, particularly if the employee is a certified nurse assistant, nurse, physician, psychiatrist, or other licensed medical or mental health professional. For information on how to find contact information for these licensing boards, see the section on "Health Care Professionals – Disciplinary Action," below.

HEALTH CARE PROFESSIONALS

Health Care Professionals—Disciplinary Action

The Legislative Counsel Bureau maintains a list of disciplinary reports from the State's occupational and health care provider licensing boards on its Web site at http:// www.leg.state.nv.us/General/occupational/Reports.cfm. Relevant contact information for the boards is available in these reports.

Supply of Health Professionals

In 2003, when compared to all states in relation to the supply of health professionals per 100,000 population, Nevada ranked 47th in number of physicians, 43rdin number of nurses, and 50th in number of dentists. Nevada's rapid growth complicates the efforts to address these shortages of health professionals. The State has consistently led the nation in population growth in recent years, showing a 4.1 percent increase between 2003 and 2004, compared to a national average growth rate of 1 percent in that time period. A national shortage of nurses to work in hospitals and nursing homes, as well as shortages of specific specialists, further illustrate a need to develop a statewide system that allows policymakers to be proactive in determining the state's needs for health care professionals to provide care.

Immunity for Certain Health Care Professionals

In Nevada, certain health care professionals who gratuitously provide emergency care, including emergency obstetrical care, are immune from civil liability if they act in good faith and their actions did not amount to gross negligence. Additionally, in the 2002 Special Session, the Nevada Legislature enacted a law providing total immunity for physicians and dentists who gratuitously render care in a nonprofit or governmental facility in good faith and in a manner not amounting to gross negligence or reckless, willful, or wanton conduct. Further, Nevada law provides a $50,000 limit on liability for treatment of traumatic injuries for hospitals and physicians and dentists rendering care in hospitals. The limitation applies whether or not the care was rendered gratuitously or for a fee, but the limitation does not apply if there is gross negligence or reckless, willful, or wanton conduct.

Financial Assistance for OB-GYNs Practicing in Rural Areas

Nevada provides grants or assistance for physicians practicing in rural areas to subsidize medical malpractice insurance for providers of prenatal care in communities lacking such services. In Nevada, the grants are offered through the University of Nevada School of Medicine (UNSOM). According to the UNSOM, the total requests for grants under the Rural Obstetrical Access Program for malpractice coverage and related obstetrical expenses (such as uncompensated care, training, and education) have far exceeded the available funds. The table below illustrates a breakdown of the total amount funded and requested in prior fiscal years.

Fiscal Year	Total Requested	Total Funded
2005	$830,317	$141,000
2004	$2,173,786	$156,750
2003	$697,374	$146,495
2002	$924,770	$162,650
2001	$447,618	$129,500
2000	$392,445	$66,000

MEDICAL MALPRACTICE

In July 2002, the 18th Special Session of the Legislature addressed what many considered a crisis of affordability and availability of medical malpractice insurance. This problem was believed by some observers to be causing an exodus of insurance carriers and practitioners who could no longer afford coverage. Following the departure from Nevada of the St. Paul Company, which insured approximately 60 percent of Nevada's doctors, in September 2001, and the temporary closure of Nevada's only Level 1 Trauma Center in July 2002, Governor Kenny C Guinn called the 18th Special Session of the Legislature to address the potentially life-threatening lack of critical medical care. In the Special Session, the Legislature passed Assembly Bill 1 (Chapter 3, *Statutes of Nevada 2002, 18th Special Session*), which limits certain damages awarded in medical malpractice cases, streamlines the civil justice process to expedite such cases, and improves the disciplinary and oversight process for medical practitioners.

Reporting of Sentinel Events

Assembly Bill 1 also requires hospitals and certain other health care facilities to report sentinel events and provides for the tracking of aggregate trends. A sentinel event is defined as "an unexpected occurrence involving death or serious physical or psychological injury or the risk thereof, including, without limitation, any process variation for which a recurrence would carry a significant chance of a serious adverse outcome." Nevada's reporting system, which was implemented on January 1, 2005, will provide the first statewide data on adverse events such as medication errors, patient falls, and hospital-acquired infections. In addition, the 2005 Legislature enacted provisions requiring physicians to report any sentinel events arising from certain office-based surgical procedures.

Medical Malpractice Initiatives for the 2004 General Election

Some doctors felt A.B. 1 did not go far enough to limit malpractice verdicts and frivolous claims. These practitioners formed a group known as "Keep Our Doctors in Nevada" and collected enough signatures to place a more restrictive measure on the November 2004 ballot. The initiative, titled "State Question 3," which was passed by the voters at the 2004 General Election, amends the state's statutes to abolish exceptions to the $350,000 cap on pain and suffering judgments and place limits on attorney's fees. Additionally, the petition ensures that doctors will not have to pay an entire jury award if they are found only partially liable for the malpractice.

In addition, two initiatives affecting civil litigation and insurance rates were defeated by the voters at the 2004 General Election.

According to Nevada's Secretary of State's Office, the first initiative, titled "State Question 4," proposed to amend the *Nevada Constitution* to provide a mechanism to reduce rates for casualty insurance after December 1, 2006. If it had passed, the "Insurance Rate Reduction and Reform Act" also would have required public representation in insurance hearings and would have voided any statute in effect on December 1, 2006, that limited damages to a person injured by

medical malpractice unless the Insurance Commissioner determined that the limitation had reduced paid claims and provider premiums for medical malpractice by at least 10 percent.

"State Question 5," called the "Stop Frivolous Lawsuits and Protect Your Legal Rights Act," proposed to amend the *Nevada Constitution* to provide that lawyers who willfully initiated or defended frivolous litigation be held personally responsible for attorney's fees, court costs, and expenses of the aggrieved party. In addition, had the measure passed, everyone would have been entitled to full recovery for their harm and losses due to the negligent or willful acts of others, but any limitations on damages existing on January 1, 2004, and prior to the 2004 General Election, would not have been annulled, and the Legislature would have been prohibited from repealing or amending any of these damage limitations.

INTERNET AND ADDITIONAL RESOURCES

Governor's Office for Consumer Health Assistance
http://govcha.state.nv.us/
http://rxhelp4nv.org/
Telephone: 1 (888) 333-1597

Department of Health and Human Services
http://www.hr.state.nv.us/
Telephone: (775) 684-4000

Health Division
http://health2k.state.nv.us/
Telephone: (775) 684-4200

Aging Services Division
http://www.nvaging.net

Carson City	E-mail: dascc@aging.state.nv.us	Telephone: (775) 687-4210
Elko	E-mail: daselko@aging.state.nv.us	Telephone: (775) 738-1966
Las Vegas	E-mail: lasvegas@aging.state.nv.us	Telephone: (702) 486-3545
Reno	E-mail: dasreno@aging.state.nv.us	Telephone: (775) 688-2964

Division of Welfare and Supportive Services
http://welfare.state.nv.us/
Telephone: (775) 684-0500

Division of Welfare and Supportive Services Field Offices
http://welfare.state.nv.us/main/find_us.htm

Welfare Customer Service
Voice Response Telephone: 1 (800) 992-0900

Senior Rx
http://nevadaseniorrx.nv.gov
Telephone: 1 (800) 262-7726

Nevada Medicaid
http://dhcfp.state.nv.us/
Telephone: (775) 684-3676

Nevada Check up
http://www.nevadacheckup.state.nv.us/
Telephone: 1 (800) 360-6044

Division of Insurance, Department of Business and Industry
http://doi.state.nv.gov
Carson City Office Telephone: (775) 687-4270
Las Vegas Office Telephone: (702) 486-4009

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HUMAN SERVICES

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Human services in Nevada includes services provided to: meet the basic subsistence needs of those individuals and families who are unable to meet those needs on their own; provide the means for those who are able to become productive members of society; provide for their public health and welfare; or enhance the quality of life for all citizens of the State of Nevada. Nevada has been the fastest growing state in the United States for the last 18 years, increasing in total population from 1,201,833 in 1990 to 1,998,257 in 2000. It is estimated to reach 2,783,700 by 2010, an increase of 37 percent over the next decade. The two major age groups, which grew at a faster rate than the general population, are children, representing 25.6 percent of the total population, and senior adults at 11 percent of the total state population. In human service terms, the significance of these growth patterns cannot be ignored. Traditionally, children and seniors have represented the most vulnerable segments of society. The first line of defense in protecting those that are most vulnerable is achieved by developing and maintaining strong families. Strong families have parenting skills that promote children's optimal development; adequate nutrition; access to appropriate health care services; the absence of violence and alcohol and drug abuse; and opportunities that lead to employment that provides wages which enable the family to thrive. In Nevada, human services are established around the goal of supporting this effort. Approximately 27 percent of the state's budget is committed to human services. This brief provides an overview of economic assistance programs, child welfare services, mental health and developmental services, and substance abuse services in the State of Nevada.

ECONOMIC ASSISTANCE PROGRAMS

Described below are programs that provide economic support to eligible persons. The Division of Welfare and Supportive Services of the Department of Health and Human Services (DHHS) administers the Temporary Assistance for Needy Families (TANF)

program, while counties, private agencies, and tribes provide services under the terms of contracts signed with DHHS. Low-income persons may also be eligible for the Food Stamp Program or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Temporary Assistance to Needy Families replaced the Aid to Families with Dependent Children (AFDC) program. The TANF program is funded by State General Fund revenue, federal TANF block grant funds from the DHHS, and program revenue, which is primarily from child support collections assigned to the state by public assistance recipients. The TANF program offers time-limited cash assistance to families that meet certain financial and nonfinancial eligibility requirements. Nonfinancial eligibility requirements include all of the following:

- Being a custodial parent who is at least 18 years old;
- Being a U.S. citizen or qualifying immigrant;
- Residing within Nevada;
- Cooperating in efforts to establish paternity of a dependent child and in obtaining child support payments; and
- Not receiving federal Supplemental Security Income (SSI), state supplemental payments, or federal Social Security disability insurance payments.

The individual, his or her spouse or other eligible adults, and any dependent children and grandchildren who reside together must have a gross income at or below 185 percent of the federal poverty level. In addition, applicants must not have assets in excess of $2,000. In determining eligibility, certain items are not counted as assets; these include: one home and surrounding property; burial plot; personal possessions such as clothes, jewelry, furnishings, household goods or pets, resources or income of an SSI recipient. However, these are some of the items counted as assets: checking and savings accounts, Individual Retirement Accounts, certificates of deposit, stocks and bonds, recreational vehicles, and property other than that listed above. All trust funds are referred to the Office of the Attorney General for a ruling on the type and availability of the funds to determine how they should be attributed for eligibility purposes.

Federal law allows a five-year lifetime limit to receive TANF cash assistance. In Nevada, recipients may receive 24 months of assistance after which they must remain off for 12 consecutive months, unless they meet hardship criteria. Receipt of benefits may continue within these time limits until the lifetime limit of five years is reached. The five-year lifetime limit does not apply to food stamps or medical coverage.

The TANF application is also a Medicaid application; Medicaid eligibility is determined in conjunction with TANF and a decision on the application is made within 45 days. Under certain circumstances, a family may be eligible for Medicaid but not eligible for cash assistance through TANF.

Program success is measured by the number of households which leave the TANF cash assistance program due to employment. In Fiscal Year (FY) 2003, the average number of recipients receiving cash benefits each month was 31,034; another 58,692 received medical assistance only. The total cash grant expenditure for TANF in FY 2003 was $16 million with an average monthly grant of $124.91 per recipient. The average TANF grant household size was three people.

Federal law requires that all participants in TANF complete a minimum of 30 hours of countable work activity or risk losing eligibility for assistance. Countable work activities include such things as unsubsidized employment, community work experience, on-the-job training, and vocational counseling and education. In certain circumstances other types of counseling and rehabilitation services required to make the person employable may be counted toward the required time.

To fulfill this requirement, the Division of Welfare and Supportive Services provides education and training to individuals via the New Employees of Nevada (NEON) program, the Food Stamp Employment and Training program, and the Welfare-to-Work (WtW) program. Certain clients are further assisted through other social services to facilitate self-sufficiency.

NEON

This program provides TANF recipients with a means to acquire basic and vocational skills and overcome barriers to achieve economic independence through employment. With few exceptions, a TANF applicant begins participation in the NEON program at the same time their eligibility is determined. A TANF applicant is assessed to determine employability and what services are necessary (i.e., child care, transportation, work clothing, et cetera) to facilitate a rapid transition into the work force. For those TANF applicants unsuccessful in obtaining employment or determined to be unprepared to enter the work force, services are provided to enhance their future success. As a TANF participant, further assessment and/or evaluation occurs to determine vocational abilities and interests. Recipients are screened to determine if personal issues such as domestic violence, parenting, substance abuse, et cetera, are inhibiting a successful transition to productive employment. After completing the assessment, the participant enters into a Personal Responsibility Plan with the Division of Welfare and Supportive Services. The Personal Responsibility Plan specifies the services the participant will receive from the agency and identifies what the participant must do to achieve certain goals. The period of time to fulfill the expectations of the contract is limited to 24 months with few exceptions. Services are determined based on the individual's needs and can range from short-term classroom training to placements in public or nonprofit settings where job skills are gained through practical experience.

The NEON program receives funding through the TANF Block Grant and State General Fund. Funding to provide child care services to NEON participants is obtained from the Child Care Development Fund. During FY 1999, the NEON program expended $1,502,803 assisting 12,224 program participants. In FY 1999, 4,514 NEON participants began employment at an average wage of $6.71 per hour. A monthly average of 81 percent of the NEON mandatory population participated in NEON program activities in FY 1999.

Food Stamp Employment and Training Program

Nevada operates a Food Stamp Employment and Training (FSE&T) program statewide to provide employment, education, training, and support services to food stamp recipients required to participate in a work activity as a condition of eligibility for food coupons. Each mandatory participant is invited to attend an orientation workshop. After a group orientation is completed, an individual assessment is performed to determine the appropriate FSE&T activity for the individual (i.e., job search, job readiness, or workfare). Support services such as transportation, child care reimbursement, and money for work-related costs are available to participants. Food stamp eligibility is approved or denied within 30 days of application for benefits. At approval, the eligibility worker determines each household member's FSE&T participation status. Persons who are elderly, disabled, employed at least 30 hours per week, or temporarily laid off from a job are exempt from the requirement to participate in a work activity.

Welfare-to-Work

The WtW formula grant funds provide employment-related services for the hardest to employ recipients and associated noncustodial parents. All services are based on a "work first" philosophy, which helps the TANF recipient and noncustodial parent to receive employment-focused services leading to economic self-sufficiency. The WtW funding passes through the Division of Welfare and Supportive Services to the two Private Industry Councils (PICs) located in Nevada. With assistance from the Division, the PICs determine services which will be contracted for the hardest to employ.

Eligibility is determined by the Division of Welfare and Supportive Services and program monitoring is conducted by the State Job Training Office of the Department of Employment, Training and Rehabilitation. Program oversight and fiscal monitoring for WtW services is the Division of Welfare and Supportive Services' responsibility.

Social Service Programs

The Division of Welfare and Supportive Services social workers address the challenges faced while working with the hardest to employ participants. These families experience a multitude of barriers and issues that prevent them from becoming self-sufficient. Some issues addressed by social workers serving the hardest to employ participant families are domestic violence, substance abuse, mental health, health, and/or caring for children with severe medical or emotional problems.

Child Care Assistance

The Child Care Development Fund assists employed low-income Nevadans with their child care needs so they can leave the welfare system or avoid becoming dependent upon it for further assistance. The program is funded with federal Child Care Development Block Grant funds and State General Fund revenue. Nevada's child care program has grown from an $18 million program in State Fiscal Year (SFY) 1998 to a $34 million program in SFY 2004. The program targets those families with incomes at or below 185 percent of the TANF need

standard. However, the program may provide child care subsidies to families with up to 200 percent of the TANF need standard.

Food Stamps

The Division of Welfare and Supportive Services contracts with two nonprofit agencies that manage the child care program. In northern Nevada the Children's Cabinet and in southern Nevada the Economic Opportunity Board outstation staff in Division of Welfare and Supportive Services field offices throughout the state to provide resource and referral services as well as child care subsidy services to welfare clientele in need of those services to become self-sufficient.

The purpose of the Food Stamp Program is to raise the nutritional level among low-income households whose limited food purchasing power contributes to hunger and malnutrition among members of these households. Food Stamps is a federal entitlement program; however, effective November 22, 1996, some individuals aged 18 through 49 may be classified as Able-bodied Adults Without Dependents and limited to receiving food coupons for three months in a 36-month period if they are not meeting certain work requirements. The food coupons are entirely federally funded. However, administrative costs for the Food Stamp Program are covered with 50 percent federal funding and a 50 percent state match.

Applications for Food Stamps are generally processed within 30 days of application; however, a household which has less than $100 in income and/or $150 in resources, or has shelter expenses which exceed its income, may be entitled to expedited service. If eligible for expedited services, food coupons are made available no later than the seventh day, which includes the date of application.

The Nevada Food Stamp Program utilizes the Electronic Benefits Transfer (EBT) system. The EBT is an electronic system that allows a recipient to authorize transfer of their government Food Stamp benefits from their EBT account (a bank account Welfare sets up for each Food Stamp household) to a food retailer's account to pay for products received. The EBT accounts are accessed by the use of an EBT card (similar to a debit or credit card) and a personal identification number. Each time the card is used, the benefit account balance is reduced by the amount of the purchase. Food Stamp recipients in Nevada have received their Food Stamp benefits via EBT since July 1, 2002.

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federally funded short-term nutrition program operated by the Health Division of the Department of Health and Human Services. Its purpose is to improve the health of Nevada women, infants, and children who are eligible for the program by providing supplemental nutritious foods, nutrition education, and other health and social services.

To be eligible to participate in the WIC Program, applicants must meet the following requirements:

- Reside in Nevada;

- Be a pregnant or recently pregnant woman, infant, or child up to age five;
- Have a moderately low income; and
- Be determined to have a nutritional risk.

Women, Infants, and Children

The income guidelines for WIC are noticeably higher than for other welfare programs. Many families with employed members can qualify for WIC that would not qualify for other welfare programs. For example, an average family of three could have an annual income up to $28,990 and remain eligible. A nutritional risk is evaluated at the clinic and includes any problem, medical or dietary, which is caused by or is associated with a person's diet. Some examples are poor growth in a child, poor eating habits, and tooth decay.

CHILD WELFARE SERVICES

The Division of Child and Family Services (DCFS) within the Department of Health and Human Services has a three-fold mission: (1) protection and permanency for children; (2) preservation of families; and (3) the unifying of communities. The DCFS is responsible for children's mental health (in the State's two largest populated counties), youth corrections, and child welfare services. Nevada's system of child welfare has undergone major changes over the last five years. Previously, Nevada operated under a bifurcated child welfare system where counties with populations of 100,000 (Clark and Washoe Counties) provided child protective services and the DCFS provided child welfare services. Currently, Clark and Washoe Counties are in the final phase of merging the child protective and child welfare services.

Child protective services included:

- Preventative services;
- Investigations of abuse and neglect;
- Family assessments;
- Emergency shelter care and/or short-term foster care; and
- In-home services.

Child welfare services included:

- Placement services (family foster care, higher levels including group and residential care);
- Case management for foster care and adoptions;

- Independent living;
- Family preservation; and
- Family foster home recruitment, training, and licensing.

In 1999, a legislatively supported pilot project was conducted in Washoe County between the Washoe County Department of Social Services (WCDSS) and the DCFS to integrate services. It was recognized that the bifurcated system caused children to remain in the system for a longer period of time due to additional legal actions, multiple case managers, changes in foster homes, and service providers. Evaluation results of this two-year pilot demonstrated less duplication of efforts and more comprehensive and consistent services to children and families. Assembly Bill 1 (Chapter 1, *Statutes of Nevada 2001, 17th Special Session*), as passed by the 2001 Nevada Special Legislative Session, redefined "child welfare services" to include protective services, foster care services, and services related to adoption. The measure authorized the transfer of child welfare services from the Division of Child and Family Services to a county whose population is 100,000 or more. The legislation also acknowledged the State and counties shared fiscal responsibility to cover the costs of providing child welfare services.

In Washoe County, transition of the programs occurred in two phases which started in April 2002 and were completed in January 2003. Washoe County now provides the full range of child welfare services and is maximizing appropriate federal funding sources such as TANF, Medicaid, and Title IV-E. In Clark County, the transition of programs is scheduled to occur in three phases. The first phas occurred in October 2003 with the transfer of ten DCFS full-time employees to Clark County to provide Family Preservation Services, and the second phase in April 2004 resulted in the transfer of 42 full-time DCFS employees to Clark County to provide Licensing and Recruitment, Adoption, Interstate Compact on the Placement of Children, and Children Resources Bureau services. The third and final phase occurred in October 2004 when the remaining 101.51 full-time DCFS employees transferred to Clark County to provide Case Management and Eligibility services.

Chapter 432B of *Nevada Revised Statutes* (NRS) ("Protection of Children from Abuse and Neglect") sets forth the court procedures involved when a child is removed from the home.

These procedures include the following:

- Protective custody hearings;
- Petitions from the protective services agencies alleging a child is in need of protection;
- Appointment of a guardian ad litem;
- Adjudicatory hearing on the need of protection for the child and disposition;
- The court's determination of custody of a child;

- Semiannual review by the court; and

- Permanency hearings.

Foster Care

Foster (substitute) care is a family-focused service that provides for the temporary care of children in need of protection. Foster care aims to support children while their parents are preparing to once again be able to care for their children who are temporarily placed out of the home due to neglect and/or abuse. Services are provided to strengthen the family unit so that reunification is possible. When reunification is not possible, permanent placements are sought for children. These placements include adoption, emancipation, independent living, guardianship, relative placement, or long-term foster care. The Independent Living Program serves all youth in foster care from the ages of 16 to 21. This program helps to prepare youth for the transition from foster care to self-sufficiency as young adults living on their own. The Independent Living Program provides training materials and life skills classes.

The rules governing the determination of a child's need for protection or removal from his or her home are set forth as circumstances in NRS 432B.330. These circumstances calling for the removal of a child from his home include but are not limited to, the child having been abandoned by a person responsible for his welfare, or the child having been subjected to abuse or neglect by a person responsible for his welfare.

Placement of a child into a foster home (family foster home or group foster home) typically is made by a court order. Pursuant to subsection 1 of NRS 432B.410, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection. The agency that provides child welfare services related to the case is required to assist the court during all stages of any proceeding. The court can become involved in one of two ways:

1. Child welfare services determine a child to be in immediate danger and the agency takes direct custody of the child. Within 72 hours a protective custody hearing is held for the child. If the court upholds the original determination of abuse, the agency is given ten days to file a petition for legal custody of the child; or

2. Child welfare services find a determination of abuse, yet the child is not in immediate danger. The agency may need a court oversight to compel the parents to comply with the case plan. The child welfare service can then file for legal custody of the child if this is deemed necessary.

A foster home is licensed by DCFS or, in counties whose population is 100,000 or more, the agency which provides child welfare services. A foster family home is licensed by the appropriate agency to provide care and maintenance to no more than six children. A group foster home is licensed to provide care and maintenance for 7 to 15 children. Wherever possible, an effort is made to keep siblings together. The 2005 Nevada Legislature required the Department of Health and Human Services to include a requirement in the State Plan for

Medicaid that certain former foster children who were in foster care on their 18th birthday is eligible for Medicaid until they reach 21 years of age.

Foster care payments are made to a licensed foster parent who is caring for a child. The amount of the foster care payment is based on the treatment level classification of the child. Specifically, if the child needs more than the usual amount of care because of individual needs, the payment is greater.

MENTAL HEALTH AND DEVELOPMENTAL SERVICES

The general provisions of mental health in Nevada are outlined in Chapter 433 of the NRS. Several levels of mental health care are provided in Nevada through inpatient and outpatient programs. Clients requiring intensive care are supported by inpatient services and intensive outpatient programs. Other outpatient programs are designed to help the client gain greater independence, confidence, and the ability to function in the community.

Three regional centers make up the Developmental Services branch of the Division of Mental Health and Developmental Services. The purpose of Developmental Services is to support people with disabilities in their pursuit to live independent and satisfactory lives. The regional centers help clients plan and access services through service coordination (case workers) that support the client's personal choices and needs. The services, choices, and options presented to a client focus on best practices, community integration, family supports, and employment.

Chapter 433B of the NRS requires the State to provide certain mental health services to persons less than 18 years of age or, if in school, until graduation from high school. In accordance with this law, the DCFS provides a range of mental health services to both severely emotionally disturbed and behaviorally disordered children, adolescents, and their families through Southern Nevada Child and Adolescent Services and Northern Nevada Child and Adolescent Services.

Involuntary Commitment

Commitment to a mental health facility is governed by Chapter 433A of NRS. Under this chapter, there are three types of admission: voluntary, emergency, and involuntary. Under NRS 433A.200, a proceeding for a court-ordered admission of a person alleged to be mentally ill (see NRS 433A.115 for definition of mentally ill person) may be commenced by the filing of a petition by a spouse, parent, adult children, or legal guardian of the person to be treated, or by any physician, psychologist, social worker or registered nurse, an accredited agent of the Department of Health and Human Services, or by any officer authorized to make arrests.

After the petition is filed, a hearing on the petition is held by the district court. Under NRS 433A.310, if the court finds that "there is clear and convincing evidence that the person with respect to whom the hearing was held is a mentally ill person and, because of that illness, is likely to harm himself or others if allowed his liberty, the court may order the involuntary admission of the person for the most appropriate course of treatment."

Crisis Triage Center in Clark County

During the 2001-2002 Interim, the Legislative Committee on Health Care studied emergency room diversions. Through this process it was determined that one of the contributing factors of the emergency room diversion problem was inadequate specialty care resources for individuals with mental illness and persons who are Chronic Public Inebriates (CPI). It was determined that limited resources and, in some instances, the process required to transfer these types of patients greatly exacerbated the already overcrowded emergency rooms. Lack of bed space and staffing shortages greatly impacted the ability of mental health services to manage the volume of emergency referrals causing delays in timeliness of service for some hospital patients. Bearing these issues in mind, local governments, area hospitals, funds derived from the liquor tax, and the Fund for a Healthy Nevada committed to funding a portion of the development and continuation of a crisis triage center that could provide a space for paramedics, firefighters, and police to take people in crisis but not in need of medical emergency care. The crisis triage center (currently operated by WestCare) opened at the beginning of 2003. To continue crisis triage center operations, the 2005 Legislature appropriated funds to contract for additional community triage center services contingent upon receipt of matching funds from local governments and hospitals. In addition, during the 2005 Session, funds were appropriated to establish a mental health screening and stabilization component at the Crisis Triage Center in Clark County. This increases the capacity to screen and stabilize persons in a location other than an emergency room.

Nevada Mental Health Plan Implementation Commission

The 72nd Session of the Nevada Legislature adopted Senate Bill 301 (Chapter 445, *Statutes of Nevada 2003*), establishing the Nevada Mental Health Plan Implementation Commission. The Commission was required to determine a plan for Nevada's implementation of the recommendations of President George W. Bush's New Freedom Commission on Mental Health. As provided in S.B. 301, in addition to members of the Legislature, the Commission membership included specific executive agency administrators and bureau chiefs.

The meetings of the Commission were organized around the following six goals contained in the final report of the New Freedom Commission on Mental Health, titled *Achieving the Promise: Transforming Mental Health Care in America*:

Goal 1: Americans understand that mental health is essential to overall health.

Goal 2: Mental health care is consumer- and family-driven.

Goal 3: Disparities in mental health services are eliminated.

Goal 4: Early mental health screening, assessment, and referral to services are common practices.

Goal 5: Excellent mental health care is delivered and research is accelerated.

Goal 6: Technology is used to access mental health care and information.

Based on the work of the Commission, the 2005 Legislature required that clients be provided with an opportunity to provide input and participation in the development and maintenance of their individualized written plan of mental health or mental retardation services. In addition, to increase consumer involvement in statewide mental health policy development, the Legislature revised the make up of the Commission on Mental Health and Developmental Services to include a member that is a current or former recipient of mental health services.

SUBSTANCE ABUSE SERVICES

Nevada's Bureau of Alcohol and Drug Abuse (BADA) was established to work to reduce the impact of substance abuse in Nevada. The organization accomplishes this goal by identifying alcohol and drug abuse needs of Nevadans and by supporting a continuum of services including prevention, early intervention, and treatment. The BADA also provides regulatory oversight and funding for community-based public and nonprofit organizations. In addition, BADA is responsible for the development and implementation of a state plan for prevention and treatment; coordination of state and federal funding; and development of standards for the certification and approval of prevention and treatment programs. The Bureau serves as the single state authority for the federal Substance Abuse Prevention and Treatment Block Grant (SAPT), but does not provide any direct substance abuse prevention or treatment services.

In SFY 2003, the BADA budget totaled nearly $21 million, including nearly $16.8 million in federal support, approximately $3.8 million in State General Funds, and $500,000 in adolescent treatment initiative funding known as Maximus. By federal requirement, 20 percent of the SAPT block grant is allocated to prevention programming and 70 percent is allocated to treatment programming.

The 2005 Legislature transferred administrative responsibility for the Bureau of Alcohol and Drug Abuse to the Division of Mental Health and Developmental Services and required the Legislative Committee on Health Care to conduct an interim study of the organizational and delivery structure of services for the treatment and prevention of substance abuse in the State.

INTERNET RESOURCES

Department of Employment, Training, and Rehabilitation: http://detr.state.nv.us/

Department of Health and Human Services: http://www.hr.state.nv.us/

Division of Child and Family Services: http://www.dcfs.state.nv.us/index.html

Division of Welfare and Supportive Services: http://welfare.state.nv.us/

Division of Mental Health and Developmental Services: http://mhds.state.nv.us/

Bureau of Alcohol and Drug Abuse: http://health2k.state.nv.us/BADA/

Clark County Department of Family Services: http://www.co.clark.nv.us/family_services/

Washoe County Social Services Department: www.co.washoe.nv.us/socsrv

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SENIOR CITIZENS

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

During the past decade, Nevada's elderly population grew nearly three times faster than the national rate of growth. The United States Census Bureau has indicated that Nevadans ages 65 and older make up 11 percent of Nevada's population. The number of people 55 and older increased by 74 percent from 239,000 in 1990 to more than 415,000 in 2000. This is the highest percentage increase in the nation. Much of this increase is due to a large influx of seniors who have moved to Nevada to retire. Many of these new retirees are healthy, live active lifestyles, contribute positively to the state's current prosperity, and initially, require few senior services. However, as seniors age, there may be significant impacts on senior services that are provided by public and private institutions. All projections indicate that the demand for enhanced programs and services for our escalating senior population will continue to grow at an increasing rate over the next decade.

HEALTH CARE

Medicare

Medicare is the federal health insurance program for: people 65 years of age or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure with dialysis or a transplant, sometimes called ESRD). The Social Security Administration is responsible for the application and eligibility processes; and, the Centers for Medicaid and Medicare Services (CMS), a federal agency, administers the Medicare program. Currently, Medicare, the country's largest health insurance program, provides coverage to approximately 40 million Americans and approximately $200 billion in health care benefits each year. The program is set up on a conventional pay-per-visit format and a recipient may go to any health care provider who accepts Medicare. The health care provider is responsible for submitting a claim for payment.

Medicare is divided into three parts:

1. Hospital insurance (also called Medicare "Part A"), which helps pay for care in a hospital and skilled nursing facility, home health care, and hospice care;

2. Medical insurance (also called Medicare "Part B"), which helps pay for doctors, outpatient hospital care, and other medical services; and

3. Prescription coverage (also called Medicare "Part D"), which helps Medicare beneficiaries have access to prescription drug coverage once they select one of the many discount options that are available. Part D was established with passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). This part of the Medicare program has been implemented in two phases. The first phase, which began in May 2004, permitted beneficiaries to sign up for a discount card to help with some drug costs. With minor exceptions, this temporary program was phased out when the second stage of assistance, a Medicare drug benefit, became effective on January 1, 2006. Part D beneficiaries must enroll in a Medicare-approved private drug plan to receive the drug coverage. There are many plans to choose from, so beneficiaries must decide which plan best suits their needs. General Open Enrollment for 2006 ended for Medicare prescription drug plans on May 15, 2006. Most people who are already in Medicare will not have another chance to enroll until November 15, 2006. As of May 2006, the Division for Aging Services indicated that approximately 80,000 (out of 303,000) Nevada Medicare beneficiaries have no pharmacy coverage.

Most people age 65 or older who are citizens or permanent residents of the U.S. are eligible for Medicare Part A without paying a monthly premium based on their own or their spouse's employment. Before age 65, individuals are eligible for premium-free Medicare hospital insurance if they have been entitled to Social Security disability benefits for 24 months. This includes: (1) widows, widowers, and children who receive benefits because of disability; (2) those who receive a disability annuity from the Railroad Retirement Board and meet certain conditions; or (3) the individual, their parent, or their spouse (living or deceased, including a divorced spouse) who has worked long enough in a government job where Medicare taxes were paid and the individual meets the requirements of the Social Security disability program. Additionally, certain individuals diagnosed with permanent kidney failure are eligible for free Medicare hospital insurance at any age. Anyone who is eligible for free Medicare hospital insurance (Part A) can enroll in Medicare medical insurance (Part B) and Prescription coverage (Part D) by paying a monthly premium.

Medicare provides basic health care coverage; however, it does not pay for all medical expenses. Consequently, many private insurance companies sell insurance to fill in the gaps in Medicare coverage. This kind of insurance is called "Medigap" for short. There are ten standard Medigap policies and each offers a different combination of benefits. Medigap policies pay most, if not all, Medicare coinsurance amounts and may provide for Medicare deductibles. Some of the ten standard policies pay for services not covered by Medicare, such as preventive screening. As provisions of Part D have been implemented, the ten standard policies have been revised and many are no longer sold with drug coverage. Another option for

Medicare beneficiaries is a Medicare SELECT policy, which is a Medigap policy in which the recipient is required to use certain hospitals and doctors. The SELECT policies generally have lower premiums than other Medigap policies.

Medicare beneficiaries may also choose to enroll in Medicare + Choice plans. Under these plans, health maintenance organizations and other private insurers are paid a set amount by the Medicare program each month to provide all Medicare-covered services. Beneficiaries must be enrolled in both Parts A and B to join these plans, which typically offer lower cost-sharing requirements and additional benefits compared to Medicare's fee-for-service program, in exchange for a restricted choice of providers.

Medicare pays for services out of two separate federal trust funds. Part A services are paid for out of the Hospital Insurance Trust Fund, which is primarily financed through the Medicare payroll tax that is exclusively dedicated to this trust fund. The Supplementary Medical Insurance (SMI) Trust Fund, through general revenues (about 75 percent), interest income and the monthly premiums ($66.60 in 2004 for Part B; $32.20 since premiums began in 2006 for Part D) that Medicare beneficiaries pay finances Part B services and Part D (prescription coverage). Part D also will receive payments from states beginning in 2006 to reimburse the federal assumption of Medicaid responsibilities for premium and cost-sharing subsidies for individuals eligible for both Medicare and Medicaid. This payment is frequently referred to as the "clawback" payment. According to the Division of Health Care Financing and Policy, Nevada's first clawback payment of $1.9 million is due on May 25, 2006. Part B and Part D premium amounts are based on methods defined in law and increase as the estimated costs of those programs rise.

SENIOR RX

Senior Rx provides Nevada seniors with insurance coverage for prescription medicine. The program is funded with a portion of Nevada's share of tobacco settlement funds and was passed into law during the 1999 Legislative Session. Senior Rx offers two benefit packages. Participation is linked to eligibility for Medicare Part D.

Senior Rx members who are NOT eligible for prescription drug coverage under Medicare Part D participate in a cost-sharing program that has no premium, no deductible, and co-payments of $10 for generic drugs and $25 for preferred or medically necessary brands. The annual coverage limit is $5,100. The cost-sharing benefit package is administered by Catalyst Rx, a pharmacy benefit manager whose contract with the Department of Health and Human Services (DHHS) became effective on January 1, 2005.

Senior Rx members who ARE eligible for prescription coverage under Medicare Part D are required to enroll in a Part D plan and also utilize federal low-income subsidies if eligible. If these conditions are met, members may receive up to $23.46 toward the monthly Part D premium (minus any help Medicare may already be providing with this expense) and may also receive 100 percent coverage of prescription medications during the Part D coverage gap. During the gap, members must continue to follow the formulary, step therapies, and prior authorization requirements of their Part D plans. The benefits described here are known as

Part D "wrap-around coverage." The premium benefit is administered directly by Senior Rx in cooperation with CMS and the Part D plans. Coverage gap protection is administered by Catalyst Rx.

The DHHS surveyed pharmacies throughout Nevada to determine the most frequently prescribed medicine in order to best target the insurance program. As of May 1, 2006, Senior Rx active enrollment was 8,533. According to data received from CMS, 7,884 of these members are Medicare-eligible and 649 (7.6 percent) are not.

The 2005 Legislature addressed the need for increased dental and vision benefits by allowing part of the revenues from the Fund for a Healthy Nevada to be used for dental and vision benefits for senior citizens. The Legislature authorized the DHHS to contract with private health insurers to provide coverage for these benefits to persons who meet Senior Rx eligibility criteria.

SERVICES FOR THE ELDERLY

The life expectancy of Americans has increased and with it the demand for services for elderly adults. While some elderly adults require nursing home care, others need only minimal daily care, which makes it possible for them to maintain independence. While programs and services for seniors are administered through various offices, the coordination of services for seniors throughout the state is the responsibility of the Aging Services, DHHS.

The Federal Department of Health and Human Services Administration on Aging administers an aging network and a variety of programs, which support elderly persons in the community. Some of these programs provide support to caregivers of elderly persons. The Administration on Aging distributes funds to the states. In Nevada, the Aging Services Division distributes federal as well as state funding to area agencies through a competitive grant process.

National Family Caregiver Support Program

The National Family Caregiver Support Program, or NFCSP, was signed into law as part of the Older Americans Act (OAA) Amendments of 2000. The NFCSP provides grants to states to enable area agencies on aging to provide an array of support services to family caregivers or older adults, as well as grandparents and other senior relative caregivers of children under 18. Nevada received approximately $900,000 under this program in 2003. In Nevada, in addition to respite programs, and the development of a caregiver Web site, a chief portion of this funding is used toward the development of a single point of entry to access support services and provide information to caregivers and seniors about available services.

Elderly Nutrition Program

The Elderly Nutrition Program is authorized under the OAA and administered by the Aging Services Division. This program focuses on meeting the nutrition and nutrition-related health needs of seniors by providing meals in the community. There are no income eligibility requirements for the nutrition program; however, the home-delivered nutrient services are for

persons who are 60 or older and are homebound due to health reasons. Through direct funding or in-kind contributions, grantees provide the matching funds required to receive this funding. Following are brief descriptions of additional state-administered programs and services, which provide a range of support to eligible senior citizens in Nevada.

Property Tax Assistance for Senior Citizens

This program provides property tax relief to eligible senior citizens who are 62 years of age or older, through a system of refunds for property taxes or rent from the Senior Citizens Property Tax Assistance Account. This program is administered by the Aging Services Division. The 2005 Legislature provided for refunds of property tax to senior citizens whose income is at or below the federal poverty level. Senior citizens may file a claim for a refund of accrued property taxes with the county assessor's office under the property tax assistance program for senior citizens. Seniors will also benefit from the property tax cap for owner-occupied residential properties, passed by the 2005 Legislature. The cap limits annual property tax increases to no more than 3 percent for such residences.

Community-Based Services for Frail Elderly Persons

The Aging Services Division administers a program to provide the community-based services necessary to enable a frail elderly person to remain in his own home or with his family to avoid placement in a facility for long-term care. This program also is known in Nevada as the Community Home-Based Initiatives Program (CHIP).

Specialist for Rights of Elderly Persons

The Specialist for the Rights of Elderly Persons provides advocacy and education relating to the legal rights of elderly persons and facilitates the development of legal services to assist elderly persons in securing and maintaining their legal rights. The Aging Services Division administers this program.

Program to Assist Relatives who have Legal Guardianship of Children

The Program to Assist Relatives Who Have Legal Guardianship of Children was established by the Legislature in 2001. The program provides cash payments to a caretaker who has obtained the guardianship of a relative child. The program, also known as the Kinship Care Program, is funded through the Temporary Assistance for Needy Families (TANF) Program. The payments provided must not exceed the amount the State would have provided if the child had been placed in foster care.

To receive cash payments, a caretaker must meet the following Kinship Care requirements: related to the child; 62 years of age or older; a Nevada resident; exercised parental control and care of the child in his or her home for a least six consecutive months; and obtained legal guardianship through a Nevada court and met the court requirements. Additionally, the caretaker must not have a household income above 275 percent of the TANF need standard.

Ombudsman for Aging Persons

The Ombudsman for Aging Persons provides assistance to persons who are 60 years of age or older and do not reside in facilities for long-term care. In addition to other duties, the Ombudsman must provide assistance related to the coordination of resources and services available to aging persons within their respective communities, dissemination of information to aging persons on issues of national and local interest, and advocation of issues relating to aging persons. At the direction of the Administrator of the Aging Services Division, the Ombudsman may temporarily perform the duties of advocates for residents of facilities for long-term care.

Nevada Silver Haired Legislative Forum

In 1997, the Legislature established the Nevada Silver Haired Legislative Forum to discuss and act upon issues of importance to aging persons. The Legislative Commission appoints members to the Forum. In consultation with the members of the Assembly who reside within the Senatorial district, members of the Senate nominate potential members for the Forum. In addition to other items, the Forum may hold public hearings to discuss issues of importance to Nevada seniors. Additionally, the Forum may submit a report containing recommendations for legislative action to the Legislative Commission and the Governor.

LONG-TERM CARE

Social Security-Medicaid Group Care Waiver Program

The Group Care Waiver Program allows Medicaid-covered individuals who are 65 and older to utilize home and community-based services in lieu of being institutionalized. This program is administered by the Aging Services Division.

Advocates for Residents of Facilities for Long-Term Care

Advocates for Residents of Facilities for Long-Term Care work under the Administrator of the Aging Services Division to receive, investigate, and attempt to resolve complaints made by or on behalf of residents of facilities for long-term care. In addition to other duties, the Advocates investigate policies or procedures of facilities for long-term care, and agencies that relate to such care, and reports the results of his investigations to the Administrator. The Advocates coordinate certain services within DHHS and recommends and reviews policies, legislation, and regulations that affect facilities for long-term care.

Board of Examiners for Long-Term Care Administrators

The Board of Examiners for Long-Term Care Administrators (BELTCA) was created in 1969. The BELTCA serves as the licensing and regulatory agency for long-term care administrators in Nevada, including nursing homes and group care facilities/assisted living facilities. The BELTCA protects public and consumer interests by ensuring long-term care administrators are of good moral character, properly educated, and trained to care for Nevada's citizens in a dignified and caring manner.

INTERNET AND ADDITIONAL RESOURCES

AARP: http://www.aarp.org

Benefits Check Up—a Service of National Council on Aging Web site:
http://www.benefitscheckup.com

Thomas—Federal Legislative Information on the Internet: http://thomas.loc.gov/

Nevada Legislative Web site: http://www.leg.state.nv.us

Aging Services Division, DHHS, State of Nevada: Web site: http://www.nvaging.net

Nevada's Aging Services Division: 775-687-4210 or 702-486-3545

Nevada Elder Care—Caregiver Resources and Information Web site:
http://www.nveldercare.org Eldercare Helpline: 1-800-243-3638

SeniorNet—Senior Net's mission is to provide older adults education for and access to computer technologies to enhance their lives and enable them to share their knowledge and wisdom: http://www.seniornet.org

"Do Not Call" Registry: http://www.donotcall.gov or 1-888-382-1222; 1-866-290-4236 TDD

Office of Elder Rights/Community Ombudsman: 775-688-2964 or 702-486-3545

Senior Citizens' Protective Services: (775) 688-2964 or (702) 455-8672

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NEVADA'S COURT SYSTEM

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

The court structure in Nevada is governed by Article 6 of the *Nevada Constitution* and the state statutes enacted by the Legislature. Justices and judges are elected in Nevada, and judicial power is vested in the Supreme Court, the district, justice, and municipal courts. An important characteristic that distinguishes the courts from each other is their "jurisdiction," or simply the kinds of cases that each is authorized to hear. The courts are divided into three levels based on their jurisdiction: (1) the lowest level is composed of the justice and municipal courts; (2) the next level contains the district courts; and (3) the third level is the Supreme Court.

This Policy Brief provides brief discussion of Nevada's court structure based upon the *Nevada Constitution* and statutory provisions under the *Nevada Revised Statutes* (NRS). The following general information is included: an overview of two constitutional commissions involved in judicial oversight; the jurisdiction and structure of Nevada's courts (including qualifications for judicial office within those courts); the method of funding the different courts (including assessments, fines, and filing fees); an overview of arbitration and mediation; and resources for additional information.

CONSTITUTIONAL JUDICIAL COMMISSIONS

Many judicial commissions exist throughout Nevada's court system. Of particular note are two commissions mandated by the *Nevada Constitution,* which are:

1. The Commission on Judicial Selection; and
2. The Commission on Judicial Discipline.

Commission on Judicial Selection

Article 6, Section 20 of the *Nevada Constitution* governs the Commission on Judicial Selection. When a vacancy occurs before

the expiration of any term of office in the Supreme Court or in a district court, the Governor must appoint an individual to fill the vacancy from a list of three nominees selected by the Commission on Judicial Selection.

The constitutional provisions establish the membership of this body, which varies depending upon whether the vacancy occurs in the Supreme Court or in a district court. Vacancies that occur in the Supreme Court are filled from the nominees selected by the permanent commission composed of the following members:

- The Chief Justice of the Supreme Court (or an associate justice designated by the Chief Justice);
- Three members of the State Bar of Nevada appointed by its Board of Governors; and
- Three persons who are not attorneys appointed by the Governor.

If a vacancy occurs in a district court, a temporary Commission is created that consists of the following individuals:

- The members of the permanent Commission on Judicial Selection;
- An attorney from the judicial district in which the vacancy occurs who is appointed by the Board of Governors for the State Bar of Nevada; and
- A resident of the judicial district in which the vacancy occurs who is not an attorney and who is appointed by the Governor.

Commission on Judicial Discipline

Established under Article 6, Section 21 of the *Nevada Constitution*, the Commission on Judicial Discipline receives and reviews complaints, and subsequently may discipline any justice of the Supreme Court, district court judge, justice of the peace, or municipal judge. The membership of this Commission is composed of two justices or judges appointed by the Supreme Court, two members of the State Bar of Nevada appointed by its Board of Governors, and three persons who are not members of the legal profession appointed by the Governor. The Commission elects the chairman from among the three lay members.

The *Constitution* requires the Nevada Supreme Court to adopt a code of judicial conduct, and the Legislature to establish forms of discipline the Commission may impose, in addition to censure, retirement, and removal. The Legislature must also establish the grounds for disciplinary action, the standards for investigations, and the confidentiality of proceedings. The statutory provisions regarding the Commission are contained in NRS 1.425 through 1.4695.

Any matter relating to the fitness of a justice or judge may be brought to the Commission's attention by any person or on the motion of the Commission itself. A preliminary investigation is required, after which the Commission must either dismiss the matter or order a hearing. The

Commission is responsible for adopting the rules of procedure for the conduct of its hearings and other necessary procedural rules.

Following is an overview of the structure and jurisdiction of the Supreme Court, the district courts, the justice courts, and the municipal courts. Included is a summary of the statutory qualifications for the justices and judges who serve in these courts. A flow chart summarizing the information presented below is available on page 311.

JURISDICTION AND STRUCTURE OF NEVADA'S COURTS

Supreme Court

The jurisdiction of the Supreme Court is derived directly from Article 6 of the *Nevada Constitution*. It is an appellate court and the court of last resort. Nevada is one of 11 states that do not have an intermediate court of appeals. The Nevada Supreme Court is currently examining the benefits of establishing an appellate court and is expected to report its findings to the 2007 Legislature, as discussed in this policy brief under the section titled "Potential Issues For The 2007 Session Of The Legislature."

The Supreme Court is composed of a Chief Justice and six associate justices, all of whom are chosen by voters at general elections for six-year terms. The Chief Justice is the administrative head of the court system. To be qualified to run for the office of justice of the Supreme Court, a person must be:

- At least 25 years of age;
- A licensed attorney admitted to practice law in Nevada at the time of his election or appointment;
- An attorney licensed and admitted to practice law in the courts of this State, another state, or the District of Columbia for not less than 15 years at any time preceding his election or appointment, at least 2 years of which has been in Nevada; and
- A qualified elector and resident of Nevada for a minimum of two years prior to the election (or appointment in the cases involving vacancies).

Anyone who has been removed from any judicial office by the Legislature or by the Commission on Judicial Discipline is not eligible for the office.

In 1997, the Legislature authorized the Supreme Court to sit, hear, and decide cases in panels of three justices. The full Supreme Court must consider any cases decided by a panel if any two justices so request. General statutory provisions governing the Nevada Supreme Court are contained in Chapter 2 of NRS.

Funding Resources and Salaries of Justices

The Supreme Court is funded by several resources, including State General Fund appropriations approved by the Legislature and court administrative assessments (which are discussed in a separate section of this Policy Brief). The annual base salary of a Supreme Court justice, which is codified under NRS 2.050, varies depending upon when the justice was elected as Article 6, Section 15 of the *Nevada Constitution* prohibits an increase or decrease in the salary of a Supreme Court justice (or a district court judge) during the term for which they were elected. Under legislation passed in 2001, justices whose term of office expires in January 2003, 2005, and 2007 receive a salary of $107.600 (Senate Bill 184, Chapter 597, *Statutes of Nevada*). The salary of their respective successors in office is $140,000 (NRS 2.050).

Office of the Court Administrator

The Office of the Court Administrator is commonly known as the Administrative Office of the Courts (AOC). The Court Administrator is the Director of AOC and serves the Supreme Court in coordinating policies and programs relating to the state courts in Nevada. The duties of this position, which are described in NRS 1.360, include examining administrative procedures used throughout the court system and making recommendations for improvements; developing a uniform system for collecting and compiling statistics; preparing and submitting a budget of state appropriations necessary for the maintenance and operation of the state's court system; and submitting certain reports to the Legislature concerning the operation of the court system.

District Courts

The district courts are courts of general jurisdiction over all cases that are excluded from the jurisdiction of the justice and municipal courts. Judges also hear appeals from justice and municipal court cases. The state is divided into nine judicial districts, and the Legislature establishes by statute the number of judges within each district. Currently, 60 district court judges serve the 9 judicial districts, and this number will increase to 64 as of January 1, 2007. Following is a breakdown of the number of judges by district:

- First Judicial District (Carson City and Storey County): two judges;
- Second Judicial District (Washoe County): 12 judges, 4 of whom serve on the family court (discussed below);
- Third Judicial District (Churchill and Lyon Counties): three judges;
- Fourth Judicial District (Elko County): two judges;
- Fifth Judicial District (Esmeralda, Mineral, and Nye Counties): two judges;
- Sixth Judicial District (Humboldt, Lander, and Pershing Counties): two judges;
- Seventh Judicial District (Eureka, Lincoln, and White Pine Counties): two judges;

- Eighth Judicial District (Clark County): 33 judges, 12 of whom serve on the family court (discussed below). On January 1, 2007, this number will increase to 37 judges, 13 of whom serve on the family court; and

- Ninth Judicial District (Douglas County): two judges.

Persons seeking to run for the office of district court judge must meet the following qualifications:

- At least 25 years of age;

- A licensed attorney admitted to practice law in Nevada at the time of his election or appointment;

- An attorney licensed and admitted to practice law in the courts of this State, another state or the District of Columbia for not less than ten years at the time of his election or appointment, at least two years of which has been in Nevada; and,

- A qualified elector and resident of Nevada for a minimum of two years prior to the election (or appointment in the cases involving vacancies).

Like the justices, district court judges are also elected for six-year terms. Chapter 3 of NRS generally governs the structure and operation of the district courts.

Salaries of District Court Judges

In Nevada, the state is responsible for the salaries of the district court judges, while the counties in which the courts are located are responsible for the courtroom, staff, facilities, and other related costs. The annual base salary of $130,000 for each district judge is codified under NRS 3.030.

Family Courts

Within each judicial district that includes a county whose population is 100,000 or more (Clark and Washoe Counties, currently), a Family Court is established as a division of the district court. The Family Court's original, exclusive jurisdiction extends to proceedings involving child support, divorce, child custody and visitation, parentage, adoption, termination of parental rights, emancipation and disabilities of minors, guardianships, protection of children from abuse and neglect, and juvenile justice.

Juvenile Courts

The district courts have the jurisdiction in all proceedings conducted under Title 5 of NRS, which governs juvenile justice. When exercising this jurisdiction, the courts are termed "juvenile courts." The juvenile court has exclusive original jurisdiction over a child alleged or adjudicated in need of supervision because the child: (1) is habitually truant; (2) habitually

disobeys his parent or guardian and is unmanageable; or (3) runs away from home and is in need of rehabilitation. These children are not legally considered delinquent.

The juvenile court also has exclusive original jurisdiction over children alleged or adjudicated to have committed a delinquent act, which is defined as a violation of a county or municipal ordinance or a rule or regulation having the force of law. A child may also be adjudicated delinquent for committing an act that is designated as a criminal offense under state law. However, NRS 62B.330 specifies that certain crimes (such as murder, violent sexual assault by children previously adjudicated delinquent for this crime, and certain firearm offenses) are not a delinquent act and therefore, are not within the jurisdiction of the juvenile court. Further, certain children may be certified for felony criminal proceedings as adults at the age of 14 years or older. Such certification is required if the child is charged with a violent sexual or firearm offense. Procedures are provided in these situations for petitioning to transfer the case back to juvenile court under certain circumstances (NRS 62B.390).

Specialty Courts

Nevada's court system also includes certain "specialty courts," created for a particular purpose. These courts include the following:

- **Drug Courts—**In 1993, Nevada was one of the first states to authorize a drug court under which a judge can assign certain offenders with drug or alcohol addictions to a treatment program under the court's supervision. Assignment to the program must include the terms and conditions for successful completion of the program, including frequent urinalysis to determine whether the person is using a controlled substance. If the offender successfully completes the program, the criminal charges may be dismissed (see NRS 453.336, 453.3363, 453.580, and 458.300).

- **Mental Health Courts—**In 2001, the Legislature authorized the establishment by a district court of a program for the treatment of mentally ill or mentally retarded offenders. After such a defendant enters a guilty plea to or is found guilty of an offense for which participation in the program is allowed, the court may suspend the proceedings without entering a judgment of conviction and place the defendant on probation with a condition that includes attendance and successful completion of the program. Like the drug court program, if the offender successfully completes the program, the criminal charges may be dismissed (NRS 176A.250 through NRS 176A.265) .

These "specialty" courts are funded, in part, by a $7 administrative assessment imposed on defendants convicted of misdemeanor offenses (NRS 176.0613). Other administrative assessments and fees collected by the courts are discussed in a later section of this document.

The *Nevada Constitution* specifies that the court system must include justices of the peace, but authorizes the legislative creation of municipal courts. Both the justice and municipal courts are courts of limited jurisdiction as determined by the Legislature.

Justice and Municipal Courts

Justice Courts

The justice courts have jurisdiction over, among other things, misdemeanors, traffic cases, evictions, and civil matters that do not exceed $10,000 in damages. (On January 1, 2005, the jurisdictional amount for justice court increased from $7,500 to $10,000.) Justice courts also have responsibility for small claims actions (up to $5,000), which are governed by Chapter 73 of NRS, and for determining whether enough evidence exists for felony and gross misdemeanor cases to be bound over to the district court for trial. A list of the civil actions over which the justice courts have jurisdiction is available under NRS 4.370.

Nevada law requires one justice's court in each township in the state and at least one justice of the peace in each court. The number of justices of the peace must be increased according to the population of the township, as certified by the Governor in even-numbered years, but a mechanism is established to decline additional justices of the peace if the caseload does not warrant the new position.

The term of office for a justice of the peace is six years. To run for the office of justice of the peace, a person must

- Be a qualified elector;
- Have a high school diploma (or its equivalent);
- Never have been removed or retired from any judicial office by the Commission on Judicial Discipline; and
- Be a licensed attorney in a township with a population of more than 100,000 located within counties over 400,000 in population, or in a township with a population of more than 250,000 in a county with a population of less than 400,000. In these circumstances, the person must have been licensed and admitted to practice law in the courts of Nevada, another state, or the District of Columbia for not less than five years at any time preceding his election or appointment. (The licensure requirement does not apply to any person who held the office on June 30, 2001.)

The governing body of a city may provide that a justice of the peace of the township in which the city is located is "ex officio" the municipal judge of the city. The consent of the board of county commissioners and the justice of the peace is required. As of February 2006, ten justices of the peace were also serving as municipal court judges.

The board of county commissioners in the respective county oversees certain aspects of the operation and funding of the justice court and establishes the minimum compensation of a justice of the peace. The level of compensation may be increased or changed during the justice's term, but must not be reduced below the minimum level established (Chapter 4 of NRS contains general statutory provisions governing justice courts).

Municipal Courts

Municipal courts, which may be established in incorporated cities or towns, hear cases involving violations (civil actions and misdemeanors) of municipal ordinances. Each municipal judge must be chosen by the electors of the city within which the municipal court is established on a day to be fixed by the governing body of that city. The term of office of a municipal judge is the period fixed by local ordinance or city charter depending upon whether the city is organized under general law or a special charter. According to the AOC, at the end of FY 2003-2004, Nevada had 17 municipal courts that were presided over by 27 municipal judges, with nine judges also serving as justices of the peace.

To be qualified for the office, a person must:

- Be a citizen of the state;
- Have been a bona fide resident of the city for not less than one year next preceding his election (except as otherwise provided in the charter of a city organized under special charter);
- Be a qualified elector in the city; and
- Not have ever been removed or retired from any judicial office by the Commission on Judicial Discipline.

Additional qualifications for municipal judges may be imposed by local ordinances or charter. Salaries of the judges are fixed by the city charter or the city's governing body and paid by the city. The compensation must not be diminished during the period for which the judge is elected, but may be increased during that period if so provided in the city's charter (Chapter 5 of NRS contains general statutory provisions governing municipal courts).

JURORS

The *Constitution of the United States* and the *Nevada Constitution* include provisions regarding the right to trial by jury. Article 1, Section 3 of the *Nevada Constitution* states, "The right to trial by jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law . . ."

Fees and Expenses of Jurors

Chapter 6 of NRS contains certain administrative provisions governing jurors in civil and criminal trials, including methods of selection. Every qualified elector in Nevada, whether registered or not, who has not been convicted of treason, a felony, or other infamous crime, and who is not rendered incapable of reason by physical or mental infirmity, is a qualified juror in the county in which he or she resides. A person who has been convicted of a felony is qualified to serve as a juror after his civil rights have been restored. Certain exceptions from jury service include:

- Legislators and employees of the Legislative Counsel Bureau while the Legislature is in session;

- Victims of domestic violence who are participating in Nevada's fictitious address program;

- Persons over the age of 70 years, if the juror so desires; and

- Persons 60 years of age or older who live 65 miles or more away from the court, if the juror so desires.

The 2003 Legislature removed exemptions for federal or state officers; judges; attorneys; county clerks, recorders, assessors, sheriffs, deputy sheriffs, constables, and police officers; locomotive engineers, firemen, conductors, brakemen, switchmen, and engine foremen; correctional officers employed by the Department of Corrections; and physicians, optometrists, and dentists licensed to practice in Nevada.

Any person summoned as a grand juror or trial juror in the district court or justice's court is entitled to the following fees and expenses under NRS 6.150:

- $40 fee for each day after the second day of jury selection that he is in attendance;

- 3.65 cents a mile for each mile traveled from home if the person's home is 65 miles or more from the place of trial; and

- Lodging at the rate paid for state employees if the person's home is 65 miles or more from the place of trial and the selection, inquiry, or trial lasts more than one day.

Administrative Assessments

COLLECTION OF ADMINISTRATIVE ASSESSMENTS, FINES, AND FILING FEES

An important responsibility of the courts is to collect the administrative assessments, fines, and filing fees that support, in part, the activities of the judicial branch as well as certain other programs, including education. Following is an overview of the various administrative assessments, fines, and filing fees collected by the judicial branch of government.

In general, NRS 176.059 through 176.085 address the major aspects of administrative assessments and fines. This includes the collection, distribution, and limitations on use. As implied by the statutory language, the purpose of assessments is to support the administration and services of the courts, as well as other related activities.

There are two major types of administrative assessments based on the kind of crime committed: (1) misdemeanor; or (2) gross misdemeanor or felony. Other assessments may be imposed for specific crimes, for the improvement of court facilities in certain counties, and for the funding of specialty court programs.

Misdemeanor Assessments

The schedule and distribution formula for administrative assessments related to misdemeanors, including the violation of any municipal ordinance, is found in NRS 176.059. The 2003 Legislature amended this statute to increase the assessments by $10 (A.B. 29, Chapter 368, *Statutes of Nevada 2003*). The assessments do not apply to any ordinances regulating metered parking or designating civil penalties.

The following administrative assessment fees for misdemeanors are set by NRS 176.059, as amended in 2003:

FINE	ASSESSMENT
$5 to 49	$25
50 to 59	40
60 to 69	45
70 to 79	50
80 to 89	55
90 to 99	60
100 to 199	70
200 to 299	80
300 to 399	90
400 to 499	100
500 to 1,000	115

Administrative assessments are distributed based on a detailed formula specified in subsections 5 through 8 of NRS 176.059. Two dollars of each assessment collected by municipal or justice courts is distributed to a special account in the county general fund for the use of juvenile court and services to juvenile offenders. Seven dollars is deposited into a special revenue fund for the use of the municipal or justice courts, respectively. The remainder of each assessment collected is distributed to a special account in the State General Fund.

State General Fund Distribution

Of the amount that goes to the State General Fund, not less than 51 percent of the funds go to the Office of Court Administrator (Administrative Office of the Courts). That 51 percent is then divided as follows:

- 18.5 percent to the Office of the Court Administrator for administration of the courts;

- 9 percent for the development of a uniform system for judicial records;
- 9 percent for continuing judicial education;
- 60 percent to the Office of the Court Administrator for the Supreme Court; and
- 3.5 percent to pay for the services of retired justices and judges.

Of the remaining funds, not more than 49 percent must be used to the extent of legislative authorization for the following, although the law does not mandate a division by percentage:

- Central Repository for Nevada Records of Criminal History;
- Peace Officers' Standards and Training Commission;
- Nevada Highway Patrol for the operation of a computerized switching system for information related to law enforcement;
- Fund for the Compensation of Victims of Crime; and
- Advisory Council for Prosecuting Attorneys.

Gross Misdemeanor and Felony Assessments

For felonies and gross misdemeanors, NRS 176.062 requires the district court judge to impose an administrative assessment of $25 against the defendant. Five dollars of the assessment is credited to the county general fund for use by the district court, and the remainder is deposited with the Office of the State Controller for credit to the special account for the assistance of criminal justice in the State General Fund. This money is distributed to the Office of the Attorney General as authorized by the Legislature.

Specialty Court Programs

The 2003 Legislature authorized a new $7 administrative assessment to be imposed on persons convicted of a misdemeanor to fund specialty court programs. Assembly Bill 29 (Chapter 368, *Statutes of Nevada 2003*) defines "specialty court programs" as programs to facilitate testing, treatment, and oversight of persons within the court's jurisdiction who the court has determined suffer from a mental illness or abuse alcohol or drugs (NRS 176.0613).

The money collected from the assessment by city and county treasurers must be deposited with the State Controller for credit to a special account in the State General Fund administered by the Office of the Court Administrator. Money apportioned to a court from the account must be used to pay for the treatment and testing of persons participating in the program and for improving the operations of the specialty court program.

Prior to January 1 of each odd-numbered year, the Court Administrator must prepare and submit to the Legislative Counsel Bureau a report concerning the distribution of the money deposited into the special account, the status of any specialty court programs to which money was allocated, and any other relevant information (NRS 1.360).

Administrative Assessment for Court Facilities

Nevada Revised Statutes 176.0611 provides that a city or county may, by ordinance, authorize the justices or judges within its jurisdiction to impose a $10 administrative assessment for the provision of court facilities, including the acquisition of land, construction of new court facilities, renovation or remodeling of existing court facilities, acquisition of advanced technology, and payment of specified debt service. Such an assessment may not be imposed for more than 50 years. The assessment must be imposed on each defendant who pleads to or is found guilty of a misdemeanor, including the violation of any municipal ordinance. The statute also includes certain restrictions regarding the imposition and collection of the assessment.

Graffiti

Pursuant to NRS 206.340, a person who violates the state graffiti law shall pay an administrative assessment of $250 for each violation. The money is credited to the Graffiti Reward Fund, which operates to provide rewards to people who provide information leading to the conviction of a person who unlawfully places graffiti.

Juveniles

Under NRS 62E.270, the juvenile court is required to impose an administrative assessment of $10 whenever a juvenile is fined for a violation of the juvenile laws.

Collection Fees

Nevada Revised Statutes 176.064 authorizes a court to impose a collection fee when a fine, administrative assessment, fee, or restitution is delinquent. The maximum amount of the collection fee correlates to the amount of the delinquent fine, assessment, fee, or restitution as follows:

- Not more than $100, if the amount of the delinquency is less than $2,000;
- Not more than $500, if the amount of the delinquency is $2,000 or more but less than $5,000; and
- 10 percent of the amount of the delinquency, if the amount is $5,000 or greater.

The money is to be used to develop and implement a program for the collection of fines, administrative assessments, fees and restitution, or to pay for the services of a collection agency.

Domestic Violence

Under NRS 200.485, a person who commits a battery that constitutes domestic violence is subject to an administrative assessment of $35. The assessment is to be deposited with the State Controller for deposit in the Account for Programs Related to Domestic Violence established pursuant to NRS 228.460.

Fines

Fines are imposed by a judge, usually based on the seriousness of the offense, and are considered to be punitive. Fines may be imposed in addition to other criminal sanctions, including imprisonment, or as a condition of probation. While fines serve to compensate the community, they are not based on the actual costs of the crime. Most fines are based on preset minimum or maximum amounts that can be ordered. As a result, the range of fines varies widely, depending upon the crime or violation.

Collection and Distribution of Fines in Nevada

The distribution of fines in Nevada is affected by the way the money is collected. For example, if the payment is classified as a fine, it must go to the state, but if it is labeled a forfeiture of bail (such as when money is mailed in with a traffic citation in lieu of appearing in court in person), it goes to the counties. In addition, if the citation is considered a violation of a state traffic law, the fine must go the state, but if it is considered a violation of a local traffic ordinance, it goes to the local government. State fines are earmarked for educational purposes (see Article 11, Section 3 of the *Nevada Constitution* and related statutes).

A more detailed discussion of this issue is presented in *Fees, Fines, Forfeitures and Administrative Assessments Imposed and Collected by Courts*, Legislative Counsel Bureau Bulletin No. 99-6. This report documents the work of the Legislative Commission's Subcommittee on this issue during the 1997-1998 interim.

Filing Fees

Filing fees are another tool the courts use to generate money for operational support. Fees are most often imposed for services rendered. However, fees can also be earmarked for specific purposes. For example, a portion of marriage license fees is allocated for victims of domestic violence, and legal services are supported, in part, by court filing fees. The following provides an overview of the various fees imposed by the courts.

Supreme Court Fees

The Clerk of the Supreme Court, as authorized by NRS 2.250, may collect a variety of fees, including:

- $200 for every appeal or special proceeding taken to the Supreme Court;

- $100 for petitions for rehearings; and

- A $50 court automation fee for any appeal or special proceeding before the Supreme Court and for rehearings in these proceedings. The money from this fee is to be credited to a special account in the State General Fund and used for technological purposes in the Supreme Court (S.B. 106, Chapter 373, *Statutes of Nevada 2003*).

An additional $60 may be collected for each year of pamphlets of Supreme Court decisions. The fee is reduced to $30 for a six-month decision period.

District Court Fees

Pursuant to NRS 19.013, each county clerk must charge a fee of $56 upon the commencement of any civil action in district court. This fee is to pay for the services of the county clerk. This money is deposited with the county treasurer. This statute also includes a long list of fees for actions including filing petitions to contest wills, filing a notice of appeal, and for certificates of the clerk under the seal of the court.

Under NRS 19.020, additional fees are established for commencing civil actions, administration of estates, guardianships, and for appeals from justice court. For example, at the time of commencement of a civil action the plaintiff must pay an additional $3 as court fees. *Nevada Revised Statutes* 19.030 requires the county clerk to charge $32 to the party commencing any civil action. This fee is paid to the county treasurer who remits the money quarterly to the Office of the State Controller to be placed in the State General Fund.

Nevada Revised Statutes 19.031 authorizes a court in each county in which legal services are provided without charge to indigent or elderly persons to collect an additional fee of $25 from the commencing or appearing party. If the case is commenced pursuant to Chapter 125 (divorce), then the fee is $14 rather than $25. These fees are eventually paid to the organization providing free legal services to the indigent or elderly in that county.

Under NRS 19.0312, an additional filing fee of $25 may be imposed by county commissioners against the commencing party when a motion or other paper seeking to modify or adjust a final order in a child custody case is filed. A $10 fee also may be imposed on the commencement of any civil action or proceeding or upon the filing of any answer or appearance in such an action or proceeding. The money is deposited with the county treasurer, who remits quarterly payments to organizations providing pro bono programs and legal services without charge to abused or neglected children and victims of domestic violence.

Further, NRS 19.0315 requires the county clerk to charge a maximum $15 fee on the commencement of civil actions in district court for credit to an account for programs for alternative dispute resolution and arbitration programs.

Nevada Revised Statutes 19.033 provides that each county clerk must charge an additional fee of $20 upon the commencement of any action for divorce in the district court. This money is deposited with the county treasurer, who remits quarterly payments to the Office of the

State Controller. The State Controller places the money in an account in the State General Fund for use by the director of the Department of Employment, Training and Rehabilitation to administer the provisions of NRS 388.605 to 388.655, inclusive (education and counseling of displaced homemakers).

In certain counties, additional filing fees of not more than $10 are authorized to support mediation programs in child custody or visitation cases, and drug and alcohol prevention and treatment programs (NRS 19.0313 and NRS 19.03135). Detailed fee schedules for the district courts are available through the individual courts.

Justice Court Fees

Justice court fees are imposed pursuant to NRS 4.060, and individuals are charged fees for accessing a variety of court services, ranging from copying to the filing of affidavits. Detailed fee schedules are available through the individual courts. All fees, except fees retained by the justice of the peace for compensation and to pay the Office of the State Controller as required, are deposited with the county treasurer.

Half of the bail or property bond fees deposited with the State Controller are earmarked for the compensation of crime victims. In addition, $5 of the fee collected for celebrating a marriage is paid to the State Controller for deposit in the Account for Aid for Victims of Domestic Violence in the State General Fund.

Additional fees that may be charged in justice court, as authorized by the state, include:

- In counties with a population of 100,000 or more, a $5 to $10 fee is required upon the commencement of any action or on the answer or appearance of any party in any such action or proceeding for which a fee is required. The funds are paid to the county treasurer for credit to an account for dispute resolution. The board of county commissioners in the remaining counties may authorize such a fee (NRS 4.063).

- In counties that charge a fee pursuant to NRS 19.031 to offset a portion of the costs of providing pro bono programs and legal services without charge to indigent or elderly persons, the board of county commissioners may impose a filing fee not to exceed $10 to offset a portion of the costs of providing such programs and services to abused or neglected children and victims of domestic violence. The justice of the peace must pay the fees to the county treasurer (NRS 4.071).

- In counties whose population is less than 100,000, the board of county commissioners may impose a filing fee of not more than $10, which the justice of the peace must pay over to the county treasurer for credit to an account for programs for the prevention and treatment of the abuse of alcohol and drugs (NRS 4.075).

Municipal Court Fees

Municipal courts must charge and collect fees prescribed for justice courts under NRS 4.060 (discussed above) that are within the jurisdictional limits of the municipal court (NRS 5.073). These courts also impose fines and administrative assessments.

ALTERNATIVES TO LITIGATION: ARBITRATION AND MEDIATION

It may be of interest to note that Nevada law authorizes various alternatives to litigation and encourages alternative methods of resolving disputes, such as arbitration and mediation.

Binding Arbitration

Under the Uniform Binding Arbitration Act of 2000, parties may *voluntarily* agree to binding arbitration (NRS 38.206 through 38.248). The Act provides the procedures for the arbitration in which parties may choose to be represented by an attorney. An agreement contained in a record (such as a contract) to submit a controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

Nonbinding Arbitration

Nevada law *requires* nonbinding arbitration for all civil actions filed in district court for damages that do not exceed $50,000 excluding attorney's fees, interest, and court costs (NRS 38.250). Certain exceptions apply, including the following types of cases, which are specifically excluded from any program of mandatory arbitration:

- Actions in which the amount in issue is more than $50,000 or less than the maximum jurisdictional amounts for justice court and small claims court;
- Class actions;
- Actions in equity;
- Actions concerning the title to real estate;
- Probate actions;
- Appeals from courts of limited jurisdiction;
- Actions for declaratory relief;
- Actions involving divorce or problems of domestic relations;
- Actions brought for relief based on any extraordinary writs;
- Actions for the judicial review of an administrative decision;
- Actions in which the parties, pursuant to a written agreement executed before the accrual of the cause of action, have submitted to the controversy to arbitration or any other alternative method for resolving a dispute;

- Actions that present unusual circumstances that constitute good cause for removal from the program;

- Actions in which any of the parties is incarcerated; and

- Actions submitted to mediation pursuant to rules adopted by the Supreme Court.

Civil actions filed in justice court *may* be submitted to arbitration or an alternative method of resolving disputes established by the Supreme Court upon the agreement of the parties. Such methods may include a settlement conference, mediation, and short trials (NRS 38.258).

The rules governing arbitration that are adopted by the Nevada Supreme Court must address the mandatory program for arbitration of actions involving less than $50,000, a voluntary program for the arbitration of actions in which the issue exceeds $50,000, and a voluntary program for the use of *binding* arbitration in all civil actions. The district courts must administer the programs in accordance with the rules adopted by the Supreme Court.

Additional Mediation and Arbitration Requirements

Throughout NRS, mediation, and arbitration generally **may** be authorized or required in certain types of cases (depending upon the circumstances and issues involved), including the following:

- Domestic issues, including child custody and visitation, within the Family Court **(**NRS 3.225, 3.475, and NRS 3.500).

- Homeowners' associations (NRS 38.300 through 38.360).

- Manufactured home parks (NRS 118B.024).

- Time-shares and campgrounds (NRS 119A.530 and NRS 119B.310).

- Certain issues involving the Department of Business and Industry (NRS 232.548).

- Certain discrimination cases under the authority of the Nevada Equal Rights Commission (NRS 233.150 and 233.170).

- Employer/employee relations and workers' compensation issues (Chapter 288 of NRS and NRS 614.010).

- Certain disputes between landowners and Indian tribes (NRS 383.160).

- Complaints against a postsecondary institution (NRS 394.520).

- Agricultural loan mediation program (NRS 561.247).

- Certain issues involving the Board for the Regulation of Liquefied Petroleum Gas (NRS 590.515).

- Disputes between telemarketers and consumers (NRS 599B.025).

- Health care services and disputes (see NRS 689A.745, NRS 689B.0285, NRS 695B.380, NRS 695F.230, and NRS 695G.200 for examples).

- Some contracts of insurance for home protection (NRS 690B.160).

Neighborhood Justice Centers

Neighborhood Justice Centers must be established by the board of county commissioners in counties with populations of 100,000 or more (NRS 244.1607). Such a center must be closely modeled after the program established by the American Bar Association for multi-door courthouses for the resolution of disputes. With certain exceptions for complex cases, a neighborhood justice center must provide, at no charge:

- A forum for the impartial mediation of minor disputes including, but not limited to, disputes between landlord and tenant, neighbors, family members, local businesses and their customers, hospitals and their patients, and governmental agencies and their clients, except where prohibited by federal law.

- A system of providing information concerning the resolution of disputes and the services available in the community.

- An efficient and effective referral system which assists in the resolution of disputes and otherwise guides the client to the appropriate public or private agency to assist in the resolution of the particular dispute, including referrals to the justices of the peace, municipal courts, lawyer referral systems, legal aid services, district attorneys, city attorneys, district courts, mental health services, other alternative methods of resolving disputes, and other governmental and private services.

POTENTIAL ISSUES FOR THE 2007 SESSION OF THE LEGISLATURE

Several interim committees are currently reviewing issues involving the court system in Nevada, including a legislative committee created to examine criminal justice and sentencing (Assembly Concurrent Resolution No. 17). Additional reports requested by the 2005 Legislature include an examination of the benefit of establishing an intermediate appellate court (S.B. 234), a review of the effectiveness of certain domestic violence counseling programs (S.B. 77), and a study of retirement salaries paid to judges (S.B. 328).

SOURCES OF ADDITIONAL INFORMATION

This Policy Brief compiles limited information concerning Nevada's court system. Invaluable information regarding Nevada's court system is available through the AOC, which prepared the flow chart on the last page of this Policy Brief. Statistical information for the courts is collected by the AOC and compiled in the *Annual Report of the Nevada Judiciary*. As an example, the following statewide caseload data is presented on page 25 of the *Annual Report of the Nevada Judiciary* for Fiscal Year 2004.

Table 1. Reported Total Nevada Statewide Trial Court Statistics, Fiscal Years 2000-2004 (*2004 Annual Report)*							
Court	**Fiscal Year**	**Criminal[1]**	**Civil[2]**	**Family[2]**	**Juvenile**	**Total Non-traffic caseload**	**Traffic and Parking[3]**
District	2004	13,203	29,011	54,951	26,968	124,133	6,967
	2003	12,001	28,077	52,258	22,204	114,540	5,997
	2002	12,191	25,303r	47,676	22,148	107,318r	5,425
	2001	11,782	23,383	42,989	18,873r	97,027r	4,134r
	2000	11,477	23,511	41,676	15,967r	92,631r	2,650r
Justice	2004	77,658	116,551	NJ	NJ	194,290	364,962
	2003	76,078	106,593	NJ	NJ	182,671	416,505
	2002	76,928r	101,204	NJ	NJ	178,132r	398,679r
	2001	74,735r	93,342	NJ	NJ	168,077r	401,937r
	2000	73,881r	83,968	NJ	NJ	157,849r	409,829r
Municipal	2004	58,235	20	NJ	NJ	58,255	236,126
	2003	59,074r	3	NJ	NJ	59,077r	240,554
	2002	56,796r	125	NJ	NJ	56,921r	239,394
	2001	50,925r	NF	NJ	NJ	50,925r	232,468r
	2000	53,735r	NF	NJ	NJ	53,735r	253,078r
TOTAL	2004	149,096	145,582	54,951	26,968	376,597	638,064
	2003	161,684	134,673	52,258	22,204	306,288r	663,056
	2002	159,361r	126,632r	47,676	22,148	342,371r	643,498
	2001	151,884r	116,725	42,989	18,873r	316,029r	638,539r
	2000	155,021r	107,479	41,676	15,967r	304,215r	665,557r

NF No filings.
NJ Not within court jurisdiction.
[1] Criminal includes felony, gross misdemeanor, and non-traffic misdemeanor filings and are counted by defendants.
[2] Reopened cases previously reported by courts have been included in earlier year's totals to allow more accurate comparison because reopened cases are included in this year's total. Numbers in these columns will be different from previous annual reports.
[3] Traffic and parking filings are counted by charges, not defendants. Not all courts process parking violations. District Court numbers are juvenile traffic.
r Data totals revised from initial publication by courts improving their collection process.
Source: Uniform System for Judicial Records, Nevada AOC, Planning & Analysis Division. Pages 56 and 57 of the Annual Report of the Nevada Judiciary for Fiscal Year 2004 provide a glossary of case types and terms. The Web site for this glossary is: http://nvsupremecourt.us/DOCS/reports/rpt_annual03.pdf.

STATE CONTACT INFORMATION FOR JUDICIAL INFORMATION

Nevada Supreme Court and the Administrative Office of the Courts
Supreme Court Building
201 South Carson Street
Carson City, Nevada 89701-4702
Telephone: (775) 684-1700
Web site: http://www.nvsupremecourt.us
Janette M. Bloom, Clerk of the Court
Ron Titus, State Court Administrator and Director of the Administrative Office of the Courts

Research Library, Nevada Legislative Counsel Bureau
401 South Carson Street
Carson City, Nevada 89701-4747
(Physical Address: Sedway Office Building, First Floor)
Telephone: (775) 684-6827
Nevada Legislature's Web site: http://www.leg.state.nv.us
Nan Bowers, Legislative Librarian

Supreme Court Law Library
Supreme Court Building
201 South Carson Street, Suite 100
Carson City, Nevada 89701-4702
Telephone: (775) 684-1640
Kathleen Harrington, Law Librarian

Legislative Reports

Following is a list of legislative reports relating to the judicial branch of government. Information regarding these reports is available through the Legislature's Research Library and its Web site.

Reports of Legislative Studies

- Bulletin No. 48 -*Judicial Retirement in Nevada* (1961)
- Bulletin No. 74 -*Nevada's Court Structure* (1968)
- Bulletin No. 88 -*County Courts for Nevada* (1970)
- Bulletin No. 77-3 - *Personnel and Administrative Practices of the Court System and District Attorneys* (1977)
- Bulletin No. 77-4 -*Funding Nevada's Courts* (1977)
- Bulletin No. 85-17 - *Study of the Laws, Rules and Practices Relating to the Grand Jury in Nevada* (1985)

- Bulletin No. 91-17 -*Study of Alternative Methods of Resolving Disputes* (1991)

- Bulletin No. 91-18 - *Study of the Youth Services Division and the Juvenile Justice System in Nevada* (1991)

- Bulletin No. 99-6 -*Fees, Fines, Forfeitures, and Administrative Assessments Imposed and Collected by Courts* (1999)

- Bulletin No. 99-9 -*Family Courts* (1999)

- Bulletin No. 01-8 -*Encouraging Corporations and Other Business Entities to Organize and Conduct Business in Nevada* (Includes discussion of proposal for business courts) (2001)

- Bulletin No. 01-12 -*Pension Plan for Certain Justices and Judges* (2001)

Reports of Audits Conducted by the Audit Division of the Legislative Counsel Bureau

- *Judicial Branch of Government -Administrative Oversight of the State Court System, 1996* (LA96-2)

- Judicial Branch of Government -Uniform System of Judicial Records, 1996 (LA96-8)

- Judicial Branch of Government-Administrative Office of the Courts, 1998 (LA98-8)

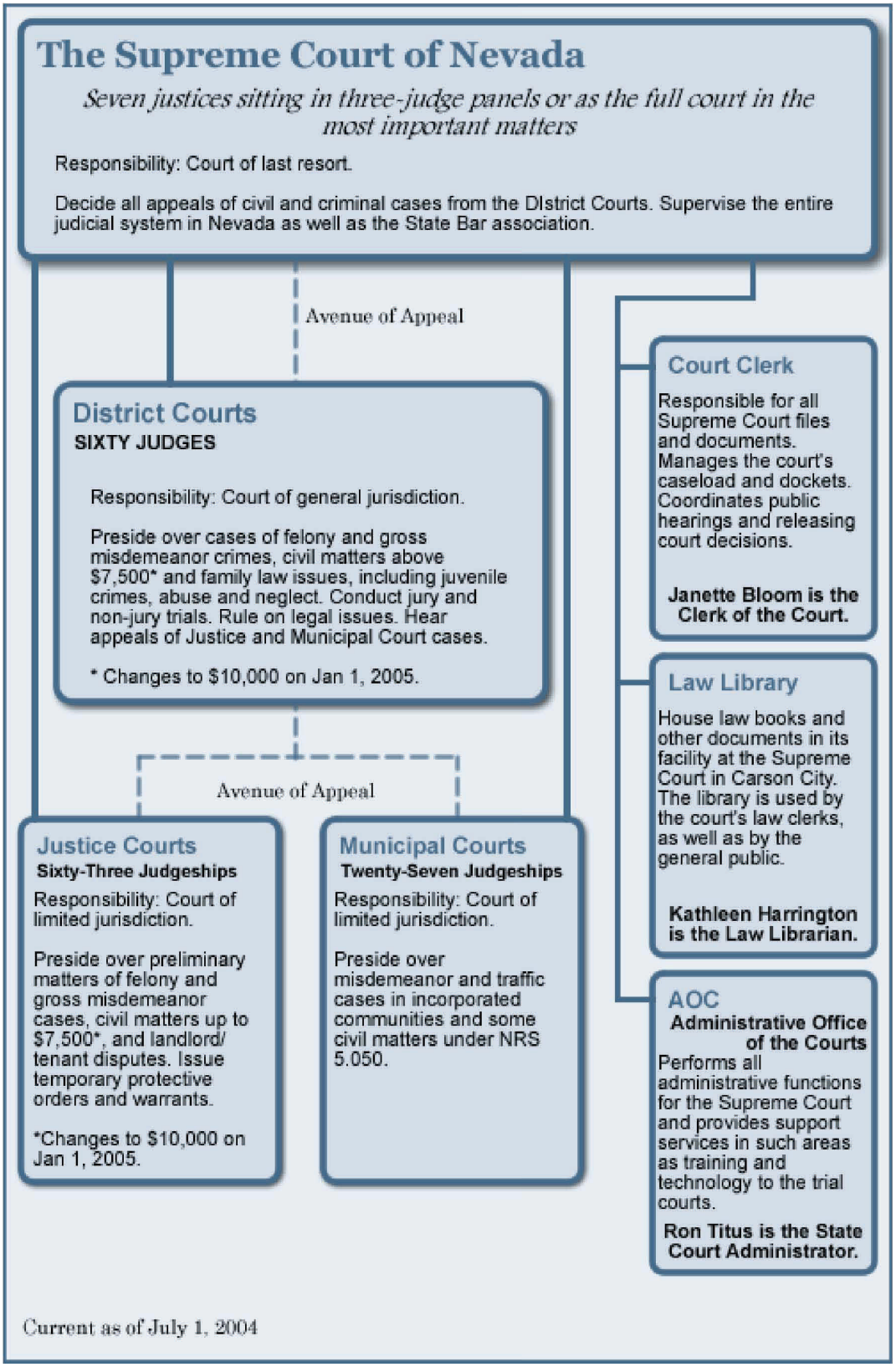
- *Judicial Branch of Government, Administrative Oversight of the State Court System, 2002* (LA02-25)

Reports to the Legislature

Nevada law requires the submission of a variety of reports to the Legislature. These reports are available through the Research Library of the Legislative Counsel Bureau, and include the following relating to the Nevada judiciary:

- *Report from the Nevada Supreme Court on arbitration and alternative methods of resolving disputes* (NRS 38.255)

- Report from certain counties regarding Neighborhood Justice Centers (NRS 244.1607)


The Supreme Court of Nevada
Seven justices sitting in three-judge panels or as the full court in the most important matters
Responsibility: Court of last resort.
Decide all appeals of civil and criminal cases from the DIstrict Courts. Supervise the entire judicial system in Nevada as well as the State Bar association.
Avenue of Appeal
District Courts
SIXTY JUDGES
Responsibility: Court of general jurisdiction.
Preside over cases of felony and gross misdemeanor crimes, civil matters above $7,500* and family law issues, including juvenile crimes, abuse and neglect. Conduct jury and non-jury trials. Rule on legal issues. Hear appeals of Justice and Municipal Court cases.
* Changes to $10,000 on Jan 1, 2005.
Avenue of Appeal
Justice Courts
Sixty-Three Judgeships
Responsibility: Court of limited jurisdiction.
Preside over preliminary matters of felony and gross misdemeanor cases, civil matters up to $7,500*, and landlord/ tenant disputes. Issue temporary protective orders and warrants.
*Changes to $10,000 on Jan 1, 2005.
Municipal Courts
Twenty-Seven Judgeships
Responsibility: Court of limited jurisdiction.
Preside over misdemeanor and traffic cases in incorporated communities and some civil matters under NRS 5.050.
Court Clerk
Responsible for all Supreme Court files and documents. Manages the court's caseload and dockets. Coordinates public hearings and releasing court decisions.
Janette Bloom is the Clerk of the Court.
Law Library
House law books and other documents in its facility at the Supreme Court in Carson City. The library is used by the court's law clerks, as well as by the general public.
Kathleen Harrington is the Law Librarian.
AOC
Administrative Office of the Courts
Performs all administrative functions for the Supreme Court and provides support services in such areas as training and technology to the trial courts.
Ron Titus is the State Court Administrator.
Current as of July 1, 2004

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CRIMINAL JUSTICE IN NEVADA: PART I-OVERVIEW

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM

In the United States, generally each state maintains independent jurisdiction over the areas of criminal justice, corrections, and juvenile justice. Therefore, each state as a matter of policy, determines what constitutes a crime and sets the appropriate punishment or penalty. Further, each state is responsible for the operation of prisons and other facilities to house the individuals who have been convicted of criminal offenses within its borders. Finally, each state independently develops a juvenile justice system and determines whether a minor who commits a criminal offense should be treated as a child or as an adult for purposes of prosecution and sentencing.

CRIMINAL JUSTICE

The most dramatic recent change to criminal justice in Nevada is the adoption of "truth-in-sentencing" legislation. During the 1995 Legislative Session, the sentencing procedure in Nevada was reviewed extensively. To address the inadequacies of the existing system and to provide for "truth-in-sentencing," the Legislature passed Senate Bill 416 (Chapter 443, *Statutes of Nevada 1995*), which became effective on July 1, 1995.

The Legislature reviewed laws in other states that had simply enacted a law to require offenders to serve 85 percent of their sentence, but this approach was rejected. Senate Bill 416 was designed to achieve the goal of actual "truth-in-sentencing" by providing a system for sentencing offenders under which the judge, the victim, the public, and the prison system know precisely the minimum amount of time an offender will serve at the time the sentence is given. Sentences for all offenders were reviewed and revised based upon the seriousness of the offense. For the most violent offenders, sentences were increased.

Truth-in-Sentencing

Under the truth-in-sentencing scheme, a judge imposes a sentence that includes a minimum and maximum period of years to serve in prison. The offender is required to serve 100 percent of the minimum sentence, and there is no parole eligibility during this period. In addition, no credits apply to reduce the minimum sentence. After serving the minimum sentence, the offender is eligible for parole and sentence-reducing credits which apply to the remainder of the sentence, reducing the maximum.

For example, the new statutory range for imprisonment for the crime of robbery is 2 to 10 years. The judge must sentence the offender to a period within this 2- to 10-year range, such as "4 to 10" years. The offender will not be eligible for parole or sentence-reducing credits until the 4-year minimum has been served. After this time, the offender is eligible for parole.

Sentence-reducing credits apply to the 10-year maximum. Based on calculations by Nevada's Department of Corrections (NDOC), a maximum sentence of 10 years may be reduced to 6 years if the offender behaves in prison and participates fully in work and educational programs offered. The judge retains the discretion to impose higher sentences upon the offenders where aggravating circumstances exist, and lower sentences upon offenders where mitigating circumstances exist. The minimum sentence imposed must not be more than 40 percent of the maximum sentence to ensure that the offender will have a sufficient period of time left on his sentence after the application of credits. During this remaining time, he will be supervised by the Division of Parole and Probation if he is released on parole.

Following are the minimum and maximum sentences the judge may impose for robbery, the minimum parole eligibility, and the estimated expiration of the maximum sentence if the offender behaves in prison:

Sentence Judge Imposes	Minimum Parole Eligibility	Expiration of Sentence
2 to 5 years	2 years	3.0 years
2 to 6 years	2 years	3.6 years
2 to 7 years	2 years	4.2 years
2 to 8 years	2 years	4.8 years
2 to 9 years	2 years	5.4 years
2 to 10 years	2 years	6.0 years
3 to 7 years	3 years	4.2 years
3 to 8 years	3 years	4.8 years
3 to 9 years	3 years	5.4 years
3 to 10 years	3 years	6.0 years
4 to 10 years	4 years	6.0 years

Felonies and Misdemeanors

In Nevada, a crime is defined as "an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline." Every crime which may be punished by death or by imprisonment in the state prison for a period of 1 year or more is a felony.

Felonies

In an effort to instill consistency and rationality in sentencing patterns, S.B. 416 established categories for felonies based on the type of sentence that may be imposed. The felonies contained in each category carry like sentences and are similar with regard to the nature of the offense. Each felony is placed into one of the following six categories:

- *Category A*—felonies for which the judge may impose a sentence of life or life without the possibility of parole. Felonies carrying a potential sentence of death are also included in this category.

- *Category B*—felonies for which the judge may impose a sentence that is not less than 1 year or more than 20 years.

- *Category C*—felonies for which the judge may impose a sentence not less than 1 year or more than 5 years.

- *Category D*—felonies for which the judge may impose a sentence not less than 1 year or more than 4 years.

- *Category E*—felonies for which probation is mandatory, but the judge must impose an underlying prison sentence of not less than 1 year nor more than 4 years. In 1997, the Legislature modified the penalty for a category E felony to provide that example, if an offender has a lengthy criminal history to impose probation or send the offender to prison.

Misdemeanors

Nevada currently does not categorize misdemeanors in the same manner as felonies. The 2001-2002 Legislative Commission's Subcommittee to Study Categories of Misdemeanors reviewed whether misdemeanors should also be categorized; however, the Subcommittee as a matter of policy decided to maintain Nevada's current system of misdemeanors. Presently, there are over 1,400 offenses in Nevada law which may be punished as a misdemeanor or a gross misdemeanor. It should also be noted that unless otherwise defined by statute, each criminal offense in Nevada is punishable as a misdemeanor. For purposes of the *Nevada Revised Statutes*, the classes of misdemeanors and the corresponding penalties are as follows:

- *Misdemeanor*—fine of not more than $1,000 or imprisonment in county jail for not more than six months, or both a fine and imprisonment, unless the statute defining the

crime prescribes a different penalty.

- *Gross Misdemeanor*—fine of not more than $2,000 or imprisonment in the county jail for not more than 1 year, or both a fine and imprisonment, unless the statute defining the crime prescribes a different penalty.

CORRECTIONS

Nevada's Department of Corrections is responsible for the housing and treatment of offenders sentenced to state prison. The Department of Corrections is governed by the Board of Prison Commissioners, which consists of the Governor (as Chairperson), the Secretary of State, and the Attorney General.

All institutions and facilities within the State of Nevada are financed by public monies and are operated by NDOC with the exception of the Southern Nevada Women's Correctional Facility, which is privatized and run by Corrections Corporation of America. However, the Interim Finance Committee of the Nevada Legislature recently approved NDOC's bid to operate this women's facility, and NDOC will assume full responsibility as of October 1, 2004.

The Department of Corrections generally intake all persons sentenced to state prison and then classify prisoners, based on risk assessment, and assign the individual to the appropriate risk-defined facility. Currently, NDOC operates 19 facilities statewide, including: 8 institutions, 10 conservation camps (with one boot camp), and 1 restitution center. The facilities are as follows:

INSTITUTIONS

Ely State Prison Male/Maximum Ely, Nevada Capacity 980	**Nevada State Prison** Male/Medium Carson City, Nevada Capacity 739
High Desert State Prison Male/Medium Indian Springs, Nevada Capacity 3000	**Southern Desert Correctional Center** Male/Medium Indian Springs, Nevada Capacity 1,458
Lovelock Correctional Center Male/Medium Lovelock, Nevada Capacity 528	**Southern NV Women's Correctional Facility** Female/Privatized Maximum/Medium North Las Vegas, Nevada Capacity 291
Northern Nevada Correctional Center Male/Medium Carson City, Nevada Capacity 1,261	**Warm Springs Correctional Center** Male/Medium Carson City, Nevada Capacity 260

RESTITUTION CENTER

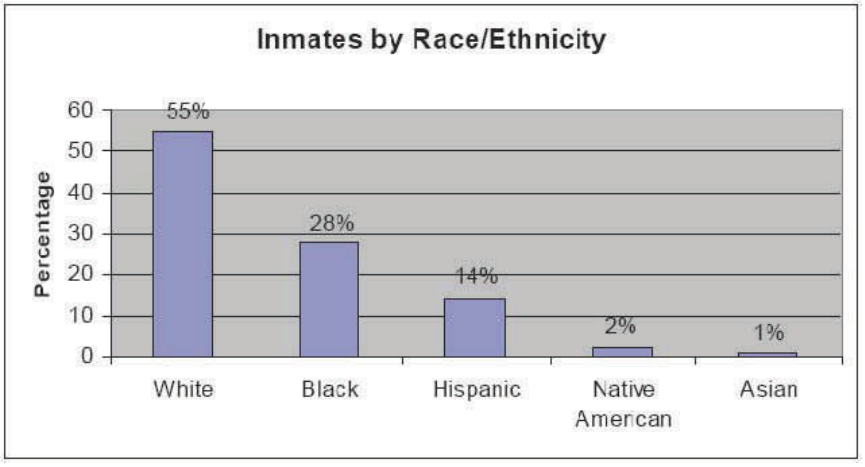
Northern Nevada Restitution Center Male/Community Trustee Reno, Nevada Capacity 88

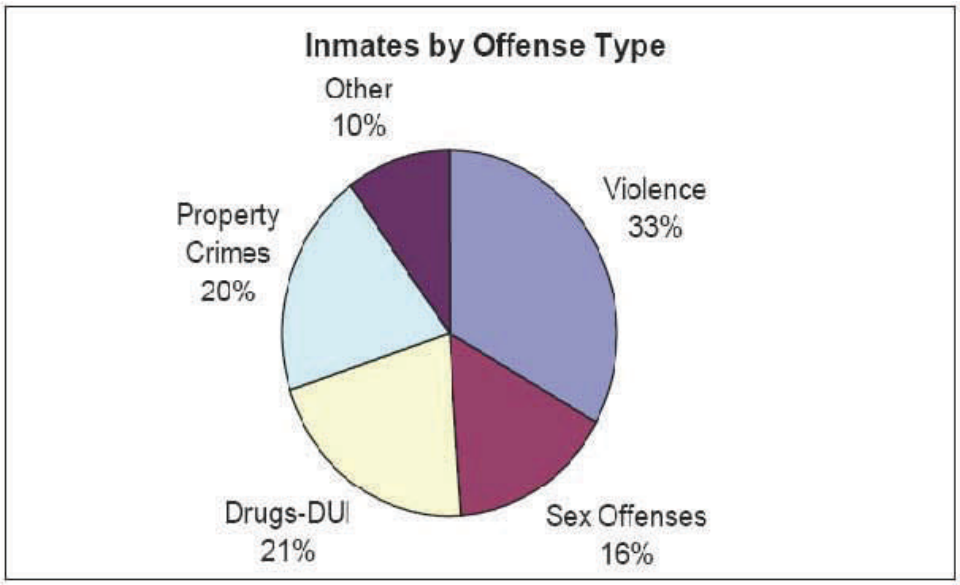
CONSERVATION CAMPS

Carlin Conservation Camp Carlin, Nevada Male/Minimum Capacity 150	**Pioche Conservation Camp** Pioche, Nevada Male/Minimum Capacity 194
Ely Conservation Camp Male/Minimum Ely, Nevada Capacity 150	**Silver Springs Conservation Camp** Female/Minimum Silver Springs, Nevada
Humboldt Conservation Camp Male/Minimum Winnemucca, Nevada Capacity 150	**Stewart Conservation Camp** Male/Minimum Carson City, Nevada Capacity 240
Indian Springs Conservation Camp Male/Minimum Indian Springs, Nevada Capacity 228	**Tonopah Conservation Camp** Male/Minimum Tonopah, Nevada Capacity 150
Indian Springs Boot Camp Male/Minimum Indian Springs, Nevada Capacity 60	**Wells Conservation Camp** Male/Minimum Wells, Nevada Capacity 150
Jean Conservation Camp Female/Minimum Jean, Nevada	

As of July 2004, Nevada's Department of Corrections was responsible for nearly 11,000 incarcerated inmates. The breakdown of the population is approximately 91 percent male and 9 percent female, with a median age of 32.3 for males and 35 years for females. Roughly 80 inmates are presently housed on death row, as the death row population fluctuates frequently pending the outcome of legal appeals. Less than 5 percent of all inmates are serving life sentences. Finally, according to NDOC, the prison system admits approximately

4,000 inmates per year and releases roughly the same number of inmates each year.





PAROLE AND PROBATION

The Division of Parole and Probation is within the purview of Nevada's Department of Public Safety. The Division has responsibilities in both law enforcement and casework; however, its primary responsibility is community safety. The Division conducts investigations of persons convicted of felony or gross misdemeanor offenses and makes sentencing recommendations to the District Court Judges.

Division officers supervise and monitor the activities of parolees and probationers and assist and encourage offenders to make acceptable adjustments within the community. The Division arranges educational programs and assists parolees and probationers in obtaining employment. Officers routinely identify offender needs and make referrals to state and local social and private service agencies.

Officers also monitor the behavior of offenders to deter future criminal activity and systematically test them for drug and alcohol abuse. On average, 70 percent of the offenders supervised by the Division exit their terms successfully, without being revoked back to prison or county jail.

The Division collects, on average, more than $2 million in restitution annually from offenders and facilitates the disbursement to victims of crime. In addition, the Division also collects more than $2 million annually in supervision fees from offenders to defray the costs of supervision, thereby reducing the burden for the citizens of Nevada.

The Division has 15 offices located throughout the state with its central administration office located in Carson City. The Division operates four primary district headquarters in Carson City, Elko, Las Vegas, and Reno. The two urban offices, Reno and Las Vegas, account for 80 percent of the Division's workload. The rural offices, while accounting for 20 percent of the workload, are responsible for coverage of 87,699 square miles, or 75 percent of the state's geography.

Parole Board

The State Board of Parole Commissioners serves the public interest by making reasonable and responsible decisions regarding the release of offenders to community supervision. The Board consists of seven members appointed to serve four-year terms by the Governor. The Chairman is the executive officer of the Board and administers its activities and services and is responsible for its management. Members of the Parole Board and case hearing representatives travel throughout the state and conduct hearings at the location the inmate is housed.

What is the difference between Parole and Probation?

Parole is the term used to describe offenders that have been incarcerated in a prison facility and released prior to the court imposed expiration date. Parolees serve their time in the community and can be returned to prison for violating any of the **conditions of parole** imposed by the State Board of Parole Commissioners.

Probation is the term used to describe offenders that have been convicted of an offense but whose prison sentence is suspended. Probation is very similar to parole except that probationers have not served prison time on their suspended sentence and the sentencing judge maintains jurisdiction over the probationer.

2005-2006 INTERIM STUDY

The 2005 Legislature debated and ultimately adopted Assembly Concurrent Resolution No. 17 (File No. 98, *Statutes of Nevada 2005*). The resolution calls for a subcommittee of six legislators, to be appointed by the Legislative Commission, to study and review:

1. the current practices and procedures relating to issuance of pardons and granting and revoking parole and probation;

2. the manner of imposing sentences;

3. the feasibility of establishing mandatory parole after an offender serves a portion of a sentence;

4. sentencing options that provide for combined prison terms and post-incarceration supervision;

5. gender and ethnic parity in sentencing;

6. training, educational, and rehabilitation programs;

7. programs developed in other states that provide a system of community-based programs that place offenders in more specialized programs according to their needs;

8. the procedures for determining when to release inmates into community supervision programs;

9. methods to promote more cost-effective pardons, parole, and probation practices; and

10. methods for combining juvenile and adult sentencing options for juveniles who commit serious crimes. It is anticipated that the subcommittee will hold six meetings throughout the interim, and will forward its recommendations for full consideration by the 2007 Legislature.

POTENTIAL CRIMINAL JUSTICE ISSUES FOR THE 2007 LEGISLATURE

Each session, the Senate and Assembly Judiciary Committees consider numerous measures involving the criminal justice system including the penalties for crimes and the addition, if necessary, of new crimes. Specific criminal justice issues that are regularly reviewed by the Judiciary Committees include the laws governing sex offenders and community notification and driving under the influence of alcohol or drugs (including marijuana). Additionally, the committees may review new or emerging areas of crime, such as identity theft or video voyeurism, which emanate through the use of computers and enhanced technology.

GLOSSARY OF TERMS AND ABBREVIATIONS

Crime-An offense that is punishable by imprisonment, either in county jail or state prison.

Misdemeanor-A crime that is punishable by imprisonment for less than one year.

Felony-A crime that is punishable by imprisonment for one year or longer.

Truth-In-Sentencing-Sentencing requirements that apply to offenses committed after July 1, 1995, under which the court must impose a bifurcated sentence consisting of a specified period

of incarceration in prison followed by a specified period of extended supervision.
NDOC-Nevada's Department of Corrections.

P&P-The Division of Parole and Probation, Nevada's Department of Public Safety.

DA-Generally refers to the local (county) Office of the District Attorney, which is responsible for prosecuting criminal offenses.

PD-Generally refers to the local (county) Office of the Public Defender, which is responsible for defending indigent persons charged with criminal offenses.

FREQUENTLY ASKED QUESTIONS

Q: What is the penalty for an offense that does not specify a penalty?
A: If no penalty is specified, the offense is a misdemeanor.

Q: For what crimes can a person be sentenced to death in Nevada?
A: A person may only receive the death penalty for a conviction of first degree murder, only where one or more aggravating circumstances are found, and any mitigating circumstances do not outweigh the aggravating circumstance(s).

ADDITIONAL REFERENCES

- Nevada's Department of Corrections: http://www.doc.nv.gov
- Nevada's Division of Parole and Probation: http://dps.nv.gov/npp/
- State Board of Parole Commissioners: http://www.parole.nv.gov

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CRIMINAL JUSTICE IN NEVADA: PART II-SEX OFFENDERS

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

SEX OFFENDER LAWS

Compliance with Federal Law

In the mid-1990s, federal legislation began pushing states to adopt comprehensive sex offender laws. Three of the most prominent federal laws are briefly summarized below:

- Under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994, states were mandated Research Division to implement programs by September 1997 to require not only the registration of sexually violent offenders but also the registration of perpetrators of certain crimes committed against children. Failure to implement such programs would result in the loss of 10 percent of the funds allocated to states under the Omnibus Crime Control and Safe Streets Act of 1968.

- Megan's Law, enacted in 1996, requires the release of information concerning a registered offender necessary for public protection. The intent of this law is to ". . . guarantee appropriate dissemination of information so that parents, school officials and community groups can responsibly use the information in order to protect their children." The means by which that notification is accomplished, however, is left up to each individual state.

- The Pam Lynchner Sexual Offender Tracking and Identification Act of 1996 amends the Wetterling Act to prescribe more stringent registration requirements, including a requirement for sexually violent offenders to register for life. The Lynchner Act also required the establishment of a national database to track convicted sex offenders and requires states to communicate with the Federal Bureau of Investigation (FBI) concerning sex offenders within their jurisdiction.

Nevada State Law

Given the federal legislation and a national movement to prosecute sex-related offenses, the Nevada Legislature in the last nine years has enacted a wide range of laws to promote public safety and to track persons convicted of sex offenses.

Procedures Following a Conviction for a Sexual Offense

Registration

Before imposing a sentence upon an adult convicted of a sex offense (or a crime against a child, as defined by statute), the court must notify the Central Repository for Nevada Records of Criminal History (Central Repository) of the conviction so the Central Repository may initiate the registration procedures under Chapter 179D of *Nevada Revised Statutes* (NRS). The court must also inform the defendant of his duty to register and to notify local law enforcement agencies of changes in address.

Chapter 179D of NRS establishes a statewide registry of sex offenders and offenders convicted of certain crimes against children in addition to establishing a program to provide the public with access to certain information in the statewide registry.

Who must register?
A person convicted or adjudicated delinquent of a "sexual offense" (defined by statute) after July 1, 1956, must register as a sex offender. Also, a person convicted of certain "crimes against a child" (defined by statute) must also register with law enforcement.

Registry Information
If a person required to register resides or is present within the state for 48 hours or more, the offender must register with a local law enforcement agency. The person must: (1) appear personally at the office of the appropriate local law enforcement agency; (2) provide all information that is requested by the local law enforcement agency, including, but not limited to, fingerprints and a photograph; and (3) sign and date the record of registration or some other proof of registration of the local law enforcement agency in the presence of an officer of the local law enforcement agency.

Duration of Registration Requirements
If a sex offender complies with the provisions for registration for an interval of at least 15 consecutive years during which he is not convicted of an offense that poses a threat to the safety or well-being of others, the sex offender may file a petition to terminate his duty to register with the district court. The court will then hold a hearing on the petition, and if the court determines from the evidence presented that the sex offender is not likely to pose a threat to the safety of others, the court shall terminate the duty of the sex offender to register. If the court does not terminate the duty of the sex offender to register, the sex offender may file another petition after each succeeding interval of 5 consecutive years if the sex offender is not convicted of an offense that poses a threat to the safety or well-being of others. A sex offender may not file a petition to terminate his duty to register if the sex offender: (1) is subject to

community notification or to lifetime supervision; (2) has been declared to be a sexually violent predator; (3) has been convicted of one or more sexually violent offenses; (4) has two or more sexual offenses against persons less than 18 years of age; (5) has two or more crimes against a child; or (6) has at least one of each offense previously described.

Penalties

A person who is subject to the registration requirements and who fails to register with a local law enforcement agency, fails to notify the local law enforcement agency of a change of address, provides false or misleading information to the Central Repository or a local law enforcement agency, or otherwise violates the provisions of the registration requirements is guilty of a category D felony (for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years). In addition to any other penalty, the court may impose a fine of not more than $5,000, unless a greater fine is authorized or required by statute.

Psychological Testing

For certain sexually related offenses, a licensed psychologist or psychiatrist who meets the statutory qualifications must certify that the person convicted does not represent a high risk to re-offend based upon a currently accepted standard of assessment. If this certification is achieved, the court may grant probation or a suspended sentence.

Psychosexual Evaluation

For specified sexual offenses for which a suspended sentence or probation is permitted, the Division of Parole and Probation must arrange for a psychosexual evaluation of the defendant as part of its presentence investigation and report to the court. The evaluation must be conducted using diagnostic tools that are generally accepted as being within the standard of care for the evaluation of sex offenders and must include a comprehensive clinical interview with the defendant and a review of all investigative reports relating to the offense and all statements made by the victims. The person conducting the evaluation must be "professionally qualified" to do so, must be given access to all records necessary to conduct the evaluation, and must prepare a comprehensive report of the results and provide a copy to the Division.

The defendant, or the parents of the defendant (if he was under 18 years of age when the sexual offense was committed and he was convicted as an adult) to the extent of his or their financial ability, must pay the cost of the evaluation.

Sentencing Requirements for Convicted Sex Offenders

At the time of sentencing, a court may commit an offender to the custody of Nevada's Department of Corrections (NDOC) (if convicted of a felony), grant probation, or suspend the sentence. Additional provisions apply to sex offenders at the time of sentencing, as referenced below.

Special Sentence of Lifetime Supervision

If a defendant is convicted of a sexual offense, as defined under subsection 5 of NRS 176.0931, the court must include a special sentence of lifetime supervision that commences after any period of probation or any term of imprisonment and any period of release on parole. A person sentenced to lifetime supervision may petition the court for release from the supervision, and the court must grant the release if the person has not been convicted of an offense that poses a threat to the safety or well-being of others for at least 15 consecutive years after his last conviction or release from incarceration, whichever occurs later, and if the person is not likely to pose a threat to the safety of others if released from lifetime supervision. However, a person remains subject to the registration and community notification requirements, unless he is otherwise relieved pursuant to the laws applicable to those provisions.

Genetic Marker Testing

At sentencing, the court must order genetic testing for all defendants convicted of certain sexual offenses and crimes against a child. In addition, testing must also be ordered for those convicted of any category A felony, any category B felony, a category C felony involving the use or threatened use of force or violence, a crime against a child, a sexual offense, elderly abuse, subsequent stalking offenses, an attempt or conspiracy to commit any of the previously listed offenses, and failing to register as a convicted person.

In addition to requiring that the defendant's name, Social Security number, and date of birth be submitted to the Central Repository, a biological specimen must be obtained from the defendant to be used for analysis to determine the genetic markers of the specimen. If the defendant is committed to the NDOC, the Department is responsible for obtaining the sample. If not, the Division of Parole and Probation must arrange to obtain the sample. Each board of county commissioners must designate a forensic laboratory to conduct the genetic marker testing that must satisfy the standards for quality assurance established by the FBI for participation in CODIS (Combined DNA Indexing System).

Designation as a Sexually Violent Predator

If an offender is convicted of a sexually violent offense, or if an offender is convicted of a sexual offense and was previously convicted for a sexually violent offense, the prosecuting attorney may petition the court in which the offender was sentenced for a declaration that the offender is a "sexually violent predator" for the purposes of registration and community notification. Such a petition must be filed before the offender is released. If a petition is filed, a panel composed of "qualified professionals," victims' rights advocates, and representatives of law enforcement must prepare a report that includes a conclusion from the two "qualified professionals" regarding whether the sex offender suffers from a mental disorder or personality disorder. If, after reviewing the report and evidence presented at the hearing on the petition, the court determines that the offender suffers from one of these disorders, it must enter an order declaring the offender to be a "sexually violent predator."

Community Notification

In 1997, the Nevada Legislature enacted a measure aimed at improving public safety by ensuring that law enforcement officials and carefully selected organizations and members of the community are made aware of sex offenders in their community as well as their whereabouts. Generally, Chapter 179D of NRS requires risk assessments and community notification of all adult and certain juvenile offenders present for 48 hours or more within the state.

Chapter 179D of NRS charges the Nevada Attorney General with the responsibility, in consultation with an advisory council, of developing guidelines and procedures for notifying the community of the whereabouts of sex offenders. The adopted *Guidelines and Procedures for Community Notification* provide for a graduated, three-tier system of notification, with increasingly broader levels of notification depending upon the offender's risk of re-offense and threat to public safety.

- *Tier 1*—if the risk of recidivism is low (a possible risk of recidivism and threat to public safety), the sex offender must be assigned a Tier 1 level of notification. The Division of Parole and Probation is required to provide the necessary information to the law enforcement agency where the sex offender is residing or working (or is expected to reside and to work), or is otherwise reasonably likely to encounter the sex offender. The law enforcement agency in whose jurisdiction the sex offender resides shall notify other law enforcement agencies that are likely to encounter the sex offender.

- *Tier 2*—if the risk of recidivism is moderate (a substantial risk of recidivism and threat to public safety), the sex offender must be assigned a Tier 2 level of notification. In addition to the notification provided by the Division to local law enforcement under Tier 1, the law enforcement agency in whose jurisdiction the sex offender resides shall notify other law enforcement agencies, schools, and religious and youth organizations that are likely to encounter the sex offender.

- Tie*r 3*—if the risk of recidivism is high (a probable risk of recidivism and threat to public safety), the sex offender must be assigned a Tier 3 level of notification. In addition to the notifications required under Tier 1 and Tier 2, the law enforcement agency in whose jurisdiction the sex offender resides shall notify other law enforcement agencies, schools, camps, day care centers, foster care centers or homes, and religious and youth organizations that are likely to encounter the sex offender. Also, notification must be provided to the public through means designed to reach members of the public who are likely to encounter the sex offender.

Sex Offender Web site

During the 2005 Session, several sex offender bills were introduced, with the hopes of further protecting the community. Senate Bill 341 requires the Department of Public Safety to establish and maintain a community notification Web site to provide certain information to the public concerning certain sex offenders. The Web site does not contain information on all convicted sex offenders; however, as information is only provided for sex offenders with a risk

assessment score of a Tier Level 3 and certain information regarding a Tier Level 2. Information on the Web site includes the name, aliases, photograph (where available), conviction information, and zip code based on the latest registered address. The Web site is located at: http://www.nvsexoffenders.gov/

Juvenile Sex Offenders

Annual Drivers' License Renewals

Also under the sweeping reform legislation passed in 2005, sex offenders convicted of a crime against a child must now re-apply for drivers' licenses, commercial drivers' licenses, and identification cards on an annual basis. Additionally, such offenders may not apply for a drivers' license, commercial drivers' license, or identification card, unless they are in compliance with the registration requirements. With the passage of this legislation, Nevada becomes one of the few states that have such a requirement, and it is expected to greatly assist in the tracking of released offenders.

Registration

There is no requirement that a juvenile sex offender register with local law enforcement. However, when a child adjudicated delinquent for certain sexual offenses or a sexually motivated act reaches 21 years of age, the juvenile court must hold a hearing to determine whether to deem the child an adult sex offender for the purposes of registration and community notification. This hearing is not required if the child has been relieved of being subject to the community notification laws before reaching the age of 21 years.

Community Notification

For juveniles, Chapter 62F of NRS requires community notification of youths adjudicated delinquent of one of the following acts, which would be crimes if committed by an adult: (1) sexual assault; (2) battery with intent to commit sexual assault; (3) an offense involving pornography and a minor; (4) lewdness with a child; or (5) an attempt to commit one of these offenses. Community notification is also required for youths adjudicated delinquent for certain acts that are determined by the court to be sexually motivated.

Each session, the Senate and Assembly Judiciary Committees consider numerous measures involving the criminal justice system including the penalties for crimes and the addition, if necessary, of new crimes. Specific criminal justice issues that are regularly reviewed by the Judiciary Committees include the laws governing sex offenders and community notification. Several issues which may be debated during the 2007 Legislative Session include: civil commitment; ankle bracelet [Global Positioning Satellite (GPS)] monitoring; and residency restrictions.

Civil commitment laws allow state officials to initiate an involuntary commitment process against convicted sex offenders, usually after they have served their sentences. Many times these individuals are then placed in state hospitals and may remain so for an indefinite period of time (many consider it a life sentence). According to a publication by the National Conference of State Legislatures (NCSL) titled *Sex Offender Civil Commitment Laws* (copy enclosed), as of December 2004 at least 16 states authorized civil commitment for certain sex offenders.

Global Positioning Satellite tracking of sex offenders has recently become more available due to technological and cost availability. According to NCSL, as of July 2005, at least eight states have passed laws requiring certain sex offenders to be subject to GPS monitoring. Additionally, Minnesota and Texas are experimenting with GPS without mandatory legislation, as is San Diego, California, at the local level through a County Sheriff's Pilot Program.

Lastly, it appears that several states have enacted certain residency distance requirements for sex offenders. For instance, in 2002, Iowa passed a law which restricts certain sex offenders from residing within 2,000 feet of an elementary or secondary school or a child care facility. On July 29, 2005, the Iowa Supreme Court upheld the state's residency requirement on sex offenders.

FREQUENTLY ASKED QUESTIONS

Q: Is it a crime for a sex offender to fail to register in Nevada?

A: Yes. A person convicted or adjudicated delinquent of a "sexual offense" (defined by statute) after July 1, 1956, must register as a sex offender. Also, a person convicted of certain "crimes against a child" (defined by statute) must also register with law enforcement. A person who is subject to the registration requirements and who fails to register with a local law enforcement agency, fails to notify the local law enforcement agency of a change of address, provides false or misleading information to the Central Repository or a local law enforcement agency, or otherwise violates the provisions of the registration requirements is guilty of a category D felony.

Q: What is the difference between registration and community notification?

A: Registration requires certain persons convicted of a sexual offense to "register" and provide personal information to law enforcement. Additionally, certain persons convicted of a sexual offense that is deemed to be more serious in nature, may be subject to community notification (whereby the public may be alerted as to the offender's location). Notification levels vary according to the offender's risk of re-offense and the perceived threat to public safety.

Q: I have a question regarding sex offenders and the registration and/or community notification requirements, who should I contact?

A: The best place to start is with your local law enforcement agencies. Most agencies have specific sex offender detail units, which can respond to questions or concerns from members of the public.

ADDITIONAL RESOURCES

- Nevada Sex Offender Registry and information: http://www.nvsexoffenders.gov.

- Las Vegas Metropolitan Police Department Tier Level 3 Sex Offender Web site: http:// www.lvmpd.com/Tier_3_Sex_ Offenders/index.html.

- Nevada Attorney General's Sex Offender Guidelines for Community Notification: http://ag.state.nv.us/menu/top/publications/Sex%20Offender%20Guidelines.pdf

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CRIMINAL JUSTICE IN NEVADA: PART III-JUVENILE JUSTICE

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Juvenile justice is the area of law applicable to persons not old enough to be held responsible for criminal acts. In most states, as in Nevada, the age for criminal culpability is set at 18 years. The main goal of the juvenile justice system is rehabilitation rather than punishment. To that end, the system attempts to provide treatment and programs, with the goal of diverting the youth from a path which may lead to a life of crime and ultimately adult prison.

The Nevada system of juvenile justice is generally contained in Chapter 62 of the *Nevada Revised Statutes* (NRS). The juvenile justice system in Nevada currently operates as a bifurcated or split system. Generally speaking, the State of Nevada has responsibility for the operation of long-term youth training center facilities and for youth parole and aftercare services. Nevada's 17 counties are responsible for the operation of local detention facilities and county youth camps, probation, and aftercare services.

Briefly, a youth coming into contact with the juvenile justice system receives an initial evaluation at the county level and is either diverted, without court action to informal probation; ordered to pay a fine and/or perform community service; placed in community programs; or is referred to juvenile court. Dependent upon the court action, a youth may be committed to a state-operated training center, a county-operated youth camp, or placed on probation. If a youth does not successfully complete conditions of probation, court action may result in the youth being committed to either a state-operated training center or a county facility.

Juvenile Court Jurisdiction

Generally, unless the child involved is subject to the exclusive jurisdiction of an Indian tribe, and except as otherwise provided in Chapter 62 of NRS, the juvenile court has exclusive original jurisdiction in proceedings:

- Concerning any child living or found within the county who is in need of supervision.

- Concerning any child living or found within the county who has committed a delinquent act.

- Concerning any child in need of commitment to an institution for the mentally retarded.

As defined by the NRS, a child means: a person who is less than 18 years of age; a person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age; or a person who is otherwise subject to the jurisdiction of the juvenile court as a juvenile sex offender.

Additionally, except for certain sexual offenses, if a child is subject to the jurisdiction of the juvenile court, the juvenile court: (a) may terminate its jurisdiction concerning the child at any time, either on its own volition or for good cause shown; or (b) may retain jurisdiction over the child until the child reaches 21 years of age.

Child in Need of Supervision

A child may be alleged or adjudicated to be in need of supervision because the child: (a) is subject to compulsory school attendance and is a habitual truant from school; (b) habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable; or (c) deserts, abandons, or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation.

Child Deemed Delinquent

A child commits a delinquent act if the child: (a) violates a county or municipal ordinance; (b) violates any rule or regulation having the force of law; or (c) commits an act designated a criminal offense pursuant to the laws of the State of Nevada. However, certain heinous acts, such as murder, certain sexual assaults, certain offenses involving a firearm, certain felonies committed on school property, and criminal offenses if the individual had already been convicted of a criminal offense are not deemed delinquent acts and are not within the jurisdiction of the juvenile court.

Certification to Adult Court

Generally, upon a motion by the district attorney and after a full investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child: (a) is charged with an offense that would have been a felony if committed by an adult; and (b) was 14 years of age or older at the time the child allegedly committed the offense.

In certain cases involving sexual offenses or firearms, and if the child was 14 years of age or older, the juvenile court must certify a child for proper criminal proceedings as an adult.

Lastly, the court may certify a child as an adult if the child escapes or attempts to escape from a facility for the detention of juveniles, if the child was previously adjudicated delinquent for an act that would have been a felony if committed by an adult, or the child used a dangerous weapon to escape or attempt to escape.

STATE JUVENILE FACILITIES

Nevada Youth Training Center

The Nevada Youth Training Center in Elko is a 160-bed, 24-hour residential juvenile correctional facility for male youth between the ages of 12 and 18 years who are committed by the state's district courts for correctional care. The facility is "staff secure" and does not employ perimeter fencing.

The center operates an accredited junior/senior high school program and also participates in interscholastic sports activities in football, basketball, wrestling, track, and cross-country. Vocational programs are offered including welding, basic auto mechanics, landscape/grounds maintenance, and carpentry and woodworking classes. All youth are involved in a counseling program, both individual and in group settings.

Caliente Youth Center

The Caliente Youth Center is a 140-bed (60 female, 80 male), 24-hour residential juvenile correctional facility for male and female youth between the ages of 12 and 18 years who are committed by the state's district courts for correctional care. The facility is "staff secure," similar to the Nevada Youth Training Center, and does not utilize perimeter fencing.

The coeducational correctional center contracts with the Lincoln County School District for educational and vocational services for students from seventh grade through high school graduation. Vocational training includes hotel/motel management, landscaping, culinary and graphic arts. Sports activities include basketball, volleyball, softball, football, soccer, swimming, and other intramural activities. The center utilizes positive peer counseling for peer group interaction, which stresses that students listen to the counsel and advice of each other more readily than they listen to adults.

Summit View Youth Correctional Facility

The 1997 Legislature gave Nevada's Department of Administration the authority to privately construct and operate a 96-bed maximum security facility for the most serious juvenile offenders. The Summit View Youth Correctional Facility opened in North Las Vegas in June 2000. The facility was privately run by Florida-based Youth Services International, but since January 2004, it has now reopened under state management by Nevada's Division of Child and Family Services.

Probation Function

Chapter 62 of the NRS authorizes juvenile probation functions. It establishes probation departments at the county level and gives them jurisdiction over children in need of supervision and those who have committed delinquent acts (those acts that if committed by an adult would be considered crimes). In addition, one of the purposes of Chapter 62 is to "promote the

establishment, supervision, and implementation of preventive programs designed to prevent persons under the age of 18 from coming under the jurisdiction of the juvenile division of the district court." Depending upon the size of the county, local probation departments differ in their organization and reporting requirements.

NEVADA COUNTIES' RESPONSIBILITIES

County-Operated Facilities

Juvenile Detention is a temporary, secure, holding facility that ensures the safe custody of juveniles ages 8 to 18 who are accused of conduct subject to the jurisdiction of the court and require a restricted environment for their own or the community's protection while pending legal action. Further, Juvenile Detention provides a wide range of helpful services which support the juvenile's physical, emotional, and social development. Following, by judicial district, is a brief listing of county-operated facilities, as compiled by the Nevada Association of Juvenile Justice Administrators.

- *First Judicial District—Carson City and Storey County:* 18-bed regional juvenile detention center.

- *Second Judicial District—Washoe County:* Recently opened (2004) the 108-bed Jan Evans Center. The county also operates the McGee Center, a 24-bed shelter care program for status offenders (runaways, incorrigible behavior, children in need of supervision).

- *Fourth Judicial District—Elko County:* Northeastern Nevada Juvenile Center, 24-bed secure detention facility.

- *Fifth Judicial District—Mineral, Nye, and Esmeralda Counties:* 14-bed secure detention facility located in Mineral County.

- *Sixth Judicial District—Humboldt, Lander, and Pershing Counties:* Leighton Hall, a 16-bed secure juvenile detention center in Winnemucca.

- *Eighth Judicial District—Clark County:* 100-bed secure detention facility and the Spring Mountain Youth Camp, for long-term offenders (average length of stay is 6 months). Through Clark County Department of Juvenile Justice Services, a maximum bed capacity for 235 youth.

- *Ninth Judicial District—Douglas County:* 14-bed secure detention facility located in one wing of the adult jail in Stateline and a 40-bed secure youth camp in China Springs.

2005 SIGNIFICANT JUVENILE JUSTICE LEGISLATION

In past legislative sessions, lawmakers have established and strengthened the penalties for juvenile crime. The 2005 Legislature enacted Senate Bill 43 (Chapter 124, *Statutes of Nevada*) to update an antiquated mechanism for tracking and supervising juveniles who move across

state borders. Senate Bill 43 (Chapter 299, *Statutes of Nevada 2005*) repeals the current Interstate Compact on Juveniles and replaces it with a new Compact. The bill establishes an Interstate Commission to administer the Compact. Under the new Compact, the Interstate Commission will continue to facilitate cooperation among states in tracking and supervising juveniles who move across state borders. Further, the bill creates the Nevada State Council for Interstate Juvenile Supervision with policymaking and oversight authority concerning the operation of the Compact in Nevada.

Additionally, Assembly Bill 47 was requested by the Legislative Commission's Subcommittee to Study the Juvenile Justice System. The bill, as passed, requires the screening of children who are either: (1) taken into custody and detained pending a detention hearing; or (2) adjudicated delinquent and committed to a regional or state facility. The screening must evaluate whether the child is in need of mental health or substance abuse services. Local and regional facilities detaining children must use a screening method approved by the Division of Child and Family Services that is based upon research, and is reliable and valid.

POTENTIAL JUVENILE JUSTICE ISSUES FOR THE 2007 LEGISLATURE

In certain situations, juveniles involved in serious criminal acts may be charged as adults. Recently, several high profile cases have occurred where juveniles have committed adult-type offenses, thus raising debate on the circumstances in which it is appropriate to treat juveniles as adults for the purposes of the criminal justice system. Under Assembly Concurrent Resolution No. 17 (File No. 98, *Statutes of Nevada*), the Interim Study on Sentencing, Pardons, Parole, and Probation is charged with studying the methods for combining juvenile and adult sentencing options for juveniles who commit serious offenses. The A.C.R. 17 Interim Study will then report its findings to the full 2007 Legislature.

FREQUENTLY ASKED QUESTIONS

Q: At what age can a minor be prosecuted as an adult?

A: Generally, a child is adjudicated in the juvenile system until he/she attains the age of 18. Some exceptions apply for the most serious offenses (such as murder, certain sexual assaults, certain offenses involving a firearm, certain felonies committed on school property, and criminal offenses if the individual had already been convicted of a criminal offense) in which case the child is excluded from juvenile court jurisdiction.

Q: Are juvenile records confidential?

A: Records of proceedings in the juvenile court are confidential and may only be opened to inspection by court order to persons who have a legitimate interest in the records.

Q: What is the difference between a child in need of supervision and a child deemed delinquent?

A: A child in need of supervision is generally defined as a status offender, such as truancy or running away; whereas, a delinquent act involves the violation of a municipal ordinance or state law.

ADDITIONAL RESOURCES

Juvenile Justice Programs Office, Nevada's Division of Child and Family Services:
http://www.dcfs.state.nv.us/DCFS_JuvenileJusticeSer.htm

Youth Parole Bureau, Nevada's Division of Child and Family Services:
http://www.dcfs.state.nv.us/DCFS_YouthParole.htm

Legislative Commission's Subcommittee to Study the Juvenile Justice System (A.C.R. 18):
http://www.leg.state.nv.us/72nd/Interim/Studies/JuvJustice/

Office of Juvenile Justice and Delinquency Prevention:
http://www.ojjdp.ncjrs.org/

National Center for Juvenile Justice:
http://ncjj.servehttp.com/NCJJWebsite/main.htm

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FAMILY LAW

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Family law includes a variety of topics such as marriage, divorce, child custody, child support and visitation, parentage, and adoption. In the judicial system, these issues are handled generally through the district court. In counties with a population of 100,000 of more, a family court is created as a special division within the district court to handle issues involving family law. Title 11 ("Domestic Relations") of *Nevada Revised Statutes* (NRS) governs the majority of these issues, and a brief overview follows. Also included is a more extensive overview of Nevada's laws regarding domestic violence.

Please note this Policy Brief is designed to provide an overview of Nevada's statutes relating to family law. It is important to understand that this document only provides general information about each topic and does not constitute legal advice. For a complete examination and understanding of the law, an individual should review relevant laws and consider consulting an attorney.

MARRIAGE

Today, marriage in Nevada is a civil contract for which both consent of each party and solemnization are required. Common law marriages after March 29, 1943, are not recognized.

Persons Authorized to Marry

- Male and Female—Nevada law specifies that a male and female person at least 18 years old may be joined in marriage (NRS 122.020). In 2002, voters gave final approval to a constitutional amendment specifying that only a marriage between a male and female person is recognized and given effect in Nevada. (Article 1, Section 21 of the *Nevada Constitution*.

- Age—The age requirement for marriage without the consent of a parent or guardian is 18 years. A person who is 16 or

17 years old may marry with the consent of a parent or a legal guardian. In extraordinary circumstances, Nevada law permits the marriage of a person less than 16 years of age if authorized by a district court and if the person has the consent of a parent or guardian.

- Relatives—No persons who are closer in relationship than second cousins may marry in Nevada.

- Residency—Although persons who wish to be married in Nevada must obtain a marriage license from a clerk of any county in the state, no residency requirements exist regarding marriage.

DIVORCE, DISPOSITION OF MARITAL PROPERTY, AND ALIMONY

A party must have resided in the state for six weeks before filing an action for divorce unless the cause of action accrued within a county while both parties were actually domiciled there (NRS 125.020). The three causes for divorce are insanity, one year of separation without cohabitation, or incompatibility (NRS 125.010).

Nevada is a community property state, which allows for the husband and wife to each have an undivided one-half interest in property owned in common. *Nevada Revised Statutes* 125.150 clarifies that community property is to be divided equally, unless the court finds a compelling reason to make an unequal disposition. The court may award temporary alimony or spousal support to a party pending the final divorce decree (NRS 125.040). In granting the divorce, the court may award alimony to the wife or husband in a specified sum or as periodic payments (NRS 125.150). The court must consider the need to grant alimony to a spouse to obtain training or education relating to a job, career, or profession. Further, the court must consider whether the spouse who would pay the alimony has obtained greater job skills or education during the marriage and whether the other spouse provided financial support to these endeavors.

CHILD CUSTODY AND VISITATION

Generally, custody and visitation of children are governed by Chapters 125 through 125C under Title 11 of NRS ("Domestic Relations"). Other statutes governing the custody of children who are victims of abuse or neglect situations and become involved in the child welfare system are contained in Chapter 432B ("Protection of Children from Abuse and Neglect") of NRS. For more information regarding the child welfare system, please review the Human Services Policy Brief. The following information focuses on the domestic relations law contained in Chapters 125 through 125C of NRS and is only intended to provide a general overview. For more detailed information on these issues, a review of NRS is recommended.

Best Interests of the Child

Nevada allows the judge in a child custody situation broad discretion to determine a custody arrangement that is in the "best interest of the child." *Nevada Revised Statutes* 125.480 sets forth factors the court must consider in determining the "best interest of the child," including

the wishes of the child if he or she is of sufficient age and capacity to form an intelligent custody preference, any nomination by a parent or a guardian for the child, and whether or not either parent or person seeking custody has engaged in acts of domestic violence. Nevada has established presumptions against awarding custody or visitation rights to the following: (1) a parent convicted of first degree murder of the parent of a child; and (2) a parent or person seeking custody who is the perpetrator of domestic violence.

Statutory Preferences for Awarding Custody

Nevada law includes an order of preference for awarding custody. The first statutory preference is to award custody to both parents jointly. If the court does not award joint custody, it must state in its decision the reason for denying a parent the joint custody. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child. The court has the authority to modify or vacate its order for child custody at any time. *Nevada Revised Statutes* 125.510 further specifies that any order for joint custody may be modified or terminated upon a petition from a parent or on the court's own motion if it is shown that the best interest of the child requires the modification or termination.

Finally, if a custodial parent intends to move out of Nevada with the child, he or she must notify and attempt to obtain the permission of the non custodial parent. If such permission is refused, the custodial parent must petition the court for permission to move the child prior to leaving the state.

Visitation

Orders awarding visitation rights must define those rights and include all specific times and terms of the visitation. In disputes regarding visitation, if the court finds the non custodial parent is being wrongfully deprived of his or her right to visit, the court may enter a judgment ordering the custodial parent to permit additional visits.

Visitation for Relatives

Nevada Revised Statutes 125C.050 governs the petitioning of the court to seek visitation by persons other than parents. Certain relatives (including grandparents) are authorized to petition the court for an order granting the right to spend sufficient time with a grandchild to establish a meaningful relationship. The child must be a minor, and one of the following conditions must exist:

- A parent is deceased;
- A parent is divorced or separated from the parent who has custody of the child;
- A parent has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent;
- A parent has relinquished his parental rights or his parental rights have been terminated; or

- The minor child has resided with a person with whom he has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during his minority, regardless of whether the person is related to the child.

If one of the above conditions exists, and the parent has denied or unreasonably restricted visits, then there is a *rebuttable presumption* that the granting of a right to visitation to a party seeking visitation is not in the best interests of the child. To rebut this presumption, the party seeking visitation must prove by *clear and convincing evidence* that it is in the best interests of the child to grant visitation. In determining whether the party seeking visitation has rebutted the presumption, the court shall consider:

- The love, affection, and other emotional ties existing between the party seeking visitation and the child.

- The capacity and disposition of the party seeking visitation to:

    1. Give the child love, affection, and guidance and serve as a role model to the child;

    2. Cooperate in providing the child with food, clothing, and other material needs during visitation; and

    3. Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of this state in lieu of health care.

- The prior relationship between the child and the party seeking visitation, including, without limitation, whether the child resided with the party seeking visitation and whether the child was included in holidays and family gatherings with the party seeking visitation.

- The moral fitness of the party seeking visitation.

- The mental and physical health of the party seeking visitation.

- The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.

- The willingness and ability of the party seeking visitation to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.

- The medical and other needs of the child related to health as affected by the visitation.

- The support provided by the party seeking visitation, including, without limitation, whether the party has contributed to the financial support of the child.

- Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation.

CHILD SUPPORT

Parents of a child have a statutory duty to provide for the child's necessary maintenance, health care, education, and support (NRS 125B.020). This duty exists for children born in and out of wedlock. Chapter 126 of NRS governs procedures to establish paternity and specifies that the parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents. Following is an overview of Nevada's child support formula under NRS 125B.070 and NRS 125B.080, which was recently modified by the 2001 Legislature.

- **Obligation for Support**—The amount of child support is a "sum certain dollar amount" of a parent's gross monthly income determined according to the following schedule:

  1. One child—18 percent of gross monthly income;

  2. Two children—25 percent of gross monthly income;

  3. Three children—29 percent of gross monthly income;

  4. Four children—31 percent of gross monthly income; and

  5. Each additional child—an additional 2 percent of gross monthly income.

- **Gross Monthly Income** is defined as the total amount of income received each month from any source of a person who is not self-employed or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, *but without deduction* of personal income taxes, contributions for retirement benefits, contributions to a pension, or for any other personal expenses.

- **Presumptive Maximum—**The obligation of support has a ***presumptive maximum amount*** per month based upon the parent's gross monthly income range. *Nevada Revised Statutes* 125B.070 sets forth a chart with the ranges adopted by the 2001 Legislature. However, the statute requires the Office of the Court Administrator to adjust these ranges annually based upon the *Consumer Price Index* (CPI). The ranges are available through the Administrative Office of the Courts in Carson City (775) 684-1700), and are published on the Nevada Supreme Court's Web site at: http:// www.nvsupremecourt.us/aoc/support.php.

- **Minimum Amount—**Notwithstanding the formula, the minimum amount of support in any case is $100 per month per child, unless the court makes a written finding that the parent is unable to pay the minimum amount.

- **Deviation from Formula—**It is statutorily presumed that a child's basic needs are met

by the formula. However, evidence may be presented to rebut this presumption, and the court may award a greater or lesser amount. Nevada law requires the court to consider the following factors when adjusting the amount of support for a child:

1. The cost of health insurance;
2. The cost of child care;
3. Any special educational needs of the child;
4. The age of the child;
5. The ***legal*** responsibility of the parents for the support of others;
6. The value of services contributed by either parent;
7. Any public assistance paid to support the child;
8. Any expenses reasonably related to the mother's pregnancy and confinement;
9. The cost of transportation of the child to and from visitation if the custodial parent moved with the child from the jurisdiction of the court which ordered the support and the noncustodial parent remained;
10. The amount of time the child spends with each parent;
11. Any other necessary expenses for the benefit of the child; and
12. The relative income of both parents.

- **Subsequent Review by the Court—**The court may review and modify the amount of the child support formula in the following situations:

  1. "Changed circumstances." A change of 20 percent or more in the gross monthly income of a person who is subject to an order for the support of a child shall be deemed to constitute changed circumstances requiring a review for modification of the order for the support of a child (subsection 3 of NRS 125B.080 and subsection 4 of NRS 125B.145);
  2. Adjustments made to the new presumptive maximums as a result of the Nevada Office of Court Administrator's annual adjustment of the cap based upon the CPI (NRS 125B.080 and NRS 125B.070); or
  3. Every three years, upon the request of the child's parent or legal guardian, the court must review the child support order to determine whether any modifications or adjustments should be made (NRS 125B.145).

In addition, based upon the passage of the 2001 legislation, the courts have been making adjustments in child support amounts, upon a motion from one of the parents or legal guardians, based upon the new statutory presumptive maximums (regardless of any CPI changes) which were effective on July 1, 2002.

An obligation for the support of a minor child ends when the child turns 18 years old, unless the child is enrolled in high school. If the child is enrolled in high school, the obligation ends when the child is 19 years old (NRS 125.510).

PARENTAGE

The parent and child relationship is not dependent upon the parents being married, and Nevada law includes presumptions that a man is the natural father of a child under certain circumstances involving marriage, cohabitation, a man holding the child out to be his own, and testing for genetic identification. An action may be brought under Chapter 126 of NRS ("Parentage") to determine paternity, and such an action is not barred until 3 years after the child turns 18 years of age.

Parental rights may be terminated in certain circumstances (Chapter 128 of NRS). The primary consideration in any proceeding to terminate a parent's rights is whether the best interests of the child will be served by the termination. Grounds for termination of parental rights include abandonment or neglect of the child; unfitness of the parent; risk of serious physical, mental, or emotional injury to the child if he remains with the parent; and only token efforts by a parent to support or communicate with the child, prevent the neglect of the child, avoid being an unfit parent, or to eliminate the risk of serious injury to the child.

ADOPTION

Chapter 127 of NRS ("Adoption of Children and Adults") requires the Division of Child and Family Services to prepare a booklet on adoption that includes detailed information on the adoption process in Nevada, which is available through the agency's Web site at: http:// www.dcfs.state.nv.us/Adoption_in_Nevada.html. In brief, any adult person or any married couple may petition the district court to adopt a child, and the child may be adopted through a child welfare agency or a private adoption agency. Subsidies are available to assist with the support of the child based upon the child's unique needs. Subsidies are provided in four basic areas: (1) medical coverage; (2) limited reimbursement of adoption-related costs; (3) social services; and (4) financial assistance.

All hearings are confidential. The files and records of adoption proceedings are not open to inspection except upon an order of the court. The Division of Child and Family Services maintains the State Register for Adoptions, which is a mutual consent registry. Established in 1979, the Register consists of names and other necessary information *voluntarily submitted* regarding:

1. Persons who have released a child for adoption or consented to a child's adoption or whose parental rights have been terminated;

2. Adoptees 18 years of age and older; and

3. Persons related within the third degree of consanguinity to adopted persons.

The Division may only release information about adoptees or their relatives to a person related within the third degree of consanguinity. If both the adoptee and the birth parent (or eligible relative) file an application with the registry, the Division will facilitate contact between the eligible parties. However, if only one party registers, the application will be kept on file with the registry. Certain nonidentifying information may be obtained through the registry, including an adoptee's social or health history; the age of the birth or adoptive parents at the time of adoption; the height, weight, complexion, eye and hair color, and ethnic background of the parents; the education, religion, and occupation of the parents; and the health of the parents.

DOMESTIC VIOLENCE

Domestic violence is an important issue in the field of family law. The following overview includes the acts that constitute domestic violence, related criminal procedures, orders for protection, general information on Nevada's stalking laws, and a discussion on child custody considerations when domestic violence is involved.

Acts that Constitute Domestic Violence

Domestic violence is defined for three different purposes under NRS: (1) issuing orders for protection against domestic violence (NRS 33.018); (2) requiring peace officers to provide information to suspected victims of domestic violence (NRS 171.1225); and (3) establishing a fund to aid victims of domestic violence (NRS 217.400).

Under these statutes, "acts of domestic violence" include any of the following acts committed by one person against his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons, or his minor child:

- A battery.
- An assault.
- Compelling the other by force or threat of force to perform an act from which he has the right to refrain or to refrain from an act which he has the right to perform.
- A sexual assault.
- A knowing, purposeful, or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to, stalking, arson, trespassing, larceny, destruction of private property, and carrying a concealed weapon without a permit.

- A false imprisonment.

- Unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably foreseeable risk of harm to the other from the entry.

As noted, these acts committed by a person upon his minor child or the minor child of one of the persons specified above also constitute domestic violence. A person who intentionally causes a child unjustifiable physical pain or mental suffering as a result of abuse or neglect may also be prosecuted for child abuse under NRS 200.508, and the laws regarding the protection of children under Chapter 432B of NRS may apply.

Criminal Procedures

Nevada's criminal laws require many special procedures for peace officers and courts when a battery that constitutes domestic violence is involved. Many of these laws, such as the mandate that certain information be provided to suspected victims of domestic violence, are applicable for any act of domestic violence, including a battery. Following is an overview of these procedures.

Procedures for Police Officers Responding to a Report of Domestic Violence

Nevada law requires a peace officer to arrest a person if the officer has probable cause to believe that the person has, within the preceding 24 hours, committed a battery against his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons, or his minor child. This law applies regardless of whether a warrant has been issued (NRS 171.137).

If the incident involves a mutual battery, the officer must attempt to determine which person was the primary physical aggressor, and arrest that person. *Nevada Revised Statutes* 171.137 sets forth a list of factors the officer must consider including prior domestic violence, the severity of the injuries and the potential for future injury, and whether one of the alleged batteries was committed in self-defense. The law specifies that the officer's decision to make an arrest must not be made on the officer's perception of the willingness of a victim or witness to the incident to testify or participate in related judicial proceedings.

Information to Suspected Victims of Domestic Violence

When investigating an act of domestic violence (as defined under NRS 171.1225, which includes battery and other crimes such as stalking and false imprisonment, as previously noted), an officer must make a good faith effort to explain the mandatory arrest procedures and to advise victims of all reasonable means to prevent further abuse, including advising victims of the availability of shelters and other community services. The law also requires the officer to provide an explanation to the victim, in writing, of the following:

- The mandatory arrest law for batteries that constitute domestic violence;

- The victim's right to file a criminal complaint against the person suspected of committing the battery, if the officer does not have probable cause for an arrest;

- The procedures involved in seeking a court order for protection and the protection offered by such an order; and

- Where the person may seek emergency assistance or shelter.

Report Forwarded to Central Repository

If an officer investigates an act that constitutes domestic violence, he must prepare and submit a written report of his investigation to his supervisor, regardless of whether the officer makes an arrest. If the officer made a finding that one of the persons involved was the primary physical aggressor, the report must include the aggressor's name and a description of the evidence that supports the officer's finding. If no arrest is made, the officer must include the reason he did not do so in the report. A copy of the report must be forwarded immediately to the Central Repository for Nevada Records of Criminal History (NRS 171.1227 and the list of crimes that constitute domestic violence under NRS 33.018, which is outlined previously).

Additional Procedures When No Arrest is Made

If an officer detains a person for violating a state or local law that is punishable as a misdemeanor and that constitutes an act of domestic violence, and the officer issues the person a citation in lieu of taking him before a magistrate, the officer must obtain at least one fingerprint of the person and forward any prints and a copy of the mandatory incident report to the Central Repository (NRS 171.1229).

Procedures Following an Arrest for a Battery that Constitutes Domestic Violence

A person arrested for a battery on a suspected victim of domestic violence must not be admitted to bail sooner than 12 hours after his arrest. As discussed under the section within this document regarding orders for protection, similar limitations are imposed for violations of certain temporary or extended orders for protection against domestic violence (NRS 178.484).

If the person is released on bail without appearing personally before a magistrate, the law specifies a minimum bail amount of $3,000, $5,000, or $15,000, depending upon the circumstances (such as the number of prior convictions and the resulting harm). These minimum amounts do not affect the authority of a magistrate or court to set the amount of bail if a person appears personally before the magistrate or court or when the magistrate has otherwise been contacted to set the amount of bail (NRS 178.484).

In addition, a juvenile who is taken into custody for committing a battery that constitutes domestic violence (or violating a temporary or extended protection order) also must not be released for at least 12 hours (62C.020).

Penalties for a Battery that Constitutes Domestic Violence

The law provides graduated penalties for batteries that constitute domestic violence under NRS 200.485. The ***mandatory*** penalties outlined in the following chart are based on the number of convictions for batteries that constitute domestic violence that were committed within a seven-year period. Legislation enacted in 2001 clarifies that a person convicted of battery constituting domestic violence, within seven years before or after the principal offense, and without regard to the sequence of the offenses and convictions, has committed a prior offense for the purposes of determining the penalty.

It is important to note that greater penalties **may** be imposed if the person is prosecuted and convicted under the general battery statute, NRS 200.481.

	Type of Crime	**Imprisonment (jail or prison)**	**Community Service**	**Fine**	**Participation in Domestic Violence Treatment Program**	**Administrative Assessment for Domestic Violence Programs (NRS 228.460)**
First Offense Within 7 Years	Misdemeanor	Jail – 2 days to 6 months	48 to 120 hours	$200 to $1,000	At least 1.5 hours per week for 6 to 12 months	$35
Second Offense Within 7 Years	Misdemeanor	Jail – 10 days to 6 months	100 to 200 hours	$500 to $1,000	At least 1.5 hours per week for 12 months	$35
Third or Subsequent Offense Within 7 Years	Category C Felony	Prison – 1-year minimum and 5-year maximum		Optional Not more than $10,000		$35

In addition to the mandatory penalties for a battery that constitutes domestic violence, the court may order a person to participate in a certified alcohol or drug abuse treatment program.

Probation, Suspension of Sentence, and Dismissing a Charge

The law prohibits the court from granting probation or suspending the sentence of a person charged with committing a battery that constitutes domestic violence. However, an exception is provided. After a person has served the mandatory minimum jail time for a misdemeanor conviction, the court may grant a suspended sentence for not more than three years. However, under these circumstances, the person must actively participate in the alcohol or drug abuse

treatment program or the domestic violence treatment program, or both, in addition to any other conditions of the suspension (NRS 4.373 and NRS 5.055).

Nevada law prohibits a prosecuting attorney from dismissing a charge of battery which constitutes domestic violence in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason. An exception to this prohibition is provided if the prosecuting attorney knows (or it is obvious) that the charge is not supported by probable cause or cannot be proved at the time of trial (NRS 200.485).

Greater Penalties Under the Battery Statute

When a battery that constitutes domestic violence is involved, the penalty is provided under the statute specifically governing this offense (NRS 200.485) ***unless*** a greater penalty is provided under the general battery statute (NRS 200.481). Under this law, battery involving a deadly weapon, substantial bodily harm to the victim, or a particular class of people performing their duties (such as a peace officer or school employee) constitutes either a category B felony, which includes a higher prison term depending upon the facts, or a category C felony. Under the general battery statute, the number of prior offenses is not relevant in determining the appropriate penalty.

Additional Conditions After Conviction

A person convicted of a felony and imprisoned for committing a battery that constitutes domestic violence cannot be granted a temporary furlough by the Director of the Department of Corrections unless the Director makes a finding that the offender is not likely to pose a threat to the victim of the battery (NRS 209.501). In addition, the Chief of the Division of Parole and Probation and the State Board of Parole Commissioners may not order residential confinement for such offenders in situations involving parole violations unless the same finding is made (NRS 213.15193 and NRS 213.152).

A person convicted of a misdemeanor for committing a battery that constitutes domestic violence is not eligible for residential confinement in lieu of imprisonment (after the mandatory minimum term is served) unless the court makes a finding that the person is not likely to pose a threat to the victim of the battery (NRS 4.3762 and NRS 5.076).

Counseling and Financial Assistance for Certain Children Involved in Domestic Violence

The court may refer children who may need counseling as a result of battery that constitutes domestic violence to an agency that provides protective services. If the court makes such a referral, the person convicted of the battery must reimburse the agency for the costs of any services provided, to the extent of his ability to pay (NRS 200.485).

In addition, the compensation officer may award payments from the Fund for Compensation of Victims of Crime to a minor who is a member of the household or immediate family of a victim of a battery which constitutes domestic violence. The payments must be used for an assessment, psychological evaluation, or psychological counseling for emotional trauma

suffered by the minor as a result of the battery which constitutes domestic violence (NRS 217.160).

Admissibility of Evidence of Domestic Violence and Expert Testimony

Nevada law currently provides that evidence of domestic violence and expert testimony concerning the effect of domestic violence on the beliefs, behavior, and perception of the person alleging the domestic violence is admissible in a criminal case when determining whether a person is excepted from criminal liability or determining whether a person killed in self-defense. The effect of physical, emotional, or mental abuse on the beliefs, behavior, and perception of the alleged victim is also admissible. Further, expert testimony concerning the effect of domestic violence may not be offered against a defendant to prove the occurrence of an act which forms the basis of a criminal charge against the defendant (NRS 48.061).

Orders for Protection

Nevada Revised Statutes 33.017 through 33.100 govern orders for protection against domestic violence. Although the following information focuses on these statutes, ***it is important to note that similar orders for protection against harassment and stalking may be obtained under NRS 200.591.***

Authority of the Court

A court may grant a temporary or extended order for protection against domestic violence if it is satisfied from the facts shown in a verified application that an act of domestic violence has occurred or a threat of domestic violence exists. The family court (in counties where one is established) and the justice court have concurrent jurisdiction over actions for the issuance of these orders (NRS 3.223 and NRS 4.370). The court may appoint a master to take testimony and recommend orders in an action to issue, dissolve, convert, modify, register, or enforce a temporary or extended order (NRS 33.019). The law specifies that a temporary order may be granted without regard to whether an action for divorce, annulment of marriage, or separate maintenance has been filed with respect to the applicant or the adverse party (NRS 33.040).

Procedure for Granting an Order

A court may grant a temporary or extended order if it appears, to the court's satisfaction, from the facts shown by a verified application than an act of domestic violence has occurred or there exists a threat of domestic violence. Temporary orders may be granted with or without notice to the adverse party. The court must rule on an application for a temporary order within one judicial day after it is filed. Extended orders may only be granted after the adverse party is given notice and a hearing is held on the application, which must be held within 45 days after the date on which the application for the extended order is filed.

The law requires that the court be available 24 hours a day, seven days a week for the issuance of temporary orders in counties whose population is 47,000 or more. In the remaining counties, the court may be available during these times (NRS 33.020, as amended by Assembly Bill 377, Chapter 268, *Statutes of Nevada 2001*).

Assistance from the Court Clerk and Waiver of Fees

The payment of all costs and official fees must be deferred for any applicant for such an order. The court must assess the costs and fees against the adverse party after a hearing on the matter, but the court may reduce or waive the amount as justice may require. The court clerk must also issue a certified copy of the temporary or extended order to the parties without fee (NRS 33.050).

In addition, the court clerk must provide to each party, at no cost, information regarding the laws and procedures governing these orders. Finally, the clerk must assist the parties with the completing and filing of necessary paperwork, but must not render any assistance that requires the professional judgment of an attorney.

Authority and Expiration of Temporary Orders

Under a temporary order, the court may enjoin an adverse party from threatening, injuring, or harassing the applicant or minor child; exclude the adverse party from the applicant's home; prohibit the adverse party from entering the applicant's (or minor child's) home, school, or place of employment and order the adverse party to stay away from any specified place regularly frequented by the applicant or child; grant temporary custody of the minor child to the applicant if the court has jurisdiction; and order any other relief deemed necessary in an emergency situation (NRS 33.030).

The temporary order expires within 30 days unless a shorter period is fixed by the court. However, if an application for an extended order is filed during the period of a temporary order or at the same time that an application for a temporary order is filed, the temporary order remains in effect until the hearing on the extended order is held. In addition, with two days' notice to the applicant, an adverse party may appear and move to dissolve or modify a temporary order. The court must hear and determine such a motion as expeditiously as the ends of justice require (NRS 33.080).

Authority and Expiration of Extended Orders

Extended orders may include any conditions that temporary orders may provide. In addition, the court may specify visitation arrangements for the minor child by the adverse party; order the adverse party to avoid communication with the applicant or minor child; and require the adverse party to pay certain relief, including the rent or mortgage on the applicant's residence, child support, support of the applicant, and costs and fees associated with bringing action for a protective order (NRS 33.030). If the extended order includes an order to pay child support, the court must order an assignment of income to a party who obtains the order, but an exception is provided if the court finds good cause for the postponement of the assignment based upon a written finding that the immediate assignment would not be in the best interests of the child (NRS 33.035).

The extended order expires within the time fixed by the court, but this period must not exceed one year. An adverse party may appeal an extended order issued by a justice's court to the

district court, but the appeal does not stay the effect or enforcement of the order (NRS 33.030 and NRS 33.080).

Transmission of Order to Law Enforcement

A law enforcement agency must enforce a temporary or extended order without regard to the county in which it was issued (NRS 33.060). By the end of the next business day after a temporary or extended order is issued, the court must transmit the order to the law enforcement agency with jurisdiction over the home, school, child care facility, or place of employment of the applicant or minor child.

In addition, the court must order the appropriate law enforcement agency to serve, without charge, the adverse party personally with a temporary order and file with or mail to the court clerk proof of service by the end of the next business day. Service of an application for an extended order and the notice of the hearing must be served upon the adverse party pursuant to *Nevada Rules of Civil Procedure* or through the alternative procedures authorized for service at the adverse party's place of employment under certain circumstances (NRS 33.060 and NRS 33.065).

Transmission of Information to the Central Repository

Any time a court issues an order and any time a person serves, registers, or takes any other action relating to an order, he shall transmit any required information to the Central Repository for Nevada Records of Criminal History. The information must be transmitted in a manner that ensures the Central Repository receives it by the end of the next business day (NRS 33.095).

Pursuant to NRS 179A.350, the Central Repository includes a special repository for information concerning orders for protection against domestic violence, which must contain a complete and systematic record of all such temporary and extended orders issued or registered in Nevada. Information received by the Central Repository must be entered within eight hours and must be accessible by computer at all times. It is important to note, however, that the information contained in the repository only concerns events that occurred after October 1, 1998. On or before July 1 each year, the Central Repository must prepare and submit to the Legislative Counsel Bureau a report containing statistical data about domestic violence in Nevada (NRS 179A.075).

Arrest for Violation of an Order

Every temporary and extended order must include a provision ordering any law enforcement officer to arrest an adverse party if probable cause exists to believe the adverse party violated any provision of the order (NRS 33.070). In addition, as with persons arrested for domestic violence, a person arrested for violating a temporary or extended order for protection against domestic violence, or for violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought under Nevada's domestic relations laws (Title 11 of NRS), must not be admitted to bail sooner than 12 hours after his arrest. However, for this limitation to apply, the

arresting officer must determine that the violation is accompanied by a direct or indirect threat of harm (NRS 178.484).

Like the statute limiting the admittance to bail for certain persons arrested for batteries involving domestic violence, a minimum bail amount of $3,000, $5,000, or $15,000 is required, depending upon the circumstances, if the person is released on bail without appearing personally before a magistrate. These minimum amounts do not affect the authority of a magistrate or court to set the amount of bail if a person appears personally before the magistrate or court or when the magistrate has otherwise been contacted to set the amount of bail (NRS 178.484).

Like adults, juveniles who are taken into custody for violating a temporary or extended order for protection against domestic violence, or for violating certain restraining orders or injunctions issued under Nevada's domestic violence laws, also must not be released for at least 12 hours. The peace officer or probation officer who takes the juvenile into custody for violating a temporary or extended order must determine that the violation is accompanied by a direct or indirect threat of harm before the limitation on release of the child applies (NRS 62C.020).

Temporary and extended orders must provide notice that the person who is arrested for violating the order will not be admitted to bail sooner than 12 hours after his arrest if the arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm (NRS 33.030).

Penalty for Violation of an Order

Generally, a violation of a temporary or extended order is a misdemeanor unless a more severe penalty is prescribed by law for the act that constitutes the violation (NRS 33.100). A person who commits a category C, D, or E felony in violation of a temporary or extended order for protection against domestic violence must be punished by a term of imprisonment equal to and in addition to the term prescribed by statute for the crime committed. If the crime committed is punishable as a category A or B felony, the person is punished by imprisonment in state prison from one to five years.

These sentences run concurrently or consecutively with the sentence for the crime committed. The court cannot grant probation or a suspended sentence to a person convicted of attempted murder or battery involving the use of a weapon or resulting in substantial bodily harm if the additional sentence for committing a felony in violation of a protection order is imposed (NRS 193.166).

Treatment of Orders Issued in Other Jurisdictions

A person may register an order for protection against domestic violence issued in another jurisdiction, and the court clerk must maintain a record of each order registered, forward the order to the appropriate law enforcement agency, and provide the protected party with a certified copy at no charge. No fees may be charged for registering an order, and the court

clerk is prohibited from notifying the party against whom the foreign order was made that the order has been registered in Nevada (NRS 33.090).

In 2001, the Legislature clarified the procedures involved in the registration and enforcement of these orders, partially in order to fully comply with the federal requirements of the Violence Against Women Act, under which Nevada receives approximately $1.5 million annually in grant funds. Under the legislation, foreign orders for protection against domestic violence must be accorded full faith and credit and enforced by the Nevada courts. The orders must be enforced regardless of whether they are registered if the court determines that: (1) the issuing court had jurisdiction over the parties and subject matter; and (2) the adverse party was given reasonable notice and an opportunity to be heard before the order was issued.

Stalking and Harassment Laws

A law enforcement officer must enforce foreign protection orders against domestic violence and make an arrest for a violation of the order, unless it is apparent to the officer that the order is not authentic on its face. In enforcing the order, a law enforcement officer may rely upon: (1) a copy of the foreign order; (2) an order included in the repository for information concerning such orders or in any national crime information database; (3) oral or written confirmation from a law enforcement agency or court in the jurisdiction from which the order was issued; or (4) an examination of the totality of the circumstances concerning the existence of a valid and effective order, including the statement of the person that the order remains in effect (NRS 33.085). Harassment and stalking are crimes that are frequently associated with domestic violence. *Nevada Revised Statutes* 200.571 through 200.601 include the definition, penalties, and protective orders for harassment and stalking.

Definitions

Harassment is defined as knowingly threatening to cause bodily injury in the future to the person threatened or to any other person; to cause physical damage to a person's property; to subject a person to physical confinement or restraint; or to do any act which is intended to substantially harm another person with respect to his physical or mental health or safety.

Stalking is defined as willfully or maliciously engaging in a course of conduct, without lawful authority, that would cause a reasonable person to feel terrorized, frightened, intimidated, or harassed ***and*** that actually causes the victim to feel this way. ("Course of conduct" and "without lawful authority" are both defined under NRS 200.575). Aggravated stalking occurs when a person commits the crime of stalking and threatens the person with the intent to cause him to be placed in reasonable fear of death or substantial bodily harm (NRS 200.575).

The 2001 Legislature also created the crime of "stalking with the use of an Internet or network site or electronic mail or other similar means of communication." To commit this crime, the person must publish, display, or distribute the information in a manner that substantially increases the risk of harm or violence to the victim (NRS 200.575).

Penalties

The first offense of harassment is a misdemeanor, and any subsequent offense is a gross misdemeanor. Like harassment, a first offense of stalking is a misdemeanor and a subsequent offense is a gross misdemeanor. Aggravated stalking is a category B felony with a minimum term of imprisonment of 2 years and a maximum term of 15 years. A maximum fine of $5,000 may also be imposed. Finally, the crime of stalking with the use of a computer is a category C felony with a minimum term of one year of imprisonment and a maximum of five years (NRS 200.571 and NRS 200.575).

Protective Orders for Stalking and Harassment

Temporary and extended orders are available for someone who reasonably believes the crime of stalking, aggravated stalking, or harassment is being committed against him by another person. The procedures and duration of the orders are similar to the requirements of orders for protection against domestic violence. A violation of a temporary order is a gross misdemeanor, and a violation of an extended order is a category C felony (NRS 200.591 through NRS 200.597).

Courts must defer the payment of all costs and fees for a person who petitions a court for a temporary or extended order to restrict alleged conduct for the crime of stalking, aggravated stalking, or harassment. Charging a fee to a person who obtains a protective order to have that order served in Nevada is also prohibited. In addition, a court must provide the petitioner and the adverse party with information on the availability of temporary and extended orders, the procedures for filing an application for such an order, and the right to proceed without counsel (NRS 200.592).

Information for Victims of Stalking or Harassment

The prosecuting attorney in any trial involving a charge of harassment, stalking, or aggravated stalking must inform the alleged victim of the disposition of the case. In addition, if the defendant is found guilty and the court issues an order or imposes a condition restricting the ability of the defendant to have contact with the victim or witnesses, the court clerk must provide a certified copy of the order or condition to the victim and other persons named in the order (NRS 200.601).

Training for Peace Officers

The Peace Officers' Standards and Training Commission must require each peace officer to be trained in dealing with the crimes of stalking and aggravated stalking (NRS 289.600). The training must include the following:

- The manner in which a report from a person who claims to be a victim of stalking or aggravated stalking should be taken;
- The proper method of carrying out an investigation of these two crimes; and
- The elements of these two crimes.

Domestic Violence and Child Custody Considerations

Orders for Protection for Children

Although not discussed in detail in this Policy Brief, the 2003 Legislature authorized a new procedure to provide children who are victims of abuse by individuals who are not living in their home or related to them with access to a temporary protective order (A.B. 331, Chapter 144, *Statutes of Nevada*). The procedures established mirror the existing laws governing temporary and extended orders for protection against stalking and harassment under Chapter 200 of NRS. Under the new procedure, the child's parent or guardian may petition the court for a temporary or extended order for protection against an adult who is reasonably believed to have committed or to be committing a crime involving nonaccidental physical or mental injury to the child, or sexual abuse or exploitation of the child. Justice courts have jurisdiction to issue these types of orders (NRS 33.040 through NRS 33.44).

In addition to the procedures under Chapter 432B of NRS for the protection of children, the Legislature has enacted numerous laws specifically designed to protect children when one or both of the parents or a guardian is involved in domestic violence either as a perpetrator or a victim.

Rebuttable Presumptions

Under NRS 125.480, in situations involving the dissolution of marriage in which child custody is an issue, a determination by a court that either parent (or any other person seeking custody) has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint custody of the child by the perpetrator of the domestic violence is not in the best interest of the child.

If the court determines that each party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. If it is not possible to make that determination, the rebuttable presumption against custody applies to both parties. If the court determines which party is the primary physical aggressor, the rebuttable presumption only applies to that person.

Legislation passed in 1999 establishes similar rebuttable presumptions in the laws regarding custody and visitation (NRS 125C.230) and the protection of children (NRS 432B.157).

Death of a Parent as a Result of Domestic Violence

Nevada law also includes a rebuttable presumption that awarding custody or visitation rights to a parent who is convicted of first-degree murder of the other parent of the child, is not in the best interests of the child (NRS 125C.220 and NRS 432B.153). The presumption may be overcome if the court makes certain determinations (including that the child's health, safety, and welfare are not at risk) or if the child is old enough to indicate his agreement to the custody or visitation. The law provides that, until the court makes a determination regarding custody

and visitation, no person may bring the child into the presence of the convicted parent without the consent of the legal guardian or custodian of the child.

Legislation from the 1999 Session also provides for the protective custody of a child upon the death of a parent if that death is or may be the result of domestic violence on the part of the other parent (NRS 432B.330, NRS 432B.390, and NRS 432B.490 as amended by A.B. 1 of the 17th Special Session, Chapter 1, *Statutes of Nevada 2001*). Agencies that provide child welfare services must place such children in protective custody in these circumstances, and the appropriate court must hold a protective custody hearing within 72 hours. Other agencies are also required to immediately notify a child protective agency of such cases of parental death and, based upon that report, a protective custody hearing must be scheduled. Within ten days of the hearing, the agency that provides child welfare services must file a petition for judicial determination of whether the child is in need of protection.

Other Laws to Protect and Assist Victims of Domestic Violence

Suitability of Guardians

Nevada law specifies that a conviction of domestic violence is a factor a court must consider in determining the suitability of a parent as a guardian for a minor (NRS 159.061). In addition, a person who has been judicially determined to have committed abuse, neglect, or exploitation of a child, spouse, parent, or other adult is not qualified to serve as a guardian, unless the court finds the appointment to be in the best interests of the ward (NRS 159.059).

As discussed previously, victims of domestic violence may obtain assistance through the Ombudsman, the Nevada Domestic Violence Prevention Council, and the Committee on Domestic Violence in the Attorney General's Office. Additional resources for victims are also available under State law.

Account for Aid for Victims of Domestic Violence

Nonprofit corporations that meet the statutory requirements of NRS 217.420 may apply to the Administrator of the Division of Child and Family Services in the Department of Health and Human Services for a grant from the Account for Aid for Victims of Domestic Violence. This account is funded through a $20 fee collected by county clerks for issuing a marriage license pursuant to NRS 122.060.

The corporations must provide services exclusively for victims of domestic violence within Nevada. In addition, the corporation must offer around-the-clock shelter to victims and facilities for food storage and preparation (in counties with a population over 100,000); an emergency telephone service; counseling (or referrals for counseling); assistance to victims in obtaining legal, medical, psychological, or vocational help; and education and training relating to domestic violence for the community.

Victims of any criminal act involving an injury may apply directly for assistance from the Fund for Compensation of Victims of Crime under Chapter 217 of NRS. This Fund is managed by the Department of Administration. Payments from the Fund may be awarded for medical expenses, loss of earnings, and expenses associated with the death of a victim.

Filing Fee to Offset Costs of Providing Pro Bono Programs and Legal Services to Victims of Domestic Violence

A board of county commissioners may impose an additional fee for filing certain actions and responses in district courts and justices' courts to offset the costs of providing pro bono programs and of providing legal services without charge to abused or neglected children and victims of domestic violence.

Specifically, a maximum fee of $10 may be charged on the commencement of any civil action or proceeding in the district court for which a filing fee is required, and on the filing of any answer or appearance in any such action or proceeding for which a filing fee is required. The maximum fee of $25 may also be charged on the filing of any motion or other paper that seeks to modify or adjust a final order that was issued pursuant to NRS Chapters 125 ("Dissolution of Marriage"), 125B ("Obligation of Support"), or 125C ("Custody and Visitation"), and on the filing of any answer or response to such motion or other paper (NRS 19.0312).

In the justices' court, a maximum fee of $10 may be charged where a filing fee is required and on the filing of any answer or appearance in any such action or proceeding for which a filing fee is required (NRS 4.071).

Fictitious Address for Victims of Domestic Violence

Under NRS 217.462 through 217.471 and 293.5002, victims of domestic violence may apply to the Secretary of State for a confidential, fictitious address. The program is designed to protect the locations of victims, but enable them to continue to register to vote and to receive mail and service of process. Participants in the program are exempted from jury service (NRS 6.020). In 2001, the Legislature extended this program to include victims of sexual assault. The 2005 Legislature expanded the program to include victims of stalking and authorized a pupil who is a participant in the fictitious address program, or whose parent or guardian is a participant in the program, to attend any public school in the state.

Change of Name – Exemption From Publication Requirement

An exemption is provided to the requirement to publish notice of a change of name for any person who can prove to the court that the publication would place his personal safety at risk (NRS 41.280).

Legal Privilege for Certain Communications

Nevada law also provides a legal privilege for communications that take place between victims of domestic violence or sexual assault and a victim's advocate (NRS 49.2541 through NRS 49.2549).

Action to Recover Damages for Personal Injury

State law also offers protection for victims in civil actions. Under NRS 41.134, a person who has been injured as a result of domestic violence may bring a civil action to recover actual

damages, including damage to any real or personal property. If the victim prevails in the action, the court must also award costs and attorney's fees.

A person convicted of committing or attempting to commit a felony, gross misdemeanor, or misdemeanor that constitutes domestic violence is prohibited from bringing an action against the victim or the victim's estate for injuries or property damage sustained by the offender that occurred during the course of the crime (NRS 41.135).

Prohibitions on Denial of Medical and Dental Claims

In 1997, the Legislature prohibited health insurers, societies, corporations, and health maintenance or dental care organizations from denying a claim for insurance coverage because it involved an incident of domestic violence. Such organizations also are prohibited from canceling or refusing to issue a policy for the same reason (NRS 689A.413, 689B.068, 689C.196, 695A.195, 695B.316, 695C.203, and 695D.217).

This legislation also required Nevada's Department of Health and Human Services to establish a task force, consisting of various agency representatives, to study the impact of domestic violence on children. As directed by A.B. 348 (Chapter 300, *Statutes of Nevada 1997*), this task force submitted its findings and recommendations to the 1999 Nevada Legislature in a report that is available through the Research Library of the Legislative Counsel Bureau (Report No. 35).

Welfare Recipients and Domestic Violence

The Division Welfare and Supportive Services (DWSS) of Nevada's Department of Health and Human Services must periodically evaluate recipients of public assistance to identify persons who are victims of domestic violence. Any recipient who the DWSS determines is a victim must be referred to appropriate counseling or other available supportive services. Any such identification by the DWSS of a recipient is confidential and may only be revealed to the victim. However, the DWSS may disclose the information to the United States Secretary of Health and Human Services for the purposes of including that information in the Federal Parent Locator Service established by federal law (NRS 422.29318).

In addition, if the DWSS determines that the head of a household is a victim of domestic violence and that requiring that person to comply with any of the laws or regulations relating to the administration of any welfare programs that may endanger or threaten the person's safety, it may waive those requirements for an appropriate period of time (NRS 422.3754).

Notification Concerning Concealed Weapons

Victims of violent crimes must be notified of the status of certain concealed weapon permits. Under NRS 202.3665, if a sheriff who is processing such a permit receives notification that the applicant has been charged with a crime involving the use or threatened use of violence, the sheriff must notify the victim of the crime whether the processing of the application has been suspended or resumed, or if the application has been denied. Notification is also required if a permit has been suspended, restored, or revoked. The sheriff must notify the victim within ten days after taking action on the application or the permit.

Team to Review Death of Victim of Domestic Violence

A court or local governmental agency may organize or sponsor multidisciplinary teams to review the death of the victim of a crime that constitutes domestic violence. Before establishing such a team, the court or agency must adopt a written protocol describing its objectives and the structure of the team, which must include representatives of organizations concerned with law enforcement, issues related to physical or mental health, or the prevention of domestic violence and assistance to victims of domestic violence. Such a review may be requested by a person related to the victim within the third degree of consanguinity within one year after the victim's death (NRS 217.475).

Domestic Violence Ombudsman and Committee

The Nevada Legislature created the Office of Ombudsman for Victims of Domestic Violence (NRS 228.430 through NRS 228.460) and the Committee on Domestic Violence (NRS 28.470) under the auspices of the Attorney General's Office. In 2005, the Legislature formally established in statute the Nevada Council for the Prevention of Domestic Violence, although this body had existed previously and received legislative funding.

Office of the Ombudsman for Victims of Domestic Violence

The Attorney General appoints the Ombudsman for a four-year term. By statute, the Ombudsman is responsible for the following:

- Preparing quarterly reports relating to victims of domestic violence from information collected from the Central Repository, if any such information is available.
- Providing necessary assistance to victims of domestic violence.
- Providing education to the public concerning domestic violence, including, without limitation, the prevention of domestic violence, available assistance to victims of domestic violence, and available treatment for persons who commit domestic violence.

In addition, the Ombudsman is responsible for administering the Account for Programs Related to Domestic Violence in the State General Fund. The mandatory administrative assessment of $35, which is collected when a person is convicted of a battery that constitutes domestic violence, is credited to this Account. The funds in the Account may only be used for expenses relating to the Committee on Domestic Violence (discussed below); training law enforcement officers, attorneys, and members of the judicial system about domestic violence; assisting victims of domestic violence; educating the public concerning domestic violence; and carrying out the duties and functions of the office.

Committee on Domestic Violence

The Committee on Domestic Violence is appointed and staffed by the Attorney General and includes representatives of victims, treatment providers, prosecuting attorneys, law enforcement officers, mental health care providers, and offenders who have completed treatment programs for domestic violence. The Committee is responsible for the following:

- Adopting regulations for the evaluation, certification, and monitoring of programs for the treatment of persons who commit domestic violence;

- Reviewing, monitoring, and certifying programs for the treatment of persons who commit domestic violence;

- Reviewing and evaluating existing programs provided to peace officers for training related to domestic violence and making recommendations to the Peace Officers' Standards and Training Commission regarding such training;

- To the extent that money is available, arranging for the provision of legal services, including, without limitation, assisting a person in an action for divorce; and

- Submitting on or before March 1 of each odd-numbered year a report to the Legislative Counsel Bureau. The report must include, without limitation, a summary of the work of the committee and recommendations for any necessary legislation concerning domestic violence.

Nevada Council for the Prevention of Domestic Violence

Assembly Bill 219 (Chapter 263, *Statutes of Nevada 2005*) established in statute the Nevada Council for the Prevention of Domestic Violence within the Office of the Attorney General. The Council's duties include increasing public awareness of domestic violence, recommending necessary legislation relating to domestic violence, and providing financial support to programs for the prevention of domestic violence. The expenses incurred by the Council in carrying out its duties will be paid from money received by the Council from gifts, grants, donations, contributions, and from other money expended from the Account for Programs Related to Domestic Violence.

Assembly Bill 219 also requires the Council to study issues pertaining to the administration of the criminal justice system in rural Nevada with respect to offenses involving domestic violence and to submit a report regarding the study to the Director of the Legislative Counsel Bureau on or before February 1 of each odd-numbered year for transmittal to the next regular session of the Legislature.

RESOURCES REGARDING FAMILY LAW

Numerous resources and publications regarding family law are available through public and private sources, including the following:

- *Nevada Revised Statutes* (Available through the Legislature's Web site at www.leg.state.nv.us and through state and local libraries).

- Nevada Supreme Court and Nevada's Administrative Office of the Courts
  201 South Carson Street
  Carson City, Nevada 89701-4702
  Telephone: (775) 684-1700
  www.nvsupremecourt.us

The Nevada Supreme Court prepares the *Annual Report of the Nevada Judiciary*, which contains a glossary of terms and statistical information relating to the Family Court in Nevada.

- National Council of Family and Juvenile Court Judges
  P.O. Box 8970
  Reno, Nevada 89507
  Telephone: (775) 784-6012
  Fax: (775) 784-6628
  www.ncjfcj.org

- Office of the Attorney General
  Nevada Department of Justice
  Carson City Office
  100 North Carson Street
  Carson City, Nevada 89701-4717
  Telephone: (775) 684-1100
  Fax: (775) 684-1108
  www.ag.state.nv.us

The Office of the Attorney General is a valuable resource on a variety of topics, including child support enforcement and domestic violence. Information on reports regarding domestic violence provided to the Legislature by the Ombudsman for Victims of Domestic Violence and the Committee on Domestic Violence Information is available through the Research Library of the Nevada Legislative Counsel Bureau (NRS 228.450 and NRS 228.470). The Research Library may be contacted by phone (775/684-6827) or through the Legislature's Web site at www.leg.state.nv.us.

- Child Support Enforcement – State Collection and Disbursement Unit
  Division of Welfare and Supportive Services
  Department of Health and Human Services
  1470 East College Parkway
  Carson City, Nevada 89706
  Telephone: (775) 684-0500
  www.welfare.state.nv.us/child.htm

Information regarding the following reports is available through the Research Library:

- *Report to the 70th Session of the Nevada Legislature (1999) by The Legislative Commission's Subcommittee to Study Family Courts*. A copy of the Subcommittee's report (Legislative Counsel Bureau Bulletin No. 99-9) is available online at: http:// www.leg.state.nv.us/lcb/research/InterimReports/99-09.html

- *Reports to the Legislature from the Child Support Statute Review Committee, State Bar of Nevada* (formerly required by NRS 125B.070).

- *Biennial Report to the Nevada Legislature on Programs for Assistance to Victims of Domestic Violence* (prepared by the Division of Child and Family Services of the Department of Health and Human Services pursuant to NRS 217.460).

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GENERAL ENVIRONMENTAL ISSUES AND MATTERS CONCERNING LAKE TAHOE

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

The health of Nevada's environment and the preservation and conservation of its most critical natural resources contribute significantly to our quality of life and economic prosperity. Clean air and water, open space, recreational opportunities, and scenic beauty make Nevada a desirable place to live and visit. As the state grows, however, so do the demands placed on these resources and the need to manage them wisely.

Historically, Nevada was known to have limited environmental regulations when compared with other more populous states. In recent decades, however, Nevada has undertaken significant state-sponsored programs to improve and protect its natural environment and to address new and changing federal regulations, particularly since passage of the National Environmental Protection Act in 1969—one of the first laws ever written that establishes a national framework for protecting the environment.

In addition to statewide environmental programs and regulations, Nevada shares responsibility for the preservation of Lake Tahoe with the State of California. Situated in the heart of the Sierra Nevada, the Lake Tahoe Basin lies one-third within the State of Nevada and two-thirds in the State of California. Regulatory responsibility for the basin rests with the Tahoe Regional Planning Agency (TRPA), established in 1968 under the Tahoe Regional Planning Compact (Public Law 96-551).

AIR QUALITY

Air pollution comes from a variety of sources. These include "stationary sources" such as factories, power plants, and smelters; "smaller sources" such as dry cleaners and degreasing operations; "mobile sources" such as cars, trucks, buses, trains, and planes; and "natural sources" such as windblown dust and wildfires.

Federal Clean Air Requirements

The foundation for most of the federal clean air requirements and standards is the federal Clean Air Act, which became law in 1970 and was most recently amended in 1990. Many of the Clean Air Act programs are driven by the National Ambient Air Quality Standards, which identify and set minimum standards for several harmful pollutants. The six principal air pollutants (known as "criteria" pollutants) are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulate matter or "dust" (with an aerodynamic size less than or equal to 10 microns, or PM_{10} and 2.5 microns, or $PM_{2.5}$), and sulfur dioxide (SO_2).

The Clean Air Act also recognizes that states should take the lead in carrying out the Clean Air Act and deciding how best to meet the air quality standards, because pollution control problems often require special understanding of local industries, geography, weather, transportation patterns, and other influences on air quality.

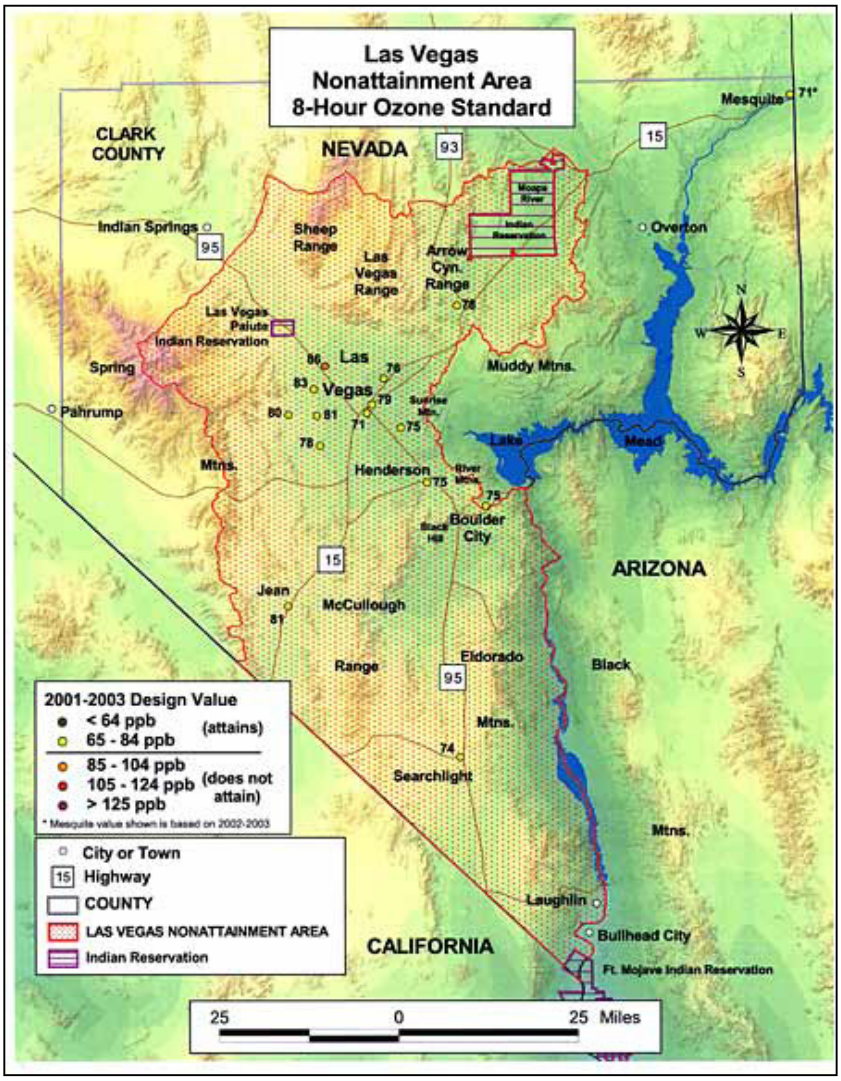
Nevada's Division of Environmental Protection (NDEP) within the State Department of Conservation and Natural Resources (SDCNR) is the state agency with enforcement responsibility for the Clean Air Act. It does so through its Bureaus of Air Pollution Control and Air Quality Planning. Air quality surveillance throughout Nevada has been divided into three jurisdictions, each of whom manages its own air program. The NDEP is responsible for air quality surveillance in all areas of the state other than Clark and Washoe Counties. Air quality programs in Clark County are managed by the Clark County Department of Air Quality Management. In Washoe County, these programs are managed by the Washoe County District Health Department, Air Quality Management Division. (Note: An exception to this rule is that the NDEP has air quality jurisdiction, including ambient air quality monitoring, statewide over fossil fuel power plants.)

In addition to setting their own standards, states are required to develop State Implementation Plans (SIPs) that explain how they will implement the air quality regulations of the Environmental Protection Agency (EPA) and attain the National Ambient Air Quality Standards. A SIP is a collection of the regulations a state will use to clean up polluted areas. Each SIP must address pollution control for both clean air areas (to maintain air quality) and for areas in violation of the air quality standards (to ensure that the ambient standards are met and attained in the future).

As part of these plans, states divide their total area into air quality control regions and attainment areas are designated at the county level. If the air quality in a control region, based on monitoring, falls below any of the air quality standards, EPA designates that control region as a nonattainment area for that particular pollutant and a SIP must be prepared. If the SIP is required of a local jurisdiction such as Clark or Washoe County, the county prepares the SIP and submits it to the NDEP for state review and approval. Once approved by the NDEP, the SIP is then submitted to the EPA for federal review and approval.

Air quality issues in Clark County have primarily focused on high concentrations of particulate matter (PM_{10}), carbon monoxide (CO), and most recently, ozone (O_3). The EPA has designated Clark County in "nonattainment" for each of these pollutants. Clark County has prepared SIPs

for particulate matter and carbon monoxide. The EPA issued its approval of the particulate matter SIP in May 2004 and implementation of the plan is underway. The EPA accepted the County's carbon monoxide SIP in October 2004; however, effective July 1, 2005, EPA found that Clark County is now in compliance with the carbon monoxide standard. As a result, Clark County will ask for a re-designation of its nonattainment status for carbon monoxide and will submit a maintenance plan to EPA for approval. Clark County will also submit its SIP for ozone no later than June 2007.



For a number of years, air quality issues in Washoe County have focused on its non attainment designations for particulate matter (PM_{10}), carbon monoxide (CO), and ozone (O_3). Washoe County has implemented all of the control strategies outlined in previously approved SIPs, and has submitted redesignation requests and maintenance plans for carbon monoxide and ozone to the EPA. A "Finding of Attainment" was issued by the EPA for both pollutants. Washoe County's particulate matter SIP was submitted to the EPA in August 2002, and is awaiting EPA review and approval.

Nevada's air pollution control laws are found in Chapter 445B of *Nevada Revised Statutes* (NRS). Specifically, NRS 445B.100 acknowledges that with regard to air pollution, it is the policy of the State of Nevada "to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State." The air pollution statutes were added to NRS by the Nevada Legislature in 1971, following passage by Congress of the original Clean Air Act in 1970.

Nevada's Air Pollution Control Laws

Vehicle Emissions Programs

An important aspect of Nevada's air pollution control laws is the concept of reducing vehicle emissions to improve air quality, especially in populated areas with air quality concerns. In Nevada, this is accomplished through the "smog check program," with fees deposited in the Air Pollution Control Account.

The Vehicle Emissions Programs are authorized under NRS 445B.770, which requires the State Environmental Commission to adopt regulations in designated areas, for the control of emissions from motor vehicles in Clark and Washoe Counties (identified in statute as counties with populations more than 100,000). In all other counties, NRS 445B.770 gives the State Environmental Commission the option to adopt regulations if the Commission determines that it is feasible and practicable to carry out an emissions testing program, and if carrying out the program is deemed necessary to achieve or maintain air quality standards.

Nevada's Air Pollution Control Account

The Air Pollution Control Account is created in the State General Fund by NRS 445B.830. Nevada's Department of Motor Vehicles (DMV) deposits money in the Account that is collected from fees for licensing and renewing licenses of smog check facilities. Also deposited in the Account are fees collected for forms certifying emission control compliance. At this time, only the urbanized areas of Clark and Washoe Counties have smog check programs; thus, the money in the Account comes mainly from the owners of automobiles in these two areas.

The Account is administered by the DMV as follows:

- One-sixth of the money received from the issuance of emission test certificates is distributed quarterly to local governmental agencies in nonattainment or maintenance areas for air pollution (Clark and Washoe Counties).

- Pursuant to legislative appropriation or with the approval of the Interim Finance Committee, money is available to air pollution control agencies in the following priority order:

    1. Department of Motor Vehicles (for administration of the program);

2. Department of Conservation and Natural Resources (for the Division of Environmental Protection's statewide air quality control programs);

3. Department of Agriculture (for its fuels testing program under Chapter 590 of NRS);

4. Local governmental agencies in nonattainment or maintenance areas for air pollution (i.e., Clark and Washoe Counties); and

5. The Tahoe Regional Planning Agency (for air quality programs at Lake Tahoe).

- Following these deductions, money remaining in the Account in excess of $1 million is available as grants to local governmental agencies in nonattainment or maintenance areas (Clark and Washoe Counties), for programs related to the improvement of air quality.

Efforts to Encourage the Use of Alternative Fuels

In addition to the Air Pollution Control Laws in Chapter 445B of NRS, Nevada encourages the use of alternative fuels. Chapter 486A of NRS was added by the Legislature in 1991, and is aimed at reducing, especially in metropolitan areas, the contaminants resulting from the combustion of conventional fuels in motor vehicles. In 2001, the Legislature added NRS 486A.200, which authorizes an incentive program for the use of clean-burning fuel. As a result, NDEP developed the "Alternative Fueled Vehicles in Fleets Program" to reduce motor vehicle-related pollution by converting fleet vehicles to use cleaner burning fuels. State and local government fleets in Clark and Washoe Counties operating ten or more vehicles are regulated under this program.

Alternative fueled vehicles are also exempt from emissions testing, and benefit from a reduced special fuels tax rate (NRS 366.190).

WATER QUALITY

(Note: This paper will address the issue of water quality as an environmental issue in Nevada. The topic of water quantity will be addressed in another paper dealing with natural resources.)

Growing public awareness and concern for controlling water pollution led to enactment of the Federal Water Pollution Control Act Amendments of 1972. As amended in 1977, this law became known as the Clean Water Act. It establishes the basic structure for regulating discharges of pollutants into the waters of the United States and gives the EPA authority to implement pollution control programs such as setting wastewater standards for industry. The Clean Water Act also continues requirements to set water quality standards for all contaminants in surface waters. Under this Act, it is unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit is obtained.

The Nevada Water Pollution Control Law is set forth in NRS 445A.300 through NRS 445A.730 (This law establishes Nevada's compliance with the federal Clean Water Act). The State

Environmental Commission has the authority to adopt regulations to carry out the provisions of the Nevada Water Pollution Control Law, including standards of water quality and amounts of waste that may be discharged into the waters of the state. Administration and implementation of these regulations are the responsibility of the NDEP.

An important aspect of the Clean Water Act is the Total Maximum Daily Load (TMDL). A TMDL is an assessment of the amount of pollutant a water body can receive and not violate water quality standards. In other words, a TMDL determines how much pollutant load a lake or stream can assimilate. It is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. A "point source" is a discharge from discernible points, including pipes, ditches, channels, and tunnels, while a "nonpoint source" is a discharge over a wide area of land not from a specific location (such as runoff).

The Clean Water Act requires each state to:

- Identify waters not meeting water quality standards;
- Set priorities for TMDL development of "impaired" water bodies; and
- Develop a TMDL for each pollutant for each listed body of water.

The Act also requires the EPA to approve or disapprove submissions by the states.

Water quality in Nevada is generally affected by agriculture, municipal, and industrial sources. Impacts on water quality from municipal and industrial sources have been greatly reduced over the years with most point source pollution eliminated or strictly controlled from direct discharges. Agriculture has the greatest impacts on the waters of Nevada due mainly to nonpoint source pollution from irrigation, grazing, and flow regulation practices, along with naturally occurring causes.

Overall, water quality has generally been improving in Nevada due to the removal of many point sources and more stringent standards being implemented on other point sources. Most exceedances are seasonal and are of a natural condition. As for nonpoint sources, improvements are anticipated as a result of promoting public awareness, improved grazing and irrigation practices, erosion control measures, and implementation of Best Management Practices.

In Clark County, perchlorate has become a serious water quality concern as it is contaminating ground water entering Lake Mead and the Colorado River system—the source of drinking water for some 22 million people in Arizona, California, and southern Nevada. Perchlorate, a toxic chemical used in rocket fuel and explosives, was produced from World War II through the 1990s at two sites in Henderson, one owned by Kerr-McGee and the other by American Pacific. Perchlorate was first detected in Lake Mead in 1997. Kerr-McGee stopped making the chemical in 1998 and a cleanup project began in 1999 (the project is ongoing). American Pacific moved to Utah in 1989.

If ingested in high doses, perchlorate can decrease function of the thyroid gland and result in hypothyroidism or possibly thyroid tumors. Currently, however, there is no national standard for safe levels of perchlorate and the EPA initially proposed a regulatory standard of 1 part per billion (ppb) -roughly equivalent to 1 drop of perchlorate in an Olympic-size swimming pool. In 2005, the National Academy of Sciences issued a report stating that up to 24.5 ppb are safe for consumption. As a result of clean up efforts, Lake Mead has seen decreasing levels of perchlorate, from 14 ppb in 2000, to 10 ppb in 2002, 9 ppb in 2003, and 6 ppb in 2004.

In Washoe County, a water quality issue in recent years has been the level of nitrates in the ground water of some outlying valleys where septic tanks have leaked, threatening the drinking water in individual water wells. Where standards are exceeded, the NDEP may require development of a community sewage system and elimination of the use of individual septic tanks, such as in the case of Spanish Springs north of Reno.

Clean Water Act vs. Safe Drinking Water Act

It is important to note that the Clean Water Act and the Safe Drinking Water Act are two different pieces of federal legislation. The Clean Water Act pertains to water quality as an environmental issue, while the Safe Drinking Water Act addresses drinking water quality and public water systems as a health issue. (A "public water system" is a system that provides the public with piped water for human consumption, if the system has 15 or more service connections or regularly serves 25 or more persons at least 60 days a year.)

In Nevada, primary enforcement responsibility for the Safe Drinking Water Act now rests with the NDEP (responsibility was transferred in 2005 from the Health Division, Department of Health and Human Services), which is responsible for licensing and monitoring public water systems consistent with national drinking water standards. The NDEP also administers Nevada's Drinking Water State Revolving Fund to provide free technical assistance and low-interest loans to private and public water systems in Nevada to ensure compliance with regulations of the Safe Drinking Water Act. State financial assistance for drinking water systems was created by the Nevada Legislature in 1991 to provide grants to water purveyors to pay for costs of capital improvements to publicly-owned water systems as required by the State Board of Health or the Safe Drinking Water Act. The grant program seeks to enable communities to comply with health regulations, and to ensure that the costs of improvements do not overwhelm or cripple the system.

In recent years, changes to federal drinking water standards have been significant in certain Nevada communities that must improve their water treatment facilities to meet higher standards. One example is the national standard for arsenic that was recently changed by the EPA to 10 parts per billion (effective in 2006). However, naturally-occurring arsenic in the Fallon area has consistently been at 100 ppb, or 10 times the new national standard. A $17.5 million water treatment plant was recently constructed that will bring the arsenic in Fallon's drinking water down to 50 ppb, and eventually to 10 ppb by 2006. Funding for the plant came from a variety of federal, state, and local sources, although residents will have to pay higher water fees to fund the continued operation of the plant.

NEVADA'S "BROWNFIELDS" PROGRAM AND THE UNIFORM ENVIRONMENTAL COVENANTS ACT

Brownfield properties are vacant or abandoned properties that are under utilized due to contamination from past use. Examples typically include former automotive, railroad, or light industrial sites. The intent of the program is to provide incentives for people to voluntarily remediate and use environmentally contaminated property while providing protection from liability for additional, future cleanup costs. In other words, the program encourages the revitalization of vacant, unproductive, and environmentally contaminated lands throughout Nevada.

The Nevada Brownfields Program (codified in NRS 459.610 through 459.658) was created in 1999 and amended slightly in 2003 to model the federal Brownfields Revitalization Act of 2002. Nevada's program allows the owner, prospective purchaser or innocent purchaser of contaminated property, or the owner of contiguous property, to reach an agreement with the NDEP to undertake corrective cleanup actions. The property owner can obtain a certificate as a result of the agreement, releasing him from liability for contamination occurring before the cleanup took place. (However, the relief from liability does not affect the liability of tort of any party, nor limit the State's authority with respect to requiring a specified action or cleanup by persons who are responsible for the actual contamination.)

As a result of the program created in 1999, the State of Nevada received a $2 million grant from the EPA. These funds are being used in the Fund for Brownfields Projects, a revolving loan administered by NDEP to provide no or low interest grants to eligible recipients. Payments from these grants have been leveraged to make additional loans.

Nevada's program also provides for recovery by the State of a portion of the cleanup costs if the State funded the cleanup effort at the property and that cleanup increased the land's value.

In 2005, the Legislature adopted the Uniform Environmental Covenants Act, which provides for a perpetual real estate interest, known as an environmental covenant, to regulate the use of contaminated land when ownership is transferred. An environmental covenant remains with the property unless it is limited to a specific duration or terminated by various means. However, an environmental covenant does not authorize a use of real property that is otherwise prohibited by zoning, another law, or a recorded instrument with priority over the covenant. It may prohibit or restrict uses of real property authorized by zoning or by another law.

MINING AND MINE RECLAMATION

Mining is an important industry in Nevada. In fact, Nevada is the nation's leading producer of precious metals, producing approximately 70 percent of U.S. gold and 43 percent of U.S. silver. Nevada was also the nation's leading producer of barite, lithium, carbonate, and mined magnesite. In 2004, approximately $3.3 billion in mineral commodities (excluding oil and geothermal resources) were produced in Nevada. Additionally there are 14 geothermal electric generating plants in 10 locations that produced 1.67 million megawatt hours of electricity in 2004 (enough power to supply nearly 80,000 homes). Finally in 2004, approximately 463,000 barrels of oil were produced from oil fields in Nye and Eureka Counties.

The economic significance of mining is especially great in rural areas where mining activities are centered. In 2004, there were, on average, 9,559 Nevadans directly employed in the mineral industry at an average salary of $63,387. It is estimated that another 48,000 jobs are involved in supplying goods and services to the industry.

Nevada's Division of Minerals, Commission on Mineral Resources, administers programs and activities to further the responsible development and production of the State's mineral resources. The Division regulates drilling operations of oil, gas, and geothermal wells; administers a program to identify, rank, and secure dangerous conditions at abandoned mines; and manages the State Reclamation Bond Pool. The statutes relating to the programs administered by the Division of Minerals are generally found in NRS 513.011 through NRS 513.113 (Commission on Mineral Resources), NRS 517.010 through NRS 517.460 (mining claims, mill sites, and tunnel rights), NRS 519A.010 through NRS 519A.290 (mine reclamation), Chapter 522 of NRS ("Oil and Gas"), and NRS 534A.010 through NRS 534A.090 (geothermal resources).

Mining regulation, mine closure, and mine reclamation are the responsibility of the NDEP and its Bureau of Mining Regulation and Reclamation. The Regulation Branch is responsible for ensuring that the quality of Nevada's water resources is not adversely impacted by active mining operations.

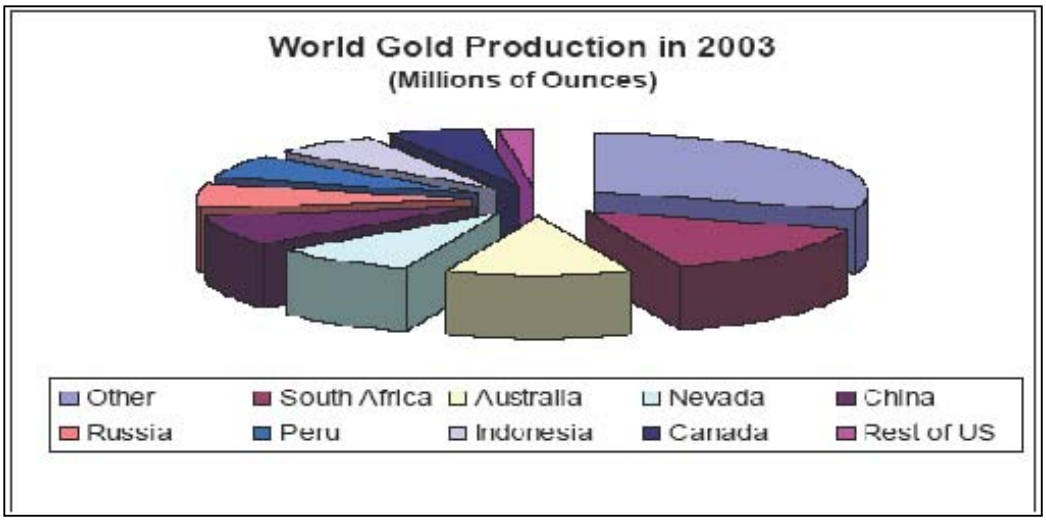
Steamboat Geothermal Power Plant, Washoe County, Nevada

The Mine Closure Branch regulates mines in closure, ensuring chemical stabilization of all components. Finally, the Mining Reclamation Branch ensures that land disturbed by mining and exploration activities is returned to a productive post-mining land use. Statutory authority for these programs is found in NRS 445A.300 through NRS 445A.730 (Nevada's Water Pollution Control Law) and NRS 519A.010 through NRS 519A.290 (mining reclamation).

Mine Reclamation

Mine reclamation is an important environmental issue, especially in rural Nevada. In 1991, the State Reclamation Bond Pool was created to ensure that sufficient resources exist in the event a

mining company goes bankrupt and cannot pay to reclaim the land. In Nevada, mine operators are required to obtain a reclamation permit and to file a surety with the NDEP or federal land manager. The Bond Pool is administered by the Division of Minerals; however, the NDEP is responsible for reviewing the mine operator's estimate of the cost for reclamation to determine if the estimate is reasonably sufficient to conduct all required reclamation.



Recent concern has been expressed for one of the types of surety that may be filed by a mine operator: corporate guarantee. The issue is that if a company claims bankruptcy, it may not have the corporate funds necessary to pay for reclamation. In that case, some have argued that taxpayers may be held responsible for reclamation costs.

Toxics Release Inventory

Another important environmental issue relative to mining is the Toxics Release Inventory (TRI). The TRI is part of the Federal Emergency Planning and Community Right-to-Know Act of 1986. The Act is intended to inform communities and residents of potential chemical hazards in their area by requiring certain businesses to report the locations and quantities of designated chemicals stored on-site.

The EPA recently expanded the TRI reporting requirements to include the mining industry. The TRI now requires mining companies to report releases of large quantities of naturally occurring substances within the rock. These releases are often the result of simply moving and handling the rock as part of the regular mining process. After the process is complete, these reportable substances remain on site. Nevertheless, because they are moved and handled, they must be reported as having been "released" into the environment. As a result, for four years immediately following the new reporting requirements, Nevada and its mining industry led the nation in the release of toxic substances. This year, Alaska became the leader for toxic releases and Nevada ranked second. A federal court last year ruled that trace amounts of potentially harmful substances need not be reported if they are less than 1 percent of the weight of the pile of rock material. As a result, Nevada's reportable numbers declined. However, the ongoing appearance of Nevada's mining industry as a significant contributor to the release of toxic materials is a concern to many.

LAKE TAHOE

The natural beauty and outstanding water quality at Lake Tahoe have resulted in ongoing efforts to preserve and enhance the natural environment within the Lake Tahoe Basin. More than a hundred years ago, conservationists voiced concern about the impacts of logging, tourism, and other development on the lake's environment. While their efforts to designate the basin as a National Forest or National Park failed, they continued lobbying for environmental protection. Although Lake Tahoe's water clarity has set it apart as a national treasure, the lake's clarity has been declining by as a much as a foot per year in recent decades. To address this situation, the states of Nevada and California began discussions about how best to protect the lake.

The debate climaxed in the 1960s after two decades of rapid growth. The governors and lawmakers of Nevada and California approved the Tahoe Regional Planning compact that created a regional planning agency to oversee development at Lake Tahoe. In 1969, the U.S. Congress ratified the agreement and created the Tahoe Regional Planning Agency (TRPA). With ratification of the Compact, the TRPA was the first bi-state regional environmental planning agency in the country.

The early years of the agency were beset with controversy as procedures and regulations were established and imposed, and people adjusted to this new level of regulation and bureaucracy. Specifically, the basic structure of the TRPA's Governing Body, as well as a voting system through which a project could be "deemed approved" unless a majority of the Board's representatives in each state voted to deny the project, proved unworkable in achieving the objectives of the compact. Other controversies centered on provisions for the location and control of gaming, inadequate requirements for establishing planning standards, and criteria for environmental evaluations.

During the 1970s, the governors and lawmakers of both states again debated about how to amend the bi-state compact to addresses these controversies. Finally in 1980, it was revised and gave the TRPA authority to adopt environmental quality standards (called thresholds), and to enforce ordinances designated to achieve those thresholds.

National attention was again turned to Lake Tahoe in 1997, with the Lake Tahoe Presidential Forum. President Bill Clinton issued an Executive Order designed to ensure increased coordination and cooperative efforts in planning and implementing environmental measures in the basin. Among the efforts is the Environmental Improvement Program (EIP), an integrated procedure for identifying the projects, continuing programs, and studies necessary to achieve environmental goals at Lake Tahoe. The total funding for projects identified in the EIP basin-wide is $908 million, while the allocation for projects funded by the State of Nevada on the Nevada side of the basin is $82 million.

Following the Presidential Forum, Nevada Governor Bob Miller signed a Memorandum of Understanding pledging the state's support for carrying out its full $82 million share of the EIP. At the time, the State of Nevada already had a portion of this amount allocated for EIP projects. The remainder was approved in the 1999 Legislative Session, with authorization of the sale of

$53.2 million in bonds staggered throughout the life of the EIP. The majority of the EIP projects in Nevada will be completed by 2007.

In every year except one since 1985, the Nevada Legislature has authorized an interim committee to oversee the activities associated with the TRPA and the bi-state compact. In 2003, the Nevada Legislature created the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System as a statutory committee (NRS 218.53871).

Water quality continues to be an important issue at Lake Tahoe, and the TRPA's environmental thresholds and ordinances are structured to focus on that concern.

The impact of these thresholds and ordinances on private property (and the ability of private landowners to develop their parcels) has been a subject of ongoing controversy and debate in the basin. Most recently, however, concern has turned to the issue of forest health and the need to aggressively reduce fire danger. It is widely believed that a fire in the Lake Tahoe Basin would quickly spread, and the environment, lake, private property, tourism, and overall economy of the region would be devastated by fire.

Additional References

USEFUL WEB SITES FOR ENVIRONMENTAL ISSUES AND MATTERS RELATED TO LAKE TAHOE

The following Web sites contain additional information and further detail on the programs and topics described in this report. In some cases, such as the EPA and NDEP sites, information is available for multiple subjects such as air quality, water quality, Brownfields, mining regulation, and more.

- Clark County Department of Air Quality: http://www.accessclarkcounty.com/daqem/aq/aq_index.html
- Nevada's Division of Environmental Protection: http://ndep.nv.gov/
- Nevada's Division of Minerals: http://minerals.state.nv.us/
- Tahoe Regional Planning Agency: http://www.trpa.org
- U.S. Environmental Protection Agency: http://www.epa.gov
- Washoe County Air Quality Monitoring Division: http://www.washoecounty.us/health/aqm/home.html

COMMON ACRONYMS FOR ENVIRONMENTAL AND NATURAL RESOURCES ISSUES IN NEVADA

As with any policy area, acronyms are common in environmental and natural resources subjects. Following is a list of the most common acronyms one might expect to encounter:

AFV	Alternative Fuel Vehicle
AML	Abandoned mine lands
BLM	Bureau of Land Management, U.S. Department of the Interior
BMP	Best Management Practices
CAA	Clean Air Act of 1990
CFR	*Code of Federal Regulations*
CWA	Clean Water Act of 1977
DMV	Nevada's Department of Motor Vehicles
DOI	U.S. Department of the Interior
EA	Environmental Assessment
EIP	Lake Tahoe's Environmental Improvement Program
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act of 1973
EV	Electric Vehicle
FEMA	Federal Emergency Management Agency
FLPMA	Federal Land Policy Management Act of 1976
FLTFA	Federal Land Transaction Facilitation Act of 2000
HEV	Hybrid Electric Vehicle
HMA	Herd Management Area
HRBWA	Humboldt River Basin Water Authority
NAAQS	National Ambient Air Quality Standards
NCA	National Conservation Area
NCPWH	Nevada's Commission for the Preservation of Wild Horses
NDEP	Nevada's Division of Environmental Protection, State Department of Conservation and Natural Resources
NDF	Nevada's Division of Forestry, State Department of Conservation and Natural Resources
NDOW	Nevada's Department of Wildlife
NEPA	National Environmental Protection Act of 1969
NMA	Nevada Mining Association
NRA	National Recreation Area
OHV	Off-highway vehicle
PILT	Payment in Lieu of Taxes
SDA	State Department of Agriculture
SDCNR	State Department of Conservation and Natural Resources
SEC	State Environmental Commission
SIP	tate Implementation Plan
SNPLMA	Southern Nevada Public Land Management Act of 1998
SNWA	Southern Nevada Water Authority

TMDL	Total Maximum Daily Load
TMWA	Truckee Meadows Water Authority
TRI	Toxics Release Inventory
TRPA	Tahoe Regional Planning Agency
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service, U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service, U.S. Department of the Interior
WSA	Wilderness Study Area

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PUBLIC LANDS AND GENERAL NATURAL RESOURCES

Policy and Program Report

Nevada Legislative Counsel Bureau

Research Division

2006

Many of the State agency responsibilities related to natural resources are housed in the State Department of Conservation and Natural Resources (SDCNR). Other State agencies with responsibilities for natural resources and related issues are Nevada's Department of Wildlife (NDOW), the State Department of Agriculture (SDA), and the Commission on Mineral Resources (through its Division of Minerals).

Approximately 87 percent of Nevada's land area is owned and administered by the Federal Government. In some rural counties, the Federal Government controls more than 90 percent of the land. As a result, federal laws, regulations, and policies play a very important role in the management of vast areas of the State's natural resources, and significantly influence local public policy.

AGRICULTURE

Although agriculture is an industry rather than a resource, it depends heavily on Nevada's natural resources and the availability of public land for grazing. Therefore, agricultural, natural resources, and public lands issues are closely related in this State, and measures pertaining to agriculture are generally considered by the Legislature's natural resources committees.

Overview of Agriculture in Nevada

Agriculture is one of Nevada's most important industries, contributing significantly to the economies of rural communities and the State as a whole. The SDA was established in 1915 by Chapter 561 of the *Nevada Revised Statutes* (NRS) to promote the efficient, orderly, and economic conduct of various activities for the encouragement, advancement, and protection of Nevada's livestock and agricultural industries. Due to the breadth of agricultural subjects and issues in Nevada, Chapters 547 through 576 of NRS cover the administrative responsibilities and programs of the SDA.

Nevada agriculture is directed primarily toward range livestock production; cattle and calves are the leading agricultural industry. Livestock production would not exist without a rancher's ability to graze on public land. With 87 percent of Nevada land owned by the Federal Government, most of Nevada's ranchers graze their livestock, at least in part, on public land. Most of the federal land in Nevada that is used for agriculture is overseen by the Bureau of Land Management (BLM), United States Department of the Interior, and by the Forest Service (USFS), U.S. Department of Agriculture (USDA). These entities determine how much livestock can be grazed on any one area at any time. Assessments are made periodically to ensure grazing is at an optimum level, taking into account other uses such as recreation, wildlife, and plant diversity.

Dairy, sheep/lambs, and hogs are among Nevada's other livestock enterprises. The larger cattle and sheep ranches are in the northern half of the state. The greatest number of dairies is in northern Nevada, but the largest dairies are in the south.

Despite Nevada's arid climate, excellent crops are produced where land can be irrigated. Alfalfa hay is the leading cash crop of the State and much of the hay is sold to dairy operations in surrounding states. Significant quantities of alfalfa cubes and compressed bales are exported overseas each year. Additional crops produced in Nevada include potatoes, barley, winter and spring wheat, corn, oats, onions, garlic, and honey. Smaller acreages of mint, fruits, and vegetables are grown throughout the State.

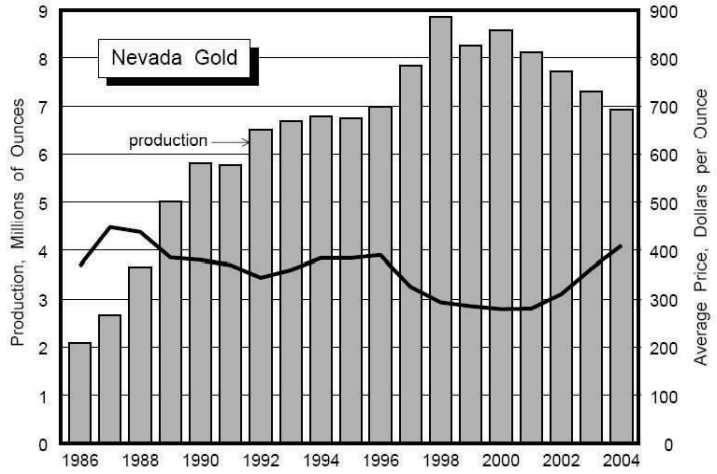
Federal laws and regulations can significantly affect ranching in Nevada where livestock production depends heavily on the use of grazing permits on federal land. In 1994, for example, the U.S. Department of the Interior began to revise existing grazing regulations that had been in effect for decades. The three major issues involved in Rangeland Reform '94 were grazing preference, ownership of range improvements, and mandatory qualifications for permit applicants. The regulations were seen by many as a means to restrict grazing on public lands.

Following implementation of Rangeland Reform '94, the Nevada Legislature created the Rangeland Resources Commission in 1999, in response to concerns about the decreasing viability of Nevada ranching. The Commission is funded by the livestock industry through an assessment on public land use to promote the benefits of rangelands through information, education, and collaboration. Its stated mission is to inform the public that Nevada's rangelands are a vital economic resource, protected and preserved for all citizens by a stable, sustainable livestock industry.

In 2003, the BLM proposed changes to its existing grazing rules that would attempt to resolve several controversial components of the Rangeland Reform '94 regulations. In general terms, the new rule would improve the working relationship between the BLM and grazing permittees (including allowing the BLM and ranchers to share title in range improvements), require in-depth assessment and monitoring of resource conditions, enhance administrative efficiency, and address various legal issues.

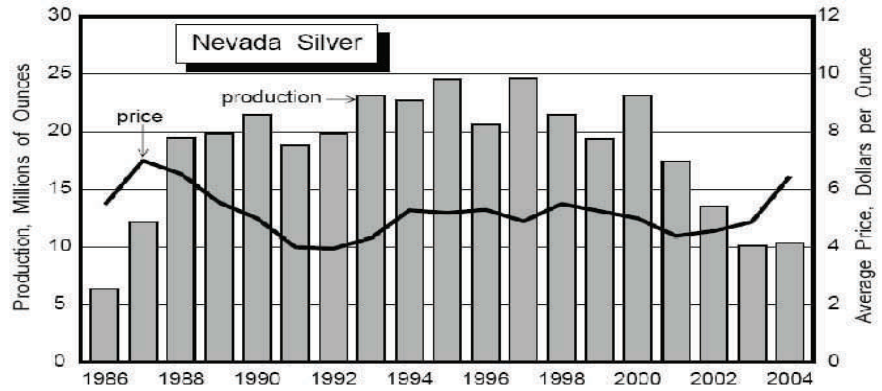
MINERAL RESOURCES

Nevada is rich with mineral resources. In fact, Nevada is the nation's leading producer of precious metals, producing approximately 70 percent of U.S. gold and 43 percent of U.S. silver. The State was also the nation's leading producer of barite, lithium, carbonate, and mined magnesite. In 2004, approximately $3.3 billion in mineral commodities (excluding oil and geothermal resources) were produced in Nevada. Additionally, there are 14 geothermal electric generating plants in 10 locations that produced 1.67 million megawatt hours of electricity in 2004 (enough power to supply nearly 80,000 homes). Finally in 2004, approximately 463,000 barrels of oil were produced from oil fields in Eureka and Nye Counties.



The economic significance of mining is especially great in rural areas where mining activities are centered. In 2004, there were, on average, 9,559 Nevadans directly employed in the mineral industry at an average salary of $63,387. It is estimated that another 48,000 jobs are involved in supplying goods and services to the industry.

Nevada's Division of Minerals administers programs and activities to further the responsible development and production of the State's mineral resources: minerals produced from mines; geothermal; and oil and gas. The division regulates drilling operations of oil, gas, and geothermal wells; administers a program to identify, rank, and secure dangerous conditions at abandoned mines; and manages the State reclamation performance bond pool.

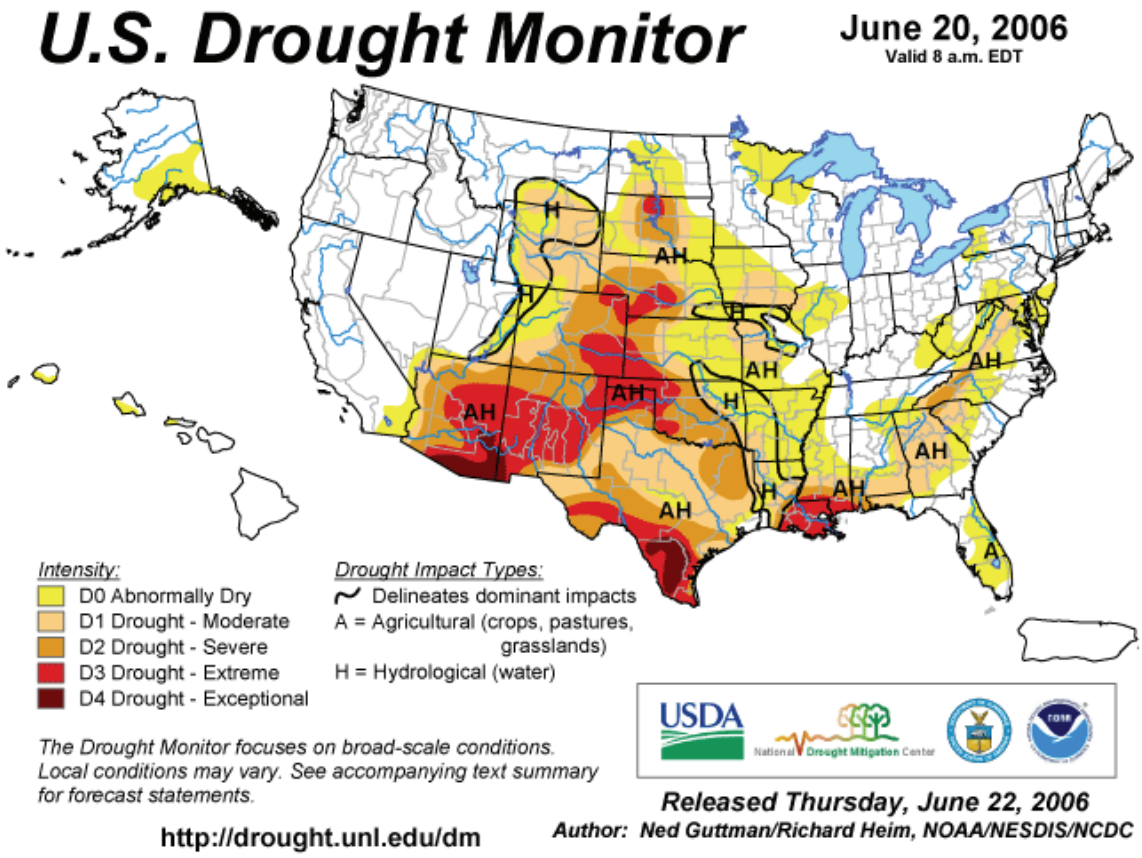


The General Mining Law of 1872 is one of the major federal statutes that direct the Federal Government's land management policy. The law grants free access to individuals and corporations to prospect for minerals on public domain lands, and allows them, upon making a discovery, to stake (or "locate") a claim on that deposit. A claim gives the holder the right to develop the minerals and may be "patented" to convey full title to the claimant. A continuing issue is whether this law should be reformed, and, if so, how to balance mineral development with competing land uses.

MISCELLANEOUS RESOURCE TOPICS

Drought

Western states recently ended their fifth year of drought. Drought conditions not drought creates severe economic and environmental conditions in Nevada. During an average year, much of the State regularly receives less than 10 inches of rain, with some areas receiving even less than that. Nevada's already dry and arid conditions are exacerbated by drought, leaving the land parched and subject to catastrophic fires and much-needed water bodies dry. The impacts to agriculture and wildlife can be disastrous.



During severe drought conditions, the USDA may identify specific counties as eligible for emergency assistance due to losses caused by drought, heat, and wildfires. Among the assistance available are low-interest loans from the USDA Farm Service Agency to qualified family-sized farm operators to help cover actual losses as a result of crop and livestock conditions.

In southern Nevada alone, the drought has spurred the Southern Nevada Water Authority (SNWA) to increase its efforts to import water from rural areas (see the section on Water Resources contained in this document). Programs by the SNWA to replace water-hungry turf with drought-tolerant plants have been met with significant success.

Noxious Weeds and Invasive Plant Species

Invasive plant species increasingly affect Nevada's lands in both urban and rural areas. Invasive plants across the State's rangelands are often flammable and increase fire intensity and frequency. They typically out-compete native plant species, thereby decreasing natural biodiversity and wildlife habitat. Thorny, spiny plants make areas inaccessible for recreation and the spread of invasive plants coupled with the need to control these weeds in crops drives up the price of food. Some species are so detrimental to the State's economy and environment that they have been placed on a special list by the SDA and are called "noxious weeds." Chapter 555 of NRS deals specifically with noxious weeds.

In recent years, studies have indicated that about one-third of the Great Basin has been infested with invasive plants, representing about 25 million acres. One of the most prominent and difficult invasive plants in Nevada is cheatgrass, an exotic annual grass that is highly flammable. In fact, cheatgrass rangelands are 500 times more likely to burn than rangelands of native vegetation. Before the invasion of cheatgrass, significant fire burned once every 40 to 100 years in the Great Basin, and native shrubs had a chance to become well established. Today, however, regular fires occur every ten years or less, thereby ensuring that cheatgrass remains the dominant species.

Beyond their contribution to wildland fire, invasive species have the potential to severely displace native and diverse plant communities with unproductive single plant communities that severely impact the environment. They jeopardize the ecological diversity of the region, with significant impacts to native habitat, wildlife, agriculture, and recreation.

Wildland Fires

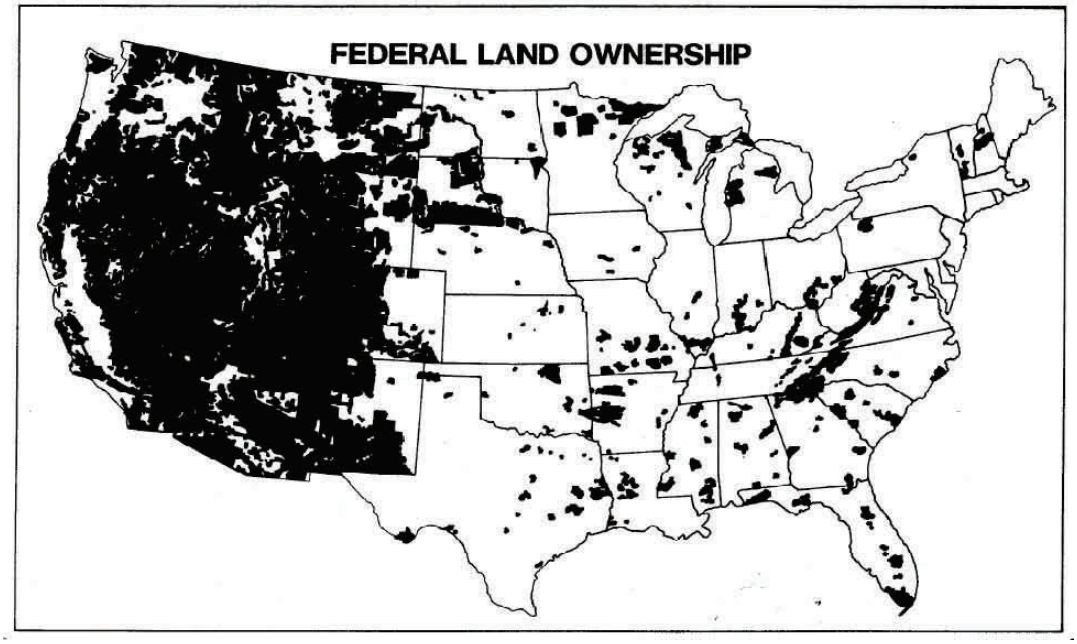
On average, more than 900 wildfires occur during any given fire season in Nevada, burning nearly 600,000 acres of land statewide. Years of unusually dry conditions and the spread of invasive plants like cheatgrass have recently left the State vulnerable to extremely dangerous fire seasons. During drought years, the acreage burned by wildfires increases significantly. Dry fuels contribute to more erratic burning conditions and increased fire intensity, and fire fighting agencies at all levels often do not have enough money and resources to suppress fires.

Several agencies share responsibility for fire prevention and suppression in Nevada. At the State level, Nevada's Division of Forestry, SDCNR, manages all forestry, nursery, endangered plant species, and watershed resource activities on certain public and private lands. The Division also provides fire protection for structural and natural resources through fire suppression and prevention programs and other emergency services. Chapters 472, 473, 527, and 528 of NRS provide the State's laws pertaining to the duties of the Division of Forestry, Fire Protection Districts, protection of timbered lands, and forest practices.

At the federal level, the BLM and USFS participate extensively in fire-related efforts throughout Nevada. Local fire protection districts and volunteer fire departments are also located across the State. The cooperation of these entities at all levels is significant and contributes greatly to successful fire prevention and suppression efforts.

PUBLIC LANDS

The Federal Government owns an average of 52 percent of the land in 13 western states, compared to 4.1 percent of the land in the remaining 37 states. In Nevada, the Federal Government controls 87 percent of the land area, representing 61 million acres. In 15 of Nevada's 17 counties, more than 50 percent of the land is in federal control; in four counties, the Federal Government owns more than 90 percent.



Because federally is owned land is exempt from property taxes, the estimated annual impact of this property tax exemption on western lands has been estimated at billions of dollars, placing some fiscal burdens on local governments. In a State like Nevada, some have argued the quantity of federal land ownership hinders the ability to develop and prosper economically.

Federal Land Ownership in Nevada by County

County	Total Area (acres)	% Federal
Carson City	97,920	45.0
Churchill	3,144,320	75.9
Clark	5,173,760	89.4
Douglas	480,640	53.3
Elko	10,995,840	72.0
Esmeralda	2,284,800	98.4
Eureka	2,676,480	80.7
Humboldt	6,210,560	79.9
Lander	3,597,440	92.7
Lincoln	6,816,000	98.2
Lyon	1,295,360	66.9
Mineral	2,455,680	85.0
Nye	11,560,960	92.4
Pershing	3,859,840	75.9
Storey	167,780	7.6
Washoe	4,229,120	68.7
White Pine	5,699,200	92.9

Note: Percent of federal land is the best recent estimate based on a variety of sources. Tribal lands administered by the Bureau of Indian Affairs are not included as federal land.

Public Land Acts

Payment in Lieu of Taxes

The Payment in Lieu of Taxes (PILT) Act of 1976 requires the Federal Government to make annual payments to local governments as compensation for the loss of revenue they experience due to the presence of federally owned land within their jurisdictions. The PILT payments began in 1977 and have distributed nearly $3 billion to local governments nationwide.

The formula used to determine the payments is based on population and the amount of federal land within an affected county of census area. The States whose local governments receive the most in PILT payments are (listed in order of the amount received): California, New Mexico, Arizona, Montana, and Colorado. Nevada typically ranks eighth of all states the amount of PILT funding, although more federally-owned land exists within its borders than any other of the 387 48 contiguous states. The irony of the PILT formula is that counties with the most federal land typically have the smallest populations. Because the formula is, in part, population-dependent, the counties with the highest percentage of federal land do not receive the greatest payments.

In 2005, Nevada's 17 counties received $13.7 million under the PILT Act. This is an increase of more than $237,000 over the previous year because of a higher congressional appropriation for the program in 2005. Although there have been increases in funding to the PILT program in recent years, the money appropriated by Congress still remains insufficient to provide full payments under the PILT formula.

Federal Land Policy Management Act

In 1964, Congress created the Public Land Law Review Commission to review all current federal land management laws and enacted the Classification and Multiple Use Act. The Commission was created to study the federal lands, their management, history, and current laws and to make recommendations for reforms and modernization. These recommendations eventually led to the enactment of the Federal Land Policy Management Act of 1976 (FLPMA).

In the FLPMA, Congress expressly stated a policy of retaining the remaining federal lands in federal ownership; repealed many executive withdrawal authorities and imposed controls on future executive withdrawals; provided for review of existing withdrawals; required land use planning; and directed the use of the "multiple use" concept whereby the uses to be allowed on particular lands would be determined directly through the land use planning process.

Southern Nevada Public Land Management Act

The Southern Nevada Public Land Management Act (SNPLMA) of 1998 allows the BLM to sell public land within a specific boundary around Las Vegas. The revenue derived from land sales is shared between the State's General Education Fund (5 percent), the SNWA (10 percent), and a special account available to the Secretary of the Interior for:

- Acquiring environmentally sensitive land in the State of Nevada;
- Capital improvements at the Lake Mead National Recreation Area, the Desert National Wildlife Refuge, the Red Rock Canyon National Conservation Area, other areas administered by the Bureau of Land Management in Clark County, Nevada, and the Spring Mountains National Recreation Area;
- Developing a multi-species habitat conservation plan in Clark County;
- Funding the development of parks, trails, and natural areas in Clark County, pursuant to a cooperative agreement with a unit of local government; and
- Conservation initiatives in Clark County on federal land administered by the Department of the Interior or the USDA.

Other provisions in the SNPLMA set forth certain land sale and acquisition procedures, direct the BLM to convey title to land in the McCarran Airport noise zone to Clark County, and provide for the sale of land for affordable housing.

Federal Land Transaction Facilitation Act

The Federal Land Transaction Facilitation Act (FLTFA) of 2000 provides for the use of revenues from the sale or exchange of public lands identified for disposal under land use plans in effect at the time the Act was passed. The revenue derived from land sales is shared between the State of Nevada (4 percent) for educational purposes or for the construction of public roads, and a special account available to the Secretary of the Interior and Secretary of Agriculture for:

- Acquiring inholdings within certain federally designated areas, or lands adjacent to those areas and containing exceptional resources. Of the funds used for acquisitions, 80 percent must be expended in the same state in which the funds were generated and 20 percent may be expended for acquisitions in any other state.

- Administrative and other expenses necessary to carry out the land disposal program under the FLTFA. Up to 20 percent of revenues from disposals may be used for this purpose.

In Nevada, the FLTFA does not apply to lands eligible for sale under the SNPLMA, Santini-Burton Act, Mesquite Lands Act, or Lincoln County Land Act. The FLTFA also would not apply to lands identified for disposal after July 25, 2000, such as through a land use plan amendment approved after that date.

Lincoln County Conservation, Recreation, and Development Act

The recently-approved Lincoln County Conservation, Recreation, and Development Act of 2004, commonly referred to as the Lincoln County Land Act, authorizes the sale of federal land in Lincoln County, Nevada. The bill further designates 770,000 acres of federal land in Nevada as wilderness. The Act also designates a specified corridor for utilities in Lincoln and Clark Counties and grants rights-of-way to the SNWA and Lincoln County Water District for roads, wells, well fields, pipes, pipelines, pump stations, storage facilities, and other facilities and systems necessary for the construction and operation of a water conveyance system.

Other provisions in the Lincoln County Land Act designate a system of trails in Lincoln County as the "Silver State Off-Highway Vehicle Trail," authorize the Secretary of the Interior to convey specified land to Lincoln County and the State of Nevada to be used for natural resources conservation or public parks, and transfer administrative jurisdiction of specified lands between the U.S. Fish and Wildlife Service and the BLM.

Red Rock Canyon Conservation Area and Adjacent Land Act

Located just 20 miles from Las Vegas, the Red Rock Canyon National Conservation Area boasts great scenic and geologic beauty and is a major tourist destination for over 1.2 million people annually. The BLM is charged with the area's stewardship and protection. In 1993, the Nevada Legislature unanimously approved Senate Bill 544 (Chapter 639, *Statutes of Nevada*), which requires the governing body of any city or county whose territory includes all or part of the Red Rock Canyon National Conservation Area (designated in Title 16 of the *U.S. Code*) to

prohibit in that area any use other than recreation, the excavation or extraction of any substance, and the erection of any structure. The governing body may permit such activities within the boundaries of a mining claim only to the extent permitted by federal law. Nevada's Division of Environmental Protection (NDEP) must issue a permit for any of these activities and must not approve any activity that is "detrimental to the environment outside the Red Rock Canyon National Conservation Area or would preclude the designation of the national conservation area as wilderness."

During the 2003 Legislative Session, the Legislature approved S.B. 358 (Chapter 105, *Statutes of Nevada*), which placed further protections on the Red Rock area. The measure specifies that the powers set forth in various chapters of the NRS regarding planning and zoning are subordinate to the limitations on development that are defined for the Red Rock Canyon area. The measure also adds several new sections to the 1993 legislation (S.B. 544) and renames the 1993 Act as the "Red Rock Canyon Conservation Area and Adjacent Lands Act." The bill further amends S.B. 544 to add new sections depicting the physical descriptions of adjacent tracts of land in the Red Rock Canyon. The 1993 bill is also amended to declare that development shall be limited in these areas of land adjacent to Red Rock Canyon and adds language explaining that a local government is prohibited from increasing the number of residential dwelling units allowed by zoning regulations except in certain circumstances, and from establishing any new, or expanding any existing, nonresidential zoning districts (other than public facilities). The local government shall, at its discretion, continue to regulate landscaping, buffering, screening, signage, and lighting.

WATER RESOURCES

Overview of Nevada Water Law

For the most arid state in the nation, the management of water resources will always be a significant issue. The continued population explosion in Nevada, especially in southern Nevada, coupled with ongoing drought conditions are straining Nevada's precious water supplies. Under current conditions, water may eventually be a limiting factor for future growth and urban water purveyors are exploring the possibility of importing water from rural areas.

Each of the 17 western states has adopted the prior appropriation doctrine, which was developed to address specific water problems in the arid West. The most significant principles of the prior appropriation doctrine are beneficial use and the rule of priority. Beneficial use generally means that the water is used productively for public benefit (such as domestic, industrial, or municipal uses; irrigation; mining; or hydroelectric power). A certificated water right is obtained by putting water to beneficial use, but the right can be lost if beneficial use is discontinued. The rule of priority, otherwise known as "first in time, first in right," means that the person using the water first has a senior right to it than those who come later. Priority is only important when the quantity of available water is insufficient to meet the needs of all those having a right to use the water, such as during drought.

All waters within the boundaries of Nevada, whether above or beneath the ground surface, belong to the public and are managed by the State through its office of the State Engineer,

Division of Water Resources, SDCNR. Nevada's water law is set forth in Chapters 533 and 534 of NRS. The State Engineer is responsible for the administration of Nevada water law, which ensures these waters are managed so that sufficient quantities are available to preserve quality of life and to protect existing water rights. There are two ways to acquire a water right in Nevada. One is by the adjudication of a right beneficially used prior to the enactment of water law (known as "vested" rights). The other is by filing an application to appropriate the public water in accordance with statutory procedures (known as "certificated" or "perfected" rights).

Numerous court decisions have further defined Nevada law. It is the State Engineer who determines the limit and extent of the rights of claimants to water, the use to which water may be put, the quantity of water that is reasonably required for beneficial use, and where water may be used. In addition, the State Engineer is responsible for quantifying existing water rights; monitoring water use; distributing water in accordance with court decrees; reviewing water availability for new subdivisions and condominiums; reviewing the construction and operation of dams; appropriating geothermal water; licensing and regulating well drillers and water rights surveyors; reviewing flood control projects; monitoring water resource data and records; and providing technical assistance to the public and governmental agencies.

Interstate Water Resource Management

Colorado River

In addition to Nevada, the states of Arizona, California, Colorado, New Mexico, Utah, and Wyoming, as well as the Republic of Mexico, all use water from the Colorado River. In 1922, these seven states entered into an interstate compact that includes a provision for the equitable division and apportionment of the waters of the Colorado River system. The U.S. Supreme Court Decree in *Arizona v. California,* 1964, established several additional dimensions to the apportionment of Colorado River water, including apportionments to the lower basin states of Arizona, California, and Nevada. It was ruled that of the first 7.5 million acre-feet of mainstream water consumed in the lower basin, California was entitled to a consumptive use of 4.4 million acre-feet per year; Arizona to 2.8 million acre-feet per year; and Nevada to 0.3 million acre-feet per year.

Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990

Long-standing disputes over water and water rights on the Truckee and Carson Rivers led to the enactment by Congress of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, also known as the "Negotiated Settlement." The main authorizations and directives included in the legislation are as follows:

- An interstate allocation between Nevada and California is made of the waters of the Truckee and Carson Rivers, and Lake Tahoe;

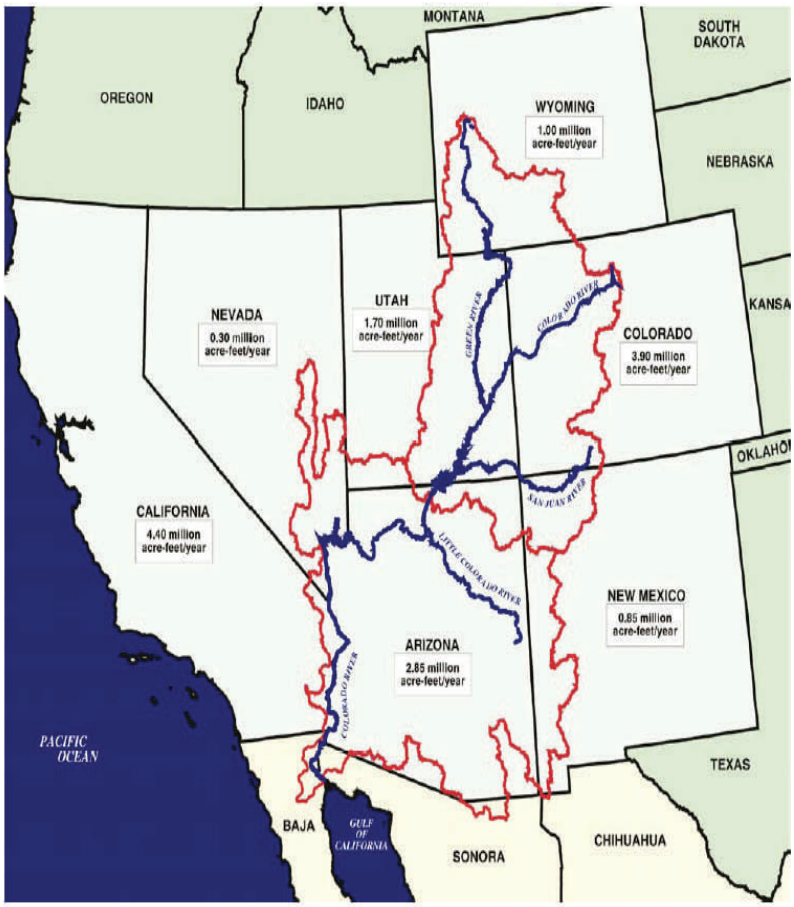
- A new operating agreement must be negotiated for the Truckee River (subsequently known as the Truckee River Operating Agreement, or TROA);

- The Newlands Project is reauthorized to serve additional purposes, including recreation, fish, and wildlife, and as a municipal water supply for the Fallon area;

- A recovery program is to be developed for the endangered Pyramid Lake cui-ui fish and threatened Lahontan cutthroat trout through an authorized water right acquisition program; and

- A water rights purchase program is authorized for the Lahontan Valley wetlands.

Perhaps the most dominant and controversial trend in recent y ears is the reallocation of water from rural, agricultural uses to rapidly growing urban, municipal uses.



Reallocation of Water Supplies

One of the easiest ways for an expanding urban center to obtain additional water resources is to purchase or otherwise acquire agricultural water rights. Indeed, both major urban areas in Nevada (Las Vegas and Reno) have initiated and seriously examined proposals to transfer water from the rural areas of the State. Reno's project to transfer water from the Honey Lake area of eastern California was effectively stopped by action of the Federal Government. Las Vegas' efforts to identify other potential water sources are ongoing.

Southern Nevada gets about 88 percent of its water from the Colorado River; the other 12 percent comes from groundwater that is pumped out through wells. These water sources are limited, however, and the SNWA has looked for many years to diversify its water portfolio, including the reallocation of water from rural areas of eastern and central Nevada. In 1989, the Las Vegas Valley Water District (one of the member entities within the SNWA) filed 147 groundwater applications with the State Engineer to appropriate unallocated water in 27 basins. Because of potential environmental concerns and existing appropriations, some applications were eventually withdrawn, limiting diversions to 19 groundwater basins in four Nevada counties: Clark, Lincoln, Nye, and White Pine. This includes between 125,000 and 200,000 acre-feet per year of groundwater applications in Lincoln, Nye, and White Pine Counties.

In 2003, the SNWA entered into an agreement with Lincoln County to resolve concerns about the water applications in that county. The agreement establishes a cooperative relationship between Lincoln County and the SNWA that will include sharing of resources and data during the development of groundwater in eastern and central Nevada. Similar discussions are ongoing with White Pine County.

In addition to in-state groundwater rights and applications outside the Las Vegas Valley, the SNWA is developing in-state surface water rights for the Muddy and Virgin Rivers.

Water Banking

Banked groundwater is one means the SNWA has pursued to meet growing water demands and supplement current water supplies from the Colorado River. In December 2004, the Central Arizona Project agreed to store up to 1.25 million acre-feet of storage credits for the SNWA, making it the first agreement to guarantee the delivery of stored water from one state to another. For the SNWA to recover a portion of its storage credits, Arizona must have utilized its banked water, forego the credited amount of Colorado River Water to Nevada, and the SNWA will divert the water from Lake Mead.

WILDLIFE AND WILD HORSES

Nevada has historically been home to 892 species of mammals, reptiles, fish, birds, and amphibians. Of that number, 790 species are native, 64 are only found in Nevada, 102 have been brought into the State, and 32 are now extinct.

Wildlife

Management of Nevada's wildlife is the responsibility of the NDOW, which oversees 11 wildlife management areas totalling 117,959 acres of wildlife habitat. Additionally, the NDOW administers four fish hatcheries that raise more than 2 million fish a year. These fish are then stocked into 50 streams and 65 lakes, reservoirs, and ponds. Nevada's wildlife laws are primarily found in Chapters 501, 502, and 503 of NRS.

Nevada's Board of Wildlife Commissioners, a nine-member, governor-appointed board, is responsible for establishing broad policy, setting annual and permanent regulations, reviewing budgets, and receiving input on wildlife and boating matters from entities such as the 17 county wildlife management advisory boards.

Another agency with wildlife-related responsibilities is the Nevada Natural Heritage Program, an agency within the SDCNR. The Program provides information to developers and other decision-makers so they can become aware of the possible biological effects of a project during the planning stages, before financial commitments are made. Inadvertent environmental impacts, as well as unexpected delays and expenses, can thereby be reduced. The agency does this by maintaining an inventory and current databases on the locations, biology, and conservation status of all threatened, endangered, and sensitive species and biological communities in the State.

Protection of threatened and endangered species falls under the Endangered Species Act of 1973, a federal law administered by the U.S. Fish and Wildlife Service (USFWS), Department of the Interior. The purpose of the Act is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. Under the law, species may be listed as either "endangered" or "threatened." Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. The Endangered Species Act is regarded as one of the most comprehensive wildlife conservation laws in the world.

Greater Sage-Grouse

The Greater Sage-Grouse is a small game bird found throughout the western United States, including 15 of Nevada's 17 counties. The USFWS estimates that there are between 100,000 and 500,000 individuals in the region, and their population is on the decline. Sage-Grouse populations are estimated to have declined an average of 3.5 percent per year from 1965 to 1985. Although the overall rate of decline from 1985 to 2003 slowed to 0.37 percent annually, concern over the quality and quantity of the populations and habitat of the Sage-Grouse has been expressed throughout the western United States. The USFWS received three petitions to list the Greater Sage-Grouse as a threatened or endangered species, and a formal species status review was initiated in April 2004.

The listing of the Greater Sage-Grouse as a threatened or endangered species would have a significant impact on Nevada. Land development, land uses, water use, and recreational activities would be affected. As a result, Nevada Governor Kenny C. Guinn appointed a Sage-Grouse task force in August 2000, representing industry, Native American tribal governments, conservation organizations, land managing agencies, legislators, and biological professionals. This group was charged with creating a strategy that would lay the framework for Local Area Conservation Planning groups to follow when creating Sage-Grouse conservation plans for their respective areas. The intent of the effort was to proactively address concern for Sage-Grouse to avoid a listing under the Endangered Species Act. While Sage-Grouse still thrive over much of their range in Nevada, with relatively large populations of birds in Elko, Eureka, northern Humboldt, northern Washoe, and White Pine Counties, a conservation plan would define proactive actions to address localized problems before the species truly reaches a threshold of vulnerability from which recovery might be difficult. After four years of work, the *Greater Sage-Grouse Conservation Plan for Nevada and Eastern California* was released in June 2004.

Due in part to the unprecendented collaboration among the Governor's Sage-Grouse Conservation Team, federal, state and local agencies, and citizen volunteers, the USFWS completed its status review of the Greater Sage-Grouse in December 2004, and determined that the species does not warrant protection under the Endangered Species Act at this time. The Director of USFWS commended the federal and state agencies as well as the local working groups for their efforts to maintain or improve sagebrush habitat and encouraged them to continue to move forward with new plans to develop and implement conservation strategies throughout the grouse's range. The Nevada Legislature also applauded these groups in a concurrent resolution that praised the unique model as a precedent for resolving issues through regional resource planning efforts and proactive steps instead of by regulation.

Wild Horses and Burros

The federal Wild and Free-Roaming Horse and Burro Act of 1971 requires the BLM and USFS to protect, manage, and control wild free-roaming horses and burros on public lands at population levels that assure a "thriving natural ecological balance" under the multiple use concept. Ecological balance is defined as the balance between populations of wild horses, burros and wildlife, livestock, and rangeland vegetation on the long-term yield basis. Management focuses on monitoring, removal of excess wild horses and burros, preparing them for adoption, the adoption process, and post-adoption compliance for one year after title is given.

Wild Horse and Burro Management

Wild horses and burros are found throughout the western states, but nowhere do their populations come close to those in Nevada. The first aerial count, conducted in 1974, found approximately 20,000 animals. In 2000, the BLM estimated a total of 48,624 wild horses and burros roamed BLM land in the ten western states, of which 25,096 (52 percent) inhabited Nevada. The USFS estimates there are approximately 746 wild horses in the

Humboldt-Toiyabe National Forest. Though the large number of animals has brought national and even international attention from wild horse enthusiasts, the vegetation and water resources in areas overpopulated by wild horses have been seriously impacted.

In Nevada, the BLM has identified 103 Herd Management Areas (HMAs). The HMAs managed for wild horses are located primarily in the Great Basin ecoregion. In the Mojave region, the habitat is better suited to burros. The HMAs vary in size from as small as 5,000 acres to almost 700,000 acres, with most exceeding 100,000 acres. Land designated as HMAs also contains livestock grazing allotments and populations of wildlife species.

Because forage on Nevada rangelands is limited and must be shared among wildlife, livestock, and wild horses, public land managers are required to set appropriate management levels (AMLs) for wild horses and burros on each HMA. This is the number of wild horses that can inhabit the HMA while maintaining a thriving natural ecological balance and avoiding deterioration of the rangeland and riparian resources. The AML may be influenced by many factors, most notably fire and drought. Achieving and maintaining the ideal AML requires periodic removal of horses.

The BLM's adoption program is the only available option to care for animals removed from the range. The success of the program is dependent on the availability of adopters, the adoptability of the animals, and the publicity on the Wild Horse and Burro program. The adoption market also affects range management because if adoption targets are not met, the BLM preparation and holding facilities quickly reach capacity. When the facilities are full, gathers must be slowed or ceased.

State laws pertaining to the preservation of wild horses are found in Chapter 504 of NRS. Nevada's Commission for the Preservation of Wild Horses serves to sustain viable herds of wild horses on public lands throughout Nevada. The Commission acts as an advocate for wild horses through participation with federal agencies to ensure that sufficient habitat is available for wild horse populations. In addition, the Commission participates in programs designed to encourage and promote the protection of wild horses by serving as a clearinghouse for information to the general public and the news media on all aspects of wild horses.

Estray Horses

An interesting differentiation in the management of wild horses is whether the animals are found on federal or State land. If located on federal land, the animals are considered "wild horses" and are managed under the provisions of the federal Wild and Free-Roaming Horse and Burro Act. However, if the animals are located on State property, they are considered "estray" and are subject to Nevada's estray and livestock laws as described in NRS 569.005 through NRS 569.130. This means the horses are the responsibility of the SDA. In Nevada, many of these estray horses are located in the Virginia Range near Virginia City.

A promising approach to improving the adoptability of estray horses is being implemented by the SDA and Nevada's Department of Corrections. Recently, an inventory and habitat evaluation showed that 1,000 estray horses were living in the Virginia Range of

western Nevada where the habitat was suitable for only 500 individuals. In the Virginia Range Estray Program, wild horses are taken to the Western Nevada Correctional Center and gentled for six weeks before nonprofit "placement" agencies sell them to qualifying private owners.

USEFUL WEB SITES FOR PUBLIC LANDS AND GENERAL NATURAL RESOURCE ISSUES

The following Web sites contain additional information and further detail on the programs and topics described in this report.

- Bureau of Land Management: http://www.blm.gov/
- Humboldt-Toiyabe National Forest: http://www.fs.fed.us/r4/htnf/
- Division of Minerals: http://minerals.state.nv.us/
- Nevada State Office, BLM: http://www.nv.blm.gov/
- Nevada's Division of Environmental Protection: http://ndep.nv.gov/
- Nevada's Division of Minerals: http://minerals.state.nv.us/
- State Department of Agriculture: http://agri.nv.gov/
- State Department of Conservation and Natural Resources: http://dcnr.nv.gov/
- U.S. Department of Agriculture: http://www.usda.gov/
- U.S. Department of the Interior: http://www.doi.gov/
- U.S. Fish and Wildlife Service: http://www.fws.gov/
- U.S. Forest Service: http://www.fs.fed.us/

COMMON ACRONYMS FOR ENVIRONMENTAL AND NATURAL RESOURCE ISSUES IN NEVADA

As with any policy area, acronyms are common in environmental and natural resource subjects. Following is a list of the most common acronyms one might expect to encounter:

AFV Alternative Fuel Vehicle
AML Abandoned Mine Lands
BLM Bureau of Land Management, U.S. Department of the Interior
BMP Best Management Practices
CAA Clean Air Act of 1990
CFR *Code of Federal Regulations*

CWA	Clean Water Act of 1977
DMV	Nevada's Department of Motor Vehicles
DOI	U.S. Department of the Interior
EA	Environmental Assessment
EIP	Lake Tahoe's Environmental Improvement Program
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act of 1973
EV	Electric Vehicle
FEMA	Federal Emergency Management Agency
FLPMA	Federal Land Policy Management Act of 1976
FLTFA	Federal Land Transaction Facilitation Act of 2000
HEV	Hybrid Electric Vehicle
HMA	Herd Management Area
HRBWA	Humboldt River Basin Water Authority
NAAQS	National Ambient Air Quality Standards
NCA	National Conservation Area
NCPWH	Nevada's Commission for the Preservation of Wild Horses
NDEP	Nevada's Division of Environmental Protection, State Department of Conservation and Natural Resources
NDF	Nevada's Division of Forestry, State Department of Conservation and Natural Resources
NDOW	Nevada's Department of Wildlife
NEPA	National Environmental Protection Act of 1969
NMA	Nevada Mining Association
NRA	National Recreation Area
OHV	Off-highway Vehicle
PILT	Payment in Lieu of Taxes
SDA	State Department of Agriculture
SDCNR	State Department of Conservation and Natural Resources
SEC	State Environmental Commission
SIP	State Implementation Plan
SNPLMA	Southern Nevada Public Land Management Act of 1998
SNWA	Southern Nevada Water Authority
TMDL	Total Maximum Daily Load
TMWA	Truckee Meadows Water Authority
TRI	Toxics Release Inventory
TRPA	Tahoe Regional Planning Agency
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service, U.S. Department of Agriculture
USFWS	U.S. Fish and Wildlife Service, U.S. Department of the Interior
WSA	Wilderness Study Area

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