POLICY AND PROGRAM REPORT

2010–2011

Nevada Legislative Counsel Bureau
Research Division

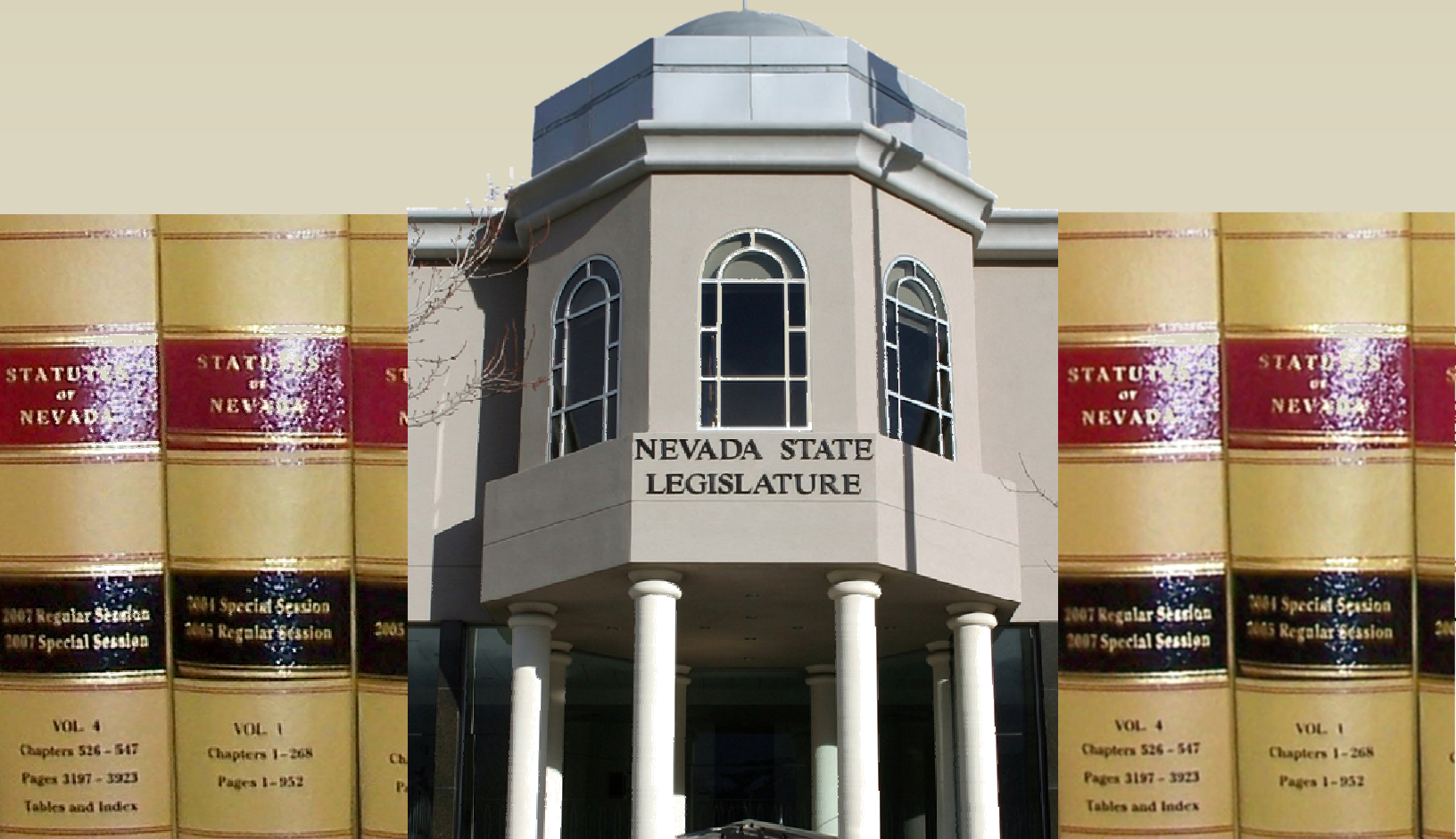


Table of Contents

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

BUSINESS AND LABOR

Business Entities and Economic Development

Corporations, Limited Liability Companies, and Partnerships
Corporations
Limited Liability Companies
Partnerships
Economic Development
Incentive Programs
Workforce Development
Industrial Development Revenue Bonds
Business Entities and Economic Development—Current Issues
2009 Legislation Affecting Business Entities and Economic Development
Contact Information for State Agencies

Labor and Employment

Introduction
At-Will Employment
Employment of Minors
Minimum Wage
Occupational Health and Safety
Right to Work
Unemployment Insurance
Workers' Compensation (Industrial Insurance)
Additional References

Occupational and Professional Licensing

Professions Regulated in Nevada
Title 54—Professions in Nevada Regulated by Independent Boards
Creation and Operation of Independent Boards
Businesses and Professions Regulated by State Agencies
Pursuits Regulated by Government Officials or Private Legal Enforcement
Licensing Requirements
Disciplinary Powers of Regulatory Bodies
Additional Resources

COMMERCE

Housing

Common-Interest Communities
Manufactured and Mobile Homes
Landlord/Tenant
Homestead Law

COMMERCE (*continued*)

Housing

Additional Resources
Commission for Common-Interest Communities and Condominium Hotels
Ombudsman for Owners in Common-Interest Communities and Condominium Hotels
Office of the Attorney General
Legislative Counsel Bureau—Research Division
State Contractors' Board
Manufactured Housing Division—Department of Business and Industry

Insurance Regulation

Regulating Insurance
Regulating Insurance in the State of Nevada
Division of Insurance
Consumer Services
Nevada Life and Health Insurance Guaranty Association Act
2009 Legislation Affecting Insurance Regulation
Autism—Assembly Bill 162 (Chapter 331, Statutes of Nevada 2009)
Insurance Company Mergers—Assembly Bill 248 (Chapter 333, Statutes of Nevada 2009)
Continuing Coverage in Health Insurance—Assembly Bill 546 (Chapter 439, Statutes of Nevada 2009)
Federal Regulation of Insurance
Possible Federal Preemption of State Laws
Terrorism Risk Insurance Act
Health Care Reform
Relevant Contact Information

Public Utilities and Energy

Public Utility Regulation
Federal Regulation of Energy Companies
State Regulation of Energy Companies
State Energy Policy
State Energy Utilities
NV Energy
Southwest Gas Corporation
Potential Energy Issues for the Future
Generation Facilities
Transmission and Distribution Facilities
Air Quality and Other Environmental Issues Associated With Electric Generation Facilities
Transportation Energy Issues
Low-Income Energy Assistance Programs
Distribution of Universal Energy Charge Revenues
Related Programs
Additional Website References
Glossary of Acronyms

Financial Institutions and Mortgage Lending

Depository Institutions
Commercial Banks
Credit Unions
Thrifts, Savings Banks, and Savings and Loan Associations

COMMERCE (*continued*)

Financial Institutions and Mortgage Lending
Nondepository Institutions
Collection Agencies
Debt Adjusters
Development Corporations and Economic Revitalization and Diversification Corporations
Installment Lenders
Money Transmitters
Payday Lending
Trust Companies
Mortgage Lending
Mortgage Bankers
Mortgage Brokers
Mortgage Agents
Escrow Agencies and Agents
Foreclosure and Loan Modification Consultants
Financial Institutions and Mortgage Lending—Current Issues
Mortgage Lending Concerns
Depository Institutions and Federal Preemption of State Authority
2009 Legislation Affecting Financial Institutions and Mortgage Lending
Escrow Agents—Assembly Bill 133
Financial Institutions—Assembly Bill 151
Mortgage Lending—Assembly Bill 486
Mortgage Agents—Assembly Bill 523
Trust Companies—Senate Bill 310
Debt Management Services—Senate Bill 355
Family Trust Companies—Senate Bill 365
Contact Information

Telecommunications and Communication Technology
Telecommunications Regulation Background
Universal Service
National Do Not Call Registry
Streamlined Sales and Use Tax Agreement
Telecommunications Regulation in Nevada
Public Utilities Commission of Nevada
Nevada's Universal Service Programs
Long-Distance Service
Wireless Service
Broadband
Nevada's Do Not Call Registry
2007 Legislation Affecting Telecommunications
Telecommunications Deregulation—Assembly Bill 518 (Chapter 216, Statutes of Nevada 2007)
Cable TV and Video Services—Assembly Bill 526 (Chapter 326, Statutes of Nevada 2007)
2009 Legislation Affecting Telecommunications
Cyber Crimes
Theft of Scrap Metal
Current Issues in Telecommunications Policy
Other Telecommunications Issues
Federal Communications Commission National Broadband Plan
Contact Information

COMMERCE (*continued*)

Transportation

Nevada's Department of Transportation
Department of Motor Vehicles
Licensing of Drivers
Nevada's Drunk Driving Laws
Driving Under the Influence
Implied Consent
Regulation of Motor Carriers
Taxicab Authority
Major Policy Issues of the 2009 Legislative Session
Auto Body Shops
Energy Efficiency and Transportation
F Street Closure in Las Vegas
Off-Highway Vehicles
RTC-5 of the 2008 General Election in Washoe County
Additional Policy Issues
REAL ID Act of 2005
The American Recovery and Reinvestment Act of 2009—Transportation Funding
Actions From the 26th Special Session
Frequently Asked Questions
Additional Resources

EDUCATION

Elementary-Secondary Education

Constitutional Basis and History
School District Characteristics and Enrollment
Financing
Governance and Oversight
Graduation Standards
Testing and Assessment
Educational Personnel
Class-Size Reduction Program
Charter Schools
Actions of the 2009 Session
Actions of the 26th Special Session
Education Issues for the 2011 Legislature
Frequently Asked Questions
Additional References
Selected Websites for Education
Selected Contact List
Glossary of Acronyms and Selected Terms

Postsecondary Education

Nevada System of Higher Education
Campuses
Governance of the NSHE
Admission
Tuition and Fees
Articulation
Financial Aid
Financing NSHE

EDUCATION (*continued*)

Postsecondary Education

Nonpublic Institutions
Colleges and Universities
Proprietary Schools
College Savings Plans
Nevada Prepaid Tuition Program
Nevada College Savings Program
Actions of the 26th Special Session
Glossary of Acronyms

GAMING IN NEVADA

History of Gaming in Nevada
The Initial Legalization of Gaming
The Prohibition of Gaming
The Relegalization of Gaming
The Modern Regulation of Gaming
The Regulation of Gaming in Nevada
The Role of NRS
State Gaming Agencies
Gaming Licenses
Gaming Employee Registration
Taxes and Revenue
Gaming/Live Entertainment Tax
2009 Significant Gaming Legislation
Additional Information
Glossary of Gaming Terms

GOVERNMENT

Elections

Voter Eligibility, Registration, and Turnout
National Voter Registration Act of 1993
Absentee Ballots and Accommodations for People Who are Elderly and Disabled
Early Voting
Filing Officer and Deadlines for Declaring and Withdrawing Candidacy
Recall of Public Officers
The Recall in Nevada
Initiative and Referendum in Nevada and Other States
The Initiative and Referendum Process in Nevada
Key Election Officials in Nevada

Homeland Security (REAL ID Act)

Homeland Security Commission
Recent Legislative Action
Emergency Response and Disaster Preparedness
REAL ID Act of 2005
Additional References

GOVERNMENT (*continued*)

The Legislature
- Legislative Structure
  - *Size and Apportionment*
  - *Membership Qualifications*
  - *Legislator Compensation and Allowances*
  - *Ethics and Conflicts of Interest*
  - *Financial Disclosure*
  - *Officers and Employees*
- Press
  - *Media and Interest Groups*
  - *Lobbyists*
- Legislative Procedure
  - *Legislator Duties*
  - *Session Deadlines*
- Legislative Counsel Bureau
  - *Legislative Commission*
  - *Interim Finance Committee*
  - *Director*
  - *Administrative Division*
  - *Audit Division*
  - *Fiscal Analysis Division*
  - *Legal Division*
  - *Research Division*
- Summary
- Selected Publications of the Legislative Counsel Bureau
- Legislative Counsel Bureau Division Chiefs
- Websites

Open Meeting Law
- Open Meeting Law
- Definitions
- Exceptions
- Legislature
- Notice of Meetings
- Meeting Records
- Attorney General Opinions
- Penalties for Violation
- Websites and Contacts

Public Records
- Public Records
  - *Nevada's Public Records Law—What is a Public Record?*
- Reproduction of Records and Associated Fees
- Records Retention and Disposal
- Homeland Security and Public Records
- Protection of Personal Information in Government Records

GOVERNMENT (*continued*)

Ethics in Government and Whistle-Blower Laws
Ethics in Government
Code of Ethical Standards
Financial Disclosure Statement
Nevada's Commission on Ethics
Willful Violations of Ethics Laws
Whistle-Blower Statutes
Websites and Contacts
Frequently Asked Questions
Ethics in Government
Whistle-Blower Law

State and Local Government
Executive Branch
Constitutional Officers
Governor and Executive Branch Departments
Home Rule Limits
County Governments
Cities and Towns
Land Use and Planning
Regional Planning
Other Forms of Local Government
Unfunded Mandates
State and Local Employees
Collective Bargaining for Local Government Employees
Websites and Contacts

Revenue and Budget
Executive Budget
Fiscal Analysis Division
Economic Forum
Budget Calendar
Interim Finance Committee
State General Fund
Budget Stabilization Fund
Fiscal Measures
26th Special Session of the Legislature in February 2010—March 2010
Additional References
Glossary of Terms

Public Employees' Benefits Program (PEBP)
Public Employees' Benefits Program
Funding
Plan Options and Rules
Legislative Changes in 2009 Session
Additional Information and Resources
PEBP Contact Information

GOVERNMENT (*continued*)

Public Employees' Retirement System (PERS)

Creation of PERS
Operation of PERS
Membership
Investment Strategy
Plan for Regular Members
PERS Contributions
Retirement Ages, Vesting, and Service Credits
PERS Benefits
Plan for Police and Firefighters
Legislative Retirement System
Judicial Retirement System
Reemployment of Retirees
Retirement Benefits Investment Board
Additional Resources and PERS Contact Information

HEALTH AND HUMAN SERVICES

Health Care and Health Insurance

Department of Health and Human Services
Division of Insurance
Major Coverage Programs
Medicaid
Medicare
Nevada Check-Up
Senior Prescription Drug Program
Health Insurance Issues
Access to Health Insurance
Regulation of Health Insurance
Health Care Services and Facilities
Health Care Services
Health Care Facilities
Health Care Professionals
Health Care Professionals—Disciplinary Action
Supply of Health Professionals
Internet and Additional Resources

Human Services

Economic Assistance Programs
Temporary Assistance for Needy Families
New Employees of Nevada Program
Food Stamp Employment and Training Program
Welfare-to-Work
Social Service Programs
Child Care Assistance
Food Stamps
Women, Infants, and Children
Child Welfare Services
Nevada Law Governing Protection of Children From Abuse and Neglect
Foster Care

HEALTH AND HUMAN SERVICES (*continued*)

Human Services

Mental Health and Developmental Services
Involuntary Commitment
Substance Abuse Services
Internet Resources

Senior Citizens

Health Care
Medicare
Senior Rx
Services for the Elderly
National Family Caregiver Support Program
Property Tax Assistance for Senior Citizens
The Nutrition Service Incentive Program
Elder Rights Unit
Program to Assist Relatives Who Have Legal Guardianship of Children
Community-Based Programs
Nevada Silver Haired Legislative Forum
Long-Term Care
Social Security-Medicaid Waiver for the Elderly in Adult Residential Care
Board of Examiners for Long-Term Care Administrators
Office of the State Long-Term Care Ombudsman
Additional Resources

JUSTICE SYSTEM

Nevada's Court System

Constitutional Judicial Commissions
Commission on Judicial Selection
Commission on Judicial Discipline
Jurisdiction and Structure of Nevada's Courts
Supreme Court
District Courts
Justice and Municipal Courts
Jurors
Fees and Expenses of Jurors
Collection of Administrative Assessments, Fines, and Filing Fees
Administrative Assessments
Fines
Filing Fees
Alternatives to Litigation: Arbitration and Mediation
Studies Authorized During the 2009-2010 Interim
Sources of Additional Information
State Contact Information for Judicial Information
Legislative Reports

Criminal Justice in Nevada Part I: Overview

Overview of the Criminal Justice System
Criminal Justice
Truth-in-Sentencing
Felonies and Misdemeanors

JUSTICE SYSTEM (*continued*)

Criminal Justice in Nevada Part I: Overview
- Corrections
- Parole and Probation
  - *State Board of Parole Commissioners*
- 2009 Significant Criminal Justice Legislation
- Frequently Asked Questions
- Additional References
- Glossary of Terms and Abbreviations

Criminal Justice in Nevada Part II: Sex Offenders
- Sex Offender Laws—Federal and State
  - *Compliance with Federal Law*
  - *Nevada Legislation*
  - *Pending Litigation Related to Nevada's Enactment of the Adam Walsh Act*
  - *2009 Nevada Legislation*
- Procedures Following a Conviction for a Sexual Offense
  - *Registration Requirements and Procedure*
  - *Psychological Testing*
  - *Psychosexual Evaluation*
- Sentencing Requirements for Convicted Sex Offenders
  - *Restrictions on Residency and Physical Location*
  - *Special Sentence of Lifetime Supervision*
  - *Genetic Marker Testing*
  - *Designation as a Sexually Violent Predator*
  - *Community Notification*
  - *Sex Offender Website*
  - *Annual Driver's License Renewals*
- Juvenile Sex Offenders
  - *Registration*
  - *Community Notification*
- Frequently Asked Questions
- Additional Resources

Criminal Justice in Nevada Part III: Juvenile Justice
- Juvenile Court Jurisdiction
  - *Child in Need of Supervision*
  - *Child Deemed Delinquent*
  - *Certification to Adult Court*
- State Juvenile Facilities
  - *Nevada Youth Training Center*
  - *Caliente Youth Center*
  - *Summit View Youth Correctional Facility*
  - *Probation Function*
- Nevada Counties' Responsibilities
  - *County-Operated Facilities*
- Studies Authorized for the 2009-2010 Interim
- Frequently Asked Questions
- Additional Resources

JUSTICE SYSTEM (*continued*)

Family Law

Marriage
Persons Authorized to Marry
Divorce, Disposition of Marital Property, and Alimony
Child Custody and Visitation
Best Interest of the Child
Statutory Preferences for Awarding Custody
Visitation
Visitation for Relatives
Uniform Child Abduction Prevention Act
Child Support
Parentage
Adoption
Domestic Violence
Acts That Constitute Domestic Violence
Criminal Procedures
Penalties for a Battery That Constitutes Domestic Violence
Orders for Protection
Stalking and Harassment Laws
Domestic Violence and Child Custody Considerations
Other Laws to Protect and Assist Victims of Domestic Violence
Domestic Violence Ombudsman and Committee
Resources Regarding Family Law

PUBLIC LANDS AND NATURAL RESOURCES

General Environmental Issues and Matters Concerning Lake Tahoe

Air Quality
Federal Clean Air Requirements
Local Air Quality Programs
Air Pollution Control Laws
Water Quality
Perchlorate
Nitrates
Clean Water Act Versus Safe Drinking Water Act
Mercury
Nevada's Brownfields Program
Mining and Mine Reclamation
Mine Reclamation
Toxics Release Inventory
Lake Tahoe
Reauthorization of the Lake Tahoe Restoration Act
Websites and Additional References
Glossary of Common Acronyms

Public Lands and General Natural Resource Issues

Agriculture
Overview of Agriculture in Nevada
Mineral Resources

PUBLIC LANDS AND NATURAL RESOURCES (*continued*)

Public Lands and General Natural Resource Issues
- Miscellaneous Natural Resources Topics
  - *Drought*
  - *Noxious Weeds and Invasive Plants*
  - *Wildland Fires*
- Public Lands
  - *Public Land Acts*
- Off-Highway Vehicles
- Wildlife and Wild Horses
  - *Wildlife Generally*
  - *Greater Sage-Grouse*
  - *Wild Horse and Burro Management*
- Useful Websites for Public Lands and General Natural Resource Issues
- Glossary of Acronyms

Water Resources
- Overview of Nevada Water Law
  - *State Engineer*
  - *Legislature's Role*
  - *Interstate Water Resources*
  - *State, Regional, and Local Water Entities*
  - *Water Resource Issues*
- Useful Websites for Water Issues

Business & Labor

Business Entities and Economic Development

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

In support of business and economic development, the State of Nevada and its units of local government endeavor to maintain fair competition, promote growth, provide infrastructure and services, and supply the legal and regulatory framework, while also caring for the protection and security of the State's residents and visitors.

From 1990 to 2000, Nevada's population grew by over 66 percent, compared to approximately 13 percent for the United States as a whole. From 2000 to 2005, Nevada's population grew by nearly 21 percent, compared to about 5 percent nationally.

Nevada takes pride in its business-friendly approach to commerce, reflected primarily in its tax climate and regulatory structure. The Tax Foundation ranks Nevada fourth overall in its 2010 State Business Tax Climate Index. Nevada has no corporate or individual income tax, and also scores well on the Foundation's property tax index.

The largest industries in Nevada's economy, in terms of employment, are accommodations and food services, construction, retail trade, and government. Other important industries include administrative services; finance and insurance; health care; mining; professional and technical services; and real estate.

TABLE OF CONTENTS

Corporations, Limited Liability Companies, and Partnerships 1
Corporations 1
Limited Liability Companies 3
Partnerships 4
Economic Development 4
Incentive Programs 4
Workforce Development 5
Industrial Development Revenue Bonds ... 6
Business Entities and Economic Development—Current Issues 6
2009 Legislation Affecting Business Entities and Economic Development 7
Contact Information for State Agencies 8
Research Staff Contact 8

This report covers the types of business entities operating in Nevada, the State's economic development efforts, current issues, and legislation from the 2009 Session affecting these topics.

CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS

Corporations

A corporation is a legal entity with a separate legal personality from its members. A corporation has the ability to sue and be sued; hold assets in its own name; hire agents; sign contracts; and make

bylaws to govern its internal affairs. Modern business corporations generally have additional characteristics, including transferable shares, perpetual succession, and limited liability.

Chapter 78 of the *Nevada Revised Statutes* (NRS) governs private corporations in our State. It provides that one or more persons may establish a corporation for the transaction of any lawful business, or to conduct any legitimate object or purpose.

Nevada recognizes different kinds of corporations, including:

- Domestic corporations (incorporated within Nevada);
- Foreign corporations (incorporated in another state or country);
- Close corporations (no more than 30 persons hold the stock of the corporation);
- Professional corporations;
- Nonprofit corporations; and
- Corporations sole (for religious purposes).

The website of Nevada's Secretary of State lists the following reasons to consider incorporation in Nevada:

- No corporate income tax;
- No taxes on corporate shares;
- No franchise tax;
- No personal income tax;
- Nominal annual fees;
- Nevada corporations may purchase, hold, sell, or transfer shares of their own stock;
- Nevada corporations may issue stock 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;
- No franchise tax on income;
- No inheritance or gift tax;
- No unitary tax;

- No estate tax;
- Competitive sales and property tax rates;
- Minimal employer payroll tax—0.7 percent of gross wages with deductions for employer-paid health insurance; and
- Nevada's Business Court, developed on the Delaware model, minimizes the time, cost, and risks of commercial litigation by:
    1. Early, comprehensive case management;
    2. Active judicial participation in settlement;
    3. Priority for hearing settings to avoid business disruption; and
    4. Predictability of legal decisions in commercial matters.

To establish a corporation in Nevada, a person must file articles of incorporation with the Secretary of State specifying the name of the corporation; the name, address, and signature of the registered agent; the number and value of shares the corporation may issue; the names and addresses of the board of directors; and the name, address, and signature of the incorporator. The articles must be accompanied by the appropriate fees. Every corporation must have a registered agent who resides in and has an actual street address in Nevada for service of process on behalf of the corporation.

If, based on its name or purpose, a proposed corporation would be regulated by the Division of Financial Institutions, the Division of Insurance, or the Real Estate Division within the Department of Business and Industry (DBI), the Nevada State Board of Accountancy, or the State Board of Professional Engineers and Land Surveyors, the application must be approved by the regulating agency before it is filed with the Secretary of State.

Each corporation organized under the laws of Nevada must file its list of officers and directors and information on its registered agent annually.

Limited Liability Companies

A limited liability company (LLC) is similar to a corporation, with a more flexible form of ownership, usually suitable for smaller companies. An LLC may be "member managed" or "manager managed." In Nevada, one or more persons may organize an LLC.

To establish an LLC in Nevada, a person must file articles of organization with the Secretary of State including the company name; the name, address, and signature of the registered agent; the form of management; the name and address of each manager or managing member; and the name, address, and signature of the organizer. The articles must be accompanied by appropriate fees. As with corporations, if the LLC would be regulated by the Division of Financial Institutions, the Division of Insurance, the Real Estate Division, the Nevada State Board of Accountancy, or the State Board of

Professional Engineers and Land Surveyors, the application must be approved by the regulating agency before it is filed with the Secretary of State.

Partnerships

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

One major difference between partnerships and corporations relates to taxation. In general, partnerships are treated as conduits, through which income and losses flow to the individual partners, who report them on their individual tax returns. Another difference is that partners do not enjoy the benefits of limited liability, as stockholders in corporations do.

Nevada recognizes various types of partnerships, both domestic and foreign, including:

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

A general partnership is typically one in which all of the partners share profits, losses, and management responsibilities equally, although their individual capital contributions may not be equal. A limited partnership usually consists of one or more general partners, who are jointly and severally liable and who conduct the primary business, and one or more limited partners, who contribute capital but are not liable for the debts of the partnership beyond the funds contributed.

ECONOMIC DEVELOPMENT

As mentioned earlier in this report, Nevada's business-friendly tax climate and regulatory structure figure prominently in the growth and development of the State in recent years. In addition, Nevada operates incentive programs, workforce development programs, and other initiatives to promote economic development.

Incentive Programs

Through the Commission on Economic Development (CED), Nevada offers a number of tax incentives for economic development to favorably influence business location decisions and to allow the State's existing businesses to expand and remain competitive. Applications must be consistent with the State's plan for industrial development and diversification, the objectives of which include diversification; attraction and expansion of basic industries; and attraction and expansion of corporate

headquarters, research and development, producer services, and other businesses that create primary jobs.

Each incentive has specific requirements regarding the level of capital investment, the number of primary jobs created, and the minimum hourly wage level. All recipients must provide health insurance to their employees, obtain required business licenses and permits, and make a five-year business commitment. The available incentive programs include:

- Sales and use tax abatement (NRS 374.357)—a partial sales and use tax abatement on eligible equipment and machinery purchases;
- Sales and use tax deferral (NRS 372.397)—a sales and use tax deferral on capital equipment;
- Personal property tax abatement (NRS 361.0687)—an abatement not to exceed 50 percent over a maximum of ten years;
- Modified business tax abatement (NRS 363B.120)—an abatement of 50 percent for four years; and
- Recycling property tax abatement (NRS 701A.210)—up to 50 percent abatement for up to ten years on real and personal property for qualified recycling businesses.

Workforce Development

Nevada offers grants of $1,000 per trainee, with a 25 percent company match, under the Train Employees Now (TEN) grant program. There is no required level of capital investment, but applicants must meet requirements for the number of primary jobs created and minimum hourly wage, and make a five-year business commitment. The program provides intensive short-term job training to assist new and expanding firms increase productivity quickly. Participating companies, the CED, and the Department of Employment, Training and Rehabilitation (DETR) design each training program individually.

Under the federal Workforce Investment Act of 1998 (Public Law 105-220), Nevada also operates Nevada JobConnect, a statewide network providing workforce development services to employers and job seekers. To employers, the program offers recruiting, retention, training, retraining, and outplacement services and information on labor laws and markets. To job seekers, the program offers information on career development, job searches, training, and—as appropriate—unemployment benefits.

Two local boards, the Southern Nevada Workforce Investment Board and the Northern Nevada Board, known as "Nevadaworks," set policy for their respective areas and provide one-stop service locations. The Governor's Workforce Investment Board oversees the program and advises the Governor and the Legislature on workforce development policy.

Industrial Development Revenue Bonds

Nevada's Industrial Development Revenue Bond (IDRB) program also supports economic development and diversification in the State. The bonds represent a form of tax-exempt financing available to qualified projects at favorable interest rates below comparable commercial rates. The Office of Business Finance and Planning, DBI, administers the bond program and offers financing for:

- Nonprofit facilities for assisted living, civic, cultural, or educational activities, or health care facilities owned and operated by qualified nonprofit organizations;
- Manufacturing facilities;
- Renewable energy projects; and
- Solid waste and recycling facilities.

The Office also partners with financial institutions to offer low-cost financing in amounts from $500,000 to $3,000,000 for qualified projects. These "mini bonds" are a type of IDRB that can be issued relatively quickly because they are purchased directly by participating institutions. From 1982 through 2004, DBI had issued 61 IDRBs, totaling over $1 billion in financing.

Business Entities and Economic Development—Current Issues

The 2009 Legislature passed Assembly Concurrent Resolution No. 30 (File No. 96, *Statutes of Nevada*), which created the Legislative Commission's Subcommittee to Study the Development and Promotion of Logistics and Distribution Centers and Issues Concerning Infrastructure and Transportation. The Subcommittee is charged with formulating a strategy and developing an implementation plan detailing the steps that need to be taken to create and promote the further development of Nevada as a logistics and distribution center. The Subcommittee must consider: (1) identification of barriers to the development of logistics and distribution centers; (2) the costs and benefits associated with expanding mass transportation systems and developing the necessary infrastructure for transportation systems; (3) delineation of future foreign trade zones; (4) prioritization of infrastructure needs, including energy and water, infrastructure and transportation systems, including mass transportation systems and light rail corridors; (5) formation of public-private partnerships for financing and incubation of new businesses; (6) funding options for the expansion of mass transportation systems and light rail corridors; (7) attraction of businesses associated with supply chain management activities, including assembly, manufacturing, warehousing, and transportation; and (8) identification of strategic public policy actions to expedite the investment of private development companies in major logistics centers in Nevada.

Also, during the 2009 Legislative Session, the Legislature created the Fund for Renewable Energy, Energy Efficiency and Energy Conservation Loans and the Account for Set-Aside Programs. The Director of Nevada's Office of Energy may use money in these funds only for purposes set forth in

the federal American Recovery and Reinvestment Act of 2009, which are largely to assist in development of renewable energy and energy efficiency projects through loans.

2009 Legislation Affecting Business Entities and Economic Development

Assembly Bill 317 (Chapter 448, *Statutes of Nevada 2009*)
This measure requires Nevada's Department of Taxation to disburse to certain regional organizations for economic development, which directly assist in the location of a business in this State, 50 percent of the modified business tax paid by that employer for not more than ten fiscal years as a result of the location of the business in Nevada. Businesses licensed by the Nevada Gaming Commission are excluded from eligibility. Through an affidavit, an officer of the employer and an officer of the eligible regional development authority must attest to the Department of Taxation the assistance provided by the regional development authority in order to qualify for receiving the disbursement.

The regional development authority must use the funds received through the disbursement to promote the advantages of locating or expanding businesses in Nevada, for recruiting businesses to locate in Nevada, and for research and analysis in support of economic development.

Assembly Bill 492 (Chapter 451, *Statutes of Nevada 2009*)
This bill sets forth certain findings that the Legislature must make before enacting exemptions to property or sales tax. The findings are required by Section 6 of Article 10 of the *Nevada Constitution*. Before enacting such an exemption, the Legislature must find that the exemption: (1) will achieve a bona fide social or economic purpose and the benefits are expected to exceed any adverse effects on public services; and (2) will not impair the ability of the State or a local government to pay outstanding bond obligations when due. The Legislature must also set a specific date on which any next exemption will expire and must ensure that similar classes of taxpayers are treated equally. Also, any new tax abatements for economic development are prohibited from abating payments from the Local School Support Tax; extending beyond ten years; and being given to a business that receives funding or property from a governmental entity. The CED must provide a minimum of 30 days' notice to a local government, including a school district, of its intent to act on an abatement application.

Assembly Bill 522 (Chapter 377, *Statutes of Nevada 2009*)
This measure provides for tax abatements for certain renewable energy facilities and specifies the manner for granting such abatements and their duration. Abatements must result in high-paying construction and ongoing utility plant jobs that benefit Nevada. The bill also provides for the disposition of taxes collected from renewable energy facilities so that both local communities and the State share in revenues from renewable energy development.

Senate Bill 73 (Chapter 245, *Statutes of Nevada 2009*)
In 2005, the Legislature enacted A.B. 3 (Chapter 2, *Statutes of Nevada*, *22nd Special Session*), which granted incentives for energy efficient buildings. Qualifying buildings were eligible for a partial abatement from property taxes, and the materials used for construction and remodeling were eligible for sales and use tax exemptions. Based upon information available after the passage of A.B. 3,

various analyses indicated its fiscal impact could exceed $900 million in lost revenue to local governments, far in excess from the estimates at the time of enactment.

As a result, the 2007 Legislature received much testimony concerning this potential impact and subsequently enacted A.B. 621 (Chapter 539, *Statutes of Nevada*), which:

- Requires Nevada's Office of Energy to adopt a Green Building Rating System to determine eligibility for tax abatements;
- Grants a partial abatement of real property taxes for a building that meets the silver, gold, or platinum standards of the Leadership in Energy and Environmental Design (LEED) system;
- Consolidates various statutes related to energy conservation; and
- Addresses the applicability of the statutes to projects already underway.

In 2009, the Legislature continued to modify the incentives for energy efficient buildings. Senate Bill 73 requires an owner of property who is seeking a partial tax abatement under the Green Building Rating System adopted by the Director of the Office of Energy to send copies of each abatement application to various governmental entities.

CONTACT INFORMATION FOR STATE AGENCIES

Office of the Secretary of State
Telephone: (775) 684-5708
Website: http://sos.state.nv.us/

Commission on Economic Development
Telephone: (775) 687-4325
Website: http://www.expand2nevada.com/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Dave Ziegler
Principal Research Analyst
Research Division
Legislative Counsel Bureau
E-mail: dziegler@lcb.state.nv.us

Telephone: (775) 684-6825
Fax: (775) 684-6400

Labor and Employment

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Introduction 1
At-Will Employment 1
Employment of Minors 2
Minimum Wage 3
Occupational Health and Safety 4
Right to Work 5
Unemployment Insurance 5
Workers' Compensation (Industrial Insurance) 6
Additional References 8
Research Staff Contact 8

INTRODUCTION

The employment of workers is a cornerstone of any economy and a fundamental subject of governmental oversight. The State of Nevada has a long history of involvement in employment issues. The first miners' unions in the western United States formed on the Comstock in the early 1800s. Chapter 613, "Employment Practices," of the *Nevada Revised Statutes* (NRS) dates to 1911. In 1915, Nevada's Legislature created the Office of Labor Commissioner, giving the Commissioner primary responsibility to enforce the State's labor laws, particularly those related to wages and hours.

At the national level, the Wagner Act of 1935, also known as the National Labor Relations Act, provided federal support for unionization and collective bargaining. In 1947, the Taft-Hartley Act shifted federal policy toward a more neutral position on unionization. The Landrum-Griffin Act of 1959, known as the Labor-Management Reporting and Disclosure Act, created a bill of rights for union members.

The following sections of this report outline some important aspects of labor and employment policy in Nevada, including the concepts of at-will employment, the minimum wage, the right to work, unemployment insurance, workers' compensation, and other subjects.

AT-WILL EMPLOYMENT

At-will employment is a legal doctrine that defines an employment relationship in which either the employer or employee may break off the relationship with no liability, provided that the employee has no contract for a definite term or that the employer has not recognized a labor union. Nevada is an at-will employment state.

In most states, including Nevada, an employer may not fire an employee if the firing would violate the State's public policies (against discrimination, for example) or a State or federal statute. Also, an employee with an implied contract may not be fired without liability on the part of the employer.

Eleven states, again including Nevada, also recognize a breach of an implied covenant of good faith and fair dealing as an exception to at-will employment.

In 1989, in the case of *Vancheri v. GNLV Corporation (*105 Nev. 417, 777 P.2d 366 [1989]), the Supreme Court of Nevada considered at-will employment, saying, "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 1990 case of *American Bank Stationery v. Farmer (*106 Nev. 698, 799 P.2d 1100 [1990]), the Court said, "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."

EMPLOYMENT OF MINORS

In the early 1900s, the numbers of child laborers in the U.S. peaked. Minors worked in agriculture, industry, as newsboys and messengers, and in other jobs. In 1938, the U.S. government regulated for the first time minimum ages of employment and hours of work for children, in the Fair Labor Standards Act.

Nevada restricts the employment of minors under the age of 16 and between the ages of 16 and 18. No person under 16 years of age may be legally employed to work in any capacity in connection with:

- The preparation of compounds using dangerous or poisonous acids;
- The manufacture of colors, paints, or white lead;
- Dipping, drying, or packing matches;
- The manufacture of goods for immoral purposes;
- A coal breaker, glass furnace, mine, ore reduction works, quarry, or smelter;
- A cigar factory, tobacco warehouse, or other factory where tobacco is prepared;
- A laundry;
- A brewery, distillery, or other establishment where malt or alcoholic liquors are bottled, manufactured, or packed;
- The outside erection or repair of electric wires;

- Running or managing elevators, hoists, or lifts or oiling dangerous or hazardous machinery in motion;
- Gate tending, track repairing, or switch tending;
- Acting as a brakeman, conductor, engineer, fireman, or motorman on any railroad; or
- Establishments where explosives are manufactured or stored.

The Labor Commissioner may also declare other employment to be dangerous or injurious to the health or morals of persons under 16 years of age, thus prohibiting the employment of children in those lines of work as well. No person under 16 may work more than 48 hours a week or 8 hours a day, with certain exceptions, and no person under 14 may be employed without written permission from a district court judge or other person authorized by a judge.

Except for employment as a performer in a motion picture, no person may employ any child under the age of 14 during the hours when school is in session, unless the child has been excused by the school district or the order of the juvenile court.

For persons between the ages of 16 and 18, Nevada has fewer restrictions. They may not work in bars or casinos or in occupations dangerous to health. In incorporated cities and towns, no person under the age of 18 may be employed to deliver goods or messages before 5 a.m. or after 10 p.m. on any day.

In 2003, Nevada amended its laws to provide for judicial approval of a contract involving a minor rendering artistic, athletic, creative, or intellectual property services. If the court grants its approval, it must immediately appoint a special guardian to receive and hold a specific percentage of the minor's earnings. When the contract is terminated, the earnings must be transferred to the minor, if emancipated, or to the minor's guardian.

MINIMUM WAGE

Both federal laws and the laws of the State of Nevada require an employer to pay a minimum wage. The current federal minimum wage, pursuant to the Fair Labor Standards Act (FLSA), is $7.25 per hour, effective July 24, 2009. The FLSA does not supersede any state or local law that is more favorable to employees. Therefore, in a state with a higher minimum wage, the employer must pay the higher rate.

In 2004 and 2006, Nevada's voters approved an amendment to the *Nevada Constitution* (Article 15, Section 16) adding a new section regarding minimum wages. An employer must pay a certain wage to any employee for whom the employer provides health care benefits or a higher wage to any employee who does not receive health care benefits. The minimum wage is adjusted annually to the level of the federal minimum wage or by the cumulative increase in the cost-of-living index, whichever results in the higher amount.

Effective July 1, 2009, the State minimum wage is $6.55 per hour for employees who receive health care benefits and $7.55 for employees who do not receive health care benefits. "Health benefits" mean a health insurance plan that is available to the employee and the employee's dependents at a total cost to the employee of not more than 10 percent of his or her gross taxable income from that employer.

An employee under the age of 18 who is employed by a nonprofit corporation for after-school or summer employment, or as a trainee, for not more than 90 days is exempt from Nevada's minimum wage rules. And in 2007, the Legislature clarified the relationship between clients and providers of rehabilitation services and training programs for handicapped persons. Such a relationship is not considered employment for purposes related to the minimum wage.

OCCUPATIONAL HEALTH AND SAFETY

To prevent work-related illnesses, injuries, and occupational fatalities, federal and State laws set standards and establish enforcement programs for workplace health and safety. These laws address such subjects as asbestos exposure, blood-borne pathogens, exposure to other chemicals, guards on moving parts, hazard communication, and work in confined spaces.

The federal Occupational Safety and Health Act of 1970 created the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), a research agency. The law authorizes states to develop approved health and safety plans, if they cover public employees and provide protection equivalent to federal regulations. Nevada's laws are found in Chapter 618, "Occupational Safety and Health," of the NRS.

In response to a number of serious worker safety issues—including 12 fatalities in southern Nevada in 2008—the Legislature passed two measures in 2009 to promote safety on construction sites and to assist families affected by fatal construction accidents.

Assembly Bill 148 (Chapter 432, *Statutes of Nevada 2009*) requires construction workers and their supervisors to take construction safety courses and obtain completion cards, or be subject to suspension or termination by their employers. A nonsupervisory construction worker must complete an approved 10-hour course in construction industry safety and health hazard recognition and prevention, known as an "OSHA-10 course." A supervisory construction worker must complete a similar 30-hour course, known as an "OSHA-30 course." The employee must present a completion card within 15 days of his or her employment date. If the employee does not present the card, the employer must suspend or terminate the employee.

Through December 31, 2010, a construction worker has the option of completing an alternative course offered by the employer. The employer's safety committee must approve the alternative course and it must meet or exceed federal guidelines. However, an employee who satisfies the requirements of A.B. 148 by completing an alternative course must nevertheless complete an OSHA-10 or OSHA-30 course, as applicable, not later than January 1, 2011. The bill does not apply to workers performing maintenance on property for which a certificate of occupancy has been issued, or to Nevada's Department of Transportation and its employees in the performance of their duties.

Senate Bill 288 (Chapter 216, *Statutes of Nevada*) of the 2009 Session addresses workplace fatalities and workers' families. It requires the Division of Industrial Relations (DIR) of Nevada's Department of Business and Industry (DBI), after investigating a fatal accident, to offer to discuss any citation it issues with the employee's immediate family. The measure also requires the Division to provide the family's contact information to the Occupational Safety and Health Review Board, in the event that the employer contests any citation or fine related to the accident.

RIGHT TO WORK

Nevada is a right-to-work state. Right-to-work laws prohibit agreements between labor unions and employers making membership in a union, or payment of union dues, a condition of employment. Fewer than half of the 50 states have such laws.

The federal Taft-Hartley Act authorizes individual states to adopt an "open shop" rule, under which an employee cannot be compelled to join a union or pay the equivalent of dues to a union, nor can the employee be fired if he or she joins the union. In other words, the employee has the right to work.

Nevada's right-to-work law is found in NRS 613.230 through 613.300. The law was enacted by an initiative of the people and became effective in 1953. In the 1950s, voters defeated three initiatives aimed at repealing the law, and a fourth initiative failed for lack of a sufficient number of signatures. Since 1959, the Legislature has considered and rejected at least ten measures to amend or repeal the law, and in 1994, an initiative to repeal the law did not gain enough signatures to be placed on the ballot.

UNEMPLOYMENT INSURANCE

The federal Social Security Act of 1935 created the unemployment insurance (UI) system, which provides workers with partial replacement of wages lost as a result of involuntary unemployment. The UI system helps to dampen economic fluctuations by replacing a portion of workers' wages during troughs in the business cycle, drawing on reserves built up during more favorable periods.

The UI system is a shared federal-state program financed jointly by federal and state payroll taxes. The Federal Unemployment Tax Act authorizes a tax to cover the costs of administering UI programs and a portion of the costs of extended UI benefits. The U.S. Department of Labor administers the federal components of the system.

Nevada's Legislature enacted the Unemployment Compensation Law in 1937, declaring, "Economic insecurity due to unemployment is a serious menace to the health, welfare, and morals of the people of this state." The Employment Security Division (ESD), DBI, administers the system in Nevada.

To qualify for benefits, a person must be fully or partially unemployed, must have earned enough wages to qualify, and must be unemployed through no fault of his or her own. A claimant must be able to work, available for work, and actively seeking work. The amount of benefits depends on the wages the worker earned during a base period, usually defined as the first four of the last

five completed calendar quarters preceding the claim. The maximum benefit is set at 50 percent of the statewide annual average weekly wage.

The duration of benefits is generally limited to 26 weeks unless extended by law. Because of the economic downturn in 2008 and 2009, both in Nevada and the nation as a whole, Nevada's unemployed workers were eligible for 99 weeks of benefits (including regular benefits, federal emergency benefits, and State extended benefits) as of November 2009.

An employer who pays wages of $225 or more during any calendar quarter for services performed in Nevada must register with the ESD and pay quarterly unemployment taxes. (Employees do not pay UI taxes.) The tax rate for new employers is 2.95 percent of a worker's taxable wages, plus 0.05 percent for the Career Enhancement Program, a training program to foster job creation and provide more skilled workers. After being in the system for a minimum of 14 quarters, an employer receives an experience rating, which is a function of the excess of taxes paid over benefits charged to the employer's account. The employer's tax rate is then based on that rating, varying from 0.25 percent to 5.4 percent of taxable wages. In 2010, an individual's taxable wages are capped at $27,000.

During the 2009 Session, the Legislature made several changes to the Unemployment Compensation Law, in order to qualify for enhanced federal funding of benefits. Assembly Bill 469 (Chapter 8, *Statutes of Nevada*) modifies the definition of the base period, temporarily revises the criteria that "trigger on" extended benefits, and makes other changes. Another measure, A.B. 84 (Chapter 445, *Statutes of Nevada*), enhances the ability of the ESD to combat unemployment insurance fraud by increasing penalties for fraud and disqualifying claimants who have committed such a fraud for at least one year.

WORKERS' COMPENSATION (INDUSTRIAL INSURANCE)

The concept of compensating workers for on-the-job injuries is an ancient one, dating to ancient Arab, Chinese, Greek, and Roman law. The Code of Hammurabi, 1750 B.C., provided rewards for specific injuries (Guyton, G.P., 1999, "A Brief History of Workers' Compensation," in *The Iowa Orthopaedic Journal* 1999, 19: 106-110). In the U.S., Wisconsin passed the first comprehensive industrial insurance law in 1911. Nevada passed its Industrial Insurance Act in 1913. The purpose of these laws revolves around economic efficiency and social justice.

The workers' compensation system is a no-fault insurance system. Employers either purchase insurance or set up self-insurance accounts. Injured workers receive compensation to replace wages ("indemnity payments") and to cover medical and rehabilitation costs. Second-injury funds, which cover benefits when a second injury proves incapacitating, are important in maintaining the employability of partially impaired workers. In exchange for covering all work-related injuries and occupational diseases, regardless of fault, employers are protected by the exclusive remedy provision, under which an injured worker cannot sue an employer in tort, even if the employer was in fact responsible.

Nevada authorized self-insurance for qualified employers in 1979. Prior to that time, the Nevada Industrial Commission (NIC) was the only provider of workers' compensation insurance in Nevada. In 1981, the Legislature enacted laws replacing the NIC with the State Industrial Insurance System (SIIS), which began operation as a State-run insurance carrier in July 1982. At the same time, the DIR became the primary regulator of the State's workers' compensation program.

Prior to the 1993 Session, the Legislature learned that SIIS was insolvent, with an unfunded $2.2 billion liability. To address this problem, the Legislature enacted a comprehensive reform measure and adopted cost-savings provisions, including implementation of a managed care program, imposition of employer deductibles, and aggressive pursuit of fraud. The measure also reduced injured workers' benefits by limiting stress as a compensable injury, limiting eligibility and compensation amounts for rehabilitation, and making other changes.

In 1995, the Legislature prohibited civil lawsuits against an insurer or third-party administrator (TPA) who in bad faith violates the workers' compensation laws. Rather than allowing bad-faith lawsuits, the Legislature created a benefit penalty to be paid directly to an injured worker, and authorized the Commissioner of Insurance to withdraw the self-insurance certificate of an employer for violations of laws intended to protect injured workers from unreasonable acts.

In 1999, the Legislature authorized privatization of SIIS, and in January 2000, SIIS became a private domestic mutual insurance company doing business as Employers Insurance Company of Nevada.

The Commissioner of Insurance reviews and approves premium rates and must certify self-insured employers and associations that meet statutory requirements. The Commissioner also regulates managed care organizations and TPAs of self-insured programs.

The Office of the Nevada Attorney for Injured Workers, a State agency, represents claimants free of charge at appeals before the Hearings Division of Nevada's Department of Administration, the district courts, and the Supreme Court of Nevada.

Benefits under Nevada's workers' compensation system fall into three general categories: indemnity payments, medical benefits, and rehabilitation expenses.

Indemnity payments replace a portion of lost wages in temporary or permanent cases of partial or total disability. The NRS establish eligibility requirements and the amount and duration of benefits.

For permanent and temporary total disability (PTD and TTD), the benefit is generally two-thirds of the person's wages at the time of his or her injury, not to exceed 150 percent of the average weekly wage, for the duration of the disability.

For permanent and temporary partial disability (PPD and TPD), the primary factor in determining the indemnity benefit amount is the extent of the injury. How this determination is made has been a major issue in workers' compensation laws nationwide. Pursuant to S.B. 195 (Chapter 500, *Statutes of Nevada*) of the 2009 Session, the DIR must adopt regulations providing that the American Medical Association's *Guides to the Evaluation of Permanent Impairment, Fifth Edition*, must be applied to all PPD examinations.

When an injured worker is permanently and totally disabled (PTD) from an occupational injury or disease and can no longer work, he or she receives cash payments, based on wages at the time of the injury, for life (as long as the disability continues to exist). This benefit recognizes not only the inability to earn income, but also the inability to contribute to a pension fund or accumulate savings for retirement.

When a worker is killed as the result of an accident in the course and scope of employment, Nevada law provides burial benefits and benefits to surviving spouses and dependents. Until 2007, the surviving spouse of the deceased worker received monthly compensation payments until death or remarriage. Senate Bill 3 (Chapter 214, *Statutes of Nevada*) of the 2007 Session removes the so-called "remarriage penalty" for a surviving spouse of a firefighter or police officer who remarries on or after October 1, 2007, and S.B. 363 (Chapter 503, *Statutes of Nevada*) of the 2009 Session removes the "remarriage penalty" for any surviving spouse who remarries on or after the same date.

The insurer pays *medical benefits* for all medically necessary procedures and devices related to the injured worker's claim, with no deductible or copayment. A health care provider may not seek payment from the injured worker for any portion of the medical costs.

The insurer also pays *rehabilitation expenses* when the nature of the injury prevents the injured worker from returning to pre-injury employment. Rehabilitation plans may include educational or vocational training, compensation payments (known as rehabilitation maintenance), or a lump sum payment in lieu of rehabilitation.

ADDITIONAL REFERENCES

Employment Security Division website: http://detr.state.nv.us/es/es_index.htm

Division of Industrial Relations website: http://dirweb.state.nv.us/

Office of the Labor Commissioner website: http://www.laborcommissioner.com/

Office of the Nevada Attorney for Injured Workers website: http://naiw.nv.gov/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Dave Ziegler
Principal Research Analyst
Research Division
Legislative Counsel Bureau
E-mail: dziegler@lcb.state.nv.us

Telephone: (775) 684-6825
Fax: (775) 684-6400

Occupational and Professional Licensing

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 50 professions, occupations, and businesses. Of these, 34 occupations are regulated by independent boards or commissions, 10 are administered through State agencies or officials, and 6 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 (Chapter 623 of NRS)
Landscape Architects (Chapter 623A of NRS)
Contractors (Chapter 624 of NRS)
Professional Engineers and Surveyors (Chapter 625 of NRS)
Environmental Health Specialists (Chapter 625A of NRS)
Accountants (Chapter 628 of NRS)
Physicians, Perfusionists, Physician Assistants and Practitioners of Respiratory Care (Chapter 630 of NRS)
Homeopathic Medicine (Chapter 630A of NRS)
Dentistry and Dental Hygiene (Chapter 631 of NRS)
Nursing (Chapter 632 of NRS)
Osteopathic Medicine (Chapter 633 of NRS)
Chiropractic (Chapter 634 of NRS)

TABLE OF CONTENTS

Professions Regulated in Nevada 1
Title 54—Professions in Nevada Regulated by Independent Boards 1
Creation and Operation of Independent Boards 2
Businesses and Professions Regulated by State Agencies 3
Pursuits Regulated by Government Officials or Private Legal Enforcement 3
Licensing Requirements 4
Disciplinary Powers of Regulatory Bodies 4
Additional Resources 5
Research Staff Contacts 5

Oriental Medicine (Chapter 634A of NRS)
Podiatry (Chapter 635 of NRS)
Optometry (Chapter 636 of NRS)
Dispensing Opticians (Chapter 637 of NRS)
Hearing Aid Specialists (Chapter 637A of NRS)
Audiologists and Speech Pathologists (Chapter 637B of NRS)
Veterinarians (Chapter 638 of NRS)
Pharmacists and Pharmacy (Chapter 639 of NRS)
Physical Therapists (Chapter 640 of NRS)
Occupational Therapists (Chapter 640A of NRS)
Athletic Trainers (Chapter 640B of NRS)
Massage Therapists (Chapter 640C of NRS)
Psychologists, Licensed Behavior Analysts, Licensed Assistant Behavior Analysts and Certified Autism Behavior Interventionists (Chapter 641 of NRS)
Marriage and Family Therapists and Clinical Professional Counselors (Chapter 641A of NRS)
Social Workers (Chapter 641B of NRS)
Alcohol, Drug and Gambling Counselors and Detoxification Technicians (Chapter 641C of NRS)
Funeral Directors, Embalmers and Operators of Cemeteries and Crematories (Chapter 642 of NRS)
Barbers and Barbering (Chapter 643 of NRS)
Cosmetology (Chapter 644 of NRS)
Private Investigators, Private Patrol Officers, Polygraphic Examiners, Process Servers, Repossessors and Dog Handlers (Chapter 648 of NRS)
Administrators of Facilities for Long-Term Care (Chapter 654 of NRS)
Certified Court Reporters (Chapter 656 of NRS)

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 Legislature. 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. When making appointments to professional licensing boards, the Governor is required to solicit nominees from professional associations but may appoint any statutorily qualified individual. 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 ten 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 Salespersons (Chapter 645 of NRS)	Real Estate Division and Real Estate Commission
Escrow Agencies and Agents (Chapter 645A of NRS)	Commissioner of Mortgage Lending
Mortgage Brokers and Mortgage Agents (Chapter 645B of NRS)	Commissioner of Mortgage Lending
Appraisers of Real Estate and Appraisal Management Companies (Chapter 645C of NRS)	Administrator of Real Estate Division and Commission of Appraisers of Real Estate
Inspectors of Structures (Chapter 645D of NRS)	Administrator of Real Estate Division
Mortgage Bankers (Chapter 645E of NRS)	Commissioner of Mortgage Lending
Exchange Facilitators (Chapter 645G of NRS)	Commissioner of Financial Institutions
Collection Agencies (Chapter 649 of NRS)	Commissioner of Financial Institutions and Collection Agency Advisory Board
Medical Laboratories (Chapter 652 of NRS)	State Board of Health
Interpreters and Realtime Captioning Providers (Chapter 656A of NRS)	Aging and Disability Services Division

PURSUITS REGULATED BY GOVERNMENT OFFICIALS OR PRIVATE LEGAL ENFORCEMENT

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

Title 54—Professions in Nevada Not Regulated by an Agency or Board	
Profession	**Enforcement Authority**
Disbursement of Money by Construction Controls (Chapter 627 of NRS)	Civil Action
Financial Planners (Chapter 628A of NRS)	Civil Action
Pawnbrokers (Chapter 646 of NRS)	District Attorney, Sheriff, Chief of Police
Dealers in Junk and Secondhand Materials; Scrap Metal Processors (Chapter 647 of NRS)	Sheriff, Police Department, or local government officials

Title 54—Professions in Nevada Not Regulated by an Agency or Board (*continued*)	
Profession	**Enforcement Authority**
Public Accommodations (Chapter 651 of NRS)	Criminal or Civil Action
Locksmiths and Safe Mechanics (Chapter 655 of NRS)	Permit from County Sheriff

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 insurance agents, sellers of travel, and telemarketing.

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 dentists, physicians, 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/sandlgov.cfm. *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/App/OL/A/.

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Scott Young
Principal Policy and Special Projects Analyst
E-mail: young@lcb.state.nv.us

Dave Ziegler
Principal Research Analyst
E-mail: dziegler@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Commerce

Housing

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 future legislative sessions.

TABLE OF CONTENTS

Common-Interest Communities 1

Manufactured and Mobile Homes 4

Landlord/Tenant 6

Homestead Law 9

Additional Resources 10

Commission for Common-Interest Communities and Condominium Hotels 10

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels 10

Office of the Attorney General 10

Legislative Counsel Bureau—Research Division 11

State Contractors' Board 11

Manufactured Housing Division—Department of Business and Industry 12

Research Staff Contacts 12

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 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 affect repairs rather than seek damages.

The Legislature continued to monitor developments with CICs. As a result of further input from stakeholders, 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 Condominium Hotels 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.

In the 2005 Session, several measures were enacted to address continuing issues. One bill revises administrative procedures relating to the Commission for Common-Interest Communities. The Commission may petition a district court for the appointment of a receiver to take over an association in certain circumstances. The measure also:

- Prohibits a person from acting as a community manager or a reserve specialist without the required certification or permit;
- Prohibits certain restrictions on the rental of units;
- Requires audits of financial statements and reserve studies;
- Provides that an association may not prohibit the display of political signs on an owner's property, with certain limitations;
- Requires executive boards to disclose the terms and conditions of any litigation settlement;
- Requires 24-hour notice before towing improperly parked vehicles; and
- Modifies procedures for electing or recalling executive board members.

Another bill enacted in 2005 prohibits a community manager from accepting or soliciting any form of compensation that is based on the number or amount of fines imposed against owners or their guests or any percentage or proportion of those fines. A community manager may be compensated pursuant to a contract with an association, if the contract complies with standards adopted by the Commission.

A major bill addressing a multitude of common-interest community issues was passed by the 2007 Legislature. Because of the inherent difficulty in balancing homeowner rights with effective association management, the omnibus common-interest community legislation was controversial and generated many calls to the Governor's office recommending it be vetoed, and the Governor acceded to these requests.

A second major piece of legislation involving common-interest communities was signed by the Governor. The associations dealt with in this bill are a developing feature in the Nevada real estate landscape. They are formed in upscale condominium hotels where units often sell for millions of dollars. These entities are a combination of residential, commercial, and in some instances, gaming establishments.

The bill creates a new chapter in Nevada law dedicated solely to these condominium hotels since they have many unique features that make it difficult to include them under traditional homeowner association laws. The bill establishes provisions governing condominium hotels addressing the creation, alteration, and termination of condominium hotels; the management of condominium hotels; the protection of purchasers; and the administration and enforcement of the new laws.

Presently, CICs continue to be one of the fastest-growing forms of housing in the country—and this continued growth has led to continued problems. Consequently, during the 2009 Legislative Session, State lawmakers passed over a dozen bills directly relating to CICs. These bills were enacted to solve continuing concerns regarding CIC governance, specifically in the areas of fees and penalties, financial accountability, election of board members, board member conduct, and the rights of homeowners. Nevertheless, based on past experience it is likely the next regular session of the Nevada Legislature will again consider a variety of bills related to CICs.

MANUFACTURED AND MOBILE HOMES

Manufactured homes are a major source of affordable housing for low- and moderate-income families. Approximately 80,000 of Nevada's 1 million housing units are mobile homes. 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. During the 2005-2006 Interim, the Legislative Commission's Subcommittee to Study the Availability and Inventory of Affordable Housing recommended improving the availability of affordable housing by providing more information to decision-makers on the impacts of closures or conversions of mobile home parks. The study led to legislation in 2007 requiring a landlord to submit a residential impact statement to the local planning commission or governing board before it makes a final decision on closing or converting a park. The statement must contain an analysis of the replacement housing needs of the residents, and potential sites to which their homes could be moved.

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.

To protect consumers, all dealers, distributers, salespersons, installers, rebuilders, and servicepersons must 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. A serviceperson must enter into a written agreement with the consumer that covers the scope, cost, and schedule of the work. A separate written agreement is required before the serviceperson does any additional work or adds charges. 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. An individual may bring an action in court if the individual makes a payment toward purchase or placement of a home in a park in reliance on a written statement that proves to be false or misleading. 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. The landlord must also pay for the cost of appraising a mobile home unit and the cost of disposal if it cannot be moved.

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). This law can be found in Chapter 118 of NRS. The NFHL, administered by the Nevada Equal Rights Commission, establishes the rights and obligations of landlords and tenants. 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;

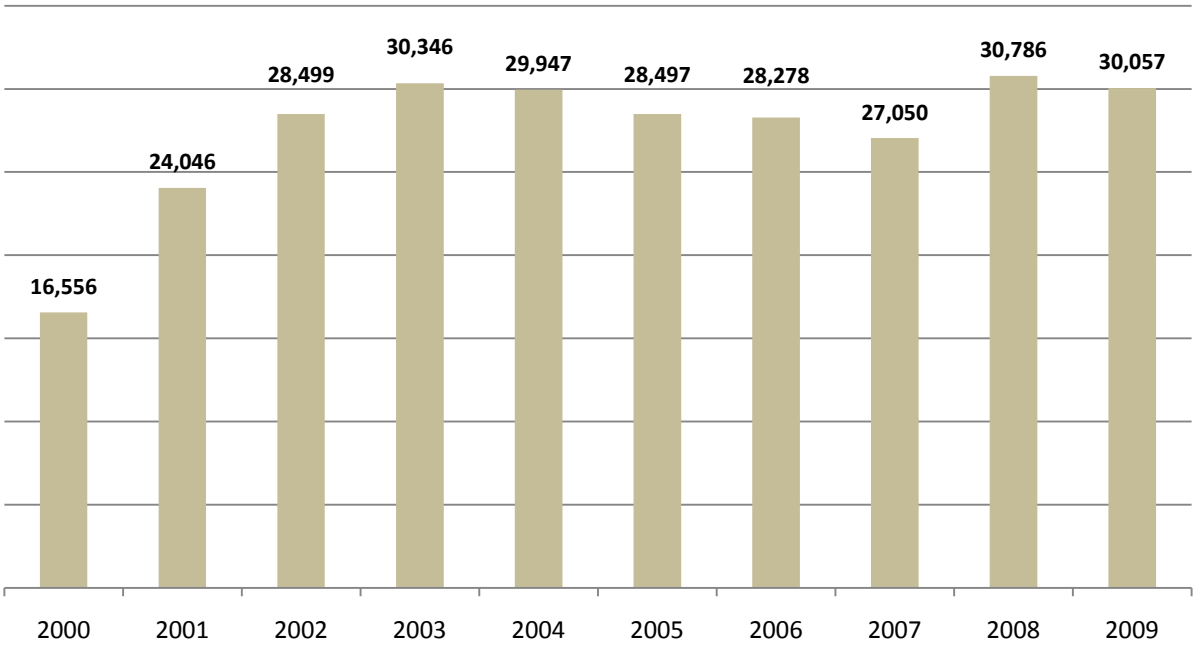
- Rights of landlords and tenants such as a landlord's right to access the dwelling, tenants' rights to display the United States flag, and a surviving spouse's right to terminate a lease; and

- Remedies for violations by a landlord or a tenant.

Because of the spike in residential foreclosures in Nevada over the last several years, the 2009 Legislature felt it necessary to make various changes to the foreclosure statutes. Of high concern was the eviction of tenants when a rental property goes into foreclosure. With so many homes entering foreclosure, many tenants were caught off guard when they were served eviction notices. Through no fault of their own, the property they rented entered foreclosure, and they were required to vacate the premises.

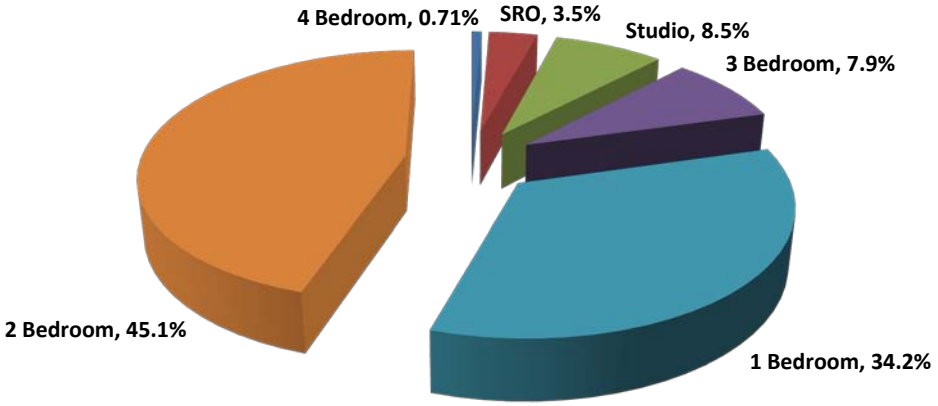
By passing A.B. 140 (Chapter 484, *Statutes of Nevada 2009*), the Legislature changed the existing law that gave tenants who resided in a foreclosed rental property only three days to vacate the property. The new law provides that a tenant may be removed only after the expiration of a specified period not to exceed 60 days. The law also specifies that a notice of foreclosure must not only be served on the property owner, but also to a tenant who occupies the actual property entering foreclosure.

Total Number of Units
Reno/Sparks Area
June 2000 - June 2009



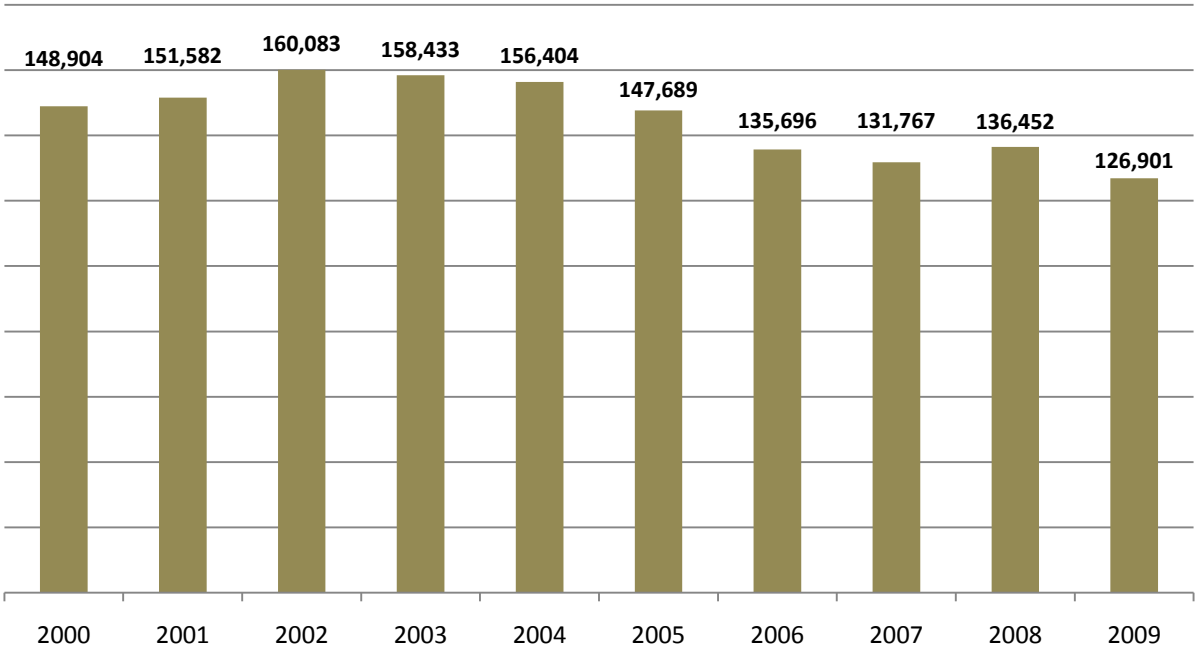
Source: Housing Division, Nevada's Department of Business and Industry

Distribution of Apartment Units by Size
Reno/Sparks Area
June 2009



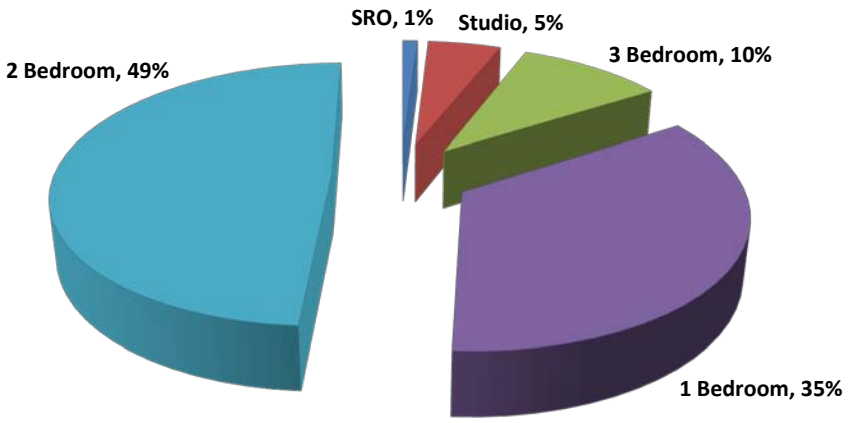
Source: Housing Division, Nevada's Department of Business and Industry

Total Number of Units
Greater Las Vegas Valley
June 2000 - June 2009



Source: Housing Division, Nevada's Department of Business and Industry
Note: Due to demolitions, conversions to condominiums, refusal to participate, expressed non-interest in taking the time to answer questions for the survey, and telephone systems that serve as screening of telephone calls, there is a lower number of total units in the survey's database for the years 2003, 2004, 2005, 2006, 2007, and 2009.

Distribution of Apartment Units by Size
Greater Las Vegas Valley
June 2009



Source: Housing Division, Nevada's Department of Business and Industry
Note: Four-bedroom size units represent 0.22 percent of the total number of apartment units in the Greater Las Vegas Valley; therefore, that number is not shown in this graph.

HOMESTEAD LAW

The *Nevada Constitution*, which was adopted in 1864, provides 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. During the 2009 Legislative Session, State lawmakers passed S.B. 67 (Chapter 22, *Statutes of Nevada*), which requires the Real Estate Division, Nevada's Department of Business and Industry, to create a standardized form for the Declaration of Homestead. This form is available, free of charge, by the Division and the recorder in each of Nevada's counties.

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 $550,000 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.

ADDITIONAL RESOURCES

Commission for Common-Interest Communities and Condominium Hotels

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
Telephone: (702) 486-4033, Extension 222
Fax: (702) 486-4067

Website: http://www.red.state.nv.us/CIC/cic_commission.htm

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels

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

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels
Real Estate Division
Department of Business and Industry
2501 East Sahara Avenue, Suite 102
Las Vegas, Nevada 89104
Telephone: (702) 486-4480
Toll-free Telephone: (877) 829-9907

Website: http://www.red.state.nv.us/CIC/cic.htm

Office of the Attorney General

Carson City Office	Reno Office	Las Vegas Office
100 North Carson Street Carson City, Nevada 89701 Telephone: (775) 684-1100 Fax: (775) 684-1108	5420 Kietzke Lane Suite 202 Reno, Nevada 89511 Telephone: (775) 688-1818 Fax: (775) 688-1822	555 East Washington Avenue Suite 3900 Las Vegas, Nevada 89101 Telephone: (702) 486-3420 Fax: (702) 486-3768

E-mail: aginfo@ag.state.nv.us
Website: http://ag.state.nv.us

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

Legislative Counsel Bureau—Research Division

Carson City Office	Las Vegas Office
401 South Carson Street Carson City, Nevada 89701 Telephone: (775) 684-6825 Fax: (775) 684-6400	555 East Washington Avenue Room 4400 Las Vegas, Nevada 89101 Telephone: (702) 486-2800 Fax: (702) 486-2810

E-mail: research@lcb.state.nv.us
Website: http://www.leg.state.nv.us

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

Chapter 116 of NAC may be viewed in its entirety at: http://www.leg.state.nv.us/NAC/NAC-116.html

Chapter 116A of NRS may be viewed in its entirety at: http://www.leg.state.nv.us/NRS/NRS-116A.html

Chapter 116B of NRS may be viewed in its entirety at: http://www.leg.state.nv.us/NRS/NRS-116B.html

State Contractors' Board

Reno Office	Henderson Office
9670 Gateway Drive, Suite 100 Reno, Nevada 89521 Telephone: (775) 688-1141 Fax: (775) 688-1271	2310 Corporate Circle, Suite 200 Henderson, Nevada 89074 Telephone: (702) 486-1100 Fax: (702) 486-1190

Website: http://www.nvcontractorsboard.com

Manufactured Housing Division—Department of Business and Industry

Las Vegas Office	Carson City Office	Elko Office
2501 East Sahara Avenue Suite 204 Las Vegas, Nevada 89104 Telephone: (702) 486-4135 Fax: (702) 486-4309	1535 Old Hot Springs Road Suite 60 Carson City, Nevada 89706 Telephone: (775) 687-2060 Fax: (775) 687-5521	540 Court Street Elko, Nevada 89801 Telephone: (775) 738-6601 Fax: (775) 738-6612

Department	Location	Telephone Number
Titling	Las Vegas	(702) 486-4135
Codes and Compliance	Las Vegas	(702) 486-4138
Compliance Investigator	Las Vegas	(702) 486-4115
Inspections	Las Vegas	(702) 486-4311
Inspections	Carson City	(775) 687-2062
Inspections	Elko	(775) 738-6601
Licensing	Las Vegas	(702) 486-4590
Landlord/Tenant Investigator	Las Vegas	(702) 486-4310
Landlord/Tenant Investigator	Carson City	(775) 687-2061
Lot Rent Subsidy Program	Las Vegas	(702) 486-4578
Education	Las Vegas	(702) 486-4592

E-mail: nmhd@mhd.state.nv.us
Website: http://mhd.state.nv.us

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Dave Ziegler
Principal Research Analyst
E-mail: dziegler@lcb.state.nv.us

Scott Young
Principal Policy and Special Projects Analyst
E-mail: young@lcb.state.nv.us

Wayne Thorley
Senior Research Analyst
E-mail: wthorley@lcb.state.nv.us

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Insurance Regulation

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 over insurance regulation in 1945 when it passed the McCarran-Ferguson Act. Further, 15 U.S.C. § 1011 "declares 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 policy declaration has been interpreted to mean that the operations of the insurance industry are so vital to society they require public oversight and regulation.

Consequently, state legislatures are largely responsible for establishing the rules under which the complex insurance industry must operate in their respective state. Generally, states have created boards or commissioners to oversee insurance 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 and statutes that govern the business of insurance 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;

TABLE OF CONTENTS

Regulating Insurance 1
Regulating Insurance in the State of Nevada 1
Division of Insurance 2
Consumer Services 2
Nevada Life and Health Insurance Guaranty Association Act 3
2009 Legislation Affecting Insurance Regulation 3
Autism—Assembly Bill 162 (Chapter 331, Statutes of Nevada 2009) 3
Insurance Company Mergers—Assembly Bill 248 (Chapter 333, Statutes of Nevada 2009) 3
Continuing Coverage in Health Insurance—Assembly Bill 546 (Chapter 439, Statutes of Nevada 2009) 3
Federal Regulation of Insurance 4
Possible Federal Preemption of State Laws 4
Terrorism Risk Insurance Act 4
Health Care Reform 4
Relevant Contact Information 5
Research Staff Contacts 5

- 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;
- Insure 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 No. 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

The Division of Insurance, under the auspices of the Department of Business and Industry, is responsible for protecting the rights of Nevada consumers in their experience with the insurance industry and for ensuring the financial solvency of insurers. Under the direction of Nevada's Commissioner of Insurance Scott J. Kipper, 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.

Consumer Services

Consumers with questions concerning insurance claims, companies, policies, or with complaints can contact the Consumer Services Section of the Division of Insurance (contact information is provided at the end of this report). The Consumer Services Section can answer questions regarding problems with all types of insurance, including auto insurance, bail bonds, health insurance, homeowners insurance, preneed and funeral plans, and title insurance. 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 via telephone or on the Internet. Once the written complaint is received by the Division of Insurance, 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

In 1973, the Nevada Legislature passed the Nevada Life and Health Insurance Guaranty Association Act (codified in Chapter 686C of NRS), requiring most insurance companies licensed in Nevada to become members of the Guaranty Association. The purpose of this association is to assure that Nevada policyholders will be protected, within limits, in the 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 Nevada and, in some cases, to keep coverage in force.

2009 LEGISLATION AFFECTING INSURANCE REGULATION

Autism—Assembly Bill 162 (Chapter 331, Statutes of Nevada 2009)

Beginning in 2011, Assembly Bill 162 requires newly issued health insurance plans to provide coverage for screening, diagnosis, and treatment of autism spectrum disorders to certain children and teenagers. The bill also prohibits an insurer from cancelling or refusing to issue a health insurance policy solely because the applicant uses or may use autism-related services. This measure applies to participants in group and blanket health insurance, health insurance plans for small employers, health management organizations, self-insured public employers, and programs of managed care except for Medicaid recipients.

Insurance Company Mergers—Assembly Bill 248 (Chapter 333, Statutes of Nevada 2009)

Based on experience from past insurance company mergers, Assembly Bill 248 gives Nevada's Commissioner of Insurance more latitude in the approval or denial of mergers involving insurance companies, including the ability to deny acquisitions based on a history of improper claims management. The bill also allows the Commissioner to deny a license or issue a cease and desist order if a merger is not in the interest of the insurance-buying public.

Continuing Coverage in Health Insurance—Assembly Bill 546 (Chapter 439, Statutes of Nevada 2009)

In response to increased continuing coverage (commonly known as COBRA) benefits provided by the American Recovery and Reinvestment Act of 2009, the Legislature passed Assembly Bill 546, which extends COBRA benefits to terminated employees of small businesses who previously denied continuing coverage. The bill provides that a person who worked for a small employer, who was terminated from employment between September 1, 2008, and February 16, 2009, and who did not have health insurance coverage on February 17, 2009, is eligible for continuing health insurance coverage. The measure also allows continuing coverage participants to pay reduced premiums, with the federal government paying up to 35 percent of the monthly premium costs.

FEDERAL REGULATION OF INSURANCE

Possible Federal Preemption of State Laws

During the 110th Congress (2007-2008), debate took place over proposals to modernize the regulation of insurance, which, because of the state-based model, creates a complicated process for insurers to bring new products to the market. A bill was introduced, the National Insurance Act of 2007 (S. 40), that sought to establish a bifurcated system of insurance regulation, much like the current regulatory structure for banking, allowing insurers to be chartered federally and be subject to new federal minimum standards, or remain licensed by the various states. The bill has since died and no similar bill has been introduced in the current session of Congress.

Terrorism Risk Insurance Act

Signed into law in 2002, the Terrorism Risk Insurance Act 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 originally designed to be a temporary stabilizer in the property, casualty, and life insurance markets following the events of September 11, 2001. However, the Act has been extended twice, and is currently set to expire in December 2014.

Health Care Reform

The most recent changes to the federal regulation of insurance came with the March 2010 passage of the Patient Protection and Affordable Care Act and the subsequent Health Care and Education Reconciliation Act. Together, these bills make numerous health-related changes to federal statutes, with changes occurring over the next eight years. Notable provisions relating to health insurance regulation include:

- The creation of health insurance exchanges;
- Subsidization of premiums for certain low-income individuals;
- Fines for people who do not purchase insurance;
- An allowance for children to remain on their parent's insurance plan until they are 26 years old;
- A prohibition against insurers charging higher premiums to individuals based on pre-existing conditions; and
- A prohibition against insurers dropping policyholders when they get sick.

RELEVANT CONTACT INFORMATION

Nevada's Division of Insurance

Scott J. Kipper
Commissioner of Insurance

E-mail: icommish@doi.state.nv.us
Website: http://doi.state.nv.us/

Carson City Office
788 Fairview Drive, Suite 300
Carson City, Nevada 89701
Telephone: (775) 687-4270
Fax: (775) 687-3937

Las Vegas Office
2501 East Sahara Avenue, Suite 302
Las Vegas, Nevada 89104
Telephone: (702) 486-4009
Fax: (702) 486-4007

Nevada Toll-free Telephone: (800) 992-0900, then press 2

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Dave Ziegler
Principal Research Analyst
E-mail: dziegler@lcb.state.nv.us

Wayne Thorley
Senior Research Analyst
E-mail: wthorley@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Public Utilities and Energy

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Public Utility Regulation 1

Federal Regulation of Energy Companies 2

State Regulation of Energy Companies 4

State Energy Policy..... 5

State Energy Utilities..... 6

NV Energy..... 7

Southwest Gas Corporation..... 8

Potential Energy Issues for the Future 8

Generation Facilities 8

Transmission and Distribution Facilities 9

Air Quality and Other Environmental Issues Associated With Electric Generation Facilities 11

Transportation Energy Issues..... 11

Low-Income Energy Assistance Programs 12

Distribution of Universal Energy Charge Revenues..... 12

Related Programs..... 12

Additional Website References..... 13

Research Staff Contacts..... 13

Glossary of Acronyms..... 14

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 (FPA) of 1935 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 (PURPA) of 1978 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 intermediaries 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 and 2000, a number of states, including Nevada, largely abandoned deregulation at the retail level.

Energy Policy Act of 2005

During the middle of the decade, facing renewed political instability in the Middle East that affected energy fuel supplies, Congress again began attempting to craft an updated national energy policy. Efforts to produce a comprehensive bill were hampered, in part due to competing regional demands and concerns that some segments of the energy sector were seeking subsidies that were too generous. During the 2005 term, Congress finally passed a measure which was signed by the President. Some critics maintained the legislation did little to decrease the demand for foreign fuels while supporters pointed to increased incentives for domestic energy production and tax credits to encourage

development of renewable energy. Clearly, however, most parties felt more remained to be done if the United States was to have a modern, comprehensive energy policy.

Energy Independence and Security Act of 2007

With oil prices nearing $100 per barrel and increasing concern about the impacts of global warming, Congress again devoted a great deal of attention to energy issues in 2007. The House and Senate passed energy bills with differing provisions. The final reconciled bill contained provisions increasing motor vehicle fuel efficiency standards and required use of biofuels such as corn ethanol and cellulosic ethanol. Increased appliance efficiency standards are also included. However, a key provision in the House bill to require 15 percent of all energy to come from renewable sources by 2020, along with an extension of tax credits for various renewables such as wind and solar, was deleted from the Senate bill in the face of a threatened presidential veto. Supporters of such provisions vowed to try again after the 2008 elections.

American Recovery and Reinvestment Act of 2009

A severe recession during 2008 and 2009 caused congressional attention to shift its focus from crafting a sustainable national energy policy towards seeing energy as an economic recovery tool. Massive federal stimulus packages were enacted which included large amounts for research, development, and deployment of a wide variety of renewable energy technologies and domestic transportation fuel resources. Many of the programs and projects funded by these stimulus measures are still in their incipient phases so their long-term impacts on the energy sector are difficult to evaluate currently. Continuing instability in foreign oil-producing regions and the accompanying volatility in commodity prices will likely maintain pressure on Congress to develop an updated comprehensive national energy policy.

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 which is set forth in the following text box:

Energy Policy

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) The State and the public have an interest in encouraging public utilities to promote and take actions toward energy conservation.

(e) 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.

(f) 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.

(g) 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.

(h) 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 efficiency measures from 12 percent in 2010 (the current level) to 25 percent in 2025;

- Incentive programs for installation of solar, wind, and small-scale waterpower generation systems; and

- A net metering program that allows customers to use renewable energy systems to generate up to 1 megawatt (MW) of power for which the customer receives credit from the utility.

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 and 2000, that process was first delayed and then largely reversed in 2001. However, large customers who use more than 1 MW of power can secure their own power sources if they meet certain conditions. One MW is enough electricity to supply approximately 600 average homes.

Several mining companies built their own power plants under these provisions. Newmont Mining Corporation built a 200-MW coal-fired facility near Battle Mountain while Barrick Gold constructed a 115-MW combined cycle natural gas plant ten miles east of Reno.

In the early years of the new century, the Legislature continued to refine polices fostering the growth of renewable energy and energy efficiency by enhancing existing programs and incentives and adopting new ones designed to encourage more use of clean, domestic energy sources.

During the 2009 Session, the Legislature, like Congress, responding to the severe economic crisis, focused policy directives on stimulating "green energy" jobs and on increasing the amount of renewable energy generated in Nevada, both for domestic consumption and for export, as part of long-term efforts to diversify the State's economy.

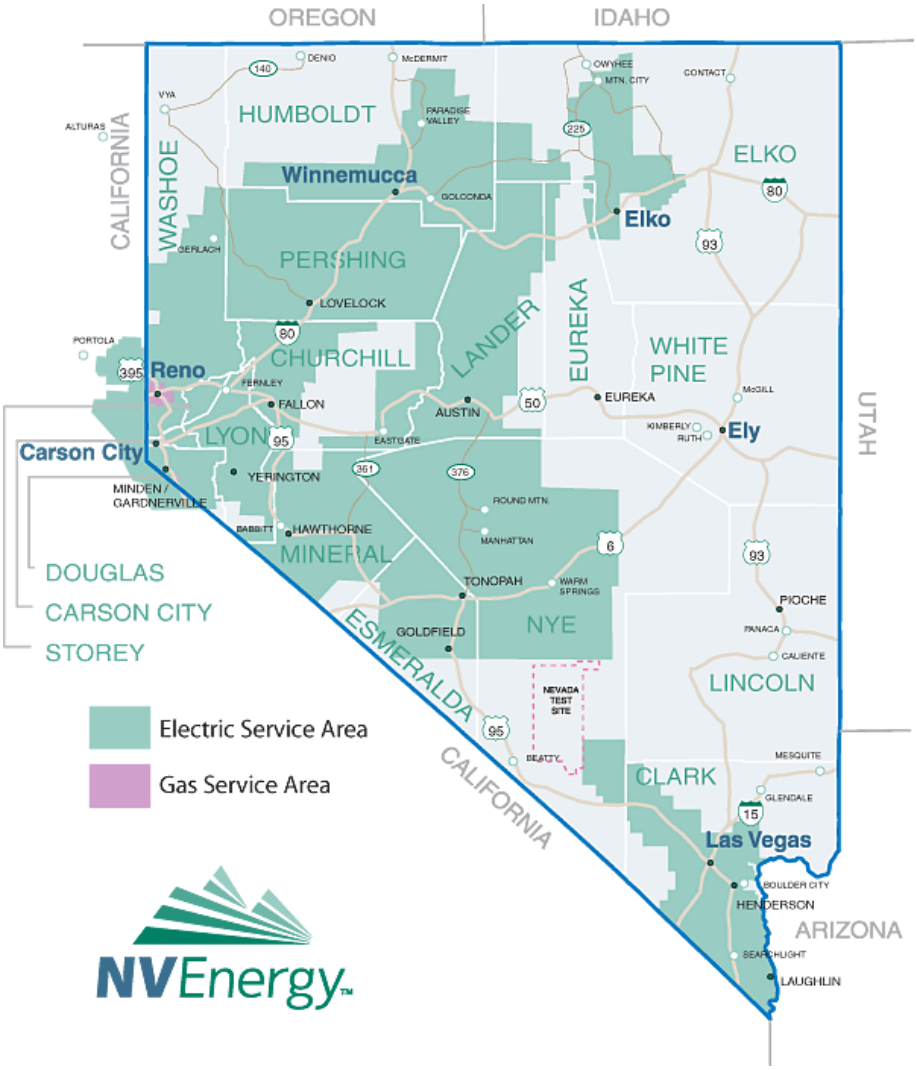
STATE ENERGY UTILITIES

Formerly there were two major electric utilities in the State: Nevada Power Company in the southern portion of the State and Sierra Pacific Power Company in the north. These companies merged in 1998 and now both operate under the name of NV Energy. Southwest Gas Corporation supplies natural gas in the south, as does NV Energy 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.

NV Energy

In northern Nevada, NV Energy 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 360,000 electric customers and provides natural gas to some 147,000 consumers. The utility owns 47,314 miles of electric transmission and distribution lines, and 1,634 miles of gas pipelines. The all-time peak electric usage occurred on July 5, 2007, at 1,743 MWs. In southern Nevada, NV Energy provides electric service to over 807,000 customers in a 4,500-square-mile territory. The utility owns more than 36,000 miles of transmission and distribution lines. Peak usage of 5,866 MWs occurred on the afternoon of July 5, 2007.



Source: NV Energy

Southwest Gas Corporation

Southwest Gas Corporation is an investor-owned natural gas enterprise headquartered in Las Vegas serving over 1.8 million customers in Arizona, Nevada, and parts of northeastern and southeastern California. The company has been one of the fastest growing natural gas suppliers for more than ten consecutive years, adding as many as 71,000 new customers a year at times. About 40 percent of the customers are located in Nevada. As with the electric utilities, recent economic conditions have slowed the growth rate.

POTENTIAL ENERGY ISSUES FOR THE FUTURE

Generation Facilities

While Nevada and the rest of the western states presently enjoy adequate power supplies, concerns exist about the need for additional generation in the region. Until the recent economic problems developed, Nevada was one of the fastest growing states in the country. As conditions improve, pressure on existing generation resources will increase. A continuing drought has reduced the amount of hydroelectric power that is normally a large component of the western system. Concerns about the impacts of global warming have led to cancelation of a number of proposed coal-fired power plants in the region, including several major projects in eastern Nevada, causing planners to stress the need for development of new sources of electric power. Responding to these challenges, Nevada has made significant progress with solar installations.

Nevada has one of the best solar endowments in the country. The State receives more than 250 days of sunshine on average, and some areas, like the former atomic Test Site outside of Las Vegas, reach as high as 310 days a year, resulting in sunshine some 79 percent to 85 percent of the time. This potential is already being converted to production. For example, in just the past few years Nevada has achieved the following solar milestones:

- Highest per capita solar energy consumption in the nation:

    1. 64-MW SolarOne concentrating solar power plant in Boulder City, just outside Las Vegas, one of the largest in the world;

    2. 10-MW “thin film” El Dorado Energy Solar facility, one of the largest in the U.S., completed in December 2008, also in Boulder City;

    3. 14-MW Nellis Air Force solar photovoltaic (PV) station, also one of the largest in the world, again in Las Vegas; and

    4. On June 30, 2008, Ausra opened a 130,000-square-foot solar concentrating manufacturing plant in Las Vegas with capacity to produce 700 MWs of product.

- Nevada also has several large solar projects in the planning or permitting stage. Examples include the:

  1. 100-MW Crescent Dunes Solar Energy Project being built by SolarReserve near Tonopah. This project uses heliostats to heat molten salt. It was announced in December 2009 and is scheduled to commence construction by the end of 2010;

  2. 100-MW thin film solar project just proposed on January 4, 2010, by Vidler Water Company for its Fish Springs Ranch north of Reno;

  3. 48-MW Sempra Generation Copper Mountain Solar addition to the existing 10-MW El Dorado facility at Boulder City, scheduled for completion late in 2010;

  4. NextLight 400-MW projects near Primm and 150-MW project at Boulder City; and

  5. BrightSource 960-MW project at Coyote Springs north of Las Vegas.

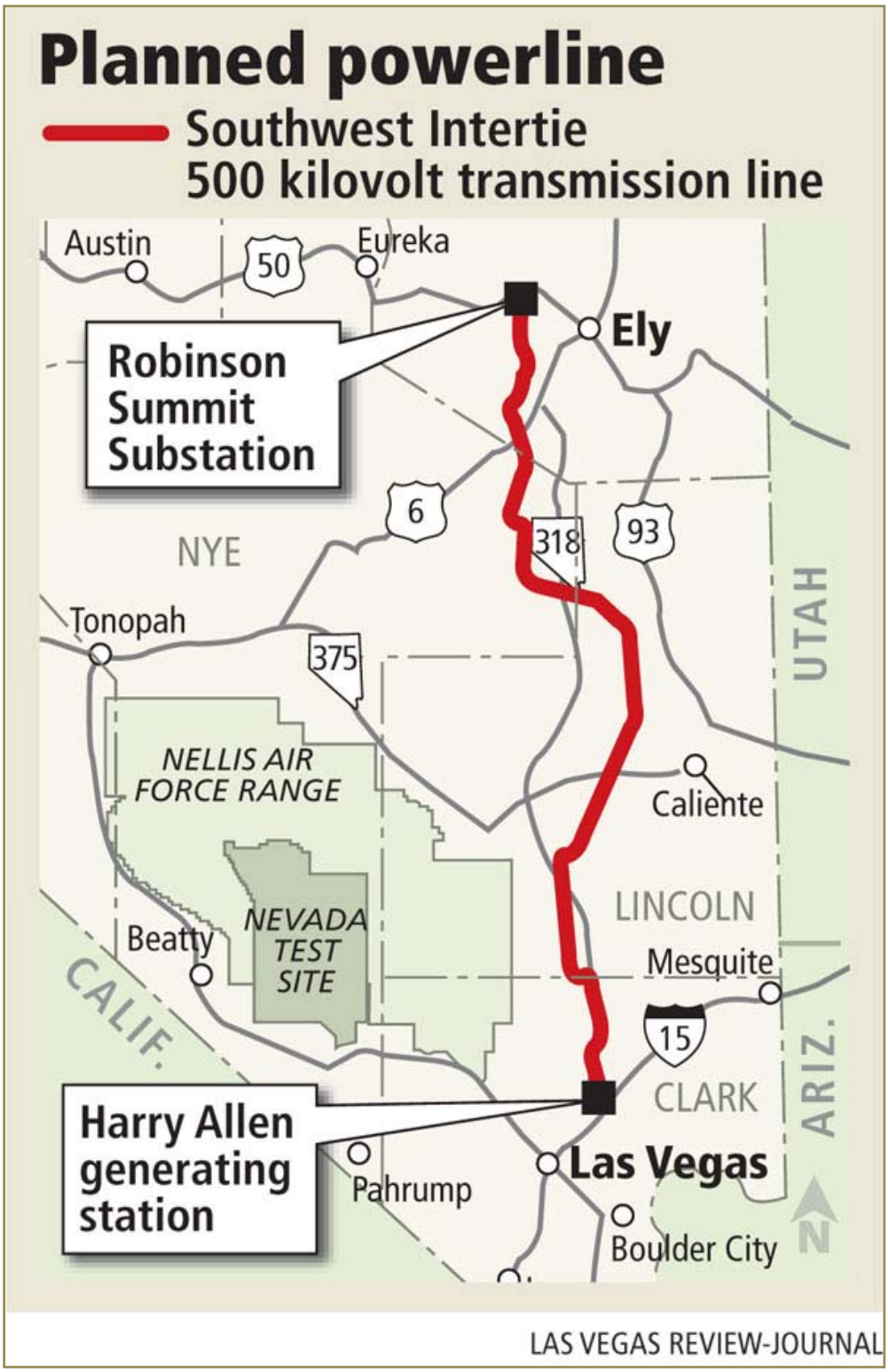
Transmission and Distribution Facilities

Adequate development of transmission capacity is another issue of concern for utilities. Since Nevada's investor-owned utilities (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.

To address this issue, a 250-mile transmission interconnection between the two regions has been proposed by NV Energy and also by LS Power, LLC of New Jersey. However, most observers agreed that two separate parallel transmission projects did not make economic sense. In January 2010, the two entities announced a plan to create a joint venture arrangement to construct a single system which they would share. Independently, LS Power plans to extend the line into southern Idaho where it will connect with existing transmission lines that will allow power from wind farms in Montana, Wyoming, Oregon and Washington to be imported to Nevada and the southwest, greatly increasing the region's access to renewable energy.

The expanded transmission system will also allow more development of northern Nevada's extensive geothermal resources. Presently, more than 300 MWs of capacity have been built with another 300 MWs planned. Estimates of the total feasible geothermal capacity exceed 2,000 MWs. With a transmission line connecting northern and southern Nevada, this base-load electric potential can be made available to the southern portions of the State in the summer to help meet its enormous air conditioning load. In turn, the large southern solar resources can be shipped north in winter to offset the increased cold weather heating needs.

There has also been discussion of another possible transmission system along Nevada's western border with California. Some of the best solar sites are located in this area but development is hampered by lack of transmission capacity in the area.



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 microgenerators, 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. Perhaps the most significant potential source of distributed generation in Nevada is solar, given the State's huge endowment of sun. During the 2009 Session, the Legislature built on earlier efforts to foster small-scale solar development by specifically including a so-called "carve out" for solar distributed generation. Indications are there may be interest in further expanding the solar distributed generation program in future sessions.

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 U.S. Environmental Protection Agency (EPA) identified the Las Vegas Valley as exceeding federal standards for ground-level ozone, a component of smog. During the first week of January 2010, the EPA announced plans for even more stringent air quality standards which will be even more difficult for southern Nevada to meet. Ultimately, a region that violates air quality standards after a grace period for compliance faces federal sanctions. Although the newer 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, all electric power plants, even the solar ones, require water for cooling or cleaning purposes. Given the prolonged drought in the west, water consumption in connection with electric power production is an increasingly important consideration. A wet-cooled solar thermal power plant consumes about 2.61 million gallons of water per MW; while solar PV plants use much less water, it still takes nearly 17,000 gallons per MW to keep the panels clean. To put this in perspective, an acre-foot of water is 325,851 gallons, approximately enough to serve a family of five people for one year. While generation plants, including solar facilities, can be designed to use air cooling technology, this lowers their efficiency and hence increases the cost of operation in hot weather.

Concern over water consumption for solar plants has already arisen in the permitting process for several proposed projects. So have issues over habitat impacts. Several solar projects are in jeopardy because of potential interference with protected species such as the desert tortoise.

TRANSPORTATION ENERGY ISSUES

Nevada imports virtually all of its transmission fuels and they are almost exclusively fossil fuels. This situation poses both economic and environmental problems. During the 2009 Session, the Legislature began to emphasize the linkage between transportation and energy issues. Discussions of mass transit systems, alternative fuel vehicle fleets, and the potential for domestic production of some forms of biofuels led to proposals to spur support for cleaner vehicles, especially hybrid and all electric cars,

truck stop electrification, increased biofuel use, and light rail systems. While not all these proposals were adopted, these subject areas are likely to continue to generate interest and discussion in future legislative sessions.

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 UNIVERSAL ENERGY CHARGE REVENUES

Seventy-five percent of the amount collected from the UEC is distributed to the Division of Welfare and Supportive Services (DWSS), Department of Health and Human Services, 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, Department of Business and Industry, 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. Additionally, 30 percent of any unspent and unencumbered DWSS UEC funds must be transferred to the Housing Division at the end of a fiscal year for further energy conservation and efficiency aid to qualifying residential customers. Both the DWSS and the Housing Division limit eligibility for assistance to households with incomes less than 150 percent of the federally designated poverty level. During Fiscal Year 2008, a total of $12,333,947 was available for use by the DWSS and Housing Division. A total of 20,799 households were assisted by the DWSS, and the Housing Division weatherized 1,107 units.

RELATED PROGRAMS

The DWSS 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. Due to the severe economic crisis during 2009, Congress substantially increased LIHEA funding and modified the 150 percent requirement to 200 percent to

make assistance available to a greater spectrum of needy people. 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.

ADDITIONAL WEBSITE REFERENCES

- Public Utilities Commission of Nevada: http://pucweb1.state.nv.us/PUCN/
- Nevada's Office of Energy: http://www.energy.state.nv.us/
- Federal Energy Regulatory Commission: http://www.ferc.gov/
- U.S. Federal Energy Information Administration: http://www.eia.doe.gov/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Scott Young
Principal Policy and Special Projects Analyst
E-mail: young@lcb.state.nv.us

Dave Ziegler
Principal Research Analyst
E-mail: dziegler@lcb.state.nv.us

Wayne Thorley
Senior Research Analyst
E-mail: wthorley@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

GLOSSARY OF ACRONYMS

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

BCP ..... Bureau of Consumer Protection
Btu ..... British thermal units
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
MW ..... megawatt
MWh ..... megawatt hour
NERC ..... North American Electric Reliability Council
NOPR ..... Notice of Proposed Rulemaking
OASIS ..... Open Access Same-Time Information System
PEC ..... Portfolio Energy Credit
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
RPS ..... Renewable Energy Portfolio Standard
RTO ..... Regional Transmission Organization
SNWA ..... Southern Nevada Water Authority
TMWA ..... Truckee Meadows Water Authority
TRED ..... Temporary Renewable Energy Development Program
UEC ..... Universal Energy Charge
WSCC ..... Western Systems Coordinating Council

Financial Institutions and Mortgage Lending

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Depository Institutions 1
Commercial Banks 2
Credit Unions 2
Thrifts, Savings Banks, and Savings and Loan Associations 2
Nondepository Institutions 3
Collection Agencies 3
Debt Adjusters 4
Development Corporations and Economic Revitalization and Diversification Corporations 4
Installment Lenders 4
Money Transmitters 5
Payday Lending 5
Trust Companies 6
Mortgage Lending 6
Mortgage Bankers 6
Mortgage Brokers 6
Mortgage Agents 7
Escrow Agencies and Agents 7
Foreclosure and Loan Modification Consultants 7
Financial Institutions and Mortgage Lending—Current Issues 8
Mortgage Lending Concerns 8
Depository Institutions and Federal Preemption of State Authority 9
2009 Legislation Affecting Financial Institutions and Mortgage Lending 11
Escrow Agents—Assembly Bill 133 11
Financial Institutions—Assembly Bill 151 11
Mortgage Lending—Assembly Bill 486 11
Mortgage Agents—Assembly Bill 523 11
Trust Companies—Senate Bill 310 12
Debt Management Services—Senate Bill 355 12
Family Trust Companies—Senate Bill 365 12
Contact Information 12
Research Staff Contacts 13

DEPOSITORY INSTITUTIONS

There are three main types of depository institutions in the United States: commercial banks, credit unions, and thrifts (including savings banks and savings and loan associations). These institutions have become more like each other in recent decades. However, they still differ in structure, specialization, and their regulatory and supervisory systems.

Both the federal government and the individual states charter depository institutions, creating what is known as a "dual" system. Federal agencies regulate the federally chartered institutions and also, to some degree, the state-chartered institutions. Where federal laws do not preempt their authority, state banking agencies regulate the state-chartered institutions. (See table at end of this section.)

Commercial Banks

The federal Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises the federally chartered banks, known as "national" banks. The Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) also participate in the regulation of national banks as well as state-chartered banks. Membership in the Federal Reserve System is required for national banks and optional for state banks. Under the 1991 Federal Deposit Insurance Corporation Improvement Act, state banks must apply to the FDIC for deposit insurance. Finally, the Division of Financial Institutions (commonly referred to as the Financial Institutions Division [FID]) of Nevada's Department of Business and Industry charters and regulates State banks under the provisions of Title 55 of the *Nevada Revised Statutes* (NRS).

Credit Unions

Credit unions are cooperative nonprofit corporations organized for the benefit of their members. The National Credit Union Administration (NCUA) regulates federally chartered credit unions (FCUs) and, to some degree, federally insured state-chartered credit unions (FISCUs). Nevada also regulates state-chartered credit unions under the provisions of Chapter 678 of NRS.

Thrifts, Savings Banks, and Savings and Loan Associations

These institutions, originally established to promote personal savings and home ownership through mortgage lending, today provide a range of services similar to commercial banks. As a result of the national savings and loan crisis of the 1980s, the United States Congress abolished the Federal Home Loan Bank Board, created the Office of Thrift Supervision (OTS) of the U.S. Department of the Treasury, eliminated the Federal Savings and Loan Insurance Corporation (FSLIC), and transferred the FSLIC's duties to the FDIC. Currently, the OTS and the FDIC regulate federally chartered entities. In Nevada, the FID regulates state-chartered entities under the provisions of Chapters 673 and 677 of NRS.

DEPOSITORY INSTITUTIONS—REGULATORY AGENCIES		
Agency	**Jurisdiction**	**Contact Information**
Office of the Comptroller of the Currency (OCC) U.S. Department of the Treasury	National banks	http://www.occ.treas.gov Consumer Assistance: (800) 613-6743

DEPOSITORY INSTITUTIONS—REGULATORY AGENCIES (continued)		
Agency	**Jurisdiction**	**Contact Information**
Office of Thrift Supervision (OTS) U.S. Department of the Treasury	Federal savings associations; thrift holding companies	http://www.ots.treas.gov Consumer Affairs Hotline: (800) 842-6929 or e-mail: consumer.complaint@ots.treas.gov
Federal Reserve Board (FRB)	All bank holding companies and their nonbank subsidiaries; state-chartered member banks; foreign banks	http://www.federalreserve.gov Consumer Help: (888) 851-1920
Federal Deposit Insurance Corporation (FDIC)	State-chartered banks not members of the Federal Reserve System; savings banks; foreign bank branches	http://www.fdic.gov Call Center: (877) ASK-FDIC (877) 275-3342
National Credit Union Administration (NCUA)	Federal credit unions; federally insured state-chartered credit unions	http://www.ncua.gov Consumer Assistance: (800) 755-1030
Division of Financial Institutions Nevada's Department of Business and Industry	State-chartered banks, credit unions, and thrifts	http://www.fid.state.nv.us (702) 486-4120 (775) 687-5522

NONDEPOSITORY INSTITUTIONS

In addition to regulating banks, credit unions, and thrifts, the FID also oversees the activities of a number of financial businesses that do not take deposits from customers.

Collection Agencies

A collection agency is a person engaged, directly or indirectly, in collecting, soliciting, or obtaining payment of claims owed, or asserted to be owed, to another. Attorneys, banks, homeowners' associations, real estate brokers, and certain others are generally not included in the definition. Statutes pertaining to collection agencies can be found in Chapter 649 of NRS.

To conduct business in Nevada, a collection agency must either obtain a license from the FID or be certified by FID as a foreign collection agency. Applicants for licensure must maintain a trust account in a bank or credit union located in Nevada, post a bond or other security of $35,000 to $60,000, depending on the amount of the balance of their trust account, have a licensed collection manager to oversee day-to-day operations, and meet other requirements. To be certified as a foreign collection agency, the agency must not have a business location in Nevada and must pay an annual fee. At present, there are about 155 licensed collection agencies in Nevada.

Debt Adjusters

A debt adjuster is a person or business that enters into contracts to receive money from debtors and distribute it to specified creditors to satisfy the debtors' obligations. Except for properly licensed attorneys, banks, nonprofit financial planning corporations, and title insurance companies, debt adjusters are required to obtain a license from the FID. Nevada currently has 14 licensed debt adjusters.

Similar to collection agencies, debt adjusters must maintain a trust account, post a bond or other security, pay annual fees, and meet other statutory requirements found in Chapter 676 of NRS. The Commissioner of Financial Institutions must investigate the financial responsibility, experience, character, and general fitness of each applicant and its associates, directors, and officers.

Development Corporations and Economic Revitalization and Diversification Corporations

Although the NRS authorizes the formation of development corporations and corporations for economic revitalization and diversification, the FID has no current licensees of this type. Such corporations, which are typically nonprofits, encourage economic development through lending and other practices and are subject to the statutes in Chapters 670 and 670A of NRS.

Installment Lenders

Under the provisions of the Nevada Installment Loan and Finance Act, the State regulates businesses that make loans repayable in installments. The Act does not apply to depository institutions, development corporations, mortgage bankers and brokers, pawnbrokers, payday lenders, trust companies, insurance companies, or businesses that lend money on real property secured by a mortgage, unless they seek to evade its application by pretense or subterfuge. Also, the Act does not apply to a company that finances the sale of its own product through a retail installment sales contract.

Installment lenders who make or solicit loans in Nevada, or who are located in Nevada, must obtain a license from the FID. Licensees must pay an application fee, an annual fee, and also comply with the various requirements of Chapter 675 of NRS. At this time, the FID has about 17 active licenses.

Money Transmitters

Any person who is in the business of selling or issuing checks, or of transmitting money or credits, must be licensed by the FID. This requirement, however, does not apply to depository institutions or telegraph companies. A licensee must post a bond or other security for each location covered by the license and otherwise comply with the statutory requirements in Chapter 671 of NRS. The FID reports that there are currently about 52 active licenses.

Payday Lending

The FID also regulates businesses that make deferred deposit loans, high-interest loans, title loans, or operate check cashing services. During the 2005 and 2007 Legislative Sessions, the Legislature adopted comprehensive laws regarding such services, intended to protect consumers from predatory and unfair lending practices. These laws also extend certain rights and privileges to members of the armed forces.

Payday lending businesses must obtain a license from the FID and comply with the extensive provisions of State law in Chapter 604A of NRS, including:

- Posting conspicuous notice of fees charged for services;
- Providing a customer with a written loan agreement before making any loan;
- Providing a complete receipt each time a customer makes a payment;
- Collecting debt in a professional, fair, and lawful manner, in accordance with the federal Fair Debt Collection Practices Act;
- Offering the opportunity of a repayment plan before taking civil action to collect on a loan in default;
- Keeping proper books and accounting records; and
- Filing annual reports with the FID, under oath.

The law also grants certain rights to customers (e.g., the right to pay off a loan before the due date) and prohibits certain activities by lenders, such as, making a deferred deposit loan that exceeds 25 percent of a customer's expected gross monthly income, or threatening criminal prosecution.

The FID has enforcement powers, including the authority to impose fines. Loans made in violation of the law are void and customers may bring civil action to enforce the law, seeking actual, consequential, and punitive damages and attorney's fees.

As of January 22, 2010, the FID had over 500 licensees for these types of services.

Trust Companies

Trust companies are corporations and limited liability companies that act as fiduciaries. "Fiduciary" means an administrator, assignee, conservator, depositary, executor, guardian of an estate, receiver, trustee, or person who receives money or property from a public administrator or from another fiduciary. Nevada's laws regarding trust companies do not apply to depository institutions, fiduciaries under a court trust, licensed real estate brokers, and various others.

Trust companies must obtain a license from the FID, maintain a minimum amount of stockholder equity, pay annual fees, and otherwise comply with the laws in Chapter 669 of NRS. According to the FID, there are about 26 licensees at the present time.

MORTGAGE LENDING

As a separate unit of the Department of Business and Industry, the Division of Mortgage Lending (commonly referred to as the Mortgage Lending Division [MLD]), oversees Nevada's mortgage bankers, brokers, and agents, and also escrow agencies and agents. Loan modification consultants, foreclosure consultants, and other people who provide similar services are also regulated by the MLD. The Legislature created the MLD during the 2003 Legislative Session to improve the regulation of the mortgage lending industry, previously under the authority of the FID. The MLD is supported by fees and does not receive any money from the State General Fund.

Mortgage Bankers

A mortgage banker is a person who buys or sells notes secured by liens on real property; makes loans with his or her own money secured by liens on real property; originates commercial mortgage loans on behalf of an institutional investor; and does not act as a mortgage broker (unless properly licensed to do so). The laws applicable to mortgage bankers do not apply to depository institutions, real estate brokers, individuals or couples acting on their own, and various others.

Mortgage bankers must obtain a license from the MLD, pay application fees and annual fees, keep complete and suitable records of all transactions, submit annual statements and audits of trust accounts to the MLD, and comply with other requirements in Chapter 645E of NRS.

Mortgage Brokers

A mortgage broker is a person who serves as an agent for any person in an attempt to obtain a loan secured by a lien on real property; serves as an agent for a person who has money to loan for such a purpose; makes such loans; buys or sells notes secured by liens on real property; or offers for sale certain securities and makes investments in promissory notes secured by liens on real property. The term "mortgage broker" does not include mortgage bankers. And as with mortgage bankers, the laws applicable to mortgage brokers do not apply to depository institutions, real estate brokers, individuals or couples acting on their own, and various others.

A mortgage broker must meet specified educational requirements; pass a written examination; obtain a license from the MLD; pay application fees and annual fees; satisfy continuing education requirements; keep complete and suitable records; submit annual statements and audits of trust accounts; and comply with extensive additional statutory provisions as found in Chapter 645B of NRS.

Mortgage Agents

A mortgage agent is an employee or independent contactor of a mortgage broker authorized to engage in the broker's activities (other than clerical or ministerial tasks) on the broker's behalf. Mortgage agents must also obtain a license from the MLD, pay application fees and annual fees, and satisfy the continuing education requirements of the MLD. An agent may not be associated with more than one broker at a time, and the broker must exercise reasonable supervision over all of the broker's agents. Statutes governing the conduct of mortgage agents can also be found in Chapter 645B of NRS.

Escrow Agencies and Agents

An escrow transaction is one involving the sale, transfer, or lease of property from one person to another, in which money or evidence of title is delivered to a third person to hold until the conditions of the transaction are satisfied. It includes the collection of payments and the performance of related services by a third person in connection with a loan secured by a lien on real property.

An escrow agent is someone engaged in the business of administering escrows, and an escrow agency is a business that either employs one or more escrow agents or consists of an agent acting on his or her own behalf. An escrow agent or agency must obtain a license from the MLD, post a bond or other security payable to the State of Nevada, pay required fees, and comply with the statutes in Chapter 645A of NRS.

Foreclosure and Loan Modification Consultants

A foreclosure consultant is someone who offers to perform, for compensation on behalf of a homeowner, any activity related to preventing or postponing a foreclosure sale. A loan modification consultant is any person who offers, for compensation, to assist homeowners adjust the terms of their mortgage loan in a manner that is not provided for in the original or previously modified mortgage agreement.

Pursuant to Chapter 645F of NRS and Chapter 645F of the *Nevada Administrative Code*, foreclosure consultants and loan modification consultants must obtain a license from the MLD, pay applicable fees, post a corporate surety bond payable to the State of Nevada, demonstrate a history of reputable behavior, and comply with all other statutory and regulatory requirements. As of January 26, 2010, the MLD had 15 licensed loan modification consultants, with 32 more applications pending approval.

FINANCIAL INSTITUTIONS AND MORTGAGE LENDING—CURRENT ISSUES

Mortgage Lending Concerns

During the last decade, values of residential property in many parts of the U.S. increased rapidly above historic levels. Many home buyers expected to see a continuation in this appreciation, fueling demand by first-time buyers fearful of being priced out of the market, as well as demand by existing owners who could take their capital gains and trade up or buy a second home. The expectation of continuing appreciation also spurred demand among investors seeking a profit on the purchase and subsequent sale of a home.

Simultaneously, credit market conditions were favorable. Low mortgage interest rates made home purchases more affordable, and low long-term interest rates made homes attractive as investments. In addition, the secondary market for mortgages grew, with the innovation of mortgage-backed securities, injecting credit into the market and encouraging mortgage lenders to offer attractive credit terms.

In 2004 and 2005, a very large number of subprime and exotic mortgages were sold to buyers who otherwise may not have qualified and whose ability to repay their loan was dependent on continuing appreciation in home prices. A common example is the subprime adjustable rate mortgage (ARM), such as the "2/28" mortgage in which a buyer was qualified based on the buyer's ability to pay a very low rate for the first two years, but for which monthly payments would reset to higher market rates after two years. Thus, in 2006 and 2007, some buyers found themselves in homes on which they were unable to continue to make the payments. Further, price appreciation slowed and, in many areas, reversed, and home sales dropped dramatically just as ARM rate resets were beginning in large numbers.

Delinquencies and foreclosures began to increase rapidly in number, and the inventory of new and existing homes for sale increased, contributing to further declines in prices. Then in 2007, institutional investors in mortgage-backed securities recognized the risk in their portfolios, and credit for refinancing, subprime mortgages, and nonconforming "jumbo" loans became increasingly tight.

This scenario has been very evident in Nevada, not only in the two largest counties—Clark and Washoe—but also in other counties experiencing robust growth including Carson City, Douglas, Elko, Lyon, and Nye. Over the last 37 months, Nevada has topped the nation in the number of homes in foreclosure. In January 2010, 1 in every 95 Nevada homes received a foreclosure filing, more than four times the national average. While Nevada experienced a year-over-year decrease of about 18 percent in foreclosure activity from January 2009 to January 2010, foreclosure rates continue to be well above historical averages. Consequently, many economists and realtors are skeptical of a turnaround in the housing market this year.

Mortgage problems impact many people and institutions, in addition to the borrower and lender. They impose substantial costs on third parties and arguably affect all segments of the population due to their effects on capital markets. The fiscal and financial effects of foreclosures include:

- Impacts on borrowers: Loss of their down payment and principal paid; penalties and fees charged during delinquency and default; legal fees; and increased future borrowing costs; and moving expenses;

- Impacts on lenders: Reduced value of assets held; increased servicing costs; high opportunity costs of money tied up in foreclosure; and weaker performance on portfolios generally;

- Impacts on neighbors: Lower rents collected by landlords; reduced sales at local businesses; negative effects on property values and prices; and costs associated with quality-of-life issues, including increased crime rates; and

- Impacts on government: Increased costs of community development, fire, legal, police, sanitation, and other services; loss of tax revenue from defaults; slower growth (or decline) in residential property valuation and tax base; and reduced sales tax receipts.

Mortgage problems and their impacts on borrowers, lenders, neighbors, government, and the economy as a whole are projected to continue throughout this year. In response to the wave of foreclosures, the 2009 Nevada Legislature enacted Assembly Bill 149 (Chapter 364, *Statutes of Nevada*), which revises the provisions governing foreclosures allowing homeowners to elect mediation in hopes of a loan modification.

Between July 1, 2009, when the foreclosure mediation program began, and December 4, 2009, 3,272 requests for mediations were filed. However, this represents only 10 percent of the 32,662 default notices that were filed during the same time period. Still, the Nevada Supreme Court has appointed over 100 new mediators as interest in the program increases. As of December 2009, 522 mediations had been conducted, while 1,064 were scheduled to take place within the next 90 days.

During the 26th Special Session in February and March 2010, the Legislature authorized the Supreme Court to extend the voluntary mediation program to include small businesses whose commercial property is in default. (See A.B. 6, Chapter 10, *Statutes of Nevada 2010*.)

DEPOSITORY INSTITUTIONS AND FEDERAL PREEMPTION OF STATE AUTHORITY

Another issue related to financial institutions in Nevada has been a long-standing concern of state legislators throughout the country. Over a period of many years, the U.S. government has preempted many aspects of state authority over banks, thrifts, lending, and related matters. This is a complex, controversial, and constantly changing issue. The level of preemption, which began over 70 years ago, has increased in recent years:

- In 1978, in the matter of *Marquette National Bank of Minneapolis v. Omaha Service Corporation*, the U.S. Supreme Court allowed national banks to take the "most favored lender" status from their home state across state lines, and preempt the laws of a borrower's home state. Subsequently, many national banks established their headquarters in states that eliminated or raised their usury limits (e.g., Delaware and South Dakota).

- In 1980, through the enactment of the Depository Institutions Deregulation and Monetary Control Act (DIDMCA), the Congress removed state interest ceilings on loans secured by first mortgages on homes, and preempted state limits on lenders' ability to assess points, finance charges, and other charges related to annual percentage rates.

- In 1982, Congress enacted the Alternative Mortgage Transaction Parity Act (AMTPA), which preempted the states' authority to limit terms on alternative mortgages, including negative amortization clauses, variable rate loans, and balloon payment provisions. The law applies to all housing creditors.

- In 1995, in *Smiley v. CitiBank (South Dakota), N.A.*, the U.S. Supreme Court approved a definition of interest rates including charges for annual fees, cash advances, late payments, membership fees, returned checks, and spending over one's limit. In combination with the Marquette National Bank decision, this decision made national banks' fees exportable.

- In 1996, the federal Office of Thrift Supervision claimed authority to occupy the entire field of lending regulation for federal savings associations and granted preemption rights to operating subsidiaries of a depository institution. And in 2004, the federal Office of the Comptroller of the Currency published broad preemption regulations.

- The Interstate Banking and Branching Efficiency Act of 1994, as amended in 1997, also known as the Riegle-Neal Act, preempts certain state authority in the area of interstate branching.

- In 2007, the U.S. Supreme Court held in *Watters v. Wachovia Bank* that the bank's mortgage business, whether conducted by Wachovia Bank or its subsidiary, Wachovia Mortgage, is subject to OCC regulation and not state licensing, reporting, and visitation requirements, which the Supreme Court said are preempted by the National Bank Act of 1864.

- Most recently, federal legislation has been introduced in the House of Representatives that would create a national Consumer Financial Protection Agency (CFPA). This bill, known as the Consumer Financial Protection Agency Act of 2009 (H.R. 3126), would create the CFPA as an independent executive agency to regulate consumer financial products or services. If passed, the bill would grant the CFPA broad authority over both federally chartered and state-chartered banks.

According to the National Conference of State Legislatures, "Federal preemptions adopted through regulation, legislative enactments, or adverse judicial determinations have far-reaching consequences. They impose liabilities on states. They curtail state creativity and state authority. They often seek uniformity when uniformity is not necessarily the most effective means for resolving issues." In addition, the National Consumer Law Center has stated that federal preemption has harmed consumers by allowing credit card abuses, irresponsible mortgage lending, overdraft fees, and predatory consumer lending.

In the dissenting opinion on the *Watters v. Wachovia Bank* decision, Justice John Paul Stevens argues that the Supreme Court had preserved the dual banking system for many years, permitting preemption of nondiscriminatory state law only when that law incapacitated a national bank or would forbid or significantly impair its activities. The dissent says that the National Bank Act does not support preemption, nor had the Congress delegated preemptive authority to the OCC.

Some analysts are concerned that the *Watters v. Wachovia Bank* decision will encourage the OCC and the OTS in granting powers to national banks and thrifts and their operating subsidiaries and preempting state laws in such areas as consumer protection.

2009 LEGISLATION AFFECTING FINANCIAL INSTITUTIONS AND MORTGAGE LENDING

Escrow Agents—Assembly Bill 133

To protect consumers in mortgage transactions, A.B. 133 (Chapter 27, *Statutes of Nevada*) prohibits an escrow officer or a person who acts as an escrow agent from disbursing money from an escrow account unless deposits of at least equal value have been received. The bill also prohibits disbursing money from an escrow account on the same business day as a deposit unless the deposit is in cash or another form available for immediate withdrawal or convertible to cash on the same day.

Financial Institutions—Assembly Bill 151

In response to predatory lending problems, the Legislature enacted A.B. 151 (Chapter 329, *Statutes of Nevada*), which requires a licensed financial institution to disclose information on the actual cost and risk of each nontraditional mortgage loan product it offers. The financial institution must certify to the FID that it has made the required disclosure, and may contract with a nonprofit or government-operated consumer credit counseling, housing counseling, or legal services agency to provide the certification.

Mortgage Lending—Assembly Bill 486

Assembly Bill 486 (Chapter 200, *Statutes of Nevada*) establishes that a mortgage broker has a fiduciary duty to a client and requires a broker to post a surety bond. The bill also authorizes the MLD to order a licensee to pay restitution to a consumer who has suffered an economic loss resulting from a violation of applicable statutes or regulations. Finally, the bill states that a contract entered into by a person conducting unlicensed activity for which an escrow agent's or agency's license is required is voidable.

Mortgage Agents—Assembly Bill 523

In response to changes in federal law, A.B. 523 (Chapter 474, *Statutes of Nevada*) revises the definition of "mortgage agent" to include all residential mortgage loan originators. As a result, all mortgage bankers, mortgage brokers, or qualified employees of a mortgage broker must be licensed as a mortgage agent if acting as a residential mortgage loan originator. The bill also revises the licensing criteria, continuing education requirements, and disciplinary provisions applicable to mortgage agents, bankers, and brokers, and requires a mortgage banker to exercise supervision over his or her mortgage agents.

Trust Companies—Senate Bill 310

Pursuant to S.B. 310 (Chapter 374, *Statutes of Nevada*), retail trust companies licensed in Nevada must maintain their principal office in Nevada. Companies engaging in business at an office outside of Nevada are prohibited from doing so without approval of the Commissioner of Financial Institutions. The bill also grants authority to the Commissioner to regulate the practices of retail trust companies. Finally, the measure provides for disciplinary proceedings and penalties for violations of the statutes and regulations on retail trust companies.

Debt Management Services—Senate Bill 355

The Uniform Debt-Management Services Act, passed as S.B. 355 (Chapter 376, *Statutes of Nevada*), directs the Commissioner of Financial Institutions to regulate debt management services including credit counseling, the development and implementation of debt-management plans, and debt settlement services. All such companies are required to register with the Commissioner and comply with detailed requirements for registration, including obtaining a surety bond. The bill also enacts provisions governing contracts between a debtor and a debt-management services company, prescribes the duties and obligations of a company, identifies prohibited activities, and grants the Commissioner investigative and regulatory authority.

Family Trust Companies—Senate Bill 365

Senate Bill 365 (Chapter 270, *Statutes of Nevada*) creates a new chapter in NRS to provide for the regulation of family trust companies through optional licensure, and clarifies that family trust companies regulated under the new chapter are exempt from regulation of trust companies under Chapter 669 of NRS. The measure creates an assessment to fund regulation by the FID and provides the Commissioner of Financial Institutions with investigative and enforcement authority.

CONTACT INFORMATION

Division of Financial Institutions—Department of Business and Industry
Telephone Las Vegas: (702) 486-4120
Telephone Carson City: (775) 687-5522
Website: http://fid.state.nv.us

Division of Mortgage Lending—Department of Business and Industry
Telephone Las Vegas: (702) 486-0780
Telephone Carson City: (775) 684-7060
Website: http://mld.nv.gov

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Dave Ziegler
Principal Research Analyst
E-mail: dziegler@lcb.state.nv.us

Wayne Thorley
Senior Research Analyst
E-mail: wthorley@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Telecommunications and Communication Technology

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TELECOMMUNICATIONS REGULATION BACKGROUND

Nationally, the Federal Communications Commission (FCC) regulates telecommunications under the provisions of the Communications Act of 1934, as amended.

For over 30 years, the trend within the telecommunications industry has been toward deregulation, which had its roots in a 1974 antitrust case against AT&T. In 1984, when AT&T accepted a restructuring agreement known as the Modification of Final Judgment, the company split by divestiture into seven regional Bell operating companies. The purpose of divestiture was to separate the competitive long-distance market from the local market, where incumbent telephone companies faced no competition.

Until 1996, the FCC had authority to regulate interstate telecommunication services and the states had authority over intrastate services. But the Telecommunications Act of 1996 dramatically changed the ground rules for competition and regulation within the industry. The Act required the regional Bell operating companies to open their networks to competitors and sought to open local markets to various potential competitors, including cable companies, utilities, and wireless service providers. The Act authorized the FCC to set policies and rules for local competition and directed the states to implement the Act and related regulations.

TABLE OF CONTENTS

Telecommunications Regulation Background 1
Universal Service 2
National Do Not Call Registry 2
Streamlined Sales and Use Tax Agreement 2
Telecommunications Regulation in Nevada 3
Public Utilities Commission of Nevada 3
Nevada's Universal Service Programs 4
Long-Distance Service 4
Wireless Service 4
Broadband 4
Nevada's Do Not Call Registry 5
2007 Legislation Affecting Telecommunications 5
Telecommunications Deregulation—Assembly Bill 518 (Chapter 216, Statutes of Nevada 2007) 5
Cable TV and Video Services—Assembly Bill 526 (Chapter 326, Statutes of Nevada 2007) 6
2009 Legislation Affecting Telecommunications 6
Cyber Crimes 6
Theft of Scrap Metal 7
Current Issues in Telecommunications Policy 7
Other Telecommunications Issues 7
Federal Communications Commission National Broadband Plan 8
Contact Information 10
Research Staff Contact 10

Universal Service

The Communications Act of 1934 provides that all persons in the United States shall have access to "rapid, efficient, nationwide . . . communications service with adequate facilities at reasonable charges." Prior to 1996, the Universal Service Fund operated as a mechanism by which interstate long-distance carriers paid assessments to subsidize telephone service to low-income households and high-cost areas.

The Telecommunications Act of 1996 expanded the traditional definition of universal service to cover rural health care providers and eligible schools and libraries. Today, the FCC supports universal service through the following four mechanisms (which are reflected in Nevada law under *Nevada Revised Statutes* [NRS] 704.6873):

- Supporting telephone companies that serve high-cost areas, making telephone service affordable for their residents;
- Assisting low-income customers to help pay for connection charges and monthly telephone charges;
- Allowing rural health care providers to pay rates similar to those of their urban counterparts, making tele-health services affordable; and
- Supporting schools and libraries with "E-Rate," which provides such services as local and long-distance calling, high-speed lines, Internet access, and internal connection equipment.

National Do Not Call Registry

Since October 2003, the Federal Trade Commission (FTC) has managed the national Do Not Call registry. Telemarketers must search the registry every three months and avoid calling any registered telephone numbers. Organizations with which a person has an established business relationship may 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. The law does not apply to calls from or on behalf of political organizations, charities, and telephone surveys.

Streamlined Sales and Use Tax Agreement

Because of the Internet, commerce has changed dramatically in recent years. The Internet makes it possible to easily purchase goods from another state or country. In contrast with the rapid development of the global economy, local and state government receipt of sales and use taxes did not keep pace. Tax laws required only vendors physically present in a state to collect and remit the tax on taxable sales in that state. To modernize the sales and use tax laws, state governments nationwide encouraged participation in the Streamlined Sales and Use Tax Agreement.

The Agreement provides states with a blueprint to create a simplified sales tax collection system that removes the burden and cost from sellers. It is designed to facilitate the collection of sales taxes on Internet purchases and other remote sales. To date, 41 states and the District of Columbia have enacted legislation to enter the agreement with member, associate member, or advisor status. Nevada became a participant in 2003, with the passage of Assembly Bill 514 (Chapter 400, *Statutes of Nevada*), now codified in Chapter 360B of NRS.

TELECOMMUNICATIONS REGULATION IN NEVADA

Reflecting national trends, Nevada has also eased its regulation of the telecommunications industry in the last two decades. Changes in the regulatory structure began in 1989, when the Legislature authorized plans of alternative regulation (PAR), and continued with additional reforms in the 1999 and 2003 Legislative Sessions. Then, in the 2007 Session, the Legislature repealed the PAR statutes and passed A.B. 518 and A.B. 526 (Chapters 216 and 326, *Statutes of Nevada*), bringing about fundamental changes in the regulation of telecommunications. (These bills are discussed in more detail, later in this report.)

Public Utilities Commission of Nevada

The Public Utilities Commission of Nevada (PUCN) administers the bulk of Nevada's laws regarding telecommunications. The PUCN:

- Regulates rates for basic telephone service (until January 1, 2012), wholesale access service, and emergency 911 service;
- Levies and collects assessments for the universal service fund and administers the fund through a contract administrator;
- Adopts regulations implementing State laws on encouraging competition, discouraging discrimination, and handling disputes among service providers;
- Reviews and approves applications from small-scale providers of last resort (i.e., small rural telephone companies) to be regulated as competitive providers; and
- Enforces the laws and regulations with administrative fines and other remedies.

The Governor appoints the three PUCN commissioners to four-year terms. A professional staff of analysts, attorneys, economists, and engineers assists the commissioners. The PUCN decisions are subject to judicial review. In addition, the Bureau of Consumer Protection in the Office of the Attorney General represents consumers' interests before the PUCN.

Nevada's Universal Service Programs

Nevada's universal service programs include the Lifeline and Link Up telephone services, governed by NRS 707.400 through NRS 707.500. The Lifeline program provides a discount on basic local service charges and federal end-user charges to residential customers. The Link Up program allows for a reduction in a carrier's customary connection charges for a single connection at a consumer's principal residence. Both programs are available to consumers who meet the income eligibility requirements of the PUCN. In 1999, the Legislature authorized automatic enrollment in Lifeline service for qualified low-income residents. Lifeline and Link Up usage has been increasing.

Long-Distance Service

Pursuant to the Telecommunications Act of 1996, the PUCN investigates applications relating to competition and the long-distance market. To obtain permission to provide long-distance service, Nevada Bell (later known as SBC and now as AT&T) applied to the PUCN for acknowledgement that competition existed in the local market. The PUCN approved the application in 2002 and the FCC approved it in 2003. The company was granted authority to provide both local and long-distance service.

Wireless Service

In 2003, the Legislature passed three bills affecting the deployment and regulation of wireless service in Nevada:

- Senate Bill 10 (Chapter 237, *Statutes of Nevada*) 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 (NRS 707.375);

- To provide consistent personal wireless service and prevent development of a patchwork system of conflicting regulations, S.B. 426 (Chapter 329, *Statutes of Nevada*), establishes statewide procedures for processing applications for the placement or construction of wireless facilities (NRS 707.550 through NRS 707.585); and

- Assembly Bill 138 (Chapter 79, *Statutes of Nevada*) requires school districts to adopt policies concerning students' use of pagers, cell phones, and similar devices on school property and at school-sponsored activities, and repeals a provision that had prohibited a student from carrying or possessing such devices on school property (NRS 392.4637).

Broadband

Senate Bill 400 (Chapter 479, *Statutes of Nevada*) of the 2003 Legislative Session prohibited the PUCN from regulating any broadband service and from imposing requirements relating to the terms, conditions, rates, or availability of such service. (See NRS 704.684.) These prohibitions encompass any regulation of Voice over Internet Protocol (VoIP), the use of which is growing very rapidly.

Nevada's Do Not Call Registry

In 2003, the Legislature passed A.B. 232 (Chapter 464, *Statutes of Nevada*), requiring the Attorney General to establish and maintain a registry of telephone numbers of persons not wishing to receive unsolicited calls from telemarketers. (These provisions are now codified in Chapter 599B of NRS.) The measure prohibits unsolicited telephone calls for the sale of goods or services to a number included in the registry, with certain exceptions:

- Calls from companies that have had a direct, preexisting business relationship with the customer within the last 18 months;
- Calls from political, religious, or tax-exempt charitable organizations made by an actual employee or volunteer from that organization;
- Calls from a telemarketer who has the express permission of the customer;
- Calls whose purpose is to collect payment or performance of a debt, or to extend credit to make the payment; and
- Calls from companies with an established business relationship with the customer, regardless of the length of the relationship, if the purpose of the call is to verify that the customer wants to terminate the relationship.

Making a call in violation of the bill is a deceptive trade practice, as is placing an unsolicited call that does not allow a service to identify the caller. The bill also prohibits automated dialing calls between 8 p.m. and 9 a.m.

In some circumstances, Nevada's law may classify a charitable organization as a telemarketer, and prohibit calls to registered numbers, even though federal law does not prohibit that organization from making such calls. Nevada residents receive the protection of both laws.

2007 LEGISLATION AFFECTING TELECOMMUNICATIONS

In 2007, Nevada's Legislature enacted two significant bills reflecting the continuing evolution of the telecommunications industry. Together, these bills will boost innovation and competition in telecommunications and provide consumers with expanded choices in service.

Telecommunications Deregulation—Assembly Bill 518 (Chapter 216, Statutes of Nevada 2007)

Assembly Bill 518 provides that a telecommunication provider, other than a small-scale provider of last resort, is a competitive supplier, not subject to any review of earnings or other regulation by the PUCN. However, a competitive supplier that is also an incumbent local exchange carrier may not increase the price of basic network service before January 1, 2011. Further, for one year after that date, the supplier may not increase the per-month price of basic network service by more than $1,

unless the supplier files a general rate application and proves to the PUCN that the increase is "absolutely necessary to avoid rates or prices that are confiscatory under the *Constitution of the United States* or the *Constitution* of this State."

Cable TV and Video Services—Assembly Bill 526 (Chapter 326, Statutes of Nevada 2007)

Assembly Bill 526 addresses competitive issues in the cable television industry. The bill:

- Preempts any local law or agreement concerning franchising and regulation of video services;
- Gives the Secretary of State exclusive authority to issue a certificate to operate a video service network, and authorizes the Secretary to collect filing and certification fees;
- Authorizes an incumbent cable operator providing service under a local franchise to elect to continue operations until the franchise's expiration date or terminate the local franchise and apply for a certificate from the Secretary of State;
- Authorizes certain local governments to renew or extend the term of a local franchise if the incumbent cable operator elects to continue to operate under the local franchise in a service area located entirely within a county other than Clark County or Washoe County;
- Authorizes a local government to charge a video service provider a franchise fee for the privilege of providing service through a network that uses any public right-of-way or highway within the jurisdiction;
- Establishes the rights and duties of video providers and local governments with respect to public, educational, and government (PEG) video programming; and
- Requires a provider of Internet service to enable subscribers in Nevada to block or restrict access to the Internet or specific website or domain they disapprove of, and to monitor a child's use of the Internet; and
- Is effective June 4, 2007.

2009 LEGISLATION AFFECTING TELECOMMUNICATIONS

The 2009 Legislature did not make major changes to telecommunications as it did in 2007. However, it did address two current issues of importance.

Cyber Crimes

The hallmark of telecommunications is innovation. Unfortunately, sometimes new technologies can spawn new crimes or provide methods to commit old crimes in new ways. Assembly Bill 309 (Chapter 497, *Statutes of Nevada 2009*) adds text messaging to the existing list of ways in which the

crime of stalking can be committed. In a related vein, S.B. 163 (Chapter 188, *Statutes of Nevada 2009*) revises provisions governing safe and respectful learning environments in schools to prohibit cyber-bullying.

Theft of Scrap Metal

With the rise in commodity prices for metal, theft of copper wire and other metals has increased dramatically. In some instances, thieves have stripped whole houses or school scoreboards of their wiring in order to sell the metal for cash to scrap dealers. These can be expensive and disruptive losses. Assembly Bill 233 (Chapter 290, *Statutes of Nevada 2009*) makes it a crime to steal utility wires in order to sell the metal. The bill also increases certain penalties for stealing scrap metal and requires more stringent reporting requirements for such transactions to make it easier for law enforcement to identify suspects.

CURRENT ISSUES IN TELECOMMUNICATIONS POLICY

Other Telecommunications Issues

According to the proceedings of the 2005 Aspen Institute Conferences on Telecommunications and Spectrum Policy, the "visions of competition and innovation behind the 1996 Telecommunications Act may finally come to at least partial fruition," as evidenced by the explosive growth in broadband penetration, the financial stabilization that should accompany recent corporate consolidations, important policy decisions, and the long-awaited video market entry of the large incumbent local exchange carriers (ILECs), while cable companies are building Internet Protocol (IP) backbones and introducing voice competition on a large scale.

Conference participants reached consensus on a set of economic objectives, including "reasonable prices, meaningful competition, removing barriers to entry, preserving the open character of the Internet and promoting the free flow of information, assuring interoperability and interconnection, and optimizing use of the spectrum."

Legislation passed in Nevada in 2007 (discussed previously in this report) addresses a number of current issues in innovation and competition that other states have not yet tackled. However, the conference proceedings identify additional issues that may deserve consideration, primarily at the federal level, since broadband is inherently an interstate service:

- Redefining universal service to include broadband. Conference participants said making some form of broadband service available to virtually every American at an affordable price, while maintaining incentives for continuing investment and technological improvement, is a worthy goal. The current trend in broadband involves increased competition among cable TV systems, landline telephone companies, and wireless providers. However, competition—at least initially—may be concentrated in areas of higher residential density. The availability and speed of broadband service in rural areas lags well behind the typical metropolitan area. Also, it may be appropriate to take steps to ensure that persons with disabilities have access to broadband Internet service;

- Improving consumer protection in access to broadband. Consumers need thorough and reliable information for choosing among broadband providers. It is difficult for consumers to assess the quality of available service and its adequacy for performing various applications, such as interactive games and VoIP; and

- Protecting intellectual property. Public policy must recognize changing technology, especially fast broadband and Internet Protocol Television (IPTV), in enforcing copyright protections. One issue is that broadband allows convenient duplication of copyrighted material through person-to-person file sharing over the Internet. The federal Digital Millennium Copyright Act limits the liability of Internet service providers for copyright violations by their customers. However, conference participants noted that enforcement of these so-called "safe harbor" policies has been uneven.

Federal Communications Commission National Broadband Plan

On March 16, 2010, the FCC sent Congress a plan entitled, "Connecting America: The National Broadband Plan." The plan was mandated by the American Recovery and Reinvestment Act passed in February 2009 and was produced by an FCC task force. According to the FCC press release announcing the proposal, about half the recommendations are addressed to the FCC, while the remainder are directed at Congress, the Executive Branch, state and local government, working closely with the private and nonprofit sectors. The press release characterizes the plan as ". . . an ambitious agenda for connecting all corners of the nation while transforming the economy and society with the communications network of the future—robust, affordable Internet."

The press release provided the following rationale for the plan:

> . . . the Plan found that while broadband access and use have increased over the past decade, the nation must do much more to connect all individuals and the economy to broadband's transformative benefits. Nearly 100 million Americans lack broadband at home today, and 14 million Americans do not have access to broadband even if they want it. Only 42 percent of people with disabilities use broadband at home, while as few as 5 percent of people living on Tribal lands have access. Meanwhile, the cost of digital exclusion for the student unable to access the Internet to complete a homework assignment, or for the unemployed worker who can't search for a job online, continues to grow.
>
> Other gaps threaten America's global competitiveness. A looming shortage of wireless spectrum could impede U.S. innovation and leadership in popular wireless mobile broadband services. More useful applications, devices, and content are needed to create value for consumers. And the nation has failed to harness broadband's power to transform delivery of government services, health care, education, public safety, energy conservation, economic development, and other national priorities.

Details of the plan as summarized in the press release include the following goals and recommendations:

- Connect 100 million households to affordable 100-megabits-per-second service, building the world's largest market of high-speed broadband users and ensuring that new jobs and businesses are created in America;

- Provide affordable access in every American community to ultra-high-speed broadband of at least 1 gigabit per second at anchor institutions such as schools, hospitals, and military installations so that America is hosting the experiments that produce tomorrow's ideas and industries;

- Ensure that the U.S. is leading the world in mobile innovation by making 500 megahertz (MHz) of spectrum newly available for licensed and unlicensed use;

- Move adoption rates from roughly 65 percent to more than 90 percent and make sure that every child in America is digitally literate by the time he or she leaves high school;

- Bring affordable broadband to rural communities, schools, libraries, and vulnerable populations by transitioning existing Universal Service Fund support from yesterday's analog technologies to tomorrow's digital infrastructure;

- Promote competition across the broadband ecosystem by ensuring greater transparency, removing barriers to entry, and conducting market-based analysis with quality data on price, speed, and availability; and

- Enhance the safety of the American people by providing every first responder with access to a nationwide, wireless, interoperable public safety network.

Early assessments of the plan by broadband industry observers contain some cautions and criticisms, including:

- A concern that the FCC lacks the authority to implement the entire spectrum of recommendations;

- The likelihood that the broadband industry would sue to prevent assertion of such authority or attempts to expand existing authority;

- A failure of the plan to effectively address the lack of true competition in most existing markets;

- A belief that parts of the plan such as freeing up 500 MHz of bandwidth nationwide are unrealistic;

- An uncertainty as to how the FCC would pay for the various component initiatives; and

- Questions as to whether the increased speeds are truly necessary.

In general, however, commentators seem to evaluate the plan as a "good start" though in need of more focus on lowering costs and catching up with other nations.

CONTACT INFORMATION

Public Utilities Commission of Nevada
Telephone: Carson City—(775) 684-6101
Telephone: Las Vegas—(775) 486-2600
Toll-free Telephone: (800) 992-0900, Extension 4-6101
Website: http://pucweb1.state.nv.us/pucn/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Dave Ziegler
Principal Research Analyst
Research Division
Legislative Counsel Bureau
E-mail: dziegler@lcb.state.nv.us

Telephone: (775) 684-6825
Fax: (775) 684-6400

Transportation

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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, ten-lane thoroughfares to nonmotorized 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 "Providing a better transportation system for Nevada through our unified and dedicated efforts." 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.

TABLE OF CONTENTS

Nevada's Department of Transportation 1
Department of Motor Vehicles 3
Licensing of Drivers 4
Nevada's Drunk Driving Laws 5
Driving Under the Influence 5
Implied Consent 6
Regulation of Motor Carriers 6
Taxicab Authority 6
Major Policy Issues of the 2009 Legislative Session 7
Auto Body Shops 7
Energy Efficiency and Transportation 7
F Street Closure in Las Vegas 7
Off-Highway Vehicles 8
RTC-5 of the 2008 General Election in Washoe County 8
Additional Policy Issues 8
REAL ID Act of 2005 8
The American Recovery and Reinvestment Act of 2009—Transportation Funding 9
Actions From the 26th Special Session 10
Frequently Asked Questions 10
Additional Resources 11
Research Staff Contact 11

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, United States highways, State highways, and farm-to-market roads. In addition, local governments maintain 32,473 miles of county 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 connectors. In addition to the roadway system, there are approximately 1,916 bridges in Nevada. The NDOT maintains 1,092 bridges with 710 bridges being maintained by county, city, or other governmental agencies. Thirty-nine bridges are privately maintained.

Funding for the State of Nevada's transportation system 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, Article 9, Section 5 of the *Nevada Constitution* 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 nonproject-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 Nevada's 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 Nevada Transportation 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 Fund for Cleaning Up Discharges of Petroleum. 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—$22 for passenger cars and $87 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 assessed 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 Churchill and Washoe 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:

1. Division of the Office of the Director;

2. Division of Compliance Enforcement;

3. Division of Field Services;

4. Division of Central Services and Records;

5. Division of Management Services and Programs;

6. Division of Information Technology;

7. Administrative Services Division; and

8. Motor Carrier Division.

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, salespersons, 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.

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 the person's residence, in which case an additional 50 hours of supervised driving experience may be substituted. Driver education is not 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 be 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.

Vehicular homicide was added as a crime in Nevada and 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 causes 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 causes the death of another person. This crime is a category A felony and is punishable in the same manner prescribed for vehicular homicide.

Recently, a court was given the authorization to order a third time offender of a DUI to a treatment program for a minimum of three years based on a report from a counselor or physician who diagnoses a drug or alcohol abuse problem. If the court orders the offender to a treatment program, further proceedings are suspended and the offender is placed on probation upon condition that the treatment program is completed. If the program is successfully completed, the conviction is reduced to a second-offense violation, which is a misdemeanor. However, for purposes of additional penalties imposed for subsequent DUI offenses, the offense will count as a third offense. If the program is not successfully completed or the offender is not accepted for treatment, the sentence must be served; however, the court has the discretion to reduce the sentence of imprisonment for the time served.

Implied Consent

Nevada has an implied consent statute (NRS 484C.160) for an individual who refuses a lawful request by a police officer to submit to an evidentiary test of the individual's 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 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.

REGULATION OF MOTOR CARRIERS

Motor carrier laws are generally contained in Chapter 706 of NRS. In Nevada, the Nevada Transportation 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.

TAXICAB AUTHORITY

The Taxicab Authority, located within the Department of Business and Industry, is responsible for regulating the taxicab industry in any county with a population of 400,000 or more (NRS 706.881). Currently, only Clark County, which includes Las Vegas, meets this criterion. There are currently 16 taxicab companies in Clark County, employing approximately 6,000 drivers and operating a taxicab fleet of approximately 2,600 vehicles.

The Taxicab Authority is governed by a five-member Board appointed by the Governor of the State of Nevada. No elected officer of the State of any political subdivision is eligible for appointment, and no more than three Board members may be of the same political party. Board members may serve up to six years on the Board. The Board conducts hearings and renders decisions regarding the administration and enforcement of provisions contained in Chapter 706 of NRS, as well as the issuance and transfer of certificates of public convenience for taxicab companies. The Board determines the number of taxicabs authorized per certificated company and the fares to be charged. Also, the Board hears appeals involving the issuance, suspension, and revocation of drivers' permits.

MAJOR POLICY ISSUES OF THE 2009 LEGISLATIVE SESSION

Auto Body Shops

As in previous legislative sessions, the issue of body shops was once again considered by the Legislature. New changes to the law affecting both consumers and the industry include transferring the authority to regulate garages, garage operators, and body shops for their registration or licensure from the Commissioner of Consumer Affairs to the DMV. The DMV may fine a person who engages in certain deceptive trade practices relating to the sale or lease of a vehicle regardless of whether the person has been fined for similar deceptive trade practices.

Energy Efficiency and Transportation

During the 2009 Session, many ideas were explored about how to prepare for and integrate the anticipated introduction of larger numbers of electric vehicles into existing infrastructure; the impact of road tax policies; increased use of alternative fuel vehicles in public vehicle fleets; and fostering instate biofuel production. Though many of these ideas were not adopted, they may possibly be considered in the 2011 Legislative Session.

F Street Closure in Las Vegas

During the 2009 Legislative Session, a major issue was the closure of F Street in Las Vegas. As background, in 2006, the Las Vegas City Council voted to close F Street and asked NDOT to include the closure in its plans for the Interstate 15 North Design-Build Project. However, the closure of F Street physically isolates residents of West Las Vegas from their places of employment and puts an undue burden on the residents in this area.

Therefore, the Legislature passed a bill that requires the City of Las Vegas to contract, to a maximum of $2.5 million, for the construction design of a project to reopen F Street using funds from the City of Las Vegas Redevelopment Agency. The City must also provide $20 million of the funding required for the project by issuing bonds financed with its share of the special 5-cent property tax rate for capital projects imposed in the county after July 1, 2011. Additionally, the City of Las Vegas and NDOT must cooperate in funding, seeking additional funding, and bringing the approval, design, and construction of the F Street project. Governor Jim Gibbons vetoed this measure on May 29, 2009, and the Legislature overrode the veto on June 1, 2009.

Off-Highway Vehicles

A new addition to the law is one that requires persons who acquire ownership of an off-highway vehicle (OHV) to apply to the DMV for the titling and annual registration of the vehicle. A Revolving Account for the Assistance of the Department (DMV) to account for start-up costs for the program of titling and registering OHVs, and the Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration, must be used to pay the ongoing expenses of administering the program.

A Commission on Off-Highway Vehicles was also created. Duties of the Commission include selecting nonvoting advisers and adopting regulations for awarding grants from a newly created Fund for Off-Highway Vehicles. A portion of the fees received from the titling and registration of OHVs must be deposited into the Fund. All money deposited into the Fund must be used only for projects relating to OHVs.

RTC-5 of the 2008 General Election in Washoe County

During the 2008 General Election, by a 55 percent to 45 percent vote, Washoe County voters approved RTC-5, an advisory question that allows the community to recover the purchasing power being lost to inflation on all fuel taxes paid in Washoe County. The Legislature passed enabling legislation (Senate Bill 201, Chapter 501, *Statutes of Nevada 2009*), which allows for the imposition of an additional fuel tax in Washoe County only to fund transportation projects in Washoe County. The additional fuel tax is applicable to gasoline, special fuel (diesel), liquefied petroleum gas, compressed natural gas, and water-phased hydrocarbon fuel. The amount of each fuel tax is established based on indexing the amount of currently imposed fuel taxes; the amount of each tax may then be increased annually based on changes in the Producer Price Index for Street and Highway Construction published by the U.S. Department of Labor, but may not exceed 7.8 percent annually. The revenue from the additional fuel taxes will be used to service bond financing for the Washoe County transportation projects, which will be coordinated with NDOT projects.

ADDITIONAL POLICY ISSUES

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, Public Law 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. In December 2009, in anticipation of implementing REAL ID, Governor Gibbons signed emergency regulations that allowed the DMV to comply with the federal law. The regulations, among other provisions, define how the DMV will store and restrict access to personal identification data as well as prohibiting the use of radio-frequency identification chips or other technology used to track individuals.

Recently, the U.S. Department of Homeland Security issued a statement that a secure state-issued identification is a nationwide effort to establish minimum performance standards to improve the integrity and security of state-issued drivers' licenses and identification cards, while retaining states' flexibility to meet and exceed the standards as they are incorporated into each state's unique operations. The goals of this effort are to reduce identity theft, make it more difficult for criminals to obtain fraudulent identities, and to help fight terrorism.

Key measures that increase the level of assurance for a document include the following:

- Information and security features that must be incorporated into each card;
- Documentation and verification of an applicant's identity, date of birth, Social Security number, and legal presence in the United States;
- Checks to ensure that an individual does not hold multiple driver's licenses in other states; and
- Minimum security standards for issuance of licenses and identification cards.

On January 11, 2010, in Carson City, and February 1, 2010, in Reno, the DMV began issuing identification, known as Advanced Secure Issuance (ASI) licenses and ID cards, which meets the current requirements of REAL ID. Eventually, the program will be available statewide. This new license or ID card is marked with a gold star indicating that it meets federal identification requirements for boarding commercial aircraft and entering federal buildings where identification is required. The documents required to prove identity for an ASI card are the same documents Nevada already requires for first-time licensees and new residents.

The American Recovery and Reinvestment Act of 2009—Transportation Funding

The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5), is an economic stimulus package enacted by the 111th United States Congress in February 2009. The Act allocated $27 billion for highway investment nationwide; $8.4 billion for transit; $1.5 billion in Discretionary Funds; and $8 billion for highspeed rail. Of this money, Nevada received roughly $200 million in highways improvement programs and $49 million for transit capital assistance grants. The NDOT is coordinating with State officials, the Legislature, regional transportation commissions, the Nevada Association of Counties, and the Nevada League of Cities and Municipalities to develop a list of transportation projects including resurfacing and pavement preservation projects, traffic signal system upgrades, bridge projects, transit projects, and intelligent transportation systems. In order to be eligible for funding, projects must be listed on the State Transportation Improvement Plan, have completed their federal environmental review, and identified/acquired right-of-way.

ACTIONS FROM THE 26TH SPECIAL SESSION

During the 26th Special Session, the Legislature passed S.B. 5 (Chapter 8, *Statutes of Nevada 2010*), which requires NDOT to create an account in the State Highway Fund to be funded by money transferred from the Fund for Cleaning Up Discharges of Petroleum. The Department must allocate the money twice a year in the following manner: (1) 70 percent of the money in the account to a regional transportation commission in Clark County; (2) 20 percent of the money in the account to a regional transportation commission in Washoe County; and (3) 10 percent of the money in the account to the Department for use in counties that have a population of less than 100,000 (all other counties). The money distributed in the account must only be used for the construction, reconstruction, improvement, and maintenance of public roads. Further, the measure removes the provision requiring the Division of Environmental Protection, State Department of Conservation and Natural Resources, to cease collection of the fees for the Fund for Cleaning Up Discharges of Petroleum if the balance in the Fund is estimated to exceed $7.5 million at the end of any fiscal year. The Department must transfer the balance of the Fund that exceeds $7.5 million to the newly created account in the State Highway Fund.

The bill also authorizes the DMV to establish, by regulation, fees for certain permits. Finally, the bill removes the prospective expiration on the collection of the gross receipts taxes of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in Clark County.

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 at the age of 15 years and 6 months 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. An applicant must also pass the vision and knowledge test and pay a licensing fee of $22.

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:

- *Nevada Driver's 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

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Marji Paslov Thomas
Principal Research Analyst
Research Division
Legislative Counsel Bureau
E-mail: mpthomas@lcb.state.nv.us

Telephone: (775) 684-6825
Fax: (775) 684-6400

Education

Elementary-Secondary Education

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

The State supervises and regulates public elementary and secondary education through Nevada's Department of Education (NDE), headed by the Superintendent of Public Instruction. The Department is responsible for regulating and supporting the State's 17 school districts and 613 public schools. In Nevada, the responsibility for the education of elementary and secondary students is divided or shared among the State, local school districts, and charter schools.

CONSTITUTIONAL BASIS AND HISTORY

The *Nevada Constitution*, Article 11, Section 2 makes the State responsible for the establishment of the public school system. Specifically, the *Nevada 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, "Education") regarding the system of public schools. Sections of Title 34 address the 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.

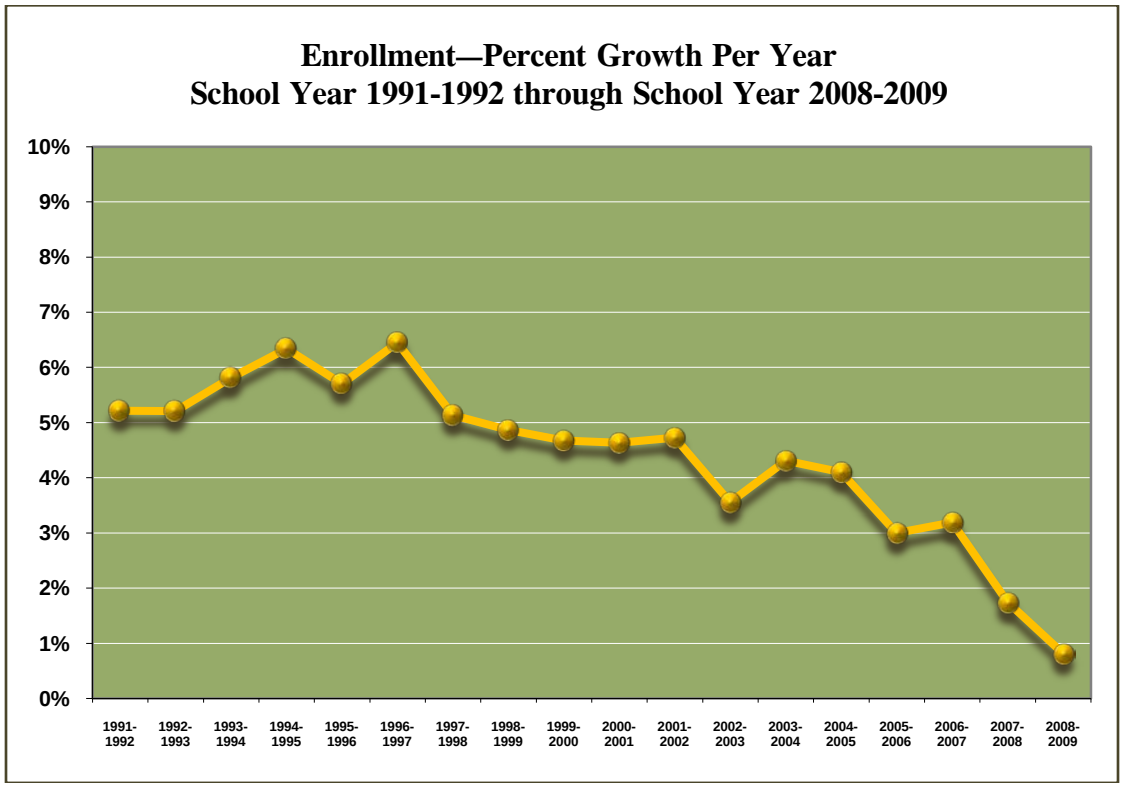
TABLE OF CONTENTS

Constitutional Basis and History 1
School District Characteristics and Enrollment 2
Financing 6
Governance and Oversight 7
Graduation Standards 9
Testing and Assessment 9
Educational Personnel 11
Class-Size Reduction Program 14
Charter Schools 15
Actions of the 2009 Session 17
Actions of the 26th Special Session 17
Education Issues for the 2011 Legislature 18
Frequently Asked Questions 18
Additional References 20
Selected Websites for Education 21
Selected Contact List 21
Research Staff Contacts 22
Glossary of Acronyms and Selected Terms 23

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 Health 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; education policy issues are discussed by the Legislative Committee on Education.

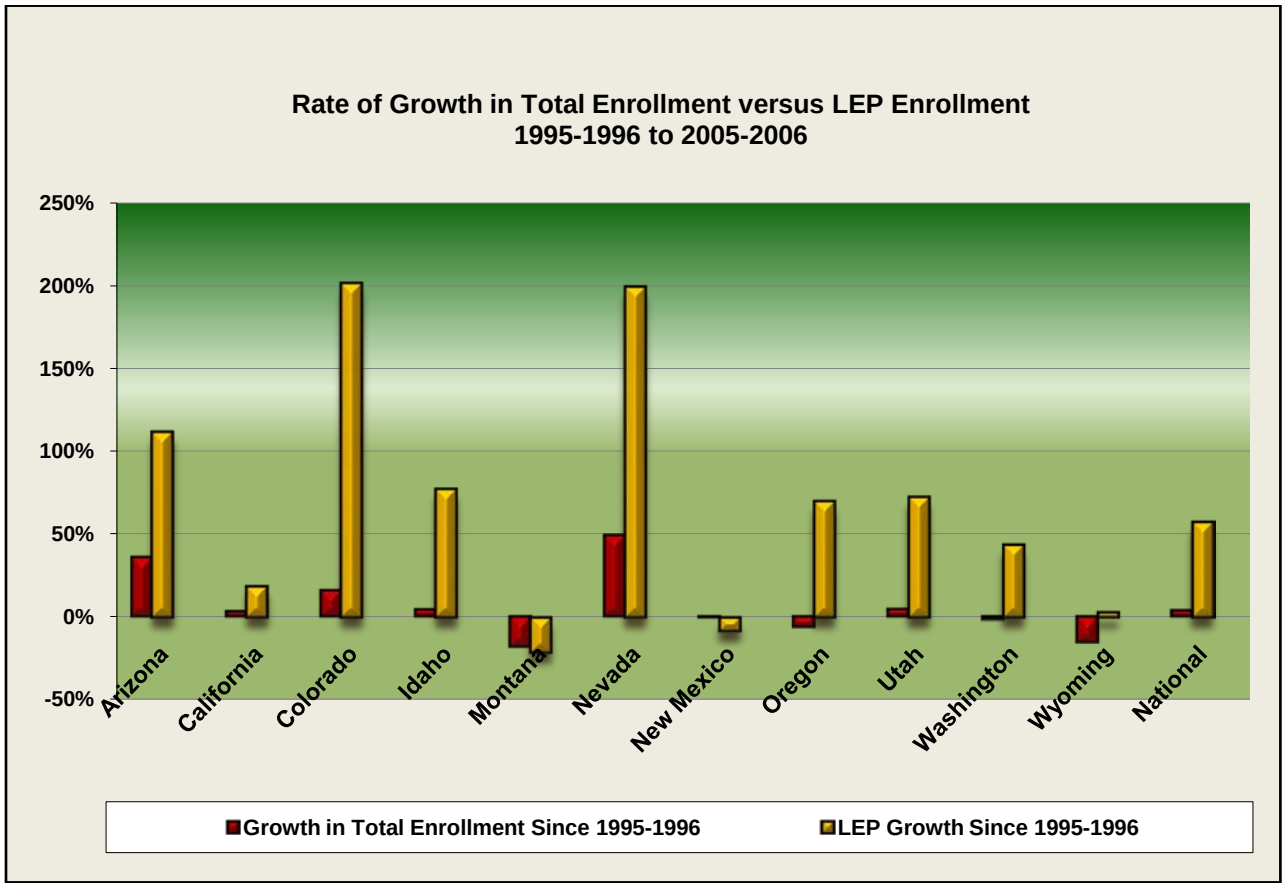
SCHOOL DISTRICT CHARACTERISTICS AND ENROLLMENT

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. According to the National Center for Education Statistics (NCES), from 1970 to 2006, Nevada's school age population grew by 255 percent, leading the western states and the nation. The NCES has issued projections that show Nevada second only to Arizona in the nation in enrollment growth, with a projected percent increase of approximately 43 percent from 2005 through 2017.



Although past enrollment growth has had a profound impact upon both district staffing and infrastructure in Nevada, especially in Clark County, review of more recent enrollment growth percentages shows enrollment growth leveling off. Throughout the 1990s until School Year (SY) 2001-2002, enrollment growth in Nevada averaged 5 percent per year. Beginning with

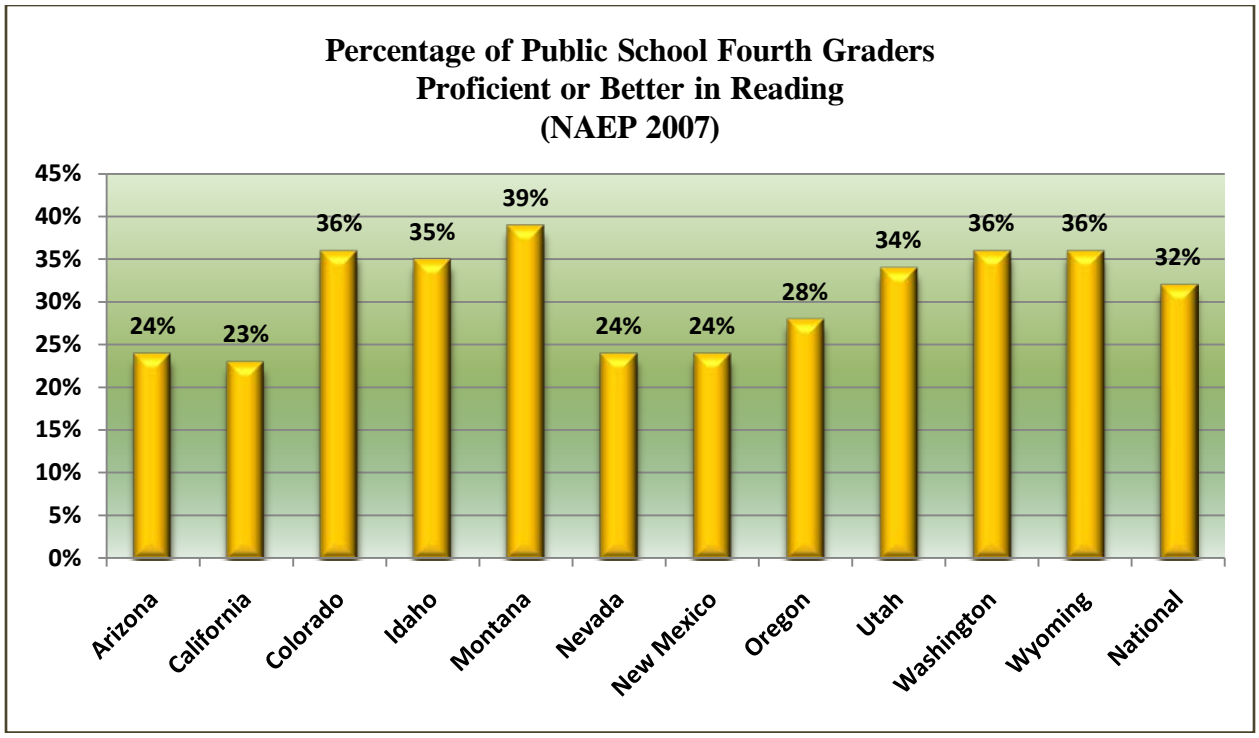
SY 2002-2003, enrollment growth began to level off with 4 percent growth in SY 2002-2003 through SY 2004-2005, 3 percent growth during SY 2005-2006 and SY 2006-2007, 2 percent growth during SY 2007-2008, and 1 percent growth for SY 2008-2009.

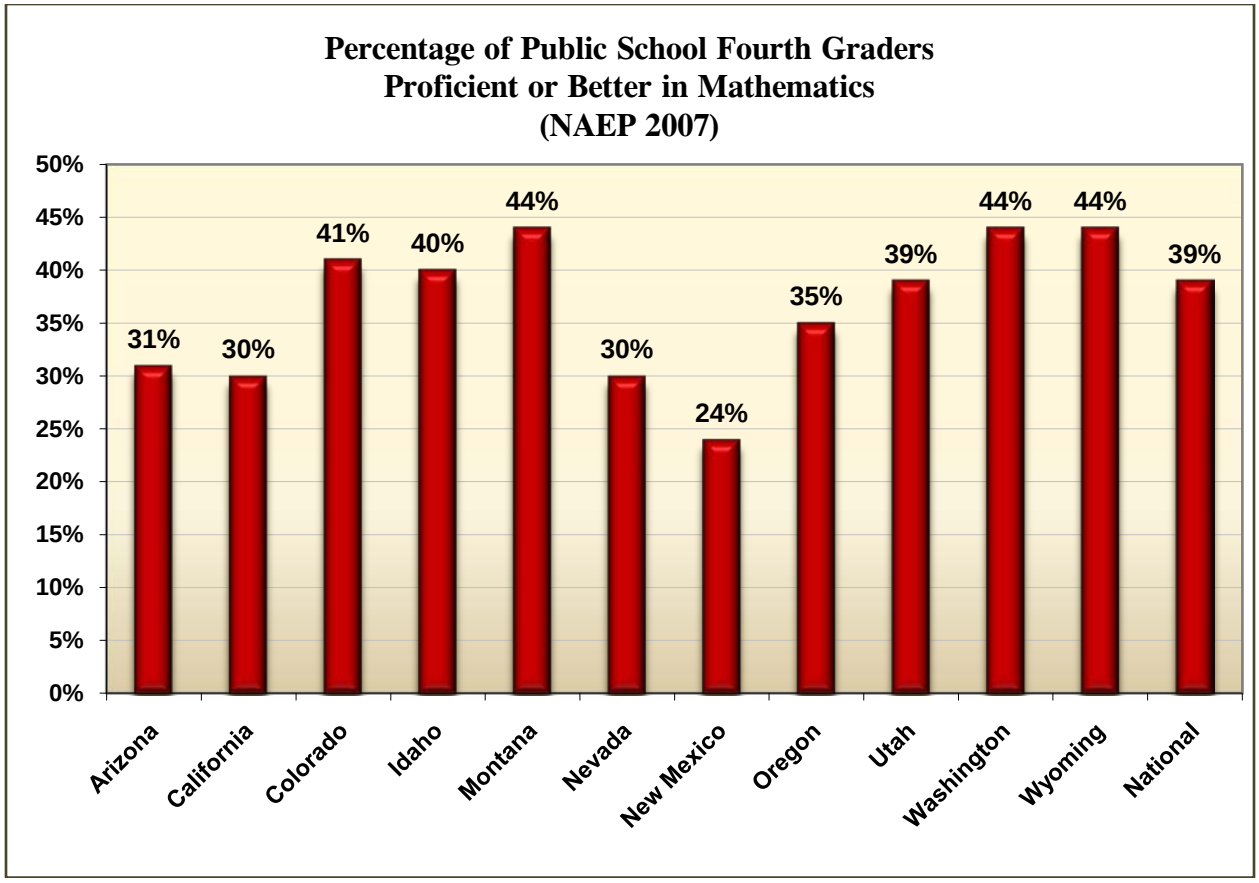


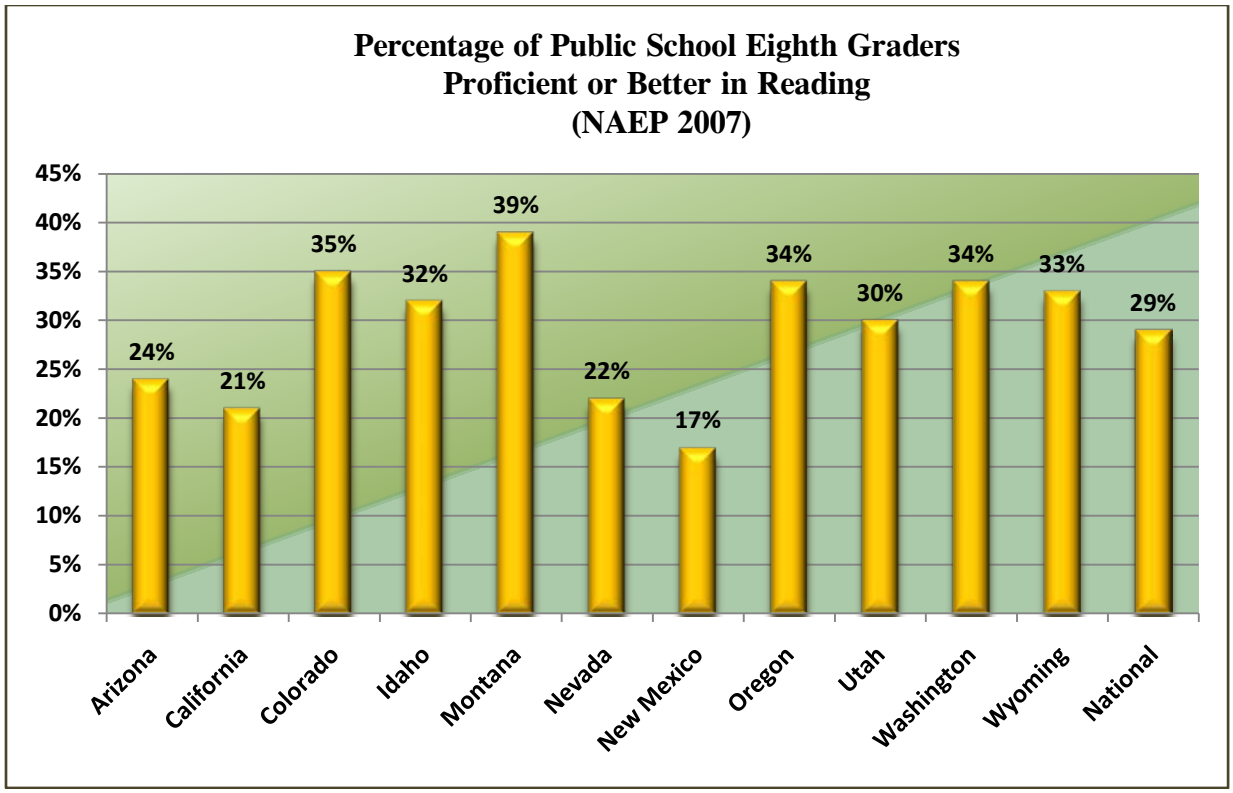
Part of Nevada's large enrollment growth involves an increase in ethnic minority student populations. According to the United States Department of Education—National Clearinghouse for English Language Acquisition, from 1995 to 2006, the number of enrolled students classified as English Language Learners in Nevada increased 199 percent. Approximately 95 percent of Nevada's limited English proficient students speak Spanish as their first language.

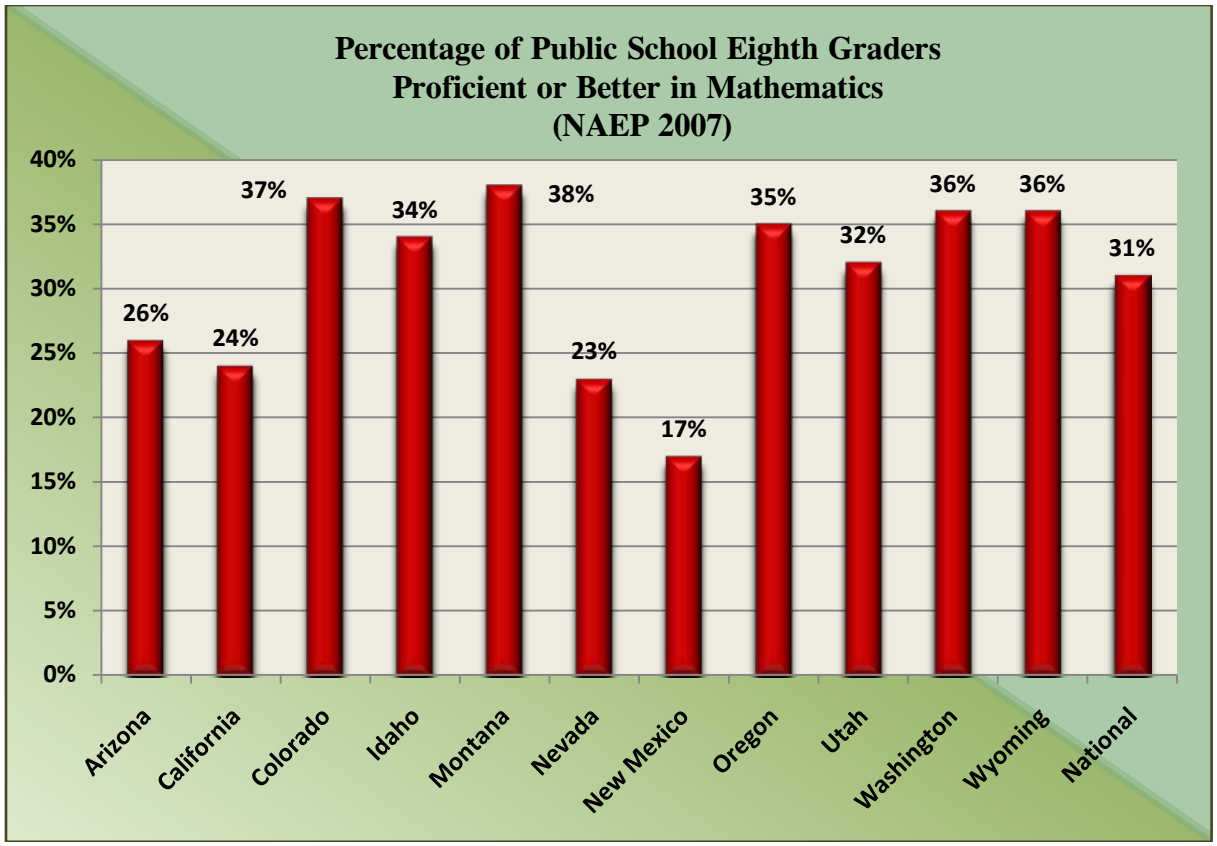
There are several areas of concern with regard to Nevada's student population. The State's annual dropout rate over the past ten years has averaged 6 percent, which is one of the highest dropout rates in the country. It also has a 55.8 percent average freshman graduation rate, one of the lowest in the nation.

Additionally, Nevada ranked 45th in the nation for the percent of fourth graders scoring proficient or better in reading on the 2007 National Assessment of Educational Progress (NAEP) and ranked 44th for eighth graders' performance on the 2007 NAEP reading assessment. Nevada ranked 44th in the nation for the percent of fourth graders scoring proficient or better in mathematics on the 2007 NAEP and ranked 42nd for eighth graders' performance on the 2007 NAEP mathematics assessment.


Percentage of Public School Fourth Graders
Proficient or Better in Reading
(NAEP 2007)
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
24%
23%
36%
35%
39%
24%
24%
28%
34%
36%
36%
32%
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
National


Percentage of Public School Fourth Graders
Proficient or Better in Mathematics
(NAEP 2007)
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
31%
30%
41%
40%
44%
30%
24%
35%
39%
44%
44%
39%
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
National


Percentage of Public School Eighth Graders
Proficient or Better in Reading
(NAEP 2007)
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
24%
21%
35%
32%
39%
22%
17%
34%
30%
34%
33%
29%
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
National


Percentage of Public School Eighth Graders
Proficient or Better in Mathematics
(NAEP 2007)
40%
35%
30%
25%
20%
15%
10%
5%
0%
26%
24%
37%
34%
38%
23%
17%
35%
32%
36%
36%
31%
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
National

FINANCING

The *Nevada Plan* is the system used to finance elementary and secondary education in Nevada'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. On average, this guaranteed funding contributes approximately 75 percent to 80 percent of school districts' general fund resources. *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 each school district (i.e., economic, geographic, et cetera). Transportation costs are included using 85 percent of the actual historical costs adjusted for inflation according to the Consumer Price Index. 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. The official count for apportionment purposes is taken in each district on the last day of the first school month. The number of kindergarten children and disabled 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.

State Aid

The difference between total guaranteed support and local resources is State aid, which is funded by the DSA. Revenue received by the school district from the 2.25 percent LSST and 25 cents of the property tax is deducted from the school district's Total Basic Support Guarantee to determine the amount of State aid the district will receive. If local revenues from these two sources 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.

Provisions for Significant Changes in Enrollment

To protect districts during times of declining enrollment, the NRS contains a "hold-harmless" provision. The guaranteed level of funding is based on the higher of the current or the previous year's enrollment, unless the decline in enrollment is more than 5 percent, in which case the funding is based on the higher of the current or the previous two years' enrollment.

An additional provision assists school districts that experience significant growth in enrollment within the school year. If a district grows by more than 3 percent but less than 6 percent after the second school month, a growth increment consisting of an additional 2 percent of basic support is added to the guaranteed level of funding. If a district grows by more than 6 percent, the growth increment is 4 percent.

Special Education

Special Education is funded on a "unit" basis, with the amount per unit established by the Legislature. These units provide funding for licensed personnel who carry out 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.

Other Local and Categorical Funding

In addition to revenue guaranteed through the *Nevada Plan*, school districts receive other revenue considered "outside" the *Nevada Plan*. Revenues outside the formula, which are not part of the guarantee but are considered when calculating each school district's relative wealth, include the following: 50 cents of the Ad Valorem Tax on property; the share of basic government services tax distributed to school districts; franchise tax; interest income; tuition; unrestricted federal revenue, such as revenue received under Public Law 81-874 in lieu of taxes for federally impacted areas; and other local revenues.

In addition to revenues recognized by the *Nevada Plan*, school districts receive "categorical" funds from the federal government, State, and private organizations that may only be expended for designated purposes. Examples include the State-funded Class-Size Reduction Program, Early Childhood Education, remediation programs, and student counseling services. Federally funded programs include the Title I program for disadvantaged youngsters, the No Child Left Behind Act, the National School Lunch program, and the Individuals with Disabilities Education Act (IDEA). Categorical funds must be accounted for separately in special revenue funds. 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 (the Capital Projects Fund and the Debt Service Fund).

(Source: Fiscal Analysis Division, Legislative Counsel Bureau [LCB], 2009.)

GOVERNANCE AND OVERSIGHT

Assembly Concurrent Resolution No. 2 (File No. 89, *Statutes of Nevada*), as approved by the 2009 Legislature, directs the Legislative Commission to conduct an interim study concerning the governance and oversight of the system of K through 12 public education in Nevada. In response to this legislation, the Legislative Commission has appointed three members of the Senate and three members of the Assembly to form a Committee and carry out the study. Based upon the findings of the interim study, the Committee will recommend actions necessary for the efficient and effective operation of the statewide system to ensure the steady progression of Nevada's public schools and the achievement of Nevada's pupils. A report of the results of the study and any recommendations for legislation will be submitted to the 76th Session of the Nevada Legislature (2011).

Additional information about the structure of Nevada's public school system may be found in the LCB's Issue Paper entitled, "History of Selected Components of Nevada's Public Elementary-Secondary Education Governance Structure." This document may be accessed in the Research Library of the LCB or at the following website: http://leg.state.nv.us/lcb/research/research briefs/HistoryEdGovernStruct.pdf.

Current Governance Structure in Nevada

According to the National Association of State Boards of Education (NASBE), Nevada follows a basic structural model for its system of education governance that is shared by seven 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 nonpartisan 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 Nevada's 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 is 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.

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 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 Grade Point Average (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 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 disabled student who meets the standards prescribed by the student's Individualized Education Plan (as prepared by the student's local school district).

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.

Required Courses for a Standard Diploma—15 credits

English/Language	4 credits
Mathematics	3 credits
Science	2 credits
Physical Education	2 credits
American History	1 credit
American Government	1 credit
Arts/Humanities or CTE	1 credit
Computer Literacy	1/2 credit
Health	1/2 credit

Senate Bill 184 (Chapter 420, *Statutes of Nevada*), as approved by the 2007 Legislature, provides for a "default curriculum" in which high school pupils enroll in four credits of English; four credits of mathematics, including Algebra I and geometry; three credits of science, including two laboratory courses; and three credits of social studies, including American government, American history, and world history or geography. A pupil may request a modified course of study that will satisfy at least the requirements for a standard high school diploma or an adjusted diploma, as applicable. The default curriculum applies to the Class of 2011.

TESTING AND ASSESSMENT

Following several sessions of discussion, in 1977 the Legislature adopted a mandated student testing program—the Nevada Proficiency Examination—to provide a statewide measure of student

accountability that was not previously available. Since 1977, the Legislature has required statewide testing.

Nevada Education Reform Act

The 1997 Nevada Education Reform Act (NERA) increased testing requirements as a part of the revised accountability program for public schools. A 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.

No Child Left Behind Act of 2001

To comply with the federal No Child Left Behind Act (NCLB), the Legislature enacted S.B. 1 (Chapter 1, *Statutes of Nevada 2003, 19th Special Session*). 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 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 standards-based CRTs required by NCLB are linked to the school accountability program, and are considered "high stakes" for schools and districts. The standards-based CRTs have been expanded to include a science examination at grades 5 and 8.

Since 1979, the HSPE has been a "high stakes" test for individual students since a passing score is required as a condition for high school graduation and more recently for eligibility in the State's Governor Guinn Millennium Scholarship Program. Historically, the HSPE has included math, reading, and writing examinations; however, beginning with the Class of 2010, a science test is included in the examination.

The 2007 Legislature, through the passage of S.B. 312 (Chapter 289, *Statutes of Nevada*), now allows a pupil who has failed to pass the HSPE at least three times to pursue an alternative route to receive a standard high school diploma. To be eligible, a pupil must pass the mathematics and reading subject areas of the HSPE, earn an overall GPA of 2.75 on a 4.0 grading scale, and satisfy alternative criteria that demonstrate proficiency in the subject areas on the examination that the pupil failed to pass.

The following table presents the current statewide assessment system in Nevada:

Current System of Statewide Examinations for *All Students* 2009–2010 Testing Schedule										
	3	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Norm-Referenced Test (NRT)[1]										
National Assessment of Education Progress (NAEP) [sample only][2]		♦				♦				♦
Writing Exam[3]			♦			♦			♦	♦
High School Proficiency Examination (HSPE) (Reading, Math, and Science)[4]								♦	♦	♦
Nevada Criterion-Referenced Tests (CRTs) (Reading, Math, and Science)[5]	♦	♦	♦	♦	♦	♦				
Current System of Statewide Examinations for *Special Student Populations* 2008–2009 Testing Schedule										
Nevada Alternate Scales of Academic Achievement (NASAA)[6]	♦	♦	♦	♦	♦	♦			♦	
English Language Proficiency Assessment (ELPA)[7]	♦	♦	♦	♦	♦	♦	♦	♦	♦	♦

[1]Due to budget reductions, administration of the NRT during the 2009-2011 Biennium has been eliminated (see Senate Bill 416, Chapter 423, *Statutes of Nevada, 2009*).
[2]The NAEP is administered to 9-, 13-, and 17-year-old pupils.
[3]The writing examinations in grades 11 and 12 are part of the HSPE. Only those 12th graders who have failed the writing examination in grade 11 are required to take the examination.
[4]The Class of 2010 is the first class required to pass the science portion of the HSPE.
[5]In order to prepare students to take the science portion of the HSPE, pupils in grades 5 and 8 are now required to take a science CRT.
[6]Eligible students are only required to participate in the assessment once during high school; participation must occur during the eleventh grade school year.
[7]All Limited English Proficient (LEP) students (K through 12) must take the ELPA to determine English proficiency.

EDUCATIONAL PERSONNEL

During SY 2008-2009, Nevada's school districts employed 27,365 licensed personnel; of these, 22,886 (84 percent) were classroom teachers. The National Education Association's (NEA) 2008 salary survey reported Nevada's average teacher salary at $47,710; the national average was reported at $52,308. (NOTE: The NEA estimates do not include the percent employee portion of the retirement contribution, which the local school districts pay for employees.)

Collective Bargaining

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. 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 Employee-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 of NRS. There is only one recognized employee organization for each bargaining unit. There are 17 organizations representing teachers; one in each school district.

2009-2011 Budget Reductions: Teacher and State Employee Salaries

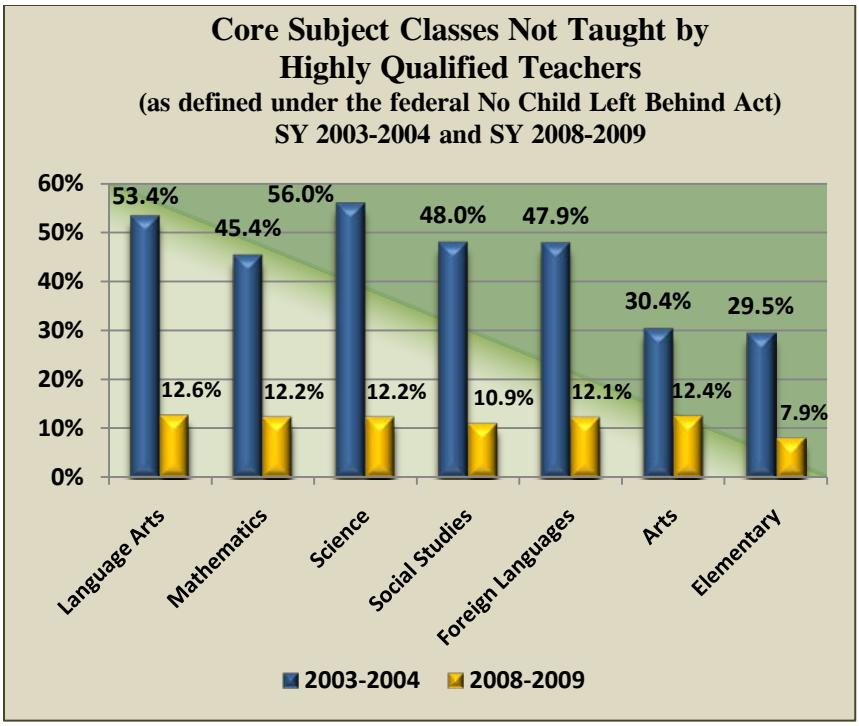
The 2009 Legislature reduced funding for teacher salaries 4 percent in each fiscal year of the 2009-2011 Biennium to help meet projected revenue shortfalls. However, as noted previously, the actual salaries of teachers continue to be subject to local collective bargaining agreements. Therefore, it is not known if the reduction will result in actual pay decreases for teachers in any of the school districts.

For all other State employees, 12-day furloughs were approved by the 2009 Legislature in each fiscal year of the 2009-2011 Biennium; this results in a reduction in pay of approximately 4.6 percent. In addition, longevity pay and merit pay increases for State employees have been temporarily suspended. The furlough provisions are outlined in S.B. 433 (Chapter 391, *Statutes of Nevada 2009*).

Senate Bill 433 provides that State employees who are subject to furloughs are held harmless in the accumulation of retirement services credit. In addition, during the 2009-2011 Biennium, the Interim Finance Committee will project the balance in the General Fund and the Distributive School Account. If the projected balance of the General Fund is at least $390 million, the bill provides for General Fund and Highway Fund appropriations to reduce unpaid furlough leave from 12 days to 9 days, along with funding sufficient to increase the salaries for personnel employed by school districts by 1 percent. If the projected balance of the General Fund is $425 million, the bill provides for General Fund and Highway Fund appropriations to reduce unpaid furlough days from 12 days to 7 days with funding sufficient to increase the salaries for personnel employed by the school districts by 2 percent.

Highly Qualified Teachers

A key focus of NCLB is the importance of highly qualified teachers. Highly qualified teachers must have: (1) a bachelor's degree; (2) full State certification or licensure; and (3) proof that they know each subject they teach. Under the federal law, all teachers of core academic subjects were to be highly qualified by SY 2005-2006. This timeline was extended to SY 2006-2007 for Nevada, based upon an approved extension received from the federal government. During SY 2006-2007, approximately 81 percent of elementary school teachers in Nevada met the criteria for highly qualified teachers. For secondary schools, the percent of core subject areas taught by highly qualified teachers ranged from approximately 71 percent in English to 78 percent in Social Studies and Arts.



Certain Nevada teachers who were hired in Nevada before July 1, 2003, are 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—Core Subject Assessments, or meet the criteria of Nevada's High Objective Uniform State Standard of Evaluation (HOUSSE). Nevada's HOUSSE rules require a teacher to have three years of full-time teaching experience by the end of SY 2005-2006, and successfully complete one of the following: an academic major, course work equivalent to an undergraduate academic major, a graduate degree in the subject being taught, a professional license in the subject being taught issued by Nevada licensing, or national board certification.

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." Districts that are not considered "rural" by the current definition are: Carson City, Clark, Douglas, Lyon, and Washoe.

The 2004 IDEA amendments provide that special education teachers hired after July 1, 2003, who teach multiple core academic subjects and already meet the highly qualified requirements in language arts, mathematics, or science at the time they are hired, have two additional years after the date of hire to become highly qualified in all other academic subjects they teach, including through the use of HOUSSE.

(Source: No Child Left Behind Requirements for Meeting the Definition of a "Highly Qualified Teacher," Nevada's Department of Education, October 2007.)

CLASS-SIZE REDUCTION PROGRAM

A key reform initiative for nearly two decades is Nevada's program to reduce pupil-to-teacher ratios, commonly known as the Class-Size Reduction Program. Following a review of the topic by a 1988 Interim legislative study, the 1989 Legislature enacted the Class-Size Reduction Act (Assembly Bill 964, Chapter 864, *Statutes of Nevada 1989*). The measure was designed to reduce the pupil-to-teacher ratio in public schools, particularly in the earliest grades where the core curriculum is taught.

The program was scheduled for implementation in several phases. The first step reduced the ratios in selected kindergartens and first grade for SY 1990-1991. The next phase was designed to improve second grade ratios, followed by third grade reductions and broadening kindergarten assistance. The 1991 Legislature made funds available for SY 1991-1992 to reduce the ratios in first and second grades and selected kindergartens to the 16-to-1 ratio. Due to budget shortfalls late in 1991 and the continuing State fiscal needs, the third grade phase was delayed until FY 1996-1997 when partial funding was provided at a 19-to-1 ratio. Those funding formulas continued throughout the subsequent biennia.

After achieving the target ratio of 15 pupils to 1 teacher in the primary grades, the original program proposed that the pupil-to-teacher 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 to 12. Until the 2005 Legislative Session, only the primary grades (K through 3) had been addressed.

Based upon a pilot program in Elko County, the 2005 Legislature enacted S.B. 460 (Chapter 457, *Statutes of Nevada*), which provided flexibility in implementing pupil-to-teacher ratios in grades 1 through 6 for school districts other than Clark and Washoe. Pupil-to-teacher ratios would be limited to not more than 22 to 1 in grades 1 through 3, and not more than 25 to 1 in grades 4 through 6. During SY 2005-2006, the Churchill, Douglas, Elko, and White Pine County School Districts were approved to carry out an alternative class-size reduction program. Since then, the Churchill, Douglas, and Elko County School Districts have continued the alternative program.

Since the 1999 Legislative Session, the Legislature has authorized school districts, subject to the approval of the State's Superintendent of Public Instruction, to operate alternative programs for reducing the ratio of pupils per teacher or to implement programs of remedial education that have been found to be effective in improving pupil achievement in grades 1, 2, and 3.

2009-2011 Budget Reductions: Class-Size Reduction Program

Assembly Bill 4 (Chapter 7, *Statutes of Nevada 2010, 26th Special Session*) temporarily revises provisions governing class-size reduction to allow school districts flexibility in addressing budget shortfalls. For SY 2010-2011, this measure authorizes a school district to increase class sizes in grades 1, 2, and 3 by no more than two pupils per teacher in each grade, to achieve pupil-teacher ratios of 18 to 1 in grades 1 and 2 and 21 to 1 in grade 3. If a school district elects to increase class sizes in this manner, all money that would have otherwise been expended by the school district to achieve the lower class sizes in grades 1 through 3 must be used to minimize the impact of budget

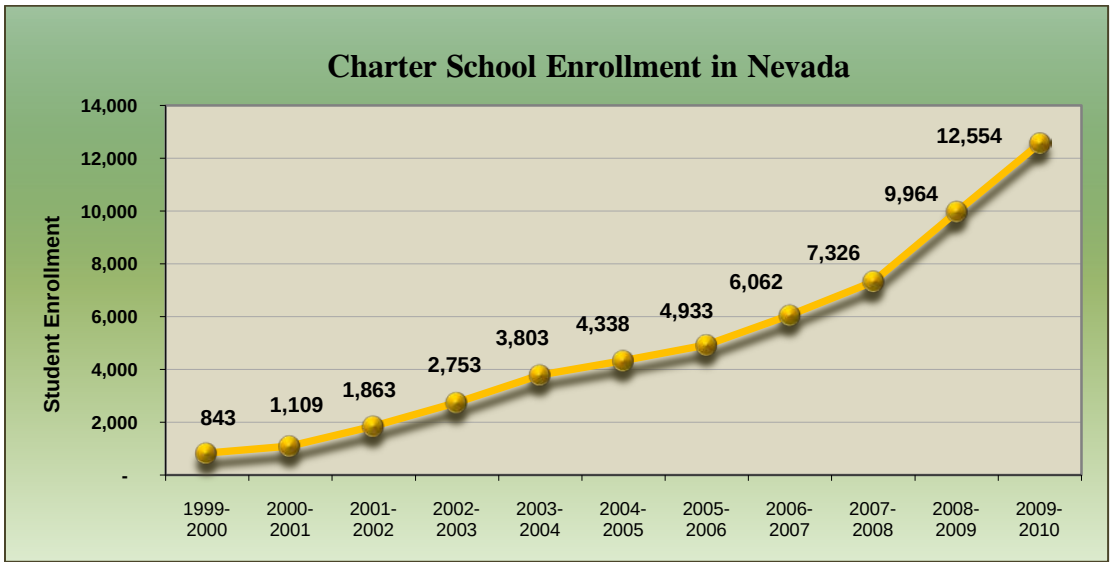
reductions on class sizes in grades 4 through 12. For reporting purposes, school districts that elect to increase class sizes in grades 1 through 3 will be required to report the pupil-teacher ratios achieved for each grade level from grade 1 through grade 12. The provisions of this bill expire by limitation on June 30, 2011.

CHARTER SCHOOLS

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. The first charter school legislation in Nevada was enacted in 1997, and Nevada's charter school law was substantially amended in subsequent sessions. While private schools can "convert" to a charter school, home schools may not.

Charters are valid for six years and may be renewed. 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.

There are 28 charter schools operating in Nevada for SY 2009-2010. Local school boards sponsor 18 of the charter schools and the State Board of Education sponsors 10 of the charter schools. Fourteen schools are located in the Clark County School District, ten in the Washoe County School District, two in the Carson City School District, one in the Douglas County School District, and one in the Elko County School District.



Source: Nevada's Department of Education, 2010.

Sponsors

The local school boards, the State Board of Education, and institutions of the Nevada System of Higher Education (NSHE) are authorized to be sponsors of charter schools. Each charter school is overseen by a governing body, which must include teachers and may include parents, or representatives of nonprofit organizations, businesses, or higher education institutions.

Governance

Each charter school is overseen by a governing body that may consist of either three licensed teachers or two licensed teachers and one person who previously held a license in good standing. A governing body may include parents, or representatives of nonprofit organizations, businesses, or higher education institutions. No more than two persons on a charter school's governing board may represent the same organization or business. A majority of the members of the governing body must be Nevada residents.

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 disability status, ethnicity, gender, or race, charter schools may be formed to serve students classified as at-risk, severe discipline problems, or special education.

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 of NRS. 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.

Revenue and Expenditures

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

Sponsors of charter schools are authorized to request reimbursement from the charter schools for the administrative costs associated with sponsorship for that school year, if the sponsor provided administrative services during that school year. The amount of administrative fees that may be requested is determined by the type of sponsor. If the sponsor is a local school board, up to 2 percent of the total amount apportioned to the charter school may be requested in the first year and up to 1 percent each year thereafter. If the sponsor is the State Board of Education or a college or university, up to 2 percent of the total amount apportioned may be requested in the first year and up to 1.5 percent each year thereafter.

(Additional information about charter schools may be found in LCB Background Paper 03-03, "Charter Schools," in the Research Library or at the following website: http://www.leg.state.nv.us/lcb/research/Bkground/BP03-03.pdf.)

ACTIONS OF THE 2009 SESSION

The education function includes three subfunctions: Nevada's Department of Education (grades K through 12); the NSHE; and other educational programs, which include the Department of Cultural Affairs, the Western Interstate Commission for Higher Education; and the Commission on Postsecondary Education. Historically, education has been the largest function in the State's budget supported by the State General Fund, and the 2009 Legislature continued this tradition.

Unlike any other Session, education funding commanded much of the Legislature's attention in 2009, because of the downturn in State revenues. Extraordinary efforts were made to reduce the impact of budget cuts on public education. Within the State budget, approximately $3.5 billion in the State General Fund was earmarked for education over the biennium, including $2.5 billion for elementary and secondary schools, and $1 billion for higher education.

The 2009 Legislature also addressed a number of important issues including the structure of public school governance and sponsorship of charter schools. The professional development programs for teachers and administrators were revised, as were licensing requirements for experienced teachers. Concerns for the budgets of school districts and the higher education institutions led to revisions of employee retirement and health benefits, collective bargaining agreements, and furloughs.

ACTIONS OF THE 26TH SPECIAL SESSION

In response to the continuing economic crisis, the Governor called the Legislature into a Special Session on February 23, 2010. Although education is a top priority in the State, some reductions were necessary to help with the budget shortfall. In addition, some policy changes were approved by the Legislature to assist the State in potentially receiving additional funds from the federal government.

The Legislature reduced the basic support guarantee of all school districts for the 2009-2011 Biennium. The guaranteed amount was lowered from an average of $5,251 to $5,186 in FY 2009-2010 and from $5,395 to $5,192 in FY 2010-2011. This change will require school districts to make corresponding reductions in their budgets. As noted previously in this report, the Legislature also temporarily revised provisions governing class-size reduction to allow school districts greater flexibility.

In addition to budget reductions, the Legislature considered policy recommendations that would make Nevada eligible to receive federal funds through the Federal American Recovery and Reinvestment Act of 2009 (ARRA). Part of Title XIV of the Act sets aside $4.35 billion for the Race to the Top (RTTT) Award; Nevada would be eligible to receive between $60 million and $175 million. Due to a statutory barrier prohibiting the linkage of student achievement to teacher and paraprofessional evaluations, Nevada was ineligible to apply for the RTTT. With the passage of S.B. 2 (Chapter 5,

Statutes of Nevada 2010, 26th Special Session), the prohibition on linking student achievement data to teachers and paraprofessionals for purposes of personnel evaluations was removed. Instead, this measure provides that such information must be considered, but must not be the sole criterion, for evaluating the performance of or taking disciplinary action against a teacher, paraprofessional, or other educational employee.

EDUCATION ISSUES FOR THE 2011 LEGISLATURE

Due to the economic downturn in Nevada, federal and State funding of education will continue to be an issue of high priority for the 2011 Legislature. One of the most important ongoing statutory committees is the Legislative Committee on Education. During the 2009-2010 Interim, the Committee has focused its efforts on reviewing the provisions of the federal RTTT Award. It is anticipated that the Committee will make recommendations to the 2011 Legislature, as appropriate, that will assist the State in being more competitive in its application for the federal funds.

Governance and oversight of the system of K through 12 education in Nevada will also be a focus of attention during the 2011 Session. As noted previously in this report, the findings from the Legislative Commission's Committee to Study the Governance and Oversight of the System of K-12 Public Education (A.C.R. 2, File No. 89, *Statutes of Nevada 2009*) will be submitted to the 2011 Legislature for consideration.

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 18 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 unless there has been an intent to circumvent the law (subsection 8 of NRS 392.040).

Q: Who determines if an absence is excused?

A: *Nevada Revised Statutes* 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 course work requirements. Although each school district's policy is different, examples of reasons for these types of absences include bereavement, family emergencies, religious holidays, 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 ten-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 IDEA.

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

A: Yes. A family wishing to homeschool its child(ren) must file a written notice of intent with the superintendent of the school district in which the child resides. A standard form for the notice is available from Nevada's Department of Education. An educational plan must be filed with the local school district board of trustees with the initial notice. Attendance at a private school also constitutes attendance under the compulsory statute (NRS 392.070).

Q: What is the HSPE 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 2007, at least 26 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. Historically, the HSPE has included math, reading, and writing examinations; however, beginning with the Class of 2010, a science test is included in the examination.

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 the 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 to take the math, reading, and science examinations; the writing test is not administered in grade 10; students in grade 11 have two chances in spring and summer to take all portions of the examination that have not yet been passed by a student; and students in grade 12 have five opportunities throughout the school year and in the summer.

The 2007 Legislature, through the passage of S.B. 312, now allows a pupil who has failed to pass the HSPE at least three times, to pursue an alternative route to receive a standard high school diploma. To be eligible, a pupil must pass the mathematics and reading subject areas of the HSPE, earn an overall GPA of 2.75 on a 4.0 grading scale, and satisfy alternative criteria that demonstrate proficiency in the subject areas on the examination, which the pupil failed to pass.

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 LCB has produced a number of documents related to K through 12 education. The 2009 Bulletin of the Legislative Committee on Education, the education oversight committee meeting during the interim period, may be ordered from LCB's Publications Office (LCB Bulletin No. 09-12, *Legislative Committee on Education, January 2009*). The telephone number for LCB's Publications Office is (775) 684-6835 in Carson City, Nevada.

The Bulletin may also be found online at: http://www.leg.state.nv.us/lcb/research/InterimReports/2009InterimReports/Bulletin09-12.pdf.

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 online at: http://www.leg.state.nv.us/lcb/research/EducationDataBook/2009EDB.cfm.

Additional data, specific to Nevada schools and districts may be found at Nevada's Department of Education accountability website ("Nevada report card"): http://www.nevadareportcard.com/.

Policy reviews of various education topics may be found in the following background papers prepared by the Research Division of LCB. These papers may be accessed at: http://www.leg.state.nv.us/lcb/research/background.cfm.

- LCB Background Paper 03-03, "Charter Schools"
- LCB Background Paper 01-2, "Nevada's Class-Size Reduction Program: Program Data and Summary of Evaluation Reports"
- LCB Background Paper 01-4, "Distance Education at the Elementary and Secondary School Levels"
- LCB Background Paper 97-4, "School Construction"
- LCB Background Paper 95-12, "Public Education Policy Structure in Nevada"
- LCB Background Paper 95-14, "Public School Accountability"

Additionally, Research Briefs titled "Full-Day Kindergarten" and "History of Empowerment Schools Program in Nevada," and an Issue Paper titled "History of Selected Components of Nevada's Public Elementary-Secondary Education Governance Structure" may be found at: http://www.leg.state.nv.us/lcb/research/researchbriefs/index.cfm.

Finally, Fact Sheets on "Charter Schools," "Class-Size Reduction," and "Elementary—Secondary Education" may be found at: http://leg.state.nv.us/lcb/research/Factsheets/index.cfm.

SELECTED WEBSITES FOR EDUCATION

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's	http://www.doe.nv.gov/
Department of Education, United States	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 Association of State Boards of Education	http://www.nasbe.org/
National Board for Professional Teaching Standards	http://www.nbpts.org/
National Center for Education Statistics	http://nces.ed.gov/
National Education Association	http://www.nea.org/
National School Boards Association	http://www.nsba.org/
Nevada School Districts	http://nde.doe.nv.gov/SD.htm
Nevada State Education Association	http://www.nsea-nv.org/
No Child Left Behind	http://www.ed.gov/nclb/landing.jhtml

SELECTED CONTACT LIST

Nevada's Department of Education	
Keith Rheault, Ph.D. Superintendent of Public Instruction Carson City, Nevada Telephone: (775) 687-9217 Fax: (775) 687-9101	Gloria Dopf Deputy Superintendent for Instructional, Research, and Evaluative Services Carson City, Nevada Telephone: (775) 687-9224 Fax: (775) 687-9101

Nevada's Department of Education (*continued*)	
James Wells Deputy Superintendent for Administrative and Fiscal Services Carson City, Nevada Telephone: (775) 687-9102 Fax: (775) 687-9101	
Selected Interest Groups	
Nevada Parent Teacher Association Alison Turner President Las Vegas, Nevada Telephone: (702) 258-7885 Toll-free Telephone: (800) 782-7201 Fax: (702) 258-7836	**Nevada Association of School Administrators** Ralph Cadwallader Executive Director Las Vegas, Nevada Telephone: (702) 233-6623 Fax: (702) 233-5794
Nevada State Education Association Terry Hickman Executive Director Las Vegas, Nevada Telephone: (702) 733-7330 Fax: (702) 733-6004	**Nevada Association of School Boards** Dotty Merrill, Ed.D. Executive Director Reno, Nevada Telephone: (775) 443-5988 Fax: (775) 324-5579

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

H. Pepper Sturm
Chief Deputy Research Director
E-mail: sturm@lcb.state.nv.us

Melinda Martini
Senior Research Analyst
E-mail: mmartini@lcb.state.nv.us

Carol M. Stonefield
Supervising Principal Research Analyst
E-mail: cstonefield@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825

GLOSSARY OF ACRONYMS AND SELECTED TERMS

AFT	American Federation of Teachers
ARRA	Federal American Recovery and Reinvestment Act of 2009
AYP	Adequate Yearly Progress
CBE	Council for Basic Education
CCSSO	Council of Chief State School Officers
CRT	Criterion-Referenced Test
CSR	Class-Size Reduction
DSA	Distributive School Account
ECE	Early Childhood Education
ECS	Education Commission of the States
ELA	English Language Arts
ELL	English Language Learners (used interchangeably with ESL and LEP)
ESEA	Elementary and Secondary Education Act of 1965
ESL	English as a Second Language (used interchangeably with ELL and LEP)
ETS	Educational Testing Service
FERPA	Family Educational Rights and Privacy Act
GTE	Gifted and Talented Education
HOUSSE	High Objective Uniform State Standard of Evaluation (applied to teachers)
HSPE	High School Proficiency Examination
IDEA	Individuals with Disabilities Education Act
IEP	Individual Education Plan
ITBS	Iowa Test of Basic Skills
LAS	Language Assessment Scales
LBEAPE	Legislative Bureau of Educational Accountability and Program Evaluation
LEA	Local Education Agency
LEP	Limited English Proficiency (used interchangeably with ELL and ESL)
LSST	Local School Support Tax
N	Number
NAEP	National Assessment of Educational Progress
NASA	Nevada Association of School Administrators
NASB	Nevada Association of School Boards
NASS	Nevada Association of School Superintendents
NCATE	National Council for Accreditation of Teacher Education
NCES	National Center for Education Statistics
NCLB	No Child Left Behind Act of 2001
NDE	Nevada's Department of Education
NEA	National Education Association
NELIP	Nevada Early Literacy Intervention Program
NERA	Nevada Education Reform Act
NRT	Norm-Referenced Test
NSEA	Nevada State Education Association
NSHE	Nevada System of Higher Education

PTA	Parent Teacher Association
RPDP	Regional Professional Development Programs
RTTT	Federal Race to the Top Award
SAIN	System of Accountability Information for Nevada (formerly SMART)
SBE	State Board of Education
SCAAN	Skills and Competencies Alternate Assessment of Nevada
SEA	State Education Agency
TAP	Technical Assistance Partnership
UNLV	University of Nevada, Las Vegas
UNR	University of Nevada, Reno
USDE	U.S. Department of Education
WICHE	Western Interstate Commission for Higher Education

Adequate Yearly Progress (AYP)
The Federal No Child Left Behind Act requires schools and districts to measure and report students' annual academic progress toward proficiency in English/language arts and mathematics by 2013-2014. The 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.

Criterion-Referenced Tests (CRTs)
In general, CRTs are 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.

Nevada Education Reform Act (NERA)
The 1997 Legislature passed a sweeping reform package called the Nevada Education Reform Act. 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.

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

Nevada's Department of Education (NDE)
The NDE 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.

No Child Left Behind (NCLB)
The NCLB is the name for the 2001 reauthorization of the federal Elementary and Secondary Education Act. Signed into law on January 8, 2002, the NCLB 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.

Norm-Referenced Tests (NRTs)
In general, NRTs are 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.

Title I
Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq*.) Improving the Academic Achievement of the Disadvantaged—generally based on calculation of the number of children eligible for free or reduced price lunches.

Postsecondary Education

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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

TABLE OF CONTENTS

Nevada System of Higher Education 1
Campuses 1
Governance of the NSHE 2
Admission 4
Tuition and Fees 4
Articulation 5
Financial Aid 6
Financing NSHE 6
Nonpublic Institutions 7
Colleges and Universities 7
Proprietary Schools 8
College Savings Plans 8
Nevada Prepaid Tuition Program 8
Nevada College Savings Program 9
Actions of the 26th Special Session 9
Research Staff Contact 9
Glossary of Acronyms 10

NEVADA SYSTEM OF HIGHER EDUCATION

The NSHE consists of two research universities, one State college, four community colleges, and one research institute (http://system.nevada.edu/). 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

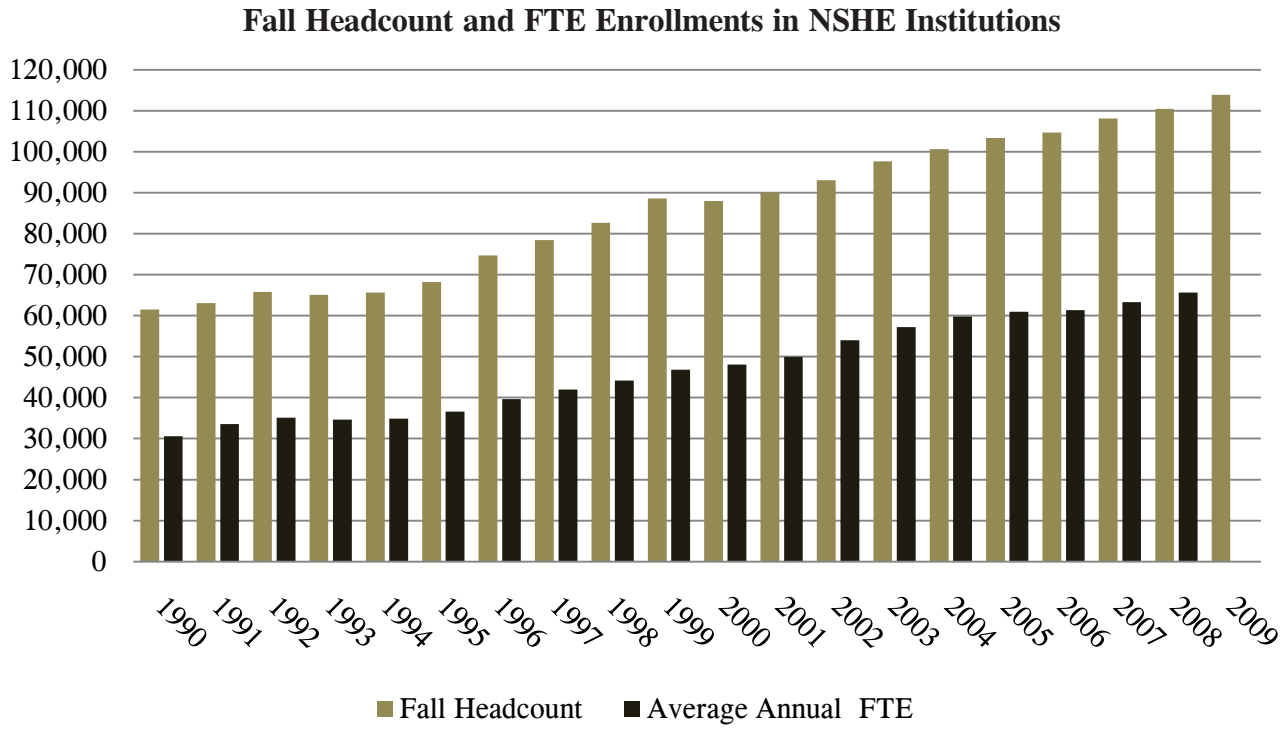
The four-year institutions include the University of Nevada, Reno (UNR), and the University of Nevada, Las Vegas (UNLV). Nevada State College (NSC) in Henderson offers baccalaureate degrees with special emphasis in nursing and teacher education.

The two-year institutions include the College of Southern Nevada with 3 main campuses and 11 academic centers. Truckee Meadows Community College includes the main campus and four satellite sites in Reno. Western Nevada College maintains the main campus in Carson City,

two satellite centers, and several rural instructional centers. Great Basin College, Elko, operates four branch campuses and numerous satellite centers. In 2007, the Regents approved requested name changes to reflect their authorization of selected baccalaureate degrees at three of the two-year institutions.

Finally, the Desert Research Institute 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.



In Fall 2009 headcount enrollment for the NSHE was 113,911 students at all institutions, including all divisions and degree levels. According to the NSHE Office of Academic and Student Affairs, the calculations to determine FTE are based on 15 credit hours for undergraduate students, 12 credit hours for master's level students, and 9 credit hours for doctoral students.

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 Article 11 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 v. 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 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 websites.

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 3.0 GPA (grade point average). As an alternative to the required GPA, a student may submit a combined score from the SAT Critical Reading and SAT Math sections of at least 1040 or an ACT composite score of at least 22. A student may also submit a Nevada Advanced High School Diploma as qualification for admission. 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.

A student who does not meet the university admission requirements may be admitted through other criteria, such as a combination of test scores and GPA that indicate a potential for success, special talents or abilities in the visual or performing arts or athletics, overcoming adversity or special hardship, or other special circumstances. The number of students admitted under these criteria must not exceed 15 percent of the previous year's admissions.

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. High school students who are at least 15 years of age may be enrolled as nondegree 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.

Two-Year 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 2009-2011.

NSHE Registration Fees Schedule per Credit		
	2009-2010	**2010-2011**
Universities (graduate)	$217.75	$239.50
Universities (undergraduate)	$136.00	$142.75
NSC	$98.25	$103.25
Community Colleges upper-division	$98.25	$103.25
Community Colleges	$60.00	$63.00

NSHE Nonresident Tuition Assessed in Addition to Registration Fees		
	2009-2010	**2010-2011**
Full-time*, Universities	$12,340 per year	$13,290 per year
Full-time*, NSC	$9,264 per year	$9,818 per year
Full-time*, Community Colleges	$6,188 per year	$6,347 per year
*Nonresident tuition is assessed on the basis of full-time or part-time enrollment. Full-time nonresident tuition rates are assessed to students enrolled in seven or more credits. Part-time students pay on the basis of a calculation multiplying the registration fees times 110 percent.		

In addition, a surcharge on undergraduate registration fees was put in place for academic year 2009-2010. These ranged from $6.50 per credit hour at the universities to $3.00 per credit hour at the community colleges.

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. The Board of Regents has also mandated a website outlining the transfer process and protections given to baccalaureate degree-seeking students. The site includes the rights and responsibilities of a transfer student and the responsibilities of all NSHE institutions.

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. Forty percent of the State's annual revenues from the Tobacco Master Settlement Agreement have been allocated to fund the Governor Guinn Millennium Scholarship, which is overseen by the State Treasurer. In the 26th Special Session, however, the Legislature revised that allocation to permit the money in the Millennium Scholarship Trust Fund to be used for any other purpose authorized by the Legislature.

Statutorily, 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.

Because of the reduction in available State General Fund revenues, the 2009 Legislature reduced the appropriation over the total of $1.679 billion appropriated for the 2007-2009 Biennium. The final General Fund appropriation was $501.05 million in each year of the 2009-2011 Biennium. Supplementing that with allocations of $92.4 million in annual education stabilization funding from the federal American Recovery and Reinvestment Act (ARRA), the Legislature was able to limit funding reductions to 12.5 percent in each year.

The following table displays the summary of appropriations for the NSHE for the 2009-2011 Biennium:

NSHE Appropriations for 2009-2011 Biennium			
	2009-2010	2010-2011	Total
General Fund[1]	$501,051,371	$501,050,065	$1,002,101,436
Federal Fund	2,541,731	2,542,628	5,084,359
Interagency Transfer[2]	107,595,348	107,585,591	215,180,939
Other	192,086,306	202,574,436	394,660,742
Total	**$803,274,756**	**$813,752,720**	**$1,617,027,476**

[1]Total General Fund appropriations include funds for Western Interstate Commission for Higher Education which was transferred to NSHE, effective in Fiscal Year 2010.
[2]Interagency transfers include ARRA State Fiscal Stabilization Funds and recharge revenues from UNR and UNLV.
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 to Study the Funding of Higher Education (Senate Bill 443, Chapter 505, *Statutes of Nevada 1999*), 1999-2000. The formula is driven by a cost reimbursement model. The report of the Committee may be found at the following website: http://www.leg.state.nv.us/lcb/research/2001Intstudy.cfm.

As the consultant to the Committee to Evaluate Higher Education Programs (Assembly Bill 203, Chapter 443, *Statutes of Nevada 2003*) in the 2003-2004 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 U.S. Department of Education. Nevada's Commission on Postsecondary Education (http://www.cpe.state.nv.us/) is the sole authority for licensing a proprietary postsecondary educational institution in this State.

Colleges and Universities

Nevada has one accredited, private, nonprofit, four-year degree-granting institution, 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. Another accredited, nonprofit institution, University of Southern Nevada, started in Las Vegas as the Nevada College of Pharmacy, enrolling its first class in 2001. Emphasizing health care professions, the university offers degrees in nursing and business as well as certain other postdoctoral training and continuing education opportunities.

According to the U.S. Department of Education, several accredited private, for-profit, four-year institutions operate in Nevada, including:

- Art Institute of Las Vegas;
- Devry University;
- ITT Technical Institute-Henderson;
- Morrison University; and
- University of Phoenix.

Private, for-profit, two-year and four-year institutions in Nevada include:

- Career College of Northern Nevada;
- Heritage College;
- High-Tech Institute-Las Vegas;
- International Academy of Design and Technology;
- Las Vegas College;
- Le Cordon Bleu College of Culinary Arts; and
- Pima Medical Institute.

Proprietary Schools

Proprietary schools may be distinguished from other educational entities based largely on their for-profit education and training programs. According to the Commission on Postsecondary Education, 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 S.B. 271 (Chapter 687, *Statutes of Nevada*), providing for a prepaid tuition program to be administered by the State Treasurer. Family members can choose to pay a lump sum, spread the payment out over five years with 60 equal payments, or pay each month from

the time of enrollment until the child is ready to start college. This program is fully transferable to private or public out-of-state colleges and universities and can be transferred to another family member. The purchaser does not have to pay federal tax on any interest or the increased contract value each year. This program qualifies under the Internal Revenue Code Section 529. Additional information may be obtained at the website of the State Treasurer at https://nevadatreasurer.gov/PrepaidTuition.htm.

Nevada College Savings Program

The Legislature provided for a college savings program in 2001 with the enactment of A.B. 554 (Chapter 445, *Statutes of Nevada*). The State Treasurer was authorized to adopt regulations to establish a qualified program pursuant to 26 U.S.C. § 529. To implement this program, the State Treasurer has contracted with private providers to offer these savings plans. Additional information may be obtained at https://nevadatreasurer.gov/CollegeSavings.htm.

ACTIONS OF THE 26TH SPECIAL SESSION

Pursuant to the provisions of A.B. 6 (Chapter 10, *Statutes of Nevada 2010*), the General Fund appropriation to NSHE was reduced by $11,524,182 in Fiscal Year (FY) 2010 and $34,572,454 in FY 2011.

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Carol M. Stonefield
Supervising Principal Research Analyst
Research Division
Legislative Counsel Bureau
E-mail: cstonefield@lcb.state.nv.us

Telephone: (775) 684-6825
Fax: (775) 684-6400

GLOSSARY OF ACRONYMS

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

ARRA—American Recovery and Reinvestment Act of 2009 (Public Law 111-5)

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

Gaming in Nevada

Gaming in Nevada

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 (Legislative Counsel Bureau Bulletin No. 93-4, *Study of Gaming, December 1992*).

TABLE OF CONTENTS

History of Gaming in Nevada 1
The Initial Legalization of Gaming 2
The Prohibition of Gaming 2
The Relegalization of Gaming 2
The Modern Regulation of Gaming 3
The Regulation of Gaming in Nevada 3
The Role of NRS 4
State Gaming Agencies 4
Gaming Licenses 5
Gaming Employee Registration 6
Taxes and Revenue 6
Gaming/Live Entertainment Tax 6
2009 Significant Gaming Legislation 7
Additional Information 7
Research Staff Contacts 8
Glossary of Gaming Terms 9

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.**
>
> **Samuel Clemens**

Gaming has also been controversial to one degree or another. In 1861, the 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 two years imprisonment. Betting was punishable by a fine of not more than $500 and up to six 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, antigaming 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 Relegalization 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. Antigambling groups argued that gambling was a vice, pure and simple, and would attract gangsters and bring shame to Nevada.

The supporters of Assembly Bill 98 (Chapter 99, *Statutes of Nevada 1931*) 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 area 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 report.)

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 overregulation.

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 Racing"; and Chapter 467, "Unarmed Combat" (boxing).

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 Committee 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:

<u>Gaming Policy Committee</u>
Created in 1961, Nevada's 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 (chair), 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.

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) Audit; (3) Corporate Securities; (4) Enforcement; (5) Investigations; (6) Tax and License; and (7) Technology.

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 gaming employee registration 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;

4. A license for, or the operation of, an inter-casino linked system; or

5. A license for, or the operation of, a mobile gaming 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 Employee Registration

The State Gaming Control Board also administers the 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 Board as prescribed by regulation (see NRS 463.335 for additional information).

The Board must conduct an investigation of each applicant to determine eligibility, including a criminal history background check. Fees charged for the issuance of a gaming employee registration 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 2007-2009 Biennium, State gaming taxes comprised approximately 28 percent of the State's General Fund revenue ($1.4 billion). Revised projections by the State's Economic Forum during a special meeting called in January 2010 indicate State gaming tax revenue for the 2009-2011 Biennium is projected to be approximately $1.27 billion, or approximately 27 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 6.75 percent of revenue exceeding $134,000 (NRS 463.370). In Fiscal Year 2009-2010 alone, this fee is projected to bring in approximately $639 million. 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) nongaming 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.

2009 SIGNIFICANT GAMING LEGISLATION

Each session, the Legislature considers numerous proposals involving the regulation of the gaming industry, including an omnibus bill brought by the Board to address the many issues that are likely to arise. In an effort to keep up with technology, Senate Bill 83 (Chapter 79, *Statutes of Nevada 2009*) modernizes the definition of manufacturers and gaming devices and authorizes the Nevada Gaming Commission to regulate independent contractors in relation to manufacturers. The bill also requires call center operators and game developers to be licensed or found suitable.

Applications and associated documents filed with the Board and Commission are confidential and S.B. 83 clarifies that documents and reports prepared by staff of the Board and Commission are confidential as well. Another policy change in S.B. 83 prohibits the transfer of interests from probate until necessary gaming approvals are obtained, otherwise the interests must be purchased at fair market value.

In addition to ever-changing technology, the Board must keep pace with the global economy and the evolution of investment opportunities. This was brought to light recently when a Dubai World government fund was licensed to invest in MGM Mirage. Assembly Bill 218 (Chapter 434, *Statutes of Nevada 2009*) clarifies the Board's authority to require an applicant that is a governmental entity or that is owned or controlled by a governmental entity to apply for a license, registration, finding of suitability, or any required approval prescribed by the Commission.

The bill also expands existing law on pari-mutuel wagering to include dog races and provides that an agreement negotiated by the Off-Track Pari-Mutuel Wagering Committee must set the same rate for intrastate wagers that are placed at a race book and wagers placed using communications technology.

ADDITIONAL INFORMATION

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

Nevada Gaming Commission	
Members: Peter C. Bernhard (Chair) Tony Alamo, M.D. Joseph W. Brown John T. Moran Jr. Randolph J. Townsend	***Office Address:*** 1919 College Parkway Carson City, Nevada 89706-7941 Telephone: (775) 684-7750
Website: http://gaming.nv.gov/ (Includes links to other state, federal, and international bodies involved in the regulation of gaming.)	

State Gaming Control Board Members	
Members: Dennis K. Neilander (Chair) Mark A. Lipparelli Randall E. Sayre	***Mailing Address:*** P.O. Box 8003 Carson City, Nevada 89702-8003 Telephone: (775) 684-7700
Website: 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 1299 Pennsylvania Avenue, N.W. Suite 1175 Washington, D.C. 20004 Telephone: (202) 552-2675 Website: http://www.americangaming.org/	**Nevada Resort Association** 3773 Howard Hughes Parkway Suite 320 North Las Vegas, Nevada 89109 Telephone: (702) 735-4888 Fax: (702) 735-4620 Website: http://www.nevadaresorts.org/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Linda Eissmann
Principal Research Analyst
E-mail: leissmann@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

GLOSSARY OF GAMING TERMS

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] and [3])

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, the 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)

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])

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] and [3]) (See "Black book.")

Foreign gaming
The conduct of gaming outside this State. (NRS 463.680[1])

Gaming device
Any object used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss and which does not otherwise constitute associated equipment. (NRS 463.0155 as amended by S.B. 83, Chapter 79, *Statutes of Nevada 2009*)

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)

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)

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 seven-day period for guests at a licensed gaming establishment. (NRS 463.0164[1])

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)

Mobile gaming
The conduct of gambling games through communications devices operated solely in public areas of an establishment which holds a nonrestricted gaming license and which operates at least 100 slot machines and at least one other game by the use of communications technology that allows a person to transmit information to a computer to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information. (NRS 463.0176)

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;

4. A license for, or the operation of, an inter-casino linked system; or

5. A license for, or the operation of, a mobile gaming 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[2])

Off-track pari-mutuel wagering
Any pari-mutuel system of wagering approved by the Commission for the acceptance of wagers on races which take place outside of this State or sporting events. (NRS 464.005[3])

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[4])

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[5]) (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[1])

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. (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
The business of 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 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 Board, including classifiable fingerprints, unless otherwise suspended. (NRS 463.01955)

Tilt condition
A 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[29])

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 or she 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)

Government

Elections

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

Voting is the cornerstone of our democracy. Franklin D. Roosevelt captured this sentiment and the importance of direct elections in a 1936 speech 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.

The extent to which a nation conducts open, free, and fair elections is a good indication of the level of freedom enjoyed by its people. Indeed, voting is a coveted privilege in areas of the world where dictatorship, political upheaval, and oppressive rule tend to suppress citizens' ability to take part in their own governance. While recent national elections here in America have brought to light problems within various states' election systems, Nevada has enjoyed largely trouble-free elections. This suggests that Nevada's election system is functioning well. However, such a system is neither simple to create nor easy to maintain. It is vitally important that Nevada keep pace as new technologies become available and our State's demographics continue to change, if we are to ensure that our citizens continue to enjoy an accessible, transparent, and fair election system.

TABLE OF CONTENTS

Voter Eligibility, Registration, and Turnout 1

National Voter Registration Act of 1993 3

Absentee Ballots and Accommodations for People Who are Elderly and Disabled 6

Early Voting 7

Filing Officer and Deadlines for Declaring and Withdrawing Candidacy 8

Recall of Public Officers 12

The Recall in Nevada 13

Initiative and Referendum in Nevada and Other States 14

The Initiative and Referendum Process in Nevada 14

Key Election Officials in Nevada 19

Research Staff Contacts 22

VOTER ELIGIBILITY, REGISTRATION, AND TURNOUT

Qualified Electors and Applications to Register to Vote

Qualifications to register to vote and cast a ballot are set forth in the *Nevada Constitution* and in the *Nevada Revised Statutes* (NRS). Specifically, Article 2, Section 1 of the *Nevada 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 voter registration form, and sets forth the contents of the application to register to vote. After the form is received and processed by the county election office, the county election officer provides a voter registration card to the applicant.

Recent attention has focused on the distribution of voter registration application forms and the registration of voters by outside interest groups. In fact, prior to the 2008 General Election, an outside interest group working to register voters in Nevada committed several violations of State law which resulted in criminal prosecution. *Nevada Revised Statutes* 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 how the applications will be distributed. 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 new voter registration applications are processed properly, Nevada law requires that the following notice 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 law in 2001 to remind voters of the risks involved with relying on another person to return their voter registration application. In 2005, the Legislature passed a bill requiring that a receipt be included on all voter registration applications. Anyone who assists a voter in completing an application and then retains the application for later submission to the county election office must record his or her name on the duplicate copy retained by the voter. To help ensure that those who register by mail do so in time to be able to vote, the 2009 Legislature passed Senate Bill 162 (Chapter 295, *Statutes of Nevada*), which provides that an applicant shall be deemed to be registered either on the date the application is postmarked or on the date received by the county clerk, whichever is earlier.

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 (NVRA) of 1993, 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 a set of national voter registration standards designed to improve registration access 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 (Chapter 523, *Statutes of Nevada*), which was approved by the Governor on July 12, 1993, and Assembly Bill 619 (Chapter 608, *Statutes of Nevada*) of the 1995 Legislative Session. 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."

Legislative Declaration of Voters' 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 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 or her polling place to vote before 7 p.m. and the voter has not already cast a 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.

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 codified this requirement in Chapter 293 of NRS. Pursuant to NRS 293.675, the Secretary of State's office is 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 have implemented this statewide system, which serves as a uniform, centralized, and computerized voter registration list.

Under this system, a person can register to vote anywhere in Nevada and registration information is available on election department computers in all 17 counties. The centralized database is linked to the DMV and the Social Security Administration to help verify the accuracy of information contained in the voter registration application. The Office of Vital Records also provides death record information to the Secretary of State's office to assist in maintaining the statewide voter registration list. The statewide voter registration list serves as the official list of registered voters for the conduct of all elections in the State.

Voter Registration Figures

According to statistics compiled by the Secretary of State's office, total voter registration in Nevada has decreased by approximately 32,000 voters since the 2008 election cycle. As of December 2009, a total of 1,331,197 people were registered to vote in Nevada. This includes 579,773 Democrats and 468,023 Republicans (a difference of 111,750 voters). In addition, 209,178 people were registered as Nonpartisans, 57,225 as Independent Americans, 8,079 as Libertarians, and 4,001 as Greens. Pursuant to NRS 293.530, 190,868 registered voters are currently designated "inactive" in Nevada, meaning that these voters did not respond to an address verification card sent by their local clerk or registrar. Should an inactive voter fail to vote in an election before the polls have closed on the day of the second general election following the mailing of the verification form, his or her voter registration may be cancelled.

Voter Turnout

A notable increase in the number of registered Nevada voters who actually voted was observed at the 2008 General Election as compared to the 2006 General Election. The 2008 voter turnout of 80.27 percent was well over the 2006 voter turnout of 59.2 percent and was significantly greater than the previous presidential election in 2004 where 77.45 percent of registered voters cast ballots. Overall, voter turnout in Nevada at the 2008 General Election ranged from a high of 92 percent in Douglas and Storey Counties to a low of 70 percent in Nye County.

GENERAL ELECTION VOTER TURNOUT—1990 THROUGH 2008		
General Election	**Voter Turnout**	**Percent of Registered Voters Who Voted**
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*	613,360	70.1
2002	512,433	58.9
2004*	831,833	77.5
2006	586,274	59.2
2008*	970,019	80.3
*Presidential election year		

Source: Secretary of State's website at http://sos.state.nv.us/.

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 sheriffs, 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 the exception of 1954), primary elections had been held on the first Tuesday of September in each even-numbered year. In 2006 and 2008, primary elections in Nevada were held on the twelfth Tuesday before the general election (NRS 293.175). The 2005 Legislature approved this 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.

For these same reasons, and to shorten the primary election season and hopefully increase voter turnout, in 2009 the Legislature voted to move primary elections to the second Tuesday in June. Pertinent filing and reporting deadlines were adjusted accordingly. 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 293.12755). 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, Sparks, Carlin and Wells, 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 PEOPLE WHO ARE ELDERLY AND DISABLED

Absentee Ballots Generally

Like other states, Nevada offers voting by absentee ballot. 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. Nevada differs from some other states in that it does not require the applicant to provide a reason for requesting an absentee ballot. A Nevada registered voter living overseas may also request an absentee ballot electronically. The county clerk or registrar of voters shall use a fax machine to send an absentee ballot to an overseas registered voter who, in turn, shall mail or fax 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 People Who are Elderly and Disabled

Nevada law makes numerous accommodations for people who are elderly and physically disabled 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 be unable to go to the polls on election day. Specifically, NRS 293.316 provides that:

> 1. Any registered voter who is unable to go to the polls:
>
> (a) Because of an illness or disability resulting in confinement in a hospital, sanatorium, dwelling or nursing home; or
>
> (b) Because the registered voter 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 the registered voter 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 People Who are Elderly and Disabled

Polling places in Nevada must be completely accessible to people who are 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

Since its inception in 1993, early voting by personal appearance in Nevada has become quite popular. At both the 2004 and 2006 General Elections, nearly 42 percent of all votes were cast during early voting. In 2008, well over 50 percent of all votes were cast 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, counties and cities 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 counties and cities often set up additional temporary early voting locations in community centers, libraries, shopping malls, and supermarkets. Hours of operation for these satellite 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 offices elected from districts comprising only one county or part of one county. The city clerk is the filing officer for offices elected at municipal elections.

The first day of candidate filing for all candidates in statewide and county elections, excluding judicial offices other than municipal judge, begins on the first Monday in March and ends at 5 p.m. on the second Friday after the first Monday in March. 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.

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

CANDIDATE FILING FEES (NRS 293.193) ***(continued)*** 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.	
State Senator	$100
Assemblyman or Assemblywoman	$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).	

Using a Nickname on the Ballot

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 expected to conduct campaign activities in a professional and ethical manner and are encouraged to sign and file the "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 2010 election cycle are:

2010 ELECTION CYCLE CONTRIBUTIONS AND EXPENSES REPORTS	
Annual Report:	Due January 15, 2010
Report No. 1:	Due June 1, 2010
Report No. 2:	Due October 26, 2010
Report No. 3:	Due January 15, 2011
Annual Report:	Due January 15, 2011

All reports must be received no later than midnight. A candidate may submit the filing in person, via fax, by mail, or electronically via the Internet. 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 fifteenth 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.

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 my opponent's 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 principals and practices set forth in this Code.

_____ _____

Date Signature of Candidate

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 7, 2011, through July 6, 2011). If a special session is called, none of the persons named above may 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.

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.

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: (1) if the report is 1 to 7 days late, $25 for each day the report is late; (2) if the report is 8 to 15 days late, $50 for each day the report is late; (3) if the report is more than 15 days late, $100 for each day the report is late—up to a maximum of $5,000.

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.

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

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).

Proponents of the recall process maintain that 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) it can lead to abuses by well-financed special interest groups.

THE RECALL IN NEVADA

Nevada is 1 of 18 states and the District of Columbia that authorizes the recall of public officers. The State's recall provisions were added to the State constitution in 1912 by a vote of the people after being proposed and approved during the 1909 and 1911 Legislative Sessions. The use of the 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, though, the success rate remains low. For example, in the past two years, eight "notices of intent" to recall have been filed against elected officials in Nevada. Of these, seven recall efforts have failed and one remains "in-progress."

The Recall Process

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 subject of the recall filed his or her declaration of candidacy. Once the notice of intent has been filed, a recall petition may be circulated for signatures. The petition must contain the signatures of at least 25 percent of the number of registered voters in the State, county, or district which the public officer represents. *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. Once the signatures have been verified, the results of the examination are forwarded to the Secretary of State who then finds the petition either sufficient or insufficient.

Between 10 and 20 days after the Secretary of State gives notice 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.

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 names of the public officer subject to the recall and any other authorized candidate must appear. Article 2, Section 9 of the *Nevada Constitution* 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.

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.

INITIATIVE AND REFERENDUM IN NEVADA AND OTHER STATES

The initiative and referendum (I&R) process was popularized in the late nineteenth and early twentieth centuries during a wave of populist feeling that swept the country at the time. During the late 1890s, the Populist Party was gaining influence on the American political scene. Their platform included women's suffrage, direct election of United States Senators, and the use of I&R. In 1897, Nebraska became the first state to allow I&R for city elections. In 1898, South Dakota became the first state to adopt a statewide I&R. Utah became the second state to adopt a statewide I&R, 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 was in the early 1900s.

The popularity of the I&R was so great during the early part of the twentieth century that by 1918, 19 of the 24 states that currently have I&R had adopted the process. Mississippi was the last state to adopt I&R in 1992. Interestingly, most of the states that have adopted I&R 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, I&R operated quietly in the background of state politics for much of the twentieth century. However, during the last two decades, it has come back into vogue.

THE INITIATIVE AND REFERENDUM 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 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, a *direct initiative* seeks to amend the *Nevada Constitution*, while an *indirect initiative* seeks to amend an existing statute. 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 consideration and input 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.

In Nevada, I&R petitions may 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 provisions also 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 website.

The *Nevada Constitution* and various provisions in Chapter 295 of NRS also provide for I&R at the county and city level, although the filing, signature requirements, approval process, and time frames vary from the statewide I&R process.

Constitutional Amendments

An initiative petition to amend the *Nevada Constitution* 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 *Nevada 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 May 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 *Nevada Constitution* must be approved in identical form at two successive elections before becoming law.

Over the years, voters have considered numerous initiative proposals to amend the *Nevada Constitution*. Key proposals that have been approved address a number of different topics, including taxation, term limits, the definition of marriage, medical marijuana, and the minimum wage. Below is a sample of initiatives considered between 2000 and the present day.

INITIATIVE PROPOSALS TO AMEND THE *NEVADA CONSTITUTION*
Action by the Voters: 2000–2008

Year of Election	Topic	Election Result
2000	Authorizes possession and use of marijuana for certain medical purposes	Passed (Second vote of people)
2000	Recognizes marriage 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)

INITIATIVE PROPOSALS TO AMEND THE *NEVADA CONSTITUTION* Action by the Voters: 2000–2008 ***(continued)***		
Year of Election	**Topic**	**Election Result**
2004	Adds provisions regarding insurance rates and practices in Nevada	Failed (First vote of people)
2004	Authorizes penalties for lawyers participating in frivolous lawsuits 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)
2006	Requires funding public education before funding any other budget item	Passed (Second vote of people)
2006	Raises the minimum wage for working Nevadans	Passed (Second vote of people)
2006	Nevada Property Owner's Bill of Rights (PISTOL)	Passed (First vote of people)
2008	Nevada Property Owner's Bill of Rights (PISTOL)	Passed (Second vote of people)
2008	Removes unconstitutional 6-month residency requirement for voter registration and replaces it with 30-day requirement	Failed (First vote of people)
2008	Requires the Legislature to make certain findings before enacting certain tax exemptions	Passed (First vote of people)

Enacting or Amending a State Statute

An initiative petition may also be used to enact a new statute or to amend an existing one. 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 an initiative question.

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: 2000–2008		
Year of Election	**Topic**	**Election Result**
2004	Limits the fees an attorney could charge a person seeking damages against a negligent health care provider in a medical malpractice case	Passed
2006	Responsibly Protect Nevadans from Second Hand Smoke	Failed
2006	Clean Indoor Air Act	Passed
2006	Regulation of Marijuana	Failed
2008	Amend Sales and Use Tax Act of 1955 to allow the Legislature to repeal or change portions of the Act in accordance with federal law without holding a vote of the public	Failed

Geographic Distribution Requirement for Petition Signatures

Until recently, Nevada was one of ten states that had a "geographic distribution" signature requirement to qualify petitions for the ballot, whereby signatures had to be gathered in 75 percent (13 out of 17) of Nevada's 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.

In response, the 2007 Nevada Legislature approved Senate Bill 549 (Chapter 484, *Statutes of Nevada*) and Senate Joint Resolution No. 3 (File No. 105, *Statutes of Nevada*), both of which required that signatures totaling 10 percent of the number of voters who voted in the preceding general election must be gathered. However, S.B. 549 went further, creating a formula whereby signatures must be gathered in each county in proportion to that county's share of the State's total population. Instead of the previous geographic distribution requirement, under this measure an initiative petition had to be signed by a number of registered voters from each of the 17 counties in the State. In a new court challenge, the formula created by S.B. 549 was also found unconstitutional and in 2009 the Legislature took a different approach to this contentious issue.

Senate Bill 212 (Chapter 460, *Statutes of Nevada 2009*) requires the Legislature to create petition districts from which signatures for a petition for initiative must be gathered. The bill defines "petition district" to mean congressional district until July 1, 2011, at which time the Legislature must have established petition districts for the period after that date.

The Director of the Legislative Counsel Bureau is required to retain a copy of maps of the petition districts and make them available to any interested person for a reasonable fee not to exceed the actual cost of producing the copy. A petition for initiative must be signed by a number of registered voters in each petition district in the State equal to at least 10 percent of the voters who voted in that petition district in the last preceding general election.

A companion measure to S.B. 212, Assembly Joint Resolution No. 1 (File No. 98, *Statutes of Nevada 2009*), proposes to amend the *Nevada Constitution* to remove provisions requiring that a statewide initiative petition be signed by at least 10 percent of the voters who voted at the last preceding general election in at least 75 percent of the counties in the State. Instead, the resolution declares that an initiative petition shall be proposed by a number of registered voters from each petition district in this State equal to 10 percent of the number of voters who voted at the last general election in the petition district. The measure also stipulates that petition districts must be created by the Legislature.

Finally, the resolution specifies that the number of signatures required on a petition for 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. If approved in identical form during the 2011 Session of the Legislature, the proposal will be submitted to the voters for final approval or disapproval at the 2012 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 either to "set in stone" a particular statute (except by another vote of the people) or to render a law or resolution void.

Signature Requirements for Referendum 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: 1908–2010		
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

Opinions concerning the I&R process vary widely. While many view the I&R process as a fair way for citizens to directly influence the lawmaking process, others believe that I&R diminishes the political strength and traditional power of legislative bodies. Others also observe that I&R has become a popular method for well-financed special interests to pursue their agendas in State and local politics. Advocates for I&R, however, say that the resurgence of the initiative is positive, that citizens are using it as a tool to implement new laws and reforms that the Legislature is unable or unwilling to enact. Opponents, though, counter that the initiative process asks voters to make simple, yes-no decisions about complex issues without the benefits of full consideration by an elected body or detailed expert analysis, and without asking voters to balance competing needs with limited resources.

In 2007, the Nevada Legislature approved Assembly Bill 80 (Chapter 267, *Statutes of Nevada*), some of the provisions of which are intended to help address another concern regarding initiatives—identifying who pays for campaigns supporting or opposing them. The measure provides that any business entity that is not otherwise required to disclose its owners, investors, officers, directors, other members, or business purpose must register with and provide certain identifying information to the Secretary of State before soliciting, receiving, contributing, or expending money with the intent of affecting the outcome of an election. These entities are also required to report to the Secretary of State certain contributions and expenditures related to their campaign activities.

Nonetheless, the I&R process continues to generate a number of concerns as state legislatures struggle to find ways to: (1) prevent fraud in the signature gathering process; (2) disclose information about who is behind 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 levels in Nevada. The following table contains the primary officials responsible for election administration in this State:

ELECTION ADMINISTRATION Primary Officials	
Ross Miller Secretary of State 101 North Carson Street, Suite 3 Carson City, Nevada 89701-3714 Telephone: (775) 684-5708 Fax: (775) 684-5725 E-mail: sosmail@sos.nv.gov Website: http://sos.state.nv.us/	Matt Griffin Deputy Secretary of State for Elections 101 North Carson Street, Suite 3 Carson City, Nevada 89701-3714 Telephone: (775) 684-5705 Fax: (775) 684-5718 Email: nvelect@sos.nv.gov Website: http://sos.state.nv.us/
Carson City Alan Glover, Clerk/Recorder 885 East Musser Street, Suite 1028 Carson City, Nevada 89701-3796 Telephone: (775) 887-2260 Fax: (775) 887-2146 E-mail: aglover@ci.carson-city.nv.us Website: http://www.carson-city.nv.us	**Churchill County** Kelly G. Helton, Clerk/Treasurer 155 North Taylor Street, Suite 110 Fallon, Nevada 89406-2763 Telephone: (775) 423-6028 Fax: (775) 423-7069 E-mail: khelton@churchillcounty.org Website: http://www.churchillcounty.org
Clark County Larry Lomax, Registrar of Voters Clark County Election Center 965 Trade Drive, Suite A North Las Vegas, Nevada 89030-7802 Telephone: (702) 455-8683 Fax: (702) 455-2793 E-mail: elinfo@co.clark.nv.us Website: http://www.accessclarkcounty.com	**Douglas County** Ted Thran, Clerk/Treasurer 1616 Eighth Street Second Floor, Old Courthouse P.O. Box 218 Minden, Nevada 89423-0218 Telephone: (775) 782-6273 Fax: (775) 782-9016 E-mail: tthran@co.douglas.nv.us Website: http://cltr.co.douglas.nv.us
Elko County Win Smith, Clerk 571 Idaho Street, Third Floor Elko, Nevada 89801-3715 Telephone: (775) 753-4600 Fax: (775) 753-4610 E-mail: clerk@elkocountynv.net Website: http://www.elkocountynv.net	**Esmeralda County** LaCinda Elgan, Clerk/Treasurer 233 Crook Street P.O. Box 547 Goldfield, Nevada 89013-0547 Telephone: (775) 485-6309 Fax: (775) 485-6376 E-mail: celgan@citlink.net Website: http://www.accessesmeralda.com

ELECTION ADMINISTRATION Primary Officials *(continued)*	
Eureka County Jackie Berg, Clerk and Treasurer County Courthouse, Main Street P.O. Box 677 Eureka, Nevada 89316-0677 Telephone: (775) 237-5262 Fax: (775) 237-6015 E-mail: jberg.ecct@eurekanv.org Website: http://co.eureka.nv.us	**Humboldt County** Tami Rae Spero, County Clerk 50 West Fifth Street, Room 207 Winnemucca, Nevada 89445-3150 Telephone: (775) 623-6343 Fax: (775) 623-6309 E-mail: coclerkts@hcnv.us Website: http://www.hcnv.us
Lander County Gladys Burris, Clerk 315 South Humboldt Street Battle Mountain, Nevada 89820-1982 Telephone: (775) 635-5738 Fax: (775) 635-5761 E-mail: clerk@landercounty.org Website: http://www.landercounty.org	**Lincoln County** Lisa C. Lloyd, County Clerk 1 North Main Street P.O. Box 90 Pioche, Nevada 89043-0090 Telephone: (775) 962-5390 Fax: (775) 962-5180 E-mail: llloyd@lincolnnv.com Website: http://www.lincolncountynevada.com
Lyon County Nikki Bryan, Clerk/Treasurer 27 South Main Street Yerington, Nevada 89447-2571 Telephone: (775) 463-6501 Fax: (775) 463-5305 E-mail: nbryan@lyon-county.org Website: http://www.lyon-county.org	**Mineral County** Cherrie A. George, Clerk/Treasurer 105 South "A" Street, Suite 1 P.O. Box 1450 Hawthorne, Nevada 89415-1450 Telephone: (775) 945-2446 Fax: (775) 945-0706 E-mail: clerk-treasurer@mineralcountynv.org
Nye County Sandra (Sam) Merlino, Clerk 101 Radar Road P.O. Box 1031 Tonopah, Nevada 89049-1031 Telephone: (775) 482-8127 Fax: (775) 482-8133 E-mail: smerlino@co.nye.nv.us Website: http://www.co.nye.nv.us	**Pershing County** Donna Giles, Clerk/Treasurer 398 Main Street P.O. Box 820 Lovelock, Nevada 89419-0820 Telephone: (775) 273-2208 Fax: (775) 273-3015 E-mail: pcclerk@pershingcounty.net Website: http://www.pershingcounty.net

ELECTION ADMINISTRATION Primary Officials *(continued)*	
Storey County Vanessa Dixon, Clerk/Treasurer 26 South "B" Street Drawer D Virginia City, Nevada 89440-0139 Telephone: (775) 847-0969 Fax: (775) 847-0921 E-mail: clerk@storeycounty.org Website: http://www.storeycounty.org/	**Washoe County** Daniel G. Burk, Registrar of Voters 1001 East Ninth Street, Room A135 P.O. Box 11130 Reno, Nevada 89520-0027 Telephone: (775) 328-3670 Fax: (775) 328-3747 E-mail: electionsdepartment@washoecounty.us Website: http://www.co.washoe.nv.us/voters
White Pine County JoAnne Malone, Clerk 801 Clark Street, Suite No. 4 Ely, Nevada 89301-1995 Telephone: (775) 289-2341 Fax: (775) 289-2544 E-mail: wpclerk@mwpower.net Website: http://www.whitepinecountyonline.com/	

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Patrick Guinan
Senior Research Analyst
E-mail: pguinan@lcb.state.nv.us

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Homeland Security (REAL ID Act)

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

Following the events of September 11, 2001, the federal government created the United States Department of Homeland Security (DHS) to provide a unifying core for the vast national network of organizations and institutions involved in keeping our nation safe.

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.

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 and modifications made in 2005 and 2007, the Governor must appoint 14 voting members to the Commission. Those members must include the sheriffs and fire chiefs of Clark and Washoe Counties, an employee of the City of Las Vegas, and a representative of the Clark County medical community. The Governor or the Governor's designee serves as the chair, and the chair must appoint a Commission member to serve as vice chair. Nonvoting members include the head of Nevada's office of the Federal Bureau of Investigation, and a representative of the U.S. Department of Homeland Security. Additionally, 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.

TABLE OF CONTENTS

Homeland Security Commission 1
Recent Legislative Action 2
Emergency Response and Disaster Preparedness 2
REAL ID Act of 2005 3
Additional References 4
Research Staff Contacts 4

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 (911) telephone systems. Specifically, establishing a State plan for the compatibility and interoperability of the State's information and communication systems for response agencies and advising the Governor about such systems with particular emphasis on public safety radio systems;
- 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.

RECENT LEGISLATIVE ACTION

Emergency Response and 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 continues to require legislative review of Nevada's emergency response planning and preparedness.

The nation witnessed the consequences of a plan that failed to account for the evacuation of pets and the Legislature filled this gap in Nevada by requiring State and local governments to address the needs of people with pets or service animals in preparing emergency management plans (*Nevada Revised Statutes* 414.095). In 2009, the Legislature considered and approved several measures related to emergency response efforts.

Coordination of activities between State and local law enforcement agencies is often an issue for the Legislature and in 2009, the body considered coordination of public bomb squads (Senate Bill 144, Chapter 187, *Statutes of Nevada*). The measure requires State law enforcement agencies to establish a plan to ensure the timely notification of the appropriate public safety bomb squad of any actual or

suspected improvised explosive device and clarifies the primary responsibilities and duties of a public safety bomb squad. Bomb squad commanders must establish policies and tactical plans consistent with the *National Guidelines for Bomb Technicians* and will retain final authority concerning the render-safe procedures for incidents involving explosives to which the public safety bomb squad responds. In a county without a public safety bomb squad, the sheriff or the sheriff's designee is authorized to carry out the duties of a public safety bomb squad.

During Hurricane Katrina, the coordination of emergency response efforts and the priority of repairs to broadcasting facilities were not clear. Similar concerns have also been raised during wildfires and other disasters. To proactively address these situations, S.B. 147 (Chapter 140, *Statutes of Nevada 2009*) requires broadcasters, through their trade associations, to develop emergency or disaster plans in cooperation with the Division of Emergency Management of Nevada's Department of Public Safety. Broadcasters must establish training programs consistent with federal law for broadcast engineers and technical personnel who wish to be certified as first response broadcasters. To the extent practicable and consistent with public safety and recovery efforts, State and local governments shall allow a first response broadcaster access to an emergency or disaster area for the purpose of repairing or resupplying broadcast equipment critical to transmitting essential emergency information. Nevada is one of the first states in the nation to enact such legislation.

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, Public Law 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 federal driver's license provisions are not in effect yet. All current drivers' licenses remain valid until their renewal date. However, in December 2009, Governor Jim Gibbons signed emergency regulations that allowed Nevada's Department of Motor Vehicles (DMV) to comply with the federal law when it becomes effective. The regulations define how the DMV will store and restrict access to personal identification data as well as prohibiting the use of radio-frequency identification chips or other technology used to track individuals.

Recently, the U.S. Department of Homeland Security issued a statement that a secure state-issued identification is a nationwide effort to establish minimum performance standards to improve the integrity and security of state-issued driver's licenses and identification cards, while retaining states' flexibility to meet and exceed the standards as they are incorporated into each state's unique operations. The goals of this effort are to reduce identity theft, make it more difficult for criminals to obtain fraudulent identities, and to help fight terrorism.

Key measures that increase the level of assurance for a document include the following:

- Information and security features that must be incorporated into each card;
- Documentation and verification of an applicant's identity, date of birth, Social Security number, and legal presence in the United States;
- Checks to ensure that an individual does not hold multiple driver's licenses in other states; and
- Minimum security standards for issuance of licenses and identification cards.

The DMV began issuing such identification—which meets the REAL ID requirements, known as Advanced Secure Issuance (ASI) licenses and ID cards—on January 11, 2010, in Carson City, and February 1, 2010, in Reno. Eventually, the program will be available statewide. This new license or ID card is marked with a gold star indicating that it meets federal identification requirements for boarding commercial aircraft and entering federal buildings where identification is required. The documents required to prove identity for an ASI card are the same documents Nevada already requires for first-time licensees and new residents.

ADDITIONAL REFERENCES

- Nevada's Office of Homeland Security, Department of Public Safety: http://homelandsecurity.nv.gov/
- U.S. Department of Homeland Security: http://www.dhs.gov/index.shtm

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Marji Paslov Thomas
Principal Research Analyst
E-mail: mpthomas@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

The Legislature

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Legislative Structure 1
Size and Apportionment 2
Membership Qualifications 2
Legislator Compensation and Allowances 3
Ethics and Conflicts of Interest 4
Financial Disclosure 5
Officers and Employees 5
Press 6
Media and Interest Groups 6
Lobbyists 6
Legislative Procedure 7
Legislator Duties 7
Session Deadlines 9
Legislative Counsel Bureau 9
Legislative Commission 10
Interim Finance Committee 11
Director 11
Administrative Division 11
Audit Division 11
Fiscal Analysis Division 12
Legal Division 12
Research Division 13
Summary 13
Selected Publications of the Legislative Counsel Bureau 13
Legislative Counsel Bureau Division Chiefs 14
Websites 14
Research Staff Contacts 15

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 Legislative Branch 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 *Nevad*a *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. The federal decennial census is being held in 2010; therefore, the Legislature will perform redistricting during the 2011 Session.

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 *Nevad*a *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 members of the Assembly 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 an 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 for up to 20 days of a special session. The daily salary for legislators elected or reelected in November 2008 is $146.29. The daily salary for Senators who are serving in the middle of their terms as of November 2008 is $137.90. Thus, for the 2009 Regular Session, a legislator received a maximum salary of either $8,777.40 or $8,274; for a special session in 2009 or 2010, the maximum salary is either $2,925.80 or $2,758.

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 $161. 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 U.S. Department of Housing and Urban Development. The most recent rate for the Carson City area is $756 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 chair 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 (LCB).

When the Legislature is not in session, each Senator and member of the Assembly is entitled to receive a salary and the per diem allowance 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 per day varies depending on the activity, but does not exceed $137.90 or $146.29.

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 a 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 herself 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. During the 2009 Session, the Legislature enacted legislation codifying the constitutional doctrines of separation of powers and legislative privilege and immunity for members of the Nevada Legislature. The measure amends only those portions of the Nevada Ethics in Government Law necessary to conform to these constitutional doctrines, but maintains all other existing provisions for financial disclosures and misuse of office by members of the Nevada Legislature.

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. Legislation enacted in 2009 further clarifies that abstentions, disclosures, and voting by legislators are governed by the Standing Rules of the Legislature. 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:

> . . . if a Legislator knows he has a conflict of interest . . . the Legislator shall make a general disclosure of the conflict of interest on the record in a meeting . . . . In determining whether to abstain from voting upon, advocating or opposing a matter . . . the Legislator should consider whether: (a) The conflict impedes his independence of judgment; and (b) His interest is greater than the interests of an entire class of persons similarly situated.

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: (1) length of residence in Nevada and the legislative district; (2) sources of income; (3) real estate holdings valued at $2,500 or more (except for a personal residence); (4) specified creditors to whom the candidate or members of the candidate's household owe more than $5,000; (5) certain gifts received by the candidate with a value of $100 or more; and (6) 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 house. The Secretary and Chief maintain all records of the Senate and Assembly, supervise compilation of the daily journals and histories of their respective houses, and advise the officer of each house on matters of parliamentary procedure or the house rules. In addition, the Secretary serves as an ex officio member of the Senate Committee on Legislative Operations and Elections, and the Chief Clerk is an ex 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 LCB'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 problems with 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 LCB 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 each lobbyist's 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 permit standing committees, select committees, or the LCB to prepare the matters respectively entrusted to them for the consideration of the Legislature as a whole. The total time taken for all such adjournments is not to exceed 20 days during any 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.

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 creating, 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 1,000 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.

Legislators are required to attend the daily meetings of their respective houses, commonly referred to as "floor sessions." In order for a bill or joint resolution to pass, the *Nevada Constitution* requires that a majority of the members elected to the body vote for the measure. Bills or joint resolutions which create, generate, or increase public revenue through taxes, fees, or similar mechanisms require approval by two-thirds of the members elected unless the measure is referred to the voters by a majority vote. All votes on final passage are by roll call and are recorded in the journal of the chamber taking the action.

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.

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.

Ongoing 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.

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 leadership meets with the Director to consider methods of improving the operation of the session. The recommendations of the leadership 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. Generally exempted from these limitations are 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. 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 to deal with increasingly complex tasks. This need is 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 LCB, 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 LCB 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 Child Welfare and Juvenile Justice, Education, Health Care, High-Level Radioactive Waste, Public Lands, the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System, and Senior Citizens, Veterans and Adults with Special Needs.

Interim Finance Committee

In 1969, the Legislature created the Interim Finance Committee to function within the LCB 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 LCB and the necessary preparations for the next regular legislative session. The Director's office consists of the Director, an executive assistant, and the Las Vegas Office.

Administrative Division

The Administrative Division, under the direction of the LCB Director, provides support to the other divisions of the Legislative Counsel Bureau and to the Legislature. The Division is responsible for accounting; lobbyist registration; communications equipment; videoconferencing; control of inventory; data processing and information systems; janitorial services; maintenance of buildings, grounds, and vehicles; purchasing; police; shipping and receiving; and utilities and warehouse operations.

The Director of the LCB is the Chief of the Administrative Division. The various administrative units are managed by the Director and the Operations Manager.

Las Vegas Office of the Legislative Counsel Bureau

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 LCB'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 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, the Senate and Assembly Committees on Taxation, 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 LCB 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 and reports 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

Appropriations Report: http://www.leg.state.nv.us/lcb/fiscal/Appropriation%20Reports/

Background or Issue Papers on issues determined to be of interest during the next legislative session: http://www.leg.state.nv.us/lcb/research/background.cfm

Biennial Report of the Legislative Auditor: http://www.leg.state.nv.us/lcb/audit/documents/BiennialReport2008.pdf

Bulletins—reports from interim committees: http://www.leg.state.nv.us/lcb/research/DivStudyLegReport.cfm

Fiscal Report: http://www.leg.state.nv.us/lcb/fiscal/Fiscal%20Report/

Policy and Program Reports: http://www.leg.state.nv.us/lcb/research/PandPReports.cfm

End of Session Speech (only available to legislators)

Summary of Legislation (This entire publication is not available online; however, summaries of individual bills are online): http://search.leg.state.nv.us/billsum/isyssearchbillsum.html

The Guide to the Nevada Legislature: http://www.leg.state.nv.us/lcb/research/Publications/Guide/guide2009.pdf

Nevada Legislative Manual: http://www.leg.state.nv.us/lcb/research/2007LegManual/index.cfm

Directory of State and Local Government: http://www.leg.state.nv.us/lcb/research/sandlgov.cfm

Nevada Revised Statutes and *Statutes of Nevada*: http://www.leg.state.nv.us/law1.cfm

Bill Indexes and Histories of Senate and Assembly

Journals of the Senate and Assembly

LEGISLATIVE COUNSEL BUREAU DIVISION CHIEFS

Nevada Legislative Counsel Bureau (LCB) 401 South Carson Street Carson City, Nevada 89701-4747 Lorne J. Malkiewich, LCB Director Telephone: (775) 684-6800 Fax: (775) 684-6600	
Brenda J. Erdoes, Legislative Counsel Legal Division Telephone: (775) 684-6830 Fax: (775) 684-6761	Brian L. Davie, Legislative Services Officer Las Vegas Office Telephone: (702) 486-2800 Fax: (702) 486-2810
Mark Krmpotic, Senate Fiscal Analyst Fiscal Analysis Division Telephone: (775) 684-6821 Fax: (775) 684-6475	Tracy Raxter, Assembly Fiscal Analyst Fiscal Analysis Division Telephone: (775) 684-6821 Fax: (775) 684-6475
Donald O. Williams, Research Director Research Division Telephone: (775) 684-6825 Fax: (775) 684-6400	Paul V. Townsend, Legislative Auditor Audit Division Telephone: (775) 684-6815 Fax: (775) 684-6435

WEBSITES

- Nevada Legislature Online: http://www.leg.state.nv.us/
- Research Library: http://www.leg.state.nv.us/lcb/research/library/
- Nevada Secretary of State Election Center: http://sos.state.nv.us/index.aspx?page=3
- Nevada's Commission on Ethics: http://ethics.nv.gov/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Donald O. Williams
Research Director
E-mail: dwilliams@lcb.state.nv.us

H. Pepper Sturm
Chief Deputy Research Director
E-mail: sturm@lcb.state.nv.us

Allison Combs
Chief Principal Research Analyst
E-mail: acombs@lcb.state.nv.us

Michelle L. Van Geel
Principal Research Analyst
E-mail: mvangeel@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Open Meeting Law

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Open Meeting Law 1
Definitions 2
Exceptions 3
Legislature 4
Notice of Meetings 4
Meeting Records 5
Attorney General Opinions 5
Penalties for Violation 5
Websites and Contacts 6
Research Staff Contacts 6

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.

One way to achieve such publicity is to ensure that the public can monitor, observe, and participate in decision-making by governmental entities. Most states have enacted so-called "open meeting" laws (also known as sunshine laws) requiring governmental entities to give advance notice of meetings and agendas, to permit public attendance and participation, and to keep records of such meetings.

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.

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 OML, the Nevada Attorney General's office publishes the *Nevada Open Meeting Law Manual* (OML Manual) with checklists and guidance on applying the OML and makes it available online at: http://ag.state.nv.us/publications/manuals/omlmanual.pdf.

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."

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; and . . . A limited-purpose association that is created for a rural agricultural common-interest community as defined in subsection 6 of NRS 116.1201.

In 2009, Assembly Bill 207 (Chapter 397, *Statutes of Nevada*) added "limited-purpose associations" to the definition of public bodies, and Senate Bill 267 (Chapter 419, *Statutes of Nevada*) refined the definition of a university foundation in Chapter 396 of NRS.

Because the definition of public bodies includes subcommittees and advisory committees, they are subject to the open meeting provisions to the same extent 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.

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 a "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 power.
> (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 power and to deliberate toward a decision on the matter, or both."

Since open government is the goal, 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 OML, including the Legislature, certain meetings of the State's Commission on Ethics, the 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 also exempt unless the licensee requests an open meeting. An agency or board may close a portion of a meeting to receive information deemed confidential by law. Although judicial proceedings are exempt from the open meeting requirements, Nevada law requires sitting courts to be open to the public, with some exceptions.

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. During a closed session, a public body generally may not take action of any sort and minutes must still be taken. In 2001, Nevada's OML was amended to provide a limited exemption for communications between a public body and its legal counsel on potential or existing litigation. Attorney-client discussions are not considered a meeting and therefore no notice or agenda is required. However, according to the most recent edition of the OML Manual (December 2005), a public body may only take action on potential or existing litigation matters in an open meeting.

In 2005, the Legislature made several significant changes relating to closed meetings, including allowing a person who is the subject of a closed meeting to waive closure of the meeting and requiring a public body to honor such a request. Meetings may not be closed 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. This includes city and county managers, school district superintendents, or university and college presidents. These changes and others were made in S.B. 267 (Chapter 466, *Statutes of Nevada 2005*).

As the result of litigation over a Nevada Tax Commission decision made in a closed session, A.B. 433 (Chapter 296, *Statutes of Nevada 2007*) clarified when the Tax Commission may meet in closed session. The bill also clarified that <u>any</u> meeting of a public body closed pursuant to a specific statute may only be closed to the extent specified in law.

In the 2009 Session, S.B. 267 (Chapter 419, *Statutes of Nevada*) clarified that workshops and public hearings on proposed regulations by State agencies, as required by Chapter 233B of NRS, are subject to the provisions of the Open Meeting Law.

LEGISLATURE

Although the Legislature is specifically exempted from the OML in subsection 3 of NRS 241.015, the Legislature has a long-standing tradition of voluntary compliance. When the Legislature is not in session, the ongoing statutory 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 "be open to the public." As a matter of practice, legislative committees generally provide three days' advance notice and post agendas. However, due to the 120-day limit on legislative sessions, advance notice and availability of agendas may be shortened significantly near the end of the session to ensure that committees are able to move bills to the Senate or Assembly floor for action.

NOTICE OF MEETINGS

In order to give the public an opportunity to observe or participate in meetings of public 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. If the public body maintains a website then supplemental notice must be posted on the website.

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 to be considered and shall designate those items on which action may be taken. 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 in the OML Manual limits emergencies to 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; <u>and</u>

- 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. 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.

Since October 1, 2005, public bodies have been required to make an audio recording of a meeting or provide a transcript prepared by a certified court reporter. However, if a public body 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.

ATTORNEY GENERAL OPINIONS

A member of the public who believes that the OML has been violated may file a complaint, subject to certain deadlines, with the Nevada Attorney General. The Attorney General will investigate the complaint and provide an opinion as to whether a violation occurred. If the Attorney General is of the opinion that a violation has occurred, he or she may file litigation 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.

However, Attorney General opinions are advisory, not binding, and only a court can determine whether or not a violation of the OML has occurred. The OML decisions are available online from the Attorney General's website at: http://ag.state.nv.us/publications/omlo/omlo.htm.

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. 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. Any member of a public body who knowingly 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). A member of a public body who is convicted of a violation of the OML must vacate their office.

WEBSITES AND CONTACTS

Open Meeting Law
Office of the Attorney General
Telephone: (775) 684-1100 Carson City
Telephone: (702) 486-3420 Las Vegas
Website: http://www.ag.state.nv.us

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Public Records

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 Nevada's 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.

Defining precisely what constitutes a public record has been a difficult debate for quite some time. Two legislative interim studies—one during the 1981-1982 Interim and one during the

TABLE OF CONTENTS

Public Records 1
Nevada's Public Records Law—What is a Public Record? 1
Reproduction of Records and Associated Fees 3
Records Retention and Disposal 3
Homeland Security and Public Records 4
Protection of Personal Information in Government Records 5
Research Staff Contacts 6

1991-1992 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 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

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 the requester to inspect or copy it. A requester may also apply to the district court for authorization to inspect or copy a confidential public record, if that document has been in the custody of a governmental entity for at least 30 years, or if the person to whom the record relates is deceased (whichever is later).

In 2007, the Nevada Legislature made several significant additions and amendments to provisions relating to the accessibility of public documents. In an effort to better clarify the overall purpose and function of Nevada's public records law, Senate Bill 123 (Chapter 435, *Statutes of Nevada 2007*) set forth the following Legislative finding and declaration:

> The Legislature hereby finds and declares that:
>
> 1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law;
> 2. The provisions of this chapter must be construed liberally to carry out this important purpose; and
> 3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly.

The measure provides that the person having legal custody over a public record must, by the end of the fifth business day after receiving a written request for the record, either allow the requester to inspect or copy the record or notify the requester of the circumstances as to why he or she is unable to view the document. If the public record is not available by the end of the fifth business day, the requester may inquire regarding the status of the request. Any denial of public records inspection due to confidentiality must be in writing and cite the specific legal or statutory authority making the document confidential. Senate Bill 123 stipulates, however, that the government entity shall not deny a request to inspect or copy a record because it contains confidential information if the governmental entity can redact the confidential content.

During the 2009 Legislative Session, the Legislature approved S.B. 83 (Chapter 79, *Statutes of Nevada*), which clarified that "any and all information and data" prepared or obtained by an agent or employee of the State Gaming Control Board or Nevada Gaming Commission relating to an application for a license, a finding of suitability for licensure, or any related approval that is required by law are confidential and absolutely privileged and may be revealed only in the course of the necessary administration of such provisions and with specific authorization and waiver of the privilege by the Board or Commission.

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 chair), the Attorney General, the Director of the Department of Administration, the Administrator of the Division of State Library and Archives of Nevada's Department of Cultural Affairs, 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. In 2003, the Legislature approved legislation providing 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 the 2003 legislation. 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 has been 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.

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. Assembly Bill 600 (Chapter 324, *Statutes of Nevada*) of the 2007 Legislative Session, which serves as a follow-up measure to A.B. 334, provides additional protections to personal information beyond the previously protected Social Security numbers on documents submitted to a public entity. The bill now allows a person to request the removal of personal information in certain government documents, gives immunity to governmental agencies regarding the disclosure of personal information, and provides that the last four digits of a Social Security number are not considered personal information.

In recent years, the Legislature has approved legislation prohibiting, 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. Nevada law now expressly prohibits a local government from requiring a Social Security number for such purposes. In addition, the Social Security number is no longer required on marriage certificates and lists of divorces or annulments.

Several measures approved in 2005, 2007, and 2009 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*) of the 2005 Legislative Session, 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*) of the 2005 Legislative Session. 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.

Meanwhile, S.B. 106 (Chapter 508, *Statutes of Nevada*) of the 2007 Legislative Session expands the list of persons who may be allowed to inspect confidential documents relating to terrorism to include certain State, county, and city emergency managers; members and staff of terrorism early warning centers; and certain public health and safety personnel. Moreover, A.B. 81 (Chapter 367, *Statutes of Nevada*) of the 2009 Legislative Session defines the term "records of criminal history of the United States or another state" for the purposes of disseminating certain information. Among other things, the bill authorizes the Records and Technology Division of Nevada's Department of Public Safety to request and receive from the Federal Bureau of Investigation information on the background and personal history of certain persons about whom a State agency or local government is authorized by law to possess.

Access to certain personal information kept by financial institutions was the subject of S.B. 101 (Chapter 457, *Statutes of Nevada*) of the 2009 Legislative Session. The bill stipulates that Chapter 239A of NRS, which contains provisions regarding disclosure of financial records to governmental agencies, does not prohibit the Administrator of the Securities Division of the Office of the Secretary of State from requesting of a financial institution, and the institution from responding to the request, as to whether a person has an account or accounts with that financial institution and, if so, any identifying numbers of the account or accounts. The bill also increases, from 60 to 90 days, the period that the court may delay the notification of a customer that a subpoena for the financial records of the customer has been issued and increases the period for any additional extension of such a delayed notification from 30 days to 45 days.

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Ethics in Government and Whistle-Blower Laws

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 Chapter 281A of the *Nevada Revised Statutes* (NRS). 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's 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. In 2007, the Legislature moved the Ethics in Government Law from Chapter 281 (General Provisions for Public Officers and Employees) into its own NRS chapter.

In December 2008, the First Judicial District Court in Carson City found that, in light of the constitutional doctrines of separation of powers and legislative privilege and immunity, any inquiry into the ethical propriety of legislative actions concerning disclosure, voting and abstention must be conducted by the Legislative Department and cannot be conducted by an administrative agency of the Executive Department, such as the Commission on Ethics. In response, the 2009 Legislature passed Senate Bill 160 (Chapter 257, *Statutes of Nevada*), which implements in statute the constitutional doctrines of separation of powers and

TABLE OF CONTENTS

Ethics in Government 1
Code of Ethical Standards 2
Financial Disclosure Statement 5
Nevada's Commission on Ethics 7
Willful Violations of Ethics Laws 7
Whistle-Blower Statutes 8
Websites and Contacts 9
Frequently Asked Questions 10
Ethics in Government 10
Whistle-Blower Law 11
Research Staff Contacts 11

legislative privilege and immunity, protecting legislators from having to defend themselves from various legal challenges when they perform certain action—such as speech, deliberation, and debate—within the sphere of legitimate legislative activity. Additionally, the measure clarifies that statutory provisions concerning disclosure, voting, and abstention do not apply to State legislators or allow the Commission on Ethics to exercise jurisdiction over State legislators with regard to these activities. The measure also amends certain provisions concerning public officers' and employees' ability to contract with governmental agencies under certain circumstances, and clarifies the definition of "public officer" in the Ethics Law by making it consistent with the definition of the term as it is found in NRS 281.005.

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:
   (a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and
   (b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:
      (1) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
      (2) The expenditure of public money; and
      (3) The administration of laws and rules of the State or any county, city or other political subdivision.
2. "Public officer" does not include:
   (a) Any justice, judge or other officer of the court system;
   (b) Any member of a board, commission or other body whose function is advisory;
   (c) Any member of a 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 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.

Code of Ethical Standards

In Nevada, public officers and 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 281A.020)

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

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

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

2. The Legislature finds and declares that:

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

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

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

(d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

Gifts

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 or her public duties.

Unwarranted Privileges

A public officer or employee shall not use his or her position in government to secure unwarranted privileges, preferences, exemptions, or advantages for himself or herself, family members, or for a business entity in which the public officer or employee has a significant interest.

Contracting With Government

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 business entity in which the public officer or employee 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 any board, commission, or similar body who is engaged in a business regulated by that board, commission or body may, in the ordinary course of his or her 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 the member 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, the rules of open competitive bidding are not employed due to an emergency situation, or the sources of supply are limited. The public officer or employee must not take part in developing the contract plans or specifications, and the public officer or employee 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 or her duties as a public officer or employee.

Private Use of Confidential Information

A public officer or employee who acquires, through his or her 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 herself 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 his or her pecuniary interests.

Misuse of Government Resources

A public officer or employee, except State legislators who are subject to certain restrictions described below, shall not use governmental time, property, equipment, or other facility to benefit his or her 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 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 governmental 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 State legislator shall not use governmental time, property, or equipment for a nongovernmental purpose or the private benefit of the State legislator 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 the State legislator's 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 from using, 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 or her 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 the State legislator's official position.

Honoraria

Nevada Revised Statutes 281A.510 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 the officer's or employee's capacity as a public officer or public 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 employee or his or her spouse or staff for transportation, meals, and lodging while away from the public officer's or employee's 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. Any elected supervisor of a conservation district is exempt 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

Financial Disclosure Statements for elected public officers and candidates for public office must be filed with 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.

What are the Standards for Disclosure and Abstention by Public Officers, Employees and Legislators?

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 the public officer's situation," would be materially affected by the legislator's or public officer's:

- Acceptance of a gift or a loan;
- Pecuniary interest; or
- Commitment in a private capacity to the interests of others.

It should be noted that even if a legislator must abstain, the legislator 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 for public officers and employees: *Nevada Revised Statutes* 281A.420 provides that:

. . . a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:
(a) Regarding which the public officer or employee has accepted a gift or loan;
(b) In which the public officer or employee has a pecuniary interest; or
(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others, without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity.

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.

The provisions concerning the above disclosure do not apply to State legislators or allow the Commission on Ethics to exercise jurisdiction or authority over State legislators. The responsibility of a State legislator to make disclosures concerning gifts, loans, interests, or commitments and the responsibility of a State legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State government which are adopted, administered, and enforced exclusively by the appropriate bodies of the Legislative Department of State government pursuant to Section 6 of Article 4 of the *Nevada Constitution*.

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.

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 public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties." 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, ensuring 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 executive commission of State government and serves in a "quasi-judicial" capacity. The Commission has a staff of five—an Executive Director, a General Counsel, a Research Analyst, a Senior Investigator, 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

As defined in NRS 281A.170, a willful violation is one where a public officer or employee acted intentionally or knowingly or intentionally or knowingly failed to act where action was called for by law. Until 2005, the Commission, upon finding a violation of ethics law, deliberated on the willfulness of an ethics violation. Since 2005, NRS 281A.480 has required 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.

With the passage of S.B. 160 (Chapter 257, *Statutes of Nevada 2009*), if the Commission finds that a legislator has committed one or more willful violations of the ethics laws, the Commission shall submit its opinion to the leadership of the appropriate body of the Legislature for consideration.

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.

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.

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 the 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.

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.

WEBSITES AND CONTACTS

Ethics in Government
Commission on Ethics
Telephone: (775) 687-5469
Website: http://ethics.nv.gov

Whistle-Blower Law
Department of Personnel
Telephone: (775) 684-0109
Website: 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 (for questions regarding nonlegislative actions) or the Legal Division of the Legislative Counsel Bureau for assistance with ethics-related matters. Clarification on legislator conflicts of interest, abstentions, and other legislative actions are to be 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 website, 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?

A:

Governor Appointees	Legislative Commission Appointees
John T. Moran III, Esq. (Vice Chair)	George M. Keele, Esq. (Chair)
Erik Beyer	Paul H. Lamboley, Esq.
Gregory J. Gale, CPA	John W. Marvel
Mark A. Hutchinson, Esq	James M. Shaw

Q: Does Nevada have a "cooling off" period or other provisions concerning a conflict of interest in future business opportunities for a public officer or employee?

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 Chapter 281A of NRS. A "cooling off" period limits a former public officer or employee from going to work, for a specified period of time, in a business or industry regulated by the public officer's or employee's former employer. 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 employee 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.

In addition to the "cooling off" period for business and industry, a public officer or employee must refuse any offer or promise of future employment, a business opportunity, money, or anything of value from a person who has provided a bid on a purchasing contract to be awarded by a public body. An employee must report such an offer to his or her supervisor or agency head within 72 hours. In addition, a State or local government or any public officer or employee shall not offer or provide to a bidder any proprietary information regarding the contract or details regarding a bid on the contract from another person, and the bidder is prohibited from requesting such information. A one-year "cooling off" period is also required for certain former public officers and employees before they may be employed by a person or company to whom a purchasing contract has been awarded.

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 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 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.

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Patrick Guinan
Senior Research Analyst
E-mail: pguinan@lcb.state.nv.us

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

State and Local Government

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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. 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.

TABLE OF CONTENTS

Executive Branch 1
Constitutional Officers 2
Governor and Executive Branch Departments 2
Home Rule Limits 4
County Governments 5
Cities and Towns 6
Land Use and Planning 7
Regional Planning 8
Other Forms of Local Government 9
Unfunded Mandates 9
State and Local Employees 9
Collective Bargaining for Local Government Employees 10
Websites and Contacts 11
Research Staff Contacts 12

EXECUTIVE BRANCH

The Executive Branch consists of the 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 *Nevada Constitution* and statute. Their duties 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 a tie, fills any vacancy during the term of the Governor, and chairs the Commissions on Economic Development and Tourism.

- 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 its agencies.

The Governor, Secretary of State, and Attorney General sit on the State Board of Examiners which duties include review of tort claims, independent contracts, leases, and requests for payments from specified accounts.

Governor and Executive Branch Departments

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, 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. Five of the seven members of the State Public Works Board are appointed by the Governor while the remaining two members are legislative appointments. In addition to these executive departments, the Governor also has appointing authority for numerous agencies or commissions, as well as over 80 independent boards, commissions, councils, and professional occupational licensing boards. The *Directory of State and Local Government* on the Legislature's website (http://www.leg.state.nv.us/lcb/research/Directory.pdf) lists 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, 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 Procedure 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 the Governor's signature. Historically, very few bills are vetoed, although in 2005, three bills were vetoed, and in 2007, seven bills were vetoed. In 2009, however, the Governor set a record in the number of bills vetoed, and the Legislature set a record in the number of vetoes it overrode. Governor Jim Gibbons vetoed 48 bills from the 2009 Legislative Session, 41 of which were vetoed during the Session. The Legislature overrode the Governor's veto on 25 of these bills and sustained the Governor's veto on the remaining 16 bills. The last seven bills were vetoed after the Legislature had adjourned *sine die*. Therefore, these seven bills will be returned to the 2011 Session of the Legislature for consideration to sustain or override the Governor's vetoes.

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 *Nevada Constitution*, 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.

Article 4 of the *Nevada Constitution* requires the Legislature to establish a uniform system of county government (Section 25); requires the Legislature to provide for the election of boards of county commissioners and to prescribe by law their duties and compensation (Section 26); and gives the Legislature power to prescribe, among other things, the duties and compensation of certain county officers, including clerks, recorders, auditors, sheriffs, district attorneys, and public administrators (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, 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.

Interim Study Concerning Powers Delegated to Local Governments (2009-2010)

During the 2009 Legislative Session, the Legislature approved Senate Bill 264 (Chapter 462, *Statutes of Nevada*), which directs the Legislative Commission to conduct an interim study concerning the powers delegated to local governments. The interim study committee, consisting of three members of the Senate and three members of the Assembly, is charged with examining the structure, formation, functions, and powers of local governments in Nevada. During the legislative interim the Committee will, among other things: (1) discuss the feasibility of increasing the powers of local governments; (2) evaluate the fiscal impact to the State of making such changes; and (3) review the experiences of states that have rejected "Dillon's Rule" under which local governments are unable to exercise powers that are not expressly granted to them. Finally, the Committee will consider recommendations made by the Interim Technical Advisory Committee for Intergovernmental Relations, which consists of six local government representatives and three representatives of State agencies who were appointed by the Legislative Commission on October 26, 2009. The results of the study and any recommendations for legislation are to be submitted to the 2011 Legislative Session.

Assembly Bill 2 of the 26th Special Session

One legislative measure was approved during the 26th Special Session of the Nevada Legislature in an attempt to provide a money-saving tool and grant a small amount of home rule to county government. Specifically, the Legislature approved Assembly Bill 2 (Chapter 9, *Statutes of Nevada 2010*), which authorizes the deviation from required hours of operation for the offices of county assessor, auditor, clerk, recorder, sheriff, treasurer, district attorney, and any county office where marriage licenses may be issued. Any plan for office hour deviation must be approved by the board of county commissioners and must be fiscally neutral or result in cost savings. Each board of county commissioners that has granted such approval must submit a report evaluating the deviations to the Director of the Legislative Counsel Bureau for transmittal to the 2011 Nevada Legislature.

COUNTY GOVERNMENTS

With the admission of Nevada as a state in 1864, 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 at the time of the preceding national decennial census. The following table sets forth the population thresholds by which certain legislation is applied:

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 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, Fernley, 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. Towns in 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. 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 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 limited to coordinating information, acquiring and using federal lands and, if requested, providing assistance in areas of critical environmental concern and resolving inconsistencies between local plans.

Due to the general 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, and planned development; (2) regional planning commissions and 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 as follows:

- The Southern Nevada Regional Planning Coalition (Coalition) in Clark County has a ten-member board with representatives from Clark County, the Clark County School District, and the Cities of Boulder City, Henderson, Las Vegas, and North Las Vegas. Created in 1999, the Coalition's regional plan was approved by the Legislature in March 2001. 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 the Coalition, Section 2 of S.B. 191 (Chapter 481, *Statutes of Nevada 1999*) requires a person proposing 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 bistate compact with California as ratified by the United States 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. For more information on the TRPA, see the *2010-2011 Policy and Program Report* entitled "General Environmental Issues and Matters Concerning Lake Tahoe."

- 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, tourism improvement districts, and special districts. 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. These districts are usually governed by elected boards of trustees. 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, *Statutes of Nevada*) in 1993 urged Congress not to require the states to provide services or benefits unless it provides related funding. Senate Bill 381 (Chapter 419, *Statutes of Nevada*) 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, *Statutes of Nevada*) requiring a disclosure on the face of each legislative measure that contains an unfunded mandate placed upon a local government, as codified in NRS 218D.270.

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). For more information, see the *2010-2011 Policy and Program Report* on PEBP. 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. For more information, see the *2010-2011 Policy and Program Report* on PERS.

Collective Bargaining for Local Government Employees

The Local Government Employee-Management Relations Act was enacted in 1969 (and codified in Chapter 288 of the *Nevada Revised Statutes* [NRS]) to allow collective bargaining for local government employees and address strikes by public employees. The Act created the three-member Local Government Employee-Management Relations Board (EMRB) which is appointed by the Governor. Chapter 288 legislatively declares it to be the public policy of the State that strikes by State or local government employees are illegal (NRS 288.230). Collective bargaining is defined by NRS 288.033 as "a method of determining conditions of employment by negotiation between representatives of the local government employer and employee organizations, entailing a mutual obligation . . . to meet at reasonable times and bargain in good faith . . . ."

Mandatory subjects of collective bargaining (NRS 288.150) include: (1) salaries/wages, sick leave, vacation, holidays, and leaves of absence; (2) insurance benefits; (3) hours of work required (by day or week) and safety of employees; (4) discharge and disciplinary procedures; (5) methodology for classification of employees in a bargaining unit; (6) deduction of employee organization dues and protection from discrimination due to participation in employee organizations; (7) grievance/arbitration procedures for resolution of disputes over agreements; and (8) for teachers, preparation time, classroom materials/supplies, transfers/reassignments, and workforce reduction procedures.

Matters <u>not</u> subject to collective bargaining and reserved to the local government employer include: (1) transfer/reassignment (except as to teachers or as a form of discipline); (2) workforce reduction due to lack of work or money except as limited by bargained procedures; (3) safety of the public; and (4) determination of staffing levels, content of workday, quality/quantity of services to the public, and means/methods of offering services to the public.

Local government employers may take whatever action is necessary—including suspension of a collective bargaining agreement—in emergency situations such as riots, military actions, natural disasters, or civil disorder. Chapter 288 of the NRS also spells out procedures for: (1) recognition of employee organizations; (2) determination of bargaining units; (3) submittal of disputes to mediation, fact finding, or arbitration; (4) timelines for such actions; and (5) the role of the EMRB in appeals and other matters. Finally, negotiations, mediations, arbitrations, fact finding, and EMRB deliberations are <u>not</u> required to be open to the public (NRS 288.220).

<u>Senate Concurrent Resolution No. 1 of the 26th Special Session</u>

Legislators during the 26th Special Session of the Nevada Legislature recognized the potential financial impact the authority granted in Chapter 288 of the NRS could have on local government budgets. Therefore, the Legislature approved Senate Concurrent Resolution No. 1 (File No. 9,

Statutes of Nevada 2010, 26th Special Session), which urges local government employers and local government employee organizations to mutually address the impacts of Nevada's budget shortfall. The resolution encourages these entities to work cooperatively and recognize the "shared sacrifice" necessary to reduce the impact of the budget deficit and to jointly consider ways to avoid employee layoffs and cuts to vital public services. The resolution explains that local governments should also consider temporary salary reductions and that a more transparent collective bargaining process would benefit the public and allow for a better understanding of negotiated employee agreements.

Efforts to Extend Collective Bargaining to State Employees

The Legislature has considered bills extending collective bargaining to State employees beginning in the 1970s but only two such bills have passed:

- Assembly Bill 130 in 1991 was vetoed by Governor Robert J. Miller and the veto was sustained in 1993; and

- Assembly Bill 395 in 2009 was vetoed by Governor Jim Gibbons and will be returned to the 2011 Legislature for a vote to sustain or override the veto.

WEBSITES AND CONTACTS

State of Nevada: http://www.nv.gov (with links to constitutional officers and State agencies)

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) 684-7111
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 R. 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 Website: http://www.nvnaco.org	Nevada League of Cities and Municipalities J. David Fraser, Executive Director 310 South Curry Street Carson City, Nevada 89703 (775) 882-2121 Website: http://www.nvleague.org
REGIONAL PLANNING ENTITIES	
Tahoe Regional Planning Agency Joanne Marchetta, Executive Director P.O. Box 5310 Stateline, Nevada 89449 (775) 588-4547 Website: http://www.trpa.org	Southern Nevada Regional Planning Coalition Jennifer Olsen, Secretary 240 Water Street, MS 115 Henderson, Nevada 89009 (702) 267-1530 Website: http://www.snrpc.org
Truckee Meadows Regional Planning Agency Rosanna Coombes, Director One East First Street, Suite 1100 Reno, Nevada 89501 (775) 321-8385 Website: http://www.tmrpa.org	

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Revenue and Budget

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

EXECUTIVE BUDGET

The major fiscal document used by legislators in Nevada is the *Executive Budget*, which is prepared by the Budget 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 taxation, revenue, 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.

TABLE OF CONTENTS

Executive Budget 1
Fiscal Analysis Division 1
Economic Forum 2
Budget Calendar 4
Interim Finance Committee 4
State General Fund 4
Budget Stabilization Fund 6
Fiscal Measures 6
26th Special Session of the Legislature in February 2010—March 2010 6
Additional References 7
Fiscal Analysis Staff Contacts 7
Glossary of Terms 8

Other duties of the Fiscal Analysis Division include:

- 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 summarizes 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.

The reports prepared by the Fiscal Analysis Division are available through the Legislature's website at: http://www.leg.state.nv.us/lcb/fiscal/index.cfm.

ECONOMIC FORUM

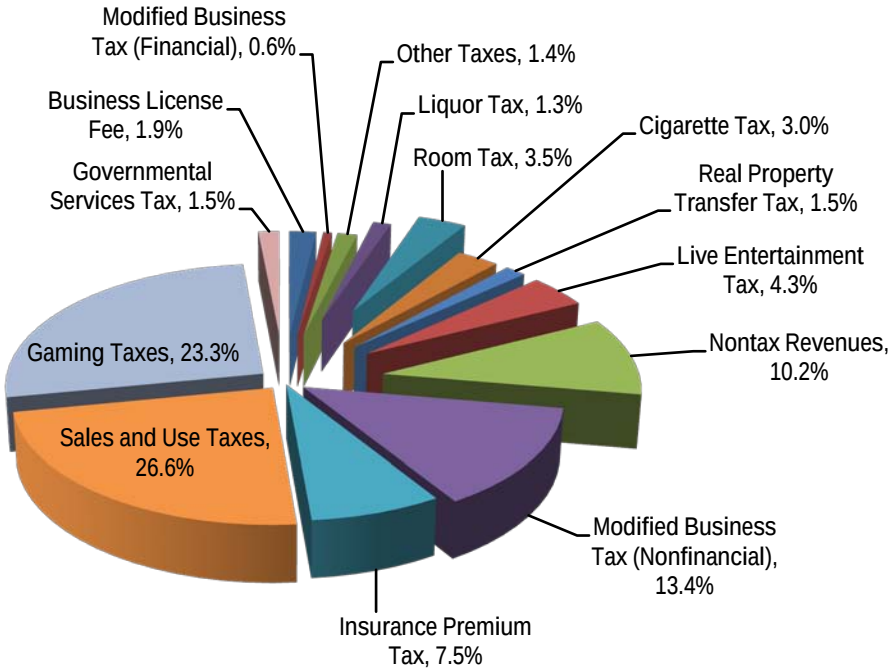
The Economic Forum is a five-member committee from the private sector directed to provide a forecast of future State General Fund revenue by December 1 of even-numbered years (*Nevada Revised Statutes* [NRS] 353.226 through 353.229). The Governor appoints three members to the Forum, and the Majority 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 within the Department of Employment, Training and Rehabilitation, the Vice Chancellor for Finance of the Nevada System of Higher Education (NSHE), and the Chair 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.

In recent years, the State of Nevada and the nation have experienced dramatic fiscal challenges. When the Economic Forum met in May 2009, it adjusted its December 2008 revenue forecast downward by approximately $208.5 million, and the 2009 Legislature utilized the revised forecast in

crafting the final budget for the 2009-2011 Biennium. Attached below is data from page 15 of the *2009 Appropriations Report* that reflects the Economic Forum forecast of State General Fund revenue for the 2009-2011 Biennium, as adjusted by certain actions of the 2009 Legislature.

Nevada General Fund Revenue
Adjusted Economic Forum Forecast, 2009-2011 Biennium



ESTIMATED GENERAL FUND REVENUE - 2009-2011 BIENNIUM
ADJUSTED* ECONOMIC FORUM MAY 1, 2009, FORECAST

	Dollars in Millions	% of Total
Taxes:		
State Gaming Taxes	$1,466.3	23.3%
Sales and Use Taxes	$1,680.4	26.6%
Insurance Premium Tax	$470.7	7.5%
Cigarette Tax	$188.9	3.0%
Live Entertainment Tax:		
Gaming Establishments	$249.5	4.0%
Nongaming Establishments	$19.0	0.3%
Modified Business Tax (MBT):		
Nonfinancial Institutions	$845.9	13.4%
Financial Institutions	$36.8	0.6%
Room Tax	$219.9	3.5%
Governmental Services Tax	$94.3	1.5%
Real Property Transfer Tax	$96.8	1.5%
Business License Fee	$121.6	1.9%
Liquor Tax	$81.1	1.3%

	Dollars in Millions	% of Total
Other Taxes:		
Business License Tax**	$0.0	0.0%
Mining Tax	$55.4	0.9%
Annual Slot Tax Transfer	$10.0	0.1%
Tobacco and Other Taxes	$19.1	0.3%
Branch Bank Excise Tax	$6.6	0.1%
Subtotal Other Taxes	$91.1	1.4%
Subtotal Taxes	$5,662.2	89.8%
Nontax Revenues		
Licenses	$230.2	3.7%
Fees and Fines	$96.6	1.5%
Use of Money and Property	$14.4	0.2%
Miscellaneous Revenues	$299.3	4.8%
Subtotal Nontax Revenues	$640.5	10.2%
Total General Fund	$6,302.7	100.0%

*Adjusted for legislative actions approved by the 2009 Legislature (75th Session).

**Business License Tax was repealed by Senate Bill 8 (Chapter 5, *Statutes of Nevada 2003, 20th Special Session*), but residual amounts are still projected to be collected from audits in the 2009-2011 Biennium.

The Fiscal Year 2010 footnotes for the General Fund Revenue Tables on page 9 of the *2009 Appropriations Report* provide a description of the legislative actions approved by the 2009 Legislature reflected in the above table and chart.

The reports of the Economic Forum are available through the Legislature's website at: http://www.leg.state.nv.us/lcb/fiscal/Economic%20Forum/.

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.

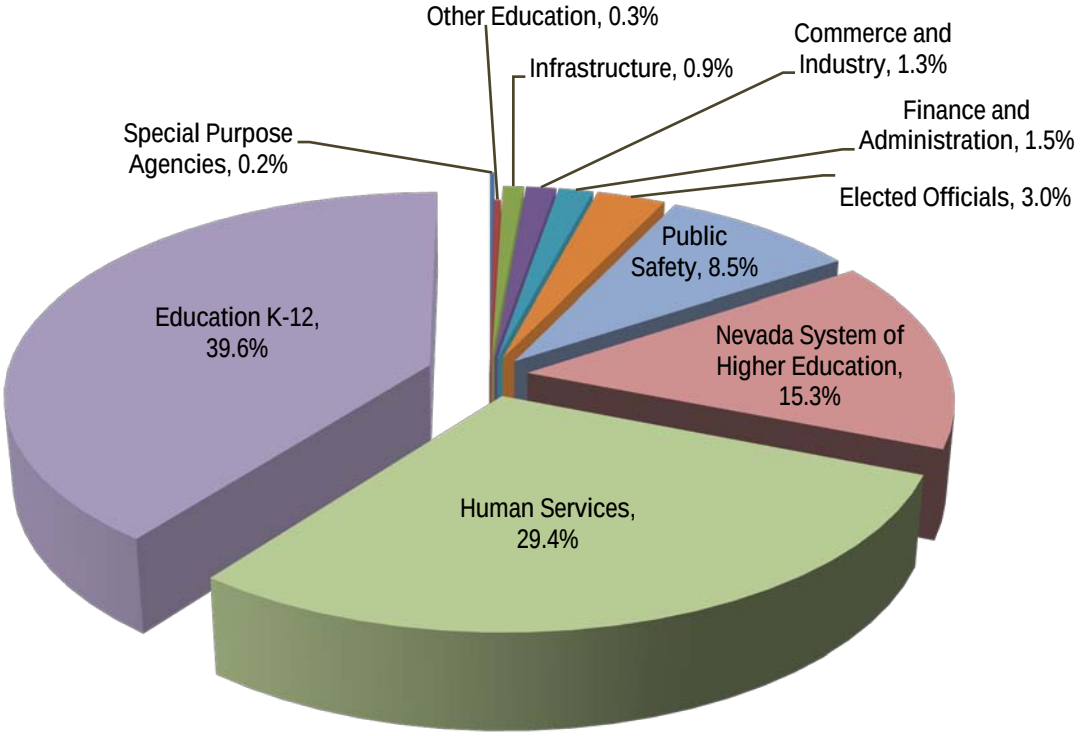
STATE GENERAL FUND

The 2009 Legislature approved a State General Fund operating budget for the 2009-2011 Biennium totaling approximately $6.548 billion. The Legislature also approved allocations from the American Recovery and Reinvestment Act of 2009 (ARRA) that impacted General Fund support in education, human services, and public safety. Information about the ARRA and related legislation passed by the 2009 Legislature is available at: http://www.leg.state.nv.us/75th2009/federalstimulus/.

Following is data from page 22 of the *2009 Appropriations Report* that details the percentage of general funds appropriated to the different areas of State government, including: (1) K through 12 education; (2) the NSHE; (3) public safety; (4) commerce and industry; and (5) human services.

The footnotes to this chart also reference funding from the ARRA for Nevada.

Nevada General Fund Appropriations
Legislature Approved
2009-2011 Biennium



LEGISLATURE APPROVED APPROPRIATIONS - 2009-2011 BIENNIUM

	FY 2009-2010	FY 2010-2011	TOTAL	% of Total
Elected Officials	$ 98,703,500	$ 99,775,678	$ 198,479,178	3.0%
Finance and Administration	$ 65,792,065	$ 34,679,647	$ 100,471,712	1.5%
Education:				
Nevada System of Higher Education*	$ 501,051,371	$ 501,050,065	$ 1,002,101,436	15.3%
Kindergarten to 12th Grade*	$ 1,249,655,316	$ 1,339,770,228	$ 2,589,425,544	39.6%
Other Education	$ 11,107,109	$ 11,038,648	$ 22,145,757	0.3%
Subtotal Education	$ 1,761,813,796	$ 1,851,858,941	$ 3,613,672,737	55.2%
Human Services	$ 895,588,060	$ 1,029,212,014	$ 1,924,800,074	29.4%
Commerce and Industry	$ 42,883,404	$ 42,764,289	$ 85,647,693	1.3%
Public Safety**	$ 312,236,851	$ 244,605,099	$ 556,841,950	8.5%
Infrastructure	$ 28,680,183	$ 28,549,140	$ 57,229,323	0.9%
Special Purpose Agencies	$ 5,767,036	$ 5,532,203	$ 11,299,239	0.2%
Total	**$ 3,211,464,895**	**$ 3,336,977,011**	**$ 6,548,441,906**	**100.0%**

*Does not include $9.4 million in American Recovery and Reinvestment Act of 2009 (ARRA) funds approved for NSHE in both FY 2010 and FY 2011 and $4.3 million in ARRA funds approved for K-12 Education in FY 2010.

**Does not include $72.2 million in ARRA funds approved for the Department of Corrections in FY 2011.

Please refer to page 68 of the *2009 Appropriations Report* for information summarizing the use of ARRA funding, which provided additional operating support in lieu of General Fund dollars.

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. During the 2007-2009 Biennium, $267 million (Senate Bill 1, Chapter 4, *Statutes of Nevada 2008*, *24th Special Session*) was transferred from the Rainy Day Fund to the State General Fund to partially offset General Fund revenues not meeting projected levels. The 2009 Legislature amended the statutes governing the Rainy Day Fund, which in addition to other changes, requires the State Controller to transfer from the State General Fund to the Rainy Day Fund at the beginning of each fiscal year 1 percent of the total anticipated revenue projected by the Economic Forum and provides for a transfer from the Rainy Day Fund to the General Fund upon a recommendation by the Board of Examiners and approval of the Interim Finance Committee if the Legislature is not in session.

FISCAL 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 fiscal 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.

Following is a list of the major fiscal measures from the 2009 Legislature:

- General Appropriations Act (Assembly Bill 562, Chapter 388, *Statutes of Nevada*);
- Unclassified Pay Bill (S.B. 433, Chapter 391, *Statutes of Nevada*);
- Authorized Expenditures Act (S.B. 431, Chapter 392, *Statutes of Nevada*);
- Capital Improvements Program Act (A.B. 564, Chapter 440, *Statutes of Nevada*); and
- School Funding Bill/State Distributive School Account (DSA) and Class-Size Reduction Bill (A.B. 563, Chapter 389, *Statutes of Nevada*).

26TH SPECIAL SESSION OF THE LEGISLATURE IN FEBRUARY 2010—MARCH 2010

As the economic challenges continued for both Nevada and the nation, Nevada's Governor convened a special meeting of the Economic Forum on January 22, 2010. After reviewing the new data presented, the Economic Forum revised its earlier projections and forecast a budget shortfall of

$580 million, which represents a 9.3 percent shortfall. Combined with shortfalls on other minor revenues, the DSA relative to the Local School Support Tax, and higher than budgeted cases in the Medicaid program, a budget shortfall of approximately $880 million was forecast. Subsequently, the Governor issued a proclamation calling the Legislature into the State's 26th Special Session on February 23, 2010.

When the special session ended on March 1, 2010, the budget gap was bridged using several strategies: (1) reductions in the State General Fund appropriations to State agencies, including the Legislative and Judicial Branches and the NSHE, along with reductions in the DSA for Fiscal Years 2010 and 2011; (2) sweeping special fund accounts and reserves into the State General Fund; and (3) increasing certain fees. In addition, a number of statutory changes were made to give school districts budget flexibility that will help them maximize the use of their funding. Secretary of State fees, mining fees, and fees paid by banks relating to the foreclosure process were increased. Authorized revenue was increased on gaming licenses.

The measures passed by the Legislature during the 26th Special Session can be reviewed through the Legislature's website at: http://www.leg.state.nv.us.

ADDITIONAL REFERENCES

Budget 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/

FISCAL ANALYSIS STAFF RESPONSIBLE FOR THIS TOPIC

Tracy Raxter
Assembly Fiscal Analyst

Mark Krmpotic
Senate Fiscal Analyst

Fiscal Analysis Division
Legislative Counsel Bureau
Telephone: (775) 684-6821
Fax: (775) 684-6475

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, 2009, through June 30, 2011).

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, 2009, through June 30, 2010).

General Appropriations Act
An omnibus act appropriating funds for government departments or programs, from the State General Fund or State Highway Fund.

Public Employees' Benefits Program (PEBP)

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Public Employees' Benefits Program 1
Funding 3
Plan Options and Rules 4
Legislative Changes in 2009 Session 4
Additional Information and Resources..... 4
PEBP Contact Information..... 5
Research Staff Contacts..... 5

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. The first group insurance program was created in 1963 and restructured into the Public Employees' Benefits Program (PEBP) in 1999 by Senate Bill 544 (Chapter 573, *Statutes of Nevada*). Over time, the State's health insurance program has evolved into a self-funded program that is also open to local governments that wish to join. The Legislature oversees PEBP, but it has an independent board with an executive officer who handles the day-to-day operations.

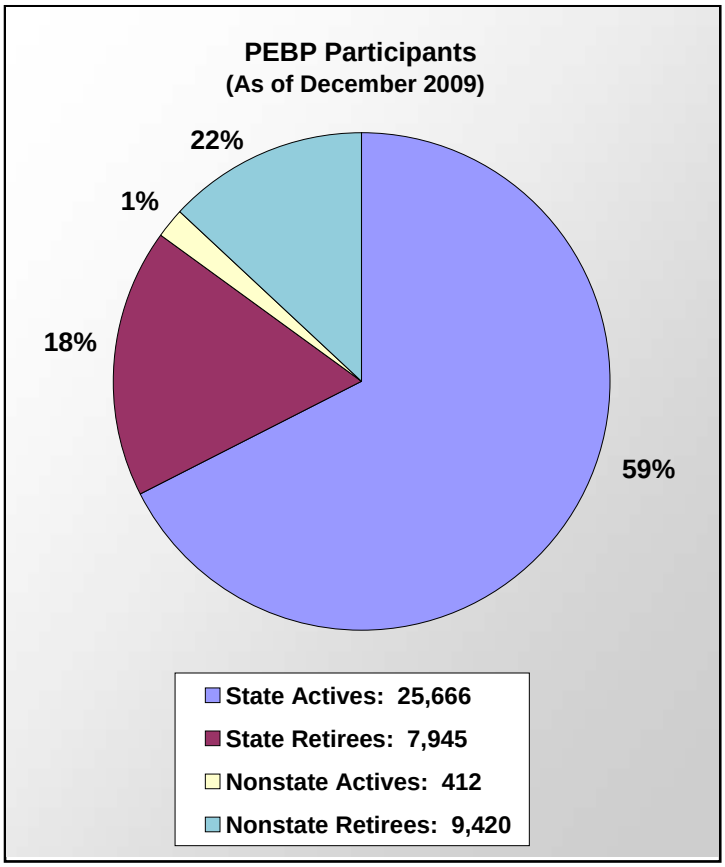
PUBLIC EMPLOYEES' BENEFITS PROGRAM

The PEBP is a State agency that administers the health plan for State and other public employees. It is legislatively mandated to provide group life, accident, or health insurance, or any combination of these (*Nevada Revised Statutes* [NRS] 287.043).

The PEBP currently administers various benefits, including: health insurance benefits such as pharmacy, dental, and vision insurance; basic life, accidental death and dismemberment insurance; long-term disability insurance; group travel accident insurance; and flexible spending accounts. Voluntary insurance products are also available, including short-term disability, long-term care, home and auto, and additional life insurance.

The program serves over 43,000 participants, plus approximately 30,000 family members and survivors. Participants include:

- State employees and officers;
- State retirees;
- State legislators;
- Certain Nevada System of Higher Education (NSHE) professional employees;
- Nonstate participating public agency employees and retirees; and
- Certain nonstate, nonparticipating public agency retirees.



A nonstate active participant is a person who is currently employed by a local government that opted to join PEBP pursuant to NRS 287.045. A nonstate retiree is a retired public employee from a participating local government, or a retired employee from a local government that does not participate in PEBP who opted into 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 (Chapter 304, *Statutes of Nevada*) in the 1993 Session 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 prohibited the claims experience of nonstate retirees from being "commingled" with other groups when setting insurance rates. For State employees and retirees, Assembly Bill 564 (Chapter 546, *Statutes of Nevada 2001*) required the commingling of State active employees and State retirees for purposes of rate-setting. Due to large rate increases for nonstate retirees, A.B. 286 (Chapter 493, *Statutes of Nevada 2003*) dictated that nonstate active employees and nonstate retirees be commingled when setting rates.

The rule allowing retirees of nonparticipating local governments to join PEBP changed significantly in 2007 under S.B. 544 (Chapter 496, *Statutes of Nevada*). If a local government's active employees do not participate in PEBP, then its retirees may not join PEBP upon retirement unless they enrolled in PEBP on or before November 30, 2008. For more information on changes to nonstate retiree eligibility, see the Fact Sheet "Changes to Local Government Retiree Participation in PEBP" at: http://www.leg.state.nv.us/lcb/research/FactSheets/SB544FAQs.pdf.

Currently, 15 nonstate governmental entities participate in PEBP. The nonstate members consist of three charter schools, the White Pine County School District, the Cities of Caliente and Elko, two general improvement districts, and seven local special districts.

FUNDING

State Appropriations/Subsidies

The operations of PEBP are funded through legislative appropriation as part of the budget. Insurance plans within PEBP are funded through contributions of program participants and their employers. State employees are subsidized by their State agency employer for their health insurance coverage and State agencies must build the cost of providing the active employee subsidy into their budgets. State retirees are subsidized by the State based on the number of years employed in State service in an amount determined by the Legislature each session.

Nonstate Subsidies

Nonstate participants may also receive a subsidy from their participating local government while they are actively employed. As required by A.B. 286 (2003), nonstate retirees with at least five years of service with a local government and who joined PEBP upon retirement from the local government employer, must receive a subsidy from their local government employer that is proportionate to the subsidy paid by the State for State retirees. In the 2009 Session, eligibility for these subsidies was modified for PEBP participants hired on or after July 1, 2010, as set forth in S.B. 427 (Chapter 426, *Statutes of Nevada*). See explanation in later section titled "Legislative Changes in 2009 Session."

Investment Fund

In the 2007 Session, the Legislature created the Retirement Benefits Investment Fund for the purposes of investing money from State and local government trust funds created to fund liabilities for post-employment benefits other than retirement. Under the provisions of S.B. 457 (Chapter 253, *Statutes of Nevada 2007*), the Public Employees' Retirement Board acts as the Retirement Benefits Investment Board.

As of December 2009, the State has deposited over $26 million in the Retirement Benefits Investment Fund. Two other entities have also deposited investments as follows: Washoe County School District—$14,338,877 and Truckee Meadows Water Authority—$4,141,133.

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. A majority of PEBP members (over 70 percent) participate in the self-funded PPO network.

The plan rates depend upon whether the PPO or HMO is chosen in a particular region, whether the participant is an active employee or retiree, the date of retirement, and how many people in the family are covered. Because of the 2009 Session and uncertainty about the budget, the PEBP Board extended the 2008 Plan Year for an additional four months and the 2009 Plan Year started on November 1, 2009. Rate charts are available on the PEBP website at: http://www.pebp.state.nv.us.

LEGISLATIVE CHANGES IN 2009 SESSION

To address budget concerns, the 2009 Legislature made a number of changes to retirement and health benefits for public employees. The provisions of S.B. 427 change subsidy requirements for PEBP participants who are hired on or after January 1, 2010. The State will only pay subsidies for such employees who continuously participate in PEBP after retirement and who have at least 15 years of service or at least 5 years of service and receive disability payments from the Public Employees' Retirement System (PERS) or the NSHE retirement program for professional employees. Local governments must pay the same subsidy as the State if the local government retiree has continuously participated in PEBP since retirement and either has at least 15 years of service or at least 5 years of service and receives disability payments from PERS or the NSHE retirement program for professional employees. Subject to certain limits, A.B. 162 (Chapter 331, *Statutes of Nevada 2009*) requires health benefit plans to cover screening, diagnosis, and treatment of autism spectrum disorders, effective July 1, 2011.

Changes to health benefits and subsidies for current employees were recited in S.B. 427 as follows: (1) the portion of the premium paid by the State will be reduced by approximately 5 percent for active State employees and dependents; (2) certain therapies for ADD and ADHD were eliminated; (3) the Health Assessment Questionnaire was eliminated along with the associated benefits (reduced deductibles and enhanced dental benefits); (4) single deductibles of $725 for individuals and $1,450 for families were instituted; (5) the annual deductible is indexed to 100 percent of medical inflation; and (6) the annual out-of-pocket maximum is indexed to 50 percent of medical inflation.

ADDITIONAL INFORMATION AND RESOURCES

Concerns about the State budget prompted review of State health benefits. The Las Vegas Chamber of Commerce published one such review, *Fiscal Analysis Brief, Volume 1, Issue 4, An Overview and Comparative Analysis of Nevada's State Retiree Health Insurance Subsidy*, which is available at: http://www.lvchamber.com/files/pdf/FAB-retiree-health-subsidy.pdf.

PEBP CONTACT INFORMATION

PEBP Telephone: (775) 684-7000
PEBP Toll-free Telephone: (800) 326-5496
Interim Executive Officer, Cateri Cavin: (775) 684-7020
E-mail: services@peb.state.nv.us
Website: http://www.pebp.state.nv.us

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Amber J. Joiner
Senior Research Analyst
E-mail: ajoiner@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Public Employees' Retirement System (PERS)

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 PERS, although PERS has an independent board with an executive director and staff who handle day-to-day operations.

CREATION OF PERS

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.

TABLE OF CONTENTS

Creation of PERS 1
Operation of PERS 2
Membership 2
Investment Strategy 3
Plan for Regular Members 3
PERS Contributions 3
Retirement Ages, Vesting, and Service Credits 4
PERS Benefits 4
Plan for Police and Firefighters 6
Legislative Retirement System 6
Judicial Retirement System 6
Reemployment of Retirees 6
Retirement Benefits Investment Board 7
Additional Resources and PERS Contact Information 7
Research Staff Contacts 7

To provide legislative oversight, the Interim Retirement Committee was created in 1977. Later renamed the Interim Retirement and Benefits Committee, the Committee also monitors the Public Employees' Benefits Program.

OPERATION OF PERS

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 and is a consolidated system with two subfunds (Regular and Police and Firefighters' Retirement Fund) that are pooled for investment purposes. Assets at the end of Fiscal Year 2009 totaled approximately $18.7 billion and PERS is 75 percent funded with full funding targeted using rolling 30-year periods.

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 periods of time as to give the public employer full benefit of the training and experience gained by these employees while employed by public employers.

Membership

With 173 public employers participating in the system, PERS serves over 105,000 members (approximately 92,800 regular members and 12,600 police/firefighter members), along with over 38,000 retirees and beneficiaries. Members include State employees, police and firefighters, nonprofessional staff at the Nevada System of Higher Education (NSHE), county and city employees, and school district and other local district employees.

Separate retirement programs have been created for State legislators (Legislative Retirement System or LRS) and State and local judges (Judicial Retirement System or JRS).

The Board of Regents of the NSHE is required by statute (NRS 286.802) to provide a separate retirement and death benefits program for its professional staff.

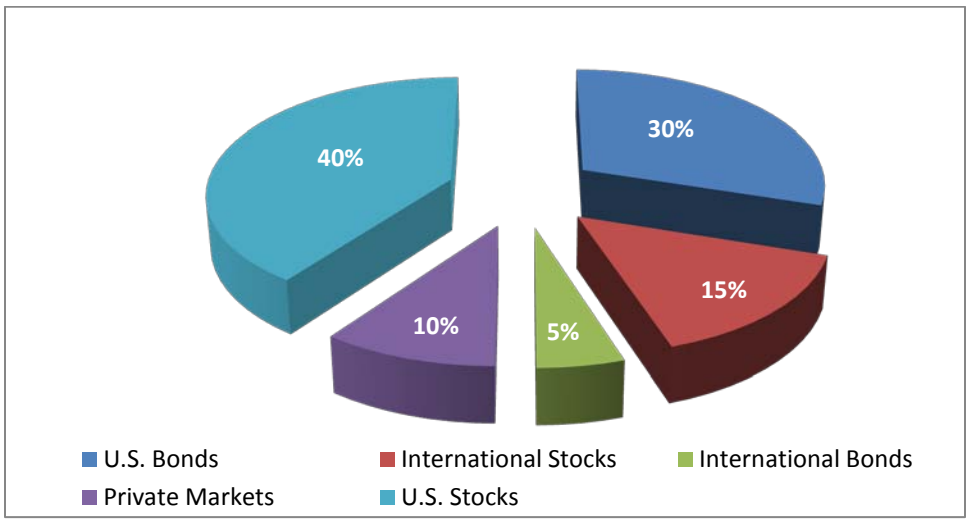
Investment Strategy

The investment objectives of PERS are to:

- Generate an 8 percent average annual return;
- Minimize risk;
- Maintain a high-quality, cost-effective program; and
- Emphasize a consistent, transparent investment strategy.

According to PERS, the fund has generated a 25-year average annual return of 9 percent and continues to rank in the top 15 percent of public pension plans for risk and return efficiency.

PERS Target Asset Allocation
December 2009



PLAN FOR REGULAR MEMBERS

PERS Contributions

Depending upon their employer, public employees may have a choice of contribution plans: employee/employer joint contributory plan or employer pay plan. The majority of employees are under the employer pay plan. Under either plan, employees pay one-half of the contributions towards their retirement.

For 2009, the contribution rate under the employee/employer plan is 11.25 percent from each, while the rate for the employer pay plan is 21.5 percent. These rates are adjusted biennially based on the preceding year's actuarial valuation. Employees under the employee/employer plan may withdraw their contributions upon termination from State service; thereby forfeiting any retirement benefits.

In the 2009 Session, Senate Bill 427 (Chapter 426, *Statutes of Nevada*) amended the provisions governing the biennial adjustments to contribution rates to "smooth out" the biennial adjustments. These changes are intended to minimize the impact of contribution rate adjustments when preparing State and local government budgets and to allow PERS to put additional funds toward the System's unfunded liability.

Retirement Ages, Vesting, and Service Credits

Eligibility for retirement differs depending on the retirement plan. Currently, the average age at retirement for regular members is 60 years after an average of 19 years of service.

Members are fully vested after five years of service and are then eligible to purchase up to five additional years of service credit. The cost to purchase a year of service credit ranges from approximately 20 percent to 40 percent of the employee's annual pay.

Eligible members with active military service in Operations Desert Storm, Enduring Freedom, or Iraqi Freedom may purchase up to three additional years of service credit depending upon the number of months served.

In the 2009 Session, S.B. 427 changed the eligibility for retirement for persons initially hired on or after January 1, 2010 (hereafter referred to as "newly hired members").

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. For service prior to July 1, 2001, the multiplier is 2.5 percent. For service after July 1, 2001, the multiplier is 2.67 percent except that newly hired employees are subject to a lower multiplier of 2.5 percent. The resulting percentage is then applied to the average monthly compensation (defined as the highest 36 consecutive months of earnings) to determine the monthly retirement benefit.

For newly hired employees, the calculation of average monthly compensation is subject to a provision in S.B. 427 that caps salary increases at no more than 10 percent per year in the 24 months leading up to, and during, the 36 months of highest compensation. Assignment-related and promotion compensation will not be subject to the 10 percent cap. Persons whose retirement benefits are affected by this cap are entitled to a refund of contributions related directly to the affected pay. Senate Bill 427 also restricts what type of "call-back pay" will be considered as compensation for purposes of determining benefits for newly hired members.

If a member desires to retire early, the monthly benefit is reduced by 4 percent for each full year prior to regular retirement age. For newly hired members, the monthly benefit will be reduced by 6 percent for each full year. The retirement plan also offers survivor and disability benefits to qualified persons. Retirees may choose one of seven benefit options and the option selected may change the monthly benefit amount.

Senate Bill 427 imposes different restrictions on post-retirement increases for newly hired members. Post-retirement increases for current employees are limited after the 13th year to the lesser of 5 percent or the 3-year average increase in the Consumer Price Index (CPI); while newly hired employees will be limited after the 12th year to the lesser of 4 percent or the 3-year average increase in the CPI.

RETIREMENT AGE ELIGIBILITY

Regular Members 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

LRS

10 years .....Age 60

Newly Hired Employees

Regular Members

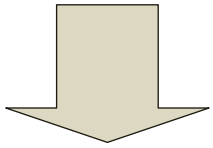
30 years ..... At any age
10 years .....Age 62
5 years .....Age 65

Police/Firefighters

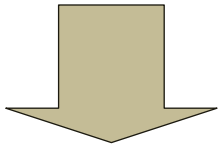
30 years ..... At any age
20 years .....Age 50
10 years .....Age 60
5 years .....Age 65

Sample Calculation of Determination of Benefits

20 years x 2.5% = **50%**



50% x **$2,000** (monthly salary)



= $1,000 monthly benefit

$1,000 is the monthly benefit for a person retired after 20 years of service at 2.5%

NOTE: The PERS website (http://www.nvpers.org) offers calculators that can be used to determine monthly benefits based upon a number of variables, including age, years of service, and average compensation. The information on calculations for retirement benefits provided above is for general information purposes only.

PLAN FOR POLICE AND FIREFIGHTERS

The Police and Firefighters' Retirement Fund was created in 1977. In some instances, police and firefighters may retire at a younger age than regular members. The average age at retirement for police and firefighters is 55 years after an average of 22 years of service. Contribution rates are 37 percent under the employer pay plan and 19 percent under the employee/employer plan.

LEGISLATIVE RETIREMENT SYSTEM

The Legislative Retirement System was created in 1967 and, although overseen by PERS, is a separate retirement system. The LRS is 77 percent funded with full funding targeted for 2025. 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 has survivor (but not disability) benefits. Legislators who leave before vesting have the option of withdrawing their contributions.

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.

JUDICIAL RETIREMENT SYSTEM

Members of the Judicial Retirement System include Supreme Court and District Court Judges, as well as local judges. In 2001, the JRS replaced a prior judicial retirement plan and some judges are still members of 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 in an amount determined by the System's actuary to pay the normal costs of benefits.

The JRS for the State-level judges is 55 percent funded. Assuming appropriations for the JRS are approved as projected, full funding of the JRS for State-level judges is targeted for 2037. The JRS for local judges is fully funded.

REEMPLOYMENT OF RETIREES

In 2001, legislation was enacted which permits the rehiring of retired employees in positions designated as "critical labor shortages," without loss of retirement benefits. These statutes were originally set to sunset in June 2005. Senate Bill 485 (Chapter 316, *Statutes of Nevada 2005*) extended the sunset date to June 2009. The sunset date was extended a second time to June 30, 2015, by Assembly Bill 488 (Chapter 346, *Statutes of Nevada 2009*). A study of the impact on PERS of the reemployment of retirees is due before the 2015 Session.

RETIREMENT BENEFITS INVESTMENT BOARD

In the 2007 Session, the Legislature required the PERS Board, acting as the Retirement Benefits Investment Board, to establish a fund for the purpose of investing money from State and local government trust funds created to fund liabilities associated with post-employment benefits other than retirement. The Retirement Benefits Investment Board has created the Retirement Benefits Investment Fund subject to the powers, duties, and limitations set forth in S.B. 457 (Chapter 253, *Statutes of Nevada 2007*). In 2009, assets of the Investment Fund totaled approximately $19 million.

ADDITIONAL RESOURCES AND PERS CONTACT INFORMATION

Public Employees' Retirement System website: http://www.nvpers.org
Executive Officer, Dana Bilyeu: (775) 687-4200

Reports that have been published recently on the subject of retirement benefits for public employees include:

- Las Vegas Chamber of Commerce, *Fiscal Analysis Brief, Volume 1, Issue 3, An Overview and Comparative Analysis of the Nevada Public Employees' Retirement System*, 2008: http://www.lvchamber.com/files/pdf/FAB-retirement-system.pdf.

- National Institute on Retirement Security, *A Better Bang for the Buck, The Economic Efficiencies of Defined Benefit Pension Plans*, August 2008: http://www.nirsonline.org/storage/nirs/documents/Bang%20for%20the%20Buck%20Report.pdf.

- TIAA-CREF Institute, *Defined Contribution Pension Plans in the Public Sector: A Best Practice Benchmark Analysis*, April 2008: http://www.tiaa-crefinstitute.org/research/articles/042408.html.

- The Pew Center on the States, *Promises with a Price, Public Sector Retirement Benefits*, December 2007: http://www.pewtrusts.org/our_work_report_detail.aspx?id=32390.

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Amber J. Joiner
Senior Research Analyst
E-mail: ajoiner@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Health & Human Services

Health Care and Health Insurance

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 and our visitors through the delivery and facilitation of essential services. Our goal is to strengthen families, protect public health, and assist individuals in achieving the highest level of self-sufficiency."

State General Fund expenditures for the DHHS are projected at $1.9 billion, or 29 percent of the State General Fund.

The following major divisions and offices, with administrators and chiefs listed, are within the jurisdiction of the DHHS:

Aging and Disability Services Division Carol Sala, Administrator
Division of Child and Family Services Diane J. Comeaux, Administrator
Health Division Richard Whitley, M.S., Administrator
Division of Health Care Financing and Policy Charles Duarte, Administrator
Division of Mental Health and Developmental Services Harold Cook, Ph.D., Administrator
Office of the State Public Defender Diane R. Crow, State Public Defender
Division of Welfare and Supportive Services Romaine Gilliland, Administrator

TABLE OF CONTENTS

Department of Health and Human Services 1
Division of Insurance 2
Major Coverage Programs 2
Medicaid 2
Medicare 3
Nevada Check-Up 4
Senior Prescription Drug Program 4
Health Insurance Issues 5
Access to Health Insurance 5
Regulation of Health Insurance 5
Health Care Services and Facilities 6
Health Care Services 6
Health Care Facilities 7
Health Care Professionals 8
Health Care Professionals—Disciplinary Action 8
Supply of Health Professionals 8
Internet and Additional Resources 8
Research Staff Contacts 9

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 website at http://dhhs.nv.gov/Grants/Grants_HealthyNevada.htm.

DIVISION OF INSURANCE

The mission of the Division of Insurance, Department of Business and Industry, is "to protect the rights of Nevada consumers in their experiences with the insurance industry and to ensure the financial solvency of insurers."

The following seven sections within the Division 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 current fiscal biennium are 63.93 percent for State Fiscal Year (SFY) 2010, and 57.77 percent for SFY 2011. In addition to the FMAP for medical services, there are different FMAP rates for other types of services: administrative services; direct care services provided by skilled professional medical personnel employed by the State of Nevada; information systems design, development, and implementation costs; and operations of a federally certified Medicaid Management Information System. 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/Info/Medicaid%20Guide%20_English_.pdf.

Issues Concerning the Nevada Medicaid Program

Due to increasing Medicaid caseloads and a reduction in the FMAP for the last two quarters of FY 2011, a projected shortfall exists in the Medicaid program for the 2009-2011 Biennium. As of December 9, 2009, the shortfall for the biennium was projected to total approximately $177.2 million. Of this amount, the State General Fund portion would total approximately $59.3 million.

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 United States 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. As of the middle of January 2006, nearly 24 million Medicare beneficiaries were participating in the new "Medicare Part D" prescription drug benefit.[1]

---

[1]Health and Human Services, Office and Management and Budget, Executive Office of the President of the United States (http://www.whitehouse.gov/omb/budget/fy2007/hhs.html).

A more in-depth description of the federal Medicare program is included in the *2010-2011 Policy and Program Report* on Senior Citizens.

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 2010 is 65.08 percent federal and 34.92 percent State. The rate for SFY 2011 is 65.88 percent federal and 34.13 percent State. Due to budget constraints the enrollment for the Nevada Check-Up program may be capped.

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.

Toll-free telephone numbers are available for families to determine their eligibility for the program: (877) 543-7669 (in-state) and (800) 360-6044 (out-of-state). Additional details about the program are available on the Division's website at http://dhcfp.state.nv.us or on the Nevada Check-Up website 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 $5,100 in prescription drug benefits per year to eligible seniors. Currently, many of the most commonly prescribed drugs are available through Senior Rx for a copayment of $10 per drug. The following table identifies the copayment 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	Nongeneric preferred drugs
$25	Nonpreferred 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. Many of the program's benefits are administered through a contracted pharmacy benefit manager called Catalyst Rx. Other benefits are coordinated directly with the Medicare Part D plans that serve as the first prescription drug resource for enrolled members.[2]

More information about Senior Rx may be found on the DHHS's website at http://dhhs.nv.gov/SeniorRx.htm; by calling (775) 687-7555 from the Reno, Carson City, or Gardnerville areas; or by calling toll-free at (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.

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 website (http://doi.state.nv.us) has information for consumers as well as companies that do business in Nevada. The "Consumers" 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.

---

[2]Nevada Senior Rx, Department of Health and Human Services website (http://dhhs.nv.gov/SeniorRx.htm).

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, nonprofit, 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 website 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 website of the Nevada Public Health Foundation at http://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:

- Has no insurance or other contractual provision for the payment of the charge by a third party;
- Is not eligible for coverage by a State or federal program of public assistance that would provide for the payment of the charge; and
- Makes reasonable arrangements within 30 days after discharge to pay the hospital bill.

Health Care Facilities

Health care facilities such as hospitals and nursing homes are regulated in Nevada by the Bureau of Health Care Quality and Compliance (HCQC) in the Health Division, DHHS. Additionally, entities such as assisted living facilities and group homes are regulated by the HCQC. Complaints about the quality of care in these facilities may be directed to the HCQC by calling the following numbers: in Carson City, (775) 687-4475; and in Las Vegas, (702) 486-6515.

The Aging and Disability 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. Consumers may obtain additional information about the Division's services at: http://www.nvaging.net.

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 website at http://www.leg.state.nv.us/App/OL/A/. Relevant contact information for the boards is available in these reports.

Supply of Health Professionals

Based on 2008 data, when compared to all states in relation to the supply of health professionals per 100,000 population, Nevada ranked 47th in number of physicians, and 49th in number of nurses. For many years, the State consistently led the nation in population growth, showing a 4.1 percent increase between 2003 and 2004, compared to a national average growth rate of 1 percent in that time period. This growth and 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.

INTERNET AND ADDITIONAL RESOURCES

Governor's Office for Consumer Health Assistance
Website: http://govcha.state.nv.us/
Website: http://rxhelp4nv.org/
Toll-free Telephone: (888) 477-2669

Nevada's Department of Health and Human Services
Website: http://dhhs.nv.gov/
Telephone: (775) 684-4000

Health Division
Website: http://health.nv.gov/
Telephone: (775) 684-4200

Aging and Disability Services Division
Website: http://www.nvaging.net
E-mail (general information for all offices): adsd@adsd.nv.gov
Carson City Telephone: (775) 687-4210
Elko Telephone: (775) 738-1966
Las Vegas Telephone: (702) 486-3545
Reno Telephone: (775) 688-2964

Division of Welfare and Supportive Services
Website: http://dwss.nv.gov/
Telephone: (775) 684-0500

Division of Welfare and Supportive Services Field Offices
Website: http://dwss.nv.gov/index.php?option=com_content&task=view&id=122&Itemid=319
Welfare Customer Service
Toll-free Voice Response Telephone: (800) 992-0900

Senior Rx
Website: http://dhhs.nv.gov/SeniorRx.htm
Toll-free Telephone: (775) 687-7555 (for Reno-Carson City-Gardnerville areas)
Toll-free Telephone: (866) 303-6323 (from outside Reno-Carson City-Gardnerville areas)

Nevada Medicaid
Website: http://dhcfp.state.nv.us/
Telephone: (775) 684-3676

Nevada Check-Up
Website: http://www.nevadacheckup.state.nv.us/
Toll-free Telephone (in-state): (877) 543-7669
Toll-free Telephone (out-of-state): (800) 360-6044

Division of Insurance, Department of Business and Industry
Website: http://doi.state.nv.us/
Carson City Office Telephone: (775) 687-4270
Las Vegas Office Telephone: (702) 486-4009

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Marsheilah D. Lyons
Principal Research Analyst
E-mail: mlyons@lcb.state.nv.us

Amber J. Joiner
Senior Research Analyst
E-mail: ajoiner@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Human Services

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

Human services in Nevada includes services designed 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 one of the fastest growing states in the United States for the last 20 years, increasing in total population from 1,201,833 in 1990 to 2,495,529 in 2006. 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 25.7 percent of the total population, and senior adults, 65 and older, at 11.3 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 constructed around the goal of supporting this effort. Approximately 30 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.

TABLE OF CONTENTS

Economic Assistance Programs.....2

Temporary Assistance for Needy Families 2

New Employees of Nevada Program 3

Food Stamp Employment and Training Program 4

Welfare-to-Work 5

Social Service Programs 5

Child Care Assistance 5

Food Stamps 5

Women, Infants, and Children 6

Child Welfare Services 6

Nevada Law Governing Protection of Children From Abuse and Neglect 7

Foster Care.....8

Mental Health and Developmental Services 9

Involuntary Commitment.....9

Substance Abuse Services.....10

Internet Resources 10

Research Staff Contacts.....11

ECONOMIC ASSISTANCE PROGRAMS

Described below are programs that provide economic support to eligible persons.

Temporary Assistance for Needy Families

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.

Eligibility Requirements

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, including the following: one's home and surrounding property; burial plot; personal possessions such as clothes, jewelry, furnishings, household goods, or pets; and resources or income of an SSI recipient. However, these are some of the items counted as assets: (1) checking and savings accounts; (2) Individual Retirement Accounts; (3) certificates of deposit; (4) stocks and bonds; (5) recreational vehicles; and (6) 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.

Limitations on Receiving Assistance

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 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.

Medicaid and TANF

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.

Measurements for Program Success

Program success is measured by the number of households that leave the TANF cash assistance program due to employment. In Fiscal Year (FY) 2009, the average number of recipients receiving cash benefits each month was 22,556; another 90,177 received medical assistance only. The total cash grant expenditure for TANF in FY 2009 was $35.9 million with an average monthly grant of $132.73 per recipient. The average TANF grant household size was 2.54 people.

Countable Work Activity

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.

New Employees of Nevada Program

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 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.

Funding for the NEON Program

The NEON program receives funding through the TANF Block Grant and State General Fund. In State Fiscal Year (SFY) 2009, the NEON program expended $1,594,631.16 for training and employment-related support services, assisting 4,647 work-eligible individuals. The NEON program expended $1,396,688.20 through social service contracts to provide domestic violence services and substance abuse treatment to 296 work-eligible individuals and their families and provide teen parenting and teen pregnancy prevention education. Funding to provide child care services to work-eligible individuals is obtained from the Child Care and Development Fund. The TANF NEON program is measured based on the percentage of work-eligible individuals engaged in an average of 30 or more hours (with a few exceptions) of "countable" work activities each week. The following is Nevada's preliminary* work participation rate (WPR) percentages for Federal Fiscal Year (FFY) 2009:

FFY 2009	All Family	Two-Parent
1st Quarter	45.13 percent	50.47 percent
2nd Quarter	38.30 percent	44.13 percent
3rd Quarter	40.33 percent	48.70 percent
4th Quarter	32.07 percent	42.20 percent
YTD FFY 2009	**38.96 percent**	**46.38 percent**

*The WPR numbers are preliminary, not final. Federal Fiscal Year 2009 WPR numbers are open to federal and divisional edits through April/May 2010.

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 that 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 and Development Fund assists low-income Nevadans with their child care needs as long as they are working, going to school, or in training. The program is funded with federal Child Care and Development funds as well as State General Fund revenue. Nevada's Child Care program has grown from an $18 million program in SFY 1998 to a $40 million program in SFY 2008. The program targets low-income families with incomes at or below 130 percent of the federal poverty level but can serve families with incomes up to 75 percent of the State's median income.

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.

Food Stamps

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 3 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.

Women, Infants, and Children

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 DHHS. 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.

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 DHHS is responsible for children's mental health (in the State's two largest populated counties), youth corrections, and child welfare

services. *Nevada Revised Statutes* (NRS) 432B.325 states that in counties where population is 100,000 or more, that the county shall provide protective services for children in that county and pay the cost of those services in accordance with standards adopted by the State. In 2001, the State Legislature expanded the county's responsibility to include all child welfare services of child protection, foster care, and adoption (NRS 432B.030 and NRS 432B.044). Therefore, the Clark County Department of Family Services and Washoe County Department of Social Services provide child welfare services directly and DCFS provides child welfare services to the remaining 15 counties in the State through its Rural Region offices (*Nevada Statewide Assessment*, June 2009, Diane Comeaux, Administrator, Division of Child and Family Services, DHHS).

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.

Nevada Law Governing Protection of Children From Abuse and Neglect

Chapter 432B of 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 the home include, but are not limited to, the child having been abandoned by a person responsible for the child's welfare, or the child having been subjected to abuse or neglect by a person responsible for his or her 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 determines 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 finds 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.

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 (MHDS), DHHS. 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 DHHS, 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 has a mental illness and, because of that illness, is likely to

harm himself or herself or others if allowed his or her liberty, the court may order the involuntary admission of the person for the most appropriate course of treatment."

SUBSTANCE ABUSE SERVICES

The Substance Abuse Prevention and Treatment Agency (SAPTA), formerly known as 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 SAPTA also provides regulatory oversight and funding for community-based public and nonprofit organizations. In addition, SAPTA 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 SAPTA serves as the single State authority for the federal Substance Abuse Prevention and Treatment Block Grant, but does not provide any direct substance abuse prevention or treatment services. As of December 4, 2006, SAPTA was merged into the Division of Mental Health and Developmental Services.

In SFY 2008, the SAPTA budget totaled nearly $26.2 million, including approximately $15.7 million in federal support and approximately $10.5 million in State funds. For FFY 2008-2009, Nevada will receive nearly $12.9 million from the SAPTA block grant, and by federal requirement, 20 percent of the block grant is allocated to prevention programming and 70 percent is allocated to treatment programming.

INTERNET RESOURCES

- Department of Employment, Training and Rehabilitation: http://detr.state.nv.us/
- Department of Health and Human Services: http://dhhs.nv.gov/
- Division of Child and Family Services: http://www.dcfs.state.nv.us/
- Division of Mental Health and Developmental Services: http://mhds.state.nv.us/
- Division of Welfare and Supportive Services: http://dwss.nv.gov/
- Substance Abuse Prevention and Treatment Agency: http://mhds.nv.gov/index.php?option=com_content&task=view&id=108&Itemid=95
- Clark County Department of Family Services: http://www.accessclarkcounty.com/depts/family_services/Pages/home.aspx
- Washoe County Department of Social Services: http://www.co.washoe.nv.us/socsrv/socsrv.html

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Marsheilah D. Lyons
Principal Research Analyst
E-mail: mlyons@lcb.state.nv.us

Amber J. Joiner
Senior Research Analyst
E-mail: ajoiner@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Senior Citizens

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

According to the United States Census Bureau, between 2000 and 2008, Nevada's senior population (age 65 and older) increased 30 percent, nearly four times the national average of 8.5 percent. The Bureau estimates that there are approximately 285,604 Nevadans age 65 and older (2008), which represents 11.2 percent of the State population. Nevada's Office of the State Demographer estimates that this number will more than double by 2026 to over 627,000 seniors. Many of these seniors are healthy; live active lifestyles; contribute positively to the State's economy in many ways; and initially, require few senior services. However, as seniors age, there may be significant impacts on services that are provided by public and private institutions. Projections suggest that the demand for enhanced programs and services for our escalating senior population will continue to grow at an increasing rate over the next several decades.

To address the concerns of this population, Assembly Bill 9 (Chapter 430, *Statutes of Nevada*) of the 2009 Legislative Session, created a statutory committee named the Legislative Committee on Senior Citizens, Veterans and Adults With Special Needs to meet during the interim between legislative sessions.

Assembly Bill 9 authorizes the Committee to review, study, and comment on issues relating to senior citizens, veterans, and adults with special needs, including: initiatives to ensure financial and physical wellness; the prevention of abuse, neglect, isolation, and exploitation; public outreach and advocacy; the enhancement of service programs to ensure that services are provided in the most appropriate setting; programs that allow seniors to live outside institutional care by providing services and care in the home; the availability of useful information and data for the State to effectively make decisions;

TABLE OF CONTENTS

Health Care 2
Medicare 2
Senior Rx 3
Services for the Elderly 4
National Family Caregiver Support Program 4
Property Tax Assistance for Senior Citizens 5
The Nutrition Service Incentive Program 5
Elder Rights Unit 5
Program to Assist Relatives Who Have Legal Guardianship of Children 6
Community-Based Programs 6
Nevada Silver Haired Legislative Forum 7
Long-Term Care 7
Social Security-Medicaid Waiver for the Elderly in Adult Residential Care 7
Board of Examiners for Long-Term Care Administrators 7
Office of the State Long-Term Care Ombudsman 7
Additional Resources 8
Research Staff Contact 9

the improvement of laws relating to the appointment of guardians; and the improvement of facilities for long-term care in Nevada.

Information about this Committee can be found at http://www.leg.state.nv.us/Interim/75th2009/Committee/StatCom/SeniorVetSpecial/?ID=50.

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 is the country's largest health insurance program. It provides coverage to approximately 45 million Americans and spends approximately $477 billion in health care benefits (2008). 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 has four main parts:

1. Hospital insurance (also called Medicare "Part A," considered part of "Original Medicare"), which helps pay for care in a hospital or skilled nursing facility, home health care services, and hospice care;

2. Medical insurance (also called Medicare "Part B," considered part of "Original Medicare"), which helps pay for doctors, outpatient hospital care, and some preventative services;

3. Medicare Advantage Plans (also called Medicare "Part C"), which is a way to get Medicare benefits through private companies that are approved and under contract with Medicare. These plans include Parts A and B and usually cover other benefits that Original Medicare does not, such as prescription drug coverage; and

4. 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). 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.

Most people age 65 or older who are citizens or permanent residents of the United States are eligible for Medicare Part A without paying a monthly premium if they or their spouse paid Medicare taxes while working. 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.

It is important for a person to enroll in Medicare as soon as they are eligible, because late enrollment penalties in the form of higher premiums may be applied if too many months elapse. Also, different parts of Medicare have different open enrollment periods, and missing one can result in a penalty. The amount of the higher premium penalty varies depending upon the number of months that have passed since the person should have been enrolled. The higher premium that results from the penalty does not go away and must be paid for the rest of the time that a person is enrolled in Medicare. Anyone interested in finding out if or when they are eligible for Medicare should call the Nevada State Health Insurance Assistance Program at (800) 307-4444; Social Security at (800) 772-1213; or go to http://www.medicare.gov for more information.

Original 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. Traditionally there were ten standard Medigap policies, and each offered a different combination of benefits, but the plans have changed in recent years. For example, in 2010 two new plans will be offered (M and N), and some of the old plans will be retired (Plans E, H, I, and J). Medigap policies can help pay for Medicare copayments, coinsurance, or deductibles. 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. Anyone interested in more information about Medigap coverage should visit http://www.medicare.gov/Publications/Pubs/pdf/02110.pdf to view the booklet, *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*; visit http://www.medicare.gov and select "Compare Medicare Health Plans and Medigap Policies in your Area"; or call 1-800-MEDICARE [(800) 633-4227].

SENIOR RX

Senior Rx is a State program that provides assistance with the cost of prescription drugs in two ways: it assists with Medicare Part D expenses for members who *are* eligible for Medicare Part D and a cost-sharing benefit for members who are *not* eligible for Medicare Part D. 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. To qualify for the program, a senior must be 62 years old, and the household income must not exceed $25,477 (for singles) or $33,963 (for married couples).

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, Senior Rx will subsidize an eligible member's monthly Medicare Part D premium. The subsidy is applicable to any Medicare Part D prescription drug plan the member selects (minus any help Medicare may already be providing with this expense). The member 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.

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 copayments 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 Nevada's Department of Health and Human Services (DHHS) became effective on January 1, 2005.

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, and the vision benefits are now available.

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. During the 2009 Legislative Session, the Aging Services Division, the Office of Disability Services, the Senior RX Program, and the Disability RX Program merged to create the Aging and Disability Services Division. While programs and services for seniors are administered through various offices in Nevada, the coordination of services for individuals age 60 years and older, and those with disabilities, is the responsibility of the Aging and Disability Services Division, 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 and Disability 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 informal caregivers of any age and

grandparents or other relatives 60 years of age or older caring for a child 18 years of age or younger. In Nevada, in addition to counseling, respite programs, and a website for caregivers, 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.

Property Tax Assistance for Senior Citizens

This program, administered by the Aging and Disability Services Division, provides property tax relief to eligible senior citizens who are 62 years of age or older by providing a refund of property taxes paid on property they own. Renters may also receive a refund of a portion of the rent they pay that is attributable to property tax. If the amount of the applicant's household income is at or below the federally designated level signifying poverty for a family unit of one or two, the applicant is entitled to a refund of 100 percent of the property taxes owed. Other seniors may qualify for a partial refund. Senior citizens may file a claim for a refund of accrued property taxes with the county assessor's office between February 1 and April 30 each year.

The Nutrition Service Incentive Program

The Nutrition Service Incentive Program (formerly the Elderly Nutrition Program) is authorized under the OAA. The Aging and Disability Services Division provides grants to entities to provide these nutrition services. 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.

Elder Rights Unit

The Aging and Disability Services Division's Elder Rights Unit provides several services for elderly persons that strive to protect their health and quality of life. During the 2009 Legislative Session, Senate Bill 65 (Chapter 21, *Statutes of Nevada*) renamed and reorganized some of the protection services offered by the Elder Rights Unit, including the Office of the State Long-Term Care Ombudsman and the Community Advocate for Elder Rights.

Elder Protective Services help those 60 years and older who may experience abuse, neglect, exploitation, or isolation. Elder Protective Services serves all of Nevada and includes investigation (within three working days of being reported), evaluation, counseling, referral for other services, and protective services.

Anyone may report an incident of abuse if they have reason to believe that an elderly person has been abused, neglected, exploited, or isolated. The report may be made to the local office of the Aging and Disability Services Division during business hours, any police department or sheriff's office, or Clark County Protective Services. After normal business hours, the reporter should contact local law enforcement or the Crisis Call Center at (800) 273-8255. If a worker with Elder Protective Services

believes that a crime has been committed against an older person, a referral is made to the appropriate law enforcement agency for possible investigation and prosecution. All information obtained during the reporting process is kept confidential.

The Community Advocate for Elder Rights (formerly the Ombudsman for Aging Persons) provides assistance to persons who are 60 years of age or older who are not residing in facilities for long-term care. In addition to other duties, the Advocate provides assistance related to the coordination of resources and services available to aging persons within their respective communities, disseminates information to aging persons, provides public presentations relevant to Aging and Disability Services Division programs and services, and advocates for issues relating to aging persons. There is an Advocate in Las Vegas [(702) 486-3545], and one in Reno [(775) 688-2964].

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 TANF Non-Needy Caretaker eligibility requirements, plus the caretaker must: (1) be related to the child; (2) be 62 years of age or older; (3) be a Nevada resident; (4) have exercised parental control and care of the child in his or her home for a least six consecutive months; and (5) have obtained legal guardianship through a Nevada court and met the court requirements.

Community-Based Programs

The Aging and Disability Services Division administers the Community Home-Based Initiatives Program (CHIP), and the Community Service Options Program for the Elderly (COPE), which provide the nonmedical, community-based services necessary to enable elderly people to maintain their independence and remain in their own homes. Services may include adult day care, adult companionship, personal emergency response systems, chore services, respite for the primary caregiver, and nutrition counseling and therapy. Programs such as CHIP and COPE are aimed at helping the elderly avoid placement in a facility for long-term care.

Another community-based program administered by the Aging and Disability Services Division is the Homemaker Program, which provides in-home care to chronically ill, disabled, or aged persons who are financially eligible. The amount of help available varies by the needs of each individual and the number of homemaker hours available. Basic services may include general housekeeping, shopping, limited meal preparation, laundering, assistance with bathing, home management, and errands.

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. The activities of the Forum may be tracked through its website at http://leg.state.nv.us/Interim/75th2009/Committee/NonLeg/Silver/?ID=2.

LONG-TERM CARE

Decisions relating to whether one should enter a long-term care facility or find services in the home to help extend independent living are difficult ones involving several options with varying levels of care. The Aging and Disability Services Division publishes a brochure explaining the different options in long-term care at http://www.nvaging.net/Long-TermCareHousingBrochure.pdf.

Social Security-Medicaid Waiver for the Elderly in Adult Residential Care

The Waiver for the Elderly in Adult Residential Care (WEARC) (formerly known as 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 and Disability Services Division.

Board of Examiners for Long-Term Care Administrators

The Nevada State Board of Examiners for Administrators of Facilities for Long-Term Care was created in 1969 by *Nevada Revised Statutes* 654.050. This Board of Examiners for Long-Term Care Administrators (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.

Office of the State Long-Term Care Ombudsman

The Office of the State Long-Term Care Ombudsman is a federally mandated service administered by the Aging and Disability Services Division. The State Ombudsman advocates for seniors over the age of 60 residing in long-term care settings. Certified staff of the Office visit facilities to listen to residents, help resolve problems, and provide information. The Office of the State Ombudsman does not investigate cases of alleged abuse, neglect, isolation, or exploitation. The Elder Protective Service Unit in the Aging and Disability Services Division has that responsibility.

ADDITIONAL RESOURCES

- *Elders Count Nevada: Key Health Indicators for Nevada's Elders 2007* - A publication of the Sanford Center for Aging, in partnership with the Nevada State Health Division and Nevada Division for Aging Services: http://www.unr.edu/sanford/documents/EldersCountReport07.pdf

- *Portrait of Nevada's Seniors: A Two-Year Study, 2006-2008*. A survey of over 5,000 individuals over the age of 50 in Nevada, conducted by the Cannon Survey Center, University of Nevada, Las Vegas: http://surveys.unlv.edu/pdfs/2008Portrait%20of%20Nevadas%20Seniors.pdf

- Nevada Aging and Disability Services Division, DHHS: http://www.nvaging.net; Carson City Administrative Office (775) 687-4210; Las Vegas Office (702) 486-3545; Reno Office (775) 688-2964; or Elko Office (775) 738-1966

- Nevada 2-1-1: Dial 2-1-1 from any phone in Nevada or visit http://www.nevada211.org for information about all types of health and human services in Nevada

- Crisis Call Center: http://www.crisiscallcenter.org/; Suicide prevention and crisis toll-free hotline: (800) 273-8255

- Advocates for Elders: http://www.nvaging.net/advocate_for_elders.htm; Las Vegas (702) 486-3545; or Reno (775) 688-2964

- Elder Protective Services: http://www.nvaging.net/protective_svc.htm; Carson City Administrative Office (775) 687-4210; Las Vegas Office (702) 486-3545; Reno Office (775) 688-2964; or Elko Office (775) 738-1966

- Clark County Senior Services: http://www.accessclarkcounty.com/depts/Social_Service/Pages/senior.aspx; (702) 455-7051

- Washoe County Senior Services: http://www.co.washoe.nv.us/seniorsrv/info.htm; (775) 328-2575

- Nevada State Health Insurance Assistance Program: http://www.nvaging.net/ship/ship_main.htm; Toll-free Telephone: (800) 307-4444

- Medicare Service Center: http://www.medicare.gov/; Toll-free Telephone: 1-800-MEDICARE [(800) 633-4227]

- Nevada Aging and Disability Resource Center: http://www.nevadaadrc.com/; Southern Nevada (702) 333-1038; Northern Nevada (775) 328-2575

- AARP: http://www.aarp.org

- Benefits Check Up—a Service of the National Council on Aging: http://www.benefitscheckup.org

- Centers for Medicare and Medicaid Services: http://www.cms.hhs.gov; Toll-free Telephone: (877) 267-2323

- "Do Not Call" Registry: http://www.donotcall.gov; Toll-free Telephone: (888) 382-1222; Toll-free TDD: (866) 290-4236

- Nevada Care Connection: http://nevadacareconnection.org/; Help for caregivers: (775) 829-4700

- 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

- The United States Administration on Aging, United States Department of Health and Human Services: http://www.aoa.gov

- Legislative Committee on Senior Citizens, Veterans and Adults With Special Needs (A.B. 9, Chapter 430, *Statutes of Nevada 2009*): http:/www.leg.state.nv.us/Interim/75th2009/Committee/StatCom/SeniorVetSpecial/?ID=50

- Nevada Legislative website: http://www.leg.state.nv.us

- Thomas—Federal Legislative Information on the Internet: http://thomas.loc.gov/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Amber J. Joiner
Senior Research Analyst
Research Division
Legislative Counsel Bureau
E-mail: ajoiner@lcb.state.nv.us

Telephone: (775) 684-6825
Fax: (775) 684-6400

Justice System

Nevada's Court System

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 and 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 *2010-2011 Policy and Program Report* provides a 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.

TABLE OF CONTENTS

Constitutional Judicial Commissions 1
Commission on Judicial Selection 1
Commission on Judicial Discipline 2
Jurisdiction and Structure of Nevada's Courts 3
Supreme Court 3
District Courts 4
Justice and Municipal Courts 7
Jurors 8
Fees and Expenses of Jurors 8
Collection of Administrative Assessments, Fines, and Filing Fees 9
Administrative Assessments 9
Fines 12
Filing Fees 13
Alternatives to Litigation: Arbitration and Mediation 16
Studies Authorized During the 2009-2010 Interim 19
Sources of Additional Information 19
State Contact Information for Judicial Information 21
Legislative Reports 21
Research Staff Contacts 23

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);
- 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 chair from among the three lay members.

The *Nevada 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 NRS 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 at the end of this document.

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 1 of 11 states that does not have an intermediate court of appeals. However, in 2007 and again in 2009, the Legislature approved Senate Joint Resolution No. 9 (File No. 69, *Statutes of Nevada*), which proposes to amend the *Nevada Constitution* to allow for an intermediate appellate court, known as the Court of Appeals. This court would have jurisdiction in civil cases arising in the district court and in criminal cases within the original jurisdiction of the district courts. The measure must next be approved by the voters at the 2010 General Election.

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 the 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 the 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 2 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 *2010-2011 Policy and Program Report*). 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 the justice was elected. Under legislation passed in 2007, justices whose term of office expires in January 2009 receive a salary of $140,000 (Senate Bill 248, Chapter 383, *Statutes of Nevada*). The salary of their respective successors in office is $170,000 (NRS 2.050).

Office of Court Administrator

The Office of 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. Following the 2010 General Election, 82 district court judges will serve the 9 judicial districts (the 2009 Legislature added 10 district court judges with 1 in Washoe County and 9 in Clark County). Following is a breakdown of the new number of judges by district:

- First Judicial District (Carson City and Storey County): 2 judges;
- Second Judicial District (Washoe County): 15 judges, 4 of whom serve on the family court (discussed below);
- Third Judicial District (Churchill and Lyon Counties): 3 judges;
- Fourth Judicial District (Elko County): 2 judges;
- Fifth Judicial District (Esmeralda, Mineral, and Nye Counties): 2 judges;
- Sixth Judicial District (Humboldt, Lander, and Pershing Counties): 2 judges;
- Seventh Judicial District (Eureka, Lincoln, and White Pine Counties): 2 judges;

- Eighth Judicial District (Clark County): 52 judges, 20 of whom serve on the family court (discussed below); and

- Ninth Judicial District (Douglas County): 2 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 the 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 10 years at the time of the 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 2 years prior to the election (or appointment in the cases involving vacancies).

Like the justices, district court judges are typically elected for six-year terms. However, in 2007, S.B. 556 (Chapter 422, *Statutes of Nevada*) changed the first term of office to four years for certain new judges in the Second and Eighth District Courts. This will allow district judges to be elected at the same time in those districts, rather than at staggered times.

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 $160,000 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 or her 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).

- Veterans Courts—In 2009, the Legislature created the Veterans Court to provide treatment to eligible defendants who are veterans or members of the military. As long as the crime committed by the defendant did not involve the use of force or violence, the court may suspend the criminal proceedings and place the defendant on probation while the defendant undergoes an approved treatment program. Upon completion of the program, the defendant's criminal record will be sealed (NRS 176A.280 through NRS 176A.295).

Although not a specific specialty court, in 2009 the Legislature also authorized courts to establish programs for the treatment of problem gambling. To be eligible, a problem gambler must be convicted of certain crimes that were committed in furtherance or as the result of problem gambling. After successful completion of the treatment program, the defendant may file a petition requesting the court to seal the defendant's criminal record (NRS 458A.200 through NRS 458A.260).

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.

Justice and Municipal Courts

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 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. 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 the 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 June 2006, there were 63 justices of the peace, with 10 justices 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, as of November 2009, Nevada has 17 municipal courts that were presided over by 30 municipal judges, with 9 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 the 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 of 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 or her 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;
- Persons 60 years of age or older who live 65 miles or more away from the court, if the juror so desires;
- Police officers; and
- Primary caregivers of persons who have a documented medical condition and require assistance at all times (this is a temporary exemption from jury service).

The 2003 Legislature removed many exemptions that previously existed. The 2007 Legislature, however, reinstated the exemption for police officers and added the exemption for primary caregivers with passage of Assembly Bill 49 (Chapter 136, *Statutes of 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 the person is in attendance;
- 36.5 cents a mile for each mile traveled from home if the person's home is 30 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.

COLLECTION OF ADMINISTRATIVE ASSESSMENTS, FINES, AND FILING FEES

Administrative Assessments

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 assessments do not apply to any ordinances regulating metered parking or designating civil penalties.

The administrative assessments for misdemeanors are set forth under NRS 176.059, which was last modified by the Legislature during the 26th Special Session held in February and March 2010. (See A.B. 6, Chapter 10, *Statutes of Nevada 2010.*)

FINE	ASSESSMENT
$5 to 49	$30
50 to 59	45
60 to 69	50
70 to 79	55
80 to 89	60
90 to 99	65
100 to 199	75
200 to 299	85
300 to 399	95
400 to 499	105
500 to 1,000	120

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. Pursuant to A.B. 6, $5 goes to the State Controller for credit to the State General Fund. 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 special account in the State General Fund, not less than 51 percent of the funds go to the AOC. That 51 percent is then divided as follows:

- 36.5 percent for administration of the courts, development of a uniform system for judicial records, and continuing judicial education;
- 48 percent for the Supreme Court;
- 3.5 percent to pay for the services of retired justices and judges; and
- 12 percent to provide for specialty court programs.

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;
- Department of Public Safety for the operation of a computerized, interoperative system for information related to law enforcement;
- Fund for the Compensation of Victims of Crime;
- Advisory Council for Prosecuting Attorneys; and
- Programs within the Office of the Attorney General related to victims of domestic violence.

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

Nevada Revised Statutes 176.0613 requires an additional $7 administrative assessment to be imposed on persons convicted of a misdemeanor to fund specialty court programs. "Specialty court programs" are defined 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 county and city treasurers must be deposited with the State Controller for credit to a special account in the State General Fund administered by the AOC. 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 county or city 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 or guilty but mentally ill 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 to 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 Legislative Counsel Bureau Bulletin No. 99-6, *Fees, Fines, Forfeitures and Administrative Assessments Imposed and Collected by Courts, January 1999*. 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.

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 and must be 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 19.03135). Detailed fee schedules for the district courts are available through the individual courts.

In 2009, the Legislature authorized the district courts to charge and collect various additional filing fees in civil cases, which must be deposited into a special county account maintained for the benefit of the court, including court-appointed special advocate programs in counties other than Clark and Washoe Counties. The new fee revenues must only be used to offset the costs of adding and maintaining new judicial departments and reimbursing the county for capital costs incurred for adding new departments. The fees are as follows:

- $99 is due at the commencement of any action or proceeding in the district court, or transfer of any action or proceeding from a district court of another county;

- On the appearance of any defendant or any number of defendants answering jointly in an action, a fee of $99 is required upon the filing of the first paper in the action;

- For the filing of a petition for letters testamentary, letters of administration, or a guardianship: (a) a fee of $352 must be paid by the petitioner if the value of the estate is $200,000 or more; or (b) if the estate is more than $20,000 but less than $200,000, fee of $99. If the estate is valued at less than $20,000, no fee will be charged;

- For the filing of a motion for summary judgment, the fee is $200;

- At the commencement of an action defined as a business matter pursuant to the local rules of practice and on the answer or appearance of any party in any such action or proceeding, $1,359 must be paid by the party commencing, answering, or appearing in the action or proceeding;

- At the commencement of an action for a constructional defect or any action defined as "complex" pursuant to the local rules of practice, and on the answer or appearance of any party in such an action or proceeding, $349 must be paid by the party commencing, answering, or appearing in the action or proceeding;

- For the filing of a third-party complaint, $135 is required from the filing party;

- For the filing of a motion to certify or decertify a class, a fee of $349 is due from the filing party; and

- Upon the issuance of any writ of attachment, writ of garnishment, writ of execution or any other writ to enforce a judgment of the court, the filing fee is $10.

For the period January 1, 2011, to June 30, 2011, the fees must be used to fund the salary and benefits of the additional district court judges also approved in 2009.

In addition to the new filing fees, the measure authorizes a board of county commissioners to impose a filing fee of not more than $20 for the commencement of any civil action or district court proceeding, to be used for certain court security costs. The bill also requires the collection of a $50 filing fee for any notice of default and election to sell, to be deposited in a special account to support a program of foreclosure mediation established by Supreme Court Rule. A portion of this fee must be placed in a special account for use by the county recorder.

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, NRS 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.155).

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 multidoor 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.

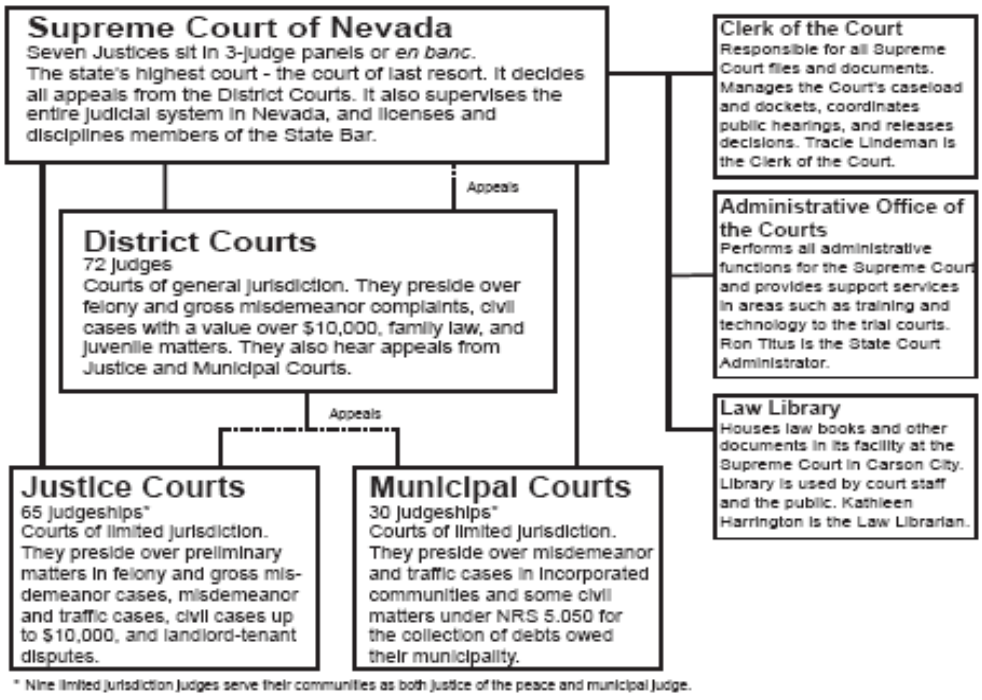
STUDIES AUTHORIZED DURING THE 2009-2010 INTERIM

The Nevada Legislature created the Advisory Commission on the Administration of Justice in 2007 (previously the Advisory Commission on Sentencing). The duties of the Commission now include (among other things) an evaluation of the effectiveness of specialty court programs in Nevada. The Commission will continue to meet throughout the 2009-2010 Interim.

SOURCES OF ADDITIONAL INFORMATION

This *2010-2011 Policy and Program Report* compiles limited information concerning Nevada's court system. Invaluable information regarding Nevada's court system is available through the AOC, which prepared the following flow chart. (*Note: This chart is current as of November 2009 and does not include the ten new judges approved by the Legislature in 2009 who will be elected in the 2010 General Election; they will be included in the 2010 Annual Report.*)

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 in the *Annual Report of the Nevada Judiciary* for Fiscal Year 2009.



Source: Annual Report of the Nevada Judiciary Fiscal Year 2009.

NOTE: The chart does not include the ten new district court judges approved by the 2009 Legislature; they will take office following the 2010 General Election.

Table 1. Reported Total Nevada Statewide Trial Court Caseload
Fiscal Years 2005-2009

Court	Fiscal Year	Criminal[1]	Civil[2]	Family[2]	Juvenile	Total Nontraffic Caseload	Traffic and Parking[3]
District	2009	13,606	41,011	63,791	13,771	132,179	8,518
	2008	14,729[r]	34,579[r]	62,405[r]	14,606[r]	126,319[r]	9,206[r]
	2007	15,049	31,320	61,729	15,889	123,987	6,536
	2006	14,865[r]	29,091[r]	59,573[r]	15,093	118,622[r]	7,095
	2005	14,056	29,447	58,111	15,177[r]	116,791[r]	7,417
Justice	2009	89,246	160,430	NJ	NJ	249,676	555,254
	2008	86,894[r]	148,471	NJ	NJ	235,365[r]	564,089[r]
	2007	82,305[r]	141,212	NJ	NJ	223,486	532,087[r]
	2006	80,438[r]	126,111[r]	NJ	NJ	206,549[r]	466,698[r]
	2005	80,996	123,716	NJ	NJ	204,712	410,153
Municipal	2009	57,458	0	NJ	NJ	57,458	368,440
	2008	55,040	4	NJ	NJ	55,044	348,169[r]
	2007	58,849[r]	7[r]	NJ	NJ	58,856[r]	324,225[r]
	2006	58,264[r]	7	NJ	NJ	58,271[r]	281,346[r]
	2005	58,521	0	NJ	NJ	58,521	241,529
TOTAL	2009	160,310	201,441	63,791	13,771	439,313	932,212
	2008	156,663[r]	183,054[r]	62,405	14,606[r]	416,728[r]	921,464[r]
	2007	156,203[r]	172,532	61,729	15,889	406,329[r]	862,848[r]
	2006	153,567[r]	155,206[r]	59,573[r]	15,093[r]	383,442[r]	755,139[r]
	2005	153,573	153,163	58,111	15,177[r]	380,024[r]	659,099

NJ Not within court jurisdiction.
[r] Data totals revised from previous annual reports owing to improved data collection.
[1] Criminal includes felony, gross misdemeanor, and nontraffic misdemeanor filings and is counted by defendants.
[2] Reopened cases are included in totals.
[3] Traffic and parking filings are counted by charges, not defendants. Not all courts process parking violations. District Court traffic data are juvenile related.

Source: Uniform System for Judicial Records, Nevada AOC, Research and Statistics Unit. The website for this report is: http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/2896/.

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) 684-1600
Website: http://www.nevadajudiciary.us
Tracie Lindeman, Clerk of the Court
Ron Titus, Court Administrator and Director of the Administrative Office of the Courts

Nevada 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

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 website: http://www.leg.state.nv.us
Nan Bowers, Legislative 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 website.

Reports of Legislative Studies

- Legislative Counsel Bureau (LCB) Bulletin No. 48, *Judicial Retirement in Nevada, January 1961*
- LCB Bulletin No. 74, *Nevada's Court Structure, December 1968*
- LCB Bulletin No. 88, *County Courts for Nevada, September 1970*
- LCB Bulletin No. 77-3, *Training, Qualifications, Workloads and Leave Policies of the Judiciary and District Attorneys, September 1976*
- LCB Bulletin No. 77-4, *Funding Nevada's Courts, September 1976*
- LCB Bulletin No. 85-17, *Study of the Laws, Rules and Practices Relating to the Grand Jury in Nevada, August 1984*

- LCB Bulletin No. 91-17, *Study of Alternative Methods of Resolving Disputes, April 1991*
- LCB Bulletin No. 91-18, *Study of the Youth Services Division and the Juvenile Justice System in Nevada, September 1990*
- LCB Bulletin No. 99-6, *Fees, Fines, Forfeitures, and Administrative Assessments Imposed and Collected by Courts, January 1999*
- LCB Bulletin No. 99-9, *Family Courts, January 1999*
- LCB Bulletin No. 01-8, *Encouraging Corporations and Other Business Entities to Organize and Conduct Business in Nevada, January 2001* (Includes discussion of proposal for business courts)
- LCB Bulletin No. 01-12, *Pension Plan for Certain Justices and Judges, January 2001*
- LCB Bulletin No. 05-6, *Study of Juvenile Justice System, January 2005*
- LCB Bulletin No. 05-13, *Study of the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders, January 2005*
- LCB Bulletin No. 09-03, *Implementation of Courts of Chancery, January 2009*

Reports of Audits Conducted by the Audit Division of the Legislative Counsel Bureau

- *Judicial Branch of Government—Administrative Oversight of the State Court System, 1995* (LA96-2)
- *Judicial Branch of Government—Uniform System for Judicial Records, 1995* (LA96-8)
- *Judicial Branch of Government—Administrative Office of the Courts, 1997* (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 LCB, 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)

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Linda Eissmann
Principal Research Analyst
E-mail: leissmann@lcb.state.nv.us

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Criminal Justice in Nevada
Part I: Overview

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 change to criminal justice in Nevada was the adoption of "truth-in-sentencing" legislation. During the 1995 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 simply required 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

TABLE OF CONTENTS

Overview of the Criminal Justice System 1
Criminal Justice 1
Truth-in-Sentencing 1
Felonies and Misdemeanors 2
Corrections 4
Parole and Probation 7
State Board of Parole Commissioners 7
2009 Significant Criminal Justice Legislation.....8
Frequently Asked Questions 9
Additional References 10
Research Staff Contacts..... 10
Glossary of Terms and Abbreviations 10

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 two to ten years. The judge must sentence the offender to a period within this two- to ten-year range, such as "four to ten" years. The offender will not be eligible for parole or sentence-reducing credits until the four-year minimum has been served. After this time, the offender is eligible for parole.

Sentence-reducing credits apply to the ten-year maximum. Based on calculations by Nevada's Department of Corrections (NDOC), a maximum sentence of ten years may be reduced to six 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 the sentence after the application of credits. During this remaining time, the offender will be supervised by the Division of Parole and Probation (P&P), Nevada's Department of Public Safety, if the offender 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 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 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 years
4 to 10 years	4 years	6 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 one 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 five 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 one year or more than five years.

- *Category D*—Felonies for which the judge may impose a sentence not less than one year or more than four years.

- *Category E*—Felonies for which probation is mandatory, but the judge must impose an underlying prison sentence of not less than one year or more than four years. In 1997, the Legislature modified the penalty for a category E felony to provide that 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 one 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 State Prison Commissioners, which consists of the Governor (as Chair), the Secretary of State, and the Attorney General.

All correctional institutions and facilities within the State of Nevada are financed by public monies and are operated by NDOC.

The Department of Corrections generally intakes all persons sentenced to State prison and then classifies prisoners, based on risk assessment, and assigns the individual to the appropriate risk-defined facility. Currently, NDOC operates 18 facilities statewide, including: 8 institutions, 8 conservation camps, 1 restitution center, and 1 transitional housing center. The facilities in the State are as follows (the capacity indicated is the capacity approved in the Fiscal Year [FY] 2010 NDOC budget for each facility):

INSTITUTIONS

Ely State Prison Male/Maximum Ely Capacity: 1,171	Nevada State Prison Male/Medium Carson City Capacity: 806
Florence McClure Women's Correctional Center Female/Multisecurity North Las Vegas Capacity: 748	Northern Nevada Correctional Center Male/Medium Carson City Capacity: 1,464
High Desert State Prison Male/Medium Indian Springs Capacity: 2,517	Southern Desert Correctional Center Male/Medium Indian Springs Capacity: 1,901
Lovelock Correctional Center Male/Medium Lovelock Capacity: 1,752	Warm Springs Correctional Center Male/Minimum Carson City Capacity: 526

RESTITUTION CENTER AND TRANSITIONAL HOUSING CENTER

Northern Nevada Restitution Center Male/Community Trustee Reno Capacity: 76	Casa Grande Transitional Housing Center Male/Community Trustee Las Vegas Capacity: 340

CONSERVATION CAMPS

Carlin Conservation Camp Male/Minimum Carlin Capacity: 131	Pioche Conservation Camp Male/Minimum Pioche Capacity: 176
Ely Conservation Camp Male/Minimum Ely Capacity: 130	Stewart Conservation Camp Male/Minimum Carson City Capacity: 350
Humboldt Conservation Camp Male/Minimum Winnemucca Capacity: 130	Three Lakes Valley Conservation Camp Male/Minimum Indian Springs Capacity: 238
Jean Conservation Camp Female/Minimum Jean Capacity: 173	Wells Conservation Camp Male/Minimum Wells Capacity: 130

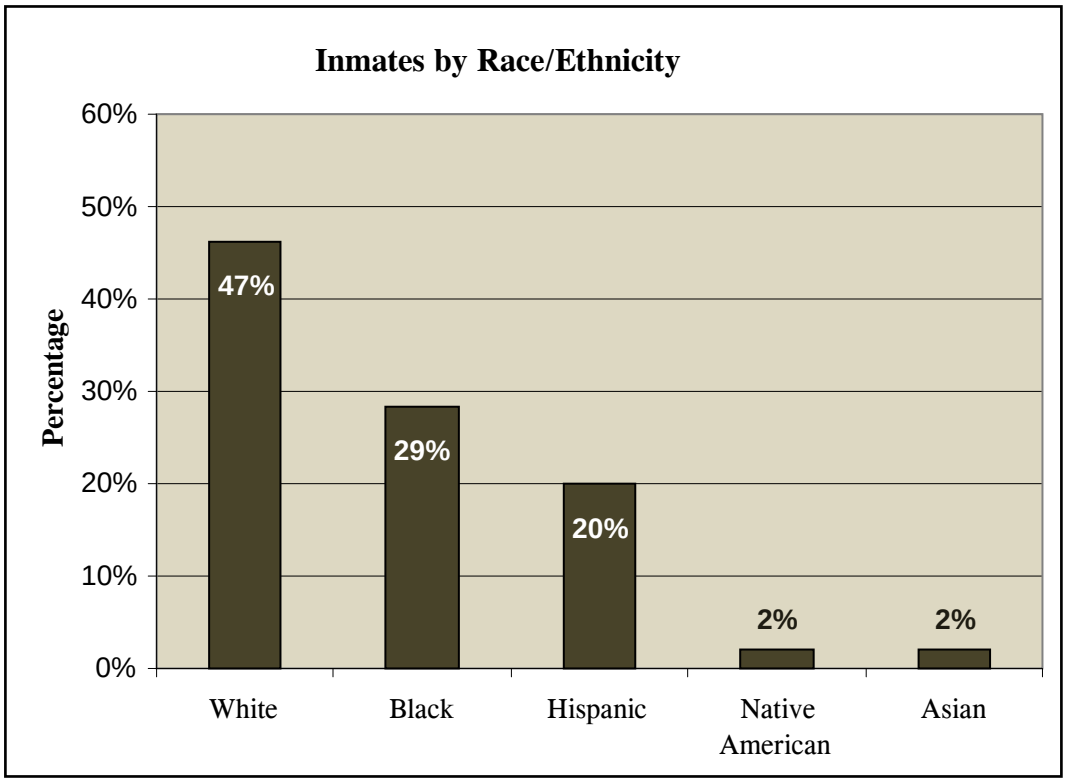
As of December 2009, NDOC is responsible for 12,512 incarcerated inmates. The breakdown of the population is approximately 93 percent male and 7 percent female, with a median age of 37 years for males and 36 years for females. At present, 81 inmates (or 3.11 percent of the prison population) are housed on death row; the death row population fluctuates frequently pending the outcome of legal appeals. About 16 percent of all inmates are serving life sentences without the possibility of parole; 80 percent are serving life sentences with the possibility of parole.

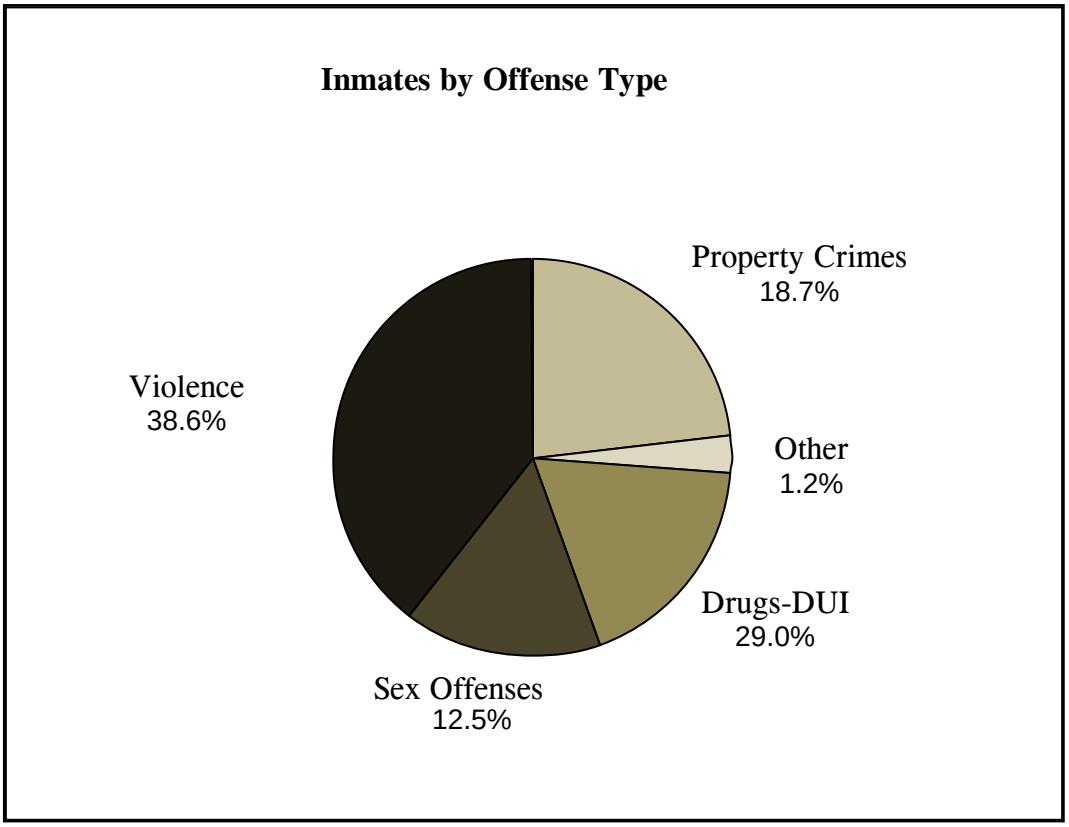
The NDOC houses inmates serving felony sentences, as follows:

INMATES BY FELONY CATEGORY

A	26 percent
B	63 percent
C	7 percent
D	3 percent
E	1 percent

The following charts offer a snapshot of the correctional population as of December 2009:





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.

At present, the Division collects about $3.25 million in restitution annually from offenders and facilitates the disbursement to victims of crime. In addition, the Division also collects roughly $3 million annually in supervision fees from offenders to defray the costs of supervision, thereby reducing the burden for the citizens of Nevada.

As of March 2010, the Division will operate 12 offices located throughout the State (the Division previously operated 15 offices prior to a revision in the use of certain facilities allowing for a combination of offices in Las Vegas). The central administration office is 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.

State Board of Parole Commissioners

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 Chair 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.

2009 SIGNIFICANT CRIMINAL JUSTICE LEGISLATION

In 2009, the Legislature addressed a wide variety of crimes including battery, driving under the influence, gangs, stalking, and technology crimes involving identity theft.

- The crime of battery was expanded to include strangulation, thereby making it a felony crime (Assembly Bill 164, Chapter 42, *Statutes of Nevada 2009*).

- The crime of driving under the influence (DUI) was revised so that revocation of a driver's license depends on the total number of violations within a seven-year period, regardless of how those violations are punished under the law (S.B. 100, Chapter 255, *Statutes of Nevada 2009*). Another DUI measure requires offenders to attend a live meeting of a panel of victims (A.B. 209, Chapter 100, *Statutes of Nevada 2009*).

- Gang activity was the subject of two bills. Senate Bill 142 (Chapter 112, *Statutes of Nevada 2009*) makes it a crime for an adult to engage in threatening or violent behavior for the purposes of gang recruitment. Assembly Bill 335 (Chapter 303, *Statutes of Nevada 2009*) expands the definition of "public nuisance" to include locations where gangs meet and plan their activities.

- The crime of stalking was expanded to include text messaging with a cell phone, and to include actions that cause the victim to fear for the safety of certain members of the victim's family and household (A.B. 309, Chapter 497, *Statutes of Nevada 2009*).

- Advances in technology that support identity theft were the subject of several measures. Senate Bill 227 (Chapter 355, *Statutes of Nevada 2009*) prohibits the transfer of unencrypted personal information and data storage devices without proper security of the data. Senate Bill 125 (Chapter 205, *Statutes of Nevada 2009*) similarly prohibits the use of radio frequency identification to capture or use someone's personal information to commit fraud, identity theft, or other illegal acts. Finally, A.B. 389 (Chapter 161, *Statutes of Nevada 2009*) prohibits businesses from printing any more than the last five digits of an account number on a transaction receipt.

Measures to address criminal procedure were also enacted in 2009, covering the subjects of competency, genetic marker testing, parole, residential confinement, and sentencing:

- With passage of A.B. 264 (Chapter 46, *Statutes of Nevada 2009*), only defendants charged with a category A felony or a violent category B felony may be committed to the Division of Mental Health and Developmental Services within the Department of Health and Human Services.

- Genetic marker testing was the subject of two measures. Assembly Bill 105 (Chapter 39, *Statutes of Nevada 2009*) streamlines the process by which biological specimens are taken from convicted felons by eliminating the need for a court order. Assembly Bill 179 (Chapter 283, *Statutes of Nevada 2009*) allows inmates to petition the court for a postconviction genetic marker analysis.

- Residential confinement for parolees and probationers who violate the conditions of their release was the subject of A.B. 259 (Chapter 447, *Statutes of Nevada 2009*). The bill provides for the granting and forfeiture of "good time" credits for these violations and allows offenders convicted of a category B felony to be assigned to residential confinement under certain conditions.

- Assembly Bill 117 (Chapter 148, *Statutes of Nevada 2009*) allows the State Board of Parole Commissioners to grant parole without the necessity of a Board meeting, if it anticipates granting the parole.

- Senate Bill 238 (Chapter 211, *Statutes of Nevada 2009*) allows the State Board of Pardons Commissioners to adopt a policy that will expedite the process of restoring the civil rights of certain persons.

- Senate Joint Resolution No. 1 (File No. 80, *Statutes of Nevada 2009*) seeks to amend the *Nevada Constitution* to replace the Pardons Board with a Clemency Board in order to meet an increased workload. The resolution must be approved again by the Legislature in 2011 before being submitted to the voters for final approval in 2012.

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).

Q: What is the difference between parole and probation?
A: 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.

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

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Linda Eissmann
Principal Research Analyst
E-mail: leissmann@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

GLOSSARY OF TERMS AND ABBREVIATIONS

Crime—An offense that is punishable by imprisonment, either in county jail or State prison.

DA—Generally refers to the local (county) Office of the District Attorney, which is responsible for prosecuting criminal offenses.

Felony—A crime that is punishable by imprisonment for 1 year or longer.

Misdemeanor—A crime that is punishable by imprisonment for less than 1 year.

NDOC—Nevada's Department of Corrections.

P&P—The Division of Parole and Probation, Nevada's Department of Public Safety.

PD—Generally refers to the local (county) Office of the Public Defender, which is responsible for defending indigent persons charged with criminal offenses.

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.

Criminal Justice in Nevada
Part II: Sex Offenders

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Sex Offender Laws—Federal and State 1
Compliance with Federal Law 1
Nevada Legislation 2
Pending Litigation Related to Nevada's Enactment of the Adam Walsh Act 3
2009 Nevada Legislation 4
Procedures Following a Conviction for a Sexual Offense 4
Registration Requirements and Procedure 4
Psychological Testing 6
Psychosexual Evaluation 6
Sentencing Requirements for Convicted Sex Offenders 7
Restrictions on Residency and Physical Location 7
Special Sentence of Lifetime Supervision 7
Genetic Marker Testing 7
Designation as a Sexually Violent Predator 8
Community Notification 8
Sex Offender Website 9
Annual Driver's License Renewals 9
Juvenile Sex Offenders 9
Registration 9
Community Notification 9
Frequently Asked Questions 10
Additional Resources 10
Research Staff Contacts 11

SEX OFFENDER LAWS—FEDERAL AND STATE

Compliance with Federal Law

In the mid-1990s, federal legislation began pushing states to adopt comprehensive sex offender laws. Four of the most prominent federal laws are briefly summarized below:

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994

States were mandated 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

This 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.

Pam Lynchner Sexual Offender Tracking and Identification Act of 1996

This act 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 requires 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.

Adam Walsh Child Protection and Safety Act of 2006

One of the most important features of the bill is creation of a national sex offender registry that will be available on the Internet, which will integrate state sex offender registries throughout the nation and be available to law enforcement regardless of location. (This is commonly referred to as the Sex Offender Registration and Notification Act, which is Title I of the Walsh Act.) The offender will be assigned to one of three tiers; the worst offenders will have to check in with greater frequency, and all offenders will have to register and update their information in person. The act calls for stricter prison sentences for offenders who fail to register and keep their information current, and eliminates the statute of limitations for prosecutions of child abduction and felony sex offenses against children. A state failing to substantially implement the act within three years of its enactment may be subject to a 10 percent reduction in allocation of federal Edward Byrne Memorial Justice Administration Grant Program monies.

Nevada Legislation

The Nevada Legislature adopted the federal Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act) during the 2007 Session in Assembly Bill 579 (Chapter 485, *Statutes of Nevada*) and Senate Bill 471 (Chapter 528, *Statutes of Nevada*).

- Assembly Bill 579, enacted in response to the federal Adam Walsh Act, requires community notification for sex offenders within three tier levels based on the crime committed (the new tiers: I, II, and III, are different than the three tiers under previous State law: 1, 2, and 3). All sex offenders and offenders who commit a crime against a child are subject to community notification regardless of tier classification. Offenders must personally register before local law enforcement every 90 days if a Tier III offender, 180 days if a Tier II offender, or every year if a Tier I offender. They must also register for the first time before being released from prison or within three days after sentencing if the offender is not imprisoned. Finally, the bill expands the types of identifying information provided through the community notification website, and subjects certain juveniles to offender registration and notification requirements. These requirements are effective on July 1, 2008 (however, the provisions requiring registration before release from prison are effective October 1, 2007, with passage of other legislation).

- Senate Bill 471 also requires an offender to register, before being released from prison, with the law enforcement agency of the jurisdiction in which the offender will reside upon release (effective October 1, 2007). The offender must also provide a biological specimen at the time of registration, if that has not already been done. Certain offenders are subject to electronic monitoring as deemed appropriate by the Division of Parole and Probation of the Department of

Public Safety, the cost of which must be paid by the offender to the extent the offender is able to pay. The time that a person convicted of sexual assault against a child under 16 years of age (not resulting in substantial bodily harm) must serve in prison before being eligible for parole is increased from 20 years to 25 years. If the child is under 14 years of age, the time to be served before parole eligibility is increased from 20 years to 35 years.

The bill also changes certain provisions prohibiting certain Tier 3/Tier III offenders from living within 1,000 feet of locations frequented by children. Some offenders are further restricted from knowingly being within 500 feet of locations frequented by children. Tier 3/Tier III offenders under lifetime supervision who violate the conditions of their supervision are guilty of a category B felony.

Pending Litigation Related to Nevada's Enactment of the Adam Walsh Act

The provisions of A.B. 579 and S.B. 471 were set to go into effect on July 1, 2008, making Nevada one of the first states to implement the Adam Walsh Act. Prior to the July implementation date, several lawsuits were filed in an attempt to stop the Adam Walsh Act from becoming law in Nevada.

On April 15, 2008, the Honorable William O. Voy, Eighth Judicial District Court, Family Division-Juvenile, declared the provisions of A.B. 579 and S.B. 471, as applied to juvenile sex offenders, unconstitutional. Nevada's Supreme Court dismissed Clark County's appeals stating that Judge Voy's decision is not a final judgment and, therefore, the Supreme Court lacks jurisdiction to hear the appeals. The juvenile cases will be sent back to Judge Voy's court for further proceedings.

On June 26, 2008, the Honorable David Wall, Eighth Judicial District Court, Department 20, granted a preliminary injunction to stay the implementation of the new sex offender provisions within Clark County. Judge Wall ordered additional briefing by the parties and at this time, the preliminary injunction is still in effect.

On June 30, 2008, the Honorable James Mahan, United States District Court, Las Vegas, granted a preliminary injunction to stay the implementation of the new sex offender provisions for the entire State of Nevada. Further hearing on the matter was resolved by Judge Mahan's October 7, 2008, order granting a permanent injunction. The Judge ruled that the provisions of A.B. 579 and S.B. 471 could not be applied retroactively; however, he declined to rule on whether the law may be applied to those convicted of sex offenses in the future since that issue is pending in Judge Wall's court. The Nevada Attorney General's Office filed a Notice of Appeal challenging Judge Mahan's ruling.

As of the date of this *2010-2011 Policy and Program Report*, all three lawsuits remain pending and in effect, Nevada's sex offender laws remain unchanged, and the provisions of A.B. 579 and S.B. 471 are not being implemented or enforced by law enforcement. Because the outcome of the litigation is unknown at this time, this *2010-2011 Policy and Program Report* attempts to provide information on the current state of the law as well as the potential changes in law if A.B. 579 and S.B. 471 are upheld.

2009 Nevada Legislation

In the 2009 Legislative Session, particular emphasis was placed on sexual offenses involving children. Additionally, sex offender registration issues pursuant to the Adam Walsh Act and resulting litigation will be studied by a newly created Advisory Committee to Study Laws Concerning Sex Offender Registration, created by A.B. 85 (Chapter 116, *Statutes of Nevada*).

The use of the Internet to access child pornography is not a new problem, but the ability to access streaming video without having to download images is a new phenomena. Nevada's laws had previously addressed downloading such material, but A.B. 88 (Chapter 471, *Statutes of Nevada 2009*) now makes it a crime to knowingly and willfully use the Internet to control child pornography.

Additionally, this measure allows for a person who, under the age of 16, appeared in child pornography and suffered personal or psychological injury, to bring a civil action against the adult who promoted or possessed that pornography.

The Legislature increased the penalty for anyone who solicits a child for prostitution from a gross misdemeanor to a category E felony with passage of A.B. 238 (Chapter 291, *Statutes of Nevada 2009*).

In addition to criminal penalties charged against a person who commits pandering or prostitution of a child, A.B. 380 (Chapter 160, *Statutes of Nevada 2009*) provides that the offender's assets may be forfeited, the proceeds from which will be distributed to programs that prevent child prostitution. The court also has the option to impose additional criminal fines if appropriate.

Two additional measures address the protection and safety of victims of sexual offenses. Assembly Bill 120 (Chapter 68, *Statutes of Nevada 2009*) allows a victim to request a temporary or extended protection order against the offender. It also allows for deferment of related fees and requires law enforcement to enforce the order. Similarly, A.B. 325 (Chapter 300, *Statutes of Nevada 2009*) prohibits someone convicted of a sexual offense from having any contact with the victim or a witness who testified against the offender, unless contact is approved by the Division of Parole and Probation.

PROCEDURES FOLLOWING A CONVICTION FOR A SEXUAL OFFENSE

Registration Requirements and Procedure

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 the 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?

Anyone 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. If A.B. 579 (2007) and S.B. 471 (2007) are upheld, an offender whose conviction took place on or after October 1, 2007, must register for the first time before being released from prison or, if the offender is not imprisoned for the offense, within three days after sentencing (NRS 179D.445). The initial registration must be in person with the local law enforcement agency where the offender was first convicted. The offender must also update law enforcement (in person) if there is any change to the information contained in the registration record (NRS 179D.447 and 179D.470).

If the provisions of A.B. 579 (2007) are upheld, each offender is required to appear in person at a local law enforcement agency at least once every 90 days, 180 days, or each year, depending on whether the offender is designated as a Tier III, Tier II, or Tier I offender, respectively (the tiers are described later in this document under "Community Notification"). Upon failure to comply, the Central Repository must immediately notify the appropriate law enforcement agencies and the United States Attorney General, and update the offender's record of registration to indicate the failure to comply with the registration provisions (NRS 179D.480).

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 offender must provide his or her: (a) name and any aliases; (b) Social Security number; (c) address where he or she resides or will reside; (d) place of work; (e) location where he or she is or will be a student; and (f) license plate number and vehicle description. The offender must also provide a biological sample and any additional information required by federal law.

The record of the offender's registration must include: (a) a physical description, photograph, and finger/palm prints of the offender; (b) a definition of each offense for which the offender is required to register; (c) the criminal history of the offender; (d) a report of the analysis of the genetic markers from the biological specimen obtained; (e) the identification number from the driver's license or identification card issued to the offender; and (f) any other information required by federal law (NRS 179D.443).

Upon receiving registration information from the local law enforcement agency, the Central Repository will immediately forward it to the Federal Bureau of Investigation.

Verification

Existing law allows each offender to mail a verification form to the Central Repository annually to verify the information in the registration record. If A.B. 579 is upheld, the annual verification requirement is eliminated, and instead, each offender is required to appear in person at a local law enforcement agency at least once every 90 days, 180 days, or each year, depending on whether the offender is designated as a Tier III, Tier II, or Tier I offender, respectively (tiers are described later in this document under "Community Notification") (NRS 179D.480).

Duration of Registration Requirements

Generally, an offender must comply with the registration provisions as long as the offender resides or is present in Nevada, or is a nonresident student or worker in this State. Currently, if a sex offender complies with the provisions for registration for an interval of at least 15 consecutive years during which the offender 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 the duty to register with the district court.

If A.B. 579 is upheld, the full period of registration is changed to 15 years for Tier I offenders, 25 years for Tier II offenders, and life for Tier III offenders. However, a petition may be filed to reduce this time under certain circumstances (NRS 179D.490).

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 reoffend 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 the defendant was under 18 years of age when the sexual offense was committed and he or she was convicted as an adult) to the extent of his, her, 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 in the following text.

Restrictions on Residency and Physical Location

Certain offenders may not reside within 1,000 feet of certain locations frequented primarily by children and must be placed under a system of active electronic monitoring if the Chief of the Division of Parole and Probation deems such monitoring appropriate. These restrictions apply to offenders who are: (a) convicted of certain crimes against a child under the age of 14; (b) a Tier 3 (currently) or Tier III (pursuant to A.B. 579) offender; and (c) placed under a program of lifetime supervision or released on parole, probation, or a suspended sentence.

Among the conditions of probation or a suspension of sentence, sex offenders may not knowingly be within 500 feet of any location frequented by children unless approved by their parole and probation officer. Finally, facilities housing four or more sex offenders who were released from prison must be licensed pursuant to State law as facilities for transitional living (NRS 176A.410).

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. 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 ten consecutive years after the person's 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 the person 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 felony, a crime against a child, a sexual offense, elder 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

Under existing law, 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.

However, if the provisions of A.B. 579 are upheld, existing State laws that apply to sexually violent predators are repealed because the federal Walsh Act prospectively repeals comparable provisions under federal law.

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.

Currently, 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 reoffense and threat to public safety.

If the provisions of A.B. 579 and S.B. 471 (2007) are upheld, all sex offenders and offenders convicted of a crime against a child will be subject to community notification regardless of their designated level. Three *new* tiers for registration and community notification are established consistent with the federal Walsh Act (the previous Tiers were 1, 2, and 3; the new Tiers are I, II, and III). The determination as to which tier level an offender is assigned is based on the specific crime committed by the offender (see NRS 179D.113, 179D.115, and 179D.117):

- *Tier I*—Offenders convicted of a crime against a child or a sex offender that is not otherwise categorized as a Tier II or Tier III offender.

- *Tier II*—Offenders convicted of a crime against a child whose crime is punishable by imprisonment for more than 1 year, or a sex offender whose offense constitutes: (a) luring a child; (b) sexual abuse or sexual exploitation of a child; (c) an offense involving pandering or prostitution; (d) pornography of a minor; or (e) any sexual offense against a child after the person becomes a Tier I offender.

- *Tier III*—Offenders convicted of a crime against a child or a sex offender who has been convicted of: (a) first degree murder committed in the perpetration of a sexual assault, abuse, or molestation of a child under age 14; (b) sexual assault; (c) battery with intent to commit sexual assault; (d) child abuse involving sexual abuse or exploitation of a child under age 13; (e) kidnapping of someone under age 18; or (f) any sexual offense against a child after the person becomes a Tier II offender.

Tier II and III offenders also include those involved in an attempt or conspiracy to commit one of these offenses, an offense that is comparable to or more severe than the offenses described in the federal sex offender registration and notification provisions of the Walsh Act, and those whose offenses were committed in another jurisdiction but whose offense would be an offense in Nevada if it had been committed here (such as those prosecuted in a tribal or military court).

Sex Offender Website

With passage of legislation in 2005, the Department of Public Safety is now required to establish and maintain a community notification website (within the Central Repository) to provide certain information to the public concerning certain sex offenders. Information on the website includes the name, aliases, photograph (where available), conviction information, and zip code based on the latest registered address. The website is located at: http://www.nvsexoffenders.gov/.

Annual Driver's License Renewals

Also under the legislation passed in 2005, sex offenders convicted of a crime against a child must now reapply for drivers' licenses, commercial drivers' licenses, and identification cards on an annual basis. Additionally, such offenders may not apply for a driver's license, commercial driver's 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.

JUVENILE SEX OFFENDERS

Registration

Currently, there is no requirement that a juvenile sex offender register with local law enforcement. However, when a child who is 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 (these provisions will expire if A.B. 579 is upheld). 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 acts identified in NRS 62F.200, which would be a crime if committed by an adult. Community notification is also required for youths adjudicated delinquent for certain acts that are

determined by the court to be sexually motivated. If A.B. 579 is upheld, the juvenile court must notify the Central Repository of the child's adjudication pursuant to Chapter 179D of NRS (currently, notification by the court is made to the Attorney General so the Attorney General may arrange for an assessment of the child's risk of recidivism) (NRS 62F.220).

Finally, the child's records must not be sealed as long as the child is subject to registration and community notification as a juvenile sex offender (NRS 62F.260).

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. Currently, 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 reoffense and the perceived threat to public safety. However, if A.B. 579 and S.B. 471 are upheld, all offenders are subject to community notification.

Q: If I have a question regarding sex offenders and the registration and/or community notification requirements, whom 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
  E-mail: sorhelp@dps.state.nv.us
  Telephone: (775) 684-6262

- Federal Bureau of Investigation National/State Sex Offender Registry: http://www.fbi.gov/hq/cid/cac/registry.htm

- Las Vegas Metropolitan Police Department Sex Offender website: http://watchsystems.com/nv/lvmpd/

- Nevada Attorney General's Sex Offender Guidelines for Community Notification: http://ag.state.nv.us/publications/manuals/Sex%20Offender%20Guidelines.pdf

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Linda Eissmann
Principal Research Analyst
E-mail: leissmann@lcb.state.nv.us

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Criminal Justice in Nevada
Part III: Juvenile Justice

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 Title 5 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.

TABLE OF CONTENTS

Juvenile Court Jurisdiction 1
Child in Need of Supervision 2
Child Deemed Delinquent 2
Certification to Adult Court 2
State Juvenile Facilities 3
Nevada Youth Training Center 3
Caliente Youth Center 3
Summit View Youth Correctional Facility 4
Probation Function 4
Nevada Counties' Responsibilities 4
County-Operated Facilities 4
Studies Authorized for the 2009-2010 Interim 5
Frequently Asked Questions 5
Additional Resources 6
Research Staff Contacts 6

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 62B 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; and
- 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 16 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.

In 2009, the Legislature addressed the transfer of cases to adult court in specific instances when the crime was committed when the offender was a juvenile but not apprehended until reaching the age of 21. The juvenile court must consider whether to dismiss the charges or transfer jurisdiction to an adult criminal court if the crime would otherwise be charged as a category A or B felony if it had been committed by an adult. Considerations must include the interests of justice and public safety, the nature of the crime, impact to the victim, behavior of the offender, extent of punishment or treatment, and risk of recidivism.

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, and 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 of 2000. The facility was privately run by Florida-based Youth Services International until January 2002 when the private provider contract was terminated. In January 2004, the facility reopened under State management by the Division of Child and Family Services within Nevada's Department of Health and Human Services.

As part of its efforts to address the State's ongoing fiscal crisis, the Legislature closed the Summit View Youth Correctional Facility in 2010 under A.B. 6 (Chapter 10, *Statutes of Nevada 2010*) during the 26th Special Session.

Probation Function

Chapter 62G of the NRS governs 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 Title 5 of NRS is to "promote the establishment, supervision and implementation of preventive programs that are designed to prevent a child from becoming subject to the jurisdiction of the juvenile 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.

STUDIES AUTHORIZED FOR THE 2009-2010 INTERIM

The larger issue of juvenile justice in Nevada is studied by the Advisory Commission on the Administration of Justice, which is responsible for evaluating many areas of the criminal justice system. In 2009, the Legislature formally created the Subcommittee on Juvenile Justice within the Commission to consider issues specifically related to juvenile justice. The work of the Commission and Subcommittee may be tracked through the Legislature's website for interim studies at http://www.leg.state.nv.us/interim/75th2009/committee/.

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 attaining 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_JJS_ProgramsOffice.htm

Youth Parole Bureau, Nevada's Division of Child and Family Services: http://www.dcfs.state.nv.us/DCFS_JJS_YouthParole.htm

Legislative Commission's Subcommittee to Study the Juvenile Justice System (Assembly Concurrent Resolution No. 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://www.ncjjservehttp.org/NCJJWebsite/main.htm

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Linda Eissmann
Principal Research Analyst
Research Division
E-mail: leissmann@lcb.state.nv.us

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Family Law

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Marriage 2
Persons Authorized to Marry 2
Divorce, Disposition of Marital Property, and Alimony 2
Child Custody and Visitation 3
Best Interest of the Child 3
Statutory Preferences for Awarding Custody 3
Visitation 3
Visitation for Relatives 4
Uniform Child Abduction Prevention Act 5
Child Support 5
Parentage 8
Adoption 8
Domestic Violence 9
Acts That Constitute Domestic Violence 9
Criminal Procedures 10
Penalties for a Battery That Constitutes Domestic Violence 12
Orders for Protection 14
Stalking and Harassment Laws 18
Domestic Violence and Child Custody Considerations 20
Other Laws to Protect and Assist Victims of Domestic Violence 21
Domestic Violence Ombudsman and Committee 24
Resources Regarding Family Law 26
Research Staff Contacts 27

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 or 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 *2010-2011 Policy and Program Report* 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: (1) insanity; (2) one year of separation without cohabitation; or (3) 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 125D under Title 11 of NRS. 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 *2010-2011 Policy and Program Report* on Human Services. The following information focuses on the domestic relations law contained in Chapters 125 through 125D of the NRS and is only intended to provide a general overview. For more detailed information on these issues, a review of NRS is recommended.

Best Interest 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. Additionally, the 2009 Legislature added a parent who has abducted a child (Assembly Bill 59, Chapter 67, *Statutes of Nevada*).

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, the custodial parent must notify and attempt to obtain the permission of the noncustodial 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 noncustodial 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 or her parental rights or his or her parental rights have been terminated; or
- The minor child has resided with a person with whom he or she 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 the child's 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 <u>not</u> in the best interest of the child. To rebut this presumption, the party seeking visitation must prove by *clear and convincing evidence* that it is in the best interest 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.

Uniform Child Abduction Prevention Act

To provide additional protection for children by deterring domestic and international child abductions by parents, the 2007 Legislature enacted the Uniform Child Abduction Prevention Act (Chapter 125D of NRS). The Act specifies who may file an action for abduction prevention, sets out the risk factors that should be considered, and identifies activities that may indicate a planned abduction.

As a safeguard in domestic violence situations, the Act provides that the court shall not issue an abduction prevention order if it finds that the parent's conduct is intended to avoid imminent harm to the child or parent (subsection 3 of NRS 125D.180).

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 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 website at: http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/1567/.

- 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.070 and NRS 125B.080); 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 three 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 interest 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 or she 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.

In some rare cases, after parental rights have been terminated, the parent and child may wish to reconnect, particularly if the parent has made life improvements. A procedure for the restoration of parental rights is set forth at NRS 128.170 through 128.190 and may be used to restore the parental rights of a child's natural parent if the child has not been adopted. The natural parent must consent and the statute sets forth procedures governing the notice and hearing requirements for a restoration petition. Before the rights of the natural parent are restored, the court must find that the child is not likely to be adopted and that restoration is in the best interest of the child (NRS 128.190).

ADOPTION

Chapter 127 of NRS ("Adoption of Children and Adults") requires the Division of Child and Family Services in the Department of Health and Human Services to prepare a booklet on adoption that includes detailed information on the adoption process in Nevada, which is available through the agency's website at: http://www.dcfs.state.nv.us/DCFS_Adoption.htm. 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.

To ensure that adoptive parents can immediately provide insurance coverage and medical benefits for an adopted child, the 2009 Legislature enacted A.B. 500 (Chapter 314, *Statutes of Nevada*). The measure specifies that a person has legal custody over the child when that person receives consent to adopt a child.

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 the person's spouse, former spouse, any other person to whom the person is related by blood or marriage, a person with whom the person is or was actually residing, a person with whom the person has had or is having a dating relationship, a person with whom the person has a child in common, the minor child of any of those persons, or the person's minor child:

- A battery;

- An assault;

- Compelling the other by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person 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, carrying a concealed weapon without a permit, and injuring or killing an animal;
- A false imprisonment; and
- 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 the person's 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 or her spouse, former spouse, any other person to whom he or she is related by blood or marriage, a person with whom he or she is or was actually residing, a person with whom he or she has had or is having a dating relationship, a person with whom he or she has a child in common, the minor child of any of those persons, or his or her 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, the officer must prepare and submit a written report of the investigation to the officer's 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 in the report. Each law enforcement jurisdiction in Nevada must forward a compiled report each month to the Central Repository for Nevada Records of Criminal History that contains the information from the domestic violence reports prepared that month (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 the person 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 the person's 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 (NRS 62C.020). However, if the peace officer or probation officer who took the child into custody determines that the child does not meet the criteria for secure detention and if other appropriate arrangements can be made, the juvenile may be released in less than 12 hours.

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	Assessment*
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**

*Administrative assessment for domestic violence programs (NRS 228.460)

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.

With testimony identifying the act of strangulation becoming more prevalent in domestic violence situations, the 2009 Legislature expanded the crime of battery to include strangulation (A.B. 164, Chapter 42, *Statutes of Nevada*). As a result, a person convicted of a battery that constitutes domestic violence, if the battery is committed by strangulation, is guilty of a category C felony with a maximum fine of $15,000.

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 the person's 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 is 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.*** Additionally, the 2009 Legislature added a protection order for victims of sexual assault (A.B. 120, Chapter 68, *Statutes of Nevada*).

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 that 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 A.B. 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, costs and fees associated with bringing action for a protective order, and lost earnings and expenses incurred for attending court proceedings (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 interest 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 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, the person 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 being arrested. However, for this limitation to apply, the arresting officer must determine whether: (1) the violation is accompanied by a direct or indirect threat of harm; (2) the person has previously violated such an order; or (3) the person is intoxicated at the time of the arrest (NRS 178.484, as amended by A.B. 112, Chapter 276, *Statutes of Nevada 2007*).

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 whether: (1) the violation is accompanied by a direct or indirect threat of harm; (2) the juvenile previously violated such an order; or (3) the juvenile is intoxicated at the time of the arrest before the limitation on release of the child applies (NRS 62C.020 as amended in 2007 by A.B. 112).

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 being arrested if the arresting officer determines that: (1) such a violation is accompanied by a direct or indirect threat of harm; (2) the person previously violated such an order; or (3) the person is intoxicated at the time of the arrest (NRS 33.030 as amended in 2007 by A.B. 112).

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.

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).

Stalking and Harassment Laws

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 or her physical or mental health or safety (NRS 200.571).

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. In 2009, the Legislature expanded the definition of stalking to include actions that cause the victim to fear for the safety of an immediate member of the victim's family or household (A.B. 309, Chapter 497, *Statutes of Nevada*). ("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 the person 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." In 2009, text messaging was added to this crime by A.B. 309 (Chapter 497, *Statutes of Nevada*). 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 or her 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 of Children

Although not discussed in detail in this *2010-2011 Policy and Program Report*, 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. 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 33.400 through NRS 33.440).

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 interest 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 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 interest of the ward (NRS 159.059).

As outlined below, 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 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. In 2009, the Legislature increased this fee by $5 (Senate Bill 14, Chapter 76, *Statutes of Nevada*) to offset the recent decline in funding available to this account.

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. The 2009 Legislature provided additional funding for this account from the mandatory alcoholic beverage awareness programs that must be completed by employees of establishments that sell alcohol. If there are violations of this mandatory program, A.B. 432 (Chapter 132, *Statutes of Nevada*) requires that 50 percent of the administrative fines be remitted to the State Treasurer for credit to the domestic violence victims' account.

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 Chapters 125 ("Dissolution of Marriage"), 125B ("Obligation of Support"), or 125C ("Custody and Visitation") of NRS, and on the filing of any answer or response to such motion or other paper (NRS 19.0312).

In the justice 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 NRS 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 the person's 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 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 of 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 422A.350).

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 422A.600).

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 228.440 through 228.450) and the Committee on Domestic Violence (NRS 228.470) 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. The 2009 Legislature increased funding for domestic violence programs by modifying the distribution of administrative assessments paid by criminal defendants. Assembly Bill 531 (Chapter 243, *Statutes of Nevada 2009*) expands the list of recipients for the legislatively authorized portion of the assessments by adding programs within the Attorney General's Office related to victims of domestic violence.

Office of 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 in the following text); 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

The Nevada Council for the Prevention of Domestic Violence operates 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.

Additionally, the Council is required 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 website at http://www.leg.state.nv.us and through State and local libraries).

- Nevada Supreme Court and the Administrative Office of the Courts
  Supreme Court Building
  201 South Carson Street
  Carson City, Nevada 89701-4702
  Telephone: (775) 684-1600
  Website: http://www.nevadajudiciary.us/

The Nevada Supreme Court prepares the *Annual Report of the Nevada Judiciary*, which contains statistical information relating to the Family Court in Nevada.

- National Council of Juvenile and Family Court Judges
  P.O. Box 8970
  Reno, Nevada 89507-8970
  Telephone: (775) 784-6012
  Fax: (775) 784-6628
  Website: http://www.ncjfcj.org

- Office of the Attorney General
  Carson City Office
  100 North Carson Street
  Carson City, Nevada 89701-4717
  Telephone: (775) 684-1100
  Fax: (775) 684-1108
  Website: http://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 is available through the Research Library of the Nevada Legislative Counsel Bureau (NRS 228.450 and 228.470). The Research Library may be contacted by telephone [(775) 684-6827] or through the Legislature's website at: http://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 College Parkway
  Carson City, Nevada 89706-7924
  Telephone: (775) 684-0500
  Fax: (775) 684-0646
  Website: http://dwss.nv.gov/index.php?option=com_content&task=view&id=56&Itemid=129

Information regarding the following reports is available through the Research Library:

- Legislative Counsel Bureau Bulletin No. 99-9, *Family Courts, January 1999*. A copy of this report to the 70th Session of the Nevada Legislature by the Legislative Commission's Subcommittee to Study Family Courts is available online at: http://www.leg.state.nv.us/lcb/research/1999intstudy.cfm.

- *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).

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Jennifer Chisel
Senior Research Analyst
E-mail: jchisel@lcb.state.nv.us

Linda Eissmann
Principal Research Analyst
E-mail: leissmann@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

Public Land & Natural Resources

General Environmental Issues and Matters Concerning Lake Tahoe

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

The health of Nevada's environment and the preservation and conservation of its most critical natural resources contribute significantly to 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 Nevada has grown, however, so have the demands placed on the State's natural resources.

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 federal Clean Air and Clean Water Acts in the early 1970s—some of the first laws ever written that establish 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, one-third of the Tahoe Basin is in the State of Nevada and two-thirds in the State of California. Regulatory responsibility for the Tahoe Basin rests with the Tahoe Regional Planning Agency (TRPA), originally established in 1968.

AIR QUALITY

Air pollution can come 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, and planes; and "natural sources" such as dust and wildfires.

TABLE OF CONTENTS

Air Quality 1
Federal Clean Air Requirements 2
Local Air Quality Programs 3
Air Pollution Control Laws 3
Water Quality 5
Perchlorate 6
Nitrates 7
Clean Water Act Versus Safe Drinking Water Act 7
Mercury 7
Nevada's Brownfields Program 8
Mining and Mine Reclamation 9
Mine Reclamation 10
Toxics Release Inventory 11
Lake Tahoe 12
Reauthorization of the Lake Tahoe Restoration Act 13
Websites and Additional References 14
Research Staff Contacts 14
Glossary of Common Acronyms 15

In Nevada, the State Department of Conservation and Natural Resources has primary authority for the control of air pollution. Within the Department, Nevada's Division of Environmental Protection (NDEP) and the State Environmental Commission (SEC) (*Nevada Revised Statutes* [NRS] 232.090 and 445B.200) work together on the adoption of regulations and the implementation of programs to maintain and improve air quality.

Nevada's Division of Environmental Protection is charged with enforcement responsibility for the federal Clean Air Act. Within NDEP, the Bureau of Air Pollution Control has jurisdiction over all air quality programs in Nevada with the exception of Clark and Washoe Counties. The Bureau of Air Pollution Control also has jurisdiction over fossil fuel-fired power plants that generate steam for electricity production. The Bureau of Air Quality Planning is responsible for ambient air quality monitoring, mobile sources, regional haze, and smoke management.

Nevada's air pollution control laws are found in Chapter 445B of the NRS. With regard to air pollution, NRS 445B.100 acknowledges that 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 Clean Air Act in 1970.

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 an understanding of local industries, geography, weather, transportation patterns, and other regional influences on air quality.

In addition to setting standards, states are required to develop State Implementation Plans (SIPs) to direct implementation of air quality regulations of the United States Environmental Protection Agency (EPA) and attainment of the National Ambient Air Quality Standards. A SIP contains regulations and measures that will be used to clean up areas in violation of air quality standards and to address pollution control in other areas to maintain air quality.

As part of these SIPs, states are divided into air quality control regions and attainment areas designated at the county level. If monitoring in a control region shows that air quality has fallen 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 a SIP is required of a local jurisdiction, the county prepares the SIP and submits it to the NDEP for review and approval. Once approved by the NDEP, the SIP is then submitted to the EPA for federal review and approval. The following Internet website for the EPA has pollutant-specific information about the nonattainment status of counties nationwide: http://www.epa.gov/oar/oaqps/greenbk/anay.html.

Local Air Quality Programs

Air quality programs in Clark County are managed by the Department of Air Quality and Environmental Management (DAQEM). In Washoe County, these programs are managed by the Washoe County District Health Department, Air Quality Management Division. Air quality issues in both Clark and Washoe Counties have primarily focused on high concentrations of particulate matter (PM_{10}), carbon monoxide (CO), and ozone (O_3).

Up-to-date information on air quality in Clark and Washoe Counties is available on the following websites: http://www.accessclarkcounty.com/depts/daqem/aq/compliance/pages/regs_index.aspx and http://www.washoecounty.us/health/aqm/home.html.

Air Pollution Control Laws

Emission Credits

So-called "cap and trade" programs are becoming an increasingly common means of controlling pollutants. Although originally proposed in response to a federal program related to mercury, Assembly Bill 67 (Chapter 278, *Statutes of Nevada*), as enacted by the 2007 Legislature, authorizes the State Department of Conservation and Natural Resources to collect money from the sale of emission credits or allocations for any pollutant. Any money collected is deposited in the Account for the Management of Air Quality in the State General Fund. The 2007 Legislature also amended the State's air pollution policy to include periodic retirement of a portion of the emissions credits and allocations that would otherwise be available for banking or sale.

Vehicle Emissions Programs

An important goal of Nevada's air pollution control laws is to reduce 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 Pollution Control Account.

The Vehicle Emissions Programs are authorized under NRS 445B.770, which requires the SEC to adopt regulations in designated areas, for the control of emissions from motor vehicles in Clark and Washoe Counties. In all other counties, the SEC has 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 Pollution Control Account

The 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. State Department of Conservation and Natural Resources (for the Division of Environmental Protection's statewide air quality control programs);

    3. State 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; and

    5. The TRPA (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, 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).

Greenhouse Gas Emissions

Concerns about global warming or climate change have resulted in a variety of initiatives and state legislation throughout the U.S. and the world. "Greenhouse gases" are defined as carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulphur hexafluoride. The EPA currently is drafting automobile tailpipe emission rules and is considering whether to issue an endangerment finding for carbon dioxide.

Against this backdrop, the 2007 Legislature directed the SEC to establish, by regulation, a statewide registry of greenhouse gases emitted by electric power plants with a capacity greater than five megawatts. The regulations must include reporting requirements and methodologies for identifying and measuring greenhouse gases and verifying the information in the registry. The Commission may also establish procedures for voluntary participation in the registry by entities other than the specified electric power plants. The State Department of Conservation and Natural Resources is required to issue a statewide inventory of greenhouse gases at least once every four years. The inventory shall include the sources, types, and amounts of greenhouse gases; an evaluation of the emissions; and documentation of the information in the inventory.

WATER QUALITY

(Note: This report will address the issue of water quality as an environmental issue in Nevada. The topic of water quantity will be addressed in another report 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 U.S. 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 445A.730, and establishes Nevada's compliance with the federal Clean Water Act. The SEC 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. Legislation enacted in 2009 authorizes the NDEP to award subgrants for set-aside programs authorized by the federal Safe Drinking Water Act.

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. 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.

Perchlorate

Nearly 90 percent of the drinking water for Southern Nevada comes from the Colorado River via Lake Mead. This vital source of drinking water is under constant scrutiny to maintain water quality. Perchlorate, a toxic chemical used in rocket fuel and explosives, was first detected in Lake Mead in 1997. Perchlorate was produced from World War II through the 1990s at two sites in Henderson, one owned by Kerr-McGee LLC and the other by American Pacific Corporation (APC). Kerr-McGee stopped making the chemical in 1998 and a cleanup project began in 1999 (the project is ongoing). The site owned by APC was destroyed by an explosion in 1988.

If ingested in high doses, perchlorate can decrease function of the thyroid gland and result in hypothyroidism or possibly thyroid tumors. Nevada's Division of Environmental Protection established 18 parts per billion (ppb) as a provisional action level based upon EPA guidance standards established in 1999 for perchlorate in drinking water. In 2005, the National Research Council recommended a reference dose of 0.0007 mg/kg/day, which translates to a Drinking Water Equivalent Level (DWEL) of 24.5 ppb. While this level was subsequently adopted by the EPA, the process to establish a promulgated drinking water standard known as a Maximum Contaminant Level (MCL) has not been completed.

As a result of clean up efforts, Lake Mead has seen decreasing levels of perchlorate. According to data collected by the Southern Nevada Water Authority, the yearly average perchlorate concentration in Lake Mead water going into the water treatment plant was 13.4 ppb in 2000 and 2.9 ppb in 2006.

Nitrates

A water quality issue in recent years has been the level of nitrates in the groundwater 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 Versus 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.

In Nevada, primary enforcement responsibility for the Safe Drinking Water Act rests with the NDEP, 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 to ensure compliance with 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 changed by the EPA from 50 ppb to 10 ppb, effective on January 23, 2006. New water treatment plants were constructed in Fallon and Fernley in order to bring their drinking water into compliance with the new national standard for arsenic.

MERCURY

Mercury is a naturally occurring metal that can contaminate air, water, and soil. In Nevada, the largest source of atmospheric mercury is from the processing of gold in mining operations. Historically, mining has also resulted in mercury contamination of certain lakes and rivers in Nevada. Ingestion of methyl mercury by eating contaminated fish or other exposures to mercury may have negative health impacts, including nervous system damage.

The Clean Water Act requires that states develop a list of water bodies ("List of Impaired Waters") needing additional work beyond existing controls to achieve or maintain water quality standards. There are several water bodies included on the 2006 list developed by the NDEP for exceeding the allowable level of certain contaminants. The Carson River from New Empire to the Carson Sink is included on the National Priorities List (Superfund) due to mercury contamination from historic mining activities. The most recent list may be viewed online: http://ndep.nv.gov/bwqp/303dlist.htm.

Nevada's Health Division, Department of Health and Human Services, has issued species specific health advisories for waters where a fish species has an average methylmercury level above 1.0 ppm, based on the Federal Drug Administration mercury action level. Five Northern Nevada waters are on the list as of February 2010 including the Carson River from Dayton to Lahontan Dam, which has been on the list for more than a decade. The advisories also include Chimney Dam Reservoir, Comins Lake, Little and Big Washoe Lakes, and Rye Patch Reservoir, and they include certain species and fish consumption amounts.

Nevada's Division of Environmental Protection has recently implemented the Mercury Air Emissions Control Program to reduce emissions at precious metal mining facilities processing mercury-containing ore by means of thermal treatment that may result in mercury emissions. Prior to this regulatory program, Nevada had implemented a voluntary mercury reduction program for Nevada gold mines that reduced annual emissions by 82 percent over three years.

After the federal government announced plans to store more than 4,500 tons of mercury at the Hawthorne Army Depot that had previously been stored in Indiana, New Jersey, Ohio, and Tennessee, the 2007 Nevada Legislature passed legislation (Senate Bill 118, Chapter 173, *Statutes of Nevada*) to require the SEC to adopt regulations on the handling and storage of mercury in quantities of 200,000 pounds or more. The SEC had already adopted such regulations as part of the Chemical Accident Prevention Program; however, the SEC supported the addition of a statutory requirement.

NEVADA'S BROWNFIELDS PROGRAM

Brownfield properties are vacant or abandoned properties that are unused or underutilized due to environmental contamination from past use. Examples typically include former automotive, railroad, or light industrial sites. The Bureau of Corrective Actions, NDEP, in the State Department of Conservation and Natural Resources, implements Nevada's Brownfields Program, also referred to as the Land Recycling Program.

The Nevada Brownfields Program was created in 1999 to model the federal Brownfields Revitalization Act of 2002. Nevada's program is codified in NRS 459.610 through 459.658. 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.

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 the property owner from liability for contamination occurring before the cleanup took place. However, the relief from liability does not limit the State's authority to require a specified action or cleanup by persons who are responsible for the actual contamination.

To implement the Brownfields Program, 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 to allow for the recordation of long-term institutional controls on remediated properties. The Act provides for a perpetual real estate interest, known as an environmental covenant, to be recorded for the purpose of giving notice of use restrictions on the land when ownership is transferred. Giving notice of any such restrictions facilitates future enforcement for the protection of both public and private interests.

An environmental covenant stays with the property unless limited to a specific duration or terminated by various means. However, while an environmental covenant may restrict uses of real property authorized by zoning or by another law, the covenant cannot authorize a use that is otherwise prohibited by law or a recorded instrument with priority over the covenant.

MINING AND MINE RECLAMATION

In 2008, gold prices and production contributed to Nevada's mining industry setting an all-time record in the value of mineral output, which was $6.1 billion, not including oil and geothermal. According to the Nevada Bureau of Mines and Geology's Special Publication P-20, "Major Mines of Nevada 2008," Nevada produced approximately 77 percent of U.S. gold and 8 percent of the world's gold production. The State was also the nation's leading producer of barite and lithium. Copper ranked second only to gold in terms of value in 2008.

Additionally, Nevada is second only to California in producing geothermal power. There are 17 geothermal electric generating plants in 10 locations that produced 1.3 million megawatt hours of electricity in 2008 (enough power to supply nearly 70,000 homes). Finally in 2008, approximately 436,000 barrels of oil were produced from oil fields in Elko, Eureka, and Nye Counties.

The economic significance of mining is especially great in rural areas where mining activities are centered. In 2008, there were, on average, 12,198 Nevadans directly employed in the mineral industry at an average salary of $77,037. This is the highest average salary of any employment sector in the State. It is estimated that another 52,000 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 513.113 (Commission on Mineral Resources), NRS 517.010 through 517.460 (mining claims, mill sites, and tunnel rights), NRS 519A.010 through 519A.290 (mining reclamation), Chapter 522 of NRS ("Oil and Gas"), and NRS 534A.010 through 534A.090 (geothermal resources).

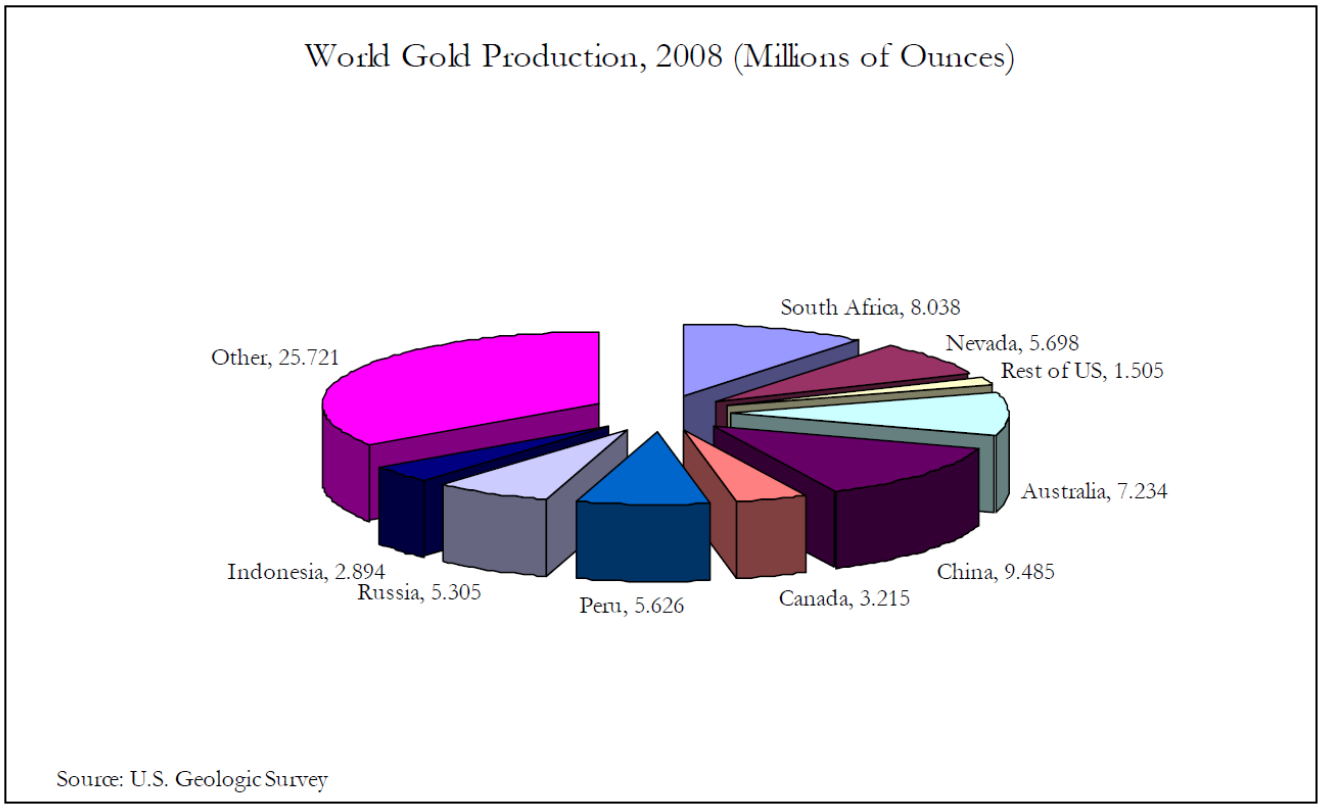
Mining regulation, mine closure, and mine reclamation are the responsibility of the NDEP and its Bureau of Mining Regulation and Reclamation. The Regulation Branch is responsible for ensuring that the quality of Nevada's water resources is not adversely impacted by active mining operations.

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 445A.730 (Nevada Water Pollution Control Law) and NRS 519A.010 through 519A.290 (mining reclamation).

Steamboat Geothermal Power Plant, Washoe County, Nevada

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, Nevada's Commission on Mineral Resources; 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.



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 TRI Program has expanded significantly since its inception. It now includes approximately 650 chemicals, and covers many industries beyond manufacturing, such as the mining industry. The TRI 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. For four consecutive years, beginning in 2002, Alaska had been the leader for toxic releases and Nevada ranked second. A federal court ruled in 2002 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.

According to the data reported on the website of the EPA, Nevada ranked sixth in the nation for the total on-site and off-site reported disposed of or otherwise released toxics, for facilities in all

industries, for all chemicals, by state in 2008. Ninety-nine percent of the reported toxics released in Nevada were categorized as "on-site" versus "off-site." On-site disposal or other releases are defined by the EPA to include emissions to the air, discharges to bodies of water, disposal at the facility to land, and disposal in underground injection wells. An off-site disposal or other release is generally defined by the EPA as a discharge of a toxic chemical to the environment that occurs as a result of a facility's transferring a waste containing a TRI chemical off-site for disposal or other release.

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 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 TRPA. With ratification of the Compact, the TRPA was the first bistate 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 Board, 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 bistate Compact to addresses these controversies. Finally in 1980, the Compact was revised to give the TRPA authority to adopt environmental quality standards (called thresholds), and to enforce ordinances designed 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 plan 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 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. General obligation bonds have been authorized each session since 1999 to fund the implementation of the EIP, and the final installment of these bonds was authorized in 2007. The 2009 Legislature authorized the issuance of not more than $100 million in general obligation bonds for the State of Nevada's apportioned share of the costs of the EIP for the next decade. The bonds are to be issued between July 1, 2009, and June 30, 2020.

In every regular session since 1985, with one exception, the Nevada Legislature has authorized an interim committee to oversee the activities associated with the TRPA and the bistate 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 218E.555).

Reauthorization of the Lake Tahoe Restoration Act

Seventy-five percent of the land in the Lake Tahoe Basin is owned by the Federal Government. Legislation was introduced in both houses of the U.S. Congress on November 3, 2009 (H.R. 4001 and S. 2724) to reauthorize the Lake Tahoe Restoration Act. The identical measures include a $415 million appropriation over eight years to enable the Chief of the U.S. Forest Service, the Director of the U.S. Fish and Wildlife Service, and the Administrator of the EPA, in cooperation with the TRPA and the States of California and Nevada, to fund, plan, and implement significant new environmental restoration and forest management activities in the Lake Tahoe Basin.

The Tenth Anniversary of the 1997 Lake Tahoe Presidential Forum was celebrated in August 2007 with national and state dignitaries attending the environmental summit hosted by Sierra Nevada College in Incline Village, Nevada. Residents of the Tahoe Basin, environmentalists, businesses, scientists, and numerous public agencies continue to collaborate on a new 20-year plan for Lake Tahoe's future. Key partner agencies in the effort to prepare an updated regional plan are: California's Lahontan Regional Water Quality Control Board, NDEP, TRPA, and the U.S. Forest Service Lake Tahoe Basin Management Unit.

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. During the Pathway planning, thresholds and ordinances are being reviewed and opportunities for public involvement are being provided.

In recent years concern has turned to the issue of forest health and the need to aggressively reduce fire danger. It has been widely believed that a fire in the Tahoe Basin would quickly spread, and the environment, private property, tourism, and overall economy of the region would be devastated by

fire. The Angora Fire of 2007, which spread four miles in three hours and burned over 3,000 acres and 250 structures on private property, demonstrates the urgent need for forest fuel reduction and widespread education and implementation of defensible space. To this end, the 2009 Legislature enacted legislation to expand the duties of the State Forester Firewarden to include cooperation with the State Fire Marshal in the enforcement of laws and the adoption of regulations relating to fire prevention through vegetation management within the Lake Tahoe and Lake Mead Basins. The State Fire Marshal is charged with assessing the codes and regulations adopted by other agencies impacting both basins to ensure consistency with fire-related codes, rules, and regulations.

WEBSITES AND ADDITIONAL REFERENCES

The following websites 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 and Environmental Management: http://www.accessclarkcounty.com/depts/daqem/Pages/index.aspx
- Nevada's Division of Environmental Protection: http://www.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 Management: http://www.washoecounty.us/health/aqm/home.html

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Jennifer Ruedy
Senior Research Analyst
E-mail: jruedy@lcb.state.nv.us

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

GLOSSARY OF COMMON ACRONYMS

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:

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

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

NAAQS .....National Ambient Air Quality Standards

NEPA .....National Environmental Protection Act of 1969

TMDL .....Total Maximum Daily Load

TRI ..... Toxics Release Inventory

TRPA ..... Tahoe Regional Planning Agency

USDA.....U.S. Department of Agriculture

Public Lands and General Natural Resource Issues

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

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 include 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

TABLE OF CONTENTS

Agriculture....1
Overview of Agriculture in Nevada....1
Mineral Resources....3
Miscellaneous Natural Resources Topics....5
Drought....5
Noxious Weeds and Invasive Plants....6
Wildland Fires....7
Public Lands....7
Public Land Acts....9
Off-Highway Vehicles....11
Wildlife and Wild Horses....13
Wildlife Generally....13
Greater Sage-Grouse....14
Wild Horse and Burro Management....15
Useful Websites for Public Lands and General Natural Resource Issues....16
Research Staff Contacts....17
Glossary of Acronyms....18

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. 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 U.S. 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 cows, 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. While most of the dairies are in northern Nevada, 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 since 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. This program was called "Rangeland Reform '94." 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.

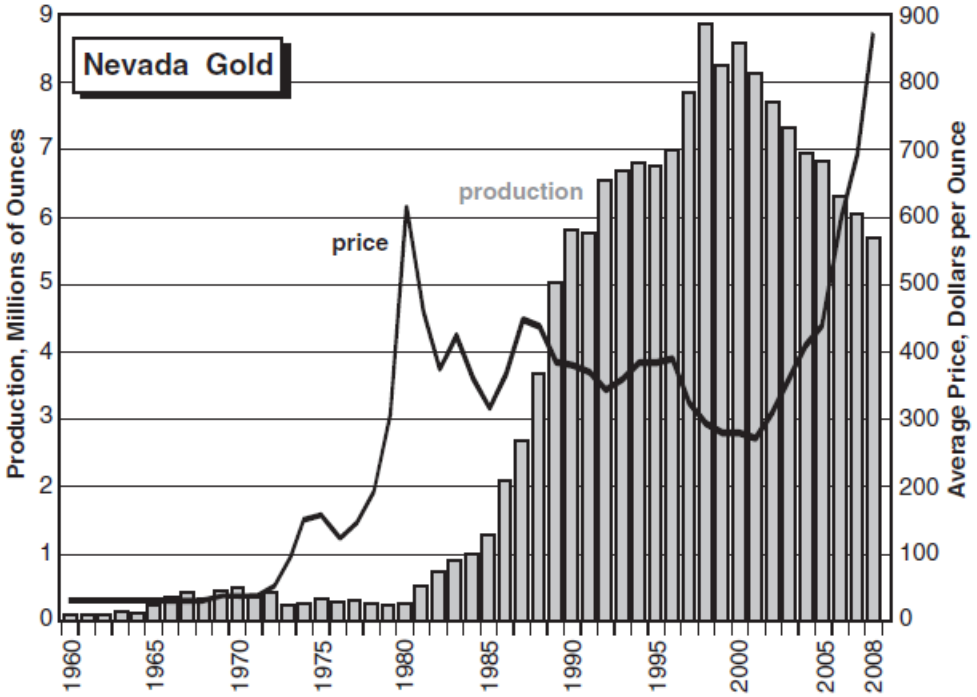
In 2003, the BLM proposed changes to its grazing rules in an attempt to resolve several controversial components of the Rangeland Reform '94 regulations. However, a federal judge blocked the new rules in a 2007 decision that concluded the rules would loosen restrictions, limit public comment, and dilute BLM's authority to sanction violators.

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 with the goal of promoting 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.

State laws on grazing are found primarily in Chapter 568 of the NRS and are complementary to federal law, including the Taylor Grazing Act of 1934. Chapter 568 creates State grazing boards and provides for the disbursement of the federal funds received by the State under the Taylor Grazing Act and related federal acts and executive orders. The Federal grazing fee for 2009 is $1.35 per animal unit month (AUM) for public lands administered by the BLM and $1.35 per head month (HM) for lands managed by the Forest Service.

MINERAL RESOURCES

In 2008, gold prices and production contributed to Nevada's mining industry setting an all-time record in the value of mineral output, which was $6.1 billion, not including oil and geothermal. According to the Nevada Bureau of Mines and Geology's Special Publication P-20, "Major Mines of Nevada 2008," Nevada produced approximately 77 percent of U.S. gold and 8 percent of the world's gold production. The State was also the nation's leading producer of barite and lithium. Copper ranked second only to gold in terms of value in 2008.

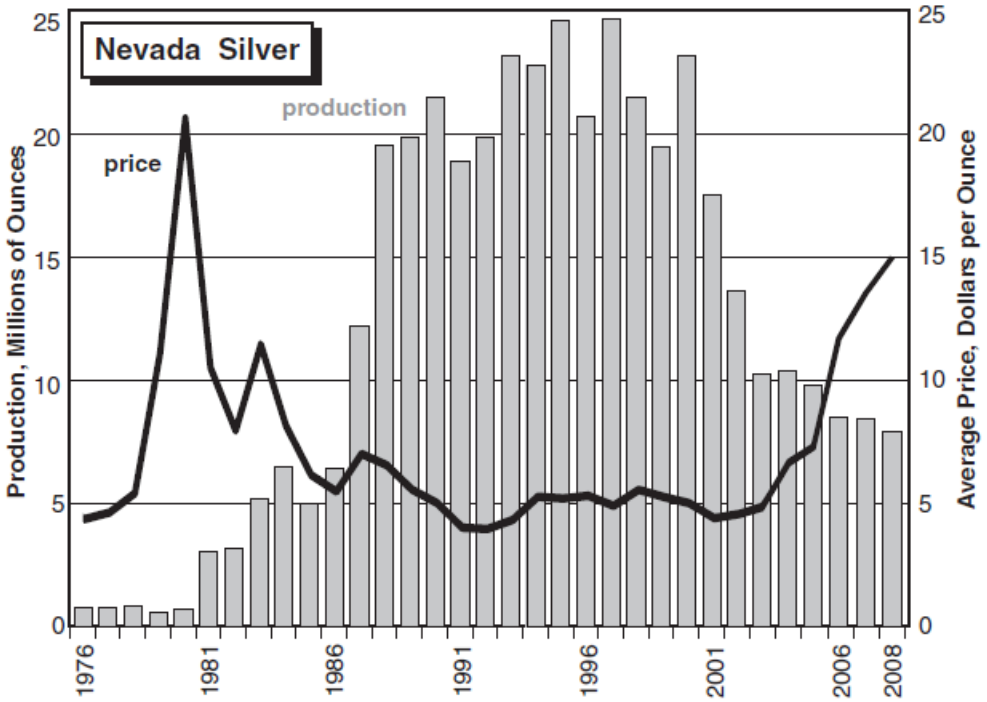


Source: *Major Mines of Nevada 2008*; *Mineral Industries in Nevada's Economy*, Nevada Bureau of Mines and Geology, Special Publication P-20, 2009.

Additionally, Nevada is second only to California in producing geothermal power. There are 17 geothermal electric generating plants in 10 locations that produced 1.3 million megawatt hours of electricity in 2008 (enough power to supply nearly 70,000 homes). Finally in 2008, approximately 436,000 barrels of oil were produced from oil fields in Elko, Eureka, and Nye Counties.

The economic significance of mining is especially great in rural areas where mining activities are centered. In 2008, there were, on average, 12,198 Nevadans directly employed in the mineral industry at an average salary of $77,037. It is estimated that another 52,000 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.



Source: *Major Mines of Nevada 2008*; Mineral Industries in Nevada's Economy, Nevada Bureau of Mines and Geology, Special Publication P-20, 2009.

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.

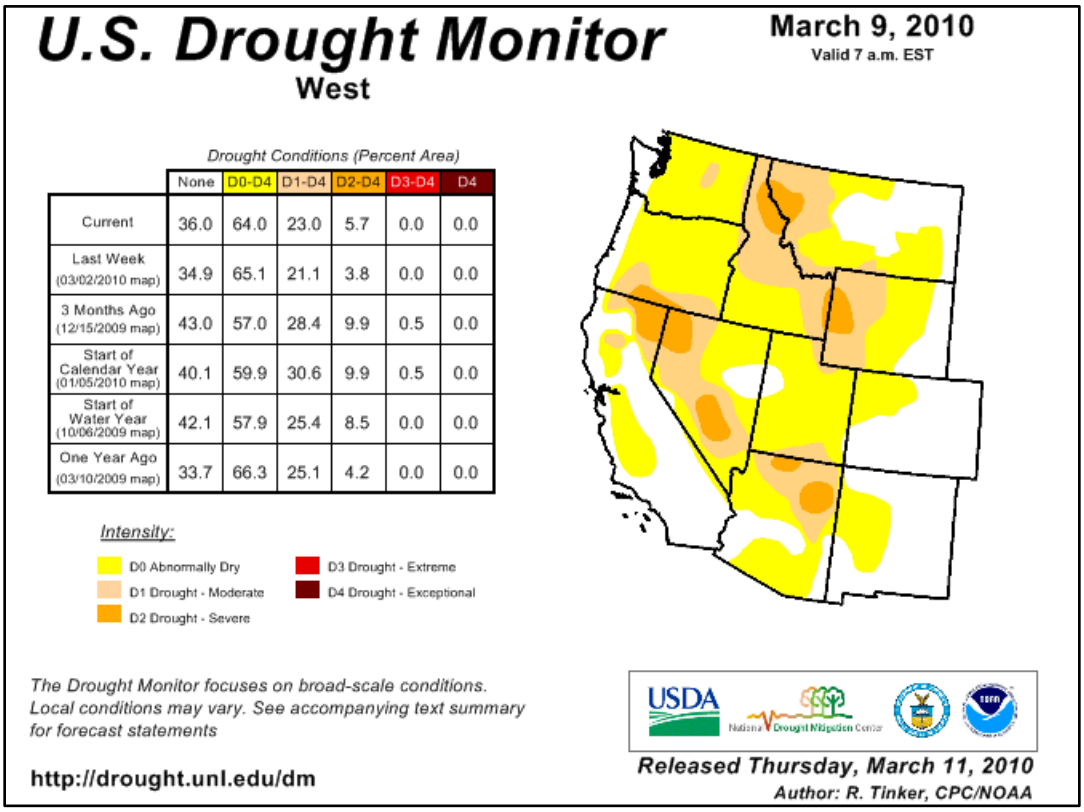
On January 27, 2009, the U.S. House of Representatives introduced H.R. 699, the Hardrock Mining and Reclamation Act of 2009, which includes an 8 percent federal royalty on new mines and a 4 percent federal royalty on those already operating. Similar legislation has been introduced in previous sessions of Congress but not enacted. While there appears to be consensus that the 137-year-old law should be revised, Nevada's federal delegates, including U.S. Senate

Majority Leader Harry Reid, have opposed provisions in the different bills. Debate continues on mining reform. Legislation was introduced in the Senate (S. 140) on January 6, 2009 to include the 8 percent and 4 percent royalties on new and existing mines and to establish the Abandoned Mine Cleanup Fund for reclamation and restoration of land and water resources adversely affected by past mineral activities on certain federal lands. For more information from an environmental standpoint, see the *2010-2011 Policy and Program Report* on General Environmental Issues and Matters Concerning Lake Tahoe.

MISCELLANEOUS NATURAL RESOURCES TOPICS

Drought

Several western states, including Nevada, have experienced drought conditions for many years. Drought conditions create 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. 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.



	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	36.0	64.0	23.0	5.7	0.0	0.0
Last Week (03/02/2010 map)	34.9	65.1	21.1	3.8	0.0	0.0
3 Months Ago (12/15/2009 map)	43.0	57.0	28.4	9.9	0.5	0.0
Start of Calendar Year (01/05/2010 map)	40.1	59.9	30.6	9.9	0.5	0.0
Start of Water Year (10/06/2009 map)	42.1	57.9	25.4	8.5	0.0	0.0
One Year Ago (03/10/2009 map)	33.7	66.3	25.1	4.2	0.0	0.0

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 continue its efforts to import water from rural areas. Programs by the SNWA to replace water-hungry turf with drought-tolerant plants have met with significant success. For more information on water resources, see the *2010-2011 Policy and Program Report* on Water Resources.

Noxious Weeds and Invasive Plants

Invasive plant species increasingly affect Nevada's lands in both urban and rural areas. Nonnative 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 are designated as "noxious weeds" through formal legislative action. Chapter 555 of NRS deals specifically with noxious weeds. According to the USDA, noxious weeds are defined as "species of plants that cause disease or are injurious to crops, livestock or land, and thus are detrimental to agriculture, commerce or public health."

One of the most prominent and insidious invasive plants in Nevada is cheatgrass. Originating in Europe, cheatgrass is an exotic, fine-stemmed annual grass that is highly flammable. In fact, cheatgrass rangelands are 500 times more likely to burn than rangelands of native vegetation. Cheatgrass easily reestablishes after a fire and becomes a "monoculture" (or a solid stand of a single plant species) on the burned land. Competitive monocultures of cheatgrass now exist on approximately 10 million acres in Nevada. Before the invasion of cheatgrass, significant fires burned once every 40 to 100 years, 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. The 2009 Legislature allocated $225,000 from the Fund to Protect Natural Resources in the State General Fund to the NDOW to create and fund a coordinator position to ensure federal, State, and local entities are working together to protect and restore sagebrush habitats, restore areas damaged by wildfires, prevent wildfires, and reduce cheatgrass.

Nevada's Noxious Weed Program, undertaken by the SDA, is an action plan to: (1) address weed management; (2) prevent new infestations; (3) educate and create awareness; (4) foster coordination, cooperation, and partnerships; and (5) promote research. The Nevada Weed Action Committee (a committee of the SDA) and others have identified funding as the primary need in the fight against noxious weeds in Nevada.

Wildland Fires

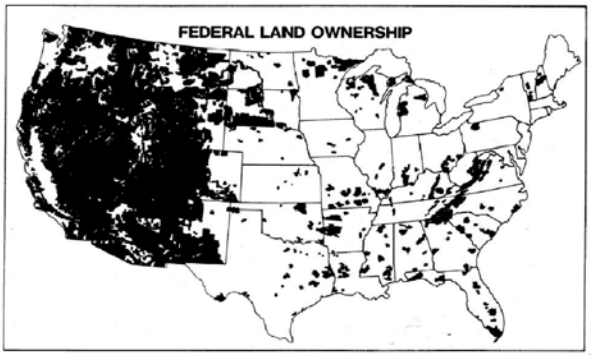
Hundreds of wildfires occur during each fire season in Nevada, burning about 1 million acres annually. Years of unusually dry conditions and the spread of invasive plants like cheatgrass have left the State vulnerable to dangerous fire seasons. During drought years, the acreage burned by wildfires increases significantly. Dry fuels contribute to more erratic burning conditions and increased fire intensity, and fire fighting agencies may 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, provides fire protection through fire suppression and prevention programs and other emergency services. Chapters 472 through 477 of the NRS pertain to protection from fire and explosives. Chapters 527 and 528 of the NRS address forestry, forestry products, and flora. 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.

Nevada's Wildfire Support Group includes a network of trained and certified fire teams that help to reduce fire risk by controlling fuel loads; rehabilitating and restoring burned areas; and working with federal, state, and local governments to implement a successful fire suppression strategy. Finally, the Nevada Fire Safe Council serves as a bridge between fire services, public agencies, and communities threatened by wildfire and strives to build a network of local community support. The Council provides assistance to threatened communities by improving residents' understanding of fire threats, encouraging personal responsibility for community protection, helping individuals and communities identify fire risks, developing fire mitigation projects, and procuring funding assistance to implement mitigation measures.

In 2005, the Nevada Legislature appropriated almost $1.55 million to Nevada's Division of Forestry for allocation to the Nevada Fire Safe Council for the development of a community-based wildfire threat reduction program. A portion of this appropriation was also earmarked for general operating expenses of the Council. In 2007, the Legislature appropriated $750,000 directly to the Council for the continuation of the wildfire threat reduction program. The 2009 Legislature did not appropriate any funds to the Nevada Fire Safe Council.

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.

FEDERAL LAND OWNERSHIP IN NEVADA BY COUNTY		
County	**Total Area (acres)**	**Percent 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.		

Because federally managed 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.

Public Land Acts

Payment in Lieu of Taxes Act of 1976

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 or census area. The states whose local governments received the most in PILT payments in 2009 are (listed in order of the amount received): New Mexico, California, Utah, Arizona, Colorado, and Montana. Nevada typically ranked tenth in the amount of PILT funding received in 2009, although more federally owned land exists within its borders than any other of the 48 contiguous states. The irony of the PILT formula is that counties with the most federal land typically have the smallest populations but, because the formula is, in part, population-dependent, counties with the highest percentage of federal land do not receive the greatest payments.

After years of inadequate PILT funding and a decrease in 2007 of payments under PILT, Congress increased PILT by over 50 percent in the Economic Stabilization Act of 2008. As a result, Nevada received approximately $22.6 million in 2008 and nearly $23.3 million in 2009 (a 4 percent increase from 2008). The 2009 payments represent nearly 99 percent full funding of PILT.

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 federal lands, their management, history, and current laws and to make recommendations for reforms and modernization. These recommendations led to the enactment of the Federal Land Policy and Management Act (FLPMA) of 1976.

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: (1) acquiring environmentally sensitive land in Nevada; (2) capital improvements at various areas administered by the BLM in Clark County, Nevada, and the Spring Mountains National Recreation Area; (3) developing a multispecies habitat conservation plan in Clark County; (4) parks, trails, and natural areas development in Clark County; and (5) various conservation initiatives 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. Recent amendments to the SNPLMA have expanded the expenditure categories in the special account pertaining to fire suppression, Nevada State Parks, affordable housing, and parks and trails access.

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 certain land acquisitions and administrative expenses necessary to carry out the land disposal program under the FLTFA. In Nevada, the FLTFA does not apply to lands eligible for sale under the SNPLMA, Santini-Burton Act, Mesquite Lands Act, or Lincoln County Conservation, Recreation, and Development Act (LCCRDA). The FLTFA also does not apply to lands identified for disposal after July 25, 2000, such as through a land use plan amendment approved after that date.

LCCRDA

The LCCRDA of 2004 authorizes the sale of federal land in Lincoln County, Nevada. The LCCRDA further designates 770,000 acres of federal land in Nevada as wilderness. The Act also designates a specified corridor for utilities in Clark and Lincoln Counties and grants rights-of-way to the SNWA and Lincoln County Water District for roads, wells, pipelines, and other facilities necessary for the construction and operation of a water conveyance system.

Other provisions designate a trail system in Lincoln County ("Silver State Off-Highway Vehicle [OHV] Trail") and 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 (USFWS) and the BLM.

White Pine County Conservation, Recreation, and Development Act of 2006

The White Pine County Conservation, Recreation, and Development Act of 2006 (WPCCRDA) (Public Law 109-432) authorizes the sale of up to 45,000 acres of federal land in White Pine County. The WPCCRDA sets up a special account similar to other federal lands acts, with 5 percent of land sales proceeds earmarked for the State education fund; and 10 percent to White Pine County for law enforcement, fire protection, transportation, and natural resource planning. The remaining 85 percent goes to the U.S. Department of the Interior to protect wilderness areas in White Pine County, study a potential extension of the Silver State OHV Trail, promote resource protection, and carry out a countywide recreation study.

The Act designates approximately 538,000 acres of wilderness in 12 new wilderness areas and expands the Mount Moriah and Currant Mountain Wilderness Areas. The bill also simplifies the land management structure around the Great Basin National Park by transferring jurisdiction of land from

the USFS to the BLM. It also transfers land from the BLM to the USFWS for inclusion in the Ruby Lake National Wildlife Refuge and simplifies management of the Bald Mountain Wilderness by transferring land from the BLM to the Forest Service.

The WPCCRDA conveys federally managed land for two existing State parks and one State wildlife management area to expand and improve the management of these areas, along with conveyances of parcels for the expansion of the Ely airport and industrial park. In addition, the Act transfers four parcels of land totaling 3,526 acres to the Ely Shoshone Tribe for traditional, ceremonial, commercial, and residential purposes.

The Act directs the Secretary of the Interior to complete a study of routes for the Silver State OHV Trail. Following the study, the Secretary must designate the trail if it is consistent with certain principles in the Act. Finally, the WPCCRDA provides for the implementation and enhancement of the Eastern Nevada Landscape Restoration Project.

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 approved legislation requiring any city or county whose territory includes all or part of the Red Rock Canyon National Conservation Area (see Title 16 of the *U.S. Code*) to prohibit any use other than recreation, the excavation or extraction of any substance, and the erection of any structure, in that area. The city or county 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), SDCNR, 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."

In 2003, the Legislature expanded protections of the Red Rock area. Nevada law specifies that the various planning and zoning powers in the NRS are subordinate to the limits on development in the Red Rock Canyon area. In addition, the 1993 Act was renamed the "Red Rock Canyon Conservation Area and Adjacent Lands Act." The Act was amended to add new sections defining adjacent tracts of land in the Red Rock Canyon. Finally, the Legislature declared that development shall be limited in areas of land adjacent to Red Rock Canyon and further 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.

OFF-HIGHWAY VEHICLES

In recent years, the number of OHVs operated on public lands in Nevada has increased dramatically. It is estimated that Nevadans own over 425,000 OHVs (including dirt bikes and snowmobiles). The increased popularity of OHVs as a form of recreation poses significant land management challenges. Since 1998, the number of OHVs used in Nevada has increased almost 200 percent.

The BLM has established three designations for OHV use in Nevada: (1) open; (2) limited; or (3) closed. Approximately 77 percent of BLM land (about 38 million acres) is designated as "open," meaning OHVs can be operated in any area without restriction. Almost 19 percent of BLM land is designated as "limited" OHV use, meaning OHVs must be operated on designated roads and trails. Four percent of BLM land in Nevada is closed to OHV use.

In 2003, the BLM issued a memorandum ("Clarification of OHV Designations and Travel Management in the BLM Land Use Planning Process"), which essentially stipulates that travel management planning for the BLM must take place as part of the standard Resource Management Plan (RMP) update process. As RMPs become due for update, each BLM field office will review existing road networks and determine, through a public process, whether a particular road or system of roads should be designated as open, limited, or closed to OHV use. This process is designed to be flexible and allows for amendments or revisions as needed.

Off-highway vehicle use on Forest Service land is also increasing. In 2004, the Forest Service published proposed regulations on travel management to govern OHVs and other motor vehicle use on national forests and grasslands. Following a 60-day comment period with over 81,000 responses, the USFS released its final "Travel Management" rule in November 2005. This rule provides a national framework for local units to use in designating a sustainable system of roads, trails, and areas for motor vehicle use. According to the USFS, the goal is to secure a wide range of recreational opportunities while ensuring the best possible care of the land. It requires each national forest or ranger district to designate those roads, trails, and areas open to motor vehicles and must include the "class" of vehicle and, if appropriate, the time of year for motor vehicle use. Once the designation is complete, the rule will prohibit motor vehicle use off the designated system or inconsistent with the designations. Road-related decisions will be made locally with public input and in coordination with state, local, and tribal governments.

In 2005, the Legislature passed Senate Bill 400 (Chapter 441, *Statutes of Nevada*) which addressed issuing "certificates of operation" and giving local governments statutory authority to designate a portion of certain roadways as acceptable for OHV use. However, efforts to implement a registration and titling program continued and culminated in the passage of S.B. 394 (Chapter 504, *Statutes of Nevada*) in the 2009 Session. The bill requires licensing of OHV dealers and titling of all new OHVs and OHVs resold through an authorized dealer. Titling fees will cover administrative costs to Nevada's Department of Motor Vehicles (DMV). Annual registration is mandatory for all OHVs and stickers with unique identification numbers will be issued. Initial registration will require certain evidence of ownership and payment of applicable sales tax and can be done by an authorized dealer. The bill limits the registration fee to between $20 and $30 and the majority of the registration fee will be deposited into the Fund for Off-Highway Vehicles created by the legislation. Exceptions include OHVs operated by government agencies, for husbandry purposes, utilities, or which were manufactured prior to 1976.

The bill calls for appointment of the Commission on Off-Highway Vehicles by the Governor. The Commission's purpose is to administer the Fund for Off-Highway Vehicles and it will include 11 appointees representing dealers, sportsmen, ranchers, local governments, enforcement personnel, users, and resource specialists. An advisory committee with membership representing federal and

State agencies will also be formed. During the first year of implementation, 85 percent of the registration fees will go the DMV and 15 percent to the Fund for Off-Highway Vehicles to be used for public education. After the first year, 85 percent of the registration fees will go to the Fund for Off-Highway Vehicles to be split between OHV projects (60 percent), enforcement (20 percent), education (15 percent), and administrative costs (5 percent).

Before implementation of the titling and registration provisions may occur, $500,000 must be deposited in a start-up account for the benefit of the DMV. As of December 2009, permittees under the Clark County Multiple Species Habitat Plan have agreed to contribute $500,000 for start-up in exchange for receiving mitigation credits from the U.S. Fish and Wildlife Service. Improved enforcement and regulation of OHVs, along with grants from the OHV Fund, are expected to improve habitat for the desert tortoise and other threatened or protected species. Clark County and the DMV will review the contract in early 2010 before presenting it for approval to the Board of County Commissioners and the State Board of Examiners.

WILDLIFE AND WILD HORSES

Historically, Nevada has 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 Generally

Management of Nevada's wildlife is the responsibility of the NDOW, which oversees 11 wildlife management areas totaling approximately 117,000 acres of habitat. Additionally, the NDOW administers four fish hatcheries that raise more than 2 million trout a year. These fish are then stocked into 50 streams and 65 lakes, reservoirs, and ponds. More than 1 million wipers, bass, walleye, catfish, and other warm water species are also stocked, and more than 14 bodies of water are managed as urban fisheries in Churchill, Clark, and Washoe Counties. 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 interested parties 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 Program 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 USFWS. 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.

Wildlife Action Plan

The U.S. Congress enacted two new programs in 2000: the Wildlife Conservation and Restoration Program and the State Wildlife Grants Program. As a condition of receiving federal funds from these programs, Congress required state wildlife agencies to submit a strategic assessment and action plan for wildlife to the USFWS for review by October 1, 2005. Nevada's Wildlife Action Plan was completed through a partnership between NDOW, Nevada Natural Heritage, Lahontan Audubon Society, and the Nature Conservancy. The Plan focuses on the species and habitats deemed to be in greatest need of conservation in Nevada.

Invasive Species

Former U.S. President William J. Clinton issued Executive Order No. 13112 on February 3, 1999, which defined invasive species as an "alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health." An alien species is a species that is nonnative to the ecosystem under consideration. Some invasive species that pose problems in Nevada currently are Africanized honey bees, Norway rats, and most recently Quagga mussels.

Quagga mussels, which are similar to Zebra mussels, were found in Lake Mead in January 2007 and later in the Lake Mead Fish Hatchery, raising concerns that mussels may have been inadvertently moved from the hatchery to interior waters during trout stocking operations in 2006. Quagga mussels are prolific breeders that clog pipelines and threaten native species of fish by competing for their food. They are difficult to control and nearly impossible to eradicate. It is presumed they were introduced into Lake Mead and Lake Havasu by an infested private boat from the Great Lakes. With the discovery of Quagga mussels in California only a few hundred miles from Lake Tahoe, the Tahoe Regional Planning Agency has implemented boat inspections in an effort to keep Quagga mussels from invading Lake Tahoe.

Greater Sage-Grouse

The Greater Sage-Grouse is a small game bird found throughout the western U.S., including 15 of Nevada's 17 counties. The USFWS estimates that there are between 100,000 and 500,000 individuals in the region and that the population is on the decline. Concerns about the quality and quantity of their populations and habitat resulted in the USFWS receiving three petitions to list the Greater Sage-Grouse as a threatened or endangered species. A formal species status review was initiated in April 2004.

The listing of the Greater Sage-Grouse as a threatened or endangered species would affect land and water uses, and recreational activities. As a result, then Nevada Governor Kenny C. Guinn appointed

a Sage-Grouse task force in August 2000, representing industry, Native American tribal governments, conservation organizations, land management agencies, legislators, and biological professionals. The task force was charged with creating a strategy for Local Area Conservation Planning groups to follow when creating Sage-Grouse conservation plans for their respective areas. The intent was to proactively address the issues and avoid a listing under the Endangered Species Act. The conservation plan will define programs to address localized problems before the species 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.

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 and encouraged moving forward with new conservation strategies. However, in December 2007, a federal judge ordered the USFWS to reconsider its 2005 refusal to add the Sage-Grouse to the endangered species list, saying the agency decision ignored expert advice. The USFWS completed its rereview and submitted its findings to the court in March 2010 that listing is warranted but precluded by listings of other species with a greater need for protection.

Wild Horse and Burro Management

Nevada's commemorative quarter-dollar coin.

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, and the adoption program.

Wild horses and burros are found throughout the western states, but the Nevada populations are by far the largest. As of December 2009, the BLM estimated a total of 36,940 wild horses and burros roamed BLM land in the ten western states, of which 17,461 (47 percent) inhabited Nevada. The BLM has identified 102 Herd Management Areas (HMAs) in Nevada. The HMAs vary in size from 4,000 acres to more than 800,000 acres, with most exceeding 100,000 acres.

Because forage in HMAs must be shared with wildlife and livestock, public land managers are required to set appropriate management levels (AMLs) for wild horses and burros for each HMA. The AML may be influenced by many factors, most notably fire and drought. As of December 2009, the BLM has determined the AML for Nevada is 12,688 wild horses and burros and that the State exceeds the AML by nearly 4,800 horses and burros.

Achieving and maintaining AMLs may require periodic removal of horses but rounding up wild horses (known as "gathers") is controversial and often results in litigation. The options for wild horses removed from the range are BLM's adoption program, transport to long-term holding facilities (pastures) in the midwest, or, in certain cases, sale. As of December 2009, the BLM has placed more than 225,000 wild horses and burros into private care since 1971. In federal Fiscal Year 2009, holding costs were approximately $29 million or 70 percent of the $40.6 million budget for the wild horse and burro program. Those holding costs covered 12,500 animals in corrals and 22,000 in midwestern pastures. Since receiving limited authority for sale of wild horses or burros, the BLM has sold more than 3,700 animals.

State laws pertaining to wild horses are found in Chapter 504 of NRS. Nevada's Commission for the Preservation of Wild Horses was created by the Legislature in 1985 with funding from a bequest from Leo Heil. The Commission strives to sustain viable herds of wild horses in Nevada, provides grant funding, acts as an advocate for wild horses through participation with federal agencies, and serves as a clearinghouse for information to the public. The Heil bequest will expire around March of 2010 and the Commission expects to cease operations at that time.

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 federal law. However, if the animals are located on State property, they are considered "estrays" subject to Nevada's estray and feral livestock laws as described in NRS 569.005 through NRS 569.130 and are the responsibility of the SDA. In Nevada, many of these estray horses are located in the Virginia Range near Virginia City.

The State Department of Agriculture estimates the current estray population in the Virginia Range to be close to 1,600 which, according to the Department, is significantly more than the habitat can support. However, due to budget constraints, the SDA does not have any immediate plans to remove, gather, and relocate estrays.

USEFUL WEBSITES FOR PUBLIC LANDS AND GENERAL NATURAL RESOURCE ISSUES

The following websites 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/

Nevada State Office, BLM: http://www.blm.gov/nv/st/en.html

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/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Jennifer Ruedy
Senior Research Analyst
E-mail: jruedy@lcb.state.nv.us

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400

GLOSSARY OF ACRONYMS

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:

AML ..... Appropriate Management Level (for wild horses)
AUM ..... Animal Unit Month
BOR ..... Bureau of Reclamation, U.S. Department of the Interior
CFR ..... *Code of Federal Regulations*
CWMA ..... Cooperative Weed Management Area
DOI ..... U.S. Department of the Interior
EA ..... Environmental Assessment
EIS ..... Environmental Impact Statement
EPA ..... U.S. Environmental Protection Agency
ESA ..... Endangered Species Act of 1973
FLPMA ..... Federal Land Policy and Management Act of 1976
FLTFA ..... Federal Land Transaction Facilitation Act of 2000
HMA ..... Herd Management Area
LCCRDA ..... Lincoln County Conservation, Recreation, and Development Act of 2004
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
NRA ..... National Recreation Area
OHV ..... Off-highway Vehicle
PILT ..... Payment in Lieu of Taxes
RMP ..... Resource Management Plan
SDA ..... State Department of Agriculture
SDCNR ..... State Department of Conservation and Natural Resources
SEC ..... State Environmental Commission
SNPLMA ..... Southern Nevada Public Land Management Act of 1998
SNWA ..... Southern Nevada Water Authority
TRI ..... Toxics Release Inventory
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
USGS ..... U.S. Geological Survey, U.S. Department of the Interior
WPCCRDA ..... White Pine County Conservation, Recreation, and Development Act of 2006
WSA ..... Wilderness Study Area

Water Resources

2010-2011 Policy and Program Report
Produced by the Publications Unit, Research Division, Legislative Counsel Bureau
April 2010

TABLE OF CONTENTS

Overview of Nevada Water Law 1
State Engineer 2
Legislature's Role 3
Interstate Water Resources 3
State, Regional, and Local Water Entities 5
Water Resource Issues..... 7
Useful Websites for Water Issues..... 11
Research Staff Contacts 12

For the most arid state in the nation, water resource management will always be a challenge. Other western states share many of our problems but Nevada's population explosion, coupled with the ongoing drought, pose special challenges. Since most surface waters were put to use before the twentieth century and Nevada's allocation of Colorado River water is a mere 300,000 acre-feet per year, determining the sustainability of groundwater sources is a critical concern. Conservation measures, water banking, water transfers, and conversions of water to new uses are possible sources of relief, as is the promise of desalination in the future.

OVERVIEW OF NEVADA WATER LAW

Like the other 17 western states, Nevada has adopted the prior appropriation doctrine. Unlike some of its neighbors, Nevada does not use the riparian doctrine. The prior appropriation doctrine was first developed in the nineteenth century in response to the water needs of mining and agricultural irrigation—uses which were not necessarily located near surface waters.

The cornerstone of the prior appropriation doctrine is beneficial use as "the basis, the measure and the limit of the right to use water." Beneficial use means the water is actually put to use for such recognized beneficial uses as: commercial, industrial, irrigation, mining, municipal, power generation, recreation, wildlife, storage, or stockwatering.

To help in resolving disputes when water supplies are inadequate to meet demand and to maximize use of the State's water resources, the two primary rules of western water law are:

- The rule of priority—"first in time, first in right"; and
- The need to maintain beneficial use—"use it or lose it."

Water belongs to public
NRS 533.025

"The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public."

The basic statutory principles of Nevada water law in use today were adopted in 1913. Nevada began regulating groundwater in 1939 although groundwater development was very limited until the 1960s.

Nevada's water law is set forth in Chapters 533 and 534 of the *Nevada Revised Statutes* (NRS). Over the years, numerous court decisions and orders of the State Engineer have refined the law.

Water rights may be acquired by: (1) adjudicating a right beneficially used prior to the enactment of water law (known as "vested" rights); or (2) applying to the State Engineer to appropriate unallocated water and perfecting the right by putting the water to beneficial use (known as "certificated" or "perfected" rights). Domestic wells are generally exempt from the requirement to obtain water rights.

State Engineer

The Office of the State Engineer, created in 1903, is responsible for the administration of Nevada water law. The State Engineer is also the executive head of the Division of Water Resources in the State Department of Conservation and Natural Resources. The State Engineer determines the rights of claimants to water, the use to which water may be put, the quantity of water 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 and maintaining related data and records;
- Processing reports of conveyances (transferring ownership of water rights);
- Reviewing recharge projects;
- Overseeing State and civil decrees, and assisting in federal decrees;
- Reviewing water availability for new subdivisions;
- Overseeing dam safety;
- Appropriating geothermal water;
- Licensing and regulating well drillers and water rights surveyors;
- Reviewing flood control projects;
- Coordinating water planning and conservation plans; and
- Providing technical assistance to the public and governmental agencies.

The State Engineer sits on the Nevada Commission of the California-Nevada Interstate Compact Commission, the State Environmental Commission, and the Board of Review for the Administration of Public Lands, while also serving as the technical adviser to the Board for Financing Water Projects.

In 2009, Assembly Bill 480 (Chapter 250, *Statutes of Nevada*) increased the filing fees that the State Engineer charges for reviewing applications, issuing permits, and other actions and approvals. Most of these fees had not been increased since 1989 and some new fee categories were added to address common administrative actions for which fees had not been set.

Legislature's Role

Over the past 30 years, the Legislature has conducted several interim studies on water resources that have resulted in changes to Nevada water law. In 2007, the Legislature assigned responsibility for monitoring the activities of water districts and purveyors and for making recommendations on water resource policies to the Legislative Committee on Public Lands.

Interstate Water Resources

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. The Law of the River is the collection of laws, court decisions, and regulations that determines the use of the Colorado River and the operation of its dams. In 1922, the seven states entered into an interstate compact that provides for the apportionment of the waters of the Colorado River system and divided the states into two basins—upper and lower—with an allocation of 7.5 million acre-feet annually (a.f.a.) to each basin. As part of the 1928 Boulder Canyon Project Act, Congress authorized the apportionment of the lower basin's 7.5 million a.f.a. as follows:

- Nevada—300,000 a.f.a.;
- California—4.4 million a.f.a.; and
- Arizona—2.8 million a.f.a.

Through a 1944 treaty, the United States agreed to deliver 1.5 million a.f.a. to Mexico.

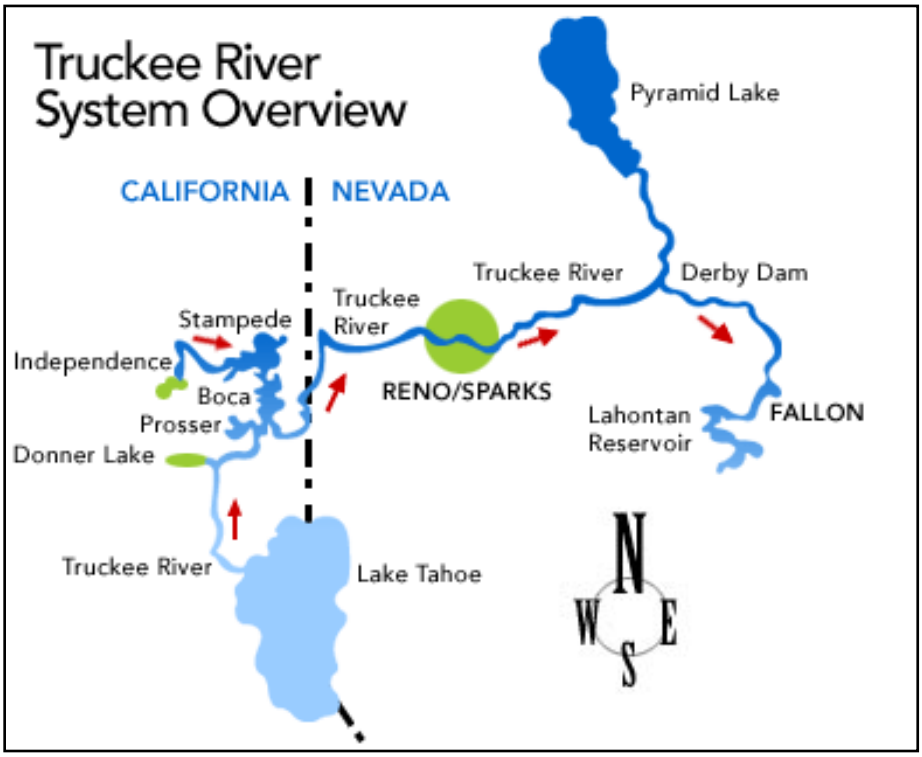
Despite estimates in the early 1900s that the flow of the Colorado River was 17 million a.f.a., more current data puts the flow at 15 million a.f.a., much less than the 16.5 million a.f.a. apportioned by the Law of the River. Compounding the controversies relating to allocation of the Colorado River is the ongoing drought since 2000.

In 2007, the Secretary of the Interior approved an interstate agreement among the lower basin states that sets forth the rules for sharing shortages on the River and jointly operating Lake Mead and Lake Powell. Since 2000, Nevada and the other lower basin states have also reached water banking and reserve agreements.

Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990

Long-standing disputes over water in the Truckee and Carson Rivers led to the congressional enactment of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, also known as the "Negotiated Settlement." The main provisions in the legislation are:

- An interstate allocation between Nevada and California of the Truckee and Carson Rivers, and Lake Tahoe;
- A new operating agreement—Truckee River Operating Agreement or TROA;
- Reauthorization of the Newlands Project to serve additional purposes, including recreation, fish, and wildlife, and as a municipal water supply for the Fallon area;
- Development of a recovery program for the endangered Pyramid Lake cui-ui fish and threatened Lahontan cutthroat trout through a water right acquisition program; and
- A water rights purchase program for the Lahontan Valley wetlands.



The parties completed negotiations on the TROA in February 2007 and the Record of Decision on the environmental impact statement was issued by Secretary of the Interior Dick Kempthorne on September 5, 2008. The major parties, including the federal government, the States of California and Nevada, the Truckee Meadows Water Authority, and the Pyramid Lake Paiute Tribe, have signed the TROA and begun implementation of the final agreement.

State, Regional, and Local Water Entities

The distribution of water is generally handled by counties, cities, water districts, or other purveyors throughout the State. Most water districts and purveyors are municipal or public entities, but some small water companies remain.

Colorado River Commission

The Colorado River Commission (CRC) is a State agency with a seven-member board charged with protecting the water and power resources in Nevada from the Colorado River. The Commission oversees the distribution of approximately 25 percent of the hydropower generated by the Hoover and Davis Dams in Nevada and the Parker Dam in Arizona. Ensuring compliance with the Lower Colorado River Multi-Species Conservation Program is another responsibility.

Southern Nevada

In southern Nevada, the regional water authority—Southern Nevada Water Authority or SNWA—is a joint powers authority that manages water supplies and water planning in most of Clark County. The SNWA works closely with the CRC to manage the Colorado River water supplies. Rate setting and typical utility functions are handled by the entities that comprise the SNWA: Boulder City, Henderson, Las Vegas, North Las Vegas, Big Bend Water District, Clark County Water Reclamation District, and Las Vegas Valley Water District.

Elsewhere in southern Nevada, water storage, conservation, and distribution are managed by entities such as the Lincoln County Water District, Moapa Valley Water District, Nye County Water District, and Virgin Valley Water District.

Northern Nevada

After a 2005-2006 Interim study on consolidation of water resources in Washoe County, the Legislature passed Senate Bill 487 (Chapter 531, *Statutes of Nevada 2007*) creating the Western Regional Water Commission to plan for the management of water supplies and to develop a comprehensive regional water plan for most of Washoe County. The bill also created the Northern Nevada Water Planning Commission to advise the Commission.

The cities of Reno and Sparks, Washoe County, Sun Valley General Improvement District, South Truckee Meadows Improvement District and Truckee Meadows Water Authority entered into a cooperative agreement and, as authorized by S.B. 487, the Western Regional Water Commission may exercise certain powers that the entities may individually exercise, provided the powers are not inconsistent with the Western Regional Water Commission Act. The bill creates a Legislative Committee to Oversee the Western Regional Water Commission and requires reports to the 2009, 2011, and 2013 Legislatures.

In northern Nevada, the Truckee Meadows Water Authority (TMWA) and the Washoe County Department of Water Resources share responsibilities for managing water in Washoe County.

In 2009, TMWA and the Department received approval of an interlocal agreement from their respective governing bodies that will govern a merger of the entities in conjunction with development of the regional water plan in 2011. The parties are working on the development and implementation of a plan and the final merger will depend, in part, upon market conditions and debt refinancing.

Elsewhere in northern Nevada, communities' water supplies are managed by general improvement districts, as in Incline Village, South Truckee Meadows, and Sun Valley. The Carson Water Subconservancy District is a multicounty, bistate agency without regulatory authority that works cooperatively to protect and maximize the resources of the Carson River watershed.

The Truckee-Carson Irrigation District, a political subdivision of the State of Nevada, was organized and chartered in 1918 for the purpose of representing the water right holders within the Newlands Project in connection with the operation of the Project. The District was formed and is paid for by landowners within the boundaries of the Newlands Project who own water rights appurtenant to their land. Since 1926, the District has been responsible for operation of the Newlands Project under a contract with the U.S. Bureau of Reclamation.

Central Nevada

In rural counties, water is generally managed by the county, city, or a water district. Regional organizations, such as the Humboldt River Basin Water Authority and the Central Nevada Regional Water Authority, are used to coordinate water planning, data collection, and legislative efforts.

Legislation in 2003 created the Lincoln County Water District which, in cooperation with the SNWA and private development entities, is developing water resources for the development of the Coyote Springs Project (residential/commercial development), and the federal legislation titled Lincoln County Conservation, Recreation, and Development Act of 2004. The Nye County Water District was authorized by the Legislature in 2007 through S.B. 222 (Chapter 542, *Statutes of Nevada*).

Water Resource Issues

Although 90 percent of the State's population lives in urban areas, the 1995 State Water Plan estimated that 77 percent of Nevada's water is used for agricultural purposes. Public and municipal uses account for 13 percent. This scenario is typical of other western states due to high rates of population growth, increasing urbanization, and finite water resources. Since most surface waters in Nevada are allocated by a federal, state, or civil decree, or water rights permit and the Colorado River allocation is only 300,000 a.f.a., determining the availability and sustainability of groundwater supplies has become an important issue. The Legislature has heard calls for additional studies and research and the integration of current data in order to better assess the State's groundwater supply.

Interbasin or Intercounty Transfers and Other Reallocations

Perhaps the most dominant and controversial trend in recent years is the reallocation of water from agricultural uses in rural counties to municipal uses in urban counties. Water importation projects are currently underway in both Clark and Washoe Counties. Reallocation can also occur through applications to change the use of water from agricultural use to municipal use.

The benefits of transferring water to urban areas to support residential and commercial growth must be balanced against potential impacts to the rural areas from which the water is being exported. Loss

of water in rural areas may affect the local economies, present and future, as well as the environment. Similarly, changing water uses can affect the economy and environment by taking agricultural lands out of production thereby reducing return flows, vegetation, and habitat.

In 1991, the Legislature adopted statutory provisions authorizing the imposition of a tax on intercounty transfers by the county of origin. Since that time, the tax has been recharacterized as a fee and raised from $6 to $10 per acre-foot annually, effective January 1, 2007. Based upon recommendations from a 1997-1998 Interim study, the 1999 Legislature enacted specific findings that must be made by the State Engineer when approving interbasin transfers.

SNWA Eastern-Central Nevada Groundwater Project

Southern Nevada gets about 90 percent of its water from the Colorado River; the other 10 percent is from groundwater wells. These sources are limited, however, and the regional water authority—SNWA—has been working on diversifying its water portfolio through the development of surface waters from the Virgin and Muddy Rivers, agreements with the lower basin states, and the appropriation and exportation of water from rural areas of eastern and central Nevada.

More recently, applications filed in 1989 by the Las Vegas Valley Water District (one of SNWA's member entities) to appropriate and pump 180,000 acre-feet over 300 miles from 27 basins in Clark, Lincoln, Nye, and White Pine Counties have generated statewide and federal concern. Over time, many of the original 147 applications have been withdrawn.

BARCASS

Federal legislation appropriated $6 million for a groundwater study by the U.S. Geological Survey—Basin and Range Carbonate Aquifer System Study or BARCASS. The BARCASS covers Lincoln and White Pine Counties and adjacent areas in Utah. The final report was submitted to Congress in December 2007.

In 2003, the SNWA entered into an agreement with Lincoln County to resolve concerns about the applications in that county. Because the pipeline will cross public lands managed by the Bureau of Land Management (BLM), a federal environmental impact statement is being prepared on the pipeline right-of-way. The draft EIS is currently scheduled for release in the spring of 2010.

In 2006, the State Engineer divided most of the remaining active applications into three groups and ruled on the Spring Valley applications in April 2007 (Ruling No. 5726). The decision granted SNWA the right to transfer up to 60,000 a.f.a. provided a minimum of five years of baseline data is collected prior to any exportation and that no more than 40,000 a.f.a. may be pumped for the first ten years. Based on review of the monitoring data and the development of a groundwater flow model, the State Engineer will consider whether to allow pumping of the remaining 20,000 a.f.a. after the initial ten years of pumping.

The second group of applications in Snake Valley were the subject of federal legislation. Under the provisions of Section 301(e)(3) of Public Law 108-424, the States of Nevada and Utah are required to reach an agreement regarding "the division of water resources of those interstate ground-water flow system(s)" from the SNWA project. The agreement must allow for the maximum sustainable beneficial use and protect existing water rights. A draft agreement is being circulated and considered by the respective State officials. The draft agreement includes postponement of action on the Snake Valley applications until 2019 to allow the collection of hydrologic and other data.

The State Engineer issued a decision (Ruling No. 5875) in July 2008 on the last group of applications in Cave Valley, Delamar Valley, and Dry Valley. The decision reserved 375 a.f.a. for future growth and development in the basins and granted SNWA authority to transfer up to 18,755 a.f.a. out of the basin subject to collection of a minimum of two years of biological and hydrological baseline data.

The State Engineer's decision was challenged and the Court in the Seventh Judicial District (Lincoln County) issued an order vacating and remanding (returning) the decision. The District Court's order was appealed to the Nevada Supreme Court which issued its decision in January 2010. The Nevada Supreme Court reversed the lower court's order denying the property owners' appeals and remanded the case to the District Court. The Nevada Supreme Court ruling found that the State Engineer had failed to act on the 1989 applications within the one-year period required by NRS 533.370 and directed the District Court to determine the appropriate remedy which is either the filing of new applications by SNWA or renoticing and reopening the protest period on the pending applications. The impact of the decision on previously approved water rights and other pending applications is not yet clear.

Interbasin or intercounty transfers are also a topic of discussion in northern Nevada. A project to pump water from Honey Lake north of Reno has been constructed. Washoe County is considering acquisition of the project from the private development company.

Groundwater Management

Nevada is divided into 232 groundwater basins, of which 119 are designated or partially designated. Designation occurs when the State Engineer determines that the groundwater basin is in need of further administration, usually as a result of overallocation. Groundwater appropriations are processed in the same manner as applications for surface water rights. As in many western states, domestic wells do not require a water right but their use has been limited to 1,800 gallons per day.

The general policy of the State Engineer is to limit groundwater withdrawals in a basin to the average annual recharge to the basin or its "perennial yield." "Perennial yield" may be defined as the maximum amount of water that can be taken each year over the long term without depleting (or mining) the groundwater reservoir.

To address domestic well issues, S.B. 275 (Chapter 246, *Statutes of Nevada 2007*) changed the daily limit of 1,800 gallons to an annual limit of 2 acre-feet. In addition, the bill clarified that domestic wells could serve accessory dwellings, such as mother-in-law units, so long as the 2 a.f.a. limit is not

exceeded and local zoning permits such accessory uses. The measure also provided for the assignment of a priority date to a domestic well based on the completion date for the well.

To address the potential proliferation of domestic wells through the parcel map process and resulting concerns about overallocations in certain groundwater basins, S.B. 275 authorizes the State Engineer to require a dedication of water rights for a parcel map in designated basins if the local government does not require water rights dedications for parcel maps.

Enforcement

Most violations of water law are punishable criminally as a misdemeanor. For the past several legislative sessions, the Legislature has debated additional enforcement powers for the State Engineer. The 2007 Legislature passed S.B. 274 (Chapter 429, *Statutes of Nevada*) granting the State Engineer the authority to impose administrative penalties and seek injunctive relief for violations of Nevada water law. The State Engineer has adopted regulations for such penalties. The bill also amends protest provisions related to applications for interbasin transfers exceeding 250 acre-feet.

Conservation

Water conservation is an important issue throughout the U.S., and Nevada is no exception. Chapter 540 of the NRS requires each water district and purveyor to develop a water conservation plan and to update the plan at least every five years.

Overallocation

In Nevada, there are communities with overallocations of surface waters or groundwater. Drought conditions worsen these situations. Areas dealing with overdraft issues include Pahrump in Nye County and the Humboldt River area.

The Las Vegas Valley is dealing with a critical overdraft complicated by years of record population growth. In 1997, at the direction of the Nevada Legislature, the Southern Nevada Water Authority developed a program to protect and manage the Las Vegas Valley's primary groundwater supply.

The Las Vegas Valley Groundwater Management Program is working on recharge projects, plugging abandoned wells, connecting well owners to municipal systems, and protecting the aquifer from contamination. Funding is provided, in part, by a fee on groundwater users of $30 per year for domestic well owners and $30 per acre-feet permitted annually on other groundwater users.

Environment

Water resource issues are often intertwined with the Endangered Species Act and increasing emphasis on protection of instream flows for wildlife and recreational purposes. The controversy surrounding the Walker River Basin and Walker Lake is an example of limited water resources impacting the environment. Endangered species are also a continuing concern in the agreements involving the Truckee River and Pyramid Lake.

Federal

Generally speaking, there is no such thing as federal water law. As part of the early congressional acts disposing of western lands, state law was recognized as controlling appropriation of water.

However, the federal government may assert expressly reserved water rights and, since 87 percent of Nevada is federally owned, federal agencies play a significant role in water issues. Federal adjudications, such as the Orr Ditch Decree (Truckee River), Alpine Decree (Carson River) and the Walker River Decree (Walker River), involved decades of litigation and continue to spawn lawsuits.

To resolve federal agency protests of SNWA's groundwater applications in Spring Valley, the National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the Fish and Wildlife Service (all within the U.S. Department of the Interior) entered into a stipulated agreement for monitoring and mitigation. The federal agencies are concerned about the effects of the Spring Valley groundwater appropriations and transfers on federal water rights and federal lands, such as the Great Basin National Park and Shoshone Ponds.

Tribal

Native American tribes may assert so-called "reserved water rights" claims under the Winters Doctrine, which is based on the assumption that Congress reserved water for tribal use when creating reservations. Tribes in Nevada have been active in asserting their claims throughout the State, including the Pyramid Lake area, Walker River Basin, and the Las Vegas Valley.

USEFUL WEBSITES FOR WATER ISSUES

The following websites contain additional information and further detail on the programs and topics described in this report:

- BLM Groundwater Projects: http://www.blm.gov/nv/st/en/prog/planning/groundwater_projects.html
- Carson Water Subconservancy District: http://www.cwsd.org
- Great Basin Water Network: http://www.greatbasinwater.net
- Nevada Water Resources Association: http://www.nvwra.org
- Nevada's State Engineer: http://www.water.nv.gov
- Southern Nevada Water Authority: http://www.snwa.com/html/
- Truckee-Carson Irrigation District: http://www.tcid.org
- Truckee Meadows Water Authority: http://www.tmwa.com
- Washoe County Department of Water Resources: http://www.co.washoe.nv.us/water
- USGS BARCASS: http://nevada.usgs.gov/barcass/

RESEARCH STAFF RESPONSIBLE FOR THIS TOPIC

Susan E. Scholley
Chief Principal Research Analyst
E-mail: sscholley@lcb.state.nv.us

Michael J. Stewart
Supervising Principal Research Analyst
E-mail: mstewart@lcb.state.nv.us

Jennifer Ruedy
Senior Research Analyst
E-mail: jruedy@lcb.state.nv.us

Research Division
Legislative Counsel Bureau
Telephone: (775) 684-6825
Fax: (775) 684-6400