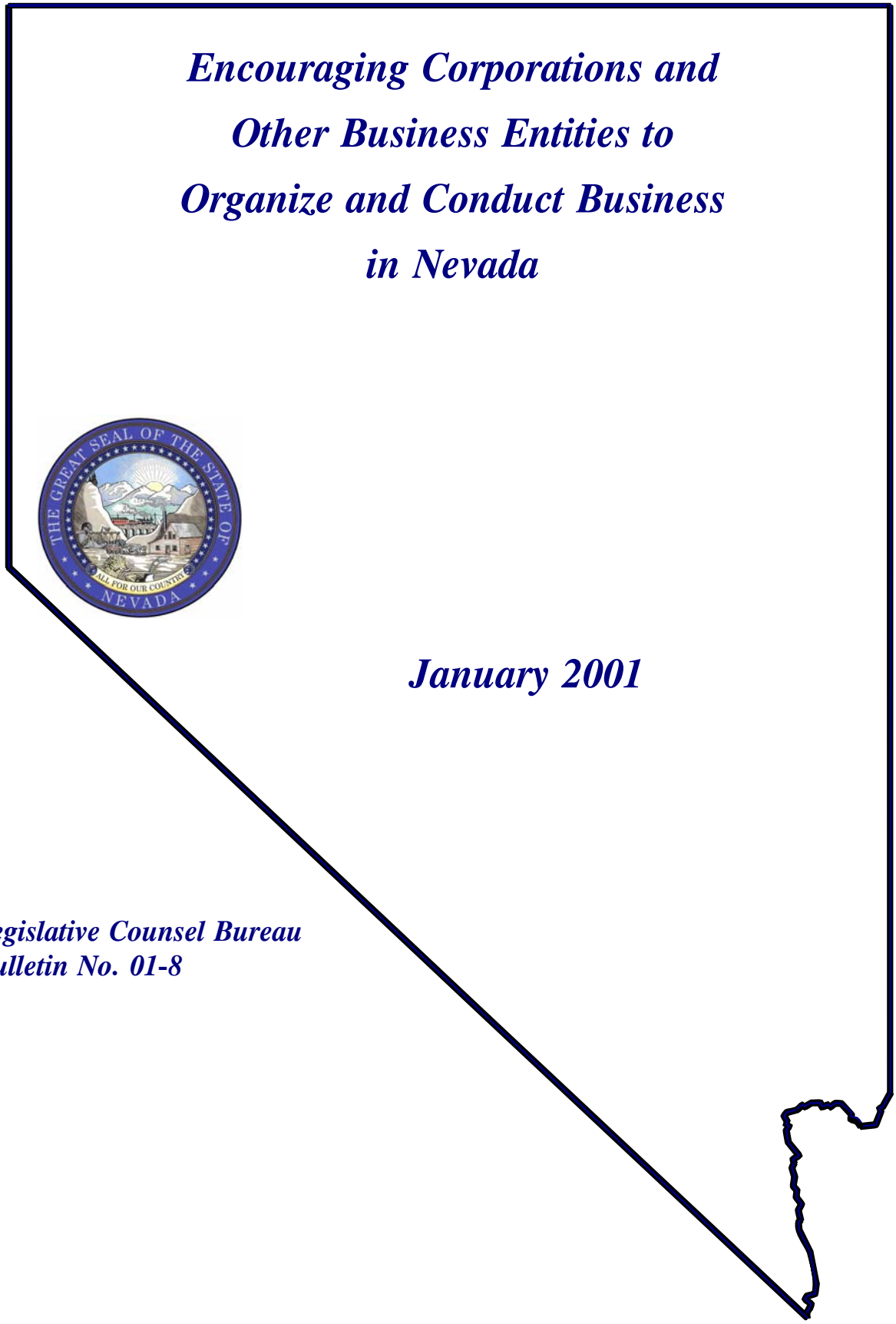
Encouraging Corporations and Other Business Entities to Organize and Conduct Business in Nevada



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ENCOURAGING CORPORATIONS AND OTHER BUSINESS ENTITIES TO ORGANIZE AND CONDUCT BUSINESS IN NEVADA

BULLETIN NO. 01-8

JANUARY 2001

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SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO ENCOURAGE CORPORATIONS AND OTHER BUSINESS ENTITIES TO ORGANIZE AND CONDUCT BUSINESS IN THIS STATE

This summary presents the recommendations approved by the Legislative Commission's Subcommittee to Study Methods to Encourage Corporations and Other Business Entities to Organize and Conduct Business in this State (Senate Concurrent Resolution No. 19, File No. 144, *Statutes of Nevada 1999*). The Subcommittee will submit these proposals to the 71st Session of the Nevada Legislature.

BUSINESS COURTS IN NEVADA

Creation of a Business Court

1. **Draft a resolution endorsing the creation of business court procedures by court rule in the Second and Eighth Judicial District Courts. (BDR R--253)**

2. **Draft legislation to create a business court by amending the *Nevada Constitution* to authorize the Legislature to provide by law for a business court as a division of a district court and prescribe the business court's jurisdiction. (BDR C--254)**

BUSINESS LAWS IN NEVADA

3. **Draft legislation amending Nevada's business statutes to include the changes recommended by members of the Executive Committee of the Business Law Section of the State Bar of Nevada designed to encourage corporations and other business entities to organize and conduct business in this State. (BDR 7--255)**

INTELLECTUAL PROPERTY LAWS IN NEVADA

4. **Draft legislation to amend Nevada's Trademark Act (*Nevada Revised Statutes* [NRS] 600.240–600.450) to include an anti-dilution provision to make it illegal to use a famous trademark on unrelated goods or services, thereby weakening or deleting the mark's value. (BDR 52--256)**

5. **Draft legislation to amend Nevada's Uniform Trade Secrets Act (NRS Chapter 600A) to address dissemination of trade secrets through the Internet by allowing a court to impose immediate injunctive relief ordering the removal of the information from the Internet. Include a presumption that if the removal is done pursuant to a court order in a reasonable period, the trade secrets are not lost. (BDR 52--257)**

LAWS RELATING TO BUSINESS ON THE INTERNET

6. **Draft legislation to adopt the comprehensive Uniform Electronic Transactions Act, which includes a provision regarding court acceptance of electronic records into evidence. (BDR 59--258)**

7. **Draft legislation to prohibit the use of the Internet as an offensive tool to disrupt business operations by sending unsolicited communications. Illegal activity includes electronically jamming or clogging a web site through the use of unsolicited e-mails or similar correspondence. (BDR 15--259)**

8. **Draft legislation to require Nevada-based Internet businesses (or businesses using Internet service providers located in Nevada) that collect personal information about Internet users to prominently post a statement regarding their privacy practices on their web site. (BDR 15--259)**

ENTERTAINMENT LAW

9. **Draft legislation to implement a Judicial Review of Minors Act that allows a district court to review a proposed contract or engagement with a minor and to approve the contract terms as being fair, reasonable, and in the minor's best interest. If such court approval were obtained, the minor could not then later challenge the contract when he reaches the age of majority. (BDR 11--260)**

ECONOMIC DEVELOPMENT AND DIVERSIFICATION IN NEVADA

10. **Draft a resolution urging the Governor; the Lieutenant Governor; the Office of Science, Engineering, and Technology; Nevada's Commission on Economic Development; the University and Community College System of Nevada (UCCSN); and Nevada's Department of Education to coordinate efforts to promote Nevada's economic development and diversification. The State must identify the target areas for economic development, including new technologies, and coordinate with the UCCSN, which must be prepared**

to facilitate these efforts with programs to train the necessary work force and to nurture new technologies. In addition, promotion of Nevada's university system as a center for Research and Development should be targeted as a primary tactic for competing with other states.

Funding sources, including the public and private contributions, for these efforts must be identified and encouraged. Nevada's EPSCoR funds (Experimental Program for the Stimulation of Competitive Research) should be focused on supporting the target areas for economic development, helping to build the research infrastructure needed.

To accomplish these goals of increasing economic diversification and cultivating an entrepreneurial environment in Nevada, initiatives in other states and the existing economic dynamics in Nevada should be reviewed. These initiatives include, but not limited to:

- **Research and Development programs offered through university systems such as the Georgia Research Alliance;**

- **Programs that promote networking for venture capital such as the Venture Network of Iowa;**

- **Improved promotion and coordination of existing State programs;**

- **Educational resources at the middle school, high school, and university levels required for students to graduate with the skills necessary for employment in the high tech industry; and**

- **Entrepreneurial education opportunities such as the class offered by the University of Nevada, Reno that combines instruction in entrepreneurship and development of venture capital. (BDR R--261)**

11. **Include a statement in the report encouraging the 2001 Legislature to consider any recommendations from the Battelle Memorial Institute, which is currently examining the economic strengths and weaknesses of the entire State to establish a plan for Nevada's economic future.**

12. **Send a letter on behalf of the S.C.R. 19 Subcommittee to Bob Shriver, Executive Director of Nevada's Commission on Economic Development (Commission), and Lieutenant Governor Lorraine T. Hunt, Chairman of the Commission, encouraging the Commission to continue its efforts to develop a State plan for economic development and diversification that targets marketing, the growth of the film industry, the role of technology in the economy, and the retention and expansion of existing businesses.**

ECONOMIC ISSUES AFFECTING RURAL NEVADA

13. **Send a letter on behalf of the S.C.R. 19 Subcommittee to Nevada's Congressional representatives in support of the Nevada Public Land Management Act of 1999 (Senate Bill 719). This legislation requires that public lands for sale in northern Nevada be auctioned off to the highest bidder and designates how proceeds from the land sales are to be divided.**

14. **Send a letter on behalf of the S.C.R. 19 Subcommittee to Governor Kenny C. Guinn in support of the Ruby Gas Pipeline and Power Plant Project in Elko, Nevada.**

OFFICE OF THE SECRETARY OF STATE

15. **Include a statement in the report supporting the continuing efforts of the Office of the Secretary of State (Office) to improve its technology and to provide state-of-the-art mechanisms for its clients to conduct their business with the Office. Prior to the preparation of The Executive Budget, the Office should communicate with the Governor regarding the funding this Office believes is necessary to continue these efforts. These efforts include new database filing applications, computer hardware necessary to offer on-line filing processes, and the addition of necessary staff to accommodate the anticipated growth of the Office.**

16. **Include a statement in the report encouraging the Secretary of State to offer expanded office hours to accommodate the increased demand for services and to open at 6 a.m. to meet the needs of clients on the East Coast.**

Expedited Services

17. **Include a statement in the report in support of expedited services through the Secretary of State's Office, including same day (or less services); facsimile confirmation of filed documents; and pre-clearing of documents.**

18. **Draft legislation to revise paragraph (d) of subsection 2 of NRS 225.140 to raise the $100 statutory cap on fees for special or expedited services to $500. (BDR 18--262)**

REPORT TO THE 71ST SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO ENCOURAGE CORPORATIONS AND OTHER BUSINESS ENTITIES TO ORGANIZE AND CONDUCT BUSINESS IN THIS STATE

I. INTRODUCTION

Nevada is nationally recognized for establishing and cultivating an attractive climate for corporations and other business entities to organize and operate within its boarders. Companies and their employees thrive under the State's minimal tax structure. With some of the least burdensome taxes in the nation and progressive incorporation laws, Nevada is often referred to as the "Delaware of the West."

A. CREATION OF AN INTERIM STUDY

The 1999 Nevada Legislature adopted Senate Concurrent Resolution No. 19 (File No. 144, *Statutes of Nevada 1999*, page 4057), which directs the Legislative Commission to conduct an interim study of methods to encourage business entities to organize and conduct business in Nevada (Appendix A contains Senate Concurrent Resolution No. 19). The resolution requires the Subcommittee to perform a comprehensive assessment of the need for changes in Nevada's business laws, the advisability of creating a court of limited jurisdiction to resolve business and corporate issues, and the accessibility of the Office of the Secretary of State.

In August 1999, the Legislative Commission appointed a subcommittee consisting of the following ten legislators to conduct the study and report its findings to the 2001 Legislature:

Senator Mark A. James, Chair
Assemblyman David R. Parks, Vice Chair
Senator Ann O'Connell
Senator Dean A. Rhoads
Senator Michael (Mike) A. Schneider
Senator Dina Titus
Assemblyman Greg Brower
Assemblywoman Barbara K. Cegavske
Assemblyman Mark A. Manendo
Assemblywoman Bonnie L. Parnell

As required by S.C.R. 19, the Legislative Commission also appointed an advisory committee consisting of the following four individuals:

Mr. Scott Anderson, Deputy Secretary of State for Commercial Recordings
Mr. Stephen Brock, Nevada Business Journal
Mr. John Fowler, Business Law Section, State Bar of Nevada
Mr. Bob Shriver, Executive Director, Commission on Economic Development

Legislative Counsel Bureau (LCB) staff services for the study were provided by: Allison Combs, Principal Research Analyst; Bradley A. Wilkinson, Principal Deputy Legislative Counsel; and Roxanne Duer, Senior Research Secretary.

B. OVERVIEW OF COMMITTEE PROCEEDINGS

The full subcommittee held three meetings in Las Vegas that were teleconferenced to Carson City. Additional meetings of sub-subcommittees were held at the direction of the chairman to conduct more in-depth reviews of the three major issues within the scope of the interim study: the creation of a business court, economic incentives for businesses to organize in Nevada, and the operation of the Office of the Secretary of State.

During the course of its work, the Subcommittee considered testimony from national, state, and local entities, including Justices of Nevada's Supreme Court, Lieutenant Governor Lorraine T. Hunt, Secretary of State Dean Heller, Nevada's Commission on Economic Development, representatives of the University and Community College System of Nevada, officials from rural Nevada, local attorneys who practice in the areas of business incorporation and intellectual property, and local and national business and venture capital organizations.

The Subcommittee adopted a total of 18 recommendations addressing the following issues:

- **Business Court in Nevada** - Endorse the creation of business court procedures by court rule and amend the *Nevada Constitution* to create a business court.

- **Nevada's Laws** - Revise Nevada's business and intellectual property laws to include changes that will encourage corporations and other business entities to organize and conduct business in this State.

- **Economic Development and Diversification** – Strengthen the coordination of efforts to encourage economic development and diversification throughout the State, including rural Nevada.

- **Office of the Secretary of State** - Support the efforts and goals of the Office of the Secretary of State to improve its technology and to provide state-of-the-art mechanisms for its clients to conduct their business with that

office. These efforts also include expanded office hours and other expedited services.

The information in this report is designed to provide a general overview of the complex issues and information considered by the Subcommittee in adopting each of its final recommendations. For more detailed information, please consult the minutes and exhibits from the meetings, which are available from the Legislative Counsel Bureau's Research Library. A brief summary of the primary topics discussed at each meeting follows:

- November 19, 1999 – Background in business courts, business laws, and the Secretary of State's Office;
- January 7, 2000 – Business courts, business laws, and intellectual property laws;
- January 10, 2000 – Venture capital programs, Workforce Investment Act, Nevada's Commission on Economic Development, ballot question regarding investment of state money;
- January 24, 2000 – Secretary of State's Office;
- February 3, 2000 – Entrepreneurship classes and the Ruby Gas Pipeline and Power Plant proposal, Elko, Nevada;
- February 28, 2000 – Secretary of State's Office;
- March 24, 2000 – Business court and laws, Ruby Gas Pipeline and Power Plant proposal, Georgia Research Alliance, Secretary of State's Office, and preliminary discussion of recommendations received at prior meetings;
- May 30, 2000 – Business court and laws; and
- June 30, 2000 – Business court, Uniform Electronic Transactions Act, overview of mission and goals of state agencies involved in economic development, and the work session.

General information regarding the meetings of the Subcommittee, including the minutes (without exhibits), and a copy of this report are electronically available on the Legislature's web site at www.leg.state.nv.us.

II. DISCUSSION OF ISSUES AND RECOMMENDATIONS

The Subcommittee adopted a total of 18 recommendations designed to promote business incorporation and retention and economic development and diversification in Nevada. Following is a summary of each of these recommendations with relevant background information considered by the Subcommittee.

A. CREATION OF SPECIALIZED BUSINESS PROCEDURES IN NEVADA'S COURT SYSTEM

1. *Background Information*

During the 1999 Legislative Session, the Secretary of State, the Executive Director of the Commission on Economic Development, and representatives of the private sector, including John H. O. LaGatta, a private citizen, testified that the creation of a specialized business court would entice companies, particularly financial institutions, to conduct business in Nevada and generate revenue for the state.

Mr. LaGatta, an early advocate of the creation of a specialized business court or procedures in Nevada, noted in his testimony before the S.C.R. 19 Subcommittee that the implications of Nevada enhancing its ability to attract businesses and becoming a "financial business center" include:

- Additional revenue generated for the state;
- More businesses that are involved in "entity creation" and finance, which are "clean" industries with the intangible benefit of a minimal impact to a state's environment, infrastructure, and social welfare;
- An increased gross state product from legal, accounting, banking, financing, trust, investment management, and administration activities; and
- A highly paid work force.

Due to its corporate and personal income taxes, Mr. La Gatta opined, Delaware cannot compete with Nevada's favorable tax structure and minimal incorporation requirements. The Secretary of State's Office and the Commission on Economic Development both have web sites listing Nevada's incentives for incorporation, which include no corporate, inheritance, gift, franchise, or personal income taxes. Nevada also offers no taxes on corporate shares, nominal annual fees, and minimal reporting and disclosure requirements. Additional state economic development incentive programs include a Sales and Use Tax Deferral Program; Sales and Use, Business, and Property Tax Abatements; Train Employees Now (TEN); and a Property Tax Abatement for Recycling/Retail Wheeling. Information prepared by

Nevada's Commission on Economic Development regarding the State's incentives and programs favorable to businesses is included in Appendix B.

One of the primary attractions for businesses incorporating in Delaware is the predictability of its legal system. The State's well-established statutory and case law has been developed by both its Legislature and its Court of Chancery, which was constitutionally created in 1792. As an equity court, the Court of Chancery has the authority to provide appropriate relief based on circumstances when no adequate remedy is available under the law. The court has jurisdiction to hear all matters relating to equity. The litigation largely deals with corporate issues, trusts, estates, other fiduciary matters, disputes involving the purchase of land, and questions of titles to real estate as well as commercial and contractual matters. With a consistent body of law, Delaware and its Court of Chancery attract corporations by providing swift and reasonably predictable civil justice.

As noted in a 1998 law review article entitled *Business Courts: Efficient Justice or Two-Tiered Elitism?*, proponents of business courts note numerous advantages to corporations and states in which such courts are established:

> - Cases would be resolved more quickly in the business court. Resources would be freed up for other cases, and costs for litigants would be decreased.
> - Complex cases take up a disproportionate amount of time and resources * * *.
> - A specialized business court would attract top-notch judges, with expertise and sensitivity to business issues.
> - Judicial expertise and specialization will lead to more predictable, consistent and prudent case results.
> - Judges may be available to resolve discovery and other disputes informally, by telephone conferences rather than formal motions.
> - Specialized courts promote the development of technological resources and support personnel.
> - The business court will offer speedier justice to small and mid-size businesses which do not have resources to hire private judges and arbitrators. These businesses suffer most from the high costs and long delays of civil litigation.
> - Better resolution of business matters is often a key factor in "business climate" discussions and in attracting and retaining businesses.
>
> (Junge, *Business Courts: Efficient Justice or Two-Tiered Elitism?,* 24 William Mitchell Law Review, 1998)

In the past decade, other jurisdictions have created business courts or specialized litigation procedures including judicial districts in California, Illinois, Massachusetts,

New York, North Carolina, Pennsylvania, Virginia, and Wisconsin. Some states, like Wisconsin and California, adopted pilot programs to streamline business litigation. In other states, like New York, a specialized business court was created by court rule.

2. *Legal Considerations Regarding the Creation of a Specialized Court*

The *Nevada Constitution* and *Nevada Revised Statutes* do not provide for a court that specializes in business litigation. Prior to the first meeting of the Subcommittee, Chairman James requested a legal opinion from Mr. Wilkinson, Principal Deputy Legislative Counsel, Legal Division, LCB, regarding whether the Nevada Legislature may establish a business court by statute or whether a constitutional amendment would be required. According to this opinion, such a court may be created by two mechanisms: constitutional amendment or court rule. Mr. Wilkinson's written opinion explains:

> Because the Legislature is not authorized under the *Nevada Constitution* to create a separate business court and because the establishment by statute of a business court as a division of the district court would violate the separation of powers provision of the *Nevada Constitution*, it is the opinion of this office that if the Legislature wishes to establish a business court by statute, it would be necessary to amend the *Nevada Constitution*.
>
> Our conclusion is further supported by the history concerning the establishment of the family courts in this state. When the Legislature wished to establish family courts as divisions of certain district courts, the *Nevada Constitution* was amended specifically to authorize the Legislature to enact legislation creating the family courts as divisions of the district courts. * * *
>
> Although it is the opinion of this office that the Legislature cannot establish a business court by statute, it is also our opinion that the judicial branch could create a specialized business division of a district court through the exercise of its inherent judicial power and rulemaking authority.

3. *Testimony Received by the Subcommittee*

During the course of the study, many individuals testified in support of creating a business court in Nevada as a method of attracting businesses to the State, including representatives of the Office of the Secretary of State, the Commission on Economic Development, and Nevada's Supreme Court.

Scott Anderson, Deputy Secretary of State for Commercial Recordings, testified that stability and continuity in a business court system is a major business concern, and the lack of such a system is a primary reason businesses decide not to organize in Nevada. Such specialized procedures within a court applying Nevada's business-friendly statutes would entice companies to organize in this state.

As noted by Mr. Anderson, increased incorporation in Nevada is a measurable financial benefit. In Fiscal Year (FY) 1999, the Secretary of State generated $33.8 million in revenues, $25.9 million of which was generated through the Commercial Recordings Division and other business related filings as compared to $22.2 million for FY 1998. Revenues have increased 14 percent over the prior year; however, the operating budget increased only 1 percent. The Secretary of State's Office contributes significantly to the State General Fund, and any efforts that increase filings will enhance contributions to the State.

Representing Nevada's Commission on Economic Development, Karen Baggett, Deputy Director, noted that Nevada has in place some very significant laws that reflect the state's business attitude: an attractive tax climate; limited-liability protection for officers and directors of Nevada corporations; reasonable fee structures for attracting incorporations; and modest, yet effective tax incentives. Nevada has been able to attract and retain major multi-national financial service companies such as Citicorp, Ford Motor Credit, First Card, and Bank of America. In addition, corporations that reflect the "new economy" such as Microsoft, Cisco Systems, and Amazon.com have made investments in this state with corporate treasuries, licensing divisions, and fulfillment centers.

To truly become the "Delaware of the West," Ms. Bagget felt Nevada must revise existing statutes to reflect the needs of the "new economy" and to encourage more significant intangible investment in this state; modernize and equip the Secretary of State's Office with the necessary resources to meet the new technologies competitors have in place; and develop a court structure that reflects the entire breadth of corporate, finance, contract, and business law.

4. *Supreme Court Task Force*

Robert E. Rose, former Chief Justice of the Nevada Supreme Court, testified in support of the creation of specialized business procedures and stated that, in his opinion, the "establishment of a business court in Nevada would ensure competent and prompt adjudication of disputes involving corporate governance, business transactions, and technical commercial issues. It would also promote a positive business climate needed to attract businesses to Nevada and to diversify our economy."

With the support of Chairman James on behalf of the Subcommittee, Chief Justice Rose created a business court task force within the judicial branch to evaluate the appeal for such a court within the judiciary and to provide suggestions for the structure of a business court for the Subcommittee's consideration. Information from Chief Justice Rose provided during the course of the study and a copy of the correspondence from Chairman James regarding the creation of the task force is included under Appendix C.

In his testimony, Chief Justice Rose described in more detail the two methods by which a business court could be established: a constitutional amendment to create a special court (like the Family Court) and using court rules to create a specialized business court. In May, Chief Justice Rose presented an overview of the work of the Task Force and the recommendations for the jurisdiction of the business court. For example, the jurisdiction would include cases involving shareholder derivative suites, trademark laws, and corporate governance. Jurisdiction would not include personal injury and products liability cases. The business court judge would determine whether or not a case should be accepted by the business court (within certain jurisdictional parameters), and the decision of whether to accept a case would not be appealable.

The recommendations also addressed the possible operation of a business court if one were created by court rule. Chief Justice Rose noted that initially, it is anticipated that the business court may not have a full calendar, and, therefore, judges should not be precluded from hearing non-business cases if time is available to dedicate to other cases. In addition, the chief judge of the judicial district should select the business court judge. As suggested, two full-time district court judges in the Eighth Judicial District Court (Clark County) and one-full time or two part-time district court judges in the Second Judicial District Court (Washoe County) would comprise the business court. Based on an examination of business court-type filings in 1999 in Clark and Washoe Counties, it is estimated that a business court in Clark County would oversee approximately 1,000 to 2,000 cases annually, and a court in Washoe County would oversee an estimated 500 to 750 cases annually.

Testimony during the work session indicated that the creation of a specialized business court docket would not immediately generate additional state or county expenditures because the judges are handling these types of cases currently. If civil filings within the jurisdiction of the business court were to increase substantially, additional resources would be needed. Regardless of the creation of the business court, testimony indicated that the existing need for expanded court facilities and for additional judges (based upon the number of current case filings) is a concern in the Eighth Judicial District Court in Clark County. Based upon these existing needs, it is anticipated that the judicial branch will request additional judges during the 2001 Legislative Session whether or not the business court is approved.

At the time of the work session in June 2000, the Eighth and the Second Judicial Districts were in the process of submitting changes in their rules to include business court procedures. However, at that time, no final decision regarding the creation of the business court by rule had been made. Therefore, the Subcommittee adopted two recommendations: (a) Endorse the creation of business court procedures by court rule; and (b) Draft legislation to amend the *Nevada Constitution* to create a specialized court if the proposed court rules are not approved or if approved rules were not in harmony with the Subcommittee's determination regarding the appropriate jurisdiction and methods of operating a business court.

Recommendation No. 1

The details of first recommendation to create business procedures by court rule are based largely on the studied recommendations of Chief Justice Rose and the judicial task force:

> ***Draft a resolution endorsing the creation of business court procedures by court rule in the Second and Eighth Judicial District Courts. (BDR R--253)***
>
> ***The Subcommittee voted to support the following concepts for the proposed business court procedures:***
>
> ***A. Structure of the Court***
>
> - ***The chief judge of the judicial district shall select the business court judges.***
> - ***The business court shall consist of two full-time district court judges in the Eighth Judicial District Court (Clark County), and one full-time or two part-time district court judges in the Second Judicial District Court (Washoe County).***
> - ***The district judge serving in business court may hear and decide all other non-business cases assigned to that judge as any other general jurisdiction district court judge.***
> - ***The position of district judge shall rotate periodically as provided in the district court rules of the Second and Eighth Judicial District Court Rules.***
> - ***The business court shall decide whether a case is or is not one the business court should hear and that decision shall***

not be appealable by any appeal or reviewable upon any writ. (See proposed jurisdiction, as outlined below.)

- ***Either party in a case filed in the Second or Eighth Judicial District may request in the pleadings that a case be transferred to a business court. When such a request has been made and all the pleadings filed, the case shall be transferred to the business court and a determination made by a business court judge whether jurisdiction over the case will be assumed.***

- ***A case filed in any judicial district other than the Second and Eighth Judicial Districts may be transferred to a business court if both parties and the district judge assigned to the case consent. The business court still reserves the right to decline to accept any case believed to be a business court case.***

B. <u>Proposed Jurisdiction of the Business Court</u>

The following types of cases would be under the jurisdiction of the business court:

- ***Disputes concerning the validity, control, operation, or governance of entities created under Nevada Revised Statutes, Chapters 78–88, including shareholder derivative suits;***

- ***Disputes concerning trademarks asserted under Nevada law (NRS Chapter 600, generally) and causes of action asserted pursuant to the Nevada Trade Secrets Act (NRS Chapter 600A); the Nevada Securities Act, involving Investment Securities described in Article 8 of the Nevada Uniform Commercial Code (NRS Chapters 104 and 104A); or Commodities (NRS Chapter 90).***

- ***Disputes between two business entities where the business court determines that the case would benefit from enhanced case management.***

<u>Cases Excluded from Business Court</u>

The business court would not hear cases where the primary claim is an action:

- ***For personal injury;***

- ***Based on products liability;***
- ***Brought by a consumer against a business;***
- ***For wrongful termination of employment; and***
- ***Involving landlord-tenant disputes.***

Recommendation No. 2

In addition to endorsing the creation of specialized business procedures by court rule, draft legislation to create a business court by amending the Nevada Constitution to authorize the Legislature to provide by law for a business court as a division of a district court and prescribe the business court's jurisdiction. **(BDR C--254)**

5. *Adoption of Business Court Rules by the Judicial Branch Following the Final Work Session*

In October 2000, the Supreme Court approved changes in the rules of the Second and Eighth Judicial Districts allowing for special business procedures. It appears the rules are generally consistent with the recommendations of the S.C.R. 19 Subcommittee and the judicial task force. A copy of these rules, which are effective on January 1, 2001, is available under Appendix D.

B. LAWS GOVERNING BUSINESS AND INCORPORATION IN NEVADA

To continue to attract and retain businesses, Nevada must continually review and update its laws governing incorporation and the way business is conducted in the State. These changes must be timely and must reflect modern commercial practices.

1. *Background Information*

Each session, the Legislature considers bills to revise and update Nevada's business laws. Generally, representatives of the Business Law Section of the State Bar of Nevada and individual attorneys testify on these measures, which often represent progressive changes recently adopted in other states, including Delaware. A general overview of only a few of the changes enacted in recent years follows:

- **1995** - The Legislature authorized banks to organize as limited-liability companies (LLCs) and accountants to organize as limited-liability partnerships. In addition, a new chapter of *Nevada Revised Statutes* was created to govern the

mergers of business corporations, nonprofit corporations, limited-liability companies, and limited partnerships.

- **1997** - The laws governing LLCs were updated to reflect changes both in Delaware statutes and in new regulations of the Internal Revenue Service that permit incorporated entities (including LLCs) to be taxed as partnerships without any further examination of their characteristics or organization structure.

- **1999** - The Legislature made numerous changes concerning the statutes relating to businesses, including authorizing the creation of business trusts, revising the business judgment rule for cases involving corporate takeovers, rewriting the rules governing the votes needed for removal of a director, making technical changes to outdated provisions, enabling the Secretary of State's Office to further implement electronic filings, deleting certain acknowledgment requirements for documents filed with the Secretary of State, and clarifying certain bankruptcy filings.

During the course of the study, John P. Fowler, advisory member of the Subcommittee and President of the Business Law Section, worked with other members of the legal community and members of the Subcommittee to identify revisions that will continue to ensure that Nevada's laws reflect the most modern methods of business operation. As noted throughout the course of the study, such efforts are critical both to retain the businesses that currently operate in Nevada and to encourage other entities to establish business operations in the State.

2. *Testimony and Recommendations Received*

On behalf of the Business Law Section, Mr. Fowler presented a comprehensive set of recommendations from members of the Business Law Section to the Subcommittee at its work session. In his testimony, Mr. Fowler explained that the intent was not for Nevada simply to copy Delaware's corporate laws, which can be difficult to read. In the past decade, Nevada has carefully revised its laws to reflect the best practices and statutes from other jurisdictions, including Delaware and the federal government.

Mr. Fowler noted that although the Executive Committee of the Business Law Section had not formally approved these changes at the time of the work session, members were involved in developing and reviewing the changes. The recommended changes primarily affect Title 7 of NRS (Business Associations; Securities; Commodities) and various aspects of business operations, including signature requirements on articles and certificates filed with the Secretary of State's Office, specifying powers of incorporators, and extending time to cure a failure to file an annual list of officers and directors.

Domestication is also addressed in the proposed changes. For example, one recommended statutory revision creates a new procedure to allow a foreign (non-United States) corporation to be domesticated in Nevada. Such a procedure would allow an entity to become a Nevada corporation without having to merge into a Nevada corporation. A comprehensive summary of the recommendations, as of June 29, 2000, is provided under Appendix E.

Recommendation No. 3

After reviewing the proposals for updating Nevada's business laws, the Subcommittee voted to adopt the following recommendation:

> ***Draft legislation amending Nevada's business statutes to include the changes recommended by members of the Executive Committee of the Business Law Section of the State Bar of Nevada designed to encourage corporations and other business entities to organize and conduct business in this State.*** **(BDR 7--255)**
>
> The Subcommittee reviewed these changes conceptually, and the final bill draft may expand upon the ideas presented. Appendix E provides an overview of 29 proposed changes discussed by the Subcommittee.

C. OTHER BUSINESS-RELATED RECOMMENDATIONS: INTELLECTUAL PROPERTY, E-COMMERCE, AND ENTERTAINMENT LAWS

Passing progressive laws that acknowledge and embrace the future of electronic commerce and the involvement of the Internet are important to those corporations or businesses presently in Nevada and those entities who may wish to establish a presence within the State. During the course of the study, the Subcommittee received various proposals to update Nevada's laws involving intellectual property laws, the use of the Internet, and the growing entertainment industry.

The Subcommittee received several well-defined recommendations regarding these topics from Mark G. Tratos, an attorney from Las Vegas, Nevada. The written testimony submitted by Mr. Tratos is summarized below in the discussion on each recommendation adopted by the Subcommittee, and is included as Appendix F.

1. *Anti-Dilution Provisions Under Trademark Laws*

Nevada's Trademark Act does not presently contain an anti-dilution provision prohibiting the use a famous trademark on unrelated goods or services, which can weaken or delete the mark's value. Mr. Tratos noted that while Nevada has a small population, because of the national and international prominence of its resort industry, many of its corporate names are famous. For example, names like Harrah's, MGM,

Mirage, Harvey's, and the Golden Nugget are famous worldwide. Because of the prominence of these names and because of the millions of dollars expended annually to promote those marks, Mr. Tratos recommended that Nevada's Trademark Act be amended to include an anti-dilution provision to help protect those famous trademarks.

In its deliberations, the Subcommittee considered Section 13 of the Model State Trademark Bill (MSTB) developed by the International Trademark Association (INTA). This legislation has been adopted (with some variations) in approximately 23 states, and earlier versions are the basis for the trademark laws in a majority of states, including Nevada.

Dilution is defined in the MSTB as "the lessening of the capacity of a mark to identify and distinguish goods or services, regardless of the presence or absence of (a) competition between the parties; or (b) likelihood of confusion, mistake, or deception." In its "Guide to Understanding the Revised Model State Trademark Bill," the INTA notes that:

> Very often the distinctiveness of a famous mark is diluted "weakened" when it is used without the consent on dissimilar products. The injury connected with dilution occurs over an extended period of time, gradually "chipping away" at the famous mark's foundation. Section 13 establishes criterion to assist the judiciary in determining whether a mark is famous.
>
> On January 16, 1996, President Clinton signed into law, the Federal Trademark Dilution Act of 1995 (Public Law 104-98). The Federal Law does not preempt a state dilution statute. State dilution laws still apply in cases involving locally famous or distinctive marks. * * * INTA notes that unlike patent and copyright laws, federal trademark law presently coexists with state trademark law, and it is to be expected that a federal dilution statute should similarly coexist with state dilution statutes.

Information regarding the INTA is available on its web site at www.inta.org.

Recommendation No. 4

> ***Draft legislation to amend Nevada's Trademark Act (NRS 600.240–600.450) to include an anti-dilution provision to make it illegal to use a famous trademark on unrelated goods or services, thereby weakening or deleting the mark's value.*** **(BDR 52--256)**

2. *Dissemination of Trade Secrets on the Internet*

New technology has made it possible for companies' valuable formulas, customer lists, and other proprietary information to be lost when an individual disseminates such information over the Internet. Mr. Tratos explained that once the information becomes available publicly, trade secret protection is presumed to be lost.

Companies often invest a great amount of money in developing lists of customers and suppliers, formulas, business methodologies, and other proprietary information that is regarded as secret, and which is beneficial to their businesses. The dissemination of such information over the Internet presumably gives public access to the information and, therefore, it is no longer a trade secret.

Mr. Tratos recommended legislation to allow courts in Nevada to impose immediate injunctive relief ordering the removal of the information from the Internet. The proposal suggests creating a presumption such trade secrets are not lost if the removal, pursuant to a court order, occurs in a reasonable period.

Recommendation No. 5

> ***Draft legislation to amend Nevada's Uniform Trade Secrets Act (NRS Chapter 600A) to address dissemination of trade secrets through the Internet by allowing a court to impose immediate injunctive relief ordering the removal of the information from the Internet. Include a presumption that if the removal is done pursuant to a court order in a reasonable period, the trade secrets are not lost.*** **(BDR 52--257)**

3. *Electronic Signatures*

The 1999 Legislature adopted a comprehensive bill to address digital signatures (Chapter 720 of NRS). The use of digital or electronic signatures continues to expand rapidly, and Mr. Tratos opined that Nevada's law does not fully provide a means by which courts can recognize commercial transactions and contracts that occur only electronically. Such a law would provide the legal framework upon which contracts and agreements entered only electronically could be legally enforced.

In conjunction with this recommendation, the Subcommittee reviewed the Uniform Electronic Transactions Act, which includes a provision regarding court acceptance of electronic records into evidence. This Act was completed in 1999 by the Uniform Law Commissioners and has been adopted by at least 23 states. According to the Uniform Law Commissioners, the Act is designed to support the use of electronic commerce. Its primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to

electronic commerce. Additional information regarding the Act is available in Appendix G.

Recommendation No. 6

> ***Draft legislation to adopt the comprehensive Uniform Electronic Transactions Act, which includes a provision regarding court acceptance of electronic records into evidence.*** **(BDR 59--258)**

4. *Anti-Spamming Laws*

Explaining that Nevada does not specifically prohibit individuals from electronically jamming or clogging a web site through the use of unsolicited electronic mail or similar correspondence, Mr. Tratos recommended that the Subcommittee consider an anti-spamming statute to prohibit the use of the Internet as an offensive tool to disrupt business operations by sending unsolicited communications. As commerce continues to lean ever-increasingly toward the Internet, the disruption of business activities on the Internet will potentially create significant injury or hardship to Nevada businesses that are affected by spamming.

Recommendation No. 7

> ***Draft legislation to prohibit the use of the Internet as an offensive tool to disrupt business operations by sending unsolicited communications. Illegal activity includes electronically jamming or clogging a web site through the use of unsolicited e-mails or similar correspondence.*** **(BDR 15--259)**

5. *Electronic Privacy Laws*

Privacy laws are under consideration across the county in state legislatures and Congress. Information should be readily available on web sites to consumers so that they are able to make an educated decision regarding any use of their personal information. Mr. Tratos recommended amending the law to require Nevada-based Internet businesses to prominently post a statement regarding their privacy practices on their web site. Such a law should also apply to businesses that use Internet service providers that are located in Nevada and that collect personal information about Internet users. Under the recommendation, gathering private information without first disclosing that information is being collected and the way the information will be used would be illegal.

If an individual's personal data is being accumulated by a web site, Mr. Tratos suggests, a visitor to that web site should be thoroughly informed of the site's privacy policy, including what data or information is being gathered; the purpose for which the

information is being gathered; and the persons, parties, or entities to whom the information will be distributed.

Recommendation No. 8

> ***Draft legislation to require Nevada-based Internet businesses (or businesses using Internet service providers located in Nevada) that collect personal information about Internet users to prominently post a statement regarding their privacy practices on their web site.*** **(BDR 15--259)**

6. *Entertainment Industry in Nevada*

Entertainment is a vibrant and growing component of Nevada's economy. Not only is it important within Nevada's gaming industry, but also the state continues to attract more companies wanting to film in Nevada. In July 2000, the Nevada Film Office released final production figures for Fiscal Year (FY) 1999. With over $79 million in revenues and approximately 500 productions coming to Nevada between July 1, 1998, and June 30, 1999, production has been a strong revenue stream for the state.

As this industry continues to grow within Nevada's economy, legislation encouraging its operation and protecting its employees is important to consider. The Subcommittee received a recommendation to strengthen certain legal protections for minors involved in the industry. Mr. Tratos noted that Nevada currently has no formal mechanism for allowing minors who perform in various entertainment venues throughout the state or in the recording, film, or television industry to have their contracts reviewed and judicially approved. Under the recommendation, a district court would review a proposed engagement or contract with a minor to ensure the contract terms as being fair, reasonable, and in the minor's best interest. If such court approval were obtained, the minor could not then later challenge the contract when he reached the age of majority. Such an act would be beneficial to both the minors and the employers of the minors.

In support of the recommendation, Mr. Tratos suggested that the minors could be assured that the contracts into which they were entering were reasonable and within normal industry standards. In addition, the minors could be assured that reasonable consideration had been given to labor conditions, hours of employment, and related child labor law issues. The employers could be assured that the contract would be enforceable, even after the minor reached the age of majority, since it had been judicially reviewed and approved, and signed by the minor and the minor's parents or guardians.

Such laws, which currently exist in California and New York, provide an effective mechanism for ensuring both the welfare and safety of minors, and the integrity of contracts entered into with talented, young performers.

Recommendation No. 9

> ***Draft legislation to implement a Judicial Review of Minors Act that allows a district court to review a proposed contract or engagement with a minor and to approve the contract terms as being fair, reasonable, and in the minor's best interest. If such court approval were obtained, the minor could not then later challenge the contract when he reaches the age of majority.*** **(BDR 11--260)**

D. ECONOMIC DEVELOPMENT AND DIVERSIFICATION

During the course of the Subcommittee's study of methods of encouraging businesses to incorporate in Nevada, the importance of attracting and retaining a wide range of businesses was also emphasized. The gaming and mining industries are key components of Nevada's economy. Trends in the last decade that raise concern for Nevada's future include the growth of gaming in other states and on Indian reservations and the decline of mining in rural Nevada.

Discussion also focused on elements of Nevada's educational system and work force that may impact the decision of a business or corporation to locate or remain in the State. Nationally, technology industries are a vital component of the economy of the twenty-first century. A report issued recently by the National Governors' Association notes that to attract these businesses, states "need to invest in their human and physical capital to attract new economy workers and businesses" by:

- Investing in early childhood development to ensure that children are ready to learn at an early age;
- Continuing progress in elementary and secondary (K-12) education reform, including improvements in teacher quality, to ensure that students are ready for postsecondary education and the workplace;
- Investing in the higher education system and encouraging it to be more market-driven and responsive to the needs of the new economy workers and businesses;
- Supporting workforce training to raise the skills of new economy workers and helping them transition to higher-paying jobs;
- Creating a research and development presence using the state's university system to attract intellectual talent and promote technology transfer; and
- Enhancing the physical infrastructure to ensure that transportation and telecommunication networks are sufficient to support growth.

(From: *State Strategies for the New Economy*, published in 2000 by the National Governors' Association, and available on its web site at www.nga.org.)

1. *Agencies Involved in Economic Development in Nevada*

In Nevada, multiple state agencies and boards are statutorily responsible for promoting economic development and diversification, including Nevada's Commission on Economic Development, the Center for Business Advocacy and Science, and the Office of Science, Engineering, and Technology. An overview of various statutory entities primarily involved in economic development and diversification at the state level is provided in Appendix H. In addition, the institutions within Nevada's university system are aggressively involved in a variety of programs involving research and development and educational opportunities for encouraging entrepreneurship and contributing to the State's economic growth and diversification.

At the local level, chambers of commerce and regional development authorities with expertise in local political climates, business opportunities, and real estate costs and availability are among the many groups also promoting economic development and diversification.

2. *Work of the Commission on Economic Development*

Nevada's Commission on Economic Development is the primary state agency involved in economic development and diversification. According to testimony at the work session from Lorraine T. Hunt, Lieutenant Governor and Chair of Nevada's Commission on Economic Development, the Commission has undertaken an aggressive and energetic pursuit of economic diversification for the State. Lieutenant Governor Hunt noted the Commission's mission is to create a state that is less dependent upon a single industry and less vulnerable to economic slumps in a particular sector of the economy.

The Lieutenant Governor explained that the Commission coordinates its efforts with a statewide network of 13 regional development authorities to target businesses that are suitable for the State's business culture. Two such industries have materialized as major prospects—the motion picture industry and the high tech industry. Additionally, a comprehensive marketing plan compiles all existing programs within the Commission and directs its efforts in a unified method.

In March 2000, the Commission released a report identifying objectives for economic diversification. In the report's introductory pages, the following paragraph highlights the goals of the Commission and similar agencies involved in economic development and diversification:

> The state values economic diversification for its potential to improve and maintain the economic well being of Nevada's citizens. Economic diversification seeks to bring high-wage primary jobs to Nevada by attracting companies and subsidiaries, corporate start-ups and investment, as well as by expanding and retaining Nevada companies currently offering primary jobs in the Nevada economy. The state also recognizes the specific goals and needs of its many communities in relation to economic diversification and the creation of wealth and prosperity, and thus views the primary role of state government to be the continual fostering of a health climate for business and entrepreneurship.

The report sets forth objectives, lead agencies responsible for accomplishing those objectives, and action items relating to the objectives in the following major areas: Business Attraction, Business Expansion and Retention, Innovation and Technology, Workforce Development, Venture Capital, Business Financing and Capital Availability, Tax Structure and Policies, and Regulation and Government Responsiveness. A copy of this report, which is entitled "Unlocking Nevada's Future: A State Strategy for Economic Diversification," is available as Appendix I.

3. *Subcommittee Examination of Economic Development Incentives and Programs in Other States*

With numerous state and local entities actively involved in promoting economic development and diversification in Nevada, the Subcommittee examined the possibility of creating new programs at the state level to assist in these efforts. As part of this examination, the Subcommittee reviewed economic development programs and incentives in other states.

a. **Incentives and Programs in Nevada** - In comparison to other states, Nevada's tax incentives for businesses to locate in this State are competitive, and testimony indicated that it would be difficult to target changes to enhance the State's existing minimal tax requirements. (An overview of Nevada's incentives and programs, which was prepared by the Commission on Economic Development, is included in Appendix B.) Nevada also has a variety of statutory programs to facilitate the financing of business and industry. On behalf of the Nevada Technology Council (NTC), Larry Struve, Vice-President of NTC, provided an overview of these programs and their current status. The chart submitted by Mr. Struve that summarizes this overview is included under Appendix J.

As noted during testimony, state involvement in investment and schemes used in other states to promote entrepreneurship (such as venture capital programs) is limited by Article 8, Section 9 of the *Nevada Constitution*, which states that:

> The State shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

Prior efforts to amend this section to authorize state-sponsored investment for the purpose of economic development or diversification failed to gain voter approval at the General Elections in 1992, 1996, and 2000.

b. **Venture Capital Programs and Incentives in Nevada and Other States** - With an amendment to Article 8, Section 9 of the *Nevada Constitution* pending at the General Election in November 2000 (which ultimately did not pass), the Subcommittee reviewed investment programs supported in other states, with a particular interest in venture capital proposals. As Mr. Struve and others pointed out during the course of the study, the constitutional limitation on state investment is a primary reason Nevada does not have a state-sponsored seed and venture capital program. Documentation from the National Association of State Venture Funds (NASVF) and testimony during the study indicated the majority of states (not including Nevada) have utilized some form of public funds to support programs designed to provide seed or venture capital to new enterprises doing business in the State.

Robert G. Heard, President of the NASVF, provided a national overview of state-sponsored seed and venture capital ideas. Some of the programs discussed such as the Venture Network of Iowa, which provides a state-sponsored forum for interaction between inventors and entrepreneurs, may not violate constitutional limitations. Other programs such as the Oklahoma Capital Investment Board may raise constitutional questions in Nevada. This Board was created by the state and utilizes state funds for investment to produce a significant potential for generating jobs and diversifying and stabilizing Oklahoma's economy.

Appendix K provides additional background information on these programs and includes two charts that document the methods used in other states to invest in seed and venture capital programs. These charts are part of a report Mr. Heard co-authored entitled *Growing New Businesses with Seed and Venture Capital: State Experiences and Options*.

A copy of the report is available through the web site of the National Governors' Association at www.nga.org.

c. **Venture Capital and Nevada's Strategy for Economic Diversification** - The state strategy for economic diversification recently released by Nevada's Commission on Economic Development includes two objectives related to venture capital: (1) Identify and evaluate existing venture capital sources; (2) Establish innovative programs to develop new sources of venture capital for Nevada entrepreneurs. For additional information, please see Appendix I.

4. *University Program to Foster Economic Development in Georgia*

The Desert Research Institute (DRI) presented an overview of the Georgia Research Alliance (GRA), a partnership of the State's research university, the business community, and state government. According to information available through GRA's web site (www.gra.org), its mission is to foster economic development within Georgia by developing and leveraging the research capabilities of the universities within the State and to assist and develop scientific and technology-based industry, commerce, and business.

During their testimony, representatives of DRI advocated that Nevada consider creating a program like the GRA, and noted the following:

- In the late 1980s, the State of Georgia was ranked within the lowest 25 percentile for all economic indicators in the United States. A consultant firm hired to improve Georgia's economy recommended that increased university research would improve economic activity.

- Money from the State of Georgia, private and state universities, and the private sector, was used to build scientific capabilities in three focused areas: (a) biotechnology; (b) environmental technology; and (c) communication technology.

- Eminent scholars, including Nobel Prize winners, were enlisted in the three focus areas. Georgia made a one-time investment of $5 million on each scholar. The outcome was a "critical mass" of scientists to contribute ideas, generate start-up companies, create a work force to build companies in Georgia, and attract companies.

- New industry offered a significant number of higher paying primary jobs for the State of Georgia, which is now ranked first in the nation in high-tech job growth.

5. *Recommendation Urging Coordination of Efforts*

As reflected by the wealth of information submitted during the course of the study from a variety of sources, numerous state and local entities (both public and private) are currently involved promoting economic development and diversification for the State. Recognizing the need to continue these efforts aggressively, to create new programs (possibly based on successful models in other states like those reviewed by the Subcommittee), and to make changes necessary to meet the educational and work force needs of existing and potential businesses in Nevada, the Subcommittee approved a recommendation encouraging statewide coordination of all of these efforts.

Recommendation No. 10

Draft a resolution urging the Governor; the Lieutenant Governor; the Office of Science, Engineering, and Technology; Nevada's Commission on Economic Development; the University and Community College System of Nevada (UCCSN); and Nevada's Department of Education to coordinate efforts to promote Nevada's economic development and diversification. The State must identify the target areas for economic development, including new technologies, and coordinate with the UCCSN, which must be prepared to facilitate these efforts with programs to train the necessary work force and to nurture new technologies. In addition, promotion of Nevada's university system as a center for Research and Development should be targeted as a primary tactic for competing with other states.

Funding sources, including the public and private contributions, for these efforts must be identified and encouraged. Nevada's EPSCoR funds (Experimental Program for the Stimulation of Competitive Research) should be focused on supporting the target areas for economic development, helping to build the research infrastructure needed.

To accomplish these goals of increasing economic diversification and cultivating an entrepreneurial environment in Nevada, initiatives in other states and the existing economic dynamics in Nevada should be reviewed. These initiatives include, but not limited to:

- ***Research and Development programs offered through university systems such as the Georgia Research Alliance;***
- ***Programs that promote networking for venture capital such as the Venture Network of Iowa;***
- ***Improved promotion and coordination of existing state programs;***

- ***Educational resources at the middle school, high school, and university levels required for students to graduate with the skills necessary for employment in the high tech industry; and***

- ***Entrepreneurial education opportunities such as the class offered by the University of Nevada, Reno that combines instruction in entrepreneurship and development of venture capital.***

(BDR R--261)

6. *Development of a "Technology Strategy" for Nevada*

During the course of the study, Lieutenant Governor Hunt highlighted a study currently underway that was designed to develop a technology strategy for Nevada. In a press release, the Lieutenant Governor noted, "The nation's economic future is being driven by knowledge, innovation, and intellectual capital. * * * Nevada needs to develop a strategy to leverage its science and technology assets into a more competitive position in this new economic environment." With funding support from the Office of Science, Engineering, and Technology, the study is a collaborative effort between the Commission on Economic Development and the University and Community College System of Nevada, whose representatives also testified in support of the project.

Conducted by the Technology Partnership Practice of the Battelle Memorial Institute, the study will analyze Nevada's "technology profile" and will assess and analyze the university and federal research and development assets, the state's emerging technology sector, and the entrepreneurial support structure in Nevada. Its purpose is to concentrate future economic development efforts and help Nevada develop a "technology strategy." In announcing the study, Lieutenant Governor Hunt noted that certain principals will guide the project, including: (1) the strategy will be developed in ways that ensure it can be accomplished and is not simply a paper plan; (2) the strategy will be bold but also realistic; (3) the strategy will address the broader issues of the new economy, which includes workforce, technology, and knowledge and learning issues; and (4) the strategy will reflect the input, views, and perspectives of Nevada opinion leaders.

Completion of the study is anticipated prior to the 2001 Legislative Session at which time it will be presented to Governor Kenny C. Guinn and Nevada's Legislature for consideration and implementation of agreed upon objectives. To ensure that the report is thoroughly reviewed and considered by the 2001 Legislature as a valuable tool for determining Nevada's future course for economic development and diversification, the Subcommittee approved the following recommendation.

Recommendation No. 11

Include a statement in the report encouraging the 2001 Legislature to consider any recommendations from the Battelle Memorial Institute, which is currently examining the economic strengths and weaknesses of the entire State to establish a plan for Nevada's economic future.

7. *Recommendation Concerning the Efforts of Nevada's Commission on Economic Development*

< >

During the course of the study, Nevada's Commission on Economic Development was in the process of revising its state strategy for economic development. The Subcommittee received updates of the established goals and the final report was presented for its consideration. In support of the Commission's continuing efforts and goals, as reflected in its report (*Unlocking Nevada's Future: A State Strategy for Economic Diversification*, which is available under Appendix I), the Subcommittee adopted the following recommendation.

Recommendation No. 12

Send a letter on behalf of the S.C.R. 19 Subcommittee to Bob Shriver, Executive Director of the Nevada Commission on Economic Development, and Lieutenant Governor Lorraine T. Hunt, Chairman of the Commission, encouraging the Commission to continue its efforts to:

a. Develop a state plan for economic development and diversification that targets the following:

- ***Marketing;***
- ***The growth of the film industry;***
- ***The role of technology in the economy; and***
- ***The retention and expansion of existing businesses.***

b. Work closely with the Office of Science, Engineering and Technology and the University and Community College System of Nevada to develop a strategic plan for Nevada. Also ensure that the study proposed in conjunction with Battelle Memorial Institute is undertaken to examine the economic strengths and weaknesses of the entire State and to establish a plan for Nevada's economic future.

A copy of the letter is included in Appendix I with a copy of the report.

E. ECONOMIC ISSUES AFFECTING RURAL NEVADA

Economic development and diversification are equally vital in rural Nevada where the mining industry is historically a key component of the economy. Based on its broad examination of economic development in rural Nevada, the Subcommittee adopted several recommendations.

1. *Land Available for Development*

According to 1999 data from the Bureau of Land Management and General Services Administration, the Federal Government owns 83.1 percent of Nevada's land (including trust properties). To support efforts at the federal level to make more land available for development, the Subcommittee approved the following recommendation:

Recommendation No. 13

> ***Send a letter on behalf of the S.C.R. 19 Subcommittee to Nevada's Congressional representatives in support of the Nevada Public Land Management Act of 1999 (Senate Bill 719). This legislation requires that public lands for sale in northern Nevada be auctioned off to the highest bidder and designates how proceeds from the land sales are to be divided.***
>
> A copy of this letter is included in Appendix L.

2. *Ruby Gas Pipeline and Power Plant*

The Subcommittee received substantial testimony and information regarding the efforts of the Elko County Economic Diversification Authority and the City of Elko to gain approval and funding for the proposed Ruby Gas Pipeline-Power Plan project. Proponents of the pipeline and power plant testified that industries require a combination of three components: (a) industrial parks; (b) existing warehouse space; and (c) an abundant natural gas supply. Although the need for industrial parks and warehouse space can be addressed, the energy infrastructure is beyond the capability of rural Nevada communities alone.

Most of rural Nevada is unable to provide economically competitive natural gas for industrial recruitment. Proponents stated that sufficient "anchor demand" is critical to investment, construction, and expansion of natural gas pipelines. Previously, "anchor demand" typically occurred with the construction of electric generators and their constant need for fuel, and/or other industrial development requiring significant heat for processing. However, rural communities are caught in a "Catch 22" position with regard to economic diversification efforts: to attract businesses, an area must offer a competitive fuel source for industrial processing; but if there is no significant anchor demand, natural gas pipelines are not viewed as viable economic investments.

Proponents testified that without the ability to offer power sources, Nevada will experience difficulty in attracting light industrial, manufacturing plants, or new technology development for economic diversification. A robust source of delivery of natural gas and adequate, competitively priced electric power are primary requirements for economic diversification. Natural gas is fundamental to economic development because it is the only fuel source that meets the requirements competitively. As noted by the proponents, electric energy is not a critical issue because of the relative ease of transporting electricity and expanding the existing infrastructure. Proponents of the project asserted Nevada has the potential to become the hub of the energy industry in the next 20 years because of its favorable geographical location, and the proposed Ruby Gas Pipeline and Power Plant is offered as a solution.

To assist in these efforts to promote economic diversification, energy resources, and job growth, the Subcommittee approved the following recommendation:

Recommendation No. 14

> ***Send a letter on behalf of the S.C.R. 19 Subcommittee to Governor Kenny C. Guinn in support of the Ruby Gas Pipeline and Power Plant Project in Elko, Nevada.***
>
> A copy of the letter and updated background information (December 21, 2000) regarding the necessity and current status of the project are included in Appendix M.

F. OFFICE OF THE SECRETARY OF STATE

The Office of the Secretary of State was a primary focus of the Subcommittee's work. Scott Anderson, Deputy for the Commercial Recordings Division and advisory member of the Subcommittee, provided a wealth of information, testimony, and recommendations concerning the operation of the Office. Selected letters and background information submitted by Mr. Anderson are included in this report under Appendix N.

The role of the Office of the Secretary of State is an essential component of the State's ability to attract and retain business entities. In many cases, the Secretary of State's Office may be the first point of contact for businesses considering a move to Nevada. As Mr. Anderson explained, the Office's Commercial Recordings Division is responsible for processing and filing the organizational and amendatory documents of corporations (both for profit and nonprofit), limited partnerships, limited liability companies, limited liability partnerships, and business trusts. This Division is also responsible for reviewing, filing, and processing Uniform Commercial Code financing statements; changes and lien searches; and federal tax liens and utility filings. In

addition, trademarks, trade names, service marks, and rights of publicity are filed in the Trademarks Division of the Las Vegas Office.

As explained by Mr. Anderson, the Office of the Secretary of State generated revenues of almost $34 million during FY 1999, of which, approximately $26 million was generated by the Commercial Recordings Division and related operations. The Office returns nearly $5 of every $6 received to the State General Fund, and approximately $28 million was returned for FY 1999. In addition, revenue generated per each full-time position has increased from $103,701.64 in FY 1987, to $348,561.32 in FY 1999. Mr. Anderson noted that these trends are expected to continue.

The Office has made great strides in its efforts to become more "user friendly." In addition to increasing access to numerous forms, the Secretary of State's web site provides a tremendous amount of information to answer questions regarding incorporating and other business activities in the state. On behalf of the Secretary of State, Mr. Anderson submitted a variety of recommendations to further its goal of becoming more "user friendly" and maintaining their reputation of being one of the "easiest filing offices in which to do business."

In strong support of the "user-friendly" objective, the Subcommittee approved several recommendations that are summarized below. The Subcommittee also discussed proposed changes in the fee schedule of the Office, including suggestions to increase certain fees to a level similar to other states, such as Delaware. No formal recommendations were adopted, however, as there was not an opportunity during the limited interim study to conduct a thorough analysis of the projected impact on the State financially and with regard to its appeal for incorporation.

1. *Improving the Operations of the Secretary of State's Office*

The Subcommittee reviewed the following recommendations, some of which are underway, involving technology and staffing that are designed to improve the operation of the Secretary of State's Office.

a. **New Database Filing Application:** The Secretary of State is investigating a new software application to process, store, and retrieve documents filed in the Office. The Legislature has approved a needs assessment by the company that developed a Windows application for these procedures in the State of Nebraska.

b. **Imaging:** The Secretary of State is investigating the conversion of all microfiched and filmed documents currently on file with the Office to digital imaging, as well as the initial digital imaging of documents.

c. **Hardware:** The Office anticipates that new filings applications will require new network and individual hardware; and that increased web traffic and on-line filing processes (such as the Federal Electronic Data Gathering Analysis and Retrieval [EDGAR] system through which registrants can file, and the public can retrieve disclosure information, electronically) will require additional technology. As a result, the Office will need "state of the art" equipment to allow it to keep up with the increased needs and demands of its clients.

d. **Staff Levels and Training:** Additional staffing will be necessary as growth continues. Further, with new applications, equipment, and processing changes, the staff will need additional training in the related nontraditional forms of doing businesses. The Office would like to customize and standardize the training of its staff, without the need to rely on the scheduling and availability of State Personnel. Testimony noted that such training would maximize the efficiency of the Office while minimizing processing errors

e. **Contact Person Within the Office of the Secretary of State:** Establish a system under which people filing documents can speak to the person most knowledgeable regarding the requirements involved with the filings they are submitting. Providing access to user-friendly software may also address this concern.

In support of these efforts and methods of improving the operation of the Secretary of State's Office and making it more "user friendly," the Subcommittee approved the following recommendation.

Recommendation No. 15

Include a statement in the report supporting the continuing efforts of the Office of the Secretary of State to improve its technology and to provide state-of-the-art mechanisms for its clients to conduct their business with the Office (as outlined in subsections a through e above). Prior to the preparation of The Executive Budget, the Office should communicate with the Governor regarding the funding this Office believes is necessary to continue these efforts.

2. *Expanded Office Hours*

To increase the availability of staff and the ability of the Office to accept and process business transactions across the country in a timely manner, the Subcommittee approved a recommendation supporting expanded office hours. Based upon the language of *Nevada Revised Statutes* 281.110, which sets minimum hours for

workweeks of state offices, it does not appear that a statutory change is required to accomplish this recommendation.

Recommendation No. 16

> ***Include a statement in the report encouraging the Secretary of State to offer expanded office hours to accommodate the increased demand for services and to open at 6 a.m. to meet the needs of clients on the East Coast.***

3. *Expedited Services*

The Subcommittee approved the following recommendation in support of efforts to enhance the Office's ability to offer expedited services.

Recommendation No. 17

> ***Include a statement in the report in support of the following expedited services through the Secretary of State's Office.***
>
> **a. Same day (or less) services:** Nevada should offer (like Delaware) two- or four-hour, or at least same day, expedited filings.
>
> **b. Written confirmation:** Provide written confirmation by facsimile of a filed document upon receipt. Provide notification when the paperwork is recorded.
>
> **c. Pre-clearing of documents:** Provide a system for "pre-clearing" of documents on the same day, or on a two- or four-hour expedited basis, to ensure that complicated articles of merger are in proper order for filing.

4. *Fees for Expedited and Special Services*

Nevada Revised Statutes 225.140 currently authorizes, but does not require, the Office of the Secretary of State to charge a "reasonable fee, not to exceed $100, for providing special services including, but not limited to, providing service on the day it is requested or within 24 hours, accepting documents filed by facsimile machine, and other use of new technology." To allow the Office to offer a wider range of special or expedited services, the Subcommittee approved a recommendation to permit (but not require) higher fees that are similar to other states like Delaware, which charges $500 for Priority 1 (two-hour) services.

Recommendation No. 18

Draft legislation to revise paragraph (d) of subsection 2 of NRS 225.140 to raise the $100 statutory cap on fees for special or expedited services to $500. **(BDR 18--262)**

III. APPENDICES

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APPENDIX A

Senate Concurrent Resolution No. 19
Legislative Commission's Subcommittee to
Encourage Corporations and Other Business Entities to
Organize And Conduct Business in This State

Senate Concurrent Resolution No. 19–Committee on Judiciary

FILE NUMBER 144

SENATE CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study of methods to encourage corporations and other business entities to organize and conduct business in this state.

WHEREAS, The State of Nevada is recognized for its achievements in establishing and maintaining an attractive climate for business entities to organize and conduct business; and

WHEREAS, The State of Nevada has a vital interest in ensuring that business entities continue to enjoy the benefits of organizing and conducting business in this state; and

WHEREAS, A comprehensive assessment of the possible methods to encourage corporations and other business entities to organize and conduct business in this state would be beneficial in maintaining and improving the attractive climate for business entities that exists in this state; and

WHEREAS, A comprehensive assessment should include a review of methods that have helped other states to become more user-friendly to business entities, such as the reduction of certain administrative fees, the expanded use of available technology and the extension of the hours of operation of the Office of the Secretary of State; and

WHEREAS, The establishment of a court of limited jurisdiction to resolve litigation and contractual disputes relating to business entities may promote greater specialization among judges, may ensure that cases and disputes are heard by judges with experience and expertise in complex corporate and fiduciary matters, may contribute to the development and stability of corporate and business law and may ensure consistency in the disposition of cases and disputes involving business entities; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislative Commission is hereby directed to appoint a subcommittee consisting of legislators to conduct an interim study of methods to encourage corporations and other business entities to organize and conduct business in this state; and be it further

RESOLVED, That, in addition to the subcommittee, the Legislative Commission shall appoint an advisory committee to assist the subcommittee, which must include, without limitation:

1. One representative from the Office of the Secretary of State;
2. One representative from the Commission on Economic Development; and
3. One representative from the Business Law Section of the State Bar of Nevada; and be it further

RESOLVED, That the study must include, without limitation, a comprehensive assessment of:

1. Whether any laws concerning business entities should be revised to facilitate the organization of business entities in this state and the conducting of business by business entities in this state;

2. The administrative fees charged to business entities who organize or conduct business in this state;

3. The need for expanded use of technology, including, without limitation, electronic filing of documents, to assist the Office of the Secretary of State in maintaining a high level of service for business entities;

4. Whether the hours of operation of the Office of the Secretary of State should be extended; and

5. Whether a court of limited jurisdiction should be established to resolve litigation and contractual disputes relating to business entities, and the possible organization of such a court, including, without limitation:

(a) The jurisdiction of such a court;

(b) The manner in which the judges for the court would be selected if such a court were to be established in this state and the qualifications required for such judges; and

(c) The development of a proposed structure and administration for the court, with consideration given to caseloads, facilities and personnel required for the operation of the court and consideration given to the possible effects on the operation and organization of the other courts in this state; and be it further

RESOLVED, That no action may be taken by the subcommittee on recommended legislation unless it receives a majority vote of the Senators on the subcommittee and a majority vote of the Assemblymen on the subcommittee; and be it further

RESOLVED, That the Legislative Commission submit a report of the results of the study and any recommended legislation to the 71st session of the Nevada Legislature.

APPENDIX B

Programs and Incentives Offered by the State to Promote Economic Development and Diversification

NEVADA BUSINESS INCENTIVES

INTRODUCTION:
Nevada offers a variety of business incentives to new and expanding companies locating within the state. All incentives are subject to review by the Commission. The Department of Taxation administers all incentives. For more information, please contact Susan Combs at 775-687-4325 or 800-336-1600.

NEVADA TAX STRUCTURE:
Nevada's tax structure continues to be one of the least burdensome in the country, allowing both business and employees to flourish.

Nevada has NO:

Corporate Income Tax	Personal Income Tax
Unitary Tax	Franchise Tax
Inventory Tax	Inheritance Tax
Estate and/or Gift Tax	Special Intangible Tax

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

SALES TAX DEFERRAL:
The state of Nevada offers a sales & use tax deferment program to qualified industries that purchase specific types of capital equipment in excess of $100,000. Taxes can be deferred interest-free for five years.

SALES TAX EXEMPTIONS:
Certain aircraft engaged in air transportation are exempted from taxes imposed on gross receipts from the sale of aircraft and major components of aircraft.

BUSINESS TAX ABATEMENT:
Partial exemption from business tax may be obtained by new and expanding businesses that meet the overall objectives of the state plan, Focus 2000. Statutory requirements, which must be met to qualify, include a minimum number of jobs created, a minimum capital investment, and wage and fringe benefit requirements.

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

PROPERTY TAX ABATEMENT:
Personal property tax abatement is available to qualified recycling businesses engaging in the primary trade of preparing, fabricating, manufacturing, or otherwise processing raw materials or an intermediate product. At least 50% of the material or product must be recycled on site. Personal property is exempt from taxation for up to ten consecutive years to the extent the property is used as a facility for the production of electrical energy from recycled material.

PROPERTY TAX EXEMPTIONS:
The following are exempt from property tax:

- All personal property stored, assembled or processed for interstate transit;
- All raw materials and supplies utilized in the manufacturing process;
- Inventories held for sale within Nevada;
- All real and personal property that qualifies and is ~~used for the purpose of air and/or water pollution control~~.

TRAIN EMPLOYEES NOW (TEN):
The Nevada *Train Employees Now* Program provides short-term, skills based intensive job training to assist new and expanding firms to reach productivity quickly. A customized program is designed covering recruitment, hiring and job training for Nevada residents. It is the State's policy to support firms demonstrating a human-relations commitment through a meaningful wage and fringe benefit policy.

NCED Research
October 29, 1999

NEVADA BUSINESS INCENTIVES

Program → / Description ↓	Sales & Use Tax Abatement (1) NRS 374.357	Business Tax Abatement NRS 364A.140	Personal Property Tax Abatement NRS 361.0687	Property Tax Abatement NRS 361.0685	Sales & Use Tax Deferral NRS 372.397	Train Employees Now NRS 231.068
Type of Incentive	Partial sales/use tax exemption capital equipment purchases	Exemption of: 80% for year one; 60% for year two;40% for year three; 20% for year four	Not to exceed 50% Tax exemption	Not to exceed 50% Tax exemption on real and personal property (Qual. recycling businesses)	Tax deferral on capital equipment purchases	Grant
Awarded to whom	Business	Business	Business	Business	Business	Training provider
Wage Requirement	100% of Statewide average hourly wage (currently **$14.12**)	100% of Statewide average hourly wage (currently **$14.12**)	100% of Statewide average hourly wage (currently **$14.12**)	100% of Statewide average hourly wage (currently **$14.12**)	80% statewide aver. hrly wage ($11.30)	80% statewide or county aver. Hrly wage whichever is lower.
Number of Jobs Required	*County /City Population >50,000* 75 full time employees *County/City Population < 50,000* 25 full time employees Exp. – new employees on payroll inc. by 10% or 6 whichever greater	*County /City Population >50,000* 75 full time employees *County/City Population < 50,000* 25 full time employees Exp. – new employees on payroll inc. by 10% or 6 whichever greater	*County/City Population >50,000* 75 full time employees *County/City Population < 50,000* 25 full time employees Exp. – new employees on payroll inc. by 10% or 6 whichever greater	*County /City Population >50,000* 75 full time employees *County/City Population < 50,000* 25 full time employees Exp. – new employees on payroll inc. by 10% or 6 whichever greater	10 new full-time employees	At least 10 trainees
Capital Investment Requirement	*County/City Population >50,000* New - $1 million *County/City Population < 50,000* New - $250,000 Expansion – equal to at least 20% of the value of tangible property possessed by the business	*County/City Population >50,000* New - $1 million *County/City Population < 50,000* New - $250,000 Expansion – equal to at least 20% of the value of tangible property possessed by the business	*County/City Population >50,000* New - $50 million Technology-oriented: **$5ml** *County/City Population <50,000* New - $5 million Technology-oriented: $500,000 Expansion – equal to at least 20% of the value of tangible property possessed by the business	$50 million for the real property tax abatement; $15 million for the personal property tax abatement Expansion – capital investment = to at least 20% of the value of tangible property possessed by the business	Minimum $100,000 or more cap. Equip. to qualify	No minimum requirement
Amount of Award	Determined on a case by case basis	Determined on a case by case basis	Determined on a case by case basis	Determined on a case by case basis	Determined on a case by case basis	$1,000 cap per trainee Company must match 25% of train budget
Comments	Must be a significant part in decision to locate **5 yr. commitment**	**5 yr. Commitment**	**10 year commitment Local gov't notification**	Process – 50% of the material of product is recycled on site - **10 yr. Commitment – Local gov't notification**	A security bond in the amount of tax deferred; Taxes can be deferred interest-free for 5 years	Training done through community college

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NEVADA PERSONAL PROPERTY TAX ABATEMENT

Partial abatement from personal property taxes is available to companies who locate or expand their business in Nevada. The applicant must apply for abatement not more than one year before the business begins to develop for expansion or operation in Nevada. The commission will approve or disapprove the application for abatement within 15 working days.

Eligibility. The Commission on Economic Development will look for the following criteria when reviewing applicant's eligibility for abatement:

A. **Objectives.** The company is consistent the Commission on Economic Development's State Plan for Industrial Development and Diversification. The overall objectives of the State Plan for Economic Diversification and Development include:
   1. Diversification from the gaming and hospitality industry;
   2. Attraction of basic industries such as manufacturing, warehousing and distribution, and back-office operations;
   3. Attraction of business facilities and services such as corporate headquarters, research and development operations, and producer services; and
   4. Expansion of existing basic businesses and industries as described above.

B. The Commission determines the abatement is a significant factor in the decision of the person to locate or expand a business in this state.

C. The company will provide a medical insurance plan for all employees including an option for dependent health insurance coverage.

D. The business is registered pursuant to the laws of this state or the applicant commits to obtain all licenses and permits required by this state and the county, city or town in which the business operates.

E. The applicant commits to maintaining the business in this state for 10 years. This 10-year period begins when the applicant begins paying taxes to the Department of Taxation.

The applicant must meet two of the three following criteria:

1. **Wage Requirement.** The company's average hourly wage at the Nevada facility equals or exceeds 100% of the average hourly wage established by the Nevada Department of Employment, Training, and Rehabilitation. The average hourly wage established for FY 2000 is $14.12.

2. **Number of Jobs Required.** For counties/cities with a population of **more than** 50,000 a minimum of 75 full-time permanent jobs in Nevada by the fourth quarter of operation and continues to employ at least the minimum. For counties/cities with a population of **less than** 50,000 a minimum of 25 full-time permanent jobs in Nevada by the fourth quarter of operation and continues to employ at least the minimum. For an expansion, the company must increase the number of employees on the payroll by 10% or six employees, whichever is greater. Abatement is void if business fails to comply. Short-term vacancies in employment do not void the abatement if the business is attempting in good faith to fill vacancies and does so within a period of time considered reasonable by the Commission.

3. **Capital Investment Requirement.** For counties/cities with a population of **more than** 50,000, a capital investment of $50million is required. Technology-oriented businesses require $5million in capital investment. For counties/cities with a population of **less than** 50,000, a capital investment of $5million is required. Technology-oriented businesses require $500,000 in capital investment. In cases of expansion, the capital investment must equal at least 20% of the value of tangible property possessed by the business.

If a business is not maintained in this state for 10 years after tax abatement approval, the company will repay to the Department of Taxation the amount of the abatement allowed before the failure to comply. Interest will be repaid on the amount due at the rate most recently established pursuant to NRS 99.040, or portion thereof, from the last day of the month following the period payment would have been made had the abatement not been granted, until the date of the actual tax payment. The Nevada Department of Taxation can determine the business has substantially complied with the requirements.

As a condition of approval, applicant agrees in writing to supply upon request copies of all necessary records for the Commission's director to verify the applicant meets all requirements.

The Commission on Economic Development reserves the right to grant or deny certification on a case-by-case basis.

A letter in support of the tax abatement from the local development authority is required.

The applicant will register with the Department of Taxation on a separate form if an account has not been established.

Upon certification, the Commission will immediately forward the application for abatement to the Nevada Department of Taxation – the administrator for tax abatements.

For more information on the Personal Property Tax Abatement Program contact:

Nevada Commission on Economic Development
108 E. Proctor St.
Carson City, NV 89701-4240
775-687-4325
800-336-1600
775-687-4450 Fax
scombs@bizopp.state.nv.us e-mail

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BUSINESS TAX ABATEMENT

A quarterly business tax in the amount of $25 per employee is imposed upon the privilege of conducting business in Nevada. A new or expanding business may qualify for a tax exemption if it meets both the statutory criteria and the regulatory requirements established by the Nevada Commission on Economic Development.

Eligibility. The Commission Economic Development will look for the following criteria when reviewing applicant's eligibility for abatement:

A. **Objectives.** The business is consistent with the Commission on Economic Development's State Plan for industrial development and diversification. The overall objectives of the State Plan for Economic Diversification and Development include:
   1. Diversification of the gaming and hospitality industry;
   2. Attraction of basic industries such as manufacturing, warehousing and distribution, and back-office operations;
   3. Attraction of business facilities and services such as corporate headquarters, research and development operations, and producer services; and
   4. Expansion of businesses and industries as described above.

B. The company will provide a medical insurance plan for all employees including an option for dependent health insurance coverage.

C. The applicant commits to maintaining the business in this state for five years. This five-year period begins when the applicant begins paying taxes to the Department Taxation.

The applicant must meet two of the three following criteria:

1. **Number of Jobs Required.** Counties/cities with a population of **more than** 50,000 requires a minimum of 75 full-time permanent jobs in Nevada by the fourth quarter of operation and continue to employ at least the minimum. Counties/cities with a population of **less than** 50,000 requires a minimum of 25 full-time permanent jobs in Nevada by the fourth quarter of operation and continue to employ at least the minimum. For and expansion, the company must increase the number of employees on the payroll by 10% or six employees, whichever is greater. Short-term vacancies in employment do not void the abatement if the business is attempting in good faith to fill vacancies and does so within a period of time considered reasonable by the Commission.

2. **Wage Requirement.** The company's average hourly wage for employees at the Nevada facility will equal or exceed the average statewide hourly wage established by the Nevada Department of Employment, Training and Rehabilitation. The average hourly wage for FY 2000 is $14.12.

3. **Capital Investment.** Counties/cities with a population of **more than** 50,000 requires a minimum capital investment of $1 million in Nevada. Counties/cities with a population of **less than** 50,000 requires a minimum capital investment of $250,000 in Nevada. In cases of expansion, the capital investment must equal at least 20% of the value of tangible property possessed by the business.

The Commission on Economic Development reserves the right to grant or deny certification on a case-by-case basis.

Applicant should allow a minimum of 15 working days prior to the next regularly scheduled Commission meeting for application processing. Those requiring special review and consideration may be granted a longer period of time to complete the certification process.

Company must obtain all required state, county, and city licenses.

Immediately after certification of eligibility is given, the Commission will forward the certification to the Department of Taxation – administrator of the business tax abatement program.

A company certified for business tax abatement is entitled to an exemption of: 80% for year one; 60% for year two; 40% for year three; and 20% for year four.

If a business is not maintained in this state for five years after tax abatement approval, the company will repay to the Department of Taxation the amount of the abatement allowed before the failure to comply. Interest will be repaid on the amount due at the rate most recently established pursuant to NRS 99.040, or portion thereof, from the last day of the month following the period payment would have been made had the abatement not been granted, until the date of the actual tax payment. The Nevada Department of Taxation can determine the business has substantially complied with the requirements.

For more information on the Business Tax Abatement Program contact:

Commission on Economic Development
108 E. Proctor St.
Carson City, NV 89701-4240
775-687-4325
800-336-1600
702-687-4450 fax
scombs@bizopp.state.nv.us **e-mail**

NCED Research
July 14, 1999

REAL AND PERSONAL PROPERTY TAX ABATEMENT FOR RECYCLING AND/OR RETAIL WHEELING

Partial abatement of real and personal property taxes for recycling and/or retail wheeling is available to companies who locate or expand their business in Nevada. The applicant must apply for abatement not more than one year before the business begins to develop for expansion or operation in Nevada. The commission will approve or disapprove the application for abatement within 15 working days.

Eligibility. The Commission Economic Development will look for the following criteria when reviewing applicant's eligibility for abatement:

A. **Objectives.** The business is consistent with the Commission's State Plan for Industrial Development and Diversification. The overall objectives of the State Plan for Economic Diversification and Development include:
   1. Diversification from the gaming and hospitality industry;
   2. Attraction of basic industries such as manufacturing, warehousing and distribution, and back-office operations;
   3. Attraction of business facilities and services such as corporate headquarters, research and development operations, and producer services; and
   4. Expansion of existing basic businesses and industries as described above.

B. The Commission determines the abatement is a significant factor in the decision of the company to locate or expand a business in this state; and

C. The company will provide a medical insurance plan for all employees including an option for dependent health insurance coverage.

D. The business is registered pursuant to the laws of this state or the applicant commits to obtain all licenses and permits required by this state and the county, city or town in which the business operates.

E. The applicant commits to maintaining the business in this state for 10 years. This 10-year period begins when the applicant begins paying taxes to the Department of Taxation.

The applicant must meet two of the three following criteria:

1. **Wage Requirement.** The company's average hourly wage at the Nevada facility equals or exceeds 100% of the average hourly wage as established by the Nevada Department of Employment, Training, and Rehabilitation. The average hourly wage established for FY 2000 is $14.12.

2. **Number of Jobs Required.** For counties/cities with a population of more than 50,000 a minimum of 75 full-time permanent jobs in Nevada by the fourth quarter of operation and continues to employ at least the minimum. For counties/cities with a population of less than 50,000 a minimum of 25 full-time permanent jobs in Nevada by the fourth quarter of operation and continues to employ at least the minimum. For an expansion, the company must increase the number of employees on the payroll by 10% or six employees, whichever is greater. Abatement is void if business fails to comply. Short-term vacancies in employment do not void the abatement if the business is attempting in good faith to fill vacancies and does so within a period of time considered reasonable by the Commission.

3. **Capital Investment Requirement.** For real property tax abatement, a $50 million capital investment is required. For personal property tax abatement, a $15million capital investment is required. In cases of expansion, the capital investment must equal at least 20% of the value of tangible property possessed by the business.

If a business is not maintained in this state for 10 years after tax abatement approval, the company will repay to the Department of Taxation the amount of the abatement allowed before the failure to comply. Interest will be repaid on the amount due at the rate most recently established pursuant to NRS 99.040, or portion thereof, from the last day of the month following the period payment would have been made had the abatement not been granted, until the date of the actual tax payment. The Nevada Department of Taxation can determine the business has substantially complied with the requirements.

As a condition of approval, applicant agrees in writing to supply upon request copies of all necessary records for the Commission's director to verify the applicant meets all requirements.

The Commission on Economic Development reserves the right to grant or deny certification on a case-by-case basis.

A letter in support of the tax abatement from the local development authority is required.

The applicant will register with the Department of Taxation on a separate form if an account has not been established.

Upon certification, the Commission will immediately forward the application for abatement to the Nevada Department of Taxation – the administrator for tax abatements.

For more information on the Real and Personal Property Tax Abatement for Recycling and/or Retail Wheeling Program contact:

Nevada Commission on Economic Development
108 E. Proctor St.
Carson City, NV 89701-4240
775-687-4325
800-336-1600
775-687-4450 Fax
scombs@bizopp.state.nv.us e-mail

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SALES AND USE TAX ABATEMENT

Nevada Guidelines For Sales And Use Tax Abatement For Purchase of Capital Goods And Equipment

Sales and use tax abatements are available for purchases of capital equipment. An application for abatement must be made in advance to the Commission or, if the purchase has been made, within 60 days after the date on which the tax was due. If application for abatement is approved, the taxpayer is eligible for a refund of the tax paid (NRS 372.297 (2)).

Eligible Goods are capital goods which an allowance for depreciation is authorized pursuant to the US Internal Revenue code, Section 179, as described in Publication 534, Depreciation under "Qualifying Property," and which directly provides jobs within the State of Nevada as a result of the use of the capital goods by the purchaser.

Ineligible Goods are capital goods purchases including, but not limited to: buildings or their structural components, equipment utilized by a public utility, equipment used for medical treatment, standard equipment used in normal business operations (i.e., office furniture, computers), and machinery and equipment used in construction, gaming, and mining industries.

Eligibility. The Commission on Economic Development will look for the following criteria when reviewing the applicant's eligibility for abatement:

A. **Objectives.** The purchases are consistent with the Commission's State Plan for Industrial Development and Diversification. The overall objectives of the State Plan for Economic Diversification and Development include:
   1. Diversification from the gaming and hospitality industry;
   2. Attraction of basic industries such as manufacturing, warehousing and distribution, and back-office operations;
   3. Attraction of business facilities and services such as corporate headquarters, research and development operations, and producer services; and
   4. Expansion of existing basic businesses and industries as described above.

B. The Commission determines the abatement is a significant factor in the decision of the company to locate or expand a business in this state; and

C. The company will provide a medical insurance plan for all employees including an option for dependent health insurance coverage.

D. The business is registered pursuant to the laws of this state or the applicant commits to obtain all licenses and permits required by this state and the county, city or town in which the business operates.

E. The applicant commits to maintaining the business in this state for five years. This five-year period begins when the applicant begins paying taxes to the Department of Taxation.

The applicant must meet two of the three following criteria:

1. **Wage Requirement.** The company's average hourly wage at the Nevada facility equals or exceeds 100% of the average hourly wage established by the Nevada Department of Employment, Training, and Rehabilitation. The average hourly wage established for FY 2000 is $14.12.

2. **Number of Jobs Required.** For counties/cities with a population of **more than** 50,000 requires a minimum of 75 full-time permanent jobs in Nevada by the fourth quarter of operation and continue to employ at least the minimum. For counties/cities with a population of **less than** 50,000 requires a minimum of 25 full-time permanent jobs in Nevada by the fourth quarter of operation and continue to employ at least the minimum. For an expansion, the company must increase the number of employees on the payroll by 10% or six employees, whichever is greater. Abatement is void if business fails to comply. Short-term vacancies in employment do

not void the abatement if the business is attempting in good faith to fill vacancies and does so within a period of time considered reasonable by the Commission.

3. **Capital Investment Requirement.** For counties/cities with a population of **more than** 50,000, a capital investment of $1 million is required. For counties/cities with a population of **less than** 50,000, a capital investment of $250,000 is required.

As a condition of approval, applicant agrees in writing to supply upon request copies of all necessary records for the Commission's director to verify the applicant meets all requirements.

The Commission on Economic Development reserves the right to grant or deny certification on a case-by-case basis.

The amount of taxes abated can be everything above 2%. This rate will vary dependent upon the county in which the business is located.

If an applicant is approved, the taxpayer is eligible for tax abatements for two years. The start date begins when the first piece of equipment is delivered to the designated facility or taxes are paid on the equipment.

If a business is not maintained in this state for five years after tax abatement approval, the company will repay to the Department of Taxation the amount of the abatement allowed before the failure to comply. Interest will be repaid on the amount due at the rate most recently established pursuant to NRS 99.040, or portion thereof, from the last day of the month following the period payment would have been made had the abatement not been granted, until the date of the actual tax payment. The Nevada Department of Taxation can determine the business has substantially complied with the requirements.

Applicant should allow a minimum of 15 working days prior to the next regularly scheduled Commission meeting for application processing. Those requiring special review and consideration may require a longer period of time to complete the certification process.

A letter in support of the tax abatement from the local development authority is required.

The applicant will register with the Department of Taxation on a separate form if an account has not been established.

Upon certification, the Commission will immediately forward the application for abatement to the Nevada Department of Taxation – the administrator for tax abatements. The Tax Department's Revenue Division will determine what purchases qualify for abatement, verify the sale, the price paid, and the date of sale.

For more information on the Sales and Use Tax Abatement Program contact:

Nevada Commission on Economic Development
108 E. Proctor St.
Carson City, NV 89701-4240
775-687-4325
800-336-1600
775-687-4450 Fax
scombs@bizopp.state.nv.us e-mail

NCED Research
July 15, 1999

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SALES AND USE TAX DEFERRAL

Nevada Guidelines for Sale and Use Tax Deferral For Purchase of Capital Goods and Equipment

Sales and use tax deferrals are available for purchases of capital equipment. An application for deferral must be made in advance to the Commission or, if the purchase has been made, within 60 days after the date on which the tax was due. If the application for a deferment is approved, the taxpayer is eligible for a refund of the tax paid (NRS 372.397(2)).

Eligible Goods are capital goods that an allowance for depreciation is authorized pursuant to the U.S. Internal Revenue Code, Section 179, as described in Publication 534, Depreciation under "Qualifying Property," and will directly provide jobs within the State of Nevada as a result of the use of the capital goods by the purchaser.

Ineligible Goods are capital goods purchases including, but not be limited to: buildings or their structural components, equipment utilized by a public utility, equipment used for medical treatment, standard equipment used in normal business operations (i.e. office furniture, computers), and machinery and equipment used in construction, gaming, mining, trucking and wholesale industries.

Eligibility. The Commission on Economic Development shall certify the applicant's eligibility for deferment if:

A. **Objectives.** The purchases are consistent with the commission's State Plan for industrial development and diversification. The overall objectives of the State Plan for Economic Diversification and Development include:

1. Diversification of the gaming and hospitality industry;
2. Attraction of basic industries such as manufacturing, warehousing and distribution, and back-office operations;
3. Attraction of business facilities and services such as corporate headquarters, research and development operations, and producer services; and
3. Expansion of businesses and industries as described above. Expansions must include increase in the number of employees **and** increase in the square footage of existing facility.

B. **Number of Jobs Required.** The purchase will provide a minimum of 10 permanent jobs in Nevada.

C. **Wage Requirement.** The company's average hourly wage for employees at the Nevada facility will equal or exceed 80% of the average statewide hourly wage established by the Nevada Department of Employment, Training and Rehabilitation. The average hourly wage for FY 2000 is $14.12.

D. The company will provide a medical insurance plan for all employees including an option for dependent health insurance coverage.

Minimum Purchase. A minimum of $100,000 capital equipment purchase is required for a tax deferral.

The Commission on Economic Development reserves the right to grant or deny certification on a case-by-case basis.

Applicant should allow a minimum of 15 working days prior to the next regularly scheduled Commission meeting for application processing. Those requiring special review and consideration may be granted a longer period of time to complete the certification process.

Upon certification, the commission will immediately forward the application for deferment to the Nevada Department of taxation – the administrator for tax deferrals. The Tax Department's Revenue Division will determine what purchases qualify for deferral, verify the sale, the price paid, the date of sale, and assign the applicable period for payment of the deferred tax. A security bond equal to the tax deferred is required.

The applicant will register with the Department of Taxation on a separate form if an account has not been established.

For more information on the Sales and Use Tax Deferral Program contact:

Nevada Commission on Economic Development
108 E. Proctor St.
Carson City, NV 89701-4240
775-687-4325
800-336-1600
775-687-4450 Fax
scombs@bizopp.state.nv.us **e-mail**

NCED Research
July 14, 1999

TRAIN EMPLOYEES NOW
Grant Program and Guidelines

The Nevada *Train Employees Now* Program provides short-term, skills based intensive job training to assist new and expanding firms to reach productivity quickly. A customized program is designed covering recruitment, hiring and job training for Nevada residents. It is the State's policy to support firms demonstrating a human-relations commitment through a meaningful wage and fringe benefit policy.

Each training program is designed jointly by the firm and state agencies. Major elements of the program include the development of a job applicant list, programming, materials, and classroom training. State agencies involved are the Commission on Economic Development, the Employment Security Division and the State Job Training Office – both divisions of the Department of Employment, Training and Rehabilitation. Training providers include local community colleges, private post-secondary institutions, or others identified by the applicant.

Program Benefits

- Assistance with employee screening;
- The employer determines the goals and objectives of the training;
- Most direct training costs are eligible for reimbursement, including:
  - Consumable materials and equipment
  - Rental of tools and equipment
  - Rental of training site
  - Instructor salaries and benefits
  - Travel and per diem for limited number of instructors and trainees (if applicable).

Eligibility

- Businesses must hire a minimum of 10 trainees to participate. Trainees must be Nevada residents. The ceiling expenditure per trainee is $1,000.
- Wages for jobs considered for training must exceed 80% of the statewide or county average annual hourly wage, whichever is less. (Current statewide average hourly wage is $14.12)
- Businesses must provide health insurance with option for dependents.
- Training is provided only for full-time, primary jobs created by companies locating or undertaking a significant expansion in Nevada.
- Existing businesses must prove growth by physical expansion, significantly increased employment or other factors indicating new investment and job creation.
- Grants are available for short-term customized training for new employees.
- Classroom training is limited to 30 days and must be completed within a 90-day period.
- Training must commence within the first 90 days after approval by the Commission. If the deadline is not met, the Commission, after review and reconsideration, may reallocate the monies to other companies seeking funding during the fiscal year.

- The program can fund up to 75% of total eligible costs. The company is required to contribute at least 25% of total eligible costs.
- Businesses must attempt to leverage other state and federal training resources wherever feasible.
- Businesses (or parent company) must have a proven business history.
- Businesses must commit to Nevada for five years. Businesses that fail to meet program criteria as set out in their application, may be required to return all or a portion of the funds.
- Companies that receive *Train Employees Now* funding are required to provide to the Commission a report regarding the employees trained with these funds. (Current work status, "trainees" hourly wage and company employment counts.)
- Training providers that receive *Train Employees Now* funding will provide to Commission staff and the Commission a report of all companies and their funding and training status on a quarterly basis during the training period. Records must be maintained for possible Legislative review.

Note: Applications for program development and related costs will be evaluated by a local post-secondary educational institution before final payment is rendered. If approved, these training monies will be granted to the appropriate educational institution, NOT the business.

For additional information on the Train Employees Now program contact:

Commission on Economic Development
108 E. Proctor Street
Carson City, NV 89701
775-687-4325
800-336-1600
775-687-4450 Fax
scombs@bizopp.state.nv.us **e-mail**

APPENDIX C

Testimony and Information from Chief Justice Robert E. Rose
Relative to the Establishment of a Business Court
And Copy of S.C.R. 19 Correspondence

MARK A. JAMES
SENATOR
Clark No. 8

COMMITTEES:
Chairman
Judiciary

Member
Natural Resources
Legislative Affairs and Operations

State of Nevada
Senate
Seventieth Session

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401 S. Carson Street
Carson City, Nevada 89701-4747
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Fax No.: (775) 687-8206

January 13, 2000

The Honorable Robert E. Rose, Chief Justice
Nevada Supreme Court
201 South Carson Street, Suite 300
Carson City, Nevada 89701-4702

Dear Chief Justice Rose:

Thank you for participating in the January 7, 2000, meeting of the Legislative Commission's Subcommittee to Study Methods to Encourage Corporations and Other Business Entities to Organize and Conduct Business in this State (S.C.R. 19): Sub-Subcommittee for the Examination of the Business Court and Business Laws. Your comprehensive testimony regarding the methods of creating a business court in Nevada was extremely helpful, and the data concerning the number of corporate cases considered by the district courts in 1999 was invaluable.

I appreciate your offer of cooperation and assistance from Nevada's judicial branch. As Chairman of the S.C.R. 19 Subcommittee, I would like to ask that you proceed with your suggestion that the Nevada Supreme Court appoint a Business Court Task Force to make "recommendations as to how a business court division of the existing district courts can be established in Clark and Washoe Counties." As you mentioned in your testimony, the Task Force would be asked to develop a plan regarding a business court division which would be presented to all of the district court judges at their Millennium Leadership Conference in May 2000.

You also suggested that the Task Force could present its recommendations to the S.C.R. 19 Subcommittee by June 30, 2000. However, because the S.C.R. 19 Subcommittee must complete its work and make any recommendations for legislation by July 1, 2000, it is imperative that we receive the Task Force's recommendations by June 1, 2000, so that the Subcommittee can review, meet, and vote on all recommendations in June 2000. Please let me know if you have any concerns regarding the June 1, 2000, date.

Finally, it would be helpful if you could appear and testify at the next meeting of the S.C.R. 19 Subcommittee to provide an update on the progress of the Task Force. At this time, the meeting is tentatively scheduled for March 22 or 24, and my staff will contact you regarding your availability on those dates.

Thank you again for your testimony and offer to work with the S.C.R. 19 Subcommittee to develop a proposal that is embraced by both the legislative and judicial branches of government in Nevada. Please do not hesitate to contact me if you have additional concerns or suggestions you would like to discuss. I look forward to working with you on this important issue which must be closely examined as we consider methods of enhancing Nevada's favorable business climate.

Very truly yours,

Mark A. James
Nevada State Senator

MAJ/rd:Corporations/L15

MEMORANDUM

From chambers of
ROBERT E. ROSE, *Chief Justice*
Supreme Court of Nevada,
Carson City

Establishment of Business Court in Nevada

Remarks of Chief Justice Bob Rose to The Legislative Subcommittee for the Examination of the Business Court and Business laws in Nevada

January 7, 2000

The establishment of a business court in Nevada would insure competent and prompt adjudication of disputes involving corporate governance, business transactions, and technical commercial issues. It would also promote a positive business climate needed to attract businesses to Nevada and to diversify our economy. While this is my personal opinion, and I have not polled our Court or the district court judges, I believe this concept will be supported by a majority of the judges.

The next question is how to establish a business court in Nevada and I think looking to other states that have considered or established a special court for business is a good place to start. At least 7 states have business courts, Delaware, New York, New Jersey, North Carolina, Illinois, Wisconsin, and Virginia.

A description of the effort to create a business court in some states is attached as Exhibit 1.

THE GOAL TO BE ACCOMPLISHED

The goal is to establish a court specifically designated to handle litigation stemming from corporate governance, business transactions, and commercial law. These courts would be filled by district court judges who have the desire and ability to handle these types of cases, who are assigned for a sufficiently long period to gain expertise in these areas, and who are able to promptly address the controversy presented. It is a basic assumption of these courts that business issues usually require quick action, especially when corporate governance and business

transactions are involved. The establishment of this court should not consume disproportionate judicial assets or be at the expense of the case processing in other types of cases.

PATHS TO ACCOMPLISH THIS GOAL

1. Pass a constitutional amendment establishing the business court, and possibly define its jurisdiction and the qualifications for judges to sit on it. The advantage of doing this is that the legislature gets exactly the Court it envisions. The down side is that it takes at least five years to pass and implement a constitutional amendment changing the structure of the judiciary and opposition to the project can surface anywhere along the amendment process.

2. Pass a law directing that a business court be established in Nevada and provide the necessary funding for it. If this law would require district judges to serve exclusive in the business court, an immediate constitutional question would be presented. The Nevada constitution provides that all district judges are general jurisdiction judges, able to handle both civil and criminal cases. Such a law may unduly restrict the general authority given district judges by the Nevada Constitution. If the law only directs that a business court be created, the Legislature will have to carefully consider how the business court interfaces with the existing district courts, how judges will be assigned to the business court and how cases are assigned between the business and civil courts. It would also have to be careful not to violate the separation of powers doctrine.

3. The legislature can pass a resolution stating that the establishment of a business court is in the best interests of Nevada and how it envisions the business court should be constructed, and provide the necessary funding to establish the business court in Nevada. The judiciary would provide the legislature with what we believe would be the best way to create these business courts and be prepared to implement the plan if favorably approved by the legislature.

In short, what I am offering this legislative committee and the legislature is our cooperation and support to work with you on a plan to establish by court order a business court

in Nevada in a format we can both agree on. I would like the Nevada Supreme Court to appoint a Business Court Task Force, consisting primarily of district court judges and civil attorneys, to make recommendations as to how a business court division of the existing district courts can be established in Clark and Washoe Counties. If this subcommittee would like the judiciary's cooperation and assistance, the Court will appoint members to this task force immediately, develop a plan in time to present to all the district court judges at their Millenium Leadership Conference in May, 2000 and present the final recommendations of the task force to this committee by June 30, 2000.

To give you some idea of how a business court division could be created within the existing court structure, here is one proposal that may provide a viable structure. Two district courts in Clark County and one in Washoe County would be designated to hear only business and commercial cases. This is how such courts were established in New York and North Carolina.

The major specifics that would have to be addressed in such a proposal would be as follows:

1. What cases will be assigned to the business courts. I would recommend that the category of cases to be handled by the business court be reasonably limited. This can be accomplished by restricting the type of cases handled by the business court to issues involving corporate governance, business transactions, and commercial litigation. See Exhibit 2 for a breakdown of the contractual cases filed in Clark County in 1999.

2. The assignment and competence of district judges to business court. A procedure to assign district judges to the business court division would have to be devised. Possibly the chief judge of each district court or a committee of district court judges could make such assignments based on a judge's experience and ability.

3. The ability to take prompt action. This is directly related to the caseload of each business court and it is one reason to keep the categories of cases assigned to business court limited, at least at the outset. If we designated several district courts to be business courts

without adding additional judges, you would accomplish little. What would occur would be a business court that is as overworked as are the present district judges handling civil cases. Reallocating the caseload now without additional judges would mean that a few judges would be handling the business related cases. If the business court judges are as swamped as the civil court judges in Clark County, they will be unable to give the immediate attention or the elevated case management necessary in processing business cases.

4. Access to the business court. I would propose that any litigant in Clark and Washoe Counties could request that the case be handled by the business court division and a judge from that division would rule on whether it should be so processed, and that determination would not be appealable. Litigants in other counties of the state could have their cases transferred to the business court divisions in Washoe and Clark Counties if the parties and the district court where the action was filed agree to the transfer. This is similar to the rule New York adopted when it created its business court.

The above is presented only to give you some idea of how a business court division could be created within the existing district court structure in Nevada. I would of course defer to the opinion and specifics that any Task Force may develop after careful study of the matter.

In conclusion, I believe that a business court in Nevada would provide a court that is ready and able to give immediate attention to those business cases that require prompt and competent action, and with greater judicial case management as they are processed. It would help both the judiciary and the business community in this state. This can be best accomplished by a joint effort of the legislature and judiciary. The judiciary can develop the specific plan and needed recourses, and the legislature can give approval and general direction about the court's creation and development, and provide the necessary funding. I believe we can have the plan in place by this summer, with the legislature able to act on it when the 2001 session begins a year from now.

Thank You.

EXHIBIT 1

Delaware is considered a business friendly state and part of that image has been created because of its Court of Chancery. This trial court division handles all equity requests and this includes all cases involving corporate governance and business litigation. It is a fine example of the advantage gained by having a court especially designated to handle business disputes. However, I think it is a poor model for us to follow in Nevada. First, the Court of Chancery is a court of equity and Nevada abolished the concept of separate courts of equity and law in its constitution. Second, all the district judges in Delaware, including those in Chancery Court, are appointed for 12 year terms and the prospective judge's prior experience is considered in making the selection. Nevada elects its district judges to 6 year terms. Delaware has taken an antiquated court and redesigned it to handle modern business litigation, but it does not provide the best model for us to follow.

Pennsylvania initially thought the proposal to establish a business court a positive move and a commission extensively studied the matter. The commission recommended the creation of a Chancery Court and a bill to create it was passed by the Senate Judiciary Committee. However, the matter became very controversial and no further action was taken. I think this shows what can happen to an overly ambitious project that becomes controversial.

The state of New York took the court structure that existed and converted five departments to be the trial courts to handle business matters in New York county. This was done by internal court directives and did not involve amending the state constitution or even the passage of any legislation. This business court division has functioned for 5 years and is deemed a success by almost everyone. It is said that the establishment of this division just redistributed the caseload and did not require any additional judges. However, the business court has authority to return a case to the normal civil courts if it finds that the case does not require special court consideration. Alternate dispute resolution (mediation) is also offered and encouraged. I believe it is a good model for Nevada to follow.

California's legislature and judiciary considered establishing courts to handle business and other complex cases and eventually decided on a pilot project now in operation. The courts participating in the project handle all cases deemed complex and includes construction defect litigation. This is a project whose operation should be monitored by us, but we must keep in mind that these California courts will be handling much more than issues of corporate governance and commercial disputes. I have a booklet that describes the California project for complex litigation cases if the Committee would find it helpful.

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY COURTHOUSE
200 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89155-0001

CHARLES J. SHORT
COURT ADMINISTRATOR

(702) 455-4277
FACSIMILE (702) 386-9104

January 6, 1999

Via FAX 775-684-1601 and regular mail

Chief Justice Robert E. Rose
Nevada Supreme Court
Capitol Complex
Supreme Court Building
201 South Carson
Carson City, Nevada 89710

Dear Chief Justice Rose:

As you requested, I have reviewed the 1999 civil filing data. Consistent with your direction, we have identified those filings which would generally comprise the jurisdiction for a business court.

If you will review the attached, the second page provides a subsection termed CONTRACTS/ACCOUNTS/JUDGMENTS. Within that subject are eleven separate civil filing case sub types. Those seem to generally match the description you provided as a business court civil case. Calculating the numbers of filings for 1999, those within the contract category total 3960 case filings. Please note these represent approximately 26% of the total civil filings for 1999.

Discussion with Tom Biggar, our Discovery Commissioner, reveals that in general 30% to 40% of the filings are not answered. Assuming that 30% of the contract-related cases are not answered means that approximately 1190 cases would not go forward to a district judge. Deducting those initial filings with no answer from the total results in an estimated 2770 cases which could potentially be heard by district judges.

As a result, assuming that a district judge could hear 500 to 600 cases per year, a business court would need approximately five full-time district court judges to accommodate the 1999 work load.

EXHIBIT 2

Hopefully this information is helpful. I will be calling you to determine if you need any additional information

Respectfully submitted,

Charles J. Short
Court Administrator

CJS/lem
Attachment

cc: Lee A. Gates, Chief Judge

EIGHTH JUDICIAL DISTRICT - CLARK COUNTY
CIVIL COVER SHEET STATISTICS 1999
ALL Case Types: For MONTH: 12/99

DESCRIPTION	DEC 99	NOV 99	YTD
DOMESTIC			
1. DIVORCE	0	0	0
2. ANNULMENT	0	0	0
3. ADOPTION	0	0	0
4. NAME CHANGE	0	0	0
5. PATERNITY	0	0	0
6. TERMINATION OF PARENTAL RIGHTS	0	0	0
7. URESA	0	0	0
8. OTHER (SPECIFY)	0	0	0
REAL PROPERTY			
1. LANDLORD AND TENANT	15	10	168
2. QUIET TITLE	13	8	127
3. UNLAWFUL DETAINER	4	1	35
4. PARTITION	1	1	22
5. SPECIFIC PERFORMANCE	7	2	52
6. FORECLOSURE	15	8	105
7. LIENS	28	32	327
8. CONDEMNATION	6	4	55
9. PLANNING AND ZONING	0	1	8
10. OTHER (SPECIFY)	72	23	298
TORTS			
NEGLIGENCE			
1. VEHICLE, AIRPLANE, MARINE, ETC.	334	332	4025
NEGLIGENCE - PROFESSIONAL			
2. MEDICAL	14	17	145
3. DENTAL	0	0	6
4. LEGAL	3	3	37
5. ACCOUNTING	1	1	2
6. ARCHITECTURAL	0	2	9
7. OTHER (SPECIFY)	51	27	564
PRODUCT LIABILITY			
1. MOTOR VEHICLE	3	2	24
2. OTHER (SPECIFY)	5	7	264
BAD FAITH			
1. INSURANCE CARRIER	11	9	117
2. OTHER (SPECIFY)	2	1	18
INTENTIONAL MISCONDUCT			
1. ASSAULT	4	6	51
2. BATTERY	1	8	37
3. INTERFERENCE W/ CONTRACTUAL RIGHTS	1	4	30
4. DEFAMATION (LIBEL OR SLANDER)	4	4	43
5. WRONGFUL TERMINATION OF EMPLOYMENT	2	3	24
6. OTHER (SPECIFY)	7	10	110

EIGHTH JUDICIAL DISTRICT - CLARK COUNTY
CIVIL COVER SHEET STATISTICS 1999
ALL Case Types; For MONTH: 12/99

DESCRIPTION	DEC 99	NOV 99	YTD
BUSINESS/COMMERCIAL TORT			
1. ANTI-TRUST	0	1	1
2. UNFAIR COMPETITION	1	1	12
3. FRAUD AND MISREPRESENTATION	15	12	174
4. NEGLIGENCE - SLIP AND FALL	23	17	244
5. OTHER (SPECIFY)	19	16	214
PROBATE AND GUARDIANSHIP			
1. GUARDIANSHIP	0	0	0
2. CONSERVATORSHIP AND TRUSTS	5	3	43
3. SPECIAL ADMINISTRATION	20	19	203
4. SUMMARY ADMINISTRATION	38	52	538
5. FULL ADMINISTRATION	22	26	344
6. SET-ASIDE ESTATES	26	32	466
7. OTHER (SPECIFY)	21	14	196
PERSONAL PROPERTY			
1. DAMAGE TO PROPERTY	2	1	36
2. RECOVERY OF PROPERTY	5	13	96
3. CONVERSION OF PROPERTY	4	0	35
4. OTHER (SPECIFY)	1	3	29
CONTRACTS/ACCOUNTS/JUDGMENTS			
1. INSURANCE	3	5	103
2. COMMERCIAL INSTRUMENT	19	20	244
3. UNIFORM COMMERCIAL CODE	7	0	63
4. ENFORCEMENT OF JUDGMENT	22	15	336
5. BUILDING & CONSTRUCTION	14	17	208
6. STOCKHOLDER SUITS	0	1	21
7. GUARANTEE	3	7	58
8. COLLECTION OF ACTIONS	172	177	1937
9. SALE CONTRACT	9	12	201
10. EMPLOYMENT CONTRACT	5	14	90
11. OTHER (SPECIFY)	56	52	699
ADMINISTRATIVE LAW			
1. GAMING	0	0	4
2. DEPT. OF MOTOR VEHICLES	0	3	21
3. PUBLIC SERVICE COMMISSION	0	0	1
4. S.I.I.S.	10	12	72
5. OTHER (SPECIFY)	39	35	501
JUSTICE/MUNICIPAL COURT APPEALS			
JUSTICE COURT:			
1. DUI	0	0	1
2. OTHER (SPECIFY)	17	5	151
MUNICIPAL COURT:			
1. DUI	0	1	1
2. OTHER (SPECIFY)	0	0	4

DESCRIPTION	DEC 99	NOV 99	YTD
SPECIAL PROCEEDINGS			
1. HABEUS CORPUS	0	0	0
2. MADAMUS OR PROHIBITION	6	5	31
3. CERTIORARI	0	0	2
4. OTHER (SPECIFY)	7	18	171
ALL OTHER	170	196	2378

Business Court Jurisdiction

The Business Court shall have authority to hear and decide cases regardless of the type of relief sought, by bench or jury trial, that involve as the primary dispute:

1. Disputes concerning the validity, control, operation, or governance of entities created under NRS 78-88, including shareholder derivative suits;

2. Disputes concerning trademarks asserted under Nevada law, causes of action asserted pursuant to the Nevada Trade Secrets Act, the Nevada Securities Act, involving Investment Securities described in Article 8 of the Nevada Uniform Commercial Code; or Commodities described in NRS Chapter 90;

3. Disputes between two business entities where the business court determines that the case would benefit from enhanced case management.

The business court shall not hear cases where the primary claim is an action for personal injury, an action based on products liability, an action brought by a consumer against

a business, an action for wrongful termination of employment, or landlord-tenant disputes.

The district judge serving in business court may hear and decide all other non-business cases assigned to that judge as any other general jurisdiction district court judge. The position of district judge shall rotate periodically as provided in the district court rules of the Second and Eighth Judicial District Court Rules.

The Business Court shall decide whether a case is or is not one the Business Court should hear and that decision shall not be appealable by any appeal nor reviewable upon any writ.

Additional recommendations:

1. The business court judges shall be selected by the chief judge of the judicial district.

2. The Business Court shall consist of two full time district court judges in the Eighth Judicial District and one full time or two part time district court judges in the Second Judicial District Court.

3. A case filed in any judicial district other than the Second and Eighth Judicial Districts may be transferred to a business court if both parties and the district judge assigned to the case consent. The business court still reserves the right to decline to accept any case believed to be a business court case.

4. Either party in a case filed in the Second or Eighth Judicial District may request in the pleadings that a case be transferred to a business court. When such request has been made and all pleadings filed, the case shall be transferred to the business court and a determination made by a business court judge whether jurisdiction over the case will be assumed.

WASHINGTON LEGAL FOUNDATION

Legal Opinion Letter

2009 MASSACHUSETTS AVENUE, N.W. • WASHINGTON, D.C. 20036 • (202) 588-0302

Vol. 8 No. 2 January 9, 1998

BUSINESS COURTS CAN IMPROVE STATE JUDICIAL AND LEGAL SYSTEMS

by
Robert L. Haig

Lawyers and clients should support the emerging national trend toward creation of business courts. Experience to date is highly encouraging. These courts offer solutions to some of the most difficult problems presented by the litigation process.

Many states have substantial business communities with significant legal needs. State courts often do not adequately address those needs. To avoid the difficulties encountered in overburdened state courts, businesses in many states have increasingly turned to other forums to resolve their disputes. Those which have a choice often prefer to litigate in federal court or private dispute resolution forums provided by such entities as the American Arbitration Association.

Business litigation is different from most other cases. The legal issues are often more complex. Such cases frequently involve numerous documents and witnesses and extensive motion practice, discovery disputes, and other applications to the court. Clients frequently perceive business litigation as costly, wasteful, and inefficient. All too often, it is, but it need not be. Business courts have made significant improvements in the process. They have shown that public courts can resolve business disputes cost-effectively.

Creation of business courts benefits the entire court system. Business courts ease pressure on overburdened general trial courts. Removing complex commercial cases from other parts of court systems allows those parts to function more efficiently and reduces the possibility that a few complicated business cases will displace the time and attention that the many other cases pending in those parts should receive. Significant progress has recently been made toward creating business courts. Five states have already created business courts (Delaware, Illinois, New York, North Carolina, and Wisconsin) while at least ten additional states are considering the concept.

A number of states are considering following the model provided by the New York State Supreme Court's new Commercial Division, which began operating on November 6, 1995. As *The Wall Street Journal* reported on October 11, 1995, "While several other states have been pushing for

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Robert L. Haig is a partner with the New York law firm Kelley Drye & Warren LLP and co-chair of the Commercial Courts Task Force appointed by New York's Chief Judge.

trial courts devoted exclusively to business litigation, New York is the first in which a general trial court has implemented such a program." During its first year of operation, more than 6,500 new cases were filed in the Commercial Division in New York County alone. Lawyers and clients vote with their feet — and they are doing so by commencing so many cases in the Commercial Division.

Historically, it is unlikely that a business litigant with a choice would have elected to litigate in the state courts in New York. Most such litigants preferred the federal courts, the courts of other states like Delaware, and private ADR. That has changed dramatically. The Commercial Division is widely perceived as a viable and in many cases a preferable alternative for resolving business cases. It is popular because it has demonstrated that it can provide efficient, cost-effective, and timely processing of commercial cases, and has improved the quality and predictability of judicial decisions. These achievements have been brought about by the experience and expertise of the Commercial Division judges and other court personnel, their use of advanced case management techniques, the ADR opportunities available in the Division, and its technological innovations.

The judges in the Commercial Division manage cases intensively from beginning to end. They establish firm deadlines and require the parties to adhere to them. The Commercial Division is also using uniform case-management software and a new civil case database system to achieve efficiencies.

One of the reasons the Commercial Division is so successful is that it aligns the interests of litigants with those of the court system. Particularly in light of its crushing caseloads and scarce resources, the court system needs to dispose of cases efficiently. To the extent they find litigation necessary, so do business litigants. Thus, by focusing on the court's bottom line, the Commercial Division enables business litigants to accommodate *their* bottom lines.

Various individuals and groups expressed concerns about the Commercial Division. However, the Task Force which created the Commercial Division anticipated the concerns and structured the Division to obviate potential objections. The Task Force's experiences may be helpful to other states which are considering business courts. The greatest single concern was that the Commercial Division would be elitist and would provide a better quality of justice for one class of litigants at the expense of another. Tort lawyers particularly raised this concern.

The quick answer is that New York has not spent large amounts of money on the Commercial Division nor has it shifted significant resources to it. No new courthouses or even courtrooms have been constructed. Most of the modest expenditures have been for technology (about $100,000 in a $980 million court budget). In addition, the Commercial Division judges have been selected from among those who have the greatest interest, aptitude, and experience in handling commercial cases. In other words, the tort cases continue to receive the attention of judges best able to deal with them.

A number of factors reduced the likelihood of significant opposition. First, the Commercial Division as it exists today is only one step in an evolutionary process. Experimental Commercial Parts in New York County began in 1993 and operated successfully for nearly three years. The Commercial Division built upon the success of the Commercial Parts, but still operates in only two out of 62 counties and is staffed by only six State Supreme Court Justices. Further steps are likely to take place only upon a showing that the Commercial Division is needed in other counties. Second, the Court created the Commercial Division through its rule-making powers, not by invoking the time-consuming and uncertain legislative process to create a separate statutory court. Third, the Task Force made extraordinary efforts to consult with affected constituencies and to address their concerns. Fourth, the Task Force has worked hard to communicate its conviction that the Commercial Division's success will benefit other areas of the Court. Many aspects of the Commercial Division such as ADR, case management, and technology will serve as the bases for improvements in other areas of the New York State courts.

All lawyers and their clients should welcome and support the innovations which business courts can provide. Business courts enable us to provide our clients with more cost-effective and predictable results, and they benefit the court system as a whole.

ISSN 1056 1137

Outline of Business Court Task Force Presentation
Judicial Leadership Conference - May 10, 2000

Presentation by Co-chairmen, Judges Gene Porter, Jim Hardesty, and Judge Mark Gibbons

A business case is different - (Porter)

1. Usually very time sensitive and initial decisions needed immediately.
2. Usually complex and need judge who wants to do that type of case and is good at it.
3. Complexity requires greater case management and supervision of discovery.
4. Remove cases to business court so other cases not caught in log jam caused by complex business case.

Brief History of Development of Business Courts - (Hardesty)

1. Delaware Court of Chancery - showed economic benefits of effective business court, but poor model to follow.
2. 16 states have considered or are considering establishing a business court
3. 8 have established them - California expanded business court study to experimental court for complex litigation
4. New York presents the best model for us to follow - established in 1995 in two most populous areas of New York by court order.

Subcommittee to Study Methods to Encourage Corporations and Other Business Entities to Organize and Conduct Business in this State (S.C.R. 19) - (Porter)

1. One primary legislative goal - to improve business climate in Nevada and attract corporations to Nevada
2. Offer of Justice Rose to form Task Force and make recommendations re formation of business court.
3. Here today to present preliminary conclusions and get feedback.
4. Task Force will present formal resolutions in June to legislative subcommittee and Supreme Court.

Creation of Business Court - by court rule, statute or constitutional amendment. Court rule seems preferable because we will control process, business court could be started in foreseeable future and changes can be made quickly.

Statement of Business Court Jurisdiction -
Explain mandatory and discretionary jurisdiction - (Hardesty)
Explain from prepared statement on jurisdiction - (Hardesty)
Explain additional recommendations - (Porter)

A proposed plan for a Business Court in the 8th Jud. District - (Porter, Gibbons, and Mahan)

1. Two judges full time - handling business cases and overflow if not enough business cases initially.
2. How many business court cases are there? Don't know for sure - stats not kept. But Chuck Short believes there are enough to keep two departments busy full time.
3. Start up time - would like to start this coming January - January 2001.
4. After start, go to legislature and ask for more judges.
5. If business court not successful, nothing is lost. Cases handled needed to be processed and business court can be converted back to general jurisdiction court.

A proposed plan for the 2nd Jud. District - (Hardesty)

1. One judge full time or two part time, handling additional non - business cases and overflow if not enough business cases. Two part time judges has the attraction of still having one business court judge even if one preempted, and a second judge available if other business court judge in trial, on vacation, etc.
2. How many business court cases are there? Probably a little less than one judge's caseload, but can take overflow and cases should come in from other northern districts.
3. Start up time - would like to start this October 2000

4. If business court not successful, nothing is lost. Cases handled needed to be processed and business court can be converted back to general jurisdiction court.

Benefits of establishing a Nevada Business Court - (Porter)

1. Business cases processed competently and quickly
2. Many complex cases removed from other judges' calendars
3. Legislature pleased that we have stepped forward and established something it really wants
4. Business climate improved in Nevada and state becomes a beacon for business
5. Business community believes court system addressed one of their major problems

Questions and Discussion

APPENDIX D

Court Rules of the Second and Eighth Judicial Districts

EXHIBIT A

ADDITION OF NEW RULE 2.1 TO THE RULES OF PRACTICE FOR THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

Rule 2.1. Business court docket.

(1) A civil action shall be assigned to the business court docket if, regardless of the nature of relief sought, the primary subject matter of the action is:

(a) A dispute concerning the validity, control, operation or governance of entities created under NRS Chapters 78-88, including shareholder derivative actions;

(b) A dispute concerning a trade-mark or trade name; a claim asserted pursuant to the Nevada Trade Secrets Act, NRS 600A.010, et seq.; a claim asserted pursuant to the Nevada Securities Act, NRS 90.211, et seq.; a claim asserted pursuant to the Nevada Deceptive Trade Practices Act, NRS 598.0903, et seq.; a claim involving investment securities governed by NRS 104.8101, et seq.; or,

(c) Any dispute among business entities if the presiding judge of the business court docket determines that the case would benefit from enhanced case management.

(2) Actions in which the primary claim alleges personal injury or products liability, damage of a consumer by a business, wrongful termination of employment, or actions arising from a landlord-tenant relationship shall not be included in the business court docket.

(3) A party in an action assigned to another department of the court may request that the action be transferred to the business court docket. Upon filing of such a request, the clerk shall transfer the case file to the presiding judge of the business court docket who shall thereupon determine whether to assume jurisdiction of the case. The decision of the presiding judge of the business court docket to accept or decline jurisdiction of the action is final, and is not appealable nor reviewable upon any petition for extraordinary relief.

(4) The presiding judge of the business court docket may hear and decide all other civil and criminal actions assigned to such judge as any other general jurisdiction district court judge.

(5) The presiding judge of the business court docket shall be appointed by the chief judge. The judge so selected shall serve for a term of two years unless reappointed. Management of the business court docket shall be the highest case management priority of the presiding judge of the business court docket, who may request reassignment by the chief judge of civil or criminal cases, as necessary, consistent with this case management priority.

(6) Subject to approval by the presiding judge of the business court docket and the chief judge, an action filed in any other judicial district may be transferred to the business court docket of this district if all parties and the district judge assigned to the case consent.

(7) The presiding judge of the business court docket may transfer a business action to another judge of this district for

any and all proceedings, subject to the consent of the judge to whom the action is transferred.

(8) If the presiding judge of the business court docket is the subject of a peremptory challenge pursuant to S.C.R. 48.1, the clerk shall randomly reassign the case to another department of the court.

of the chief judge. Assignments shall be made as follows:

(a) Civil/Criminal division: judges as needed;

(b) Business court division: at least 2 judges;

(c) Civil only division: judges as needed;

(d) Drug Court/Overflow division: judges as needed;

(e) Overflow division: judges as needed.

Rule 1.61. Assignment of business matters. Unless otherwise provided in these rules, business matters must be divided evenly among those full-time civil judges deemed necessary to handle all business matters.

(a) "Business Matters" shall be deemed as follows:

(1) Disputes concerning the validity, control, operation, or governance of entities created under NRS Chapters 78-88, including shareholder derivative suits;

(2) Disputes concerning trademarks asserted under Nevada law, causes of action asserted pursuant to the Nevada Trade Secrets Acts, the Nevada Securities Act, involving investment securities described in Article 8 of the Nevada Uniform Commercial Code; or commodities described in NRS Chapter 90;

(3) Disputes between two business entities where the court determines that the case would benefit from enhanced case management.

(b) The following shall not be deemed business matters:

(1) Matters where the primary claim is an action for personal injury;

(Eighth Judicial District)

(2) An action based on products liability;

(3) An action brought by a consumer against a business;

(4) An action for wrongful termination of employment; or

(5) Landlord-tenant disputes shall not be deemed a business matter.

(c) Either party in a case may file a request in the pleadings that a case be assigned as a business matter. If the request is made by the plaintiff, the case will automatically be assigned to a full-time civil judge assigned to business matters. If the request is not made by the plaintiff, but is made by a defendant in its answer, the case shall be randomly reassigned to a business court judge for determination whether the case should be handled as a business court matter.

(d) The court shall decide whether a case is or is not a business matter and that decision shall not be appealable by any appeal nor reviewable upon any writ; any matters not deemed a business matter shall be randomly reassigned if it was originally assigned to the business court. If a case was remanded to the business court for determination of whether it would be handled as a business court matter and the business court deems it not to be a business court matter, that case will be remanded back to the department to which it was originally assigned.

Rule 1.62. Assignment of civil cases. Unless otherwise provided in these rules, all civil cases [must] not designated business matters shall be divided [evenly] among those trial judges assigned to the [civil] civil/criminal division and full-time civil division; additionally, any civil case which will take 4 weeks or more to try may be handled by a full-time civil

(Eighth Judicial District)

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Las Vegas SUN

November 21, 2000

District Court changes to start Jan. 1

By Cy Ryan
<cy@lasvegassun.com>
SUN CAPITAL BUREAU

CARSON CITY -- Starting Jan. 1, District Court judges in Clark County will have to speed up their decisions and a new court will be created to exclusively handle business disputes.

The Nevada Supreme Court, after verbally approving these changes in September, on Monday issued formal, written approval for the changes to go into effect.

"It is the goal of the court to achieve a final resolution in 80 percent of its civil cases within 24 months of filing and a final resolution in 95 percent of its cases within 36 months of the date of filing," the high court wrote.

It now takes about 33 months before the trial is held and a decision is issued.

The new rules allow eight months from the date the suit was filed for both sides to complete pretrial discovery. All pretrial motions must be heard and decided no later than 15 days before trial.

District judges, under the new rules, must issue a decision within 20 days after a case is submitted to them. In an extraordinarily complex case, the decision may take as long as 30 days.

There's possible disciplinary action against any judge who lets cases pile up because of inactivity, neglect or inadequate management. A case-flow committee, created to oversee the management of cases, must meet with the errant judge first to discuss the problem.

The case-flow committee, composed of the judges, can recommend to the chief judge a variety of options in an effort to get the judge current. The chief judge can require the judge, who is tardy, to attend proceedings with a judge who is up-to-date in the handling of his cases.

The chief justice could refuse the request from the errant judge to spend money not related to items that impact his productivity. The judge could be required to attend an educational program on docket management and develop a plan for improvement.

The chief judge could curtail the judge's time away from the court or send a letter of complaint to the Nevada Judicial Discipline Commission.

To avoid cases languishing after being filed, the court administrator will provide the judges with a list of all the civil cases that have not been served or answered within 180 days of the filing. The district judge, to whom the case has been assigned, can call the parties into court and dismiss the complaint.

The court administrator also is being required to submit other cases that have been pending for anywhere from two years to four years with little or no action. The judges can also notify the parties and call a hearing. The complaint can then be dismissed.

The rule change also calls for the creation of a Business Court division with at least two judges assigned to hear these cases.

These would involve shareholder suits, disputes over ownership of a company, trademarks, securities investments and trade secret cases.

The newly created Business Court would not handle personal injury cases, product liability suits, complaints by consumers against businesses, landlord-tenant disputes or wrongful firing cases.

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Questions or problems? Click here.

APPENDIX E

Proposed Changes to Title 7 of *Nevada Revised Statutes*

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June 29, 2000

Via E-mail to LCB's Offices: acombs@lcb.state.nv.us
Senator Mark James, Chairman
Legislative Commission's Subcommittee
To Encourage Corporations and Other
Business Entities to Organize and Conduct
Business in this State – SCR 19
Legislative Building
401 S. Carson Street
Carson City, Nevada

Re: *Suggested Changes to Statutes for 2001 Nevada Legislature*

Dear Senator James:

On June 23, 2000, I submitted to Allison Combs, Principal Research Analyst, specific suggested changes to the statutes Titled 7 of the NRS. These suggestions came from members of the Executive Committee, Business Law Section, State Bar of Nevada, law firms throughout the state, individual attorneys and others. Members of the Executive Committee, Business Law Section have reviewed and tentatively marked-up certain of these statutes. We have not yet completed the review of the statutes sent to Ms. Combs on June 23. We will continue our efforts this summer and provide additional detailed statutory changes for review by the Legislative Counsel Bureau.

I wish to outline in general terms some of the more prominent of the suggested statutory changes.

1. Delete From Title 7 Required Signatures of Two Officers of a Corporation.

Many statutes throughout Title 7 require that articles and certificates filed with the Secretary of State's office must be signed by the President or Vice-President and Secretary or Assistant Secretary of a corporation. The Executive Committee believes this is no longer necessary and proposes a global change deleting from any such statute these requirements and require only that a certificate be signed by an officer of the corporation.

2. Allowing Filed Articles and Certificates to Become Effective Up To 90 Days After

The Certificate is Filed.

Some statutes contain this already. Others do not. We proposed to make it uniform throughout Title 7.

3. Allowing Corporations to Withdraw Certificates and Articles if Actions Pursuant Thereto Have Not Occurred.

This statutory change would be included in NRS 78.1955, 78.209, 78.380 (amendments before issuing stock), 78.390 (amendment of articles after issuing stock).

4. Chapter 78 - New Section Allowing Reference to the Chapter as the Nevada General Corporation Law.

5. New Statutes Regarding Incorporators.

New sections would specify the powers of incorporators who may do whatever is necessary to perfect the organization of the corporation in the absence of directors named in the articles of incorporation. Incorporators may meet after the articles are filed to adopt bylaws and elect directors. The articles may provide that an incorporator's powers are to terminate upon filing the articles of incorporation.

6. NRS 78.125 - Specify All the Powers of the Board Which Can be Used by a Director Committee.

7. New Statute Specifically Providing the Procedure to Decrease the Number of Outstanding Shares of Stock Without Decreasing the Authorized Shares.

This new statute would allow this to be done by Board resolution and then stockholder approval.

8. NRS 78.175 - More Time to Cure Failure to File Annual List.

Corporations failing to file their annual list of officers and directors having until the first day of the second anniversary of the month in which the filing was required, in which to cure the default. Existing law gives them only nine (9) months to cure the default.

9. NRS 78.196 - Redeemed Shares Cannot Be Voted.

New subsection provides that shares called for redemption are not deemed outstanding for the purpose of voting or determining the number of votes required for corporate action.

10. NRS 78.220 - Remedy For Defaults In Subscription Agreements.

After default in a subscription agreement to purchase shares, corporation may claim all of the stock of the defaulting stockholder.

11. NRS 78.235 - Lost Share Certificates.

Board may replace lost share certificates with uncertified shares and may require the owner of the lost shares to post a bond in favor of the corporation.

12. NRS 78.310 - Directors meeting.

Unless provided in the articles or bylaws, the Board calls annual and special meetings and any two Directors may do so on behalf of the Board.

13. NRS 78.320 - Quorum; Voting.

Specify that articles or bylaws may provide for greater or lesser proportions for quorums and voting than a majority. Some practitioners find this necessary even though it does not change Nevada law from the way it has been for some years now. Corporate counsel from other jurisdictions need more specific language to be convinced Nevada law reads as it does.

14. New Section in Chapter 78 - Fiduciaries Voting Stock.

Clarifies the powers of those holding stock in a fiduciary capacity to vote shares and clarifies how shares owned in common by more than one person can be voted.

15. NRS 78.330 - Directors.

A Director holds his office after his terms expires until his successor is elected or until he is removed or resigns.

16. NRS 78.390 - Class Voting.

Class voting of stockholders on amendments required only if the proposed amendment would adversely change that classes' rights.

17. NRS 78.390 - Amendments to Articles.

Board may abandon an amendment approved by stockholders before the amendment becomes effective if the stockholder's resolution approving the amendment permits it.

18. NRS 78.565 - Approving Sale of Assets.

Articles may provide for a greater or lesser proportion of stockholders approving a sale, lease or exchange of all assets than a majority.

19. NRS 80.015 - Foreign Qualification Statute.

New language defines "deposits" as defined in NRS Chapter 657.

20. Domestication of Non-US Corporations.

This new procedure allows a non-US corporation to be domesticated in Nevada. This is a new procedure by which the corporation becomes a Nevada corporation without having to merge into a Nevada corporation.

21. New Statute Allowing Transfer or Continuance of Domestic Corporations Out of Nevada.

This new procedure allows a Nevada corporation to transfer to or domesticate in any non-US jurisdiction and either transport entirely out of Nevada or maintain its status both as a Nevada corporation and simultaneously as a foreign a corporation.

22. New Statutes Providing for Noneconomic Members of a Limited Liability Company

Many financial institutions now require that a borrower be a "bankruptcy remote" entity. This is often met by creating an LLC providing for special voting rights for a "member" appointed by the lending institution. This special member has no economic rights (cannot take profits or losses) but is there to vote against a bankruptcy petition, amendment to the articles of organization, etc. This "noneconomic member", if given only certain specific powers and no economic rights, may be disregarded by the Internal Revenue Service. Thus, an LLC with only one regular member and one "noneconomic member" is determined by the IRS to have only one member. This makes the entity disregarded for tax purposes just like a sole proprietorship.

A new definitional section defines "noneconomic member". A new subsection to another statute in Chapter 86 permits the articles of organization to provide for such a noneconomic member.

23. New Statute in NRS Chapter 86 - Allowing Corrections For Incorrect or Defective Documents.

24. NRS 86.343 - Distribution While Insolvent.

Member who receives a distribution while the LLC is insolvent and who knew it is liable to the LLC for the distribution. This new subsection puts a statute of limitations of three (3) years on such an action.

25. New Statute in NRS Chapter 86 - Allows for Classes of Members or Managers.

26. New Statute in NRS Chapter 86 - Allows Dissolution of an LLC By Order of a District Court.

27. NRS Chapter 86 - New Statutes Permitting Derivative Actions on Behalf of Members.

28. NRS 88A.030 - Last Sentence of the Definition of "Business Trust" Deleted.

The deleted sentence states that the term "business trust" does not include a corporation as defined in a US bankruptcy code statute. However, this is confusing as the bankruptcy code statute specifically includes a "business trust" as a corporation. Deleting the sentence deletes this circular reasoning.

29. NRS Chapter 92A - A New Procedure Called Conversions.

This new procedure allows a foreign or domestic corporation, limited liability company, limited partnership or general partnership to convert into one of those same other entities. This permits the conversion of one entity into another without the requirement of forming the new entity and merging into it. However, if any officer, director or stockholder of a corporation, any limited partner of a limited partnership or any member of an LLC would become liable for the debts and obligations of the resulting entity as a result of the conversion, the conversion must be specifically approved that person who assumes the unlimited liability. Otherwise, the conversion is approved by the normal vote of stockholders, partners, members, etc.

The statute also permits conversion with foreign entities.

The Executive Committee, Business Law Section has reviewed in detailed all those statutes up to and including the beginning of NRS Chapter 86. We will continue working on the remainder of the proposed statutes, and other suggestions as they come in, through the summer.

Very truly yours,

John P. Fowler

JPF/nah

APPENDIX F

Testimony of Mark G. Tratos
Regarding Intellectual Property Laws

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MEMORANDUM

TO: SENATOR MARK JAMES

cc: ALLISON COMBS, Principal Research Analyst

FROM: MARK G. TRATOS, ESQ. of Quirk & Tratos

DATE: MAY 26, 2000

RE: Proposed Changes in the Data- Intellectual Property, Entertainment & Internet Statutes

Further to the request of Allison Combs, Principal Research Analyst for the Legislative Counsel Bureau, we are providing a short statement of the types of legislative enactments that we believe should be considered in the 2001 legislative session, together with a brief statement as to the proposed beneficial effect that such enactment would bring about.

INTELLECTUAL PROPERTY

(1) **NEVADA'S TRADEMARK ACT:**
NRS 600.240 et. seq.

ADDITION OF A DILUTION PROVISION: Nevada's Trademark Act does not presently contain an anti-dilution provision. Such a provision would make it illegal to use a famous trademark on unrelated goods or services, thereby weakening or deleting the mark's value.

While Nevada has a small population, because of the prominence of many of its corporate businesses in the resort industry, many of its corporate names are famous. Names like Harrah's; MGM; Mirage; Harvey's; and the Golden Nugget are famous worldwide. An anti-dilution provision would prevent these names from being applied to

non-competing goods or products, thereby weakening the strength of the famous names. For example, there could not be "Harrah's hats" or a "Mirage car wash" without weakening the famous marks. Several other business-oriented jurisdictions have state anti-dilution laws. Because of the prominence of many of Nevada's companies, names and trademarks, and because of the tens of millions of dollars expended annually to promote those marks, Nevada's Trademark Act should be amended to include an anti-dilution provision to help protect those famous trademarks.

(2) **NEVADA'S TRADE SECRET ACT**
NRS 600(A)

NEVADA'S TRADE SECRET ACT SHOULD BE AMENDED TO SPECIFICALLY ADDRESS DISSEMINATION OF TRADE SECRETS VIA THE INTERNET.

New technology has made it possible that companies' valuable formulas, customer lists and other proprietary information can be lost when an individual disseminates such information over the internet. Once the information becomes available publicly, trade secret protection is presumed to be lost.

The proposed new legislation would allow Nevada courts to impose immediate injunctive relief ordering the removal of the information from the internet, and would create a presumption that if the removal was done pursuant to court order in a reasonable period, such trade secrets would not be lost.

Nevada's businesses sometimes spend hundreds of thousands, even millions of dollars, developing customer lists, suppliers lists, formulas, business methodologies and other proprietary information that they regard as secret, and which is beneficial to their business. Disgruntled employees, or employees moving from one employment to the next, sometimes access such information and attempt to use it to their benefit. While such uses are currently covered by Nevada's statute, the dissemination of such information over the internet presumably gives access to the general public for such information, rendering the information no longer a trade secret.

The new Act would recognize that the mere posting of the information over the internet would not necessarily invalidate the business advantage that the information provides to its owner, and if the owner took reasonable business steps to seek an injunction removing such information from the internet within a commercially reasonable time, that information should not be treated as lost to the owner and the business would still be entitled to treat such information as proprietary.

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(3) ELECTRONIC SIGNATURES:

AT PRESENT, NEVADA DOES NOT HAVE AN ELECTRONIC SIGNATURES ACT THAT WOULD ESTABLISH THE MEANS BY WHICH COURTS COULD RECOGNIZE COMMERCIAL TRANSACTIONS AND CONTRACTS THAT OCCUR ONLY ELECTRONICALLY.

An Electronic Signature Act would provide the legal framework upon which contracts and agreements entered only electronically could be legally enforced.

A number of states have adopted electronic signature or e-commerce contracting provisions to provide a specific statutory basis for legal enforcement.

(4) ANTI-SPAMMING ACT:

NEVADA AT THE PRESENT TIME HAS NO LAWS PREVENTING INDIVIDUALS FROM ELECTRONICALLY JAMMING OR CLOGGING A WEBSITE THROUGH THE USE OF UNSOLICITED E-MAILS OR SIMILAR CORRESPONDENCE. AN ANTI-SPAMMING STATUTE WOULD MAKE IT ILLEGAL FOR ENTITIES OR INDIVIDUALS TO USE THE INTERNET AS AN OFFENSIVE TOOL TO DISRUPT BUSINESS OPERATIONS THROUGH SENDING UNSOLICITED COMMUNICATIONS.

As commerce continues to lean ever-increasingly toward the internet, the disruption of business activities on the internet will potentially create significant injury or hardship to Nevada businesses who are affected by spamming. New legislation would make it illegal to disrupt the business activities of Nevada businesses, or interfere with the lives of individuals through various spamming techniques.

(5) NEVADA ELECTRONIC PRIVACY ACT:

THE ACT WOULD REQUIRE NEVADA-BASED INTERNET BUSINESSES, OR BUSINESSES THAT USE INTERNET SERVICE PROVIDERS LOCATED IN NEVADA THAT COLLECT PERSONAL INFORMATION ABOUT INTERNET USERS, TO PROMINENTLY POST A STATEMENT AS TO THEIR PRIVACY PRACTICES ON THEIR WEBSITE.

If individuals' personal data is being accumulated by a website, visitors to that website should be informed as to the privacy policy of the website, including what data or information is being gathered; the purpose for which the information is being gathered; and the persons, parties or entities to whom the information will be

distributed.

The Act would make it illegal to gather such information without first disclosing to prospective businesses that information is being collected, and the nature and purpose of its use.

ENTERTAINMENT LAW

(6) JUDICIAL APPROVAL OF MINORS' CONTRACTS:

AT PRESENT, NEVADA HAS NO BASIS FOR ALLOWING MINORS WHO PERFORM IN VARIOUS ENTERTAINMENT VENUES THROUGHOUT THE STATE, OR IN THE RECORDING, FILM OR TELEVISION INDUSTRY, TO HAVE THEIR CONTRACTS REVIEWED AND JUDICIALLY APPROVED.

A Judicial Approval of Minors Act would allow the District Courts to review a proposed engagement or contract with a minor, to approve the contract terms as being fair, reasonable and in the minor's best interest. If such court approval were obtained, the minor could not then later challenge the contract when they reach the age of majority. Such an act would be beneficial to both the minors and employers of the minors.

First, the minors could be assured that the contracts into which they were entering was reasonable and within normal industry standards.

Secondly, the minors could be assured that reasonable consideration had been given to labor conditions, hours of employment and related child labor law issues. The employers could be assured that the contract entered would be enforceable, even after the minor reached the age of majority, since it had been judicially reviewed and approved, and signed by the minor and the minor's parents or guardians.

Similar statutes exist in California and New York and provide an effective mechanism for ensuring both the welfare and safety of minors, and the integrity of contracts entered into with talented, young performers.

(7) SALES TAX ABATEMENT FOR FILM AND TELEVISION PRODUCTION PROJECTS:

NEVADA SHOULD ADOPT A SPECIFIC SALES TAX ABATEMENT PROVISION THAT WOULD ALLOW FILM AND TELEVISION COMPANIES WHO PURCHASE GOODS IN THE STATE OF NEVADA FOR USE IN FILM OR TELEVISION PRODUCTIONS TAKING PLACE IN THE STATE OF NEVADA, TO AVOID PAYING SALES TAX, PROVIDED THAT THE GOODS OR ITEMS REMAINED

IN THE STATE OF NEVADA FOR A SPECIFIC PERIOD OF TIME (FIVE YEARS OR MORE) AND ARE USED FOR FUTURE FILM OR TELEVISION PROJECTS, OR ARE DONATED TO SPECIFIC INSTITUTIONS THAT HELP DEVELOP THE FILM AND TELEVISION INDUSTRY INFRASTRUCTURE IN THE STATE OF NEVADA (SUCH AS UNLV OR NEVADA'S COMMUNITY COLLEGE SYSTEM).

Such a provision would help lower the production costs for film and television companies coming into the State of Nevada and help foster that fledgling industry as well as our institutions of higher learning that help teach and train individuals who are learning the industry.

To ensure that there is no loss of income to the state, the state could modify its current sales tax statute that exempts the imposition of sales tax on events that take place in venues of 2,700 seats or greater.

There are additional provisions and legislative enactments that might further be considered by the Legislative Counsel Bureau, but these specific statutory revisions seem to be the most urgent ones, and we would strongly recommend the Legislative Counsel Bureau's immediate efforts be directed at these specific items of legislation. Of course, or firm, as we have in the past, would be happy to assist in the drafting process or in providing supporting materials to augment the legislative drafting process.

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APPENDIX G

Uniform Electronic Transactions Act

Uniform Law Commissioners

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INTRODUCTIONS & ADOPTIONS *Of Uniform Acts*

> A Few Facts About the...

UNIFORM ELECTRONIC TRANSACTIONS ACT

PURPOSE:
The Uniform Electronic Transactions Act is designed to support the use of electronic commerce. The primary objective of this act is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.

ORIGIN:
Completed by the Uniform Law Commissioners in 1999.

APPROVED BY:
American Bar Association

ENDORSED BY:
American Council of Life Insurance
Equipment Leasing Association of America

STATE ADOPTIONS:

Arizona	Iowa	North Carolina
California	Kansas	Ohio
Delaware	Kentucky	Oklahoma
Florida	Maine	Pennsylvania
Hawaii	Maryland	Rhode Island
Idaho	Michigan	South Dakota
Indiana	Minnesota	Utah
	Nebraska	Virginia

2001 INTRODUCTIONS:

District of Columbia	New Jersey	US Virgin Islands
Montana	Oregon	

INTRODUCTIONS & ADOPTIONS
Of Uniform Acts

> Why States Should Adopt ...

THE UNIFORM ELECTRONIC TRANSACTIONS ACT

The Uniform Electronic Transactions Act (UETA) allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce.

The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.

There are many reasons why every state should adopt the Uniform Electronic Transactions Act.

- UETA defines and validates electronic signatures. An electronic signature is defined as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."
- UETA removes writing and signature requirements which create barriers to electronic transactions.
- UETA insures that contracts and transactions are not denied enforcement because electronic media are used.
- UETA insures that courts accept electronic records into evidence.
- UETA protects against errors by providing appropriate standards for the use of technology to assure party identification.
- UETA avoids having the selection of medium (paper vs. electronic) govern the outcome of any disputes or disagreements, and it assures that parties have the freedom to select the media for their transactions by agreement.
- UETA authorizes state governmental entities to create, communicate, receive and store records electronically, and encourages state governmental entities to move to electronic media.

SUMMARY OF THE UNIFORM ELECTRONIC TRANSACTIONS ACT

Prepared by the Uniform Law Commissioners and
Available on their web site (www.nccusl.org)

The Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA) in 1999. It is the first comprehensive effort to prepare state law for the electronic commerce era. Many states have already adopted legislation pertaining to such matters as digital signatures, but UETA represents the first national effort at providing some uniform rules to govern transactions in electronic commerce that should serve in every state. Although related to the Uniform Commercial Code, the rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction" that is not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A. A "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs. Much is excluded in this definition, including required notices, disclosures or communications by courts and governmental agencies.

UETA applies only to transactions in which each party has agreed by some means to conduct them by electronically. Agreement is essential. Nobody is forced to conduct to electronic transactions. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply only in the event the terms of an agreement do not govern.

Electronic commerce means, of course, persons doing business with other persons with computers and telephone or television cable lines. The Internet is the great marketplace for these kinds of transactions; a marketplace developing almost daily in 1999 (and presumably into the foreseeable future). The outlines and boundaries for this marketplace are still unknown and developments are not predictable. It is not possible to predict with any certainty how new law should develop to serve that marketplace or any other electronic marketplace that might develop in the future.

However, a few things are known about the existing electronic marketplace and there are some assumptions about the law that governs transactions within it that can be made with reasonable certainty in 1999, and that will continue to be reasonably certain into the future. Electronic transactions are conducted by communicating digitized information from one person to another. That digitized information can be communicated and stored without the use of paper, and the basic language of electronic transactions is fully and inherently paperless. In fact, relying on paper for the memorialization of transactions and upon manual signatures for verifying them are most likely to impede electronic transactions, adding to their costs. And there is no benefit to any party to an electronic transaction, with very few exceptions, in requiring that they be memorialized on paper with signatures that are manual. The need to expand requirements in the law for writings and manual signatures so that electronic records

and electronic signatures will satisfy those requirements, is the one thing that is reasonably certain with respect to electronic transactions.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective--that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

The basic rules are in Section 7 of UETA. The most fundamental rule in Section 7 provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." The second most fundamental rule says that "a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation." The third most fundamental rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all of the other rules in UETA serve the fundamental principles set out in Section 7, and tend to answer basic legal questions about the use of electronic records and signatures. Thus, Section 15 determines when information is legally sent or delivered in electronic form. It establishes when electronic delivery occurs--when an electronic record capable of retention by the recipient is legally sent and received. The traditional and statutory rules that govern mail delivery of the paper memorializing a transaction can't be applied to electronic transactions. Electronic rules have to be devised, and UETA provides the rule.

Another rule that supports the general validity of electronic records and signatures in transactions is the rule on attribution in Section 9. Electronic transactions are mostly faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown. In the faceless environment of electronic transactions, the obvious difficulties of identification and attribution must be overcome. UETA, Section 9 gives guidance in that endeavor.

Much has been much written about digital signatures in electronic commerce. What is a digital signature? It is really a method of encryption that utilizes specific technology. In the faceless environment of the electronic marketplace and particularly the Internet, such technologies are highly useful.

It is not wholly certain what the legal impact of these technologies should be. For that reason UETA may not be characterized as a digital signature statute. It does facilitate the use of digital signatures and other security procedures in rules such as the one in Section 9 on attribution. Section 10 provides some rules on errors and changes in messages. It favors the

party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content of the message.

But nothing in UETA requires the use of a digital signature or any security procedure. It is technologically neutral. Persons can use the most up-to-date digital signature technology, or less sophisticated security procedures such as passwords or pin numbers. Whatever parties to transactions use for attribution or assuring message integrity may be offered in evidence if there is a dispute.

UETA is procedural, not substantive. It does not require anybody to use electronic transactions or to rely upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply as they have always applied.

There are three provisions in UETA that need special attention, and that are not directly in support of the basic rules in Section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, except for those under Articles 2 and 2A, the Uniform Computer Information Transactions Act, laws governing estates and trusts, and any other specific laws that a state wants to exempt from the rules applied in UETA. Some writing and signature requirements in state law do not impact the enforceability of transactions, and have objectives that should not be affected by adoption of a statute like UETA. The limitation of UETA to agreed electronic transactions will eliminate any conflict with other writing requirements for the most part. However, there is some room for jurisdiction-specific tailoring of UETA permitted in each state, to assure no conflict. Exclusions should be carefully and conservatively selected. Most law relating to contracts and transactions between persons will serve the public better if electronic records and signatures are recognized.

Second, UETA provides for "transferable records" in Section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form. Notes and documents are negotiable instruments. The quality of negotiation relies upon the note or document as the single, unique token of the obligations and rights embodied in the note or document. Maintaining that quality as a unique token for electronic records is the subject of Section 16. A transferable record exists when there is a single authoritative copy of that record existing and unalterable in the "control" of a person. A person in "control" is a "holder" for the purposes of transferring or negotiating that record under the Uniform Commercial Code. Section 16 is essentially a supplement to the Uniform Commercial Code, until its relevant articles can be fully amended or revised to accommodate electronic instruments.

Third, UETA clearly validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. They operate automatically, without immediate human supervision, though they are certainly not autonomous agents. They are a kind of tool that parties use to communicate. Section 14 provides that a person may form a contract by using an electronic agent. That means that the

principal, which is the person or entity which provides the program to do business, is bound by the contract that its agent makes.

When somebody buys something on the Internet, therefore, that person will be assured that the agreement is valid, even though the transaction is conducted automatically by a computer that solicits orders and payment information. Did anyone really think that every order on the Internet involves a direct communication with a human being?

Three sections of UETA deal with electronic records that state governmental agencies create and retain. Section 17 allows a state to designate one agency or officer as the authority on creation and retention of governmental records. Section 18 allows a state to designate which agency or officer regulates the communication of electronic records and use of electronic signatures between agencies and other persons. Section 19 allows a state to designate an agency or officer to set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures. All three sections are optional sections, there for the state that needs them, but not mandatory for all states in order to implement uniformity. These are very important provisions, however, because they provide a state with some root law for organizing the electronic business of the state. They should be given very serious consideration in every state.

It is not possible to cover every aspect of UETA in a short summary. This summary highlights some important aspects. The adoption of these rules will be a boon to electronic commerce. They will not artificially skew any market or make any substantive law relating to contracts any different from that governing transactions memorialized on paper. Every state should adopt them as quickly as possible.

APPENDIX H

Nevada Entities Involved in Economic Development

OVERVIEW OF STATUTORY ECONOMIC DEVELOPMENT AGENCIES IN NEVADA

Agency (NRS citation)	Structure	Overview of Statutory Responsibilities
Nevada's Commission on Economic Development *Nevada Revised Statutes* (NRS) 231.030 through 231.141	**Members:** Lieutenant Governor (Chairman), and six additional members appointed by the Governor. Staff includes an Executive Director appointed by the Governor. **Divisions:** The Commission consists of two divisions: the Division of Economic Development and the Division of Motion Pictures.	**Research and Dissemination of Information** ❖ Investigate and study conditions affecting Nevada business, industry, and commerce, and engage in technical studies, scientific investigations, statistical research, and educational activities necessary or useful for the proper execution of the function of the division in promoting and developing Nevada business, industry, and commerce, both within and outside the state. ❖ Conduct or encourage research designed to further new and more extensive uses of the natural and other resources of the state and designed to develop new products and industrial processes. ❖ Serve as a center of public information for the State of Nevada by answering general inquiries concerning the resources and economic, residential, and recreational advantages of this state and by furnishing information and data on these and related subjects. ❖ Prepare and publish pamphlets and other descriptive material designed to promote industrial development in Nevada. ❖ Plan and develop an effective service for business information, both for the direct assistance of business and industry of the state, and for the encouragement of business and industry outside the state to use economic facilities within the state, including readily accessible information on state and local taxes, local zoning regulations and environmental standards, the availability and cost of real estate, labor, energy, transportation, and occupational education and related subjects. **Other Duties and Responsibilities** ❖ Develop a state plan for industrial development and diversification. ❖ Promote, encourage, and aid the development of commercial, industrial, agricultural, mining, and other vital economic interests. ❖ Identify sources of financing and assist businesses and industries that wish to locate in Nevada in obtaining financing. ❖ Provide and administer grants of money to political subdivisions of the state and to local or regional organizations for economic development to assist them in promoting the advantages of their communities and in recruiting businesses to relocate. ❖ Encourage and assist state, county, and city agencies in planning and preparing projects for economic or industrial development and financing those projects with revenue bonds. ❖ Coordinate and assist the activities of counties, cities, local, and regional organizations for economic development and fair and recreation boards in the state that affect industrial development. ❖ Arrange by cooperative agreements with local governments to serve as the single agency in the state where relocating or expanding businesses may obtain all required permits. ❖ Promote close cooperation between public agencies and private persons who have an interest in industrial development and diversification. ❖ Organize and coordinate the activities of a group of volunteers that will aggressively select and recruit businesses and industries, especially small industries, to locate their offices and facilities in Nevada. ❖ To the extent of legislative appropriations, grant money to a postsecondary educational institution to develop a program for occupational education that is designed to teach skills in a short period to persons who are needed for employment by new or existing businesses.

OVERVIEW OF STATUTORY ECONOMIC DEVELOPMENT AGENCIES IN NEVADA

Agency (NRS citation)	Structure	Overview of Statutory Responsibilities
Interagency Committee for Coordinating Tourism and Economic Development (NRS 231.015)	Members: Governor (Chairman), Lieutenant Governor (Vice-chairman), the Executive Director of the Commission on Tourism, the Executive Director of the Commission on Economic Development, and such other members as the Governor may from time to time appoint.	**Purposes:** ❖ Identify the strengths and weaknesses in state and local governmental agencies that enhance or diminish the possibilities of tourism and economic development in Nevada. ❖ Foster coordination and cooperation among state and local governmental agencies, and enlist the cooperation and assistance of federal agencies, in carrying out the policies and programs of the Commission on Tourism and the Commission on Economic Development. ❖ Formulate cooperative agreements between the Commission on Tourism or the Commission on Economic Development, and state and other public agencies pursuant to the Interlocal Cooperation Act, so that each of those commissions may receive applications from and, as appropriate, give governmental approval for necessary permits and licenses to persons who wish to promote tourism, develop industry, or produce motion pictures in Nevada. (The Committee meets at the call of the Governor.)
Center for Business Advocacy and Service (NRS 232.522)	Created within the Office of Business Finance and Planning at the option of the Director of the Department of Business and Industry	**Purposes:** ❖ To assist small businesses in obtaining information about financing and other basic resources that are necessary for success. ❖ In cooperation with the Executive Director of the Commission on Economic Development, to increase public awareness of the importance of developing manufacturing as an industry and to assist in identifying and encouraging public support of businesses and industries that manufacture goods in this state. ❖ To serve as an advocate for small businesses, subject to the supervision of the Director or his representative, both within and outside the Department of Business and Industry. ❖ To assist the Office of Business Finance and Planning in establishing an information and referral service within the Department of Business and Industry that is responsive to the inquiries of business and industry, which are directed to the department or any entity within the department. ❖ In cooperation with the Executive Director of the Commission on Economic Development, to advise the Director and the Office of Business Finance and Planning in developing and improving programs of the Department of Business and Industry to serve more effectively and support the growth, development, and diversification of business and industry in Nevada.

OVERVIEW OF STATUTORY ECONOMIC DEVELOPMENT AGENCIES IN NEVADA

Agency (NRS citation)	Structure	Overview of Statutory Responsibilities
Office of Science, Engineering, and Technology (NRS 396.798 through 396.7988)	**Overview:** Located statutorily within the University and Community College System of Nevada (UCCSN). This Office was originally created under the auspices of the Governor's Office, but it was transferred in 1997 to the UCCSN. The Governor is responsible for appointing the Director of the Office who must meet statutory qualifications. According to testimony during the S.C.R. 19 interim study, the annual budget is approximately $200,000. Currently, the state ***does not*** pay the salary of the Director, who is "on loan" from Bechtel Corporation.	**The Director of the Office:** ❖ Serves as the state science, engineering, and technology adviser to the Governor, Legislature, various agencies of this state, and businesses and industries located in Nevada. ❖ May serve as a member of the Nevada Technology Council. ❖ Works in coordination with the commission on economic development to establish criteria and specific goals for economic development and diversification in this state in the areas of science, engineering, and technology. ❖ Identifies and recommends policies: ➢ To ensure that projects and resources located in this state relating to science, engineering, and technology are managed and coordinated to provide the greatest benefit to residents of this state. ➢ Related to alternative uses of the Nevada Test Site that most effectively utilize the technology that is available at the site. ➢ To establish programs that develop and enhance the scientific and mathematical skills of pupils in this state. ➢ To coordinate the activities of the various agencies of this state to bring advanced technological programs that are federally funded or operated into this state. ➢ To provide technical assistance to the Commission on Economic Development and local authorities to bring advanced technology into Nevada. ➢ To provide advice and assistance to businesses and industries located in Nevada. ❖ Shall not overlap or duplicate any work performed by the state climatologist, state engineer, state health officer, or the executive director of the agency for nuclear projects.

APPENDIX I

"Unlocking Nevada's Future:
A State Strategy for Economic Diversification"

MARK A. JAMES
SENATOR
Clark No. 8

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July 14, 2000

The Honorable Lorraine T. Hunt, Chairman
Nevada Commission on Economic Development
101 North Carson Street, Suite 2
Carson City, Nevada 89701-4786

Dear Lieutenant Governor Hunt:

As Chairman of the Nevada Legislative Commission's Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in Nevada (S.C.R. 19), I am writing to relay the Subcommittee's support for the Nevada Commission on Economic Development's goals that were outlined by Bob Shriver, Executive Director of the Commission, during the course of the interim study. These goals include the following:

1. Develop and implement a state plan for economic development and diversification that targets marketing; the growth of the film industry; the role of technology in the economy; and the retention and expansion of existing businesses; and

2. Work closely with the Office of Science, Engineering and Technology and the University and Community College System of Nevada to create a strategic plan for the economic development of this State.

On June 30, 2000, the Subcommittee voted unanimously to send a letter to you in support of these efforts, which were identified as important components of any plan to encourage businesses to locate in Nevada. The Subcommittee also voted to include a statement in its final report to the 2001 Legislature encouraging the consideration of any recommendations from the Battelle Memorial Institute, which is currently examining the economic strengths and weaknesses of the entire State to establish a plan for Nevada's economic future.

Finally, I would like to thank you and your staff for the assistance and testimony provided during the course of the S.C.R. 19 Interim Study. If the Subcommittee's legislative staff or I can be of any assistance to you in the future, please do not hesitate to contact me.

Very truly yours,

Mark A. James
Nevada State Senator

c: Mr. Bob Shriver
Members of the S.C.R. 19 Subcommittee

Unlocking Nevada's Future

A state strategy for economic diversification

Unlocking Nevada's Future

A state strategy for economic diversification

- Business Attraction
- Business Expansion & Retention

Diversification Components

- Innovation and Technology
- Workforce Development
- Venture Capital
- Business Financing/Capital Availability

Business Environment

- Tax Structure and Policies
- Regulation and Government Responsiveness

Economic Diversification

The state values economic diversification for its potential to improve and maintain the economic well being of Nevada's citizens. Economic diversification seeks to bring high-wage primary jobs to Nevada by attracting companies and subsidiaries, corporate start-ups and investment, as well as by expanding and retaining Nevada companies currently offering primary jobs in the Nevada economy. The state also recognizes the specific goals and needs of its many communities in relation to economic diversification and the creation of wealth and prosperity, and thus views the primary role of state government to be the continual fostering of a healthy climate for business and entrepreneurship.

State Strategy Overview

The state strategy for economic diversification has been developed to provide a simple, straightforward discussion of areas critical to successful diversification in Nevada.

This document describes the involvement of various state agencies and commissions in the advancement of economic diversification in Nevada. It does not attempt to replace detailed strategic plans at the division, department or program level, nor does it replace the plans of local development authorities or communities. State partners and local/private partners have been listed in an attempt to portray the broad group involved in economic diversification. The partner list, however, is not intended to be complete and we apologize in advance for any group that is not currently listed.

While providing an instructive overview of the overall state-level objectives for economic diversification, the plan is intended to be very action-oriented in nature. The partners and guiding principles identified in each section will likely change only occasionally, however, the action items are meant to be accomplished. One hallmark of the new economy is rapid change, and a measure of success is the ability to move quickly and adapt readily. To that end, state partners will meet quarterly to assess progress on action items and other plan elements. This assessment will not only encourage action item completion, but also facilitate flexibility in the strategy in order to allow changes and adjustments necessary to address the rapidly changing business environment.

Action Item Progress Measurement

Evaluate quarterly each action item in Unlocking Nevada's Future: A state strategy for economic diversification and determine the following:

❑ Accomplished ❑ Recommend Action Item Removal

❑ Ongoing _____ % Achieved Toward Accomplishment

Specify Barriers/Solutions to Accomplishment:

❑ Recommend Addition/Adjustment of Action Item(s)

Specify Addition/Adjustment:

Business Attraction

State Lead: Nevada Commission on Economic Development (NCED)

Local Lead: *Development Authorities*

State Partners:
Office of the Secretary of State
Department of Business & Industry
Department of Employment, Training & Rehabilitation
Department of Education
University and Community College System of Nevada
Nevada Commission on Tourism
State Regulatory Agencies

Other Partners:
Local Governments
Utility Companies
Telecommunications Companies
Development Groups and Alliances
Chambers of Commerce

Objective: **Position Nevada globally as an attractive location for company or corporate headquarters relocation, company incorporation, subsidiary location, foreign investment or a corporate start-up.**

Objective: **Operate a state-level prospect development effort, with NCED serving as the "front door" for companies interested in bringing primary jobs to Nevada.**

- Identify the positive state features that best establish a leading position for Nevada in relation to business attraction; work to maintain, or improve when possible, these positive attributes.
- Develop the research and data necessary to support marketing, public information and recruitment efforts.
- Create a marketing strategy that links business and Nevada in the minds of target audiences, creates interest and generates qualified leads; emphasize contacts for further assistance and information; utilize state agency initiatives and program success in business attraction efforts.
- Offer a program of tax deferrals and abatements as an incentive to qualified relocating companies bringing high-paying primary jobs to Nevada.

Business Attraction, *continued*

- Serve as the "front door" for interested businesses by providing requested information, coordinating contact with other state agencies as needed, and initiating specialized handling of the business prospect by local development authorities; maintain a lead tracking program based on quality, rather than quantity, to provide to local development authorities.

- Distribute grants from the state level to local development authorities for economic diversification activities, including business attraction.

- Utilize Nevada companies and public/private representatives as ambassadors for diversification.

- Identify issues that impact business attraction and economic diversification; analyze state involvement and potential course of action.

- Encourage local entities to establish target industry analysis, strictly targeted industry marketing programs, as well as "smart growth" and other area development programs; recognize the unique objectives of each local area and create a broad program of "Nevada strengths" at the state level under which these local efforts will flourish.

Action Items:

1. Determine the state's marketing priorities and develop a results-driven strategic marketing program; prepare detailed cost-benefit information and analyze long-term marketing program needs.

2. Identify messages and prepare the materials necessary for business attraction efforts; update economic development web site content and links to both state and local public and private partners; coordinate business outreach efforts among state agencies.

3. Partner with local development authorities and private economic development entities to coordinate and extend marketing efforts; coordinate special events that recognize relocated companies.

4. Prioritize the primary and secondary research programs necessary to support recruitment and marketing efforts, as well as to satisfy requests for general information.

5. Further refine electronic delivery of qualified leads to local development authorities.

6. Develop a program of regular communication with in-state business and opinion leaders to provide them the current message focus and information necessary to be diversification "ambassadors" when appropriate during routine business dealings and business travel.

Business Expansion and Retention

State Lead:	Nevada Commission on Economic Development (NCED)
Local Lead:	*Development Authorities*
State Partners:	Department of Business & Industry Department of Employment, Training & Rehabilitation Nevada Commission on Tourism Department of Education University and Community College System of Nevada State Regulatory Agencies
Other Partners:	*Local Governments* *Loan Programs* *Business Assistance Programs, i.e.: MAP, SBDC* *Chambers of Commerce* *Federal Agencies*
Objective:	**Establish the expansion of current Nevada companies as a significant aspect of successful state economic diversification.**
Objective:	**Provide various state programs that help Nevada companies achieve the success necessary to expand operations.**

- Work closely with local development authorities on expansion and retention efforts; assist in identifying and addressing state-level barriers to the expansion and retention of companies.
- Maintain an outreach program to contact existing and recently relocated primary companies to provide business resource information, as well as specifics on state tax incentives and workforce training funds for qualified expansion companies.
- Provide community development training and counsel to rural development authorities and local officials while focusing primary rural efforts on expansion and retention, rather than just industry attraction; emphasize a "homegrown" approach to diversification.
- Distribute grants from the state level to local development authorities for economic diversification activities that include business expansion and retention.

Business Expansion, *continued*

- Emphasize to local development authorities that expansion and retention efforts are a significant part of the state economic development grant program; encourage business expansion and retention surveys and programs at the local level.

Action Items:

1. Facilitate this year's preparation of a separate plan for rural Nevada - "Building Prosperity: An Action Plan for Rural Nevada" to identify and coordinate the specific priorities and activities of the state in rural Nevada; proceed on identified action items once the rural plan is adopted in late 2000.

2. Develop and coordinate the resource directories and program materials necessary to carry out a business expansion and retention outreach program; provide cross-training for all state and local government and private sector partners to facilitate the most knowledgeable "resource" team possible for Nevada businesses.

3. Establish a regular program of contact with recently relocated companies to share information on state programs and partnerships in areas such as global trade and export assistance, procurement, financial assistance, technical assistance, employment and training, and other areas such as Made in Nevada; also to establish contact and solicit information on company concerns and perceived and actual barriers to the expansion and retention of business in Nevada.

4. Create a communication plan for providing existing Nevada companies with general information on business resources noted above, as well as with information on state tax incentive programs and workforce training funds for qualified expansion companies; coordinate events and public recognition for Nevada companies that complete a successful expansion; provide information on state conferences and seminars that provide educational programming for businesses.

5. Seek a legislative change to the statute addressing economic development grants in order to formalize expansion and retention programs as an important component in a successful application for, and compliance with, the requirements for an economic development grant.

6. Establish a program that offers Nevada companies the opportunity to expand their markets and market share by participating in state marketing activities such as industry-specific trade shows and related advertising efforts.

Innovation and Technology

State Lead: Nevada Commission on Economic Development (NCED)

State Partners: Office of Science, Engineering and Technology in NCED
University and Community College System of Nevada
Desert Research Institute

Other Partners: *Development Authorities*
Local Governments
Nevada Technology Council
Tech Alliance for New Nevada
Nevada Alliance for Defense, Energy & Business
NTS Development Corporation
Corporation for Solar Technology and Renewable Resources
Nevada Sustainable Energy Council

Objective: **Provide the business environment and support services necessary to facilitate the attraction and retention of advanced technology companies and R&D firms.**

Objective: **Maintain a coordinated focus on programs that develop the scientists, engineers, technicians and managers needed in Nevada by advanced technology companies and R&D firms.**

- Contract independent expertise to develop a Nevada technology strategy to guide state and UCCSN advanced technology policies and priorities.
- Guide the development of effective public policies for the attraction, retention and expansion of advanced technology companies and R&D firms; provide Nevada staff support for the Western Governors' Association Western High Technology Council.
- Participate in efforts to develop venture/risk capital and other financing options for advanced technology companies and R&D firms.
- Identify opportunities for advanced technology companies to participate with the university system in federally-sponsored research and development.
- Encourage the private commercialization of research and development breakthroughs; identify incubators and research parks available for relocating or expanding R&D firms and advanced technology companies.
- Facilitate communication of advanced technology and R&D workforce requirements to educators.

Innovation and Technology, *continued*

Action Items:

1. Identify funding and initiate a study of technology in Nevada together with development of a state strategy; proceed on identified action items once technology strategy is adopted.

2. Research technology statutes, plans, policies, incentives and spending in other states and jurisdictions and maintain an updated database of this information.

3. Maintain a resource database of Nevada's advanced technology companies and R&D firms; also maintain and regularly update a database of related statistics.

4. Establish channels for communicating advanced technology workforce requirements to educators; develop opportunities for exchange of information and ideas between educators and technology-driven industries to improve the business relevance of curriculum.

5. Explore creation of an Innovative Technology Competitive Fund to help secure federal research and development projects to Nevada by allowing the leveraging of federal and private sector research and development dollars that increasingly require state matching funds.

6. Encourage and help facilitate the involvement of advanced technology firms in math and science instruction at public schools.

7. Investigate possible funding sources for a marketing campaign specifically focused on the R&D and advanced technology sectors.

Workforce Development

State Lead: Department of Employment, Training and Rehabilitation (DETR)

State Partners:
Governor's Workforce Investment Board Members
Department of Education
University and Community College System of Nevada
Nevada Commission on Economic Development
Office of the Treasurer
Department of Human Resources

Other Partners:
Employers
Council on Academic Standards
School-to-Careers Partnership
Industry Associations
Job and Apprenticeship Partnerships and Programs
School Districts
Labor Unions
Local Workforce Boards and Local Elected Officials
Distance Education Programs
Chambers of Commerce

Objective: **Support Nevada's strategic five-year State Workforce Investment Plan prepared by DETR and the Governor's Workforce Investment Board.**

Objective: **Help match educational offerings with the workforce training needs of existing and expanding Nevada companies, as well as those companies relocating to Nevada.**

Objective: **Provide graduating seniors with affordable access to community college and university programs, as well as distance learning opportunities.**

- Consolidate and streamline workforce development services under the State Workforce Investment Plan.

- Provide funding to qualified relocating and expanding companies for employee skills training and workforce development through the state's Train Employees Now (TEN) program; leverage Claimant Employment Program (CEP) and DETR training monies; continue the development of training partnerships with the community college system.

Workforce Development, *continued*

- Encourage workforce needs assessments at the local level; establish use of these findings by the University and Community College System of Nevada and state public education officials in policy and curriculum development.

- Promote the Millennium Scholarship program to maximize student access to a post-secondary education as a critical aspect of workforce development.

- Support distance learning as a means to develop technology and management skills among rural and/or working professionals.

Action Items:

1. Implement the strategic five-year State Workforce Investment Plan, including the establishment of Local Workforce Investment Boards and one-stop service delivery; market the program to employers and job seekers.

2. Investigate expansion of the Train Employees Now (TEN) program; refine the criteria for employer-based training by community colleges.

3. Use the Workforce Education Team at the Department of Education, along with the Employment Statistics and Employer Support committees of the Workforce Investment Board, to both involve the business community and to collect and transmit workforce needs assessments to secondary and post-secondary education officials.

4. Proceed on identified workforce action items related to technology, such as graduate retention, once the technology strategy for Nevada (referenced in Innovation and Technology) is completed and adopted.

5. Cross-promote the Millennium Scholarship program through several agencies, with the Office of the Treasurer as the lead, to encourage program use by Nevada youth.

6. Identify, together with the Workforce Education Team, distance learning program needs based in part on workforce assessments.

Venture Capital

State Lead: Nevada Commission on Economic Development (NCED)

State Partners: Office of Science, Engineering and Technology in NCED
Office of the Secretary of State

Other Partners: *Nevada Development Capital Corporation*
Technology Alliances
Development Authorities
Small Business Development Center
SBIR Outreach Program

Objective: **Identify and evaluate existing venture capital sources.**

Objective: **Establish innovative programs to develop new sources of venture capital for Nevada entrepreneurs.**

- Explore barriers to capital investment in current state law, regulations and service practices and work to eliminate these barriers.
- Encourage and help facilitate the growth of Nevada "angel networks" to provide entrepreneurs with an additional source of venture capital.
- Participate in evaluating and securing federal program assistance for companies needing early-stage research and development and/or technology transfer capital.
- Centralize and communicate information on available public and private sources of venture capital.

Action Items:

1. Provide executive branch participation on the Legislative Commission's Subcommittee to Study Methods to Encourage Corporations and Other Business Entities to Organize and Conduct Business in this State (created by SCR 19) through the Nevada Commission on Economic Development and the Office of the Secretary of State. The subcommittee is evaluating and recommending legislative proposals in regard to venture capital, in addition to other related areas.

Venture Capital, *continued*

2. Create venture capital forums to bring investors, investment bankers and traditional venture capitalists together with candidate companies.

3. Facilitate the further growth and creation of "angel" networks of wealthy private and corporate investors through information gathered both independently and through venture capital forums; encourage wealthy individuals to call Nevada home.

4. Maintain a resource database of available sources of venture capital; in addition, maintain a database of opportunities for investment in technology firms and other companies based or desiring to be based in Nevada; communicate this information as required.

5. Explore the siting of investment banking origination offices in Reno and Las Vegas.

6. Implement a strategic outreach plan to increase the number of successful Nevada firms receiving SBIR and other federal competitive early-stage research and development and/or technology transfer capital.

Business Financing & Capital Availability

State Co-Leads:	Department of Business and Industry (B&I) Nevada Commission on Economic Development (NCED)
State Partner:	Department of Agriculture
Other Partners:	*Small Business Administration* *Local Governments* *Small Business Development Centers* *Nevada MicroEnterprise Initiative* *Southern Nevada Enterprise Community Loan Program* *Certified Development Corporations*
Objective:	**Expand traditional funding sources to fill financing gaps in Nevada's business sector.**
Objective:	**Serve as a resource for information on business financing.**
Objective:	**Maintain high quality state programs that are now part of the available business financing mix.**

- Lead discussions with executives of financial institutions on business financing needs in Nevada and the merits of lending to existing and relocating businesses; include a focus on rural Nevada.
- Encourage institutional investors, such as the Public Employees Retirement System, to consider appropriate Nevada businesses.
- Encourage and recognize innovation, achievement and collaboration in state level loan and Community Development Block Grant programs.
- Centralize information on available sources of business financing and capital.
- Work with counties, development authorities, cities and other business development and economic diversification entities to provide financing information to businesses.
- Participate at the state level in business financing through innovative and sound management of the Community Business Resource Center's loan program, the Nevada Revolving Loan Fund, the Community Development Block Grant program and the Junior Agricultural Loan Program.

Business Financing, *continued*

- Maintain the Small Business Roundtable as a venue for discussing and addressing the business and financing needs of small businesses, particularly in rural Nevada.

- Maximize awareness of the Industrial Development Revenue Bond (IDRB) program.

Action Items:

1. Set a regular schedule of meetings with financial institutions in Nevada to discuss business financing and lending, as well as with other institutional investors such as executives from the Public Employees' Retirement System (PERS).

2. Regularly update resource database with information on business financing and capital. Include information on the B&I and NCED web sites, as well as in the business resource directory and its accompanying rural edition.

3. Maintain communication with counties and cities; use creation of a business resource directory as an opportunity to cross-train all entities involved in business development and economic diversification on available business financing and capital programs.

4. Support the regular meetings of the Small Business Roundtable through involvement by all applicable state agencies.

5. Promote the Industrial Development Revenue Bond (IDRB) Program as appropriate.

Tax Structure and Policies

State Lead: Office of the Governor

State Partners: Department of Administration
Department of Taxation
Nevada Commission on Economic Development
Department of Business & Industry

Local Partners: *Chambers of Commerce*
Development Authorities
Nevada Taxpayers Association
Local Governments/Other Taxing Entities
Nevada Association of Counties
Nevada League of Cities

Objective: **Develop a tax structure that is equitable and meets revenue requirements of the state.**

Objective: **Support business attraction and expansion via tax policy.**

- Conduct a thorough examination of state revenue requirements and the state tax structure as the basis for policy, regulatory and legislative proposals.
- Examine state program efficiency and privatization in relation to service delivery and as alternatives to increased taxes.
- Analyze effectiveness of deferral and abatement incentive programs as tools for attracting and expanding businesses and creating high-wage primary jobs.

Action Items:

1. Establish Governor's Steering Committee to Conduct a Fundamental Review of State Government.
2. Conduct a Fiscal Forum as part of a state tax structure review.
3. Direct the Nevada Commission on Economic Development to work with the local development authorities and the Department of Taxation, as well as other interested organizations, to perform a cost-benefit analysis of current state business incentives prior to each legislative session.

Regulation and Government Responsiveness

State Lead: Office of the Governor

State Partners: Executive Branch Agencies, Boards and Commissions

Objective: **Establish state government responsiveness to customer/ business needs.**

Objective: **Protect the public while providing a fair and understandable regulatory environment.**

- Communicate to all state agencies that their role in economic diversification is maintenance of a fair, flexible and solution-oriented regulatory environment, along with an attitude of responsiveness to both customers and fellow state agencies.
- Review existing agency regulations for both necessity and simplicity; eliminate multiple or duplicative regulations, practices and fees.
- Coordinate state agencies' permitting processes and policies with each other and with local government regulatory efforts.
- Consider both business size and ability to comply, as well as impact on business climate, when formulating new state regulations pursuant to legislative intent and NRS 233B.0603, 233B.061 and 233B.066.
- Encourage and support "ombudsman" positions or processes in state regulatory agencies in order that interaction with the business community will have an initial focus on problem solving, followed by enforcement as necessary.

Action Items:

1. Issue an executive directive to all state agencies related to their role in both economic diversification efforts and the state's regulatory reputation as established through existing regulatory practices and future regulatory proposals.
2. Direct state agencies to informally evaluate existing regulations for necessity, simplicity, and duplication, as well as coordination with other regulatory efforts, as part of each agency's budget/legislative preparation process, as well as formally by law every ten years per NRS 233B.050(e).
3. Re-establish the Interagency Committee for Coordinating Tourism and Economic Development pursuant to NRS 231.015 for the purpose of regularly evaluating and resolving state government communication, policy and regulatory barriers to

economic diversification and tourism development. Per NRS, the committee consists of the Governor as chairman, the Lieutenant Governor, the executive directors of the Commissions on Economic Development and Tourism and other members as the Governor may appoint.

4. Require agencies to identify the individuals or processes in place for working with businesses to solve problems prior to enforcement.

5. Explore the assignment/creation of a business advocate position within the Office of the Governor.

APPENDIX J

Overview of Statutory Incentive Programs for Businesses in Nevada

Summary of Status of Business Finance Programs
Nevada Dept of Business and Industry
1981 - 1997

OVERVIEW OF NEVADA STATUTES

AUTHORIZING DEVELOPMENT OF NEW FINANCING TOOLS IN DEPARTMENT OF BUSINESS AND INDUSTRY

1981 - 1997

YEAR	NRS CHAPTER	PURPOSE OF STATUTE	CURRENT STATUS
1981	349.400 to 349.670	Authorize Issuance of Tax Exempt IDRBs to Finance Manufacturing Plants and Other Qualified Facilities	Total Issued (1982-1997): 49 Bonds $154,687,000
1983	Chapter 670A	Permit creation of corporations for economic revitalization and diversification	Inactive
1985	Chapter 319	Increase statutory limit for issuance of tax exempt housing revenue bonds by Nevada Housing Division to $1,250,000,000	Total Amt. of Bonds Issued (1977 - 1997): $1,174,800,000
1985	349.700 to 349.870	Authorize issuance of up to $50,000,000 in taxable revenue bonds to guarantee export loans made by eligible Nevada financial institutions	Inactive
1987	349.935 to 349.961	Authorize issuance of GO debt or revenue bonds up to maximum limit of $20 million to finance water projects approved by Board for Financing Water Projects	Inactive (Total Amount of bonds issued to date: $4,625,000 in 1989)
1987	349.900 to 349.929	Authorize issuance of up to $100,000,000 in taxable revenue bonds to establish a venture capital fund for the State of Nevada	Inactive

Summary of Status of Business Finance Programs
Nevada Dept of Business and Industry
1981 - 1997

1987	**Chapter 348A and NAC 348A**	**Establishment of cap allocation program to utilize up to $150 million per year permitted in Internal Revenue Code for Nevada governing entities to issue tax exempt private activity bonds**	**Amount allocated 1986-97: *$2 Billion *(Used for Housing IDRBs Utility Projects Solid Waste)**
1991	**Chapter 286, 1991 Stats. of Nevada**	**Appropriation of $50,000 to develop plan for use of public and private money to provide capital and financing for small business enterprises in Nev.**	**Plan Prepared, Presented by Private Sector Group to 1993 Leg.**
1991	**349.970 to 349.987**	**Authorize issuance of up to $100 million in revenue bonds to establish a revolving fund to finance capital improvements of community water systems; and authorize issuance of up to $25 million in GO bonds to provide grants to purveyors of water of publicly owned water systems**	**Program was established by Board for Financing Water Projects and is administered in Dept. of Conservation & Nat. Res.**
1993	**AJR 35 (Ballot Ques. 7 on 1996 Genl. Election Ballot)**	**Proposed Constitutional Amendment to Modify Nevada's "Anti-Donation" Clause to Allow Public Investments in Corporate Entities to Create Jobs and Stimulate Economic Diversification**	**AJR 35 Passed in '93 and '95 Legislatures but failed in 1996 general election**
1995	**AB 244, Chapter 276, 1995 Stats. of Nevada**	**Appropriated $200,000 to provide operational assistance to a private corporation established to provide financing to small businesses that are unable to obtain conventional financing, provided**	**Nevada Development Capital Corporation (NDCC) became operational in**

	certain conditions are met Note: An additional $100,000 appropriated in 1997, subject to similar conditions.	**Dec. 1996 with 3 million in capital raised from the private sector**
1997 1999	**AJR 12 (Ballot Proposes the same type of constitutional amendment as AJR 35 in 1993 and 1995 Legislatures)**	**Passed 1997 Nev. Legis. and 1999 Nev. Legis.**
[2000	**Ballot Question 1 Again Fails in the 2000 General Election]**	

APPENDIX K

Background on Venture Capital Programs in Other States

APPENDIX C: STATE PROGRAMS TO INCREASE ACCESS TO CAPITAL:
Survey of State Programs

RANGE OF CAPITAL SOURCES

	Allocated State Funds	Dedicated State Revenues	Tax Credit Incentives	Credit-Enhanced Notes	State Pension Funds	Other State Fiduciary Funds	Private Lead Investors
Alaska	X					X	
Alabama						X	X
Arizona	X						
Arkansas	X		X		X		
California	X				X		
Colorado					X	X	X
Connecticut	X				X		
Delaware	X						X
Dist. of Col.	X						
Florida					X		X
Georgia							X
Hawaii	X						
Idaho							
Illinois	X			X		X	
Indiana	X		X				X
Iowa	X		X		X		
Kansas	X	X	X		X		
Kentucky			X				
Louisiana	X		X		X		
Maine	X		X	X			
Maryland	X				X		
Massachusetts	X				X		
Michigan		X			X		
Minnesota	X						
Mississippi				X			
Missouri			X		X		
Montana	X		X				
Nebraska	X					X	
New Hampshire	X						X
New Jersey	X					X	
New Mexico						X	
New York	X		X		X		
Nevada							X
North Carolina	X					X	X
North Dakota	X						
Ohio	X		X		X		
Oklahoma			X	X			
Oregon		X				X	
Pennsylvania	X				X	X	
Puerto Rico	X		X		X		
Rhode Island					X		
South Carolina			X				
South Dakota			X				X
Tennessee							
Texas	X				X		
Utah	X						
Vermont			X				
Virginia	X						
Washington							
West Virginia	X		X				
Wisconsin					X		
Wyoming							
TOTALS	31	3	17	4	19	10	10

Source: National Association of State Venture Funds

RANGE OF PRACTICES

	Direct Investment by State Agencies	Granting of Investment Tax Credits for Direct Investments	Granting of Tax Credits for Investment in Privately Managed, Restricted Funds	Investment of Cash in Privately Managed, Geographically Restricted Funds	Investment in Private Seed and Venture Capita Partnerships with a Best Efforts Focus	Investment in a Targeted, Privately Managed, Co-Investment Fund
Alaska	A			F		
Alabama					A	
Arizona				F		
Arkansas	A		A		F	
California	A				A	
Colorado				I	A	
Connecticut	A			A		
Delaware				A		
District of Columbia				A		
Florida					A	D
Georgia					A	
Hawaii				A		
Idaho						
Illinois	I			A		
Indiana	A		I	F		
Iowa	I		I	F		
Kansas	A		F	A	I	
Kentucky			A			
Louisiana	A		A	A		
Maine	A	A				
Maryland	A			A	A	
Massachusetts			I	A	A	A
Nebraska	I			F		
New Hampshire						A
New Jersey	A			A	A	
New Mexico				A	A	
New York	A		A	F		
Nevada				F		
Michigan				F	I	
Minnesota	I					
Mississippi				I		
Missouri		A	A	I		
Montana	I		F	F		
North Carolina	A		D		F, D	D
North Dakota	A					
Ohio		A		I	F, D	
Oklahoma	I		A	A	A	
Oregon	A			D		
Pennsylvania	A	A		A	A	I
Puerto Rico	A	A		A	A	A
Rhode Island					D	
South Carolina			F			
South Dakota			F			
Tennessee						
Texas	I			A		
Utah	A				I	
Vermont			F			
Virginia						
Washington						
West Virginia	A		A			
Wisconsin	A					
Wyoming					D	
TOTALS	26	5	16	29	20	6

A=active, I=inactive, F=fully invested, D=in development

Background Information on the Venture Network of Iowa

Overview

According to its web site, Venture Network of Iowa was established in 1990 to provide a forum through which inventors and entrepreneurs could interact with investors in the hope of forging profitable, long-term business relationships. VNI has been a valuable catalyst in the formation of new, viable businesses throughout Iowa.

VNI extends a unique opportunity for entrepreneurs to present ideas to an audience of many of Iowa's most adept and eager investors. The "Five-Minute Forum" is an ideal outlet for entrepreneurs to introduce products and services to prospective investors.

VNI offers professionals a resource for reviewing numerous investment opportunities on behalf of clients. In addition, resources are available to any individual or firm interested in funding or managing a business. VNI services the needs of both emerging and existing businesses.

Excerpt of an Article Regarding Angel Networks in Iowa Provided by Dr. Robert Heard

The Iowa Department of Economic Development (IDED) is out to build an active network of angel investors across the state. Using research information about angel investors from Dr. Bill Wetzell, University of New Hampshire, IDED extrapolated that Iowa has 2500 to 3000 angels investing $250 million annually. Since Iowa attracts less than one tenth of one percent of the nation's institutional venture capital, IDED officials felt the opportunity to mobilize angel capital could not be ignored.

IDED launched their effort by hosting a "Seed Investing as a Team Sport" seminar in Des Moines, Iowa on November 17, 1998. The event was targeted to a geographically balanced statewide audience of prospective angels who also fit the profile of community leaders. The Iowa Bankers Association (IBA) agreed to be a co-sponsor. Names suggested by local economic development directors and IBA member bankers, and angels who had participated in investments with the Iowa Seed Capital Fund, provided IDED with a list of 250 potential invitees.

The Governor signed a letter to each of these invitees asking if they would "like to be considered" for this event for which space was extremely limited. Over 70 persons responded. IDED then chose a first class location; recruited well-known, well-respected expert panelists and enlisted the new governor-elect to be the seminar guest speaker at lunch.

"It was an overwhelming success," said George Lipper, IDED's Small Business Resource Office Director. "I'm very enthusiastic. The evaluations were very favorable. We've continued to communicate with participants through our e-mail list and now have a half dozen seminars in the pipeline. A utility company has agreed to pick up about half the cost for up to four seminars in communities they serve and the Iowa Bankers Association has agreed to sponsor the networking receptions. We believe we've started down the road to creation of a vibrant statewide angel network."

For states considering a similar statewide effort Mr. Lipper advises, "In building community programs, be sure to have local leaders attend the seminar so they have real enthusiasm about orchestrating the event. Also, it's important to find ways to reach beyond the usual list of participants to find more qualified potential angels." Finally, he says, the person leading the effort must be in constant communication with angels, advisors, expert panelists and others in the mix to keep interest levels high.

OKLAHOMA CAPITAL INVESTMENT BOARD

Report for the Year Ending June 30, 1998

Mobilizing Sources of Equity Capital for Oklahoma Businesses

Mission

The mission of the Oklahoma Capital Investment Board is to mobilize equity and near-equity capital for investment in a manner that will result in a significant potential to create jobs and diversify and stabilize the economy of the State of Oklahoma.

Vision Statement

The Oklahoma Capital Investment Board encourages and ***supports the growth of a broadly diversified and sophisticated financial industry capable of providing the necessary risk capital*** to Oklahoma entrepreneurial companies from early stage start-ups to later stage expansions.

Over time, the OCIB program is expected to result in over ***$228 million of new capital*** for Oklahoma businesses. The increase in the capital base will strengthen and support the growth of those companies which are the engines of economic growth that create jobs and diversify and stabilize the State's economy.

The Board ***manages risk*** through a prudent investment strategy. By use of a contingent liability funding structure, the Board mobilizes capital and covers all program costs until such time as investment returns materialize. Over the life of the program the Board expects the State will enjoy significant economic benefits at minimal cost to the taxpayers of Oklahoma.

Together the Board's programs will help ensure the Board will ***exceed the statutory minimum*** of 2 dollars invested in Oklahoma projects and businesses of every 1 dollar of principal guaranteed. The Board's Venture Investment Program is designed to attract leverage of private capital of approximately 5 to 1 while the Oklahoma Capital Access Program of the Board has already achieved leverage of better than 24 to 1.

The ***cash surplus*** generated through disciplined investment becomes an on-going resource for development finance activities.

By supporting investment in a number of venture capital funds, each with its own team of investment professionals, the Board is able to bring to Oklahoma a ***broad range of professional talent*** to serve the diverse opportunities within the State. Likewise, by making a credit insurance type of tool available to dozens of banks, it engages a large number of individual bankers in creating solutions for small business borrowers.

Both the funding structure and delivery system employed by the Board provide a variety of opportunities for meaningful ***private sector participation*** in the programs of the Board.

Background

The Oklahoma Capital Investment Board is a public trust with the State of Oklahoma as its sole beneficiary. The public trust was originally formed in 1975 for unrelated purposes. Legislation relating directly to the Board occurred first in 1987. The Oklahoma Capital Formation Act (the Board's enabling legislation) was passed in 1991. The mechanism by which the Board's guarantee authority can be used to raise capital was clarified by District Court decree in January 1992. The amended trust indenture was signed by the governor in March 1992. The Board's Oklahoma Capital Access Program enrolled its first loan in July 1992. The Board's Venture Investment Program's first investment occurred in March 1993.

Core Values

OCIB programs are based on principles that emphasize the use of private sector expertise and traditional investment disciplines. When it comes to building new capital companies in the State, ones that will endure for many years, there is no substitute for a careful investment process that seeks out the best talent available to serve the needs of Oklahoma businesses. The following are basic principles pursued by the Board:

- Risk capital is necessary to generate and support the growth of entrepreneurial firms, which in turn create jobs and provide economic growth.
- Risk capital is best provided and managed by qualified, professional investment groups.
- A responsive state program can demonstrate to potential investors the high level of commitment Oklahoma has for entrepreneurial ventures.
- The pursuit of a market rate of return provides the best discipline for using limited resources to generate the greatest economic impact.
- The risks of making venture capital investments in Oklahoma can best be managed by diversifying this risk through a number of investments in separate venture capital funds, each with a proven track record.
- The successful targeting of venture investments to the State requires the careful selection of fund managers who can demonstrate the ability to successfully invest in economic sectors that are indigenous to or developing within the State. Such managers must commit to marketing their resources aggressively, being highly visible to their primary markets within Oklahoma and to actions that help build the permanent presence of venture capital talent within the State.

New Program Initiative

As a part of its ongoing internal review, the Board, in cooperation with the Oklahoma Department of Commerce, conducted a series of focus group interviews around the State to ascertain the current barriers to growth for mid-market, non-metro Oklahoma growth companies. One of the barriers identified as the access to risk capital for knowledge based businesses. The Board in implementing its fiscal '99 business plan, as approved by Oklahoma Futures, will design a program to address that specific risk capital need.

Venture Investment Program

The **Venture Investment Program** is designed to support the funding of venture capital pools that meet the investment and strategic objectives of the Board. Through December 1998, over ***$57.6 million has been invested in promising Oklahoma businesses*** through the activities of Board supported private venture funds that have a history of building and growing companies.

Firms headquartered in Oklahoma or firms with significant divisions or facilities in-state that have received backing from Board supported venture funds include:

Infinitec Communications, Inc., Tulsa
Intersouth Partners III
Chisholm Private Capital Partners
Davis, Tuttle Venture Partners

MelanX Corporation, Oklahoma City
Ventures Medical II
Intersouth Partners III

StadiaNet Sports, Inc., Tulsa
Chisholm Private Capital Partners

InfoGlide Corporation, Tulsa
Intersouth Partners III

Dominion Management, Edmond
Chisholm Private Capital Partners

NetCom Solutions, Oklahoma
Pacesetter Growth Fund

Torch Health Care, Lawton
Richland Ventures
Richland Ventures II

Premier Parks, Oklahoma City
Richland Ventures
Richland Ventures II

The Rock Island Group, Oklahoma City
Chisholm Private Capital Partners

AEMT, Tulsa
Chisholm Private Capital Partners

Global Dispatch Tech., Oklahoma City
Chisholm Private Capital Partners

The Board has to date extended $25.9 million in aggregate commitments to a total of eight funds, all of which have closed. The Board continues to seek qualified groups with successful investment track records and a commitment to investment opportunities in Oklahoma.

Venture Investment Program

Those closed commitments include:

- **Ventures Medical II.** A $2 million investment commitment in a $14 million fund which works closely with the Oklahoma Health Sciences Center and specializes in investing early in technology based medical companies.
- **Richland Ventures.** A $4 million investment commitment in a $50 million venture partnership which invests in service industry growth companies which have developed a strong and profitable presence. Richland teamed up with RBC Ventures in Tulsa to strengthen Richland's expansion efforts into the State.
- **Intersouth Partners III.** A $4 million investment commitment in a $26 million fund which invests in early-stage technology opportunities. This fund opened an office in Oklahoma City to aggressively address the Oklahoma market.
- **Davis, Tuttle Venture Partners.** A $5 million investment commitment in a Tulsa based venture fund of $45.3 million which invests in high growth opportunities in basic industries. This fund has held 3 closings and is actively investing.
- **Chisholm Private Capital Partners.** A $3.4 million investment commitment to a group with $13.3 million in aggregate commitments. This firm has offices in both Oklahoma City and Tulsa and an appetite for a wide range of industries and stages of business development.
- **Pacesetter Growth Fund.** A $3.5 million investment commitment in a $41 million venture capital partnership that backs later-stage high growth firms. The fund has a particularly strong focus on firms owned or lead by minorities and has established an Oklahoma marketing alliance with BankOne.
- **Richland Ventures II.** A $1 million investment commitment in an $83 million follow-on fund to Richland Ventures. This fund continues the relationship with Tulsa based RBC Ventures for in-state expansion.
- **Rocky Mountain Mezzanine Fund II.** A $3 million investment commitment in a $110 million leveraged fund qualified as a Small Business Investment Company under the U.S. Small Business Administration. This group, which has Houchin, Adamson as its marketing affiliate in Tulsa, provides growth capital to established firms.

Other OCIB supported venture funds are expected to focus on different industries of promise in the State ranging from start-up businesses developed around new proprietary materials to existing businesses with new growth opportunities in established industries. The talent and experience available to Oklahoma firms through these funds will be exceptional and capable of helping Oklahoma entrepreneurs build successful businesses.

Oklahoma Capital Access Program

The **Oklahoma Capital Access Program** (OCAP) provides a tool similar to credit insurance that a lender can use to build its customer base by granting loans that have merit but which could benefit from a higher loan loss reserve. The program provides businesses with much needed capital and financial institutions with a simple to use tool capable of improving the bottom line. Both Oklahoma businesses and the financial institutions benefit by the higher volume of small business loans created through OCAP.

The ***OCAP is simple to use.*** To enroll a loan, the lender submits a one-page loan filing form to OCIB within 10 days of making the loan. There are only a few restrictions placed on the types of loans which are eligible for the OCAP. OCAP loans must be for an Oklahoma business purpose, cannot be for the refinance of existing debt or be for speculative real estate or oil and gas production purposes. The lender performs the underwriting and is responsible for the monitoring of the loan until it is paid off or reaches its maturity date. Should a charge-off occur, the lender simply submits a one-page claim form to OCIB. Claim payment will be issued, subject to the lender's reserve account balance, within two business days after the receipt of the claim form. OCIB staff is available to provide training or simply answer questions upon request.

The first OCAP loan was enrolled in July 1992. By December 1998, the program had ***enrolled 74 financial institutions and insured over 780 loans totaling in excess of $22.5 million.*** OCAP is in a growth mode showing significant increases in both the number of loans enrolled and dollars lent with average respective growth rates of 26% and 21% for the last three years. Loans have varied in size from $1,100 to $728,000, and have primarily been used for working capital and equipment purchases. Borrowers have ranged from farmers and ranchers to foundries, roofers, machine shops, manufacturers, and day care operators.

The Board intends for OCAP to remain an active part of OCIB's efforts to ***support the growth and diversification of Oklahoma's economy.*** This can be achieved by broadening OCAP's borrower base through increased participation in the program. In fiscal 1998, OCIB out-sourced the marketing of OCAP but subsequently determined that, at this time, the marketing could best be handled internally. In 1999, OCIB staff will continue the marketing of OCAP in an effort to encourage new and existing lenders to increase their participation in the program. The focus will not only be on enrolling new financial institutions but also on encouraging increased activity within existing OCAP lenders.

Audit

The annual audit was performed for OCIB by Finley & Cook, Shawnee, and is on file with the State Auditor and Inspector. The audited financial statements are included in this report on pages 6 through 12. As stated in note (8) to the audited financial statements, OCIB has an outstanding guarantee of $15.9 million on a line of credit. This guaranty is secured by assets with a cost basis of $12.9 million, representing a net contingent liability of $3.3 million.

INDEPENDENT AUDITORS' REPORT

Board of Directors
Oklahoma Capital Investment Board

We have audited the accompanying balance sheets of the Oklahoma Capital Investment Board as of June 30, 1998 and 1997, and the related statements of revenues, expenses, and changes in retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Oklahoma Capital Investment Board's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards and *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Oklahoma Capital Investment Board as of June 30, 1998 and 1997, and the results of its operations and its cash flows for the years then ended, in conformity with generally accepted accounting principles.

As discussed in Note 8 to the financial statements, the Oklahoma Capital Investment Board has guaranteed a $17,500,000 line of credit being used by the Oklahoma Capital Formation Corporation, a related third party.

In accordance with *Government Auditing Standards*, we have also issued our report dated July 29, 1998, on our consideration of the Oklahoma Capital Investment Board's internal control over financial reporting and our test of compliance with certain provisions of laws, regulations, contracts, and grants.

Finley & Cook, P.L.L.C.

Shawnee, Oklahoma
July 29, 1998

APPENDIX L

Correspondence to Nevada's Congressional Delegation from the S.C.R. 19 Subcommittee in Support of the Nevada Public Land Management Act of 1999

MARK A. JAMES
SENATOR
Clark No. 8

COMMITTEES:
Chairman
Judiciary

Member
Natural Resources
Legislative Affairs and Operations

State of Nevada
Senate

Seventieth Session

DISTRICT OFFICE:
3773 Howard Hughes Parkway
Suite 290 N
Las Vegas, Nevada 89109
Office: (702) 791-0308
Fax No.: (702) 791-1912
P.O. Box 80484
Las Vegas, Nevada 89180
Home: (702) 871-0180

LEGISLATIVE BUILDING:
401 S. Carson Street
Carson City, Nevada 89701-4747
Office: (775) 687-8132 or 687-5742
Fax No.: (775) 687-8206

July 14, 2000

The Honorable Harry Reid
United States Senate
528 Hart Senate Office Building
Washington D.C. 20510-2803

The Honorable Jim Gibbons
United States House of Representatives
100 Cannon House Office Building
Washington, D.C. 20515-0001

Dear Senator Reid and Congressman Gibbons:

As Chairman of the Nevada Legislative Commission's Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in Nevada (S.C.R. 19), I am writing to relay the Subcommittee's support for your efforts to stimulate local growth and economic expansion in rural Nevada by facilitating the sale of certain public lands to private individuals.

During the course of the Subcommittee's work, one of the problems identified as an obstacle to encouraging businesses to locate in Nevada is the availability of land for development, particularly in rural Nevada. The federally proposed Nevada Public Lands Management Act of 1999 (Senate Bill 719) was identified as one method through which additional public land may be sold and conceivably used to attract businesses and fuel economic development. We understand this measure is currently pending in Congress.

On June 30, 2000, the Subcommittee voted unanimously to send a letter to both of you in support of the Act's purpose of stimulating economic development and your related efforts. If the Subcommittee's legislative staff or I can be of any assistance to you, please do not hesitate to contact me.

Very truly yours,

Mark A. James
Nevada State Senator

c: Members of the S.C.R. 19 Subcommittee
\\Stephanie\edrive\PERFECT\SENATE\SCR 19\reid gibbons ltr.wpd

APPENDIX M

Correspondence from the Subcommittee to Governor Kenny C. Guinn
Supporting the Ruby Gas Pipeline and Power Plant Project and
Background Information on the Project and Its Status

MARK A. JAMES
SENATOR
Clark No. 8

COMMITTEES:
Chairman
Judiciary

Member
Natural Resources
Legislative Affairs and Operations

State of Nevada
Senate

Seventieth Session

DISTRICT OFFICE:
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July 14, 2000

The Honorable Kenny C. Guinn
Governor of Nevada
101 North Carson Street, Suite 1
Carson City, Nevada 89701-4786

Dear Governor Guinn:

As Chairman of the Nevada Legislative Commission's Subcommittee to Encourage Corporations and Other Business Entities to Organize and Conduct Business in Nevada (S.C.R. 19), I am writing to relay the Subcommittee's strong support for the proposed Ruby Gas Pipeline and Power Plant in rural Nevada.

The 1999 Legislature charged the S.C.R. 19 Subcommittee with the task of examining methods of encouraging businesses to locate in Nevada. During the course of the study, numerous issues were raised, including the possibility of creating a business court in Nevada, ways of improving the operation of the Office of the Secretary of State, and economic and legal incentives for businesses to move into Nevada. Clearly, the economic strengths and weaknesses vary throughout the state.

In rural Nevada, building the necessary infrastructure to be able to compete for new businesses is a key component to that region's economic growth and stability. The proposed Ruby Gas Pipeline and Power Plant appears to be an ideal solution both to stimulate the overall economy by providing new jobs and attracting new businesses and to provide a new source of energy for Nevada and the western United States.

On June 30, 2000, the Subcommittee voted unanimously to send a letter to you, as Governor of Nevada, urging your support of the project and encouraging you to take any appropriate and reasonable steps to facilitate the development of the pipeline and power plant. We understand that the parties may reach an agreement within the next month. Enclosed for your review is a copy of the correspondence to the members of the Subcommittee from Michael J. Franzoia, Elko City Mayor, regarding the project and the desire for assistance from the Governor's Office.

If you have any questions or if the Subcommittee's legislative staff or I can be of any assistance to you, please do not hesitate to contact me.

Very truly yours,

Mark A. James
Nevada State Senator

Enclosure
c: Michael J. Franzoia, Elko City Mayor
Ursula Powers, Economic Development Director, Elko
Members of the S.C.R. 19 Subcommittee
\\Stephanie\c drive\PERFECT\SENATE\SCR 19\gov ltr.wpd

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Elko, NV 89801
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Senator Mark A. James, Chairman
Members of the SCR – 19 Sub-subcommittee
401 S. Carson Street
Carson City, NV 89701-4747

June 29, 2000

Dear Senator James and Members of the SCR-19 Sub-Subcommittee:

On behalf of the citizens of the City of Elko, Elko County and northeast Nevada, I extend sincere appreciation of the interest your Sub-subcommittee showed in the economic development needs of rural Nevada and the connection to development of new energy infrastructure.

I would like to ask that consideration be given to submitting letters of support to Nevada Governor Kenny Guinn to move forward in setting a firm date for electric deregulation to begin this year. It is obvious that the research we presented to your committee last winter has proven to be accurate regarding the tight electric market in the West and that now is the time to send out the message that investment in Nevada for construction of new electric power generation facilities is possible while the demand is apparent.

The proposed Ruby Gas Pipeline and Power Plant project that we shared with you is reaching final negotiations, which is a positive sign. As you know, natural gas is needed in northern Nevada and this project can be a reality if the anchor power plant that is proposed can function in an open electric retail market. If this project reaches successful completion of negotiations and contracts, which I believe is very possible, Nevada will benefit from the development of a new source supply of natural gas for existing users and future users in this region. In addition, a new electric power generation facility would be producing a much needed commodity with the same benefits.

The proponents and customers of this proposed project, as well as the citizens of our region in support of this project would appreciate any help that any of you could give us at this time. I have attached a letter of support for the timely start of deregulation, signed by the Elko Board of Supervisors this week, which was submitted to Governor Guinn. A delay of the implementation of deregulation would add an element of risk for the project proposed in northeast Nevada, as well as any others that are proposed. It is also important that the deregulation issues not go through an additional round of legislative hearings. A clear indication of when and how the deregulation process will occur in the State is critical. This project has withstood over two years of challenges and hurdles to reach the stage it is at now. It is important for the parties involved to know that the State of Nevada is ready for competition and the resulting economic investment that will be made by a project such as this to Nevada, particularly to rural northern Nevada's future, is welcomed.

In addition, perhaps a bill draft could be developed in this legislative cycle to create incentives for power generation facilities to be built in rural Nevada where economic investment has been somewhat constrained. For example, the permitting process involved in the development and construction of power plants and pipelines could be expedited if a project is placed in the rural parts of the State where issues related to population are not present. Any ideas to encourage investment such as this would be appreciated and perhaps the Commission on Economic Development could assist with this.

Thank you for your past interest and support of our region and the concerns of our citizens. We look forward to working with you on these issues that confront our State. I can be reached by calling (775) 777-7101.

Sincerely,

Michael J Franzoia
Elko City Mayor

Elko County Energy & Economic Development Issues
Related to the Nevada 2001 Legislative Review of Electric Deregulation
SCR-19 Subcommittee Report
Governor Kenny Guinn's Nevada Energy Policy Committee
December 21, 2000

Submitted by
LeRoy Goodman, NV Energy Policy Committee Member &
Nevada Commission on Economic Development, Rural Rep.
Ursula Powers, Elko City/Elko County Economic Development

I. Introduction:

For approximately two years, community leaders from Elko County and the Cities of Elko, Carlin, Wells and West Wendover have lobbied the Nevada 1998 Legislature, the SCR-19 Subcommittee, the Nevada Energy Policy Committee and other State Officials to proceed with opening up the electric market to competition in order to attract a commitment from a group of private energy companies and mines to develop the proposed "Ruby Gas Pipeline/Power Plant" project to our region (map attached).

After years of studying the issues related to rural economic development and the lack thereof, the evidence points loud and clear that capacity and reliability of a wide choice of economic energy resources, including natural gas, are a primary requirement for business and industrial companies making a relocation decision. Rural communities throughout Nevada do not have these choices and will only get these energy infrastructure investments if they are passing through on the way to serve large customers. Exploration is being conducted by many rural communities into renewable energy as a means for economic development, however many do not realize that natural gas is still required in order to have complete energy and economic development success. In the meantime, many of our rural Nevada economies are failing or slowly slipping.

II. Electricity:

When looking at the electric transmission line system in Nevada (Attached Nevada map), it is easy to see that the electric territories of Sierra Pacific Power Company in the north and the Nevada Power Company in the south are not connected and do not facilitate any opportunity at this time to share electric resources between the two regions. Potential exists to build electric generation in the north for the south but not if transmission connectivity exists. In addition, the two state regions are different from within their transmission territories.

1) The two electric transmission systems are technically different:
    a. The southern area has interstate transmission connectivity and capacity potential with Utah, Arizona and California. This allows for independent power producers to currently build plants in the south, under today's regulated territorial electric market, in order to sell power on the wholesale market regionally to customers such as Nevada Power

Company and out-of-state customers. Example: El Dorado Power Plant, Boulder City area.

b. The northern electric transmission line system is limited and this region is referred to in the industry as a "load pocket" which means that it is difficult to get electricity into the area from out of state or for an independent power plant to produce power within the region and sell outside to other customers. In order for a power plant to succeed in northern Nevada, an opportunity to sign retail power contracts within the region to large users must be available. It has been stated publicly that in Northern Nevada, in today's current market, a new power plant would have no problem signing on new customers, a second power plant would take a longer time to sell within the region, unless it was built to export near transmission lines to sell out of state. However, the best location for a 500-mgw electric generation plant would be in an energy underserved area that is anchored to a new natural gas supply and pipeline, such as one coming from the east in order to create a complete energy service.

III. Natural Gas:

Natural gas is a key energy resource in today's market to fuel industrial development projects such as large manufacturing projects. In addition it is highly attractive to commercial and residential development as a heating resource during the winters. Also, natural gas is a key component of electric power generation plants due to federal and local environmental concerns. It is cleaner in operation for electric generation, however, due to the restraints placed on developing new natural gas supplies by environmental groups in years past, the cost is high and raising. Unfortunately, 85% of the known natural gas reserves available in the Rockies are locked up at this time. With changes in attitude related to energy development by the new presidential administration, it is likely that some of this supply will become available in the near future to help quell the increasing energy crisis that is creeping across the nation.

There are distinct differences between the northern and southern regions of Nevada that can be tied to economic development, sustainability and vibrancy and natural gas plays a major role in that picture.

a. When looking at the natural gas transmission lines in Nevada, it is easy to see that southern Nevada is served with two very large lines belonging to El Paso Energy and Kern River Pipeline. These lines bring natural gas to southern Nevada customers from supplies in the east, primarily the Rocky Mountain region, and continue on to customers in Arizona and California. Natural gas supplies in the Rocky Mountain region are owned by competitive mix of companies such as Exxon, Texaco and Amoco. Independent power plant construction is still possible in the southern Nevada area because natural gas capacity is available and reliable.
b. The northern part of the state is supplied out of the Canadian natural gas basins to the north and is delivered to the Washoe County area via the Tuscarora

Pipeline Company (Sierra Pacific subsidiary) and via the Paiute Pipeline Company (Southwest Gas subsidiary) traversing from the north to the south. The Elko County region is only served with natural gas by a lateral connecting line that ends in the Elko area. Only the City of Elko and Carlin are served, as well as Newmont Gold Company outside of Carlin. The communities of Spring Creek (approximate population – 10,000+), the Cities of Wells and West Wendover and many other industrial users of varying sizes throughout Elko and Eureka County are not served with natural gas or are on a non-firm delivery contract that results in no service during high use winter months. At this time, these users heat their homes or operate their businesses with propane, a by-product of natural gas that is always higher in price. This winter, residential users in the Spring Creek area with a traditional 3-bedroom, 2-bath home are paying approximately $300 or more a month for their propane to heat their homes and the supply is threatened nationwide because of the restricted availability of natural gas. In addition, the natural gas basin in Canada that serves northern Nevada lacks competition so the price recently has been as high as $20 a dekatherm yet the supply of natural gas coming from the Rocky Mountain basins is three times less in price due to the competition that exists there. Elko County's economy has been weakened over the past three years due to the declining price of gold and the recent closure of the University of Nevada, Reno Fire Science Academy. Weak and expensive heating and operational costs are not attractive to industrial users who may consider relocating to this region and, the price of doing business for those still here is reeling higher and higher, especially for those forced to use propane.

IV. Status of the Proposed Ruby Gas Pipeline & Power Plant:

The possibility of this project was realized as a direct result of the State of Nevada's past five years of electric energy market restructuring efforts. In order to bring a new natural gas pipeline into northern Nevada that fills in the underserved energy regions of northeast Nevada, a large industrial anchor customer is needed and that customer would be a 500-mgw electric generation plant that would have access to retail market throughout the northern Nevada electric service territory. In addition, the power plant needed commitments for large anchor users such as the area mines to move forward and become a reality. One of the region's major mining companies, Newmont Gold Company, has taken a leading role in trying to make such a project happen however they have expressed concerns about the success of the electric generation part of the project due to no clear decisions on when the Nevada electric market will be open for retail sale of power. The indecision of the State related to setting an electric deregulation start date is putting the potential of this entire project into jeopardy and this will seriously impact the future viability of this region of the state if a firm date is not committed to shortly.

V. Benefits of this Project to the State of Nevada & the Northern Territory:
Should this project become successful the following benefits will be realized:

a) New and competitive natural gas supplies would come into the northern part of the State to serve underserved rural communities and industries in the northeast Nevada region. This would result in improvement of state and local economic development efforts and improving the cost of living for citizens in heating choices and the cost of operations for existing business and large industrial users.
b) New and competitive natural gas supplies coming in from the east through northeast Nevada to serve that region would result in a reinforcement of the existing Paiute Pipeline capacity thus improving the ability to service existing and new customers along the Interstate 80 corridor all the way down to Douglas County.
c) New and competitive natural gas supplies provided by a project like the Ruby Gas Pipeline would lead to the construction of an electric generation plant that would provide reliability and capacity for the existing northern Nevada region and due to the competitive supply of natural gas in the Rocky Mountain region, electricity costs would be competitive for northern Nevadans who are in desperate need of economic sustainability.
d) This project would improve the State's competitive edge within this western region by leading to economic sustainability and future opportunity because the potential would be boosted with new natural gas and electric supplies.

V. Recommendations:
We understand that the fear of deregulating the State into a short electric supply market currently exists but we also take into consideration that electric and natural gas needs exist. Possible solutions are different in the northern and southern Nevada and even more different in the rural northeastern Nevada region due to our "underserved" energy needs. We also understand that new generation must be built in Nevada to provide additional energy supply within the State and region. We ask that the following statute be used to encourage the attraction of additional energy resources to Nevada, specifically to our region, as our State leaders prepare for the upcoming Legislative Session related to deregulation.

1. According to NRS 704.976 Section 2 (a) the Public Utilities Commission of Nevada may establish different dates for the provision of different services by alternative sellers in different geographic areas. ***If the State of Nevada is uncomfortable in opening up the southern region of Nevada, the Nevada Power Company service territory, to retail competition because there are other opportunities in that region to meet energy needs due to the difference in their energy infrastructure compared to northern Nevada at this time, we request that a regional forward movement of opening the State be considered for northern Nevada.***

2. In addition, according to Section 3 (a-e), the PUC may also determine that an electric service is a potentially competitive service if provision from the service:

(a) will not "harm any class of customers", ***this project will provide enormous benefit and opportunity to create economic sustainability in a threatened region of the State of Nevada.***

(b) "will decrease the cost of providing the service to customers in this state or increase the quality or innovation of the service to customers in this state" ***because the proposed project will access and deliver new, competitive natural gas resources into a natural gas deficient region of Nevada and will lead to the construction of a competitive, environmentally friendly, electric generation plant for customers in the region.***

(c) "is a service for which effective competition in the market is likely to develop" ***because there is need for at least one new 500 mgw electric generation facility within northern Nevada to serve customers. Evidence on public record at the PUC supports this claim.***

(d) "will advance the competitive position of this state relative to surrounding states" ***particularly in an energy deficient rural region that is in desperate need of diversification and sustainability. The cost of living and doing business as it relates to energy will improve in this region if a stable supply of natural gas is available and electric generation is provided within the region.***

(e) "will otherwise not jeopardize the safety and reliability of the electric service in this state" ***because this project would be an enormous improvement to what currently exists in this region and also enhances the northern Nevada territory in both the electric and natural gas service to the public.***

After reviewing this justification information, we hope that you will consider (1) moving forward the Nevada electric energy market on a selected basis by the end of 2001, (2) possibly on a regional basis if it is agreed that there is justification and (3) allow a choice based on the magnitude of the size of the customer's electric load, thus protecting smaller users and communities who may not be ready for several years. This will allow new energy infrastructure for natural gas and electricity to begin construction soon.

NOTE: By allowing large electric users to make a choice to take the risk now of purchasing power on the open retail market, opportunity for the development and construction of new natural gas and electric generation infrastructure will move forward in a region of Nevada that is energy deficient and lacks economical energy choices for community sustainability. The owners of this proposed project in the northern part of the State could then be able to execute power contracts with large retail customers and, hence, secure the proposed natural gas/power plant project, in total, for the citizens of Nevada and their prosperous future.

Thank you for your consideration of our needs.

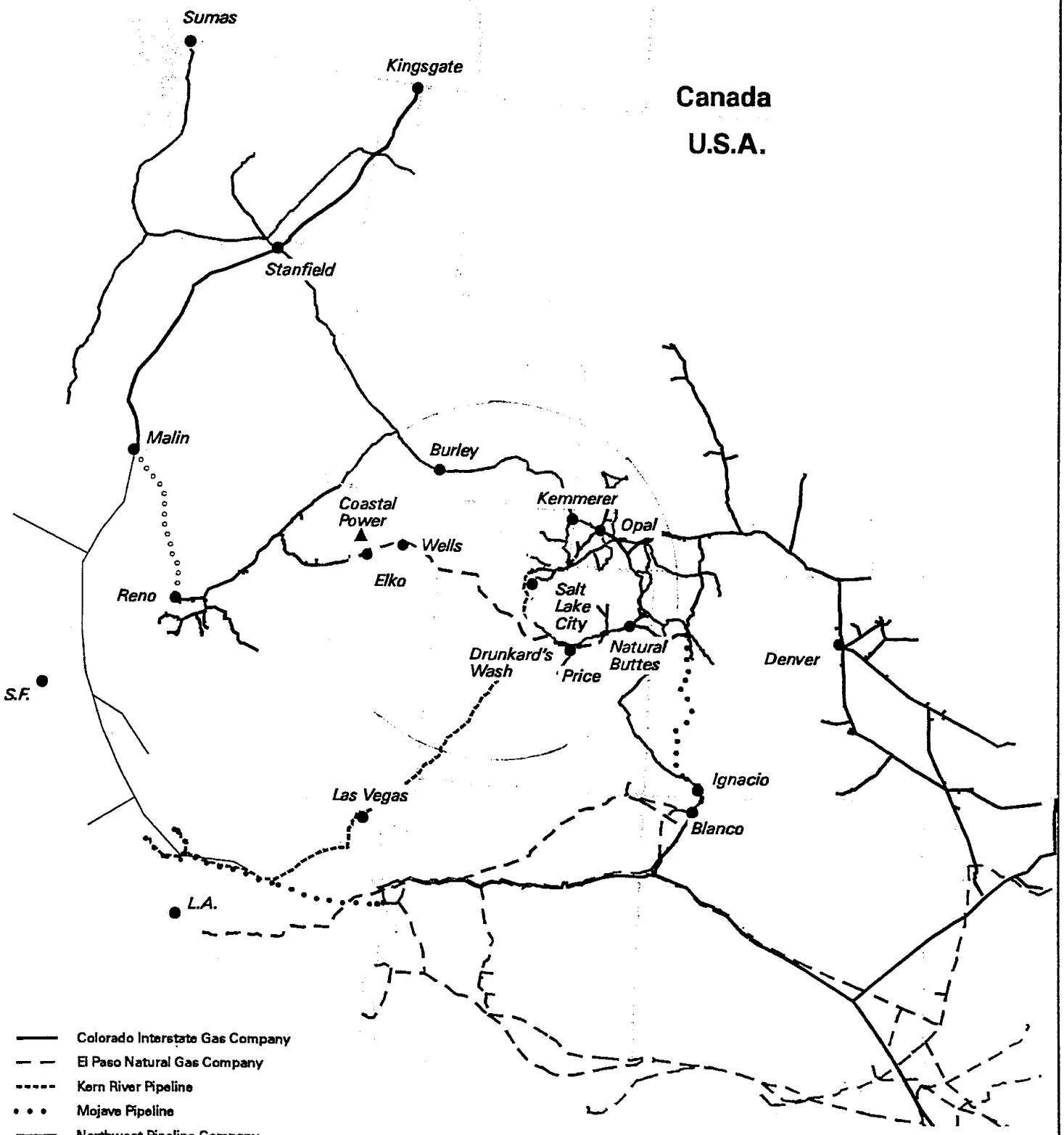
Summary of Current Issues impacting the Economies of Rural Nevada
Prepared by Linda Ritter, Elko City Manager
December 20, 2000

1. A lack of diversification of industries. In many Nevada communities, the mining industry is the driving force. Others may depend on agriculture, but in most cases, one industry drives the economy. This lack of diversification and dependence on one industry can cause wide fluctuations in the local economy. As an example, with declining gold prices and its impact on mining, many rural economies suffered declines in employment, housing markets, and tax dollars. These declines were sharp and immediate, i.e., there was no other industry in the economy to buffer the effect of mining company slow downs.

2. Dependence on public lands. Much of the agricultural and mining industries operate on public lands administered by the Federal Government. Changes in regulations on a national level can impact these industries. Unfortunately, rural communities do not have a strong voice in Washington, and in some cases, the economic impact of these regulatory changes are not fully analyzed prior to new regulations being adopted. The national environmental movement is likely to become a stronger force, thus, creating a larger threat to rural economies.

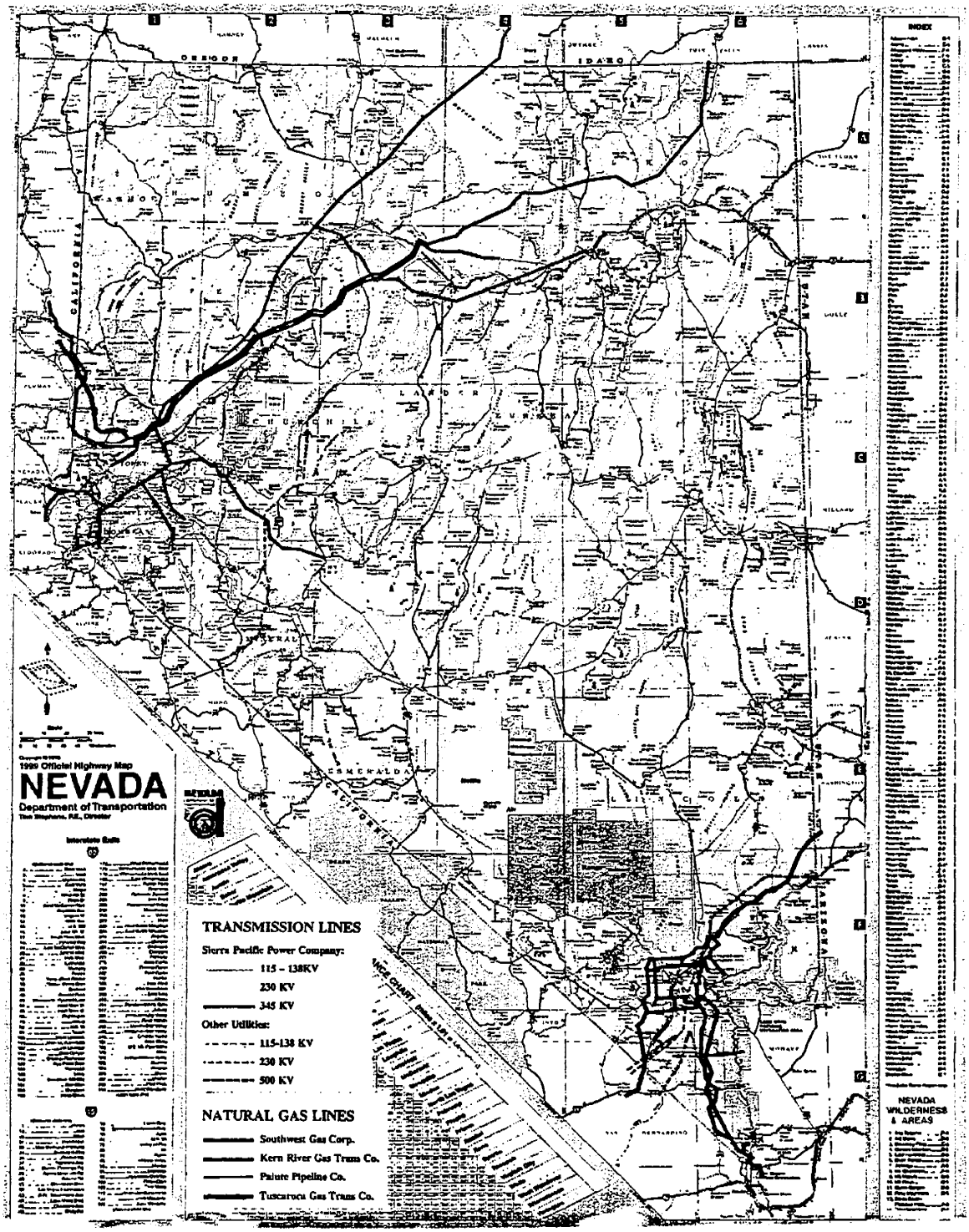
3. A lack of energy infrastructure. Partly due to the vast expanse of rural Nevada and surrounding western states, power transmission infrastructure is a large investment. Without a large and concentrated demand for power, utility companies may be hesitant to make investment in transmission infrastructure. This, coupled with the lack of electric power resources makes attraction of new heavy industrial businesses difficult. These businesses require inexpensive and reliable power to operate. Additionally, many rural communities either have limited natural gas available for economic expansion, or they do not have natural gas available at all! This lack of energy in rural communities make industrial recruitment and economic expansion very difficult and result in a high cost of living for citizens and a high cost of operations for existing and potential new business or industrial customers.

4. Long distances to major markets. Businesses make relocation decisions based on their "bottom line". The cost to operate must be attractive to induce a company to relocate. One of the factors affecting this bottom line is the cost of transportation. Nevada is a state with an extremely large land mass but with many relatively small and concentrated population centers sometimes separated from urban market regions by 100's of miles. Manufacturers often site plants at locals close to their principal market. Rural communities in Nevada and hundreds of miles from many of these markets, therefore, recruitment of these types of businesses is difficult. In looking at the national economy and comparing its makeup with the makeup of rural Nevada's economy, the manufacturing sector is clearly lacking in rural Nevada. Attraction of this type of industry would help diversify rural economies and smooth out the swings experienced by mining and agriculture. In addition, these transportation costs impact the cost of development of real estate and buildings, resulting in a higher cost to locate in rural Nevada to do business.



RUBY GAS PIPELINE PROJECT

/frodo/area/projects98/d_pitco/pitcobase2.aml 02/25/99 GLW


1999 Official Highway Map
NEVADA
Department of Transportation
TRANSMISSION LINES
Sierra Pacific Power Company:
115 - 138KV
230 KV
345 KV
Other Utilities:
115-138 KV
230 KV
500 KV
NATURAL GAS LINES
Southwest Gas Corp.
Kern River Gas Trans Co.
Paiute Pipeline Co.
Tuscarora Gas Trans Co.
INDEX
NEVADA WILDERNESS & AREAS

APPENDIX N

Background Information Pertinent to the Operations of the Office of the Secretary of State

DEAN HELLER
Secretary of State

DONALD J. REIS
Chief Deputy Secretary of State

STATE OF NEVADA

CHARLES E. MOORE
Securities Administrator

SCOTT W. ANDERSON
Deputy Secretary for Commercial Recordings

PAMELA BISSELL CROWELL
Deputy Secretary for Elections

OFFICE OF THE

SECRETARY OF STATE

January 24, 2000

Senator Mark James, Chairman
Legislative Commission's Subcommittee on SCR 19
Legislative Building
401 South Carson Street
Carson City, Nevada

Dear Senator James,

I am Scott Anderson, Deputy Secretary of State for Commercial Recordings. I am here today to testify on behalf of Secretary of State Dean Heller and as an advisory member of the subcommittee of the Legislative Commission's Subcommittee on SCR 19. My purpose here today is to give you a brief overview and history of the office of the Secretary of State and a synopsis of items necessary for the Office of the Secretary of State to compete with other states and entice businesses to organize in Nevada. A more detailed overview is included in our Annual Report for Fiscal Year 1999.

The Office of the Secretary of State was established with statehood in 1864 and is part of the executive branch of the state's government. The Secretary of State is elected every four years and is charged with a wide variety of duties, most of which involve accepting and filing documents that become public record. The Divisions in the Secretary of State's office include Elections, Notaries, Commercial Recordings, Securities, Customer Service and Administrative Services. I will focus today on the Commercial Recordings Division and related areas within the office.

The Mission of the Office of the Secretary of State is to promote the activities of this office across the state. The goals of the office are achieved by (1) encouraging the development and diversification of the state's business community by providing efficient, expeditious and cost-effective services to businesses wishing to organize under the laws of Nevada, (2) maintaining and making the records and information filed with the office easily accessible, promptly and at a reasonable price, and (3) protecting the state's citizens against investment fraud through regulation and enforcement of the securities laws and through the education of the public.

From 1864 until the mid 1980s the records of the Commercial Recording Division were maintained on index cards and images of documents on file were maintained in hard copy and later on microfiche. The procedures were sufficient to handle the filings processed and the copies requested. During that period Nevada did not have the business friendly statutes that are inviting to businesses that we have today and therefore did not have the volume of filings and requests that we are currently experiencing. Starting in the mid 1980s the office started using the COBOL based database application we refer to as IRMA. This is the system we still use today. Images are now maintained on microfilm instead of microfiche.

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Fax (702) 486-2888

101-432

In calendar year1989, a total of 11,770 new corporations and limited partnerships filed their organizational documents in this office. During calendar year 1999, in excess of 48,000 new business entities were filed in this office. During 1999, Nevada surpassed Michigan as the number 9 incorporating state in numbers of new corporations filed and is fast approaching Georgia for the number 8 position. This phenomenal growth can be attributed to several items: 1. The 1991 rewrite of Nevada's business statutes, namely Title 7 of NRS, 2. The Legislature's willingness to improve upon these statutes every session and the high level of service provided by the Office of the Secretary of State.

Today, The Commercial Recordings Division is responsible for processing and filing the organizational and amendatory documents of corporations, both for profit and nonprofit, limited partnerships, limited liability companies, limited liability partnerships, and most recently, business trusts. It is also responsible for reviewing, filing and processing Uniform Commercial Code financing statements, changes and lien searches, as well as federal tax liens and utility filings. Trademarks, trade names, service marks and rights of publicity are filed in the Trademarks Division in our Las Vegas office.

The Commercial Recordings Division, Carson City office is comprised of 5 divisions; the New Filings Division, the Status Division, the Amendments Division, the UCC Division and the Floater Division.

a. The New Filings Division is responsible for processing and filing, on a regular and expedited basis, the initial organizational documents of entities to be formed pursuant to Title 7 of NRS which include, but are not limited to Articles of Incorporation, Articles of Organization, Foreign Qualifications, Certificates of Limited Partnership and Certificates of Business Trust. The division also processes name reservations, resident agent acceptances, apostilles, charters and other certificates and documents necessary in the processing of organizational documents. This division in Carson City is comprised of 7 FTE.

b. The Status Division is responsible for processing and filing, on a regular and expedited basis, the annual lists of officers, directors and resident agent for all corporations and the annual lists for all other entity types on file in the office of the Secretary of State. This division is also responsible for processing certificates of reinstatement for entities whose status has become revoked. Other filings processed include resident agent changes, address changes, officer resignations and resident agent resignations. Certificates of good standing and certified copies related to Status filings are also processed by this division. This division is comprised of 7 FTE and 1 PTE.

c. The Amendments Division is comprised of 2 FTE and 2 PTE. This Division is responsible for processing and filing, on a regular and expedited basis, all amendatory documents for corporations, limited partnerships, limited liability companies, limited liability partnerships and business trusts. Other filings processed by this division are mergers, dissolutions, withdrawals, renewals, revivals, stock changes and name changes. This division also prepares other certificates, apostilles and certified copies relating to amendment filings.

d. The UCC Division is responsible for processing and filing, on a regular and expedited basis, UCC-1 financing statements, UCC-2 financing statement change forms and UCC-3 lien searches. This division is also responsible for processing and filing federal tax liens and utility filings. This division opens it own mail, receipts fees received and sorts and indexes documents for microfilming. This division is comprised of 5 FTE.

e. The Floater Division is a relatively new division created in 1998 with several new positions approved by the Interim Finance committee. The purpose of this division is to train staff in all areas of the Commercial Recordings Division. Staff "floats" to areas in need of assistance within the Commercial Recordings Division. The implementation of the floater concept has allowed the division to get caught up in critical areas during staff shortages and workload increases. The floater staff is also utilized, at times, by the Administrative Services Division and Technology Services Division and is assigned special projects by the Deputy for Commercial Recordings. The Floater Division is comprised of 6 FTE.

The Commercial Recordings Division in Las Vegas is comprised of two divisions, Commercial Recordings and Trademarks divisions.

f. The Commercial Recordings Division in Las Vegas is comprised of 5 FTE. This Division is responsible for filing the organizational documents of entities wishing to organize under Nevada law, amendments, annual lists, reinstatements and other related documents. All filings within this division are processed on an expedite basis. This division is also responsible for processing and filing trademarks, trade names, service marks and rights of publicity. In the future, this office is expected to become a full service office.

g. Our 4-R Division is comprised of 6 FTE and is responsible for processing requests for copies of documents on file with the Office of the Secretary of State. They also provide Certificates of Good Standing, and many other certificates as well as searches of current and past filings. While technically a part of our administrative services division, their function is very much related to those of the Commercial Recordings Division

h. The Mailroom and Receipting Departments are also a part of our Administrative Services Division yet play a vital role in the Commercial Recordings functions. They are responsible for the opening and proper dispersal of most mail coming into the office, the proper receipting of the fees accompanying the many filings received and in some cases assist with the input of documents.

i. The Customer Service Division is comprised of 10 FTE in Carson City and 3 FTE in Las Vegas. This division is responsible for the first line of service our customers receive. They are responsible for answering most questions regarding all aspects of the office with a majority being Commercial Recordings related. They also greet and handle customer requests at our counters in Carson City and Las Vegas. Additionally, customer service answers e-mail requests and processes most of the mailers for the office.

These Divisions are vital to the operations of the office and the Commercial Recordings Division.

The Office of the Secretary of State generated revenues of $33,810,448.00 during fiscal year 1999, of which approximately 26,000,000.00 was generated by the Commercial Recording and related divisions. Revenues in excess of 38,000,000 are expected for fiscal year 2000 with an estimated $30,000,000.00 generated by these divisions. The office of the Secretary of State returns nearly $5 of every $6 received to the General Fund, returning $28,043,776 for Fiscal Year 1999. Additionally, Revenue generated per FTE has risen from $103,701.64 in fiscal year 1987 to $348,561.32 in fiscal year 1999. (See Attachment A) These trends are continuing for fiscal year 2000.

The Secretary of State strives daily to make his offices more efficient and convenient for our citizens and is dedicated in his efforts to maintain and improve the services of his office. Some of the recent improvements to our services include:

1. Creation of a separate Customer Service Division that maintains the first line service to our customers, thus allowing our processing staff to process with a minimum of interruptions.

2. Creation of the Floater Division dedicated to filling in other divisions within the Commercial Recordings Division as needed due to staff shortages and unusual and seasonal increases in workloads.

3. Implementation of our money-back guarantee on certain filings if not filed within 10 working days of proper receipt of documents.

4. Removal by the 1999 legislature of the notarial requirements on most of the filings processed by this Division.

5. The 1998 unveiling of our web page that now receives over one million "hits" per month. This web traffic has reduced Customer Service incoming telephone calls from 2,200 to 800 per day with abandoned calls reduced to fewer than 10%. Commercial filers downloaded over 133,000 forms from our web page. Soon our clients will be able to complete and file many of these forms online. On January 3, 2000, the Secretary of State offered his first online filing, that of name reservations. This pilot program has met with many positive comments and is leading in the development of other online applications.

6. The adoption of digital signature regulations and the passage of digital signature legislation have placed Nevada as one of the leading states in this area. These will also allow this office to continue to develop filing applications using digital signature technology.

The Secretary of State has made significant strides in making his office one of the easiest and efficient to deal with. And although we are thus considered, we are not without our problems and limitations. We are faced with many of the same problems and limitations as any growing business with the added limitation of being a governmental agency. We will need to improve and expand our services and minimize the problems and limitations to continue to grow in this competitive area of government.

The following areas are those we feel are the most vital for the efficient operation of our office through the next decade.

1. TECHNOLOGY - Technology is by far the most important area in which this office can improve efficiency and the accuracy of the filings we process. It will allow us to offer services that most states cannot. The following areas of technological advancement will be necessary.

a. New Database Filing Application – The Secretary of State is investigating a new software application to process, store and retrieve documents filed in this office. The COBOL application "IRMA" has long outlived its usefulness. There are problems encountered when utilizing this application with "state of the art" hardware. It is also difficult to manipulate data for reporting purposes. We must rely on the Division of Information and Technology (DoIT) for special reports, new types of filings and for any needed modifications, which due to their limitations, are costly and take a significant amount of time.

DoIT estimated a cost of over $2,000,000 and 2 years for the development of a new filing application. We had seen a new Windows application that had been developed for the State of Nebraska which provided many of the features required by this office. With some modification, this system could be the answer to our software needs.

We have seen this application in process and are impressed by its speed and efficiency. It also integrates many of our functions that require several different steps and software applications into one application. This application also allows for necessary changes to be made by Secretary of State staff.

The Legislature has approved a needs assessment by the company that developed this application. This assessment is currently underway. Our staff is excited about what they have seen and heard.

b. Imaging – The history of image retention of documents on file in the Secretary of State has progressed from hard copy images to microfiche and currently to microfilm. The microfiched documents are currently being transferred to microfilm. However, retention of these documents can now be performed through digital imaging, allowing for the documents to be displayed on a computer screen and printed out on your printer. At some point in the future certified copies may be obtained via the Internet utilizing digital certification and accepting fees via credit card or e-money. The Secretary of State is currently investigating the conversion of all fiched and filmed documents currently on file in this office to digital imaging, as well as the initial digital imaging of documents.

c. Hardware – As technology progresses, so should the Office of the Secretary of State. New filing applications will require new network and individual hardware. Increased web traffic and online filing processes will require additional technology. State of the art equipment will allow us to keep up with the needs and demand of our clients.

d. Training – Our staff will need sufficient training, not only with the new applications, but also with the equipment and the processing changes inherent with these new applications. With the advent of Internet filings, our staff will need training in this nontraditional form of doing business.

2. STAFFING -

a. Staff Levels - Staffing continues, and will continue to be a concern as we grow. The 1999 Legislature approved a number of new positions. These positions are necessary to maintain acceptable turnaround times during this period of growth. Current staffing levels should enable us to maintain these turnaround times until the next biennium. These levels leave little room for employee development, cross training and utilization of staff in the development of new applications, policies and procedures. Additional staffing will be necessary as growth continues. As shown by the charts, the efficiency of staff has increase fourfold in the past 12 years due to technological advancements, improvement in policies and procedures and increased workloads. We expect this trend to continue with any future additions to staff. We feel it is necessary to maintain staff levels that will allow for appropriate training, employee development, employee leave and increases in workload while maintaining and improving turnaround times. This will also reduce any errors due to time constraints and turnaround time expectations.

b. Staff Training – Appropriate staff training is necessary. While we strive to adequately train all staff, it is sometimes difficult to arrange formal training for all staff. Formal, standardized training, both in-house and off-site that could be scheduled at times convenient to the division would be highly desirable and would allow us to customize and standardize the training of our staff, without the need to rely on the scheduling and availability of State Personnel. Of course, State Personnel and Training would be utilized as necessary, however, customized, standardized training would be beneficial to this staff. Such training would maximize the efficiency of the office while minimizing processing errors.

3. SPACE CONSTRAINTS –

a. As the Office of the Secretary of State grows so does its need for space. We currently occupy every usable bit of space allocated to us in the Capitol as well as additional space located across the street at our annex. At the request of the governor, a majority of the office, mainly the Commercial Recordings Division and related service will be relocated to space being vacated by Nevada Business Factors. This request was made so as to reduce the "business" foot traffic in the Capitol. The relocation will leave us with some additional space for further growth but not enough for any significant increase. This is all dependent on whether additional staff will be required to relocate.

b. There has been discussion of making our Las Vegas office a full service office. Currently, this office provides expedited service on a variety of filings only. However, the Carson City staff processes all regular filings. The Las Vegas office cannot process UCC filing and certain amendatory documents. Copy orders must be obtained through the Carson City office. The space currently utilized by the Commercial Recordings and Customer Service Divisions in Las Vegas is all but filled. Additional space will be necessary to make this a full service office.

4. WORKING HOURS –

With online filings, increased demands for services and space and time constraints, it is foreseeable that it may become necessary to extend the hours of the office of the Secretary of State. Evening and weekend shifts may be necessary and may be desired by our clients. Our clients are requesting services on days that are state holidays but are not considered business holidays. Nevada is not only a national place to do business but international, as well. The ability to service our international customers may also be reason to extend hours.

Currently, we do not see a dire need to extend our office hours. The Secretary of State would however, like the ability and flexibility to do so if and when needed. A specific statute allowing the Secretary of State to designate the hours of operation would be desirable.

5. FEES – There have been discussions about increasing fees or modifying our fee structure. My personal feeling is that a fee increase would not be out of line if it were moderate. However, as I stated before, we must be careful, as we do not want to price ourselves out of the market. There have also been discussions about graduated fees for annual list. This may be an issue left for the economists. At this time I do not have the answer.

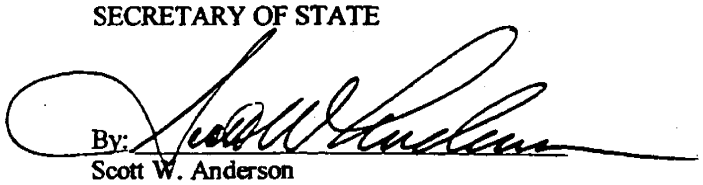
6. SPECIAL SERVICES ACCOUNT – The special services account was set up using fees received for special services rendered, i.e., expedite fees. This fund was to be used to enhance the services provided by the Secretary of State. On June 30 of each year, all revenues in excess of $2,000,000.00 are swept from this account into the general fund. Of this $2,000,000.00, over $1,900,000.00 is reserved for budgetary items, leaving little for expansion of services. As the account increases with the collection of current fees, these are available for use through Interim Finance Committee approval. We are concerned that enough funds may not be available as needed to fund the proposed enhancements to our services. It is proposed that the operating expenses of this office be provided for through the general fund and the special revenue account left to provide for current enhancements of service. We would, of course, come before the Interim Finance Committee or the Assembly Ways and Means and Senate Finance Committees as appropriate with our requests.

7. ADVERTISING AND PROMOTION – The Office of the Secretary of State does not have an advertising budget in which to promote the benefits of organizing in this state or the services this office provide. We have relied on the attorneys, service providers and more recently our own web site for promotion of this state and office. Delaware sends out a very nice packet that is sent to those inquiring about organizing in their state. An annual advertising and printing budget line item would greatly enhance our office's ability to get the word out to those who might not otherwise know of the benefits derived from incorporating or organizing in Nevada. Cooperation between our office, the Departments of Tourism and Economic could help entice businesses to organize, visit and locate in Nevada.

These items are the foreseeable needs of this office and we are dependent upon them to compete in this market. Future approval will definitely impact our ability to remain one of the best and to ultimately become the best state in which to organize a business. We will include our requests in our 2001 budget and submissions to the Interim Finance Committee as necessary. We appreciate the support received in the past from the legislature, both during the regular sessions and in the interim, and look forward to your continued support.

Respectfully,

DEAN HELLER
SECRETARY OF STATE

By: 
Scott W. Anderson
Deputy, Commercial Recordings Division

SECRETARY OF STATE

Analysis of Combined Revenues and Expenditures
For the 13 years ended 6/30/99

Fiscal Yr	Revenues	Expenditures	Fiscal Yr	FTE	Rev per FTE
FY 87	$ 6,014,695.00	$ 1,105,286.00	FY 87	58	$ 103,701.64
FY 88	$ 7,293,566.00	$ 1,723,886.00	FY 88	60	$ 121,559.43
FY 89	$ 8,020,098.00	$ 1,909,629.00	FY 89	64	$ 125,314.03
FY 90	$ 10,642,636.00	$ 2,537,693.00	FY 90	64	$ 166,291.19
FY 91	$ 10,692,902.00	$ 2,669,102.00	FY 91	68	$ 157,248.56
FY 92	$ 13,738,536.00	$ 3,029,565.00	FY 92	68	$ 202,037.29
FY 93	$ 15,777,156.00	$ 3,301,966.00	FY 93	70	$ 225,387.94
FY 94	$ 19,758,180.00	$ 3,217,091.00	FY 94	74	$ 267,002.43
FY 95	$ 21,602,443.00	$ 3,657,564.00	FY 95	78	$ 276,954.40
FY 96	$ 24,665,285.00	$ 4,696,194.00	FY 96	85	$ 290,179.82
FY 97	$ 26,606,840.00	$ 4,829,950.00	FY 97	89	$ 298,953.26
FY 98	$ 29,634,728.00	$ 5,268,817.00	FY 98	94	$ 315,263.06
FY 99	$ 33,810,448.00	$ 5,766,672.00	FY 99	97	$ 348,561.32

FILING STATISTICS - ALL NEW FILINGS

CALENDAR YEARS 1994 Through 1997

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTA
Year ended 12/31/94													
Corporations	1450	1530	1736	1604	1491	1771	1570	1746	1602	1495	1595	2082	19€
Limited Liability Companies	76	83	89	83	95	94	91	87	85	108	83	173	11
Limited Partnerships	129	130	152	179	153	147	130	132	167	153	158	255	18
Limited Liability Partnerships	-	-	-	-	-	-	-	-	-	-	-	-	
1994 Total Filings	1,655	1,743	1,977	1,866	1,739	2,012	1,791	1,965	1,854	1,756	1,836	2,510	22,7(
Per mo.% inc (dec)w/ prior year													
Y-T-D 1994	1,655	3,398	5,375	7,241	8,980	10,992	12,783	14,748	16,602	18,358	20,194	22,704	
Y-T-D % inc (dec) w/ prior year													
Year ended 12/31/95													
Corporations	1429	1569	1911	1568	1694	1915	1504	2181	1715	1699	2038	2378	216(
Limited Liability Companies	144	125	166	151	105	211	126	182	196	156	166	226	19
Limited Partnerships	172	122	204	102	146	222	192	221	138	176	213	297	22(
Limited Liability Partnerships	-	-	-	-	-	-	-	-	-	-	-	-	
1995 Total Filings	1,745	1,816	2,281	1,821	1,945	2,348	1,822	2,584	2,049	2,031	2,417	2,903	25,76
Per mo.% inc (dec)w/ prior year	5.44%	4.19%	15.38%	-2.41%	11.85%	16.70%	1.73%	31.50%	10.52%	15.66%	31.64%	15.66%	
Y-T-D 1995	1,745	3,561	5,842	7,663	9,608	11,956	13,778	16,362	18,411	20,442	22,859	25,762	
Y-T-D % inc (dec) w/ prior year	5.44%	4.80%	8.69%	5.83%	6.99%	8.77%	7.78%	10.94%	10.90%	11.35%	13.20%	13.47%	
Year ended 12/31/96													
Corporations	2000	1914	2477	2262	2018	1887	2238	2012	2068	2030	1864	3086	2585(
Limited Liability Companies	224	227	308	307	305	311	318	320	294	343	318	440	371
Limited Partnerships	133	159	238	172	215	177	160	161	176	200	165	433	238
Limited Liability Partnerships	0	0	0	0	0	20	4	4	-	1	-	3	3
1996 Total Filings	2,357	2,300	3,023	2,741	2,538	2,395	2,720	2,497	2,538	2,574	2,347	3,962	31,992
Per mo.% inc (dec)w/ prior year	35.07%	26.65%	32.53%	50.52%	30.49%	2.00%	49.29%	-3.37%	23.87%	26.74%	-2.90%	36.48%	
Y-T-D 1996	2,357	4,657	7,680	10,421	12,959	15,354	18,074	20,571	23,109	25,683	28,030	31,992	
Y-T-D % inc (dec) w/ prior year	35.07%	30.78%	31.46%	35.99%	34.88%	28.42%	31.18%	25.72%	25.52%	25.64%	22.62%	24.18%	
Year ended 12/31/97													
Corporations	2024	2150	2611	2344	2446	2307	2500	2096	2676	2989	2383	3526	30052
Limited Liability Companies	324	367	430	424	420	456	486	439	454	499	466	798	5563
Limited Partnerships	157	226	190	223	157	199	155	177	209	198	155	469	2515
Limited Liability Partnerships	0	3	3	4	0	0	2	3	2	1	3	2	23
1997 Total Filings	2,505	2,746	3,234	2,995	3,023	2,962	3,143	2,715	3,341	3,687	3,007	4,795	38,153
Per mo.% inc (dec)w/ prior year	6.28%	19.39%	6.98%	9.27%	19.11%	23.67%	15.55%	8.73%	31.64%	43.24%	28.12%	21.02%	
Y-T-D 1997	2,505	5,251	8,485	11,480	14,503	17,465	20,608	23,323	26,664	30,351	33,358	38,153	
Y-T-D % inc (dec) w/ prior year	6.28%	12.75%	10.48%	10.16%	11.91%	13.75%	14.02%	13.38%	15.38%	18.18%	19.01%	19.26%	

Year ended 12/31/98													
Corporations	1909	2251	2972	2851	2586	2838	2,784	2,469	2,306	2,332	2,306	3,949	31553
Limited Liability Companies	524	543	670	651	540	699	709	615	632	625	694	947	7849
Limited Partnerships	188	202	333	346	287	367	336	236	262	230	248	484	3519
Limited Liability Partnerships	3	3	1	1	5	2	5	3	3	3	6	4	39
1998 Total Filings	2,624	2,999	3,976	3,849	3,418	3,906	3,834	3,323	3,203	3,190	3,254	5,384	42,960
Per mo.% inc (dec)w/ prior year	4.75%	9.21%	22.94%	28.51%	13.07%	31.87%	21.99%	22.39%	-4.13%	-13.48%	8.21%	12.28%	
Y-T-D 1998	2,624	5,623	9,599	13,448	16,866	20,772	24,606	27,929	31,132	34,322	37,576	42,960	
Y-T-D % inc (dec) w/ prior year	4.75%	7.08%	13.13%	17.14%	16.29%	18.94%	19.40%	19.75%	16.76%	13.08%	12.64%	12.60%	
Year ended 12/31/99													
Corporations	2,270	2,352	3,128	2,900	2,638	2,974	2,522	2,654	2,544	2,831	2,867	4,463	34,143
Limited Liability Companies	580	694	922	892	806	936	858	891	847	883	895	1,184	10,388
Limited Partnerships	212	218	305	292	307	314	229	285	303	294	352	558	3,669
Limited Liability Partnerships	5	4	4	3	1	1	2	3	4	7	2	10	46
1999 Total Filings	3,067	3,268	4,359	4,087	3,752	4,225	3,611	3,833	3,698	4,015	4,116	6,215	48,246
Per mo.% inc (dec)w/ prior year	16.88%	8.97%	9.63%	6.18%	9.77%	8.17%	-5.82%	15.35%	15.45%	25.86%	26.49%	15.43%	
Y-T-D 1999	3,067	6,335	10,694	14,781	18,533	22,758	26,369	30,202	33,900	37,915	42,031	48,246	
Y-T-D % inc (dec) w/ prior year	16.88%	12.66%	11.41%	9.91%	9.88%	9.56%	7.16%	8.14%	8.89%	10.47%	11.86%	12.30%	

DEAN HELLER
Secretary of State

DONALD J. REIS
Chief Deputy Secretary of State

STATE OF NEVADA

CHARLES E. MOORE
Securities Administrator

SCOTT W. ANDERSON
Deputy Secretary for Commercial Recordings

PAMELA BISSELL CROWELL
Deputy Secretary for Elections

OFFICE OF THE

SECRETARY OF STATE

March 24, 2000

Senator Mark James, Chairman
Legislative Commission's Subcommittee on SCR 19
Legislative Building
401 South Carson Street
Carson City, Nevada

Dear Mr. Chairman and Subcommittee Members,

I am Scott Anderson, Deputy Secretary of State for Commercial Recordings. I am here today to testify on behalf of Secretary of State Dean Heller and as an advisory member of the Legislative Commission's Subcommittee on SCR 19. I will limit my testimony to responding to the recommendations of the sub-subcommittee, providing the additional information as requested by the Sub-Subcommittee, proposing additional recommendations and updating you on the recent activities of our office.

The Secretary of State generally supports the recommendations of the Sub-Subcommittee as approved during the February 28, 2000 hearing. Included in those recommendations are requests for additional information in the areas of technology, fee schedules and our special services account.

- **Technology** – The Sub-Subcommittee expressed a desire for additional assurances regarding the ability of the proposed new database filing application to meet and adapt to Nevada's needs.

  During January of this year a needs assessment was conducted in our office in which our staff reviewed the application and provided information to the software provider. The Interim Finance Committee and the Department of Information and Technology approved this needs assessment.

  During the week of March 6, 2000, the software provider returned to our office to further demonstrate the application, answer additional questions and receive additional input from our staff. Office management and our processing staff are confident this new application will meet the future needs of the office.

  We had hoped the needs assessment would have been completed by today. However, the process is on schedule with tentative completion within the next two weeks. At that time, the completed report will be provided to the Department of Information and Technology for its review as well as to this Subcommittee.

  The need for this new application becomes more evident everyday. Since our last meeting, the DoIT staff assigned to the maintenance of our current mainframe application have left DoIT. As well, filings are increasing at a higher rate than originally estimated.

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Telephone (702) 486-2880
Fax (702) 486-2888

- **Fee Schedules** – Since the February 28, 2000 Sub-subcommittee hearing, I have had the opportunity to meet with John Fowler, John LaGatta, Scott Scherer of the Governor's Office and several others regarding the proposed restructuring of the fee schedules for commercial filings processed in our office.

  Chairman Parks was concerned that the Governor's office may be opposed to changes to the fee structure, as they would ultimately raise the overall fees we charge. Mr. Scherer assured me that our proposed changes would not be summarily opposed by the Governor's office, but would be reviewed on a case-by-case basis.

  There are several trains of thought regarding the restructuring of the fee schedules. There has been support and opposition to the concept. I will briefly discuss the ideas brought forth and the arguments for and against them.

  1. Our fees have remained very constant with no significant increases.

  2. Large corporations enjoy the benefits of Nevada's business-friendly statutes for a mere $85.00 per year.

  3. Nevada should focus on the restructuring of the annual filing fees rather than the initial fees for filing the organizational documents. Increases in annual filing fees would give the state an ongoing benefit rather than limiting increases to the initial year in which a corporation was formed. There is a concern that this type of structure may discourage many corporations from filing here if not properly structured.

  4. Annual corporate filing fees should be calculated based on authorized shares similar to how the initial incorporating fees are currently calculated. This would be a relatively simple structure to implement once the appropriate fees are determined. This structure does not consider large corporations with a small number of authorized shares or those that may have a significant presence in the state yet are only paying $85.00 per year.

  5. Annual corporate filing fees should be based on factors such as net worth of the corporation or the number of employees in this state. A structure based on these factors would require higher annual fees of those corporations with a significant presence in this state. Currently, the statues do not require this information be disclosed in the documents filed in this office. Such disclosure requirements may be considered contrary to Nevada's business-friendly statutes and atmosphere.

  6. In light of the proposed "business" taxes in which initiative petitions are circulating, increased fees may be inappropriate and would make Nevada less inviting to those wishing to organize their businesses here.

  7. Other states such as Wyoming have adopted business-friendly statutes and are charging similar fees. Fee increases, if excessive, may drive potential customers to these other states.

  8. "Nevada's fees are high enough. We should look to the increases we are experiencing for the increased revenue." We are experiencing rapid growth. However, an economic downturn or the passage of a business income or gross receipts tax will have a negative impact on the growth of this office.

I must reiterate that these items represent a variety of views regarding the fee structure of the Office and do not necessarily represent the views of the Secretary of State. We feel they are all valid ideas worthy of consideration.

I would like to propose for your consideration the following recommendation; that the Secretary of State be given regulatory authority for the fee structure of his office. This would allow for the public hearing process, while allowing the flexibility to modify the structure. The market in which we operate is quite dynamic and is becoming much more competitive. The flexibility of the regulation process would allow for adaptation to market changes.

- **Special Services Account** — The special services account was set up using fees received for special services rendered, i.e., expedite fees. This fund was to be used to enhance the services provided by the Secretary of State. On June 30 of each year, all revenues in excess of $2,000,000.00 are swept from this account into the general fund. On July 1, the amount budgeted for salaries is transferred out of this account to fund salaries for the entire year. Each year, any payroll that is added through IFC approval is taken from this fund.

  I have included an analysis (Attachments A and B) for each of the last two fiscal years showing the activity in this account. As you can see from Attachment B, this fund is now being entirely depleted at the beginning of each fiscal year, leaving virtually nothing to work with in this account. While funds are generated and become available for our use throughout the year, we must be mindful that there must be $2,000,000.00 in this account at year's end.

  The funds available in this account will no longer be sufficient for the enhancement of services our customers and this Subcommittee are demanding. Therefore, we are proposing the following recommendations.

  It is proposed that the operating expenses of this office be provided for through the General Fund and the special revenue account left to provide for current enhancements of service. This would mean those salaries now appropriated from the Special Services Account would be appropriated from the General Fund, leaving a beginning balance of $2,000,000; or

  The $2,000,000.00 cap to which the account is swept at year-end should be raised to a minimum of $3,000,000.00 so as to allow for needed enhancements at the beginning of the fiscal year.

  We prefer the first proposal as it is allows for better monitoring of the fund and should minimize the need to raise the cap again as the appropriations increase. We would, of course, come before the Interim Finance Committee or the Assembly Ways and Means and Senate Finance Committees as appropriate with our requests.

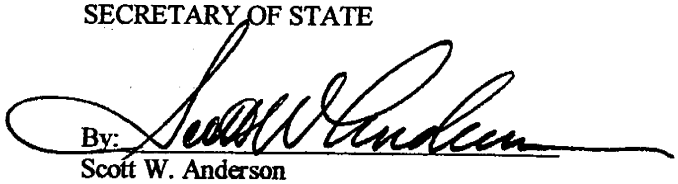
In reviewing the other recommendations, it was noted that in the recommendation for salaries for deputies on page 5 of the Recommendations, the request for further analysis was for the Chief Deputy's position. It is my understanding that the analysis was to be for all unclassified positions in the office. It is requested that the recommendation be revised to include all the unclassified positions.

Our office is experiencing considerable growth. This growth is far exceeding our expectations and estimates. We estimated our growth to be approximately 12% for this biennium based on figures from the previous years. During January and February 2000, New Filings have increased by 24.52% and 27.97%, respectively over the same months in 1999. Our estimates for March approximate these percentages. Year-to date revenue generated through March 10, 2000 was $26,287,378.00 compared to $21,913,161.00 for the same period last fiscal year.

A healthy economy, the availability of forms and information via our web site, the enhanced services provided by our office and Nevada's business-friendly statutes and business environment have contributed to these increases. We look to this Subcommittee and the Legislature, both during the regular session and in the interim for continued support. We appreciate the support we have received in the past and look forward to your continued assistance in our efforts to make Nevada the foremost state in which to incorporate. These recommendations, changes and proposals, in conjunction with those concerning economic development and the creation of a business court are major strides to that goal.

Respectfully,

DEAN HELLER
SECRETARY OF STATE

By: 
Scott W. Anderson
Deputy, Commercial Recording Division

ATTACHMENT A

Budget Account 1054 - Special Services - Secretary of State

Ending Balance FY 98	$	2,903,350.00
Reversion to General Fund	$	903,350.00
Forward to FY 99	$	2,000,000.00
Transfer to B/A 1050 for Salary	$	1,698,064.00
Balance Available 7/1/98	$	301,936.00
Balance Available 08/31/98	$	705,590.00
IFC Request to remodel Las Vegas Commercial recordings office 8/29/98	$	4,594.00
Balance Available 11/10/98	$	1,301,055.00
IFC Request for 3 SOSTEK positions Janice, Bart, Christine	$	164,144.00
Balance Available 3/10/99	$	68,920.00
Transfer to cover Insurance and reclassification for positions funded through Special Services fund 3/10/99	$	49,119.00
Balance Available 4/26/99	$	2,583,646.00
Tranfer to cover shortfall due to merit salary freeze on positions funded by Special Services 4/26/99	$	42,229.00

ATTACHMENT B

Budget Account 1054 - Special Services - Secretary of State

Ending Balance FY 99	$	3,288,636.00
Reversion to General Fund	$	1,288,636.00
Balance Forward to FY 00	$	2,000,000.00
Transfer to B/A 1050 for Salary	$	1,961,691.00
Balance Available 7/1/99	$	38,309.00
Balance Available 10/26/99	$	1,022,947.00
10/26/00 IFC Request for 1 additional FTE in LV Upgrade .5 FTE to 1.0 Technolgy Upgrades	$	482,750.00
Balance Available 11/18/99	$	540,197.00
Balance Available 3/17/00	$	2,412,450.00
IFC Request pending for acquisition of additional office space.	$	609,383.00
IFC Request pending for Election night reporting contract with Governet	$	29,000.00
Projected Balance 4/13/00	$	1,774,067.00

APPENDIX O

Suggested Legislation

SUMMARY—Endorses creation of business courts in Second and Eighth Judicial Districts through adoption of court rules developed by Business Court Task Force. (BDR R-253)

_____ CONCURRENT RESOLUTION—Endorsing the creation of business divisions of the district courts in the Second and Eighth Judicial Districts through the adoption of court rules developed by the Business Court Task Force.

WHEREAS, The State of Delaware has been recognized for its efficient and professional Court of Chancery, which resolves commercial and corporate matters and which has earned international prominence in the areas of corporate, business and commercial law; and

WHEREAS, The creation of business courts modeled after the Court of Chancery has proven successful in other states for facilitating the prompt and final resolution of disputes, thereby eliminating the delay in litigation found in courts of general jurisdiction; and

WHEREAS, The limited jurisdiction of such courts promotes greater specialization to ensure that disputes are heard by judges with experience and expertise in complex commercial and corporate matters; and

WHEREAS, The establishment of business courts as divisions of the district courts in the Second and Eighth Judicial Districts will contribute to the development and stability of corporate and business law, will ensure consistency in decisions and expertise in the disposition of complex commercial and corporate matters and will make this state a more attractive location in which to organize and conduct business; and

WHEREAS, The members of the Business Court Task Force have, through extensive deliberation and analysis, developed court rules providing for the creation of business courts as divisions of the district courts in the Second and Eighth Judicial Districts and prescribing their jurisdiction and procedures; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the members of the 71st Session of the Nevada Legislature hereby endorse the creation of business courts as divisions of the district courts in the Second and Eighth Judicial Districts through the adoption of court rules developed by the Business Court Task Force; and be it further

RESOLVED, That the members of the 71st Session of the Nevada Legislature hereby commend the members of the Business Court Task Force for their hard work in providing for the creation of business courts; and be it further

RESOLVED, That the _____ of the _____ prepare and transmit a copy of this resolution to the Chief Justice of the Supreme Court of Nevada, the Chief Judge of the Second Judicial District Court and the Chief Judge of the Eighth Judicial District Court.

SUMMARY—Proposes to amend Nevada Constitution to authorize legislature to establish business court. (BDR C-254)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

SENATE JOINT RESOLUTION—Proposing to amend section 6 of article 6 of the Constitution of the State of Nevada to authorize the legislature to establish a business court as a division of a district court and to prescribe its jurisdiction.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That section 6 of article 6 of the Constitution of the State of Nevada be amended to read as follows:

Sec. 6. 1. The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts. They also have final appellate jurisdiction in cases arising in Justices Courts and such other inferior tribunals as may be established by law. The District Courts and the Judges thereof have power to issue writs of Mandamus, Prohibition, Injunction, Quo-Warranto, Certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction. The District Courts and the Judges thereof shall also have power to issue writs of Habeas Corpus on petition by, or on behalf of any person who is held in actual custody in their respective districts, or who has suffered a

criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction.

2. The legislature may provide by law for:

(a) Referees in district courts.

(b) The establishment of a family court as a division of any district court and may prescribe its jurisdiction.

(c) The establishment of a business court as a division of any district court and may prescribe its jurisdiction.

2/3s Vote Required - §§ 6, 10, 14, 27, 28, 34, 40, 51, 57, 58, 70, 80, 81, 82, 96

SUMMARY—Makes various changes concerning requirements for formation, maintenance and management of business associations. (BDR 7-255)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to business associations; providing for the decrease of issued and outstanding shares of stock in certain circumstances; providing for the voting rights of fiduciaries and joint owners of stock; revising provisions governing the forfeiture of stock by delinquent subscribers; providing for the registration and management of foreign limited-liability companies; revising provisions governing the merger, conversion and exchange of business entities; providing for the domestication of certain foreign business entities; making various other changes pertaining to business associations; and providing other matters properly relating thereto.

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

Section 1. Chapter 78 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. A person holding stock in a fiduciary capacity is entitled to vote the shares so held.*

2. A person whose stock is pledged is entitled to vote, unless in the pledge the pledgor has expressly empowered the pledgee to vote the stock, in which case only the pledgee or the proxy of the pledgee may vote the stock.

3. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common or otherwise, or if two or more persons have the same fiduciary relationship respecting the shares or securities, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship, their acts with respect to voting have the following effect:

(a) If only one votes, that person's act binds all;

(b) If more than one votes, the act chosen by a majority of votes binds all; or

(c) If more than one votes, but the vote is evenly split on any particular matter, each faction may vote the shares or securities in question proportionally.

Sec. 3. *1. Unless otherwise provided in the articles of incorporation, a corporation that desires to decrease the number of issued and outstanding shares of a class or series held by each stockholder of record at the effective date and time of the change without correspondingly decreasing the number of authorized shares of the same class or series may do so if:*

(a) The board of directors adopts a resolution setting forth the proposal to decrease the number of issued and outstanding shares of a class or series; and

(b) The proposal is approved by the vote of stockholders holding a majority of the voting power of the affected class or series, or such greater proportion as may be provided in the articles of incorporation, regardless of limitations or restrictions on the voting power of the affected class or series.

2. If the proposal required by subsection 1 is approved by the stockholders entitled to vote, the corporation may reissue its stock in accordance with the proposal after the effective date and time of the change.

3. If a proposed decrease in the number of issued and outstanding shares of any class or series would adversely alter or change any preference, or any relative or other right given to any other class or series of outstanding shares, then the decrease must be approved by the vote, in addition to any vote otherwise required, of the shares representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the decrease, or such greater proportion as may be provided in the articles of incorporation, regardless of limitations or restrictions on the voting power of the adversely affected class or series.

4. Any proposal to decrease the number of issued and outstanding shares of any class or series, if any, that includes provisions pursuant to which only money will be paid or scrip will be issued to stockholders who:

(a) Before the decrease in the number of shares becomes effective, hold 1 percent or more of the outstanding shares of the affected class or series; and

(b) Would otherwise be entitled to receive fractions of shares in exchange for the cancellation of all their outstanding shares,

is subject to the provisions of NRS 92A.300 to 92A.500, inclusive. If the proposal is subject to those provisions, any stockholder who is obligated to accept money or scrip rather than receive a fraction of a share resulting from the action taken pursuant to this section may dissent in accordance with the provisions of NRS 92A.300 to 92A.500, inclusive, and obtain payment of the fair value of the fraction of a share to which the stockholder would otherwise be entitled.

Sec. 4. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

(a) "Approval" and "vote" as describing action by the directors or stockholders mean the vote of directors in person or by written consent or of stockholders in person, by proxy or by written consent.

(b) "Articles," "articles of incorporation" and "certificate of incorporation" are synonymous terms and unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.1955, 78.209, 78.380, 78.385 and 78.390 and any articles of merger ~~[or]~~ ***, conversion,*** exchange ***or domestication*** filed pursuant to NRS 92A.200 to 92A.240, inclusive ~~[.]~~ ***, and sections 76 to 82, inclusive, of this act.*** Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.

(c) "Directors" and "trustees" are synonymous terms.

(d) "Receiver" includes receivers and trustees appointed by a court as provided in this chapter or in chapter 32 of NRS.

(e) "Registered office" means the office maintained at the street address of the resident agent.

(f) "Resident agent" means the agent appointed by the corporation upon whom process or a notice or demand authorized by law to be served upon the corporation may be served.

(g) "Sign" means to affix a signature to a document.

(h) "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, a digital signature as defined in NRS 720.060.

(i) "Stockholder of record" means a person whose name appears on the stock ledger of the corporation.

(j) "Street address" of a resident agent means the actual physical location in this state at which a resident agent is available for service of process.

2. General terms and powers given in this chapter are not restricted by the use of special terms, or by any grant of special powers contained in this chapter.

Sec. 5. NRS 78.125 is hereby amended to read as follows:

78.125 1. Unless it is otherwise provided in the articles of incorporation, the board of directors may designate one or more committees which, to the extent provided in the resolution or resolutions or in the bylaws of the corporation, have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation . ~~[, and may have~~

~~power to authorize the seal of the corporation to be affixed to all papers on which the corporation desires to place a seal.]~~

2. The committee or committees must have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

3. Each committee must include at least one director. Unless the articles of incorporation or the bylaws provide otherwise, the board of directors may appoint natural persons who are not directors to serve on committees.

4. The board of directors may designate one or more directors as alternate members of a committee to replace any member who is disqualified or absent from a meeting of the committee. The bylaws of the corporation may provide that, unless the board of directors appoints alternate members pursuant to this subsection, the member or members of a committee present at a meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of an absent or disqualified member of the committee.

Sec. 6. NRS 78.150 is hereby amended to read as follows:

78.150 1. A corporation organized ~~[under]~~ ***pursuant to*** the laws of this state shall, on or before the first day of the second month after the filing of its articles of incorporation with the secretary of state, file with the secretary of state a list, on a form furnished by him, containing:

(a) The name of the corporation;

(b) The file number of the corporation, if known;

(c) The names and titles of the president, secretary, treasurer and of all the directors of the corporation;

(d) The mailing or street address, either residence or business, of each officer and director listed, following the name of the officer or director; and

(e) The signature of an officer of the corporation certifying that the list is true, complete and accurate.

2. The corporation shall annually thereafter, on or before the last day of the month in which the anniversary date of incorporation occurs in each year, file with the secretary of state, on a form furnished by him, an ~~[amended]~~ ***annual*** list containing all of the information required in subsection 1.

3. Upon filing ~~[a list of officers and directors,]~~ ***the annual list required by subsection 2,*** the corporation shall pay to the secretary of state a fee of $85.

4. The secretary of state shall, 60 days before the last day for filing the annual list required by subsection 2, cause to be mailed to each corporation which is required to comply with the provisions of NRS 78.150 to 78.185, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file ~~[a list of officers and directors.]~~ ***the annual list required by subsection 2.*** Failure of any corporation to receive a notice or form does not excuse it from the penalty imposed by law.

5. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection 3 , *6* or 7 is not paid, the secretary of state may return the list for correction or payment.

6. An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and ~~[does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.]~~ ***must be accompanied by a fee of $85 for filing. A payment submitted pursuant to this subsection does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.***

7. If the corporation is an association as defined in NRS 116.110315, the secretary of state shall not accept the filing required by this section unless it is accompanied by evidence of the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the association pursuant to subsection 4 of that section.

Sec. 7. NRS 78.175 is hereby amended to read as follows:

78.175 1. The secretary of state shall notify, by letter addressed to its resident agent, each corporation deemed in default pursuant to NRS 78.170. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. On the first day of the ~~[ninth month following]~~ ***second anniversary of*** the month in which the filing was required, the charter of the corporation is revoked and its right to transact business is forfeited.

3. The secretary of state shall compile a complete list containing the names of all corporations whose right to do business has been forfeited. The secretary of state shall forthwith notify, by letter addressed to its resident agent, each such corporation of the forfeiture of its charter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

4. If the charter of a corporation is revoked and the right to transact business is forfeited as provided in subsection 2, all of the property and assets of the defaulting domestic corporation must be held in trust by the directors of the corporation as for insolvent corporations, and the same proceedings may be had with respect thereto as are applicable to insolvent corporations. Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the charter the proceedings must at once be dismissed and all property restored to the officers of the corporation.

5. Where the assets are distributed they must be applied in the following manner:

(a) To the payment of the filing fee, penalties and costs due to the state;

(b) To the payment of the creditors of the corporation; and

(c) Any balance remaining to distribution among the stockholders.

Sec. 8. NRS 78.180 is hereby amended to read as follows:

78.180 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited its right to transact business ~~[under]~~ ***pursuant to*** the provisions of this chapter and restore to the corporation its right to carry on business in this state, and to exercise its corporate privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 78.150; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS 78.150 and 78.170 for each year or portion thereof during which ~~[its charter was revoked;]~~ ***it failed to file each required annual list in a timely manner;*** and

(2) A fee of $50 for reinstatement.

2. When the secretary of state reinstates the corporation, he shall:

(a) Immediately issue and deliver to the corporation a certificate of reinstatement authorizing it to transact business as if the filing fee ***or fees*** had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a corporate charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 9. NRS 78.195 is hereby amended to read as follows:

78.195 1. If a corporation desires to have more than one class or series of stock, the articles of incorporation must prescribe, or vest authority in the board of directors to prescribe, the classes, series and the number of each class or series of stock and the voting powers, designations, preferences, limitations, restrictions and relative rights of each class or series of

stock. If more than one class or series of stock is authorized, the articles of incorporation or the resolution of the board of directors passed pursuant to a provision of the articles must prescribe a distinguishing designation for each class and series. The voting powers, designations, preferences, limitations, restrictions, relative rights and distinguishing designation of each class or series of stock must be described in the articles of incorporation or the resolution of the board of directors before the issuance of shares of that class or series.

2. All shares of a series must have voting powers, designations, preferences, limitations, restrictions and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

3. Unless otherwise provided in the articles of incorporation, no stock issued as fully paid up may ever be assessed and the articles of incorporation must not be amended in this particular.

4. Any rate, condition or time for payment of distributions on any class or series of stock may be made dependent upon any fact or event which may be ascertained outside the articles of incorporation or the resolution providing for the distributions adopted by the board of directors if the manner in which a fact or event may operate upon the rate, condition or time of payment for the distributions is stated in the articles of incorporation or the resolution. ***As used in this subsection, "fact or event" includes, without limitation, the existence of a fact or occurrence of an event, including, without limitation, a determination or action by a person, government, governmental agency or political subdivision of a government.***

5. The provisions of this section do not restrict the directors of a corporation from taking action to protect the interests of the corporation and its stockholders, including, but not limited to, adopting or executing plans, arrangements or instruments that ***grant rights to stockholders or that*** deny rights, privileges, power or authority to a holder of a specified number of shares or percentage of share ownership or voting power.

Sec. 10. NRS 78.1955 is hereby amended to read as follows:

78.1955 1. If the voting powers, designations, preferences, limitations, restrictions and relative rights of any class or series of stock have been established by a resolution of the board of directors pursuant to a provision in the articles of incorporation, a certificate of designation ***setting forth the resolution*** must be ***signed by an officer of the corporation and*** filed with the secretary of state . ~~[setting forth the resolution. The certificate of designation must be executed by the president or vice president and secretary or assistant secretary and acknowledged by the president or vice president before a person authorized by the laws of Nevada to take acknowledgments of deeds. The]~~ ***A*** certificate of designation ~~[so executed and acknowledged must be filed]~~ ***signed and filed pursuant to this section must become effective*** before the issuance of any shares of the class or series.

2. Unless otherwise provided in the articles of incorporation or the certificate of designation being amended, if no shares of a class or series of stock established by a resolution of the board of directors have been issued, the designation of the class or series, the number of the class or series and the voting powers, designations, preferences, limitations, restrictions and relative

rights of the class or series may be amended by a resolution of the board of directors pursuant to a certificate of amendment filed in the manner provided in subsection 4.

3. Unless otherwise provided in the articles of incorporation or the certificate of designation, if shares of a class or series of stock established by a resolution of the board of directors have been issued, the designation of the class or series, the number of the class or series and the voting powers, designations, preferences, limitations, restrictions and relative rights of the class or series may be amended by a resolution of the board of directors only if the amendment is approved as provided in this subsection. Unless otherwise provided in the articles of incorporation or the certificate of designation, the proposed amendment adopted by the board of directors must be approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation, of:

(a) The class or series of stock being amended; and

(b) Each class and each series of stock which, before amendment, is senior to the class or series being amended as to the payment of distributions upon dissolution of the corporation, regardless of any limitations or restrictions on the voting power of that class or series.

4. A certificate of amendment to a certificate of designation must be ***signed by an officer of the corporation and*** filed with the secretary of state and must:

(a) Set forth the original designation and the new designation, if the designation of the class or series is being amended;

(b) State that no shares of the class or series have been issued or state that the approval of the stockholders required pursuant to subsection 3 has been obtained; and

(c) Set forth the amendment to the class or series or set forth the designation of the class or series, the number of the class or series and the voting powers, designations, preferences, limitations, restrictions and relative rights of the class or series, as amended.

~~[The certificate of amendment must be executed by the president or vice president and secretary or assistant secretary and acknowledged by the president or vice president before a person authorized by the laws of Nevada to take acknowledgments of deeds.]~~

5. A certificate filed pursuant to subsection 1 or 4 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

6. If shares of a class or series of stock established by a certificate of designation are not outstanding, the corporation may file a certificate:

(a) Stating that no shares of the class or series are outstanding; and

(b) Containing the resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock. The certificate must be signed by an officer of the corporation and filed with the secretary of state. Upon filing the certificate and payment of the fee required pursuant to NRS 78.765, all matters contained in the certificate of designation regarding the class or series of stock are eliminated from the articles of incorporation.

7. NRS 78.380, 78.385 and 78.390 do not apply to certificates of amendment filed pursuant to this section.

Sec. 11. NRS 78.196 is hereby amended to read as follows:

78.196 1. Each corporation must have:

(a) One or more classes or series of shares that together have unlimited voting rights; and

(b) One or more classes or series of shares that together are entitled to receive the net assets of the corporation upon dissolution.

If the articles of incorporation provide for only one class of stock, that class of stock has unlimited voting rights and is entitled to receive the net assets of the corporation upon dissolution.

2. The articles of incorporation, or a resolution of the board of directors pursuant thereto, may authorize one or more classes or series of stock that:

(a) Have special, conditional or limited voting powers, or no right to vote, except to the extent otherwise provided by this Title;

(b) Are redeemable or convertible:

(1) At the option of the corporation, the stockholders or another person, or upon the occurrence of a designated event;

(2) For cash, indebtedness, securities or other property; or

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the stockholders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;

(d) Have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation;

(e) Have par value; or

(f) Have powers, designations, preferences, limitations, restrictions and relative rights dependent upon any fact or event which may be ascertained outside of the articles of incorporation or the resolution if the manner in which the fact or event may operate on such class or series of stock is stated in the articles of incorporation or the resolution.

3. ***Unless otherwise provided in the articles of incorporation or in a resolution of the board of directors establishing a class or series of stock, shares which are subject to redemption and which have been called for redemption are not deemed to be outstanding shares for purposes of voting or determining the total number of shares entitled to vote on a matter on and after the date on which:***

(a) Written notice of redemption has been sent to the holders of such shares; and

(b) A sum sufficient to redeem the shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of any certificates.

4. The description of voting powers, designations, preferences, limitations, restrictions and relative rights of the classes or series of shares contained in this section is not exclusive.

Sec. 12. NRS 78.205 is hereby amended to read as follows:

78.205 1. A corporation is not ~~[obliged]~~ ***obligated*** to but may execute and deliver a certificate for or including a fraction of a share.

2. In lieu of executing and delivering a certificate for a fraction of a share, a corporation may:

(a) Pay to any person otherwise entitled to become a holder of a fraction of a share:

(1) The appraised value of that share if the appraisal was properly demanded ~~[;]~~ ***pursuant to this chapter or chapter 92A of NRS;*** or

(2) If no appraisal was demanded or an appraisal was not properly demanded, an amount in cash specified for that purpose as the value of the fraction in the articles, plan of reorganization, plan of merger or exchange, resolution of the board of directors, or other instrument pursuant to which the fractional share would otherwise be issued, or, if not specified, then as may be determined for that purpose by the board of directors of the issuing corporation;

(b) Issue such additional fraction of a share as is necessary to increase the fractional share to a full share; or

(c) Execute and deliver registered or bearer scrip over the manual or facsimile signature of an officer of the corporation or of its agent for that purpose, exchangeable as provided on the scrip for full share certificates, but the scrip does not entitle the holder to any rights as a stockholder except as provided on the scrip. The scrip may provide that it becomes void unless the rights of the holders are exercised within a specified period and may contain any other provisions or conditions that the corporation deems advisable. Whenever any scrip ceases to be exchangeable for full share certificates, the shares that would otherwise have been issuable as provided on the

scrip are deemed to be treasury shares unless the scrip contains other provisions for their disposition.

3. The provisions of this section do not prevent a person who holds a fractional share from disputing the appraised value of a share pursuant to NRS 92A.300 to 92A.500, inclusive, if the person is otherwise entitled to exercise such rights.

Sec. 13. NRS 78.207 is hereby amended to read as follows:

78.207 1. Unless otherwise provided in the articles of incorporation, a corporation ~~[organized and existing under the laws of this state]~~ that desires to change the number of shares of a class ~~[and]~~ ***or*** series, if any, of its authorized stock by increasing or decreasing the number of authorized shares of the class ~~[and]~~ ***or*** series and correspondingly increasing or decreasing the number of issued and outstanding shares of the same class ~~[and]~~ ***or*** series held by each stockholder of record at the effective date and time of the change, may, except as otherwise provided in subsections 2 and 3, do so by a resolution adopted by the board of directors, without obtaining the approval of the stockholders. The resolution may also provide for a change of the par value, if any, of the same class ~~[and]~~ ***or*** series of the shares increased or decreased. After the effective date and time of the change, the corporation may issue its stock in accordance therewith.

2. A proposal to increase or decrease the number of authorized shares of any class ~~[and]~~ ***or*** series, if any, that includes provisions pursuant to which only money will be paid or scrip will be issued to stockholders who:

(a) Before the increase or decrease in the number of shares becomes effective, in the aggregate hold 10 percent or more of the outstanding shares of the affected class ~~[and]~~ ***or*** series; and

(b) Would otherwise be entitled to receive fractions of shares in exchange for the cancellation of all of their outstanding shares,

must be approved by the vote of stockholders holding a majority of the voting power of the affected class ~~[and]~~ ***or*** series, or such greater proportion as may be provided in the articles of incorporation, regardless of limitations or restrictions on the voting power thereof.

3. If a proposed increase or decrease in the number of authorized shares of any class or series would ***adversely*** alter or change any preference or any relative or other right given to any other class or series of outstanding shares, then the increase or decrease must be approved by the vote, in addition to any vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series whose preference or rights are ***adversely*** affected by the increase or decrease, regardless of limitations or restrictions on the voting power thereof.

4. Any proposal to increase or decrease the number of authorized shares of any class ~~[and]~~ ***or*** series, if any, that includes provisions pursuant to which only money will be paid or scrip will be issued to stockholders who:

(a) Before the increase or decrease in the number of shares becomes effective, hold 1 percent or more of the outstanding shares of the affected class ~~[and]~~ ***or*** series; and

(b) Would otherwise be entitled to receive a fraction of a share in exchange for the cancellation of all of their outstanding shares,

is subject to the provisions of NRS 92A.300 to 92A.500, inclusive. If the proposal is subject to those provisions, any stockholder who is obligated to accept money or scrip rather than receive a fraction of a share resulting from the action taken pursuant to this section may dissent in accordance with those provisions and obtain payment of the fair value of the fraction of a share to which the stockholder would otherwise be entitled.

Sec. 14. NRS 78.209 is hereby amended to read as follows:

78.209 1. A change pursuant to NRS 78.207 is not effective until after the filing in the office of the secretary of state of a certificate, signed by ~~[the corporation's president, or a vice president, and its secretary, or an assistant secretary, and acknowledged by the president or vice president before a person authorized by the laws of this state to take acknowledgments of deeds,]~~ ***an officer of the corporation,*** setting forth:

(a) The current number of authorized shares and the par value, if any, of each class ~~[and]~~ ***or*** series, if any, of shares before the change;

(b) The number of authorized shares and the par value, if any, of each class ~~[and]~~ ***or*** series, if any, of shares after the change;

(c) The number of shares of each affected class ~~[and]~~ ***or*** series, if any, to be issued after the change in exchange for each issued share of the same class or series;

(d) The provisions, if any, for the issuance of fractional shares, or for the payment of money or the issuance of scrip to stockholders otherwise entitled to a fraction of a share and the percentage of outstanding shares affected thereby; ***and***

(e) That any required approval of the stockholders has been obtained. ~~[; and~~

~~(f) Whether the change is effective on filing the certificate or, if not, the date and time at which the change will be effective, which must not be more than 90 days after the certificate is filed.]~~

The provisions in the articles of incorporation of the corporation regarding the authorized number and par value, if any, of the changed class ~~[and]~~ ***or*** series, if any, of shares shall be deemed amended as provided in the certificate at the effective date and time of the change.

2. Unless an increase or decrease of the number of authorized shares pursuant to NRS 78.207 is accomplished by an action that otherwise requires an amendment to the ~~[corporation's]~~ articles of incorporation ~~[,]~~ ***of the corporation,*** such an amendment is not required by that section.

3. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

4. If a certificate filed pursuant to subsection 1 specifies an effective date, the board of directors may terminate the effectiveness of the certificate by resolution. A certificate of termination must:

(a) Be filed with the secretary of state before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identify the certificate being terminated;

(c) State that the effectiveness of the certificate has been terminated;

(d) Be signed by an officer of the corporation; and

(e) Be accompanied by the fee required pursuant to NRS 78.765.

Sec. 15. NRS 78.211 is hereby amended to read as follows:

78.211 1. The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including, but not limited to, cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

~~[2. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for the shares to be issued is adequate.]~~ The judgment of the board of directors as to ~~[the adequacy of]~~ the consideration received for the shares issued is conclusive in the absence of actual fraud in the transaction.

~~[3.]~~ *2.* When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid.

~~[4.]~~ *3.* The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make any other arrangements to restrict the transfer of the shares. The corporation may credit distributions made for the shares against their purchase price, until the services are performed, the benefits are received or the promissory note is paid. If the services are not performed, the benefits are not received or the promissory note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

Sec. 16. NRS 78.220 is hereby amended to read as follows:

78.220 1. Subscriptions to the shares of a corporation, whether made before or after its organization, ~~[shall]~~ ***must*** be paid in full at such time or in such installments at such times as

determined by the board of directors. Any call made by the board of directors for payment on subscriptions ~~[shall]~~ ***must*** be uniform as to all shares of the same class or series.

2. If default is made in the payment of any installment or call, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. In addition, the corporation may sell a sufficient number of the subscriber's shares at public auction to pay for the installment or call and any incidental charges incurred as a result of the sale. No penalty causing a forfeiture of a subscription, of stock for which a subscription has been executed, or of amounts paid thereon, may be declared against any subscriber unless the amount due remains unpaid for 30 days after written demand. Such written demand shall be deemed made when it is mailed by registered or certified mail, return receipt requested, to the subscriber's last known address. If any of the subscriber's shares are sold at public auction, any excess of the proceeds over the total of the amount due plus any incidental charges of the sale ~~[shall]~~ ***must*** be paid to the subscriber or his legal representative. If an action is brought to recover the amount due on a subscription or call, any judgment in favor of the corporation ~~[shall]~~ ***must*** be reduced by the amount of the net proceeds of any sale by the corporation of the subscriber's stock.

3. ***All stock subject to a delinquent installment or call and all amounts previously paid by a delinquent subscriber for the stock must be forfeited to the corporation if an amount due from a subscriber remains unpaid, the corporation has complied with the requirements of subsection 2 and:***

(a) A bidder does not purchase the subscriber's shares at public auction; or

(b) The corporation does not collect the defaulted amount by an action at law.

4. If a receiver of a corporation has been appointed, all unpaid subscriptions ~~[shall]~~ ***must*** be paid at such times and in such installments as the receiver or the court may direct, subject, however, to the provisions of the subscription contract.

~~[4.]~~ *5.* A subscription for shares of a corporation to be organized is irrevocable for 6 months unless otherwise provided by the subscription agreement or unless all of the subscribers consent to the revocation of the subscription.

Sec. 17. NRS 78.235 is hereby amended to read as follows:

78.235 1. Except as otherwise provided in subsection 4, every stockholder is entitled to have a certificate, signed by officers or agents designated by the corporation for the purpose, certifying the number of shares owned by him in the corporation.

2. Whenever any certificate is countersigned or otherwise authenticated by a transfer agent or transfer clerk, and by a registrar, then a facsimile of the signatures of the officers or agents, the transfer agent or transfer clerk or the registrar of the corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. If a corporation uses facsimile signatures of its officers and agents on its stock certificates, it cannot act as registrar of its own stock, but its transfer agent and registrar may be identical if the institution acting in those dual capacities countersigns or otherwise authenticates any stock certificates in both capacities.

3. If any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any certificate or certificates for stock cease to be an officer or officers of the corporation, whether because of death, resignation or other reason, before the certificate or certificates have been delivered by the corporation, the certificate or certificates may

nevertheless be adopted by the corporation and be issued and delivered as though the person or persons who signed the certificate or certificates, or whose facsimile signature or signatures have been used thereon, had not ceased to be an officer or officers of the corporation.

4. ~~[A corporation may provide in its]~~ ***Unless otherwise provided in the*** articles of incorporation or ~~[in its bylaws for]~~ ***bylaws,*** the ***board of directors may authorize the*** issuance of uncertificated shares of some or all of the shares of any or all of its classes or series. The issuance of uncertificated shares has no effect on existing certificates for shares until surrendered to the corporation, or on the respective rights and obligations of the stockholders. Unless otherwise provided by a specific statute, the rights and obligations of stockholders are identical whether or not their shares of stock are represented by certificates.

5. Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the stockholder a written statement containing the information required on the certificates pursuant to subsection 1. At least annually thereafter, the corporation shall provide to its stockholders of record, a written statement confirming the information contained in the informational statement previously sent pursuant to this subsection.

6. Unless otherwise provided in the articles of incorporation or bylaws, a corporation may issue a new certificate of stock or, if authorized by the board of directors pursuant to subsection 4, uncertificated shares in place of a certificate previously issued by it and alleged to have been lost, stolen or destroyed. A corporation may require an owner or legal representative of an owner of a lost, stolen or destroyed certificate to give the corporation a bond or other security sufficient to indemnify it against any claim that may be made against it

for the alleged loss, theft or destruction of a certificate, or the issuance of a new certificate or uncertificated shares.

Sec. 18. NRS 78.257 is hereby amended to read as follows:

78.257 1. Any person who has been a stockholder of record of any corporation and owns not less than 15 percent of all of the issued and outstanding shares of the stock of such corporation or has been authorized in writing by the holders of at least 15 percent of all its issued and outstanding shares, upon at least 5 days' written demand, is entitled to inspect in person or by agent or attorney, during normal business hours, the books of account and all financial records of the corporation, to make ~~[extracts therefrom,]~~ ***copies of records,*** and to conduct an audit of such records. Holders of voting trust certificates representing 15 percent of the issued and outstanding shares of the corporation shall be regarded as stockholders for the purpose of this subsection. The right of stockholders to inspect the corporate records may not be limited in the articles or bylaws of any corporation.

2. All costs for making ~~[extracts]~~ ***copies*** of records or conducting an audit must be borne by the person exercising his rights ~~[under]~~ ***set forth in*** subsection 1.

3. The rights authorized by subsection 1 may be denied to any stockholder upon his refusal to furnish the corporation an affidavit that such inspection, ~~[extracts]~~ ***copies*** or audit is not desired for any purpose not related to his interest in the corporation as a stockholder. Any stockholder or other person, exercising rights ~~[under]~~ ***set forth in*** subsection 1, who uses or attempts to use information, documents, records or other data obtained from the corporation, for

any purpose not related to the stockholder's interest in the corporation as a stockholder, is guilty of a gross misdemeanor.

4. If any officer or agent of any corporation keeping records in this state willfully neglects or refuses to permit an inspection of the books of account and financial records upon demand by a person entitled to inspect them, or refuses to permit an audit to be conducted, as provided in subsection 1, the corporation shall forfeit to the state the sum of $100 for every day of such neglect or refusal, and the corporation, officer or agent thereof is jointly and severally liable to the person injured for all damages resulting to him.

5. A stockholder who brings an action or proceeding to enforce any right ~~[under]~~ ***set forth in*** this section or to recover damages resulting from its denial:

(a) Is entitled to costs and reasonable attorney's fees, if he prevails; or

(b) Is liable for such costs and fees, if he does not prevail,

in the action or proceeding.

6. Except as otherwise provided in this subsection, the provisions of this section do not apply to any corporation listed and traded on any recognized stock exchange nor do they apply to any corporation that furnishes to its stockholders a detailed, annual financial statement. A person who owns, or is authorized in writing by the owners of, at least 15 percent of the issued and outstanding shares of the stock of a corporation that has elected to be governed by subchapter S of the Internal Revenue Code and whose shares are not listed or traded on any recognized stock exchange is entitled to inspect the books of the corporation pursuant to subsection 1 and has the rights, duties and liabilities provided in subsections 2 to 5, inclusive.

Sec. 19. NRS 78.288 is hereby amended to read as follows:

78.288 1. Except as otherwise provided in subsection 2 and the articles of incorporation, a board of directors may authorize and the corporation may make distributions to its stockholders ~~[.]~~ ***, including distributions on shares that are partially paid.***

2. No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) Except as otherwise specifically allowed by the articles of incorporation, the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were to be dissolved at the time of distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights are superior to those receiving the distribution.

3. The board of directors may base a determination that a distribution is not prohibited ~~[under]~~ ***pursuant to*** subsection 2 on:

(a) Financial statements prepared on the basis of accounting practices that are reasonable in the circumstances;

(b) A fair valuation, including, but not limited to, unrealized appreciation and depreciation; or

(c) Any other method that is reasonable in the circumstances.

4. The effect of a distribution ~~[under]~~ ***pursuant to*** subsection 2 must be measured:

(a) In the case of a distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of:

(1) The date money or other property is transferred or debt incurred by the corporation; or

(2) The date upon which the stockholder ceases to be a stockholder with respect to the acquired shares.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

(c) In all other cases, as of:

(1) The date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(2) The date the payment is made if it occurs more than 120 days after the date of authorization.

5. A corporation's indebtedness to a stockholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general unsecured creditors except to the extent subordinated by agreement.

6. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations ~~[under]~~ ***pursuant to*** subsection 2 if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to stockholders could then be made pursuant to this section. If the indebtedness is issued as a distribution, each payment of principal or interest must be treated as a distribution, the effect of which must be measured on the date the payment is actually made.

Sec. 20. NRS 78.310 is hereby amended to read as follows:

78.310 *1.* Meetings of stockholders and directors of any corporation organized ~~[under]~~ ***pursuant to*** the provisions of this chapter may be held within or without this state, in the manner provided by the bylaws of the corporation. The articles of incorporation may designate any place or places where such stockholders' or directors' meetings may be held, but in the absence of any provision therefor in the articles of incorporation, then the meetings must be held within or without this state, as directed from time to time by the bylaws of the corporation.

2. Unless otherwise provided in the articles of incorporation or bylaws, the entire board of directors, any two directors or the president may call annual and special meetings of the stockholders and directors.

Sec. 21. NRS 78.315 is hereby amended to read as follows:

78.315 1. Unless the articles of incorporation or the bylaws provide for a ~~[different]~~ ***greater or lesser*** proportion, a majority of the board of directors of the corporation then in office, at a meeting duly assembled, is necessary to constitute a quorum for the transaction of business, and the act of directors holding a majority of the voting power of the directors, present at a meeting at which a quorum is present, is the act of the board of directors.

2. Unless otherwise restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at a meeting of the board of directors or of a committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by all the members of the board or of the committee.

3. Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or the governing body of any corporation, or of any committee designated by

such board or body, may participate in a meeting of the board, body or committee by means of a telephone conference or similar ~~[method]~~ ***methods*** of communication by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

Sec. 22. NRS 78.320 is hereby amended to read as follows:

78.320 1. Unless this chapter, the articles of incorporation or the bylaws provide for different proportions:

(a) A majority of the voting power, which includes the voting power that is present in person or by proxy, regardless of whether the proxy has authority to vote on all matters, constitutes a quorum for the transaction of business; and

(b) Action by the stockholders on a matter other than the election of directors is approved if the number of votes cast in favor of the action exceeds the number of votes cast in opposition to the action.

2. Unless otherwise provided in the articles of incorporation or the bylaws, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if, before or after the action, a written consent thereto is signed by stockholders holding at least a majority of the voting power, except that if a different proportion of voting power is required for such an action at a meeting, then that proportion of written consents is required.

3. In no instance where action is authorized by written consent need a meeting of stockholders be called or notice given.

4. Unless otherwise restricted by the articles of incorporation or bylaws, stockholders may participate in a meeting of stockholders by means of a telephone conference or similar ~~[method]~~ ***methods*** of communication by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

5. Unless otherwise provided in this chapter, the articles of incorporation or the bylaws, if voting by a class or series of stockholders is permitted or required, a majority of the voting power of the class or series that is present in person or by proxy, regardless of whether the proxy has authority to vote on all matters, constitutes a quorum for the transaction of business. An act by the stockholders of each class or series is approved if a majority of the voting power of a quorum of the class or series votes for the action.

Sec. 23. NRS 78.330 is hereby amended to read as follows:

78.330 1. Unless elected pursuant to NRS 78.320, directors of every corporation must be elected at the annual meeting of the stockholders by a plurality of the votes cast at the election. Unless otherwise provided ***in this chapter or*** in the bylaws, the board of directors ~~[have]~~ ***has*** the authority to set the date, time and place for the annual meeting of the stockholders. If for any reason directors are not elected pursuant to NRS 78.320 or at the annual meeting of the stockholders, they may be elected at any special meeting of the stockholders which is called and held for that purpose. ***Unless otherwise provided in the articles of incorporation or bylaws, each director holds office after the expiration of his term until his successor is elected and qualified, or until he resigns or is removed.***

2. The articles of incorporation or the bylaws may provide for the classification of directors as to the duration of their respective terms of office or as to their election by one or more authorized classes or series of shares, but at least one-fourth in number of the directors of every corporation must be elected annually. If an amendment reclassifying the directors would otherwise increase the term of a director, unless the amendment is to the articles of incorporation and otherwise provides, the term of each incumbent director on the effective date of the amendment terminates on the date it would have terminated had there been no reclassification.

3. The articles of incorporation may provide that the voting power of individual directors or classes of directors may be greater than or less than that of any other individual directors or classes of directors, and the different voting powers may be stated in the articles of incorporation or may be dependent upon any fact or event that may be ascertained outside the articles of incorporation if the manner in which the fact or event may operate on those voting powers is stated in the articles of incorporation. If the articles of incorporation provide that any directors may have voting power greater than or less than other directors, every reference in this chapter to a majority or other proportion of directors shall be deemed to refer to a majority or other proportion of the voting power of all of the directors or classes of directors, as may be required by the articles of incorporation.

Sec. 24. NRS 78.3783 is hereby amended to read as follows:

78.3783 1. Except as otherwise provided in subsection 2, "acquisition" means the direct or indirect acquisition of a controlling interest.

2. "Acquisition" does not include any acquisition of shares in good faith, and without an intent to avoid the requirements of NRS 78.378 to 78.3793, inclusive:

(a) By an acquiring person authorized pursuant to NRS 78.378 to 78.3793, inclusive, to exercise voting rights, to the extent that the new acquisition does not result in the acquiring person obtaining a controlling interest greater than that previously authorized; or

(b) Pursuant to:

(1) The laws of descent and distribution;

(2) The enforcement of a judgment;

(3) The satisfaction of a pledge or other security interest; or

(4) A merger , ***exchange, conversion, domestication*** or reorganization effected in compliance with the provisions of NRS 78.622 , ~~[or]~~ 92A.200 to 92A.240, inclusive, ***or sections 78 to 82, inclusive, of this act*** to which the issuing corporation is a party.

Sec. 25. NRS 78.3791 is hereby amended to read as follows:

78.3791 Except as otherwise provided by the articles of incorporation of the issuing corporation, a resolution of the stockholders granting voting rights to the control shares acquired by an acquiring person must be approved by:

1. The holders of a majority of the voting power of the corporation; and

2. If the acquisition will result in any change of the kind described in subsection ~~[3]~~ *2* of NRS 78.390, the holders of a majority of each class or series affected,

excluding those shares as to which any interested stockholder exercises voting rights.

Sec. 26. NRS 78.3793 is hereby amended to read as follows:

78.3793 ~~[1.]~~ Unless otherwise provided in the articles of incorporation or the bylaws of the issuing corporation in effect on the 10th day following the acquisition of a controlling interest by an acquiring person, if the control shares are accorded full voting rights pursuant to NRS 78.378 to 78.3793, inclusive, and the acquiring person has acquired control shares with a majority or more of all the voting power, any stockholder ~~[of record,]~~ ***, as that term is defined in NRS 92A.325,*** other than the acquiring person, ~~[who has]~~ ***whose shares are*** not voted in favor of authorizing voting rights for the control shares ~~[is entitled to demand payment for]~~ ***may dissent in accordance with the provisions of NRS 92A.300 to 92A.500, inclusive, and obtain payment of*** the fair value of his shares.

~~[2. The board of directors of the issuing corporation shall, within 20 days after the vote of the stockholders authorizing voting rights for the control shares, cause a notice to be sent to any stockholder, other than the acquiring person, who has not voted in favor of authorizing voting rights for the control shares, advising him of the fact and of his right to receive fair value for his shares as provided in subsection 3.~~

~~3. Within 20 days after the mailing of the notice described in subsection 2, any stockholder of the corporation, other than the acquiring person, who has not voted in favor of authorizing voting rights for the control shares, may deliver to the registered office of the corporation a written demand that the corporation purchase, for fair value, all or any portion of his shares. The corporation shall comply with the demand within 30 days after its delivery.]~~

Sec. 27. NRS 78.380 is hereby amended to read as follows:

78.380 1. At least two-thirds of the incorporators or of the board of directors of any corporation, before issuing any stock, may amend the ~~[original]~~ articles of incorporation ~~[thereof as may be desired by executing or proving in the manner required for original articles of incorporation,]~~ ***of the corporation by signing*** and filing with the secretary of state a certificate amending, modifying, changing or altering the ~~[original]~~ articles, in whole or in part. The certificate must ***state that:***

(a) ~~[Declare that the]~~ ***The*** signers thereof are at least two-thirds of the incorporators or of the board of directors of the corporation, and state the ~~[corporation's name.]~~ ***name of the corporation; and***

(b) ~~[State the date upon which the original articles thereof were filed with the secretary of state.~~

~~(c) Affirmatively declare that to]~~ ***As of*** the date of the certificate, no stock of the corporation has been issued.

2. ~~[The amendment]~~ ***A certificate filed pursuant to this section*** is effective upon ~~[the filing of]~~ ***filing*** the certificate with the secretary of state ***or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.***

3. ***If a certificate specifies an effective date and if no stock of the corporation has been issued, the board of directors may terminate the effectiveness of a certificate by filing a certificate of termination with the secretary of state that:***

(a) Identifies the certificate being terminated;

(b) States that no stock of the corporation has been issued;

(c) States that the effectiveness of the certificate has been terminated;

(d) Is signed by at least two-thirds of the board of directors of the corporation; and

(e) Is accompanied by the fee required pursuant to NRS 78.765.

4. This section does not permit the insertion of any matter not in conformity with this chapter.

Sec. 28. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and ***either*** call a ***special*** meeting ~~[, either annual or special,]~~ ***of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting*** of the stockholders entitled to vote ~~[for the consideration thereof.]~~ ***on the amendment.***

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections ~~[3 and 5,]~~ ***2 and 4,*** or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, ~~[the president, or vice president, and secretary, or assistant secretary,~~

~~shall execute~~] ***an officer of the corporation shall sign*** a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so ~~[executed]~~ ***signed*** must be filed ~~[in the office of]~~ ***with*** the secretary of state.

~~[2. Upon filing the certificate the articles of incorporation are amended accordingly.~~

~~3.~~] *2.* If any proposed amendment would ***adversely*** alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series ***adversely*** affected by the amendment regardless of limitations or restrictions on the voting power thereof.

~~[4.]~~ *3.* Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

~~[5.]~~ *4.* Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by the fee required pursuant to NRS 78.765.

Sec. 29. NRS 78.403 is hereby amended to read as follows:

78.403 1. A corporation may restate, or amend and restate, in a single certificate the entire text of its articles of incorporation as amended by filing with the secretary of state a certificate ***signed by an officer of the corporation and*** entitled "Restated Articles of Incorporation of .....," which must set forth the articles as amended to the date of the certificate. If the

certificate alters or amends the articles in any manner, it must comply with the provisions of this chapter governing such amendments and must be accompanied by:

(a) A resolution; or

(b) A form prescribed by the secretary of state,

setting forth which provisions of the articles of incorporation on file with the secretary of state are being altered or amended.

2. If the certificate does not alter or amend the articles, it must be signed by ~~[the president or vice president and the secretary or assistant secretary]~~ ***an officer*** of the corporation and state that ~~[they have]~~ ***he has*** been authorized to execute the certificate by resolution of the board of directors adopted on the date stated, and that the certificate correctly sets forth the text of the articles of incorporation as amended to the date of the certificate.

3. The following may be omitted from the restated articles:

(a) The names, addresses, signatures and acknowledgments of the incorporators;

(b) The names and addresses of the members of the past and present boards of directors; and

(c) The name and address of the resident agent.

4. Whenever a corporation is required to file a certified copy of its articles, in lieu thereof it may file a certified copy of the most recent certificate restating its articles as amended, subject to the provisions of subsection 2, together with certified copies of all certificates of amendment filed subsequent to the restated articles and certified copies of all certificates supplementary to the original articles.

Sec. 30. NRS 78.565 is hereby amended to read as follows:

78.565 ~~[Every]~~

1. Unless otherwise provided in the articles of incorporation, every corporation may, by action taken at any meeting of its board of directors, sell, lease or exchange all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions as its board of directors may ~~[deem expedient and for the best interests of the corporation,]~~ ***approve,*** when and as authorized by the affirmative vote of stockholders holding stock in the corporation entitling them to exercise at least a majority of the voting power given at a stockholders' meeting called for that purpose. ~~[but:~~

~~1. The articles of incorporation may require the vote of a larger proportion of the stockholders and the separate vote or consent of any class of stockholders; and]~~

2. Unless ***otherwise provided in*** the articles of incorporation ~~[provide otherwise, no]~~ ***, a*** vote of stockholders is ***not*** necessary ~~[for]~~ ***:***

(a) For a transfer of assets by way of mortgage, or in trust or in pledge to secure indebtedness of the corporation ~~[.]~~ ***; or***

(b) To abandon the sale, lease or exchange of assets.

Sec. 31. NRS 78.750 is hereby amended to read as follows:

78.750 1. In any action commenced against any corporation in any court of this state, service of process may be made in the manner provided by law and rule of court for the service of civil process.

2. Service of process on a corporation ***whose charter has been revoked or*** which has been continued as a body corporate ~~[under]~~ ***pursuant to*** NRS 78.585 may be made by mailing copies of the process and any associated documents by certified mail, with return receipt requested, to:

(a) The resident agent of the corporation, if there is one; and

(b) Each officer and director of the corporation as named in the list last filed with the secretary of state before the dissolution or expiration of the corporation or the forfeiture of its charter.

The manner of serving process described in this subsection does not affect the validity of any other service authorized by law.

Sec. 32. NRS 78.751 is hereby amended to read as follows:

78.751 1. Any discretionary indemnification ~~[under]~~ ***pursuant to*** NRS 78.7502 **,** unless ordered by a court or advanced pursuant to subsection 2, may be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made:

(a) By the stockholders;

(b) By the board of directors by majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding;

(c) If a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion; or

(d) If a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

2. The articles of incorporation, the bylaws or an agreement made by the corporation may provide that the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation. The provisions of this subsection do not affect any rights to advancement of expenses to which corporate personnel other than directors or officers may be entitled under any contract or otherwise by law.

3. The indemnification ***pursuant to NRS 78.7502*** and advancement of expenses authorized in or ordered by a court pursuant to this section:

(a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in his official capacity or an action in another capacity while holding his office, except that indemnification, unless ordered by a court pursuant to NRS 78.7502 or for the advancement of expenses made pursuant to subsection 2, may not be made to or on behalf of any director or officer if a final adjudication establishes that his acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.

(b) Continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person.

Sec. 33. NRS 78.760 is hereby amended to read as follows:

78.760 1. The fee for filing articles of incorporation is prescribed in the following schedule:

If the amount represented by the total number of shares provided for in the articles ~~[or agreement]~~ is:

$25,000 or less $125

Over $25,000 and not over $75,000 175

Over $75,000 and not over $200,000 225

Over $200,000 and not over $500,000 325

Over $500,000 and not over $1,000,000 425

Over $1,000,000:

For the first $1,000,000 425

For each additional $500,000 or fraction thereof 225

2. The maximum fee which may be charged ~~[under]~~ ***pursuant to*** this section is $25,000 for:

(a) The original filing of articles of incorporation.

(b) A subsequent filing of any instrument which authorizes an increase in stock.

3. For the purposes of computing the filing fees according to the schedule in subsection 1, the amount represented by the total number of shares provided for in the articles of incorporation is:

(a) The aggregate par value of the shares, if only shares with a par value are therein provided for;

(b) The product of the number of shares multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which shares may be issued and disposed of, if only shares without par value are therein provided for; or

(c) The aggregate par value of the shares with a par value plus the product of the number of shares without par value multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which the shares without par value may be issued and disposed of, if shares with and without par value are therein provided for.

For the purposes of this subsection, shares with no prescribed par value shall be deemed shares without par value.

4. The secretary of state shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one-tenth of a cent as if the par value were one-tenth of a cent.

Sec. 34. NRS 78.765 is hereby amended to read as follows:

78.765 1. The fee for filing a certificate changing the number of authorized shares pursuant to NRS 78.209 or a certificate of amendment to articles of incorporation that increases the corporation's authorized stock or a certificate of correction that increases the corporation's authorized stock is the difference between the fee computed at the rates specified in NRS 78.760 upon the total authorized stock of the corporation, including the proposed increase, and the fee computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the proposed increase. In no case may the amount be less than $75.

2. The fee for filing a certificate of amendment to articles of incorporation that does not increase the corporation's authorized stock or a certificate of correction that does not increase the corporation's authorized stock is $75.

3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is $75.

4. The fee for filing a certificate of termination pursuant to NRS 78.1955, 78.209, 78.380 or 78.390 is $75.

Sec. 35. NRS 80.015 is hereby amended to read as follows:

80.015 1. For the purposes of this chapter, the following activities do not constitute doing business in this state:

(a) Maintaining, defending or settling any proceeding;

(b) Holding meetings of the board of directors or stockholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining accounts in banks or credit unions;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Making sales through independent contractors;

(f) Soliciting or receiving orders outside of this state through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside of this state and filling them by shipping goods into this state;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Isolated transactions completed within 30 days and not a part of a series of similar transactions;

(k) The production of motion pictures as defined in NRS 231.020;

(l) Transacting business as an out-of-state depository institution pursuant to the provisions of Title 55 of NRS; and

(m) Transacting business in interstate commerce.

2. The list of activities in subsection 1 is not exhaustive.

3. A person who is not doing business in this state within the meaning of this section need not qualify or comply with any provision of NRS 80.010 to 80.280, inclusive, chapter 645A, 645B or 645E of NRS or Title 55 or 56 of NRS unless he:

(a) Maintains an office in this state for the transaction of business; or

(b) Solicits or accepts deposits in the state, except pursuant to the provisions of chapter 666 or 666A of NRS.

4. As used in this section and for the purposes of NRS 80.016, "deposits" means demand deposits, savings deposits and time deposits, as those terms are defined in chapter 657 of NRS.

Sec. 36. Chapter 86 of NRS is hereby amended by adding thereto the provisions set forth as sections 37 to 54, inclusive, of this act.

Sec. 37. ***"Articles" and "articles of organization" are synonymous terms and, unless the context otherwise requires, include certificates and restated articles of organization filed pursuant to NRS 86.221 and articles of merger, conversion, exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, and sections 78 to 82, inclusive, of this act.***

Sec. 38. ***"Noneconomic member" means a member of a limited-liability company who:***

1. Does not own a member's interest in the company;

2. Does not have an obligation to contribute capital to the company;

3. Does not have a right to participate in or receive distributions of profits of the company or an obligation to contribute to the losses of the company; and

4. May have voting rights and other rights and privileges given to noneconomic members of the company by the articles of organization or operating agreement.

Sec. 39. ***The provisions of this chapter may be amended or repealed at the pleasure of the legislature. A limited-liability company created pursuant to the provisions of this chapter or availing itself of any of the provisions of this chapter and all members and managers of the limited-liability company are bound by the amendment. An amendment or repeal does not take away or impair any remedy against a limited-liability company or its managers or members for a liability that has been previously incurred. The provisions of this chapter and all amendments thereof are a part of the articles of every limited-liability company.***

Sec. 40. *1. A limited-liability company may correct a document filed by the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged.*

2. To correct a document, the limited-liability company must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability company;

(2) Describes the document, including, without limitation, its filing date;

(3) Identifies the incorrect statement and specifies the reason it is incorrect, or the manner in which the execution or other formal authentication was defective;

(4) Corrects the incorrect statement or defective execution; and

(5) Is signed by a manager of the company, or if management is not vested in a manager, by a member of the company.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay the fee required pursuant to NRS 86.561 to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 41. *The articles of organization or operating agreement of a limited-liability company may create classes of members or managers, define their relative rights, powers and duties, and may authorize the creation, in the manner provided in the operating agreement, of additional classes of members or managers with the relative rights, powers and duties as may*

from time to time be established, including, without limitation, rights, powers and duties senior to existing classes of members or managers. The articles of organization or operating agreement may provide that any member, or class or group of members, has voting rights that differ from other classes or groups.

Sec. 42. *Upon application by or for a member, the district court may decree dissolution of a limited-liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement.*

Sec. 43. *A member who owns a member's interest in a limited-liability company or a noneconomic member, when permitted by the terms of the articles of organization or operating agreement, may bring an action in the right of a limited-liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.*

Sec. 44. *In a derivative action, the plaintiff must be a member who owns a member's interest or a noneconomic member at the time of bringing the action and at the time of the transaction of which he complains.*

Sec. 45. *In a derivative action, the complaint must set forth with particularity:*

1. The effort of the plaintiff to secure initiation of the action by a manager or member; or

2. The reasons for the plaintiff not making the effort to secure initiation of the action by a manager or member.

Sec. 46. *If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited-liability company the remainder of those proceeds received by him.*

Sec. 47. *Subject to the constitution of this state:*

1. The laws of the state, pursuant to which a foreign limited-liability company is organized, govern its organization, internal affairs and the liability of its managers and members; and

2. A foreign limited-liability company may not be denied registration by reason of any difference between the laws of the state of organization and the laws of this state.

Sec. 48. *Before transacting business in this state, a foreign limited-liability company must register with the secretary of state. In order to register, a foreign limited-liability company must submit to the secretary of state an application for registration as a foreign limited-liability company, signed by a manager of the company or, if management is not vested in a manager, a member of the company and a signed certificate of acceptance of a resident agent. The application for registration must set forth:*

1. The name of the foreign limited-liability company and, if different, the name under which it proposes to register and transact business in this state;

2. The state and date of its formation;

3. The name and address of the resident agent whom the foreign limited-liability company elects to appoint;

4. A statement that the secretary of state is appointed the agent of the foreign limited-liability company for service of process if the authority of the resident agent has been revoked, or if the resident agent has resigned or cannot be found or served with the exercise of reasonable diligence;

5. The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited-liability company;

6. The name and business address of each manager or, if management is not vested in a manager, each member; and

7. The address of the office at which is kept a list of the names and addresses of the members and their capital contributions, together with an undertaking by the foreign limited-liability company to keep those records until the registration in this state of the foreign limited-liability company is canceled or withdrawn.

Sec. 49. *If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall issue a certificate of registration to transact business in this state and mail it to the person who filed the application or his representative.*

Sec. 50. *A foreign limited-liability company may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of*

organization, which contains the words required by NRS 86.171 and which could be registered by a domestic limited-liability company.

Sec. 51. *1. A foreign limited-liability company may cancel its registration by filing with the secretary of state a certificate of cancellation signed by a manager of the company or, if management is not vested in a manager, a member of the company. The certificate, which must be accompanied by the required fees, must set forth:*

(a) The name of the foreign limited-liability company;

(b) The date upon which its certificate of registration was filed;

(c) The effective date of the cancellation if other than the date of the filing of the certificate of cancellation; and

(d) Any other information deemed necessary by the manager of the company or, if management is not vested in a manager, a member of the company.

2. A cancellation pursuant to this section does not terminate the authority of the secretary of state to accept service of process on the foreign limited-liability company with respect to causes of action arising from the transaction of business in this state by the foreign limited-liability company.

Sec. 52. *1. A foreign limited-liability company transacting business in this state may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.*

2. The failure of a foreign limited-liability company to register in this state does not impair the validity of any contract or act of the foreign limited-liability company, or prevent

the foreign limited-liability company from defending any action, suit or proceeding in any court of this state.

3. A foreign limited-liability company, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state by the foreign limited-liability company.

Sec. 53. *The attorney general may bring an action to restrain a foreign limited-liability company from transacting business in this state in violation of this section and sections 47 to 52, inclusive, of this act.*

Sec. 54. *The articles of organization or operating agreement of a limited-liability company may provide for one or more noneconomic members or classes of noneconomic members.*

Sec. 55. NRS 86.011 is hereby amended to read as follows:

86.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS ~~[86.021]~~ ***86.031*** to 86.128, inclusive, ***and sections 37 and 38 of this act*** have the meanings ascribed to them in those sections.

Sec. 56. NRS 86.081 is hereby amended to read as follows:

86.081 "Member" means the owner of ~~[an]~~ ***a member's*** interest in a limited-liability company ~~[.]~~ ***or a noneconomic member.***

Sec. 57. NRS 86.201 is hereby amended to read as follows:

86.201 1. ~~[Upon filing the articles of organization and the certificate of acceptance of the resident agent, and the payment of filing fees, the]~~ ***A*** limited-liability company is considered legally organized pursuant to this chapter ~~[.]~~ ***upon:***

(a) Filing the articles of organization with the secretary of state or upon a later date specified in the articles of organization;

(b) Filing the certificate of acceptance of the resident agent with the secretary of state; and

(c) Paying the required filing fees to the secretary of state.

2. A limited-liability company must not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the ~~[secretary of state has filed the articles of organization and the certificate of acceptance.]~~ ***company is considered legally organized pursuant to subsection 1.***

Sec. 58. NRS 86.226 is hereby amended to read as follows:

86.226 1. A signed certificate of amendment, or a certified copy of a judicial decree of amendment, must be filed with the secretary of state. A person who executes a certificate as an agent, officer or fiduciary of the limited-liability company need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, upon his receipt of all required filing fees he shall file the certificate.

2. ~~[Upon the filing of a]~~ ***A*** certificate of amendment or judicial decree of amendment ~~[in the office of]~~ ***is effective upon filing with*** the secretary of state ~~[, the articles of organization are amended as set forth therein.]~~ ***or upon a later date specified in the certificate or judicial decree, which must not be more than 90 days after the certificate or judicial decree is filed.***

3. If a certificate specifies an effective date and if the resolution of the members approving the proposed amendment provides that one or more managers, or, if management is not vested in a manager, one or more members may abandon the proposed amendment, then those managers or members may terminate the effectiveness of the certificate by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate or judicial decree filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the members, the manager of the company or, if management is not vested in a manager, a designated member is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by a manager of the company or, if management is not vested in a manager, a designated member; and

(f) Is accompanied by the fee required pursuant to NRS 86.561.

Sec. 59. NRS 86.274 is hereby amended to read as follows:

86.274 1. The secretary of state shall notify, by letter addressed to its resident agent, each limited-liability company deemed in default pursuant to the provisions of this chapter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. On the ~~[first day of the ninth month]~~ ***second anniversary*** following the month in which the filing was required, the charter of the company is revoked and its right to transact business is forfeited.

3. The secretary of state shall compile a complete list containing the names of all limited-liability companies whose right to do business has been forfeited. The secretary of state shall forthwith notify each limited-liability company by letter addressed to its resident agent of the forfeiture of its charter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

4. If the charter of a limited-liability company is revoked and the right to transact business is forfeited, all of the property and assets of the defaulting company must be held in trust by the managers or, if none, by the members of the company, and the same proceedings may be had with respect to its property and assets as apply to the dissolution of a limited-liability company ~~[.]~~ ***pursuant to NRS 86.505 and 86.521.*** Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the charter the proceedings must be dismissed and all property restored to the company.

5. If the assets are distributed they must be applied in the following manner:

(a) To the payment of the filing fee, penalties and costs due to the state; and

(b) To the payment of the creditors of the company.

Any balance remaining must be distributed among the members as provided in subsection 1 of NRS 86.521.

Sec. 60. NRS 86.276 is hereby amended to read as follows:

86.276 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any limited-liability company which has forfeited its right to transact business ~~[under]~~ ***pursuant to*** the provisions of this chapter and restore to the company its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 86.263; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS 86.263 and 86.272 for each year or portion thereof during which ~~[its charter has been revoked;]~~ ***it failed to file in a timely manner each required annual list;*** and

(2) A fee of $50 for reinstatement.

2. When the secretary of state reinstates the limited-liability company, he shall:

(a) Immediately issue and deliver to the company a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the company one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a company's charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 61. NRS 86.281 is hereby amended to read as follows:

86.281 A limited-liability company organized and existing ~~[under]~~ ***pursuant to*** this chapter may ~~[:]~~ ***exercise the powers and privileges granted by this chapter and may:***

1. Sue and be sued, complain and defend, in its name;

2. Purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or an interest in it, wherever situated;

3. Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;

4. Lend money to and otherwise assist its members;

5. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares, member's interests or other interests in or obligations of domestic or foreign limited-liability companies, domestic or foreign corporations, joint ventures or similar associations, general or limited partnerships or natural persons, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of it;

6. Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the company may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises and income;

7. Lend, invest and reinvest its money and take and hold real property and personal property for the payment of money so loaned or invested;

8. Conduct its business, carry on its operations and have and exercise the powers granted by this chapter in any state, territory, district or possession of the United States, or in any foreign country;

9. Appoint managers and agents, define their duties and fix their compensation;

10. Cease its activities and surrender its articles of organization;

11. Exercise all powers necessary or convenient to effect any of the purposes for which the company is organized; and

12. Hold a license issued pursuant to the provisions of chapter 463 of NRS.

Sec. 62. NRS 86.286 is hereby amended to read as follows:

86.286 ***1.*** A limited-liability company may, but is not required to, adopt an operating agreement. An operating agreement may be adopted only by the unanimous vote or unanimous written consent of the members, ***or by the sole member,*** and the operating agreement must be in writing. Unless otherwise provided in the operating agreement, amendments to the agreement may be adopted only by the unanimous vote or unanimous written consent of the persons who are members at the time of amendment.

2. An operating agreement may be adopted before, after or at the time of the filing of the articles of organization and, whether entered into before, after or at the time of the filing, may become effective at the formation of the limited-liability company or at a later date specified in the operating agreement. If an operating agreement is adopted before the filing of the articles of organization or before the effective date of formation specified in the articles of

organization, the operating agreement is not effective until the effective date of formation of the limited-liability company.

3. An operating agreement may provide that a certificate of limited-liability company interest issued by the limited-liability company may evidence a member's interest in a limited-liability company.

Sec. 63. NRS 86.291 is hereby amended to read as follows:

86.291 *1.* Except as otherwise provided in this section ~~[,]~~ *or* the articles of organization *,* ~~[or the operating agreement,]~~ management of a limited-liability company is vested in its members in proportion to their contribution to its capital, as adjusted from time to time to reflect properly any additional contributions or withdrawals by the members.

2. If provision is made in the articles of organization, management of the company may be vested in a manager or managers, who may but need not be members, in the manner prescribed by the operating agreement of the company. The manager or managers also hold the offices and have the responsibilities accorded to them by the members and set out in the operating agreement.

Sec. 64. NRS 86.301 is hereby amended to read as follows:

86.301 Except as otherwise provided in this chapter *,* ~~[or]~~ in its articles of organization ~~[,]~~ *or its operating agreement,* no debt may be contracted or liability incurred by or on behalf of a limited-liability company, except by one or more of its managers if management of the limited-liability company has been vested by the members in a manager or managers or, if management

of the limited-liability company is retained by the members, then ~~[as provided in the articles of organization or the operating agreement.]~~ ***by any member.***

Sec. 65. NRS 86.343 is hereby amended to read as follows:

86.343 1. A distribution of the profits ***and contributions*** of a limited-liability company must not be made if, after giving it effect:

(a) The company would not be able to pay its debts as they become due in the usual course of business; or

(b) Except as otherwise specifically permitted by the articles of organization, the total assets of the company would be less than the sum of its total liabilities.

2. The manager or, if management of the company is not vested in a manager or managers, the members may base a determination that a distribution is not prohibited ~~[under]~~ ***pursuant to*** this section on:

(a) Financial statements prepared on the basis of accounting practices that are reasonable in the circumstances;

(b) A fair valuation, including unrealized appreciation and depreciation; or

(c) Any other method that is reasonable in the circumstances.

3. The effect of a distribution ~~[under]~~ ***pursuant to*** this section must be measured:

(a) In the case of a distribution by purchase, redemption or other acquisition by the company of member's interests, as of the earlier of:

(1) The date on which money or other property is transferred or debt incurred by the company; or

(2) The date on which the member ceases to be a member with respect to his acquired interest.

(b) In the case of any other distribution of indebtedness, as of the date on which the indebtedness is distributed.

(c) In all other cases, as of:

(1) The date on which the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(2) The date on which the payment is made if it occurs more than 120 days after the date of authorization.

4. Indebtedness of the company, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations ~~[under]~~ ***pursuant to*** this section if its terms provide that payment of principal and interest are to be made only if and to the extent that payment of a distribution to the members could then be made pursuant to this section. If the indebtedness is issued as a distribution, each payment of principal or interest must be treated as a distribution, the effect of which must be measured as of the date of payment.

5. Except as otherwise provided in subsection 6, a member who receives a distribution in violation of this section is liable to the limited-liability company for the amount of the distribution. This subsection does not affect the validity of an obligation or liability of a member created by an agreement or other applicable law for the amount of a distribution.

6. Unless otherwise agreed, a member who receives a distribution from a limited-liability company is not liable for the amount of the distribution after the expiration of 3 years after the

date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the 3-year period following the distribution.

Sec. 66. NRS 86.351 is hereby amended to read as follows:

86.351 1. The interest of each member of a limited-liability company is personal property. The articles of organization or operating agreement may prohibit or regulate the transfer of a member's interest. Unless otherwise provided in the articles or ***operating*** agreement, a transferee of a member's interest has no right to participate in the management of the business and affairs of the company or to become a member unless a majority in interest of the other members approve the transfer. If so approved, the transferee becomes a substituted member. The transferee is only entitled to receive the share of profits or other compensation by way of income, and the return of contributions, to which his transferor would otherwise be entitled.

2. A substituted member has all the rights and powers and is subject to all the restrictions and liabilities of his transferor, except that the substitution of the transferee does not release the transferor from any liability to the company.

Sec. 67. NRS 86.391 is hereby amended to read as follows:

86.391 1. A member is liable to a limited-liability company:

(a) For a difference between his contributions to capital as actually made and as stated in the articles of organization or operating agreement as having been made; and

(b) For any unpaid contribution to capital which he agreed in the articles of organization or operating agreement to make in the future at the time and on the conditions stated in the articles of organization or operating agreement.

2. A member holds as trustee for the company ~~[:~~

~~(a) Specific]~~ ***specific*** property stated in the articles of organization or operating agreement as contributed by him, but which was not ***so*** contributed . ~~[or which has been wrongfully or erroneously returned; and~~

~~(b) Money or other property wrongfully paid or conveyed to him on account of his contribution or the contribution of a predecessor with respect to his member's interest.]~~

3. The liabilities of a member as set out in this section can be waived or compromised only by the consent of all of the members, but a waiver or compromise does not affect the right of a creditor of the company to enforce the liabilities if he extended credit or his claim arose before the effective date of an amendment of the articles of organization or operating agreement effecting the waiver or compromise.

~~[4. When a contributor has rightfully received the return in whole or in part of his contribution to capital, the contributor is liable to the company for any sum, not in excess of the return with interest, necessary to discharge its liability to all of its creditors who extended credit or whose claims arose before the return.]~~

Sec. 68. NRS 86.491 is hereby amended to read as follows:

86.491 ***1.*** A limited-liability company organized ~~[under]~~ ***pursuant to*** this chapter must be dissolved and its affairs wound up:

~~[1.]~~ ***(a)*** At the time, if any, specified in the articles of organization;

~~[2.]~~ ***(b)*** Upon the occurrence of an event specified in an operating agreement; ~~[or~~

~~3. By the unanimous written agreement of all members.]~~

(c) Unless otherwise provided in the articles of organization or operating agreement, upon the affirmative vote or written agreement of members owning at least two-thirds of the interests in the current profits of the limited-liability company or, if there is more than one class or group of members, by members owning at least two-thirds of the interests in the current profits of each class or group of members voting separately; or

(d) Upon entry of a decree of judicial dissolution pursuant to section 42 of this act.

2. Except as otherwise provided in the articles of organization or operating agreement, the death, retirement, resignation, expulsion, bankruptcy, dissolution or dissociation of a member or any other event affecting the member does not:

(a) Terminate the status of the person as a member; or

(b) Cause the limited-liability company to be dissolved or its affairs to be wound up.

3. Except as otherwise provided in the articles of organization or operating agreement, upon the death of a natural person who is the sole member of a limited-liability company, the status of the member, including the member's interest, may pass to the heirs, successors and assigns of the member by will or applicable law. The heir, successor or assign of the member's interest becomes a substituted member pursuant to NRS 86.351, subject to administration as provided by applicable law, without the permission or consent of the heirs, successors or assigns or those administering the estate of the deceased member.

Sec. 69. NRS 86.541 is hereby amended to read as follows:

86.541 1. ~~[The signed articles of dissolution must be filed with the secretary of state. Unless the secretary of state finds that the articles of dissolution do not conform to law, he shall~~

~~when all fees and license taxes prescribed by law have been paid issue a certificate that the limited liability company is dissolved.~~] ***Articles of dissolution become effective upon filing with the secretary of state.***

2. Upon the filing of the articles of dissolution the existence of the company ceases, except for the purpose of suits, other proceedings and appropriate action as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of them, are thereafter trustees for the members and creditors of the dissolved company and as such have authority to distribute any property of the company discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the dissolved company.

Sec. 70. NRS 86.561 is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, $125;

(b) Amending or restating the articles of organization, ~~[or]~~ amending the registration of a foreign company ~~[,]~~ ***or filing a certificate of correction,*** $75;

(c) Filing the articles of dissolution of a domestic or foreign company, $30;

(d) Filing a statement of change of address of a records or registered office, or change of the resident agent, $15;

(e) Certifying articles of organization or an amendment to the articles, in both cases where a copy is provided, $10;

(f) Certifying an authorized printed copy of this chapter, $10;

(g) Reserving a name for a limited-liability company, $20;

(h) ***Filing a certificate of termination or cancellation, $30;***

(i) Executing, filing or certifying any other document, $20; and

~~[(i)]~~ ***(j)*** Copies made at the office of the secretary of state, $1 per page.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $10 which may be recovered as taxable costs by the party to the action causing the service to be made if the party prevails in the action.

3. Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 71. NRS 86.580 is hereby amended to read as follows:

86.580 1. A limited-liability company which did exist or is existing ~~[under]~~ ***pursuant to*** the laws of this state may, upon complying with the provisions of NRS 86.276, procure a renewal or revival of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing and preexisting debts, duties and liabilities secured or imposed by its original charter and amendments thereto, or existing charter, by filing:

(a) A certificate with the secretary of state, which must set forth:

(1) The name of the limited-liability company, which must be the name of the limited-liability company at the time of the renewal or revival, or its name at the time its original charter expired.

(2) The name of the person designated as the resident agent of the limited-liability company, his street address for the service of process, and his mailing address if different from his street address.

(3) The date when the renewal or revival of the charter is to commence or be effective, which may be, in cases of a revival, before the date of the certificate.

(4) Whether or not the renewal or revival is to be perpetual, and, if not perpetual, the time for which the renewal or revival is to continue.

(5) That the limited-liability company desiring to renew or revive its charter is, or has been, organized and carrying on the business authorized by its existing or original charter and amendments thereto, and desires to renew or continue through revival its existence pursuant to and subject to the provisions of this chapter.

(b) A list of its managers, or if there are no managers, all its managing members and their post office box or street addresses, either residence or business.

2. A limited-liability company whose charter has not expired and is being renewed shall cause the certificate to be signed by its manager, or if there is no manager, by a person designated by its members. The certificate must be approved by a majority ~~[of the members.]~~ ***in interest.***

3. A limited-liability company seeking to revive its original or amended charter shall cause the certificate to be signed by a person or persons designated or appointed by the members. The execution and filing of the certificate must be approved by the written consent of a majority ~~[of the members]~~ ***in interest*** and must contain a recital that this consent was secured. The limited-

liability company shall pay to the secretary of state the fee required to establish a new limited-liability company pursuant to the provisions of this chapter.

4. The filed certificate, or a copy thereof which has been certified under the hand and seal of the secretary of state, must be received in all courts and places as prima facie evidence of the facts therein stated and of the existence of the limited-liability company therein named.

Sec. 72. NRS 88.405 is hereby amended to read as follows:

88.405 1. The secretary of state shall notify, by letter addressed to its resident agent, each defaulting limited partnership. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. Immediately after the ~~[first day of the ninth month following]~~ ***second anniversary of*** the month in which filing was required, the certificate of the limited partnership is revoked. The secretary of state shall compile a complete list containing the names of all limited partnerships whose right to do business has been forfeited. The secretary of state shall notify, by letter addressed to its resident agent, each limited partnership of the revocation of its certificate. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

3. In case of revocation of the certificate and of the forfeiture of the right to transact business thereunder, all the property and assets of the defaulting domestic limited partnership are held in trust by the general partners, and the same proceedings may be had with respect thereto as for the judicial dissolution of a limited partnership. Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates

the limited partnership the proceedings must at once be dismissed and all property restored to the general partners.

Sec. 73. NRS 88A.030 is hereby amended to read as follows:

88A.030 "Business trust" means an unincorporated association which:

1. Is created by a trust instrument under which property is held, managed, controlled, invested, reinvested or operated, or any combination of these, or business or professional activities for profit are carried on, by a trustee for the benefit of the persons entitled to a beneficial interest in the trust property; and

2. Files a certificate of trust pursuant to NRS 88A.210.

The term includes, without limitation, a trust of the type known at common law as a business trust or Massachusetts trust, a trust qualifying as a real estate investment trust pursuant to 26 U.S.C. §§ 856 et seq., as amended, or any successor provision, or a trust qualifying as a real estate mortgage investment conduit pursuant to 26 U.S.C. § 860D, as amended, or any successor provision. ~~[The term does not include a corporation as that term is defined in 11 U.S.C. § 101(9).]~~

Sec. 74. NRS 88A.640 is hereby amended to read as follows:

88A.640 1. The secretary of state shall notify, by letter addressed to its resident agent, each business trust deemed in default pursuant to the provisions of this chapter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. ~~[On the first day of the ninth month following]~~ ***Immediately after the second anniversary of*** the month in which the filing was required, the certificate of trust of the business trust is revoked and its right to transact business is forfeited.

3. The secretary of state shall compile a complete list containing the names of all business trusts whose right to do business has been forfeited. He shall forthwith notify each such business trust, by letter addressed to its resident agent, of the revocation of its certificate of trust. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

4. If the certificate of trust is revoked and the right to transact business is forfeited, all the property and assets of the defaulting business trust must be held in trust by its trustees as for insolvent business trusts, and the same proceedings may be had with respect thereto as are applicable to insolvent business trusts. Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the certificate of trust, the proceedings must at once be dismissed.

Sec. 75. Chapter 92A of NRS is hereby amended by adding thereto the provisions set forth as sections 76 to 82, inclusive, of this act.

Sec. 76. ***"Domestic general partnership" means a general partnership governed by the provisions of Chapter 87 of NRS.***

Sec. 77. ***"Resulting entity" means, with respect to a conversion, the entity that results from conversion of the constituent entity.***

Sec. 78. *1. Except as limited by NRS 78.411 to 78.444, inclusive, one domestic general partnership or one domestic entity, except a domestic nonprofit corporation, may convert into a different type of entity if the plan of conversion is approved pursuant to the provisions of this chapter.*

2. The plan of conversion must be in writing and set forth the:

(a) Name of the constituent entity and the proposed name for the resulting entity;

(b) Address of the constituent entity and the resulting entity;

(c) Jurisdiction of the law that governs the constituent entity;

(d) Jurisdiction of the law that will govern the resulting entity;

(e) Terms and conditions of the conversion;

(f) Manner and basis of converting the owner's interest or the interest of a partner in a general partnership of the constituent entity into owner's interests, rights of purchase and other securities in the resulting entity; and

(g) Full text of the constituent documents of the resulting entity.

3. The plan of conversion may set forth other provisions relating to the conversion.

Sec. 79. *Unless otherwise provided in the partnership agreement, all partners must approve a plan of conversion involving a domestic general partnership.*

Sec. 80. *1. One foreign entity or foreign general partnership may convert into one domestic entity if:*

(a) The conversion is permitted by the law of the jurisdiction governing the foreign entity or foreign general partnership and the foreign entity or foreign general partnership complies with that law in effecting the conversion;

(b) The foreign entity or foreign general partnership complies with the applicable provisions of section 81 of this act and, if it is the resulting entity in the conversion, with NRS 92A.210 to 92A.240, inclusive; and

(c) The domestic entity complies with the applicable provisions of NRS 92A.120, 92A.140 and 92A.165 and sections 78 and 79 of this act and, if it is the resulting entity in the conversion, with NRS 92A.210 to 92A.240, inclusive, and section 81 of this act.

2. When the conversion takes effect, the resulting foreign entity in a conversion shall be deemed to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation. Service of process must be made personally by delivering to and leaving with the secretary of state duplicate copies of the process and the payment of a fee of $25 for accepting and transmitting the process. The secretary of state shall send one of the copies of the process by registered or certified mail to the resulting entity at its specified address, unless the resulting entity has designated in writing to the secretary of state a different address for that purpose, in which case it must be mailed to the last address so designated.

Sec. 81. *1. After a plan of conversion is approved as required by this chapter, if the resulting entity is a domestic entity, the constituent entity shall deliver to the secretary of state for filing:*

(a) Articles of conversion setting forth:

(1) The name and jurisdiction of organization of the constituent entity and the resulting entity; and

(2) That a plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

(b) The following constituent document of the domestic resulting entity:

(1) If the resulting entity is a domestic corporation, the articles of incorporation;

(2) If the resulting entity is a domestic limited partnership, the certificate of limited partnership;

(3) If the resulting entity is a domestic limited-liability company, the articles of organization; or

(4) If the resulting entity is a domestic business trust, the certificate of trust.

2. After a plan of conversion is approved as required by this chapter, if the resulting entity is a foreign entity, the constituent entity shall deliver to the secretary of state for filing articles of conversion setting forth:

(a) The name and jurisdiction of organization of the constituent entity and the resulting entity;

(b) That a plan of conversion has been adopted by the constituent entity in compliance with the laws of this state; and

(c) The address of the resulting entity where copies of process may be sent by the secretary of state.

3. If the entire plan of conversion is not set forth in the articles of conversion, the filing party must include in the articles of conversion a statement that the complete executed plan of conversion is on file at the registered office or principal place of business of the resulting entity or, if the resulting entity is a domestic limited partnership, the office described in paragraph (a) of subsection 1 of NRS 88.330.

4. If the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the constituent document filed with the secretary of state pursuant to paragraph (b) of subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date.

5. Any documents filed with the secretary of state pursuant to this section must be accompanied by the required fees.

Sec. 82. *1. Any undomesticated organization may become domesticated in this state as a domestic entity by:*

(a) Paying the required fees to the secretary of state; and

(b) Filing with the secretary of state:

(1) Articles of domestication which must be executed in compliance with subsection 6; and

(2) The appropriate constituent document in compliance with the provisions of all applicable statutes governing the appropriate domestic entity.

2. The articles of domestication must set forth the:

(a) Date when and the jurisdiction where the undomesticated organization was first formed, incorporated, organized or otherwise created;

(b) Name of the undomesticated organization immediately before filing the articles of domestication;

(c) Name and type of domestic entity as set forth in its constituent document pursuant to subsection 1; and

(d) Jurisdiction that constituted the principal place of business or central administration of the undomesticated organization, or any other equivalent thereto pursuant to applicable law, immediately before filing the articles of domestication.

3. Upon filing the articles of domestication and constituent document with the secretary of state, the undomesticated organization is domesticated in this state as the domestic entity described in the constituent document filed pursuant to subsection 1. The existence of the domestic entity begins on the date the undomesticated organization began its existence in the jurisdiction in which the undomesticated organization was first formed, incorporated, organized or otherwise created.

4. The domestication of any undomesticated organization does not affect any obligations or liabilities of the undomesticated organization incurred before its domestication.

5. The filing of the constituent document of the domestic entity filed pursuant to subsection 1 does not affect the choice of law applicable to the undomesticated organization. From the date the constituent document of the domestic entity is filed, the law of this state

applies to the domestic entity to the same extent as if the undomesticated organization was organized and created as a domestic entity on that date.

6. Before filing articles of domestication, the domestication must be approved in the manner required by:

(a) The document, instrument, agreement or other writing governing the internal affairs of the undomesticated organization and the conduct of its business; and

(b) Applicable foreign law.

7. When a domestication becomes effective, all rights, privileges and powers of the undomesticated organization, all property owned by the undomesticated organization, all debts due to the undomesticated organization, and all causes of action belonging to the undomesticated organization are vested in the domestic entity and become the property of the domestic entity to the same extent as vested in the undomesticated organization immediately before domestication. The title to any real property vested by deed or otherwise in the undomesticated organization is not reverted or impaired by the domestication. All rights of creditors and all liens upon any property of the undomesticated organization are preserved unimpaired and all debts, liabilities and duties of an undomesticated organization that has been domesticated attach to the domestic entity resulting from the domestication and may be enforced against it to the same extent as if the debts, liability and duties had been incurred or contracted by the domestic entity.

8. When an undomesticated organization is domesticated, the domestic entity resulting from the domestication is for all purposes deemed to be the same entity as the undomesticated

organization. Unless otherwise agreed by the owners of the undomesticated organization or as required pursuant to applicable foreign law, the domestic entity resulting from the domestication is not required to wind up its affairs, pay its liabilities or distribute its assets. The domestication of an undomesticated organization does not constitute the dissolution of the undomesticated organization. The domestication constitutes a continuation of the existence of the undomesticated organization in the form of a domestic entity. If, following domestication, an undomesticated organization that has become domesticated pursuant to this section continues its existence in the foreign country or foreign jurisdiction in which it was existing immediately before the domestication, the domestic entity and the undomesticated organization are for all purposes a single entity formed, incorporated, organized or otherwise created and existing pursuant to the laws of this state and the laws of the foreign country or other foreign jurisdiction.

9. As used in this section, "undomesticated organization" means any incorporated organization, private law corporation, whether or not organized for business purposes, public law corporation, general partnership, registered limited-liability partnership, limited partnership or registered limited-liability limited partnership, proprietorship, joint venture, foundation, business trust, real estate investment trust, common law trust or any other unincorporated business formed, organized, created or the internal affairs of which are governed by the laws of any foreign country or jurisdiction other than the United States, the District of Columbia or another state, territory, possession, commonwealth or dependency of the United States.

Sec. 83. NRS 92A.005 is hereby amended to read as follows:

92A.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 92A.007 to 92A.080, inclusive, ***and sections 76 and 77 of this act*** have the meanings ascribed to them in those sections.

Sec. 84. NRS 92A.010 is hereby amended to read as follows:

92A.010 "Constituent document" means the articles of incorporation or bylaws of a corporation, whether or not for profit, the articles of organization or operating agreement of a limited-liability company, ~~[or]~~ the certificate of limited partnership or partnership agreement of a limited partnership ~~[.]~~ ***, or the certificate of trust or governing instrument of a business trust.***

Sec. 85. NRS 92A.015 is hereby amended to read as follows:

92A.015 "Constituent entity" means ~~[, with]~~ *:*

1. ***With*** respect to a merger, each merging or surviving entity ~~[and, with]~~ *;*

2. ***With*** respect to an exchange, each entity whose owner's interests will be acquired or each entity acquiring those interests ~~[.]~~ *; and*

3. ***With respect to the conversion of an entity or a general partnership, the entity or general partnership that will be converted into another entity.***

Sec. 86. NRS 92A.070 is hereby amended to read as follows:

92A.070 "Member" means:

1. A ~~[person who owns an interest in, and has the right to participate in the management of the business and affairs of a domestic limited-liability company; or]~~ ***member of a limited-liability company, as defined in NRS 86.081; or***

2. A member of a nonprofit corporation which has members.

Sec. 87. NRS 92A.075 is hereby amended to read as follows:

92A.075 "Owner" means the holder of an interest described in NRS 92A.080 ~~[.]~~ ***or a noneconomic member of a limited-liability company described in section 38 of this act.***

Sec. 88. NRS 92A.120 is hereby amended to read as follows:

92A.120 1. After adopting a plan of merger ~~[or exchange,]~~ ***, exchange or conversion,*** the board of directors of each domestic corporation that is a constituent entity in the merger ~~[,]~~ ***or conversion,*** or the board of directors of the domestic corporation whose shares will be acquired in the exchange, must submit the plan of merger, except as otherwise provided in NRS 92A.130, ***the plan of conversion*** or the plan of exchange for approval by its stockholders ~~[.]~~ ***who are entitled to vote on the plan.***

2. For a plan of merger ***, conversion*** or exchange to be approved:

(a) The board of directors must recommend the plan of merger ***, conversion*** or exchange to the stockholders, unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the stockholders with the plan; and

(b) The stockholders entitled to vote must approve the plan.

3. The board of directors may condition its submission of the proposed merger ***, conversion*** or exchange on any basis.

4. ~~[The]~~ ***Unless the plan of merger, conversion or exchange is approved by the written consent of stockholders pursuant to subsection 8, the*** domestic corporation must notify each

stockholder, whether or not he is entitled to vote, of the proposed stockholders' meeting in accordance with NRS 78.370. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger***, conversion*** or exchange and must contain or be accompanied by a copy or summary of the plan.

5. Unless this chapter, the articles of incorporation ***, the resolutions of the board of directors establishing the class or series of stock, subsection 6*** or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by classes of stockholders, the plan of merger or ~~[exchange to be authorized]~~ ***conversion*** must be approved by a majority of the voting power ~~[unless stockholders of a class of shares are entitled to vote thereon as a class. If stockholders of a class of shares are so entitled, the plan must be approved by a majority of all votes entitled to be cast on the plan by each class and representing a majority of all votes entitled to be voted.~~

~~6. Separate voting by a class of stockholders is required:~~

~~(a) On a plan of merger if the plan contains a provision that, if contained in the proposed amendment to the articles of incorporation, would entitle particular stockholders to vote as a class on the proposed amendment; and~~

~~(b) On a plan of exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting class.~~

~~7.]~~ ***of the stockholders.***

6. Unless the articles of incorporation or the resolution of the board of directors establishing a class or series of stock provide otherwise, or unless the board of directors acting

pursuant to subsection 3 requires a greater vote, the plan of exchange must be approved by a majority of the voting power of each class and each series to be exchanged pursuant to the plan of exchange.

7. In addition to any other vote required, if a plan of merger contains an amendment to the articles of incorporation of the surviving domestic corporation or if a plan of conversion provides for a resulting entity with constituent documents, that adversely alter or change any preference or other right given to any class or series of outstanding stock of the surviving domestic corporation, then the plan of merger or conversion must be approved by the vote of stockholders representing a majority of the voting power of each class or series adversely affected by the amendment or the constituent documents, regardless of limitations or restrictions on the voting power of that class or series of stock.

8. Unless otherwise provided in the articles of incorporation or the bylaws of the domestic corporation, the plan of merger*, conversion or exchange* may be approved by written consent as provided in NRS 78.320.

9. If an officer, director or stockholder of a domestic corporation, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because he will be the owner of an owner's interest in the resulting entity, then that officer, director or stockholder must also approve the plan of conversion.

10. Unless otherwise provided in the articles of incorporation or bylaws of a domestic corporation, a plan of merger, conversion or exchange may contain a provision that permits amendment of the plan of merger, conversion or exchange at any time after the stockholders

of the domestic corporation approve the plan of merger, conversion or exchange, but before the articles of merger, conversion or exchange become effective, without obtaining the approval of the stockholders of the domestic corporation for the amendment if the amendment does not:

(a) Alter or change the manner or basis of exchanging an owner's interest to be acquired for owner's interests, rights to purchase owner's interests, or other securities of the acquiring entity or any other entity, or for cash or other property in whole or in part; or

(b) Alter or change any of the terms and conditions of the plan of merger, conversion or exchange in a manner that adversely affects the stockholders of the domestic corporation.

11. This section does not prevent or restrict a board of directors from canceling the proposed meeting or removing the plan of merger, conversion or exchange from consideration at the meeting if the board of directors determines that it is not advisable to submit the plan of merger, conversion or exchange to the stockholders for approval.

Sec. 89. NRS 92A.140 is hereby amended to read as follows:

92A.140 1. Unless otherwise provided in the partnership agreement or the certificate of limited partnership, a plan of merger , ***conversion*** or exchange involving a domestic limited partnership must be approved by all general partners and by limited partners who own a majority in interest of the partnership then owned by all the limited partners. If the partnership has more than one class of limited partners, the plan of merger , ***conversion or exchange*** must be approved by those limited partners who own a majority in interest of the partnership then owned by the limited partners in each class.

2. For the purposes of this section, "majority in interest of the partnership" means a majority of the interests in capital and profits of the limited partners of a domestic limited partnership which:

(a) In the case of capital, is determined as of the date of the approval of the plan of merger, ***conversion*** or exchange.

(b) In the case of profits, is based on any reasonable estimate of profits for the period beginning on the date of the approval of the plan of merger, ***conversion*** or exchange and ending on the anticipated date of the termination of the domestic limited partnership, including any present or future division of profits distributed pursuant to the partnership agreement.

3. If any partner of a domestic limited partnership, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because he will be the owner of an owner's interest in the resulting entity, then that partner must also approve the plan of conversion.

Sec. 90. NRS 92A.150 is hereby amended to read as follows:

92A.150 ***1.*** Unless otherwise provided in the articles of organization or an operating agreement:

~~[1.]~~ ***(a)*** A plan of merger, ***conversion*** or exchange involving a domestic limited-liability company must be approved by members who own a majority of the interests in the current profits of the company then owned by all of the members; and

~~[2.]~~ *(b)* If the company has more than one class of members, the plan of merger*, conversion or exchange* must be approved by those members who own a majority of the interests in the current profits of the company then owned by the members in each class.

2. If any manager or member of a domestic limited-liability company, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because he will be the owner of an owner's interest in the resulting entity, then that manager or member must also approve the plan of conversion.

Sec. 91. NRS 92A.165 is hereby amended to read as follows:

92A.165 Unless otherwise provided in the certificate of trust or governing instrument of a business trust, a *plan of* merger*, conversion or exchange* must be approved by all the trustees and beneficial owners of each business trust that is a constituent entity in the merger.

Sec. 92. NRS 92A.170 is hereby amended to read as follows:

92A.170 After a merger*, conversion* or exchange is approved, and at any time before the articles of merger*, conversion* or exchange are filed, the planned merger*, conversion* or exchange may be abandoned, subject to any contractual rights, without further action, in accordance with the procedure set forth in the plan of merger*, conversion* or exchange or, if none is set forth, in the case of:

1. A domestic corporation, whether or not for profit, by the board of directors;

2. A domestic limited partnership, unless otherwise provided in the partnership agreement or certificate of limited partnership, by all general partners;

3. A domestic limited-liability company, unless otherwise provided in the articles of organization or an operating agreement, by members who own a majority in interest ***in the current profits*** of the company then owned by all of the members or, if the company has more than one class of members, by members who own a majority in interest ***in the current profits*** of the company then owned by the members in each class; ~~[and]~~

4. A domestic business trust, unless otherwise provided in the certificate of trust or governing instrument, by all the trustees ~~[.]~~ ***; and***

5. A domestic general partnership, unless otherwise provided in the partnership agreement, by all the partners.

Sec. 93. NRS 92A.175 is hereby amended to read as follows:

92A.175 After a merger***, conversion*** or exchange is approved, at any time after the articles of merger***, conversion*** or exchange are filed but before an effective date specified in the articles which is later than the date of filing the articles, the planned merger***, conversion*** or exchange may be terminated in accordance with a procedure set forth in the plan of merger***, conversion*** or exchange by filing articles of termination pursuant to the provisions of NRS 92A.240.

Sec. 94. NRS 92A.180 is hereby amended to read as follows:

92A.180 1. A parent domestic corporation, whether or not for profit, parent domestic limited-liability company ***, unless otherwise provided in the articles of organization or operating agreement,*** or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation, 90 percent of the percentage or other interest in the capital and profits of a subsidiary ~~[limited partnership]~~ ***limited-liability company***

then owned by ~~[both the general and]~~ each class of ~~[limited partners]~~ ***members*** or 90 percent of the percentage or other interest in the capital and profits of a subsidiary ~~[limited liability company then owned by each class of members]~~ ***limited partnership then owned by both the general partners and each class of limited partners*** may merge the subsidiary into itself without approval of the owners of the owner's interests of the parent domestic corporation, domestic limited-liability company or domestic limited partnership or the owners of the owner's interests of a subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.

2. ***A parent domestic corporation, whether or not for profit, parent domestic limited-liability company, unless otherwise provided in the articles of organization, or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation, 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited-liability company then owned by each class of members, or 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited partnership then owned by both the general partners and each class of limited partners may merge with and into the subsidiary without approval of the owners of the owner's interests of the subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.***

3. The board of directors of ~~[the]~~ ***a*** parent corporation, the managers of a parent limited-liability company with managers unless otherwise provided in the operating agreement, all ~~[the]~~ members of a parent limited-liability company without managers unless otherwise provided in

the operating agreement, or all ~~[the]~~ general partners of ~~[the]~~ *a* parent limited partnership shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the owner's interests of the disappearing entity into the owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property in whole or in part.

~~[3.]~~ *4.* The parent shall mail a copy or summary of the plan of merger to each owner of the subsidiary who does not waive the mailing requirement in writing.

~~[4. The parent may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date the parent mailed a copy of the plan of merger to each owner of the subsidiary who did not waive the requirement of mailing.]~~

5. Articles of merger under this section may not contain amendments to the constituent documents of the surviving entity ~~[.]~~ ***except that the name of the surviving entity may be changed.***

6. The articles of incorporation of a domestic corporation, the articles of organization of a domestic limited-liability company, the certificate of limited partnership of a domestic limited partnership or the certificate of trust of a domestic business trust may forbid that entity from entering into a merger pursuant to this section.

Sec. 95. NRS 92A.200 is hereby amended to read as follows:

92A.200 After a plan of merger or exchange is approved as required by this chapter, the surviving or acquiring entity shall deliver to the secretary of state for filing articles of merger or exchange setting forth:

1. The name and jurisdiction of organization of each constituent entity;

2. That a plan of merger or exchange has been adopted by each constituent entity;

3. If approval of the owners of one or more constituent entities was not required, a statement to that effect and the name of each entity;

4. If approval of owners of one or more constituent entities was required, the name of each entity and a statement for each entity that:

(a) The plan was approved by the ~~[unanimous]~~ ***required*** consent of the owners; or

(b) A plan was submitted to the owners pursuant to this chapter including:

(1) The designation, percentage of total vote or number of votes entitled to be cast by each class of owner's interests entitled to vote separately on the plan; and

(2) Either the total number of votes or percentage of owner's interests cast for and against the plan by the owners of each class of interests entitled to vote separately on the plan or the total number of undisputed votes or undisputed total percentage of owner's interests cast for the plan separately by the owners of each class,

and the number of votes or percentage of owner's interests cast for the plan by the owners of each class of interests was sufficient for approval by the owners of that class;

5. In the case of a merger, the amendment***, if any,*** to the articles of incorporation, articles of organization, certificate of limited partnership or certificate of trust of the surviving entity ~~[; and]~~

, which amendment may be set forth in the articles of merger as a specific amendment or in the form of:

(a) Amended and restated articles of incorporation;

(b) Amended and restated articles of organization;

(c) An amended and restated certificate of limited partnership; or

(d) An amended and restated certificate of trust,

or attached in that form as an exhibit; and

6. If the entire plan of merger or exchange is not set forth, a statement that the complete executed plan of merger or plan of exchange is on file at the registered office if a corporation, limited-liability company or business trust, or office described in paragraph (a) of subsection 1 of NRS 88.330 if a limited partnership, or other place of business of the surviving entity or the acquiring entity, respectively.

7. Any of the terms of the plan of merger, conversion or exchange may be made dependent upon facts ascertainable outside of the plan of merger, conversion or exchange, provided that the plan of merger, conversion or exchange clearly and expressly sets forth the manner in which such facts shall operate upon the terms of the plan. As used in this subsection, the term "facts" includes, without limitation, the occurrence of an event, including a determination or action by a person or body, including a constituent entity.

Sec. 96. NRS 92A.210 is hereby amended to read as follows:

92A.210 ~~[The]~~

1. Except as otherwise provided in this section, the fee for filing articles of merger, *articles of conversion,* articles of exchange *, articles of domestication* or articles of termination is $125. *The fee for filing the constituent documents of a domestic resulting entity is the fee for filing the constituent documents determined by the chapter of NRS governing the particular domestic resulting entity.*

2. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than $125. The amount paid pursuant to subsection 3 must not exceed $25,000.

Sec. 97. NRS 92A.220 is hereby amended to read as follows:

92A.220 If the entire plan of merger *, conversion* or exchange is not set forth ~~,~~ *in the articles of merger, conversion or exchange,* a copy of the plan of merger *, conversion* or

exchange must be furnished by the surviving, ~~[or]~~ acquiring ***or resulting*** entity, on request and without cost, to any owner of any entity which is a party to the merger, ***conversion*** or exchange.

Sec. 98. NRS 92A.230 is hereby amended to read as follows:

92A.230 1. Articles of merger, ***conversion*** or exchange must be signed by each domestic constituent entity as follows:

(a) By ~~[the president or a vice president]~~ ***an officer*** of a domestic corporation, whether or not for profit;

(b) By all the general partners of a domestic limited partnership;

(c) By a manager of a domestic limited-liability company with managers or by all the members of a domestic limited-liability company without managers; and

(d) By a trustee of a domestic business trust.

2. ~~[If the domestic entity is a corporation, the articles must also be signed by the secretary or an assistant secretary.~~

~~3.]~~ Articles of merger, ***conversion*** or exchange must be signed by each foreign constituent entity in the manner provided by the law governing it.

~~[4.]~~ ***3.*** As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.

Sec. 99. NRS 92A.240 is hereby amended to read as follows:

92A.240 1. A merger , ***conversion*** or exchange takes effect upon filing the articles of merger , ***conversion*** or exchange or upon a later date as specified in the articles, which must not be more than 90 days after the articles are filed.

2. If the filed articles of merger , ***conversion*** or exchange specify such a later effective date, the constituent ***entity or entities*** may file articles of termination before the effective date, setting forth:

(a) The name of each constituent entity ~~[,]~~ and , ***for a conversion, the resulting entity; and***

(b) That the merger , ***conversion*** or exchange has been terminated pursuant to the plan of merger , ***conversion*** or exchange.

3. The articles of termination must be executed in the manner provided in NRS 92A.230.

Sec. 100. NRS 92A.250 is hereby amended to read as follows:

92A.250 1. When a merger takes effect:

(a) Every other entity that is a constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases;

(b) The title to all real estate and other property owned by each merging constituent entity is vested in the surviving entity without reversion or impairment;

(c) The surviving entity has all of the liabilities of each other constituent entity;

(d) A proceeding pending against any constituent entity may be continued as if the merger had not occurred or the surviving entity may be substituted in the proceeding for the entity whose existence has ceased;

(e) The articles of incorporation, articles of organization, certificate of limited partnership or certificate of trust of the surviving entity are amended to the extent provided in the plan of merger; and

(f) The owner's interests of each constituent entity that are to be converted into owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the owner's interests are entitled only to the rights provided in the articles of merger or any created pursuant to NRS 92A.300 to 92A.500, inclusive.

2. When an exchange takes effect, the owner's interests of each acquired entity are exchanged as provided in the plan, and the former holders of the owner's interests are entitled only to the rights provided in the articles of exchange or any rights created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. When a conversion takes effect:

(a) The constituent entity is converted into the resulting entity and is subject to the law of the jurisdiction of the resulting entity;

(b) The conversion is a continuation of the existence of the constituent entity;

(c) The title to all real estate and other property owned by the constituent entity is vested in the resulting entity without reversion or impairment;

(d) The resulting entity has all the liabilities of the constituent entity;

(e) A proceeding pending against the constituent entity may be continued as if the conversion had not occurred or the resulting entity may be substituted in the proceeding for the constituent entity;

(f) The owner's interests of the constituent entity that are to be converted into the owner's interests of the resulting entity are converted;

(g) An owner of the resulting entity remains liable for all the obligations of the constituent entity to the extent the owner was personally liable before the conversion; and

(h) The domestic constituent entity is not required to wind up its affairs, pay its liabilities, distribute its assets or dissolve, and the conversion is not deemed a dissolution of the domestic constituent entity.

Sec. 101. NRS 92A.260 is hereby amended to read as follows:

92A.260 An owner that is not personally liable for the debts, liabilities or obligations of the entity pursuant to the laws and constituent documents under which the entity was organized does not become personally liable for the debts, liabilities or obligations of the surviving entity or entities of the merger or exchange ***or the resulting entity of the conversion*** unless the owner consents to becoming personally liable by action taken in connection with the plan of merger, ***conversion*** or exchange.

Sec. 102. NRS 92A.380 is hereby amended to read as follows:

92A.380 1. Except as otherwise provided in NRS 92A.370 and 92A.390, a stockholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(a) Consummation of a plan of merger to which the domestic corporation is a ~~[party:]~~ ***constituent entity:***

(1) If approval by the stockholders is required for the merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation ~~[and he]~~ ***, regardless of whether the stockholder*** is entitled to vote on the ***plan of*** merger; or

(2) If the domestic corporation is a subsidiary and is merged with its parent ~~[under]~~ ***pursuant to*** NRS 92A.180.

(b) Consummation of a plan of exchange to which the domestic corporation is a ~~[party]~~ ***constituent entity*** as the corporation whose subject owner's interests will be acquired, if ~~[he is entitled to vote on the plan.]~~ ***his shares are to be acquired in the plan of exchange.***

(c) Any corporate action taken pursuant to a vote of the stockholders to the event that the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

2. A stockholder who is entitled to dissent and obtain payment ~~[under]~~ ***pursuant to*** NRS 92A.300 to 92A.500, inclusive, may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to him or the domestic corporation.

Sec. 103. NRS 78.295, 86.021 and 86.551 are hereby repealed.

TEXT OF REPEALED SECTIONS

78.295 Liability of directors for declaration of distributions. A director is fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officials as to the value and amount of the assets, liabilities or net profits of the corporation, or any other facts pertinent to the existence and amount of money from which distributions may properly be declared.

86.021 "Articles of organization" defined. "Articles of organization" means the articles of organization filed with the secretary of state for the purpose of forming a limited-liability company pursuant to this chapter.

86.551 Registration of foreign limited-liability company. A foreign limited-liability company may register with the secretary of state by complying with the provisions of NRS 88.570 to 88.605, inclusive, which provide for registration of foreign limited partnerships, except that:

1. The provisions of subsection 7 of NRS 88.575 do not apply; and

2. Cancellation is accomplished by filing articles of dissolution signed by all managers, if any, or by all members, if there are no managers.

SUMMARY—Provides remedy for dilution of marks. (BDR 52-256)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to marks; providing remedies to the owner of a mark for the dilution of the mark; and providing other matters properly relating thereto.

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

Section 1. Chapter 600 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 4, the owner of a mark that is famous in this state may bring an action to enjoin commercial use of the mark by a person if such use:

(a) Begins after the mark has become famous; and

(b) Causes dilution of the mark.

2. In determining whether a mark is famous in this state, the court shall consider, without limitation, the following factors:

(a) The degree of inherent or acquired distinctiveness of the mark in this state.

(b) The duration and extent of use of the mark in connection with the goods and services with which the mark is used.

(c) The duration and extent of advertisement and promotion of the mark in this state.

(d) The geographical extent of the trading area in which the mark is used.

(e) The channels of trade for the goods or services with which the mark is used.

(f) The degree of recognition of the mark in the trading areas and channels of trade in this state used by the owner of the mark and the person against whom the injunction is sought.

(g) The nature and extent of use of the same or similar mark by other persons.

(h) Whether the mark is registered in this state or registered in the United States Patent and Trademark Office pursuant to federal law.

3. Except as otherwise provided in this subsection, the owner of a mark that is famous may obtain only injunctive relief in an action brought pursuant to this section. The owner of a mark that is famous is entitled to the remedies provided in NRS 600.430 if the person using the mark willfully intended to cause dilution of the mark or willfully intended to trade on the reputation of the owner of the mark.

4. The owner of a mark that is famous may not bring an action pursuant to this section for the fair use of the mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the mark.

5. As used in this section:

(a) "Commercial use" means use of a mark primarily for profit. The term does not include use of a mark for research, criticism, news commentary, news reporting, teaching or any similar use that is not primarily for profit.

(b) "Dilution" means a lessening in the capacity of a mark that is famous to identify and distinguish goods or services, regardless of the presence or absence of:

(1) Competition between the owner of the mark and other persons; or

(2) Likelihood of confusion, mistake or deception as to the source of origin of goods or services.

Sec. 2. NRS 600.240 is hereby amended to read as follows:

600.240 As used in NRS 600.240 to 600.450, inclusive, ***and section 1 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 600.250 to 600.320, inclusive, have the meanings ascribed to them in those sections.

SUMMARY—Revises provisions governing trade secrets. (BDR 52-257)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to trade secrets; providing that a trade secret which is misappropriated and posted on the Internet remains a trade secret under certain circumstances; authorizing a court to issue an order or injunction requiring the immediate removal of a misappropriated trade secret from the Internet; and providing other matters properly relating thereto.

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

Section 1. Chapter 600A of NRS is hereby amended by adding thereto a new section to read as follows:

A trade secret that is misappropriated and posted, displayed or otherwise disseminated on the Internet shall be deemed to remain a trade secret as defined in NRS 600A.030 and not to have "ceased to exist" for the purposes of subsection 1 of NRS 600A.040 if:

1. The owner, within a reasonable time after discovering that the trade secret has been misappropriated and posted, displayed or otherwise disseminated on the Internet, obtains an

injunction or order issued by a court requiring that the trade secret be removed from the Internet; and

2. The trade secret is removed from the Internet within a reasonable time after the injunction or order requiring removal of the trade secret is issued by the court.

Sec. 2. NRS 600A.040 is hereby amended to read as follows:

600A.040 1. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction must be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time to eliminate commercial or other advantage that otherwise would be derived from the misappropriation.

2. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include a material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

3. In appropriate circumstances, the court may order affirmative acts to protect a trade secret. ***As used in this subsection, "affirmative acts" includes, without limitation, issuing an injunction or order requiring that a trade secret which has been misappropriated and posted, displayed or otherwise disseminated on the Internet be removed from the Internet immediately.***

SUMMARY—Adopts Uniform Electronic Transactions Act. (BDR 59-258)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to electronic transactions; adopting the Uniform Electronic Transactions Act; making various related changes pertaining to the use of electronic records and signatures; and providing other matters properly relating thereto.

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

Section 1. Title 59 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 35, inclusive, of this act.

Sec. 2. ***This chapter may be cited as the Uniform Electronic Transactions Act.***

Sec. 3. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 19, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 4. ***"Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.***

Sec. 5. *"Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by a natural person in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.*

Sec. 6. *"Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.*

Sec. 7. *"Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.*

Sec. 8. *"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.*

Sec. 9. *"Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by a natural person.*

Sec. 10. *"Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.*

Sec. 11. *"Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.*

Sec. 12. *"Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the Federal Government or of a state or of a county, municipality or other political subdivision of a state.*

Sec. 13. *"Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.*

Sec. 14. *"Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.*

Sec. 15. *"Person" includes a governmental agency and a public corporation.*

Sec. 16. *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

Sec. 17. *"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption or callback, or other acknowledgment procedures.*

Sec. 18. *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.*

Sec. 19. *"Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.*

Sec. 20. *1. Except as otherwise provided in subsection 2, the provisions of this chapter apply to electronic records and electronic signatures relating to a transaction.*

2. The provisions of this chapter do not apply to a transaction to the extent it is governed by:

(a) A law governing the creation and execution of wills, codicils or testamentary trusts;

(b) The Uniform Commercial Code other than NRS 104.1107, 104.1206 and 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532, inclusive; or

(c) Chapters 162 to 167, inclusive, of NRS.

3. The provisions of this chapter apply to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 to the extent it is governed by a law other than those specified in subsection 2.

4. A transaction subject to the provisions of this chapter is also subject to other applicable substantive law.

Sec. 21. *The provisions of this chapter apply to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after October 1, 2001.*

Sec. 22. *1. The provisions of this chapter do not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.*

2. The provisions of this chapter apply only to transactions between parties each of whom has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

3. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

4. Except as otherwise provided in this chapter, the effect of any of the provisions of this chapter may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement.

5. Whether an electronic record or electronic signature has legal consequences is determined by the provisions of this chapter and other applicable law.

Sec. 23. *1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.*

2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

3. If a law requires a record to be in writing, an electronic record satisfies the law.

4. If a law requires a signature, an electronic signature satisfies the law.

Sec. 24. *1. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.*

2. If a law other than this chapter requires a record to be posted or displayed in a certain manner, to be sent, communicated or transmitted by a specified method or to contain information that is formatted in a certain manner, the following rules apply:

(a) The record must be posted or displayed in the manner specified in the other law.

(b) Except as otherwise provided in paragraph (b) of subsection 4, the record must be sent, communicated or transmitted by the method specified in the other law.

(c) The record must contain the information formatted in the manner specified in the other law.

3. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

4. The requirements of this section may not be varied by agreement, but:

(a) To the extent a law other than this chapter requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) A requirement under a law other than this chapter to send, communicate or transmit a record by first-class mail, postage prepaid, regular United States mail, may be varied by agreement to the extent permitted by the other law.

Sec. 25. *1. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a*

showing of the efficacy of any security procedure applied to determine the person to whom the electronic record or electronic signature was attributable.

2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Sec. 26. *If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:*

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

2. In an automated transaction involving a natural person, the natural person may avoid the effect of an electronic record that resulted from an error made by him in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the natural person learns of the error, the natural person:

(a) Promptly notifies the other person of the error and that the natural person did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person.

3. If neither subsection 1 nor subsection 2 applies, the change or error has the effect provided by other law, including the law of mistake and the parties' contract, if any.

4. Subsections 2 and 3 may not be varied by agreement.

Sec. 27. *If a law requires a signature or record to be acknowledged, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.*

Sec. 28. *1. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:*

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) Remains accessible for later reference.

2. A requirement to retain a record in accordance with subsection 1 does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

3. A person may satisfy subsection 1 by using the services of another person if the requirements of that subsection are satisfied.

4. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection 1.

5. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection 1.

6. A record retained as an electronic record in accordance with subsection 1 satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after October 1, 2001, specifically prohibits the use of an electronic record for the specified purpose.

7. This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Sec. 29. *In a proceeding, evidence of a record or signature must not be excluded solely because it is in electronic form.*

Sec. 30. *In an automated transaction, the following rules apply:*

1. A contract may be formed by the interaction of electronic agents of the parties, even if no natural person was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

2. A contract may be formed by the interaction of an electronic agent and a natural person, acting on his own behalf or for another person, as by an interaction in which the natural person performs actions that he is free to refuse to perform and which he knows or has reason to know will cause the electronic agent to complete the transaction or performance.

3. The terms of the contract are determined by the substantive law applicable to it.

Sec. 31. *1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:*

(a) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) Is in a form capable of being processed by that system; and

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(a) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) It is in a form capable of being processed by that system.

3. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4.

4. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or recipient has more than one place of business, his place of business is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

5. An electronic record is received under subsection 2 even if no natural person is aware of its receipt.

6. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

7. If a person is aware that an electronic record purportedly sent under subsection 1, or purportedly received under subsection 2, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Sec. 32. *1. In this section, "transferable record" means an electronic record that:*

(a) Would be a note under NRS 104.3101 to 104.3605, inclusive, or a document under NRS 104.7101 to 104.7603, inclusive, if the electronic record were in writing; and

(b) The issuer of the electronic record expressly has agreed is a transferable record.

2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes him as the person to whom the transferable record was issued or transferred.

3. A system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(a) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (d), (e) and (f), unalterable;

(b) The authoritative copy identifies the person asserting control as:

(1) The person to whom the transferable record was issued; or

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to whom the transferable record was most recently transferred;

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subsection 20 of NRS 104.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under NRS 104.7501, 104.9308 or subsection 1 of NRS 104.3302 are satisfied, the rights and defenses of a holder to whom a negotiable document of title has been duly negotiated, a purchaser, or a holder in due course, respectively. Delivery, possession and endorsement are not required to obtain or exercise any of the rights under this subsection.

5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

6. If requested by a person against whom enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that he is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Sec. 33. *Each governmental agency of this state shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.*

Sec. 34. *1. Except as otherwise provided in subsection 6 of section 28 of this act, each governmental agency of this state shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures.*

2. To the extent that a governmental agency uses electronic records and electronic signatures under subsection 1, the governmental agency, giving due consideration to security, may specify:

(a) The manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes;

(b) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) Processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and auditability of electronic records; and

(d) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

3. Except as otherwise provided in subsection 6 of section 28 of this act, the provisions of this chapter do not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

Sec. 35. ***In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.***

Sec. 36. Chapter 720 of NRS is hereby amended by adding thereto a new section to read as follows:

"Record" has the meaning ascribed to it in section 16 of this act.

Sec. 37. NRS 720.010 is hereby amended to read as follows:

720.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 720.020 to 720.130, inclusive, ***and section 36 of this act,*** have the meanings ascribed to them in those sections.

Sec. 38. NRS 720.060 is hereby amended to read as follows:

720.060 "Digital signature" means ~~[a transformation of]~~ ***an electronic signature that transforms*** a message ***by*** using an asymmetric cryptosystem. ***As used in this section, "electronic signature" has the meaning ascribed to it in section 11 of this act.***

Sec. 39. NRS 720.140 is hereby amended to read as follows:

720.140 ***1.*** The provisions of this chapter apply to any transaction for which a digital signature ~~[may be]~~ ***is*** used to ~~[satisfy a requirement that a document or record be signed or in writing as set forth in NRS 720.160, including, without limitation, transactions carried out by private businesses and transactions carried out by governmental entities.]~~ ***sign an electronic record.***

2. As used in this section, "electronic record" has the meaning ascribed to it in section 10 of this act.

Sec. 40. NRS 720.160 is hereby amended to read as follows:

720.160 1. Except as otherwise provided in ~~[subsection 2,]~~ ***this section,*** if each person ~~[or governmental entity]~~ who will be involved in the submission and acceptance of a record ~~[or other document]~~ agrees to the use of a digital signature, ~~[where a statute or rule of law requires that the record or other document be signed or in writing,]~~ the use of a message which:

(a) Represents the record ~~[or other document;]~~ *;* and

(b) Is transformed by a digital signature,

~~[shall be deemed to satisfy the statute or rule of law with respect to the requirement that the record or other document be signed or in writing.]~~ ***constitutes a sufficient signing of the record.***

2. The provisions of this section do not apply with respect to:

(a) ~~[A sworn statement;~~

~~(b)]~~ An acknowledgment;

~~[(c)]~~ *(b)* A record ~~[or other document]~~ that is required to be signed in the presence of a third party; or

~~[(d)]~~ *(c)* A record ~~[or other document]~~ with respect to which the requirement that the record ~~[or other document]~~ must be signed ~~[or in writing]~~ is accompanied by an additional qualifying requirement.

Sec. 41. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

(a) "Approval" and "vote" as describing action by the directors or stockholders mean the vote of directors in person or by written consent or of stockholders in person, by proxy or by written consent.

(b) "Articles," "articles of incorporation" and "certificate of incorporation" are synonymous terms and unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.1955, 78.209, 78.380, 78.385 and 78.390 and any articles of merger or exchange filed pursuant to NRS 92A.200 to 92A.240, inclusive. Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.

(c) "Directors" and "trustees" are synonymous terms.

(d) "Receiver" includes receivers and trustees appointed by a court as provided in this chapter or in chapter 32 of NRS.

(e) "Registered office" means the office maintained at the street address of the resident agent.

(f) "Resident agent" means the agent appointed by the corporation upon whom process or a notice or demand authorized by law to be served upon the corporation may be served.

(g) "Sign" means to affix a signature to a document.

(h) "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060.]~~ ***section 11 of this act.***

(i) "Stockholder of record" means a person whose name appears on the stock ledger of the corporation.

(j) "Street address" of a resident agent means the actual physical location in this state at which a resident agent is available for service of process.

2. General terms and powers given in this chapter are not restricted by the use of special terms, or by any grant of special powers contained in this chapter.

Sec. 42. NRS 78A.090 is hereby amended to read as follows:

78A.090 1. A close corporation may operate without a board of directors if the certificate of incorporation contains a statement to that effect.

2. An amendment to the certificate of incorporation eliminating a board of directors must be approved:

(a) By all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments; or

(b) If no shares have been issued, by all subscribers for shares, if any, or if none, by the incorporators.

3. While a corporation is operating without a board of directors as authorized by subsection 1:

(a) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders.

(b) Unless the articles of incorporation provide otherwise:

(1) Action requiring the approval of the board of directors or of both the board of directors and the shareholders is authorized if approved by the shareholders; and

(2) Action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of votes of the shareholders entitled to vote on the action.

(c) A requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a close corporation without a board of directors and that the action was approved by the shareholders.

(d) The shareholders by resolution may appoint one or more shareholders to sign documents as designated directors.

4. An amendment to the articles of incorporation that deletes the provision which eliminates a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must specify the number, names and mailing addresses of the directors of the corporation or describe who will perform the duties of the board of directors.

5. As used in this section, "sign" means to execute or adopt a name, word or mark, including, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060,]~~ ***section 11 of this act,*** with the present intention to authenticate a document.

Sec. 43. NRS 80.003 is hereby amended to read as follows:

80.003 "Signed" means to have executed or adopted a name, word or mark, including, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060,]~~ ***section 11 of this act,*** with the present intention to authenticate a document.

Sec. 44. NRS 81.0015 is hereby amended to read as follows:

81.0015 "Signed" means to have executed or adopted a name, word or mark, including, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060,]~~ ***section 11 of this act,*** with the present intention to authenticate a document.

Sec. 45. NRS 82.043 is hereby amended to read as follows:

82.043 "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060.]~~ ***section 11 of this act.***

Sec. 46. NRS 84.004 is hereby amended to read as follows:

84.004 "Signed" means to have executed or adopted a name, word or mark, including, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060,]~~ ***section 11 of this act,*** with the present intention to authenticate a document.

Sec. 47. NRS 86.127 is hereby amended to read as follows:

86.127 "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060.]~~ ***section 11 of this act.***

Sec. 48. NRS 87.020 is hereby amended to read as follows:

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

1. "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.

2. "Business" includes every trade, occupation or profession.

3. "Conveyance" includes every assignment, lease, mortgage or encumbrance.

4. "Court" includes every court and judge having jurisdiction in the case.

5. "Professional service" means any type of personal service which may legally be performed only pursuant to a license or certificate of registration.

6. "Real property" includes land and any interest or estate in land.

7. "Registered limited-liability partnership" means a partnership formed pursuant to an agreement governed by this chapter for the purpose of rendering a professional service and registered pursuant to and complying with NRS 87.440 to 87.560, inclusive.

8. "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060.]~~ ***section 11 of this act.***

9. "Signed" means to have affixed a signature to a document.

10. "Street address" of a resident agent means the actual physical location in this state at which a resident agent is available for service of process.

Sec. 49. NRS 88.315 is hereby amended to read as follows:

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

1. "Certificate of limited partnership" means the certificate referred to in NRS 88.350, and the certificate as amended or restated.

2. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

3. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in NRS 88.450.

4. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

5. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

6. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

7. "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

8. "Partner" means a limited or general partner.

9. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

10. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

11. "Registered office" means the office maintained at the street address of the resident agent.

12. "Resident agent" means the agent appointed by the limited partnership upon whom process or a notice or demand authorized by law to be served upon the limited partnership may be served.

13. "Sign" means to affix a signature to a document.

14. "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060.]~~ ***section 11 of this act.***

15. "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

16. "Street address" of a resident agent means the actual physical location in this state at which a resident is available for service of process.

Sec. 50. NRS 88A.090 is hereby amended to read as follows:

88A.090 "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060.]~~ ***section 11 of this act.***

Sec. 51. NRS 89.250 is hereby amended to read as follows:

89.250 1. A professional association shall, on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state showing the names and residence addresses of all members and employees in such

association and shall certify that all members and employees are licensed to render professional service in this state.

2. The statement must:

(a) Be made on a form prescribed by the secretary of state and must not contain any fiscal or other information except that expressly called for by this section.

(b) Be signed by the chief executive officer of the association.

3. Upon filing the annual statement required by this section, the association shall pay to the secretary of state a fee of $15.

4. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060,]~~ ***section 11 of this act,*** with the present intention to authenticate a document.

Sec. 52. NRS 92A.230 is hereby amended to read as follows:

92A.230 1. Articles of merger or exchange must be signed by each domestic constituent entity as follows:

(a) By the president or a vice president of a domestic corporation, whether or not for profit;

(b) By all the general partners of a domestic limited partnership;

(c) By a manager of a domestic limited-liability company with managers or by all the members of a domestic limited-liability company without managers; and

(d) By a trustee of a domestic business trust.

2. If the domestic entity is a corporation, the articles must also be signed by the secretary or an assistant secretary.

3. Articles of merger or exchange must be signed by each foreign constituent entity in the manner provided by the law governing it.

4. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, ~~[a digital]~~ ***an electronic*** signature as defined in ~~[NRS 720.060,]~~ ***section 11 of this act,*** with the present intention to authenticate a document.

Sec. 53. NRS 720.170 is hereby repealed.

Sec. 54. This act becomes effective on July 1, 2001.

TEXT OF REPEALED SECTION

720.170 1. Except as otherwise provided by specific statute, a public agency may provide that any document submitted to the public agency may be submitted electronically if the document is transformed by a digital signature.

2. As used in this section, "public agency" means an agency, bureau, board, commission, department or division of the State of Nevada or a political subdivision thereof.

SUMMARY—Prohibits various acts related to Internet, networks, computers and electronic mail. (BDR 15-259)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State: Yes.

AN ACT relating to technology; prohibiting various acts related to the Internet, networks, computers and electronic mail; prohibiting, under certain circumstances, persons who own, operate, administer or control an Internet or network site from collecting personal identifying information from persons who access the site; prohibiting a person from committing certain acts that prevent, impede, delay or disrupt the normal operation or use of any Internet or network site, electronic mail address, computer, system or network; allowing victims of certain technological crimes to recover response costs in a civil action; providing penalties; and providing other matters properly relating thereto.

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

Section 1. Chapter 205 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *1. "Internet or network site" means any identifiable site on the Internet or on a network.*

2. The term includes, without limitation:

(a) A website or other similar site on the World Wide Web;

(b) A site that is identifiable through a Uniform Resource Location;

(c) A site on a network that is owned, operated, administered or controlled by a provider of Internet service;

(d) An electronic bulletin board;

(e) A listserv;

(f) A newsgroup; or

(g) A chat room.

Sec. 3. *1. "Response costs" means any reasonable costs that arise in response to and as a proximate result of a crime described in NRS 205.473 to 205.513, inclusive, and sections 2, 3 and 4 of this act.*

2. The term includes, without limitation, any reasonable costs to:

(a) Investigate the facts surrounding the crime;

(b) Ascertain or calculate any past or future loss, injury or other damage;

(c) Remedy, mitigate or prevent any past or future loss, injury or other damage; or

(d) Test, examine, restore or verify the integrity of or the normal operation or use of any Internet or network site, electronic mail address, computer, system, network, component, device, equipment, data, information, image, program, signal or sound.

Sec. 4. *1. If a person:*

(a) Is physically present within this state, is incorporated or organized under the laws of this state, or subscribes to the services of a provider of Internet service who is physically present within this state or is incorporated or organized under the laws of this state;

(b) Owns, operates, administers or controls an Internet or network site; and

(c) Uses, attempts to use or intends to use the Internet or network site to advertise or sell any product or service,

the person shall not collect any personal identifying information from or about another person who accesses the Internet or network site, unless there is posted on the Internet or network site a statement of privacy practices that complies with the provisions of subsection 2.

2. A statement of privacy practices must:

(a) Appear conspicuously at the home page on the Internet or network site and at each location on the Internet or network site at which personal identifying information is collected, or a link to the statement of privacy practices must appear conspicuously at the home page and at each such location; and

(b) Include a clear statement explaining:

(1) The type of personal identifying information collected at the Internet or network site;

(2) Whether any personal identifying information is collected automatically when a person accesses the Internet or network site and, if so, the type of personal identifying information collected in this manner;

(3) Each intended purpose or use for the personal identifying information collected at the Internet or network site, and each third party to whom the personal identifying information may be disclosed;

(4) Whether a person who accesses the Internet or network site may review the personal identifying information collected from or about him, whether he may have such personal identifying information removed permanently from databases and other records where the personal identifying information is stored and, if so, the means by which such a review or removal may be requested; and

(5) Whether a cookie or any other data, information, image, program, signal or sound is placed, saved or stored automatically on the computer or system of a person who accesses the Internet or network site and, if so, each intended purpose or use for the cookie or other data, information, image, program, signal or sound.

3. A person who violates any provision of this section is guilty of a misdemeanor.

4. As used in this section, "personal identifying information" means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person, including, without limitation, the name, telephone number, postal address, electronic mail address, driver's license number, social security number, savings account number, credit card number, debit card number, date of birth, place of employment or maiden name of the mother of a person.

Sec. 5. NRS 205.473 is hereby amended to read as follows:

205.473 As used in NRS 205.473 to 205.513, inclusive, ***and sections 2, 3 and 4 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 205.4732 to 205.476, inclusive, ***and sections 2 and 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 6. NRS 205.4765 is hereby amended to read as follows:

205.4765 1. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

(a) Modifies;

(b) Damages;

(c) Destroys;

(d) Discloses;

(e) Uses;

(f) Transfers;

(g) Conceals;

(h) Takes;

(i) Retains possession of;

(j) Copies;

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed; or

(l) Enters,

data, a program or any supporting documents which exist inside or outside a computer, system or network is guilty of a misdemeanor.

2. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

(a) Modifies;

(b) Destroys;

(c) Uses;

(d) Takes;

(e) Damages;

(f) Transfers;

(g) Conceals;

(h) Copies;

(i) Retains possession of; or

(j) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

equipment or supplies that are used or intended to be used in a computer, system or network is guilty of a misdemeanor.

3. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

(a) Destroys;

(b) Damages;

(c) Takes;

(d) Alters;

(e) Transfers;

(f) Discloses;

(g) Conceals;

(h) Copies;

(i) Uses;

(j) Retains possession of; or

(k) Obtains or attempts to obtain access to, permits access to or causes to be accessed,

a computer, system or network is guilty of a misdemeanor.

4. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization:

(a) Obtains and discloses;

(b) Publishes;

(c) Transfers; or

(d) Uses,

a device used to access a computer, network or data is guilty of a misdemeanor.

5. Except as otherwise provided in subsection 6, a person who knowingly, willfully and without authorization introduces, causes to be introduced or attempts to introduce a computer contaminant into a computer, system or network is guilty of a misdemeanor.

6. If the violation of any provision of this section:

(a) Was committed to devise or execute a scheme to defraud or illegally obtain property;

(b) Caused ***response costs, loss, injury or other*** damage in excess of $500; or

(c) Caused an interruption or impairment of a public service, including, without limitation, a governmental operation, a system of public communication or transportation or a supply of water, gas or electricity,

the person is guilty of a category C felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $100,000. In addition to any other penalty, the court shall order the person to pay restitution.

Sec. 7. NRS 205.477 is hereby amended to read as follows:

205.477 1. Except as otherwise provided in subsections 3 and 4, a person who knowingly, willfully and without authorization interferes with, denies or causes the denial of access to or use of a computer, system or network to a person who has the duty and right to use it is guilty of a misdemeanor.

2. Except as otherwise provided in subsections 3 and 4, a person who knowingly, willfully and without authorization uses, causes the use of, accesses, attempts to gain access to or causes access to be gained to a computer, system, network, telecommunications device, telecommunications service or information service is guilty of a misdemeanor.

3. If the violation of ~~[subsection 1 or 2 was]~~ ***any provision of this section:***

(a) Was committed to devise or execute a scheme to defraud or illegally obtain property ~~[.]~~ ***;***

(b) Caused response costs, loss, injury or other damage in excess of $500; or

(c) Caused an interruption or impairment of a public service, including, without limitation, a governmental operation, a system of public communication or transportation or a supply of water, gas or electricity,

the person is guilty of a category C felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $100,000. In addition to any other penalty, the court shall order the person to pay restitution.

4. It is an affirmative defense to a charge made pursuant to this section that at the time of the alleged offense the defendant reasonably believed that:

(a) He was authorized to use or access the computer, system, network, telecommunications device, telecommunications service or information service and such use or access by the defendant was within the scope of that authorization; or

(b) The owner or other person authorized to give consent would authorize the defendant to use or access the computer, system, network, telecommunications device, telecommunications service or information service.

5. A defendant who intends to offer an affirmative defense described in subsection 4 at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

Sec. 8. NRS 205.492 is hereby amended to read as follows:

205.492 1. A person shall not willfully falsify or forge any data, information, image, program, signal or sound that:

(a) Is contained in the header, subject line or routing instructions of an item of electronic mail; or

(b) Describes or identifies the sender, source, point of origin or path of transmission of an item of electronic mail,

with the intent to transmit or cause to be transmitted the item of electronic mail to ***any Internet or network site or to*** the electronic mail address of one or more recipients without their knowledge of or consent to the transmission.

2. Except as otherwise provided in subsection ~~[5,]~~ *7,* a person shall not willfully transmit or cause to be transmitted an item of electronic mail to ***any Internet or network site or to*** the electronic mail address of one or more recipients without their knowledge of or consent to the transmission if the person knows or has reason to know that the item of electronic mail contains or has been generated or formatted with:

(a) An Internet domain name that is being used without the consent of the person who holds the Internet domain name; or

(b) Any data, information, image, program, signal or sound that has been used intentionally in the header, subject line or routing instructions of the item of electronic mail to falsify or misrepresent:

(1) The identity of the sender; or

(2) The source, point of origin or path of transmission of the item of electronic mail.

3. A person shall not knowingly sell, give or otherwise distribute or possess with the intent to sell, give or otherwise distribute any data, information, image, program, signal or sound which is designed or intended to be used to falsify or forge any data, information, image, program, signal or sound that:

(a) Is contained in the header, subject line or routing instructions of an item of electronic mail; or

(b) Describes or identifies the sender, source, point of origin or path of transmission of an item of electronic mail.

4. ~~[A]~~ ***Except as otherwise provided in subsection 7, a person shall not willfully and without authorization transmit or cause to be transmitted an item of electronic mail or any other data, information, image, program, signal or sound to any Internet or network site, to the electronic mail address of one or more recipients or to any other computer, system or network:***

(a) With the intent to prevent, impede, delay or disrupt the normal operation or use of the Internet or network site, electronic mail address, computer, system or network, whether or not such a result actually occurs; or

(b) Under circumstances in which such conduct is reasonably likely to prevent, impede, delay or disrupt the normal operation or use of the Internet or network site, electronic mail address, computer, system or network, whether or not such a result actually occurs.

5. Except as otherwise provided in subsection 6, a person who violates any provision of this section is guilty of a misdemeanor.

~~[5.]~~ ***6. If the violation of any provision of subsection 4:***

(a) Was committed to devise or execute a scheme to defraud or illegally obtain property;

(b) Caused response costs, loss, injury or other damage in excess of $500; or

(c) Caused an interruption or impairment of a public service, including, without limitation, a governmental operation, a system of public communication or transportation or a supply of water, gas or electricity,

the person is guilty of a category C felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $100,000. In addition to any other penalty, the court shall order the person to pay restitution.

7. The provisions of ~~[subsection]~~ ***subsections*** 2 ***and 4*** do not apply to a provider of Internet service who, in the course of providing service, transmits or causes to be transmitted an item of electronic mail on behalf of another person, unless the provider of Internet service is the person who first generates the item of electronic mail.

8. As used in this section, "item of electronic mail" includes, without limitation:

(a) A single item of electronic mail;

(b) Multiple copies of one or more items of electronic mail;

(c) A collection, group or bulk aggregation of one or more items of electronic mail;

(d) A constant, continual or recurring pattern or series of one or more items of electronic mail; or

(e) Any other data, information, image, program, signal or sound that is included or embedded in or attached or connected to one or more items of electronic mail.

Sec. 9. NRS 205.511 is hereby amended to read as follows:

205.511 1. Any victim of a crime described in NRS 205.473 to 205.513, inclusive, ***and sections 2, 3 and 4 of this act*** may bring a civil action to recover:

(a) Damages for any ***response costs,*** loss or injury suffered as a result of the crime;

(b) Punitive damages; and

(c) Costs and reasonable attorney's fees incurred in bringing the civil action.

2. ***A victim of a crime described in NRS 205.473 to 205.513, inclusive, and sections 2, 3 and 4 of this act may bring a civil action pursuant to this section whether or not the person who committed the crime is or has been charged with or convicted or acquitted of the crime or any other offense arising out of the facts surrounding the crime.***

3. The provisions of this section do not abrogate or limit the right of a victim of a crime described in NRS 205.473 to 205.513, inclusive, ***and sections 2, 3 and 4 of this act*** to bring a civil action pursuant to any other statute or the common law.

Sec. 10. NRS 205.513 is hereby amended to read as follows:

205.513 1. If it appears that a person has engaged in or is about to engage in any act or practice which violates any provision of NRS 205.473 to 205.513, inclusive, ***and sections 2, 3 and 4 of this act,*** the attorney general or the appropriate district attorney may file an action in any court of competent jurisdiction to prevent the occurrence or continuance of that act or practice.

2. An injunction:

(a) May be issued without proof of actual damage sustained by any person.

(b) Does not preclude the criminal prosecution and punishment of a violator.

Sec. 11. The amendatory provisions of sections 4, 6, 7 and 8 of this act do not apply to offenses committed before October 1, 2001.

SUMMARY—Provides for judicial approval of certain contracts involving minors. (BDR 11-260)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to minors; providing for the judicial approval of certain contracts for the artistic, creative or athletic services or intellectual property of minors; and providing other matters properly relating thereto.

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

Section 1. Chapter 129 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. ***As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Contract" means a proposed contract pursuant to which:***

1. A minor agrees to render artistic or creative services, directly or through a third party. As used in this subsection:

(a) "Artistic or creative services" includes, without limitation, services as an actor, actress, extra, background performer, dancer, musician, comedian, singer, stunt person, voiceover artist, songwriter, musical producer, musical arranger, writer, director, producer, production executive, choreographer, composer, conductor, designer or other performer or entertainer.

(b) "Third party" includes, without limitation, a personal services corporation or loan-out company.

2. A minor agrees to render services as a participant, competitor or player in a sport.

3. A person agrees with a minor to purchase, sell, lease, license, transfer, exchange or otherwise dispose of:

(a) Literary, musical, artistic or dramatic properties, either tangible or intangible;

(b) The use of the name, voice, signature, photograph or likeness of the minor; or

(c) Radio broadcasting, television or motion picture rights for the performance of the minor, or for the story of or incidents in the life of the minor, either tangible or intangible.

Sec. 4. *"Interested party" includes:*

1. A person who is a party to a contract; and

2. The parent, custodian or guardian of a minor who is a party to a contract, if the parent, custodian or guardian is authorized to act on behalf of the minor.

Sec. 5. *"Minor" means a person who:*

1. Is less than 18 years of age;

2. Has not been declared emancipated pursuant to NRS 129.080 to 129.140, inclusive; and

3. Resides in this state, or will be rendering services in this state pursuant to a contract.

Sec. 6. *"Net earnings" means the gross earnings received for services rendered by a minor during the term of a contract, less:*

(a) All sums required by law to be paid as taxes to any federal, state or local government with respect to or by reason of such earnings;

(b) Reasonable sums to be expended for the support, care, education, training and professional management of the minor; and

(c) Reasonable fees and expenses to be paid in connection with the contract and its performance.

Sec. 7. *"Petition" means a petition for approval of a contract filed pursuant to section 9 of this act.*

Sec. 8. *"Petitioner" means a person who files a petition for approval of a contract pursuant to section 9 of this act.*

Sec. 9. *1. An interested party may petition the district court for approval of a contract by filing a written petition for approval of the contract in the district court of the county in which:*

(a) The minor resides;

(b) The minor will be rendering services pursuant to the contract; or

(c) A party to the contract has its principal office for the transaction of business.

2. The petition must be verified by the petitioner and must contain the following items:

(a) The full name, date of birth, place of birth and physical address of the minor.

(b) The full name and physical address of any living parent of the minor.

(c) The full name and physical address of any person who has care and custody of the minor.

(d) Whether the minor has, at any time, had a guardian appointed for him by a court in any jurisdiction or pursuant to a will or deed.

(e) If the minor is not a resident of this state, the location in this state at which the minor will be rendering services pursuant to the contract.

(f) A summary of the nature and provisions of the contract.

(g) A schedule showing the estimated:

(1) Gross earnings of the minor pursuant to the contract;

(2) Deductions from the earnings of the minor required by law;

(3) Reasonable fees and expenses to be paid in connection with the contract and its performance;

(4) Reasonable sums to be expended for the support, care, education, training and professional management of the minor; and

(5) Net earnings of the minor pursuant to the contract.

(h) Whether any person is entitled to receive any portion of the earnings of the minor and a detailed description of the financial circumstances of any such person.

(i) A statement acknowledging that the minor and a parent, custodian or guardian of the minor consent to an order of the court setting aside a portion of the net earnings of the minor for the benefit of the minor.

(j) The relationship of the petitioner to the minor and the interest of the petitioner in the contract or in the performance of the minor pursuant to the contract, if any.

(k) A statement acknowledging that the term of the contract during which the minor is to render services, if applicable, may not extend beyond 5 years from the date of approval of the contract by the court.

(l) A statement describing any other covenants or conditions contained in the contract which extend beyond 5 years from the date of approval of the contract by the court, or a statement indicating that the contract contains no such covenants or conditions.

(m) Any other facts which demonstrate that the terms of the contract are:

(1) Objectively fair and reasonable;

(2) Consistent with the standards of the industry to which the object of the contract pertains;

(3) Consistent and in compliance with the laws of this state, including, without limitation, the laws governing the conduct and employment of minors; and

(4) In the best interests of the minor.

(n) A statement acknowledging that the minor and a parent, custodian or guardian of the minor have had the opportunity to consult with an attorney who is experienced in the laws and

practices pertaining to the applicable industry and consent to the approval of the contract by the court.

3. A copy of the contract must be attached to the petition.

4. If a new petition is filed following the denial of a previous petition pursuant to paragraph (c) of subsection 2 of section 11 of this act, the following must be attached to the petition:

(a) A copy of any previous petition that was denied by the court and copies of any exhibits thereto; and

(b) A certified copy of the transcribed record of any hearing conducted concerning any previous petition that was denied by the court.

Sec. 10. *1. Upon receipt of a petition, the court shall schedule a hearing to determine whether the petition should be granted.*

2. At any hearing concerning the petition:

(a) The minor who is the subject of the petition shall personally attend.

(b) The court may hear and consider all competent, material and relevant evidence helpful in determining whether the petition should be granted, including, without limitation, oral and written testimony and reports, and such evidence may be received by the court and relied upon to the extent of its probative value.

Sec. 11. *1. In determining whether to grant a petition, the court shall consider whether the terms, conditions and covenants of the contract are:*

(a) Objectively fair and reasonable;

(b) Consistent with the standards of the industry to which the object of the contract pertains;

(c) Consistent and in compliance with the laws of this state, including, without limitation, the laws governing the conduct and employment of minors; and

(d) In the best interests of the minor.

2. After considering the petition, the court shall issue an order:

(a) Granting the petition.

(b) Granting the petition upon the condition that the parties modify the terms of the contract in the manner set forth in the order. If the parties modify the terms of the contract in the manner set forth in the order, the petition shall be deemed granted on the date that the contract, as modified, is executed by the parties.

(c) Denying the petition. If the court issues an order denying the petition, an interested party may file a new petition for approval of the contract if the parties modify the terms of the contract.

3. The granting of a petition pursuant to this section:

(a) Extends to the entire contract and all of its terms and provisions, including, without limitation, any optional or conditional provisions contained in the contract for extension, prolongation or termination of the term of the contract.

(b) Must not be construed to constitute an emancipation of the minor.

Sec. 12. *1. If the court issues an order granting a petition, the court shall immediately issue an order appointing a special guardian to receive and hold the specified amount or*

percentage of the net earnings of the minor to be set aside for the benefit of the minor pursuant to section 13 of this act.

2. The petitioner or a parent, custodian or guardian of the minor is not ineligible to be appointed as a special guardian pursuant to this section solely because of his interest, so long as that interest is fully disclosed to the court. A disclosure pursuant to this subsection must include, without limitation, whether the person has an interest:

(a) In any part of the earnings of the minor pursuant to the contract;

(b) As a party to the contract; or

(c) As an interested party to the contract or to the performance of the minor pursuant to the contract.

3. The appointment of a special guardian pursuant to this section expires on the earliest of the following dates:

(a) The date on which the contract is terminated.

(b) The date on which the minor is emancipated.

(c) The date on which the minor reaches the age of majority.

Sec. 13. *1. At the time of issuing an order appointing a special guardian pursuant to section 12 of this act, the court shall fix and include in the order the amount or percentage of the net earnings of the minor to be set aside for the benefit of the minor that the court determines is in the best interests of the minor. The amount or percentage of the net earnings to be set aside must not be less than 15 percent or more than 50 percent of the net earnings.*

2. Any time following the issuance of an order fixing or modifying the amount or percentage of the net earnings to be set aside pursuant to this section:

(a) Upon the request of the minor, the special guardian shall move the court for an order modifying the amount or percentage of the net earnings to be set aside.

(b) Upon his own initiative, the special guardian may move the court for an order modifying the amount or percentage of the net earnings to be set aside.

3. The court may grant a motion and modify the amount or percentage of the net earnings to be set aside if the court finds that, because of changed circumstances, modification of the amount or percentage of the net earnings to be set aside is in the best interests of the minor.

4. Upon termination of a contract approved by the court pursuant to sections 2 to 17, inclusive, of this act, the special guardian shall immediately transfer all remaining money that has been received and held for the benefit of the minor, together with an accounting of all money that has been collected, disbursed and expended, to:

(a) The guardian of the property of the minor, if the minor has not reached the age of majority and has not been emancipated.

(b) The minor, if the minor has reached the age of majority or has been emancipated.

Sec. 14. *1. During the term of the contract, or during the term of any other covenant or condition of the contract, the court that approved a contract pursuant to sections 2 to 17, inclusive, of this act may, upon its own motion or the motion of an interested party and upon*

finding that the mental, physical or emotional health, safety, morals or well-being of the minor is being impaired by the performance of the contract:

(a) Revoke its granting of the petition; or

(b) Declare its granting of the petition revoked unless a modification of the terms of the contract, which the court finds to be appropriate under the circumstances, is agreed upon by the parties and approved by an order of the court.

2. An interested party or a guardian ad litem appointed for the purpose by the court may apply for an order of revocation pursuant to this section.

3. The revocation of the granting of a petition pursuant to this section does not affect any right of action existing on the date of the revocation, except that the court may determine that a refusal to perform on the ground of impairment of the mental, physical or emotional health, safety, morals or well-being of the minor was justified.

4. The provisions of this section do not create an exemption to the requirements of NRS 41.200.

Sec. 15. *Unless the granting of a petition has been revoked pursuant to section 14 of this act, if a contract that is otherwise valid is approved by the district court by the granting of a petition, a minor may not, during his minority, upon reaching the age of majority or upon his emancipation:*

1. Disaffirm the contract on the ground that the contract was entered into during his minority;

2. Rescind, avoid or repudiate the contract because of his minority;

3. Rescind, avoid or repudiate any exercise of a right or privilege pursuant to the contract because of his minority; or

4. Assert that a parent, custodian or guardian lacked authority to make the contract on his behalf.

Sec. 16. *The determination of whether to grant or deny a petition, to grant or deny a motion to modify the amount or percentage of the net earnings of a minor to be set aside, or to grant or deny a motion for revocation of a petition is a matter solely within the discretion of the court and is not subject to appeal.*

Sec. 17. *The provisions of sections 2 to 17, inclusive, of this act do not:*

1. Exempt any person from compliance with any other law concerning licenses, consents or authorizations required for any conduct, employment, use or exhibition of a minor in this state; or

2. Limit, in any manner, the discretion of a licensing authority or other persons charged with the administration of licensing requirements.

SUMMARY—Urges various persons and entities to coordinate efforts to promote economic development and diversification in this state. (BDR R-261)

SENATE CONCURRENT RESOLUTION—Urging various persons and entities to coordinate their efforts to promote economic development and diversification in this state.

WHEREAS, Research and development programs offered through the university systems of other states, such as the Georgia Research Alliance, have fostered economic diversification and growth in those states by building the research infrastructure necessary to develop new and emerging technologies; and

WHEREAS, The University and Community College System of Nevada is charged with the task of developing programs to train the workforce necessary to nurture new and emerging technologies; and

WHEREAS, Entrepreneurial education, such as the class offered by the University of Nevada, Reno, provides valuable instruction in entrepreneurship and the development of venture capital and assists in promoting new business ventures in this state; and

WHEREAS, Efforts must be coordinated to ensure that the University and Community College System of Nevada can realize its potential as a center for research and development; and

WHEREAS, The Commission on Economic Development must identify target areas for economic development and sources of funding for the development of those target areas,

including public and private contributions, and must review existing economic dynamics in this state and initiatives in other states; and

WHEREAS, The Office of Science, Engineering and Technology has the statutory duty to work in coordination with the Commission on Economic Development to establish criteria and specific goals for economic development and diversification in this state in the areas of science, engineering and technology; and

WHEREAS, The expenditure of the funds of the Experimental Program for the Stimulation of Competitive Research should be focused on supporting the appropriate target areas for economic development and on building the necessary research infrastructure to develop new and emerging technologies; and

WHEREAS, Venture capital programs have been successfully developed in other states to promote economic development and diversification, such as the Venture Network of Iowa, which has cultivated an entrepreneurial environment where new businesses can thrive and existing businesses can innovate; and

WHEREAS, The Governor, as chief executive of the State of Nevada, and the Lieutenant Governor, as Chairman of the Commission on Economic Development, play important roles in the efforts to foster economic development and diversification in this state; and

WHEREAS, The State of Nevada has a wealth of potential economic resources that can be developed, diversified and targeted through the cooperation and coordination of existing public and private entities and programs; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the members of the 71st Session of the Nevada Legislature do hereby urge the

Governor, the Lieutenant Governor, the Office of Science, Engineering and Technology, the Commission on Economic Development and the University and Community College System of Nevada to coordinate their efforts to promote economic development and diversification in this state; and be it further

RESOLVED, That the Secretary of the Senate prepare and transmit a copy of this resolution to the Governor, the Lieutenant Governor, the Director of the Office of Science, Engineering and Technology, the Executive Director of the Commission on Economic Development and the Board of Regents of the University of Nevada.

SUMMARY—Increases maximum fee secretary of state may charge for providing special services. (BDR 18-262)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to the secretary of state; increasing the maximum fee the secretary of state may charge for providing special services; and providing other matters properly relating thereto.

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

Section 1. NRS 225.140 is hereby amended to read as follows:

225.140 1. Except as otherwise provided in subsection 2, in addition to other fees authorized by law, the secretary of state shall charge and collect the following fees:

For a copy of any law, joint resolution, transcript of record, or other paper on file or of record in his office, other than a document required to be filed pursuant to Title 24 of NRS, per page $1.00

For a copy of any document required to be filed pursuant to Title 24 of NRS, per page ..... .50

For certifying to any such copy and use of the state seal, for each impression 10.00

For each passport or other document signed by the governor and attested by the secretary of state 10.00

For a negotiable instrument returned unpaid 10.00

2. The secretary of state:

(a) Shall charge a reasonable fee for searching records and documents kept in his office.

(b) May charge or collect any filing or other fees for services rendered by him to the State of Nevada, any local governmental agency or agency of the Federal Government, or any officer thereof in his official capacity or respecting his office or official duties.

(c) May not charge or collect a filing or other fee for:

(1) Attesting extradition papers or executive warrants for other states.

(2) Any commission or appointment issued or made by the governor, either for the use of the state seal or otherwise.

(d) May charge a reasonable fee, not to exceed ~~[$100,]~~ ***$500,*** for providing special services, including, but not limited to, providing service on the day it is requested or within 24 hours, accepting documents filed by facsimile machine ~~[,]~~ and other use of new technology.

(e) Shall charge a fee, not to exceed the actual cost to the secretary of state, for providing:

(1) A copy of any record kept in his office that is stored on a computer or on microfilm if the copy is provided on a tape, disk or other medium used for the storage of information by a computer or on duplicate film.

(2) Access to his computer data base on which records are stored.

3. All fees collected pursuant to paragraph (d) of subsection 2 must be deposited with the state treasurer for credit to the account for special services of the secretary of state in the state general fund. Any amount remaining in the account at the end of a fiscal year in excess of $2,000,000 must be transferred to the state general fund. Money in the account may be transferred to the secretary of state's operating general fund budget account and must only be used to create and maintain the capability of the office of the secretary of state to provide special services, including, but not limited to, providing service:

(a) On the day it is requested or within 24 hours; or

(b) Necessary to increase or maintain the efficiency of the office.

Any transfer of money from the account for expenditure by the secretary of state must be approved by the interim finance committee.

Sec. 2. This act becomes effective on July 1, 2001.