

Availability and Inventory of Affordable Housing



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AVAILABILITY AND INVENTORY OF
AFFORDABLE HOUSING

BULLETIN NO. 07-8

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SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE AVAILABILITY AND INVENTORY OF AFFORDABLE HOUSING

Assembly Concurrent Resolution No. 11
(File No. 97, *Statutes of Nevada 2005*)

Following is a summary of the recommendations adopted by the Legislative Commission's Subcommittee to Study the Availability and Inventory of Affordable Housing at its June 5, 2006, meeting. These recommendations will be forwarded to the Legislative Commission and ultimately to the 2007 Session of the Nevada Legislature, as appropriate.

RECOMMENDATIONS FOR LEGISLATION

Housing Trust Funds

RECOMMENDATION NO. 1 — Create a housing trust fund to provide money for affordable housing projects dedicated to workforce housing, targeted at families whose gross income is greater than 80 percent and equal to or less than 120 percent of area median income (AMI). The trust fund for workforce housing will be set up and administered in the same manner as the Account for Low-Income Housing (*Nevada Revised Statutes* [NRS] Chapter 319). **(BDR 25-139)**

RECOMMENDATION NO. 2 — Clarify that local governments may utilize money from the Account for Low-Income Housing to assemble and acquire property for the development of affordable housing and expand the authority of local governments to utilize their funds for the development of affordable housing. **(BDR 25-139)**

Data Collection and Revision of Definitions

RECOMMENDATION NO. 3 — Provide for the development and maintenance of a Statewide Housing Database as proposed by the Nevada Housing Database Partnership with an annual operating budget of \$175,000.

- a. Allow existing revenue from the Account for Low-Income Housing to be used to provide funding for the database.
- b. Include all housing, demographic, and economic elements required by A.C.R. 11.
- c. The Statewide Housing Database should contain specific data on the number of housing authority units and Section 8 Housing Program units (Section 8 of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f]) that are available to victims of

domestic violence, and the number of terminations of Section 8 housing vouchers of domestic violence victims.

- d. Specifically require owners of rental properties in the State of Nevada currently receiving and/or those that have received funding from state, federal, or local jurisdictions to report available disabled accessible units to the Nevada Housing Registry Web site. **(BDR 25-140)**

RECOMMENDATION NO. 4 — Amend various statutes throughout the NRS that relate to affordable housing to ensure consistency. Affordable housing should be defined as housing which is affordable to families whose income is equal to or less than 80 percent of AMI; attainable housing should be defined as housing which is affordable to households whose income is greater than 80 percent and equal to or less than 120 percent of AMI. **(BDR 25-140)**

Mobile Home Parks

RECOMMENDATION NO. 5 — Require the submission of a resident impact statement by a mobile home park owner proposing to close or convert a mobile home park. The statement should be submitted to and considered by the appropriate local zoning board, planning commission, or governing body. The statement should include a list of the names, addresses, and mobile home site identification numbers of all persons living in units within the existing park; an analysis of replacement housing needs or requirements for existing tenants; and an analysis of any sites proposed for relocated units. **(BDR 10-141)**

Requests for Funding

RECOMMENDATION NO. 6 — Make a one-time appropriation to the Account for Low-Income Housing, Fund for Low-Income Owners of Manufactured Housing, and proposed workforce housing trust fund. The amount of the surplus dedicated for these purposes should be equal to or greater than the amount of the general fund surplus attributable to excess proceeds from the Real Property Transfer Tax. **(BDR S-142)**

Local Government

RECOMMENDATION NO. 7 — Require Clark County to have a regional planning coalition similar to Washoe County, which must operate and function in the same manner as the Washoe County Planning Commission. **(BDR 20-143)**

RECOMMENDATION NO. 8 — Clarify that local governments may enact ordinances that provide for the acquisition, construction, improvement, rehabilitation, or expansion of affordable or attainable housing. **(BDR 20-143)**

RECOMMENDATION NO. 9 — Assist redevelopment agencies with regard to the bonding process. These changes would:

- a. Allow parties aggrieved by the actions of a county assessor to appeal to the Nevada Tax Commission and require that an appeal be decided within 30 days of receipt by the Commission;
- b. Require a county assessor to reappraise all real property in redevelopment areas at least once per year, notwithstanding other existing provisions;
- c. Require tax increment funds to be remitted to redevelopment agencies within a specific time period;
- d. Grant local governments standing to refute reductions in assessed value of properties within redevelopment areas to boards of equalization; and
- e. Expand the applicability of NRS 279.685 by lowering the population threshold from 300,000 to 200,000 for cities and counties. **(BDR 20-143)**

SUBCOMMITTEE ACTIONS

In addition, the Subcommittee directed staff to:

RECOMMENDATION NO. 10 — Conduct a study of the impact, development, and permitting fees and processes employed by local governments throughout the state and include a statement in the Subcommittee’s bulletin with information on best practices used by other jurisdictions. **(Appendix B)**

RECOMMENDATION NO. 11 — Prepare a letter to be sent on the Subcommittee’s behalf to each public housing agency urging consideration of a preference for admission of families that include victims of domestic violence, if they do not have such a preference already.

RECOMMENDATION NO. 12 — Prepare a letter to be sent on the Subcommittee’s behalf to each public housing agency directing their attention to and urging their compliance with the federal Violence Against Women Act of 2005.

RECOMMENDATION NO. 13— Prepare a letter to be sent on the Subcommittee’s behalf to each participating jurisdiction urging them to use federal grants or funds received from the Account for Low-Income Housing to fund a bridge-gap source for persons currently in housing that are on a waiting list for a housing subsidy, and who are at risk of becoming homeless or currently in a nursing facility and awaiting community transition.

**REPORT TO THE 74th SESSION OF THE NEVADA STATE LEGISLATURE BY THE
LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE AVAILABILITY
AND INVENTORY OF AFFORDABLE HOUSING**

I. INTRODUCTION

The Legislative Commission's Subcommittee to Study the Availability and Inventory of Affordable Housing was established as a result of Assembly Concurrent Resolution No. 11, (File No. 97, *Statutes of Nevada 2005*). According to the resolution, the study must include the compilation and analysis of demographic, economic, and housing data from a variety of sources that:

- Provides for an annual assessment of the affordable housing market at the city and county level, including data relating to housing units, age of housing, rental rates and rental vacancy rates, new home sales and resale of homes, new construction permits, mobile homes, lots available for mobile homes, and conversions of multifamily condominiums;
- Addresses the housing needs of various population groups in Nevada, such as households that rent, homeowners, elderly households, veterans, persons with disabilities or special needs, homeless persons, recovering drug abusers, persons suffering from mental health ailments, and abused women, with each group broken down to show the percentage of the population group at different income levels, and a determination of the number of households within each special needs group experiencing housing costs greater than 50 percent of their income, overcrowding or substandard housing;
- Contains an estimate of the number and condition of subsidized and other low-income housing units at the county level and the identification of any subsidized units that are forecast to convert to market-rate units within a 2-year planning period;
- Includes an assessment relating to the funding of a new position or an expansion of the duties of the Nevada State Demographer's Office, which is funded by the Department of Taxation, to fulfill the responsibilities of compiling future housing data and producing an annual assessment of housing supply and demand; and
- Includes an examination of the methods for funding the provision of such housing data on an annual basis.

The Legislative Commission appointed the following six members to the Subcommittee:

Assemblyman Marcus L. Conklin, Chair
Senator Steven A. Horsford
Senator Dennis Nolan
Senator Maurice E. Washington
Assemblywoman Francis O. Allen
Assemblywoman Marilyn Kirkpatrick

Legislative Counsel Bureau (LCB) staff services were provided by Kelly S. Gregory, Research Analyst, Research Division; William L. Keane, Principal Deputy Legislative Counsel, Legal Division; Ann M. Iverson, Senior Deputy Legislative Counsel, Legal Division; and Lucinda Benjamin, Senior Research Secretary, Research Division.

During the course of the study, the Subcommittee was provided with formal presentations and expert and public testimony on a broad range of topics involving affordable housing. The Subcommittee also received detailed data on the inventory and availability of affordable housing in southern Nevada from the Southern Nevada Regional Planning Agency and Applied Analysis. A great deal of information was gathered during the course of this study, and much of it was provided in the exhibits that became a part of the minutes of the Subcommittee's meetings. All supporting documents and minutes are on file with the LCB Research Library; exhibits pertinent to this bulletin are provided as links to the electronic version available on the Subcommittee's Web site: <http://www.leg.state.nv.us/73rd/Interim/Studies/Housing/>.

II. SUMMARY OF SUBCOMMITTEE PROCEEDINGS

The Subcommittee held six meetings to obtain expert and public testimony. Meetings were held on the following dates:

- November 14, 2005;
- January 23, 2006;
- February 27, 2006;
- April 10, 2006;
- May 8, 2006; and
- June 5, 2006.

All of the meetings were held at the Grant Sawyer State Office Building in Las Vegas and videoconferenced to the Legislative Building in Carson City. Meeting materials for the presentations referenced are available on the Subcommittee's Web site: <http://www.leg.state.nv.us/73rd/Interim/Studies/Housing/>; click on the links to "Agendas and Minutes" to view minutes and linked exhibits for each meeting.

November 14, 2005, Meeting

The initial meeting of the Subcommittee focused on current initiatives in the development of affordable housing and background information on the impetus for the interim study. After opening remarks by Chairman Marcus L. Conklin and Kelly S. Gregory, Research Analyst, LCB, the members heard testimony regarding the Nevada Housing Database Partnership and its role in developing the language contained in Assembly Concurrent Resolution No. 11 (File No. 97, *Statutes of Nevada 2005*), which created the Subcommittee.

The concept for the study was presented by Tony Ramirez, Field Office Director, United States Department of Housing and Urban Development (HUD), acting as the facilitator for the Nevada Housing Database Partnership. According to Mr. Ramirez, the partnership was developed to address a perceived lack of affordable housing data on a local, county, or state level. The agencies involved in the partnership wished to pursue the creation of a statewide housing database to assist with identifying the existing affordable housing supply and corresponding demand utilizing available federal, state, and local demographic, economic, and housing data.

Testifying in support of the Nevada Housing Database partnership were: Brian Bonnenfant, Program Manager, Nevada Small Business Development Center, University of Nevada, Reno (UNR); Nancy Muniz, Community Development Manager, Charles Schwab Bank; and Sherry Manning, Office of Disability Services, Nevada Department of Health and Human Services (DHHS).

Members then heard presentations regarding current affordable housing programs available in Nevada from:

- Tony Ramirez, Field Office Director, Reno Field Office, HUD;
- William Brewer, Housing Programs Director, United States Department of Agriculture Rural Development;
- Jodi Royal-Goodwin, Community Resources Specialist, City of Reno;
- Lynn Gondorcin, Community Development Director, Nevada Rural Housing Authority;
- Charles B. Horsey, Administrator, and Lon DeWeese, Chief Financial Officer, Housing Division, Department of Business and Industry; and
- Kristin Cooper, Senior Planner, Community Resources Management, Clark County.

Mr. Horsey also provided the Subcommittee with an update on the progress of Governor Kenny C. Guinn's affordable housing proposal, the Workforce Housing Initiative of Nevada. Governor Guinn outlined this program during his State of the State address in January 2005; the program involves obtaining Bureau of Land Management (BLM) land for affordable housing through a provision in the [Southern Nevada Public Lands Management Act of 1998 \(SNPLMA\) \(Public Law 105-263\)](#).

Public comment included testimony supporting the concept of a statewide housing database and urging the Subcommittee to support acquisition of federal land pursuant to the SNPLMA.

January 23, 2006, Meeting

During the Subcommittee's second meeting of the interim, members heard presentations regarding current affordable housing programs available in Nevada from:

- Kenny Young, Redevelopment Manager, Community Development, City of North Las Vegas;
- Sabra Smith-Newby, Administrative Officer, and Orlando Sanchez, Director, Department of Neighborhood Services, City of Las Vegas; and
- Doug Kuntz, Affordable Housing Coordinator, City of Henderson.

The presenters discussed efforts by local governments to encourage the development of affordable housing and made recommendations for Subcommittee action.

Members then heard presentations regarding the housing needs of special needs populations in Nevada from:

- Ernest Nielsen, Washoe County Senior Law Project;
- Sherry L. Manning, Housing Specialist, Office of Disability Services, DHHS;

- Anne Cory, Reno Area Alliance for the Homeless and United Way of Northern Nevada and the Sierra; and
- Susan Meuschke, Executive Director; Paula Berkley; and Dana Crittendon, Nevada Network Against Domestic Violence.

Finally, Ken Lange, Executive Director, Nevada State Education Association, addressed the Subcommittee regarding the housing issues facing the education community.

At the request of Chairman Conklin, Lesa Coder, Director of Operations, Clark County Redevelopment Agency, provided an update on the affordable and attainable housing study commissioned by the Southern Nevada Regional Planning Coalition.

February 27, 2006, Meeting

At the third meeting of the Subcommittee, the members received an update on the progress of the Southern Nevada Workforce Housing Study commissioned by the Southern Nevada Regional Planning Coalition's Workforce Housing Subcommittee. Lesa Coder and John Restrepo, Principal, Restrepo Consulting Group LLC, gave a short presentation on the results of the study and answered questions from the members. A copy of the study is available on the Subcommittee's Web site.

The Subcommittee heard presentations regarding private sector efforts and suggestions to develop affordable housing programs in Nevada from:

- Steven G. Hill, Chairman of Government Affairs, Associated General Contractors;
- Christina Dugan, Vice President, Public Affairs, Las Vegas Chamber of Commerce; and
- Michael F. Dillon, Jr., Community Relations Director, Builders Association of Northern Nevada (BANN) and Robert Nielson, Shelter Program, BANN.

Members received an overview of the affordable housing provisions contained in the SNPLMA from Juan Palma, Las Vegas Field Manager, BLM. Section 7 of the SNPLMA allows the BLM to make land available at less than fair market value to public and non-profit entities for certain purposes. Section 7 states:

(b) AFFORDABLE HOUSING.—The Secretary, in consultation with the Secretary of Housing and Urban Development, may make available, in accordance with section 203 of the Federal Land Planning and Management Act of 1976, land in the State of Nevada at less than fair market value and under other such terms and conditions as he may determine for affordable housing purposes. Such lands shall be made available only to State or local governmental entities, including local public housing authorities. For the purposes of this subsection, housing shall be considered to be affordable housing

if the housing serves low-income families as defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704).

As a result, the BLM, in consultation with HUD, created a set of policies and procedures for the disposal of parcels for affordable housing. These guidelines require the State of Nevada or any appropriate Nevada local governmental entity to submit a written nomination or request to purchase eligible land for affordable housing. The BLM and HUD will jointly review the nomination to assess the proposed affordable housing project. A copy of these guidelines is available on the Las Vegas Field Office of the BLM Web site, located at: http://www.nv.blm.gov/snplma/affordable_housing/default.htm.

Next, the Subcommittee heard testimony regarding non-profit affordable housing development from:

- Cloyd Phillips, Executive Director, Community Services Agency and Development Corporation; and
- Ron Trunk, Chief Executive Officer, Citizens for Affordable Homes, Inc.

Senator Michael Schneider also addressed the Subcommittee and provided recommendations on possible changes to zoning regulations to stimulate affordable housing development.

April 10, 2006, Meeting

At the fourth meeting of the Subcommittee, the members heard a presentation from Timothy J. McBride, Senior Vice President, Government Relations and Industry Relations, and Samuel Luna, Expanding Market Director, Freddie Mac. Mr. McBride discussed Freddie Mac's operation as an issuer of mortgage revenue bonds and explained the firm's operations in Nevada. Leo Poggione, President, Craftsman Homes, provided information on manufactured housing development and its affect on the affordable housing supply. Dana Serrata, Re-Entry Coordinator, Nevada's Department of Corrections, gave a presentation on the lack of housing options available to released offenders.

Next, the members received testimony from the Nevada Housing Coalition, represented by Ann Harrington in Carson City, and Michael T. Mullin in Las Vegas. Ms. Harrington and Mr. Mullin outlined the organization's recommendations. Jodi Royal-Goodwin, Community Resources Program Manager, Washoe County HOME Consortium, presented the group's recommendations for changes to current affordable housing policies. Representatives from the City of Sparks, including Rob Joiner, Government Affairs Manager; Kermitt McMillin, Finance Manager; and Randy Mellinger, Assistant City Manager; followed with a discussion of redevelopment bonds and their uses and limitations for developing affordable housing.

Members also received an overview of the "Workforce Housing in Southern Nevada: A Springboard to Action" Conference from Ken Lange, Executive Director, Nevada State Education Association.

May 8, 2006, Meeting

At the fifth meeting of the Subcommittee, the members heard presentations on the current state of the housing market in Southern Nevada and a recent survey on affordable and attainable housing from:

- Irene Porter, Executive Director, Southern Nevada Homebuilders Association;
- Jeremy Aguero, Principal Analyst, Applied Analysis
- Jim Chachas, Financial Consultant, Hobbs, Ong & Associates; and
- Jason Gray, Strategic Solutions.

Presentations were made by the following individuals regarding the role of manufactured housing in developing more affordable housing options:

- Assemblywoman Chris Giunchigliani, Clark County, Assembly District No. 9;
- Assemblyman Mark Manendo, Clark County, Assembly District No. 18;
- Bob Varallo, past-president of the Nevada Association of Manufactured Homeowners; and
- Vanessa Hatch, Compliance Officer, Augusta Homes.

The Subcommittee heard a presentation on a proposed private housing trust fund from Mark Fiorentino, Lobbyist, Kummer, Kaempfer, Bonner, Renshaw, and Ferrario, on behalf of Focus Properties.

Members of the Nevada Housing Database Partnership appeared before the committee to discuss the creation of a statewide housing database. Presenters included:

- Debra March, Executive Director, Lied Institute for Real Estate Studies, University of Nevada, Las Vegas (UNLV);
- Brian Bonnenfant, Geographic Information Systems Analyst, Nevada Small Business Development Center, UNR;
- Jeff Hardcastle, American Institute of Certified Planners, State Demographer, UNR; and
- Robert Potts, Assistant Director, Center for Business and Economic Research, UNLV.

Michael Pennington, Public Policy Director, Reno-Sparks Chamber of Commerce, and Jason Geddes, Manager of Government Affairs, Economic Development Authority of Western Nevada, testified in support of the proposed statewide housing database.

Michael Mullin, President, Nevada Housing and Neighborhood Development (HAND), provided the Subcommittee with information on the Account for Low-Income Housing, also known as the Low-Income Housing Trust Fund.

Ernie Nielsen, Washoe County Senior Law Project, testified in support of the creation of a statewide housing database.

June 5, 2006, Meeting

At its final meeting, the Subcommittee conducted a work session in which the members adopted many, but not all, of the recommendations for legislative action that were presented during the course of this study. The approved recommendations include five bill draft requests covering a variety of topics and are summarized in the “Summary of Recommendations” section of this report. Also, they are discussed in greater detail in the “Discussion of Recommendations” section beginning on page 14.

III. OVERVIEW OF AFFORDABLE HOUSING PROGRAMS

Following is historical and other background information on affordable housing programs in Nevada. This information is intended to provide a contextual perspective concerning the issues that were addressed during the course of this study.

A. Background Information

Traditionally, affordable housing initiatives have been directed under the auspices of the federal government, particularly through the Department of Housing and Urban Development, augmented by local government efforts. As the funding for HUD diminished over the past 10 to 15 years, many states began to address affordable housing issues. Some state approaches have included: (1) developing comprehensive affordable housing strategies; (2) issuing bonds to assist low- and moderate-income individuals purchasing housing; and (3) giving incentives to organizations that provide housing for low-income individuals and families.

According to the National Conference of State Legislatures (NCSL), state initiatives to address affordable housing can be broken into two categories directed toward: (1) the purchase market; and (2) the rental market. Incentives in the purchase market are directed at builders and developers, buyers, and employers. Incentives in the rental market are directed at landlords, builders, developers, tenants, and employers.

Purchase Market

Builders and Developers. To assist builders and developers, many states have provided monetary incentives and streamlined permitting processes for affordable housing projects. These incentives and waivers generally only apply to tax credits and permitting waivers at the state level.

Buyers. To directly assist buyers, several states have approved individual development accounts or IDAs. The accounts emphasize personal investment. Funds invested by individuals are used to save for a particular goal, such as homeownership, and the state then matches those funds. According to NCSL, sources for matching funding frequently involve Temporary Aid to Needy Families funds and tax deductible contributions.

About half the states, including Nevada, have affordable housing trust funds. The trust funds are used to provide down payment assistance, rent assistance, and assistance for home repairs. Funding is derived from proceeds on the sale of unclaimed property, interest from real estate and escrow accounts, and interest from rental property deposits.

Employers. State and local governments are increasingly looking to employers to shoulder some of the burden for affordable housing needs. Employer assisted housing (EAH) programs are of particular interest in states with very high-cost areas or low-density markets. The NCSL

reports that Minnesota and New Jersey have recently instituted EAH programs, which provide incentives to employers to develop affordable housing for employees.

Rental Market

As in the purchase market, most incentives for landlords and developers include tax incentives and streamlined permitting processes, as well as reduced permitting fees. New initiatives include allowing state housing agencies to finance mixed commercial or residential facilities. Some states are also revising the median income thresholds used to qualify for affordable housing in certain high-cost areas.

B. Housing Trust Funds

Account for Low-Income Housing

The 1989 Legislature enacted Assembly Bill 489 (Chapter 572, *Statutes of Nevada*), which created the Trust Fund for Low-Income Housing. This act provided that the money deposited in the fund may be used to:

1. Acquire, construct, or rehabilitate housing for low-income households;
2. Provide financial and technical assistance to organizations seeking to provide low-income housing;
3. Provide or guarantee the payment of rent and security deposits for low-income persons; and
4. Defray the costs incurred by Nevada's Housing Division, Department of Business and Industry, in administering the fund.

Fifteen percent of the money must be distributed to the Division of Welfare and Supportive Services, DHHS, to provide emergency assistance to needy families with children. The remainder must be distributed to nonprofit organizations, housing authorities, and local governments for projects to supply low-income housing. The organizations must use the money to benefit families whose income does not exceed 60 percent of the median income in the county. At least 15 percent of the housing units provided must be affordable to persons below the poverty level. The trust fund was later renamed the "Account for Low-Income Housing" (see [NRS 319.500 through 319.520](#)).

Although the 1989 Legislature could not decide on a revenue source for the trust fund, the 1991 Legislature increased the real property transfer tax by 10 cents for each \$500 of value and required the proceeds collected from the increase to be deposited in the trust fund account (see [NRS 375.070](#)).

As noted above, the Housing Division is responsible for administering the Account for Low-Income Housing. The Division is also responsible for, among other things, administering the State's allocation of Federal HOME funds. The HOME program was created under Title II (the Home Investment Partnership Act) of the National Affordable Housing Act of 1990. The HOME program encourages the State to undertake activities and adopt policies aimed at expanding the supply of affordable housing or ways that best suit its housing needs. According to Charles L. Horsey, Administrator of the Housing Division, the original purpose of the trust fund (account) was to provide a matching source in order to access the Federal HOME program funds.

Regarding the administration of the account, the Division has developed program criteria and procedures in consultation with representatives of housing authorities, organizations of low-income persons, providers of housing, financial institutions, and other interested persons. An advisory committee advises the Division concerning the account's administration (see [Nevada Administrative Code 319.885 through 319.950](#)).

Fund for Low-Income Owners of Manufactured Homes

The Nevada State Legislature also created a trust fund for low-income tenants of mobile home parks. In 1991, the Legislature enacted a law requiring owners of mobile home parks to pay a fee of \$12 per year for each occupied lot. The proceeds of this fee are placed in a trust fund. Mobile home park tenants whose income is less than \$750 per month or less than the federally designated poverty level may apply for assistance from the fund (see [NRS 118B.211 through 118B.218](#)).

Trust Funds in Other States

According to the Housing Trust Fund Project of the Center for Community Change in Washington, D.C., there are housing trust funds in 350 cities and 37 states. Click on the following link to view a report titled "*Housing Trust Fund Progress Report 2002: Local Responses to America's Housing Needs*," published by the Center: <http://www.communitychange.org/shared/publications/downloads/HousingSurvey2002.pdf>. The report contains comprehensive information regarding trust funds across the country. Highlights include the following facts regarding revenue generation for housing trust funds:

- Nearly 40 different sources of revenue have been dedicated to existing housing trust funds. Most housing trust funds in existence have revenue from a tax or fee dedicated to the Fund.
- Total annual revenue collected by trust funds range from a high of \$300 million plus each year to less than \$100,000 annually. Overall, housing trust funds commit some \$750 million to housing projects each year through dedicated revenue streams, along with additional funds through appropriations and other special funds.

- The revenues most commonly committed to housing trust funds include exactions required of developers, real estate transfer taxes, or document recording fees. New sources are constantly being secured, including unclaimed utility deposits, gaming revenues, interest from rainy day funds, and others.

C. Redevelopment Set-aside

The Nevada State Legislature created [NRS 279.685](#) (Chapter 410, *Statutes of Nevada 1993*) to address a shortage of affordable housing by allowing a percentage of redevelopment funds to be used for the development of additional affordable housing options. In enacting the measure, the Legislature declared that “the provision of housing is a fundamental purpose of the Community Redevelopment Law. . .” The Cities of Las Vegas, North Las Vegas, Reno, and Sparks and the housing authorities of Las Vegas and Reno testified on behalf of the bill. The original law included only cities with a population of 200,000 or more and required an urban renewal agency to set aside at least 15 percent of the redevelopment funds received to increase, improve, and preserve the number of low-income housing units in the community.

During the 1999 Legislative Session, Assemblywoman Chris Giunchigliani introduced Assembly Bill No. 306 (Chapter 643, *Statutes of Nevada*); the bill increased the percentage set aside for affordable housing projects from 15 percent to 18 percent, effective October 1, 1999. The population requirement was increased in 2001, and the set-aside is now limited to cities with a population of 300,000 or more.

D. Low-Income Housing Tax Credit

The federal Low-Income Housing Tax Credit (LIHTC) program provides income tax credits to developers of housing for low-income households. The goal of the program is to reduce the gap in funds needed to construct or rehabilitate affordable rental housing. In Nevada, LIHTC is administered by the Housing Division of the Department of Business and Industry.

According to the Housing Division, approximately \$3 million in tax credits are available annually in Nevada; qualifying projects may be eligible for a tax credit of up to 9 percent. The tax credits are allocated to the states by the Internal Revenue Service; the Housing Division is responsible for awarding the credits to qualified developers. Federal law requires that each state develop an annual Qualified Allocation Plan that gives preference to projects that serve the lowest income families and are structured to remain affordable for the longest period of time. To be eligible, a proposed project must: (1) be a residential rental property; (2) commit to one of two possible low-income occupancy threshold requirements; (3) restrict rents, including utility charges, in low-income units; and (4) operate under the rent and income restrictions for 30 years or longer.

The tax credits are awarded on a competitive basis and provide equity financing for affordable housing projects. Developers can sell the credits to investors to raise equity for their projects, which reduces the debt the developer would otherwise have to incur to undertake the project. There are property maintenance requirements investors must follow in order to remain in compliance with the program; if the requirements are met investors can receive a credit against their federal tax liability each year over a period of ten years. The credit for a project is calculated based on the costs of development and the number of qualified low-income units, and cannot exceed the amount needed to make the project feasible.

E. First-Time Homebuyer Program

The Housing Division launched the First Time Homebuyer Program in November 2005. There are two components to the program. The first is a below-market fixed interest rate 30-year mortgage loan designed for borrowers who meet certain underwriting criteria. This program is funded by the Division's sale of tax-exempt mortgage revenue bonds. The Division received approval from the State Board of Finance to issue \$50 million of these bonds in November of 2005.

The second part of the program is a down payment and closing cost assistance loan. It is only accessible when combined with the Division's mortgage loan. Originally, there were three tiers of funds available depending on the borrower's income level. Assistance ranged from a \$15,000 second mortgage financed by the Division's mortgage revenue bond program, to a \$75,000 deferred loan financed with HOME funds from the United States Department of Housing and Urban Development (HUD). According to Housing Division, the HOME grant monies being used to fund this program were extinguished in October 2006; however, the second mortgage program funded by the sale of mortgage revenue bonds remains available.

Buyers who choose to utilize the program are required to attend a first time homebuyer education class. After they have chosen a residence and entered into a real estate purchase contract, buyers can formally apply for a loan from the Housing Division through a participating lending institution. There are maximum income and purchase price limits for the program that vary depending on the area. Click on the following link to view the Division's brochure titled "First Time Homebuyer Program" that outlines these limits: <http://www.nvhousing.state.nv.us/First%20Time%20Homebuyer%20Program/web%20homebuyer%20brochure.pdf>. There are other restrictions the buyer must adhere to throughout the term of the loan.

IV. DISCUSSION OF RECOMMENDATIONS

At its final meeting and Work Session, the Subcommittee adopted recommendations concerning the following topics:

Housing Trust Funds

Much of the testimony delivered to the Subcommittee concerned the lack of funding available for the development of affordable housing projects; rapidly escalating construction costs added to these difficulties, leading to what was labeled an affordability gap. Additionally, several of the municipal governments lamented that there was no assistance of any kind available to finance affordable housing for families whose income exceeded 80 percent of area median income (AMI). Chairman Conklin and Assemblywoman Kirkpatrick proposed the following recommendation, which was adopted by the Subcommittee:

RECOMMENDATION NO. 1—Create a housing trust fund to provide money for affordable housing projects dedicated to workforce housing, targeted at families whose gross income is greater than 80 percent and equal to or less than 120 percent of area median income (AMI). The trust fund for workforce housing will be set up and administered in the same manner as the Account for Low-Income Housing (*Nevada Revised Statutes* [NRS] Chapter 319). (BDR 25-139)

In order to specify that local governments could use funds from the Account for Low-Income Housing to acquire property for future affordable housing development, the City of North Las Vegas proposed the following recommendation, which was adopted by the Subcommittee:

RECOMMENDATION NO. 2—Clarify that local governments may utilize money from the Account for Low-Income Housing to assemble and acquire property for the development of affordable housing and expand the authority of local governments to utilize their funds for the development of affordable housing. (BDR 25-139)

Data Collection and Revision of Definitions

As previously noted, the concept for the housing study was introduced by the Nevada Housing Database Partnership. The partnership was developed to address a perceived lack of affordable housing data on a local, county, or state level. The agencies involved in the partnership advocated the creation of a statewide housing database to assist with identifying the existing affordable housing supply and corresponding demand utilizing available federal, state, and local demographic, economic, and housing data.

Efforts by the states of Washington and Wyoming to study the availability of affordable housing served as a model for the Nevada Housing Database Partnership. In Washington, data is obtained and analyzed by the Washington Center for Real Estate Research at the Washington State University's College of Business and Economics. The Center is funded primarily by an assessment on real estate recordings and real estate transfers and operates with an annual budget of approximately \$200,000.

The Wyoming study is conducted by the Wyoming Community Development Authority (WCDA), an entity created by the legislature that acts as a housing finance agency. Funding for the WCDA is obtained through proceeds on the sale of mortgage revenue bonds. The WCDA forms a partnership with several private firms to conduct studies on affordable housing; it contracts with Western Economic Services to produce housing profiles for each county in Wyoming on a semiannual basis. The cost of the study ranges from \$100,000 to \$125,000 annually. It focuses on trends in the Wyoming housing market and was created to allow access to more updated information than what was available from the HUD five-year *Consolidated Plan*. The WCDA uses the information to form its biennial strategic plan and to establish program spending priorities.

The Nevada Housing Database Partnership incorporated the elements from both studies in its proposal to create a statewide housing database in Nevada. Other parties, such as the Office of Disability Services and the Nevada Network Against Domestic Violence, requested that additional items be included in the study. The Subcommittee adopted the following recommendations to facilitate the creation of the database:

RECOMMENDATION NO. 3—Provide for the development and maintenance of a Statewide Housing Database as proposed by the Nevada Housing Database Partnership with an annual operating budget of \$175,000.

- a. Allow existing revenue from the Account for Low-Income Housing to be used to provide funding for the database.
- b. Include all housing, demographic, and economic elements required by A.C.R. 11.
- c. The Statewide Housing Database should contain specific data on the number of housing authority units and Section 8 Housing Program units (Section 8 of the United States Housing Act of 1937 [42 U.S.C. Sec. 1437f]) that are available to victims of domestic violence, and the number of terminations of Section 8 housing vouchers of domestic violence victims.
- d. Specifically require owners of rental properties in the State of Nevada that have received funding from state, federal, or local jurisdictions to report available disabled accessible units to the Nevada Housing Registry Web site. (BDR 25-140)

Definitions of Affordable and Attainable Housing

As noted above, funds in the Account for Low-Income Housing are targeted for development of affordable housing for families whose income is at or below 60 percent of AMI. The Southern Nevada Regional Planning Coalition recommended the permissible uses for the Account be expanded to include projects for families whose income is at or below 80 percent of AMI, and further recommended that all the definitions of affordable housing in the NRS to be amended to include this new income criterion, where appropriate. The group also recommended a new set of definitions be created to address attainable housing, or housing for families whose income is greater than 80 percent but below 120 percent of AMI. The Subcommittee adopted the following recommendation to define affordable and attainable housing:

RECOMMENDATION NO. 4—Amend various statutes throughout the NRS that relate to affordable housing to ensure consistency. Affordable housing should be defined as housing which is affordable to families whose income is equal to or less than 80 percent of AMI; attainable housing should be defined as housing which is affordable to households whose income is greater than 80 percent and equal to or less than 120 percent of AMI. (BDR 25-140)

Mobile Home Parks

Assemblywoman Chris Giunchigliani and Assemblyman Mark A. Manendo appeared before the Subcommittee to discuss the increasing number of mobile home park closures and conversions in Clark County. According to the Manufactured Housing Division, Department of Business and Industry, ten mobile home parks closed in the Las Vegas valley in 2005, and three more gave a notice of intent to close in the first three months of 2006. Under current law, landlords of manufactured home parks are obligated to give tenants at least 180-day notice before the closure of a park ([NRS 118B.177](#)), for the conversion of a park into lots ([NRS 118B.180](#)), and for the conversion of a park to other use ([NRS 118B.183](#)). Other requirements involving the relocation of a manufactured home to another park are also outlined in these NRS sections.

In Clark County, mobile home park closure or conversion to another use is managed by the Clark County Department of Comprehensive Planning. The Clark County Planning Commission is included within the Department. According to [NRS 278.0232](#), a report proposing the closure or conversion must be filed with the planning commission. The report must contain information about the closure or conversion, the availability of parks in the area, and the cost of relocating a mobile home to another park. The report also must be made available to the public. In order to provide more information on the impacts of a potential park closure or conversion, Assemblywoman Giunchigliani and Assemblyman Manendo proposed the following recommendation, which was adopted by the Subcommittee:

RECOMMENDATION NO. 5—Require the submission of a resident impact statement by a mobile home park owner proposing to close or convert a mobile home park. The statement should be submitted to and considered by the appropriate local zoning board, planning commission, or governing body. The statement should include a list of the names, addresses, and mobile home site identification numbers of all persons living in units within the existing park; an analysis of replacement housing needs or requirements for existing tenants; and an analysis of any sites proposed for relocated units. (BDR 10-141)

Requests for Funding

Chairman Conklin proposed that the excess funds generated from the Real Property Transfer Tax ([NRS 375.070](#)) be used to provide a one-time appropriation to the affordable housing, proposed workforce or attainable housing, and manufactured home assistance trust funds. This recommendation was approved by the Subcommittee:

RECOMMENDATION NO. 6—Make a one-time appropriation to the Account for Low-Income Housing, Fund for Low-Income Owners of Manufactured Housing, and proposed workforce housing trust fund. The amount of the surplus dedicated for these purposes should be equal to or greater than the amount of the general fund surplus attributable to excess proceeds from the Real Property Transfer Tax. (BDR S-142)

Authority of Local Governments

During the work session, the Subcommittee members debated various philosophies regarding local government zoning practices. As a result of this discussion, Assemblywoman Kirkpatrick made the following recommendation, which was adopted by the Subcommittee:

RECOMMENDATION NO. 7—Require Clark County to have a regional planning coalition similar to Washoe County, which must operate and function in the same manner as the Washoe County Planning Commission. (BDR 20-143)

As part of the suggested legislation to enhance local governments' ability to develop affordable housing, the Southern Nevada Regional Planning Coalition recommended the following action, which was adopted by the Subcommittee:

RECOMMENDATION NO. 8—Clarify local governments may enact ordinances that provide for the acquisition, construction, improvement, rehabilitation, or expansion of affordable or attainable housing. (BDR 20-143)

Redevelopment Set-Aside

Representatives from the City of Sparks approached the Subcommittee regarding the difficulties experienced by redevelopment agencies in several areas relative to bonding. To address these concerns, Assemblywoman Kirkpatrick made the following recommendation, which was adopted by the Subcommittee:

RECOMMENDATION NO. 9—Assist redevelopment agencies with regard to the bonding process. These changes would:

- a. Allow parties aggrieved by the actions of a county assessor to appeal to the Nevada Tax Commission and require that an appeal be decided within 30 days of receipt by the Commission;**
- b. Require a county assessor to reappraise all real property in redevelopment areas at least once per year, notwithstanding other existing provisions;**
- c. Require tax increment funds to be remitted to redevelopment agencies within a specific time period;**
- d. Grant local governments standing to refute reductions in assessed value of properties within redevelopment areas to boards of equalization; and**
- e. Expand the applicability of NRS 279.685 by lowering the population threshold from 300,000 to 200,000 for cities and counties. (BDR 20-143)**

Impact of Fees Imposed by Local Governments

The Southern Nevada Home Builders Association, among others, testified before the Subcommittee regarding the impact of various fees imposed by local governments on housing affordability. None of the parties who appeared were able to quantify the amount of the fees imposed by the various jurisdictions. Chairman Conklin directed staff to study fees for development, impacts, and the permitting process and to include best practices of other states, in particular the State of Arizona. The information is in Appendix B.

RECOMMENDATION NO. 10—Conduct a study of the impact, development, and permitting fees and processes employed by local governments throughout the state and include a statement in the Subcommittee’s bulletin with information on best practices used by other jurisdictions.

Housing for Special Needs Populations

To address the needs of victims of domestic violence and access to public housing, the Nevada Network Against Domestic Violence requested the Subcommittee express its support by preparing letters to the various public housing agencies. The Subcommittee directed staff to:

RECOMMENDATION NO. 11—Prepare a letter to be sent on the Subcommittee’s behalf to each public housing agency urging consideration of a preference for admission of families that include victims of domestic violence, if they do not have such a preference already.

RECOMMENDATION NO. 12—Prepare a letter to be sent on the Subcommittee’s behalf to each public housing agency directing their attention to and urging their compliance with the federal Violence Against Women Act of 2005.

Additionally, the Office of Disability Services, DHHS, requested that the Subcommittee express its support of additional funding for programs benefiting the homeless or those who are at risk of becoming homeless. The Subcommittee directed staff to:

RECOMMENDATION NO. 13—Prepare a letter to be sent on the Subcommittee’s behalf to each participating jurisdiction urging them to use federal grants or funds received from the Account for Low-Income Housing to fund a bridge-gap source for persons currently in housing that are on a waiting list for a housing subsidy, and who are at-risk of becoming homeless or currently in a nursing facility and awaiting community transition.

V. CONCLUDING REMARKS

The Subcommittee wishes to thank the many individuals who contributed to this study through their correspondence or testimony at the public hearings. The Subcommittee members also recognize the cooperation and assistance provided by the staffs of the Housing Division, Department of Business and Industry; the Nevada Small Business Development Center; the Clark County Redevelopment Agency; and the Reno Field Office of the United States Department of Housing and Urban Development.

VI. APPENDICES

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APPENDIX A

Assembly Concurrent Resolution No. 11 (File No. 97, *Statutes of Nevada 2005*)

APPENDIX A

Assembly Concurrent Resolution No. 11
Assemblyman Anderson

FILE NUMBER 97

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study on the availability and inventory of affordable housing in Nevada.

WHEREAS, Recent discussions initiated by the Nevada Housing Database Partnership relating to the lack of accurate, timely, affordable data concerning housing in the State of Nevada have generated ideas for the compilation of demographic, economic and housing data that could aid in forecasting the supply of and demand for affordable housing for rent and ownership in this State; and

WHEREAS, Various state and local agencies involved in the discussions have indicated the desire to pursue the creation of a statewide housing database that would assist in identifying the existing affordable housing and the corresponding demand, using federal, state and local demographic, economic and housing data; and

WHEREAS, Finding affordable housing today in Nevada is often difficult because of the tremendous increase in housing prices coupled with rapid population growth, and the availability of data to estimate housing demand would be an extremely useful tool to assist state and local agencies in assessing and developing policies on affordable housing to ensure its availability to all Nevadans; and

WHEREAS, The creation of a statewide housing database would also complement the growing trend of implementing a regional approach to growth management and planning throughout the State, as well as eliminate duplicative studies and services, thus providing cost savings for all entities currently attempting to generate and compile data on housing; and

WHEREAS, Such a database would also offer objective information to assist developers, administrators, applicants for grant and tax credits, state and local governments, and others interested in the provision of affordable housing and housing-related services; and

WHEREAS, The states of Washington and Wyoming have established studies that could serve as models for our State because of the types of data collected and the demographic and geographic similarities of those states to the State of Nevada; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Legislative Commission is hereby directed to appoint a subcommittee, composed of three members of the Assembly and three members of the Senate, one of whom must be appointed as Chairman of the subcommittee, to conduct a study of the availability and inventory of affordable housing in Nevada; and be it further

RESOLVED, That the study must include, without limitation, the compilation and analysis of demographic, economic and housing data from a variety of sources that:

1. Provides for an annual assessment of the affordable housing market at the city and county level, including data relating to housing units, age of housing, rental rates and rental

vacancy rates, new home sales and resale of homes, new construction permits, mobile homes, lots available for mobile homes, and conversions of multifamily condominiums;

2. Addresses the housing needs of various population groups in Nevada, such as households that rent, homeowners, elderly households, veterans, persons with disabilities or special needs, homeless persons, recovering drug abusers, persons suffering from mental health ailments and abused women, with each group broken down to show the percentage of the population group at different income levels, and a determination of the number of households within each special needs group experiencing housing costs greater than 50 percent of their income, overcrowding or substandard housing;

3. Contains an estimate of the number and condition of subsidized and other low-income housing units at the county level and the identification of any subsidized units that are forecast to convert to market-rate units within a 2-year planning period;

4. Provides a demographic and economic overview by local and county jurisdiction, if feasible, for the population of Nevada, including age, race and ethnicity, household size, migration, current and forecast employment, household income and a summary relating to the effects of demographics and economic factors on housing demand;

5. Includes an assessment relating to the funding of a new position or an expansion of the duties of the Nevada State Demographer's Office, which is funded by the Department of Taxation, to fulfill the responsibilities of compiling future housing data and producing an annual assessment of housing supply and demand; and

6. Includes an examination of methods for funding the provision of such housing data on an annual basis; and be it further

RESOLVED, That local governments are urged to participate in the study by providing information, including, but not limited to, the types of projects the local governments are currently providing to assist persons in locating affordable housing; and be it further

RESOLVED, That any recommended legislation proposed by the subcommittee must be approved by a majority of the members of the Senate and a majority of the members of the Assembly appointed to the subcommittee; and be it further

RESOLVED, That the Legislative Commission shall submit a report of the results of the study and any recommendations for legislation to the 74th Session of the Nevada Legislature.

Appendix B

Report on the Impact, Development, and Permitting Fees and Processes Employed by Local Governments in Nevada and Best Practices Used in Other Jurisdictions.

APPENDIX B

MEMORANDUM

DATE: January 19, 2007
TO: Assemblyman Marcus Conklin
FROM: Kelly S. Gregory, Research Analyst
Research Division
SUBJECT: **Impact Fees**

This memorandum contains information on impact, development, and permitting fees and processes employed by local governments throughout the State, and an overview of best practices in impact fee implementation, as directed during the final meeting of the Legislative Commission's Subcommittee to Study the Availability and Inventory of Affordable Housing (Assembly Concurrent Resolution No. 11, File No. 97, *Statutes of Nevada 2005*) on June 5, 2006.

IMPACT FEES IN NEVADA

Impact fees are charges imposed by local governments on developers to finance the cost of constructing a capital improvement or facility expansion. Specifically, impact fees are defined as single payments required to be made by builders or developers at the time of development approval and calculated to be the proportionate share of the capital cost of providing certain facilities, including sanitary sewers, roads, and water systems.

Legislative History

The 1979 Legislature approved Senate Bill No. 356 (Chapter 602, *Statutes of Nevada*) to authorize a tax on residential construction for the purpose of constructing or adding to school buildings. The tax is codified in Chapter 387 of the *Nevada Revised Statutes* (NRS), and it presently allows any school district whose county population is less than 50,000 to request its implementation. Section [387.331](#) of the NRS allows the imposition of a tax on residential construction to pay for the construction or remodeling of school buildings. The tax may not exceed \$1,600 for each house, apartment, or mobile home lot. Currently, the Douglas, Lyon,

Nye, and Storey County School Districts utilize the tax as a source of revenue for school construction or remodeling.

The 1989 Legislature approved Assembly Bill No. 372 (Chapter 395, *Statutes of Nevada*) to authorize cities and counties to impose impact fees on new development to construct capital improvements or to expand existing facilities and “various projects”, which now include drainage, fire station, park, police station, sanitary sewer, storm sewer, street, and water projects. The general provisions for the impact fee are found in [NRS 278B.010 through 278B.330](#). The costs must be necessitated by and attributable to the new development. Nevada’s impact fee law was adopted in 1989 as a result of a legislative study regarding methods of financing capital improvements required to accommodate growth. The law was intended to provide an alternative to the traditional practice of exactions—that is, compelling developers to construct or pay for capital facilities as a condition of obtaining zoning changes. Proponents of impact fees found them to be more equitable and less arbitrary than exactions.

A legislative subcommittee appointed after the 1993 Legislative Session to examine the effect of new development on utilities, streets, parks, and other infrastructure; identify existing methods and sources of financing for infrastructure improvements; evaluate the need for infrastructure to sustain continued development; and identify and evaluate new methods of financing infrastructure to accompany new residential, commercial, and industrial development issued a report titled *Laws Relating to Financing of Infrastructure Which Accompany Development*. Based on a study of local governments, this report to the 1995 Legislature identifies six commonly used sources of revenues for capital improvements. These are: (1) general tax revenues; (2) taxes and assessments levied by special districts; (3) taxes and fees related directly to development (i.e., impact fees); (4) exactions, dedications, and contributions made by developers; (5) federal grants and loans; and (6) borrowed funds. The subcommittee made several suggestions for revision of financing capital improvements; however, no major changes to the current impact fee structure were implemented as a result of the study.

Fire and police facility projects were added to Chapter 278B of the NRS by Assembly Bill 458 (Chapter 168, *Statutes of Nevada*) of the 2001 Session. This measure added park projects, along with police and fire projects, as capital improvements that local governments may finance with impact fees. In addition, the bill provided a credit against an impact fee for a park project in certain circumstances, and revised the definition of street projects to include traffic signals.

Statutory Authority for Impact Fees

As noted above, the primary statutory provisions on off-site construction costs are found in Chapter 278B of NRS, “Impact Fees for New Development.” In general, this chapter establishes that local governments may recover the costs attributable to new development, including sanitary sewers, storm sewers, transportation, and water improvements. For most types of improvements, the local government must construct the improvements within a certain

time. An impact fee is defined in NRS 278B.050 as “a charge imposed by a local government on new development to finance the costs of a capital improvement or facility expansion necessitated by and attributable to the new development.” Therefore, the definition of “capital improvement” is relevant to the application of impact fees, and is set forth in NRS 278B.020 to include:

1. Drainage projects;
2. Fire station projects;
3. Park projects;
4. Police station projects;
5. Sanitary sewer projects;
6. Storm sewer projects;
7. Street projects; or
8. Water projects.

The existing provisions of Chapter 278B of NRS do not authorize the use of impact fees for maintenance purposes. According to NRS 278B.160, a local government may impose an impact fee to “pay the cost of constructing a capital improvement or facility expansion necessitated by and attributable to new development.” The cost may include only: (a) the estimated cost of actual construction, (b) fees for professional services, (c) the cost of the land, and (d) the preparation or revision of the corresponding capital improvements plan. Also, NRS 278B.280 lists six prohibited uses of impact fees, including: “The repair, operation, or maintenance of existing or new capital improvements or facility expansions.” And, although maintenance costs of a project would continue for at least the project’s useful life, Chapter 278B limits capital improvement plans to needs for a period not to exceed ten years (NRS 278B.170) and requires the refund of any impact fee or portion thereof, with interest, if it is not spent within ten years of payment (NRS 278B.260).

In addition to this explicit authority provided to local governments, [NRS 278.4983](#) also allows any city council or board of county commissioners which has adopted a master plan and recreation plan to impose by ordinance a residential construction tax. If imposed, the tax must apply to the privilege of constructing apartment houses and residential dwelling units, and developing mobile home lots. The rate of the tax must not exceed 1 percent of the valuation of each building permit issued, or \$1,000 per unit or lot, whichever is less. The purpose of the tax is to raise revenue for neighborhood parks and facilities and the money must be refunded, with interest, if the improvements are not installed within three years of 75 percent of the units authorized within a subdivision or development being occupied.

For the improvement of transportation, a board of county commissioners may impose a tax on new residential, commercial, and other development pursuant to [NRS 278.710](#). The amount of the tax is limited, but the statute does not include a time limit on spending the money.

The following table depicts each of the impact fees and residential construction taxes currently authorized in statute:

Statutory Citation; Infrastructure Type; Purpose	Available to	Financing Mechanisms	Creation and Approval	Miscellaneous
NRS 387.331; Public Schools; Residential construction tax for capital projects	School districts in counties with under 50,000 in population	Residential construction tax up to \$1,600 per unit	<ul style="list-style-type: none"> ▪ Request by school board ▪ Approval by county commission ▪ Approval by Nevada Tax Commission ▪ Authorized for a period of four years and may be extended 	<ul style="list-style-type: none"> ▪ Douglas County \$1,600 county-wide ▪ Storey County \$500 county-wide ▪ Lyon County \$1,600 county-wide ▪ Nye County \$1,600 in Pahrump only
Chapter 278B of NRS; City, County, Town & Improvement District Multi-purpose; Capital improvements necessitated by new development	Counties and cities	Impact Fees	Local government required to post notice of intent, hold public hearing and adopt capital improvement plan	Cannot be used for operations or maintenance
No Statutory Authority Exaction Fees (Also represented as an impact fee by local governments.)	Any government requiring prior approval for construction	Whatever the developer or other payer agrees to with the local government	<ul style="list-style-type: none"> ▪ Planners maintain they have a valid exercise of police powers ▪ In 1993 Legislative legal counsel questioned the legal authority to impose fees not mentioned in statute 	
NRS 244A.785; Park & Open Space; Park Districts Capital Improvements and Maintenance	Clark County	Residential construction tax	Created by County Commission	
NRS 278.4943; Park & Open Space; Park Impact Fees-for acquisition and construction	Counties and cities	Tax on residential construction of 1% of building permit or \$1,000 per unit	Developer may set aside land. Adopted by ordinance of governing body	<ul style="list-style-type: none"> ▪ Credit against amount due is allowed if land is set aside ▪ Cannot be used for operations or maintenance
Chapter 278B of NRS; Parks & Open Space; Impact Fee-Park Projects	Counties and cities	Assessments against property to be used to pay bonds. Maximum fee is total cost of project divided by number of units	Local government required to post notice of intent, hold public hearing and adopt capital improvement plan	Cannot be used for operations or maintenance

Statutory Citation; Infrastructure Type; Purpose	Available to	Financing Mechanisms	Creation and Approval	Miscellaneous
Chapter 278B of NRS; Public Safety (Fire, Police); Impact Fees–Fire Stations, Police Stations	Counties and cities	<ul style="list-style-type: none"> Assessments against property to be used to pay bonds Maximum fee is total cost of project divided by number of units 	Local government required to post notice of intent, hold public hearing, and adopt capital improvement plan	Use of proceeds for operations and maintenance prohibited
NRS 278.710; Transportation Related; Transportation Impact Fee	Counties	<ul style="list-style-type: none"> The following fees are per residential unit and per square foot for commercial development, respectively. <ul style="list-style-type: none"> On or after 7/1/2005 up to \$600 & \$0.65 7/1/2010 up to \$700 & \$0.75 7/1/2015 up to \$800 & \$0.80 7/1/2020 up to \$1,000 & \$1.00 	<ul style="list-style-type: none"> Requires voter approval to implement fees. Ballot question on fees may be combined with 1% room tax for transportation projects (NRS 244.3351) 	Tax must be paid before certificate of occupancy can be issued. Note: Prior to July 1, 2003 the rate was: Up to \$500 per individual residential unit and \$0.50 per square foot for commercial development
Chapter 278B of NRS; Transportation Related; Streets	Counties and cities	<ul style="list-style-type: none"> Impact Fee assessments against property to be used to pay bonds. Maximum fee is total cost of project divided by number of units 	Local government required to post notice of intent, hold public hearing and adopt capital improvement plan	Use of proceeds for operations and maintenance prohibited
Chapter 543 of NRS; Water Facilities (Flood Control, Water, Waste Water, Solid Waste Disposal); Drainage, Sewer Projects, or Water Projects	Counties and cities	Impact Fee assessments against property are used to pay bonds. Maximum fee is total cost of project divided by number of units	Local government required to post notice of intent, hold public hearing and adopt capital improvement plan	Use of proceeds for operations and maintenance prohibited

Statutory Citation; Infrastructure Type; Purpose	Available to	Financing Mechanisms	Creation and Approval	Miscellaneous
NRS 244.386; Miscellaneous; Wildlife Impact Fee	Clark County	Up to \$1,000 per acre on new development	Adopted by ordinance by county commission	For desert tortoise impact mitigation

Source: *Nevada Taxpayers Association's Nevada Issues: Financing Nevada's Infrastructure (July 2006)*

BACKGROUND INFORMATION

According to Altshuler and Gomez-Ibanez (1993)¹, governments may impose fees on the basis of their police power, and such fees must be justified “with reference to the cost of providing services to the payers or of mitigating harm to others that would otherwise be caused by the payers’ activities.” They say that the explicit purposes of exactions (including impact fees) must be to finance service capacity for future occupants or to alleviate negative project impacts on a wider community.

Altshuler and Gomez-Ibanez say that the courts of most states have applied the “rational nexus” test to the legality of exactions. Among other points, the test requires that:

- Where facilities are to be financed by a combination of tax and impact fee revenues, special care must be taken to ensure that project occupants, who pay taxes, are not double-billed; and
- Impact fees must be segregated until used and must be expended in timely fashion (generally, within five or six years) for the purposes originally designated.

A report prepared for The Brookings Institution Center on Urban and Metropolitan Policy in June 2003² found that impact fees were an effective tool for generating revenue to pay for infrastructure related to new development. The authors conducted a review of literature concerning the effect of impact fees on the Florida economy and came to the following conclusions (p. vi):

- **Property tax revenues increasingly fail to cover the full costs of the infrastructure needed to serve new development.** More and more, political resistance to property taxes compromises the conventional way to pay for infrastructure needs brought on by new development. Consequently, new

¹ Altshuler, Alan A., and Jose A. Gomez-Ibanez, 1993. *Regulation for Revenue: the Political Economy of Land Use Exactions*. The Brookings Institution, Washington D.C., and the Lincoln Institute of Land Policy, Cambridge, p. 51.

² Nelson, Arthur C. and Mitch Moody, 2003. *Paying for Prosperity: Impact Fees and Job Growth*. The Brookings Institution, Washington, D.C.

property values would have to be very high or property tax rates raised across the board to pay for the full array of infrastructure needs.

- **Impact fees, like user fees, offer a more efficient way to pay for infrastructure than general taxes, and ensure benefits to those who pay them.** While impact fees often do not reflect the full price of infrastructure improvements, fees do make the economic linkage between those paying for and those receiving benefits more direct, and so promote economic efficiency.
- **Impact fees increase the supply of buildable land.** In the absence of impact fees, local governments may not have the revenue necessary to accommodate growth. With impact fees, they gain necessary infrastructure—water, sewer, drainage, and road facilities—to open new parcels of land development.
- **Impact fees have complex effects on housing prices.** While land values are reduced by the amount of fees paid, finished house prices are raised by about half again the fee amount. One interpretation of this finding is that while impact fees lower raw land prices as predicted by conventional economic theory, the amount of the fee reflecting infrastructure value is recovered in the sales price. Additionally, the increment above the fee represents the value of the infrastructure as a whole and/or the certainty perceived by the market that facilities will be provided at a desired level and quality of service (i.e. no congestion) regardless of growth pressures.
- **Impact fees do not slow job growth.** In the study, the authors found, at minimum, that impact fees are not a drag on local economies.

The American Planning Association has published a *Policy Guide on Impact Fees* which is attached to this memorandum for your review. The guide issues findings and makes recommendations for policymakers' consideration as well as standards for regulators to take into account as they set out to implement impact fee policies.

CONCLUDING REMARKS

I trust this information is useful. Please contact me at (775) 684-6825 if I may provide you with any additional details regarding impact fees.

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Enc.



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Policy Guide on Impact Fees

Ratified by Board of Directors, Cincinnati, Ohio, October 1988

Revised and updated, San Diego, California, April 1997

Ratified by Board of Directors, San Diego, California, April 1997

FINDINGS

Impact fees are payments required by local governments of new development for the purpose of providing new or expanded public capital facilities required to serve that development. The fees typically require cash payments in advance of the completion of development, are based on a methodology and calculation derived from the cost of the facility and the nature and size of the development, and are used to finance improvements offsite of, but to the benefit of the development.

Local governments throughout the country are increasingly using impact fees to shift more of the costs of financing public facilities from the general taxpayer to the beneficiaries of those new facilities. As a general matter, impact fees are capitalized into land values, and thus represent an exaction on the incremental value of the land attributable to the higher and better use made possible by the new public facilities. Some commentators have argued that, under certain circumstances, others may instead bear the incidence of the fee (these may include the original landowner, the developer, or the consumer). There has been little to demonstrate that the imposition of a fee system has stifled development. The fees supplement local government resources that otherwise have decreased because of diminished state and federal transfers of funds. Local governments have also used impact fees to delay or as a substitute for general property tax increases.

Impact fees, when based on a comprehensive plan and used in conjunction with a sound capital improvement plan, can be an effective tool for ensuring adequate infrastructure to accommodate growth where and when it is anticipated. It is important that communities rely on zoning and other land use regulations, consistent with a comprehensive plan, to influence patterns of growth and to more accurately predict new infrastructure needs. However, in areas facing development moratoria because of the lack of adequate public facilities, impact fees may be viewed not as growth stopping measures, but rather as growth facilitators. Impact fees should not be considered a panacea for the funding of general capital improvements, nor should they be used to "stop growth." They can do neither.

Local government experimentation with impact fees has been paralleled by increasing state court involvement in the review of these fees. A general trend in the state courts has been to require a "rational nexus" between the fee and the needs created by development and the benefits incurred by the development. This analysis is a moderate position between a standard that requires that the fee be "specifically and uniquely attributable" to the needs created by new development, and the relaxed standard that the fee be "reasonably related" to the needs created by development.

Impact fees have been criticized as being an inequitable means to finance public facilities. By requiring new development to pay for new facilities without benefiting from existing facility capacity, local governments may be bypassing the traditional practice of intergenerational contribution toward public facilities. Some commentators have argued that, when set at high levels, impact fees may also tend to be regressive. Certain public facilities may be considered "public goods" that should be financed by the entire community, such as general

government, police, or schools. To the extent that impact fees are paid by those who are most likely to benefit from the public facilities provided therefrom, however, impact fees are equitable.

Many local communities have expanded the use of impact fees to finance a wide variety of public facilities. The most widespread use of these fees is for sewer and water facilities, parks, and roads. Impact fees are also being used for schools, libraries and public facilities. In recent years, rulings at the state court level have defined how impact fees may be applied and utilized. Thus, there are numerous standards and guidelines available to assist local and regional governmental agencies on the planning processes that must be undertaken to develop a legally defensible impact fee program. Approximately half the states have enacted enabling legislation for impact fees, some of which have specifically included language that governs how these programs are to be implemented. To be most effective and legally valid, impact fees must be carefully designed and documented.

POLICY GUIDE

POLICY 1. APA National and Chapters support state enabling legislation that establishes clear and concise standards for the adoption and use of impact fees consistent with this policy.

Reasons to Support #1

Since there is substantial case law on impact fees around the country, the courts have been specific in developing the criteria for an equitable and legally defensible impact fee system. By encouraging enabling legislation that delineates these standards, state, regional and local government will be required to follow the planning process needed to develop the proper methodology for calculating fees that are valid and well documented. While following these standards will not eliminate costly litigation challenging the fees, it places a greater burden of proof on the party challenging the imposition of the fee. Further elaboration on specific issues can be found in the following policies and a list of applicable standards are appended to this Policy Guide.

POLICY 2. APA National and Chapters encourage consideration of the use of impact fees as a means to provide additional resources for an adequate public infrastructure and services only as they relate to the needs of new development.

Reasons to Support #2

Given the diminishing level of support for infrastructure improvements from state and local governments, coupled with the significant costs involved, regional and local governments are limited in where they can turn to secure funding for new infrastructure projects to accommodate new growth. Moreover, since impact fees cannot be used to cover the staggering costs of maintaining and repairing the existing infrastructure, they can augment resources available for new infrastructure necessary to accommodate new growth, for which general revenue funding must be made available.

POLICY 3. APA National and Chapters support the use of impact fees as a standardized method for ensuring that new development pays its fair share of the cost of public infrastructure.

Reasons to Support #3

While the development community has yet to rally behind the concept of impact fees, it seeks predictability and consistency in the permitting and approval process. When local governments attempt to obtain off-site improvements that do not relate to the impacts of a specific development, a system of negotiating exactions with developers is created that has no "rational nexus" because it is not based upon a sound planning process. Impact fee

programs designed as described in this Policy Guide must be based on a planning process for capital improvements to ensure that the infrastructure needs of new development are met. This lends credibility to the planning process.

POLICY 4. APA National and Chapters encourage the use of impact fees to pay for facilities where a rational nexus can be established.

Reasons to Support #4

Impact fees should only be utilized when a connection can be made between the impact of new development and the need for new infrastructure to accommodate that development. Proper planning and analysis can demonstrate the nexus between future build-out and the capital needs to support that growth.

POLICY 5. APA National and Chapters believe that impact fees should be used in the context of community-wide plans and programs for financing public facilities and services, and ensure the adequacy of public facilities to serve future development.

Reasons to Support #5

New development should not be responsible for financing an inordinate share of the expense of the future facilities and services needed by the municipality. Community-wide capital improvement planning is necessary in order to properly plan for required improvements and long-term maintenance. This type of planning process should be a pre-requisite to the imposition of impact fees to ensure that fees from new development are not used to finance improvements that are legitimately in the purview of the local government and will benefit the community-at-large.

POLICY 6. APA National and Chapters oppose requiring voter approval to establish fees for mitigation of impacts on public facilities and services where such fees are imposed pursuant to a legislatively approved program in compliance with APA standards for the adoption and use of impact fees.

Reasons to Support #6

If an impact fee program has been adopted and implemented in a manner that is consistent with this Policy Guide, and has already been approved as a matter of law, such programs can be subverted by requiring voter approval. In addition to being administratively cumbersome, it raises constitutional issues of fairness and equal protection. This issue has been raised in several states.

POLICY 7. APA National and Chapters support continued dialogue between local planning agencies, the general public, and the development community to discuss the public costs associated with new development, reaching an understanding on the calculation of such costs, and establishing alternative means for financing these costs, including the use of impact fees.

Reasons to Support #7

APA should continue its training and educational efforts on impact fees and capital improvement planning in order to build a better body of knowledge about the planning, economic, and legal implications of the varying methods of financing major infrastructure improvements.

POLICY 8. As a framework for imposing fees, local jurisdictions are encouraged to develop, adopt, and implement capital improvement programs consistent with an adopted comprehensive plan with consideration given to other funding alternatives.

Reasons to Support #8

Only a capital improvement plan can provide a comprehensive summary of the capital requirements of the jurisdiction. Impact fees will only be able to finance a percentage of those needs. The plan is necessary in order to prioritize expenditures and should relate them to the source of funding.

IMPACT FEE STANDARDS

- The imposition of a fee must be rationally linked (the "rational nexus") to an impact created by a particular development and the demonstrated need for related capital improvements pursuant to a capital improvement plan and program.
- Some benefit must accrue to the development as a result of the payment of a fee.
- The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary by the development and must not exceed the cost of the improvements.
- A fee cannot be imposed to address existing deficiencies except where they are exacerbated by new development.
- Funds received under such a program must be segregated from the general fund and used solely for the purposes for which the fee is established.
- The fees collected must be encumbered or expended within a reasonable timeframe to ensure that needed improvements are implemented.
- The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources (such as federal and state grants, developer initiated improvements for impacts related to new development, etc.) and local tax payments which fund capital improvements, for example.
- The fee cannot be used to cover normal operation and maintenance or personnel costs, but must be used for capital improvements, or under some linkage programs, affordable housing, job training, child care, etc.
- The fee established for specific capital improvements should be reviewed at least every two years to determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.
- Provisions must be included in the ordinance to permit refunds for projects that are not constructed, since no impact will have manifested.
- Impact fee payments are typically required to be made as a condition of approval of the development, either at the time the building or occupancy permit is issued.

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APPENDIX C

Suggested Legislation

The following Bill Draft Requests will be available during the 2007 Legislative Session, or can be accessed after “Introduction” at the following Web site: <http://www.leg.state.nv.us/74th/BDRList/>.

BDR 25-139 Creates New Housing Trust Fund and Revises Provisions Governing Existing Housing Trust Fund.

BDR 25-140 Provides for Statewide Housing Database and Revises Definitions Related to Affordable Housing.

BDR 10-141 Provides Additional Requirements for Closing or Converting Mobile Home Parks.

BDR S-142 Requests Appropriations to Accounts and Funds Related to Housing.

BDR 20-143 Revises Provisions Governing the Planning for and Funding of Redevelopment and Affordable Housing.