Legislative Counsel Bureau

POLICY AND PROGRAM REPORTS

JANUARY 2012

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Legislative Counsel Bureau

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Business Entities and Economic Development

Research Division January 2012

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

From 1990 to 2000, Nevada's population grew by over 66 percent, compared to approximately 13 percent for the United States as a whole. From 2000 to 2010, Nevada's population grew by nearly 35 percent, compared to about 10 percent nationally.

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

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The largest industries in Nevada's economy, in terms of employment, are leisure and hospitality; accommodations and food service; and government. Other important industries include business and professional services; retail trade; and education and health services.

This report covers the types of business entities operating in Nevada, the State's economic development efforts, current issues, and legislation from the 2011 Session affecting these topics.

CORPORATIONS, LIMITED LIABILITY COMPANIES, AND PARTNERSHIPS

Corporations

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

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

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

Nevada recognizes different kinds of corporations, including:

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

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

- No corporate income tax;
- No taxes on corporate shares;
- No franchise tax;
- No personal income tax;
- Nominal annual fees;
- Nevada corporations may purchase, hold, sell, or transfer shares of their own stock;
- Nevada corporations may issue stock for capital, services, personal property, or real estate, including leases and options. The directors may determine the value of any of these transactions, and their decision is final;
- No franchise tax on income;
- No inheritance or gift tax;
- No unitary tax;

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

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

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

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

Limited Liability Companies

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

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

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

Partnerships

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

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

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

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

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

ECONOMIC DEVELOPMENT

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

Incentive Programs

Through the Governor's Office of Economic Development (GOED), Nevada offers a number of tax incentives for economic development to favorably influence business location decisions and to allow the State's existing businesses to expand and remain competitive. Applications must be consistent with the State's plan for industrial development and diversification, the objectives of which include

diversification; attraction and expansion of basic industries; and attraction and expansion of corporate headquarters, research and development, producer services, and other businesses that create primary jobs.

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

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

Workforce Development

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

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

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

Industrial Development Revenue Bonds

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

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

The Office also partners with financial institutions to offer low-cost financing in amounts from $500,000 to $3 million for qualified projects. These "mini bonds" are a type of IDRB that can be issued relatively quickly because they are purchased directly by participating institutions.

2011 Legislation Affecting Business Entities and Economic Development

Assembly Bill 564 (Chapter 168, *Statutes of Nevada*)
This bill authorized the boards and stockholders of nonprofit and private corporations to meet by videoconference or other electronic communication formats, unless their bylaws or articles of incorporation otherwise restrict such meetings. The bill also allowed the operating agreement of a limited-liability company to include any electronic or tangible format, and it authorized the Secretary of State to make available a model operating agreement.

Senate Bill 405 (Chapter 455, *Statutes of Nevada*)
This bill made changes to the laws relating to private corporations. The bill authorized a stockholder to designate a proxy to express written consent or dissent to a corporate action, provided that a proxy may be limited to action on designated matters, and deleted the requirement that a corporate officer or other person designated by the directors or the bylaws must sign a notice of a meeting of stockholders.

Regarding the dissolution of private corporations, S.B. 405 authorized the board of directors to condition its proposal for dissolution on any lawful basis and required the corporation to notify each stockholder of the proposal, whether or not they are entitled to vote on dissolution. The bill also provided that the trustees in a dissolution have the same duties and presumptions applicable to corporate directors in the ordinary course of business.

Senate Bill 405 changed the period in which a resident domestic corporation is prohibited from engaging in a combination with an interested stockholder from three years to two years after the date the person becomes an interested stockholder, and it provided that this prohibition does not apply if the board of directors and stockholders representing at least 60 percent of the outstanding votes not owned by the interested stockholder approve the combination. With respect to suits against corporations and their officers, the bill prohibited the retroactive elimination or impairment of the right of corporate officers to indemnification.

This measure also made changes to the laws regarding business associations generally. It provided that nonprofit tax-exempt organizations are not required to obtain State business licenses, authorized directors or stockholders to give their written consent in the form of electronic or paper records, and it allowed a business entity to designate an effective time, in addition to an effective date, for filings.

If a court charges a person who owns stock or interest in a private corporation, limited-liability company, or limited partnership with payment of an unsatisfied amount of a judgment, S.B. 405 provided that this is the exclusive remedy by which a judgment creditor may satisfy a judgment out of the stock or interest or the judgment debtor, and no other remedy may be ordered by a court.

The bill also provided that a business trust organized after October 1, 2011, is deemed to be an entity separate from its trustee and beneficial owner and may hold or take title to property in its own name, except as provided in the governing documents, and made various other changes to the laws on business associations and entities.

Assembly Bill 182 (Chapter 164, *Statutes of Nevada*)

This bill contained enabling legislation that permits participating entities to seek approval for creation of inland ports and public bodies known as inland port authorities, the purposes of which are to promote, encourage, and aid in economic development and employment opportunities within Nevada. A participating entity can be either a county or a city. Nevada's Commission on Economic Development must develop a State Plan for Inland Ports and may only approve an application if the proposed inland port and authority are in conformance with the State Plan. An inland port must not contain any residential property and must be a contiguous area that contains at least two of the following: (1) a municipal airport; (2) a highway within the National Highway System; or (3) operating assets of at least one Class I railroad. The bill required a participating entity to create the inland port and to give notice of withdrawal by ordinance.

The board of directors for an inland port authority must consist of an odd number of members and may not include elected officials or employees of a participating entity. The bill set forth additional criteria for the directors of the inland port authority. Meetings of an authority are subject to the Open Meeting Law, and members are not entitled to compensation. Authorities may not condemn property and may not alter airports, highways, or railroads without the consent of the entity controlling or owning those facilities. The powers of an inland port authority include, but are not limited to, receiving property from a governmental entity, entering into agreements with other entities and persons, operating facilities, and accepting public and private funding.

Assembly Bill 449 (Chapter 507, *Statutes of Nevada*)

This bill made various provisions relating to economic development. The bill created an Advisory Council on Economic Development and a Board of Economic Development, and it prescribed the composition and duties of both entities. It also created an Office of Economic Development, headed by an Executive Director, within the Office of the Governor, and eliminated the Commission on Economic Development. The bill outlined the duties of the Office and the Executive Director and included a requirement that a State Plan for Economic Development be developed. The bill eliminated regional development districts established by the Governor, and instead it required the Office of Economic Development to establish regional development authorities.

Assembly Bill 449 also made changes to tax abatements. It required the recipients of certain abatements to repay the abated taxes if the recipients no longer meet the eligibility requirements. The measure also required the Office of Energy to consult with the Office of Economic Development before granting partial property tax abatements for certain energy efficient buildings and renewable energy facilities.

The Commission on Economic Development, later the Office of Economic Development, may make grants or loans of money from the Catalyst Fund, created by this bill, to the regional development authorities in consultation with the Advisory Council on Economic Development. The grants or loans must be used to invest in businesses seeking to expand in or relocate to this State.

Assembly Bill 449 also created a Knowledge Fund and established a program for the development and commercialization of research and technology at the University of Nevada, Las Vegas; the University of Nevada, Reno; and the Desert Research Institute. Among other uses, money in the Knowledge Fund is to be allocated by the Executive Director of the Office of Economic Development to provide funding for:

- The recruitment, hiring, and retention of faculty and teams to conduct research in science and technology;
- Research laboratories and related equipment;
- The construction of research clinics, institutes and facilities, and related buildings in this State; and
- Matching funds for federal and private grants that further economic development.

Provisions of the bill establishing the Advisory Council on Economic Development were effective on June 17, 2011. Provisions creating the Board of Economic Development, the Office of Economic Development, the Catalyst Fund, and the Knowledge Fund were effective on July 1, 2011. Provisions relating to transitioning certain duties from the Commission on Economic Development to the Office of Economic Development and relating to partial tax abatements are effective on July 1, 2012.

Senate Bill 75 (Chapter 423, *Statutes of Nevada*)
This bill required the State Treasurer to form an independent corporation for public benefit to act as a limited partner of limited partnerships or as a shareholder or member of limited-liability companies that provide private equity funding to businesses that engage in certain industries. These industries include but are not limited to:

- Advanced materials and manufacturing;
- Alternative energy;
- Cyber security;
- Health care and life sciences;
- Homeland security and defense; and
- Information technology.

The members of the corporation must have at least ten years of experience in the fields of banking, finance, or investment. Members must comply with certain ethics standards and meetings of the corporation are subject to the Open Meeting Law.

The State Treasurer is required to adopt regulations addressing specifically identified issues, including providing assurance that businesses receiving venture capital investments have a presence in the State. The Treasurer may, by regulation, establish a Business Leadership Council and adopt further regulations as needed.

The bill authorized the State Treasurer to transfer an amount not to exceed $50 million from the State Permanent School Fund to the independent corporation for investment if the State Treasurer first obtains a judicial determination that such an investment does not violate the provisions of Section 9 of Article 8 of the *Nevada Constitution*. At least 70 percent of the investments made by the independent corporation must be provided to businesses located or seeking to locate in Nevada.

Assembly Concurrent Resolution No. 4 (File No. 11, *Statutes of Nevada*)
This resolution expressed support for economic development and the development of a highly skilled workforce in the sectors of logistics, supply chain management, and renewable energy technology in Nevada. The Legislature expressed its intent to promote Nevada as a distribution and transportation center and as a State that is at the forefront of renewable energy technology. Further, the Governor of Nevada was urged to promote economic development in the sectors of logistics, supply chain management, and renewable energy technology. Finally, the Legislature recognized the need to prioritize the training and education of a highly skilled workforce in the aforementioned sectors and to promote the investment of private capital in logistics-related and renewable energy-related businesses in Nevada.

CONTACT INFORMATION FOR STATE AGENCIES

Office of the Secretary of State
Telephone: (775) 684-5708
Website: http://nvsos.gov/

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POLICY AND PROGRAM REPORT

Labor and Employment

Research Division January 2012

INTRODUCTION

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

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

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

AT-WILL EMPLOYMENT

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

In most states, including Nevada, an employer may not fire an employee if the firing would violate the State's public policies (against discrimination, for example) or a State or federal statute. Also, an employee with an implied contract may not be fired without liability on the part of the employer. Eleven states, again including Nevada, also recognize a breach of an implied covenant of good faith and fair dealing as an exception to at-will employment.

In 1989, in the case of *Vancheri v. GNLV Corporation (*105 Nev. 417, 777 P.2d 366 [1989]), the Supreme Court of Nevada considered at-will employment, saying, "Employment 'at-will' is a contractual relationship and thus governed by contract law. An employer can dismiss an at-will employee with or without cause, so long as the dismissal does not offend a public policy of this state."

Similarly, in the 1990 case of *American Bank Stationery v. Farmer (*106 Nev. 698, 799 P.2d 1100 [1990]), the Court said, "All employees in Nevada are presumed to be at-will employees. An employee may rebut this presumption by proving by a preponderance of the evidence that there was an express or implied contract between his employer and himself that his employer would fire him only for cause."

EMPLOYMENT OF MINORS

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

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

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

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

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

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

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

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

MINIMUM WAGE

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

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

federal minimum wage or by the cumulative increase in the cost-of-living index, whichever results in the higher amount. The adjustment, if any, is announced on April 1 by the Office of Labor Commissioner and is effective on July 1. Effective July 1, 2011, the State minimum wage is $7.25 per hour for employees who receive health care benefits and $8.25 for employees who do not receive health care benefits. "Health benefits" mean a health insurance plan that is available to the employee and the employee's dependents at a total cost to the employee of not more than 10 percent of his or her gross taxable income from that employer.

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

OCCUPATIONAL HEALTH AND SAFETY

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

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

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

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

Through December 31, 2010, a construction worker had the option of completing an alternative course offered by the employer. The employer's safety committee must approve the alternative course and it must meet or exceed federal guidelines. However, an employee who satisfied the requirements of A.B. 148 by completing an alternative course must nevertheless complete an OSHA-10 or OSHA-30 course, as applicable, not later than January 1, 2011. The bill does not apply to workers performing

maintenance on property for which a certificate of occupancy has been issued, or to Nevada's Department of Transportation and its employees in the performance of their duties.

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

RIGHT TO WORK

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

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

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

UNEMPLOYMENT INSURANCE

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

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

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

To qualify for benefits, a person must be fully or partially unemployed, must have earned enough wages to qualify, and must be unemployed through no fault of his or her own. A claimant must be able to work, available for work, and actively seeking work. The amount of benefits depends on the wages the worker earned during a base period, usually defined as the first four of the last five completed calendar quarters preceding the claim. The maximum benefit is set at 50 percent of the statewide annual average weekly wage.

The duration of benefits is generally limited to 26 weeks unless extended by law. Because of the economic downturn in 2008 and 2009, both in Nevada and the nation as a whole, Nevada's unemployed workers were eligible for 99 weeks of benefits (including regular benefits, federal emergency benefits, and State extended benefits) as of November 2009. On December 23, 2011, President Obama signed Public Law 112-78, which provides for continuation of the extended benefits program through March 2012. Congress is expected to consider further extensions in the meantime.

An employer who pays wages of $225 or more during any calendar quarter for services performed in Nevada must register with the ESD and pay quarterly unemployment taxes. (Employees do not pay UI taxes.) The tax rate for new employers is 2.95 percent of a worker's taxable wages, plus 0.05 percent for the Career Enhancement Program, a training program to foster job creation and provide more skilled workers. After being in the system for a minimum of 14 quarters, an employer receives an experience rating, which is a function of the excess of taxes paid over benefits charged to the employer's account. The employer's tax rate is then based on that rating, varying from 0.25 percent to 5.4 percent of taxable wages. In 2012, an individual's taxable wages are capped at $26,600.

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

WORKERS' COMPENSATION (INDUSTRIAL INSURANCE)

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

The workers' compensation system is a no-fault insurance system. Employers either purchase insurance or set up self-insurance accounts. Injured workers receive compensation to replace wages ("indemnity payments") and to cover medical and rehabilitation costs. Second-injury funds, which

cover benefits when a second injury proves incapacitating, are important in maintaining the employability of partially impaired workers. In exchange for covering all work-related injuries and occupational diseases, regardless of fault, employers are protected by the exclusive remedy provision, under which an injured worker cannot sue an employer in tort, even if the employer was in fact responsible.

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

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

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

In 1999, the Legislature authorized privatization of SIIS, and in January 2000, SIIS became a private domestic mutual insurance company doing business as Employers Insurance Company of Nevada. Then, in 2007, the company converted to a publicly traded stock company and operates in Nevada under the name "Employers."

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

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

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

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

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

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

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

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

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

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

ADDITIONAL REFERENCES

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

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

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

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

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POLICY AND PROGRAM REPORT

Occupational and Professional Licensing

Research Division

January 2012

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PROFESSIONS REGULATED IN NEVADA

Many types of businesses, occupations, and professions are regulated by government. Most of the laws regulating occupations in this State are found in Title 54 ("Professions, Occupations and Businesses") of the *Nevada Revised Statutes* (NRS), which contains provisions governing 50 professions, occupations, and businesses. Of these, 34 occupations are regulated by independent boards or commissions, 12 are administered through State agencies or officials, and 6 professions or businesses have regulatory provisions that rely on local officials or civil action for enforcement.

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

Title 54 of the NRS—Professions in Nevada Regulated by Independent Boards

The following table lists the 34 professions in Title 54 of the NRS that are regulated by independent boards:

Profession	Chapter of NRS
Accountants	628
Administrators of Facilities for Long-Term Care	654
Alcohol, Drug and Gambling Counselors and Detoxification Technicians	641C
Architecture, Interior Design and Residential Design	623
Athletic Trainers	640B
Audiologists and Speech Pathologists	637B
Barbers and Barbering	643
Certified Court Reporters	656

Profession (*continued*)	Chapter of NRS
Chiropractic	634
Contractors	624
Cosmetology	644
Dentistry and Dental Hygiene	631
Dispensing Opticians	637
Environmental Health Specialists	625A
Funeral Directors, Embalmers and Operators of Cemeteries and Crematories	642
Hearing Aid Specialists	637A
Homeopathic Medicine	630A
Landscape Architects	623A
Marriage and Family Therapists and Clinical Professional Counselors	641A
Massage Therapists	640C
Nursing	632
Occupational Therapists	640A
Optometry	636
Oriental Medicine	634A
Osteopathic Medicine	633
Pharmacists and Pharmacy	639
Physical Therapists	640
Physicians, Physician Assistants, Medical Assistants, Perfusionists and Practitioners of Respiratory Care	630
Podiatry	635
Private Investigators, Private Patrol Officers, Polygraphic Examiners, Process Servers, Repossessors and Dog Handlers	648
Professional Engineers and Land Surveyors	625
Psychologists, Licensed Behavior Analysts, Licensed Assistant Behavior Analysts and Certified Autism Behavior Interventionists	641
Social Workers	641B
Veterinarians	638

CREATION AND OPERATION OF INDEPENDENT BOARDS

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

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

BUSINESSES AND PROFESSIONS REGULATED BY STATE AGENCIES

The following table indicates the 12 businesses or professions in Title 54 of the NRS that are regulated by State agencies, along with the NRS chapter and the agency with the regulatory authority:

Title 54 of the NRS—Professions in Nevada Regulated by State Agencies	
Profession	**Regulatory Authority**
Appraisers of Real Estate and Appraisal Management Companies (Chapter 645C of NRS)	Administrator of Real Estate Division and Commission of Appraisers of Real Estate
Collection Agencies (Chapter 649 of NRS)	Commissioner of Financial Institutions and Collection Agency Advisory Board
Dietetics (Chapter 640E of NRS)	State Board of Health
Escrow Agencies and Agents (Chapter 645A of NRS)	Commissioner of Mortgage Lending
Exchange Facilitators (Chapter 645G of NRS)	Commissioner of Financial Institutions
Inspectors of Structures and Energy Auditors (Chapter 645D of NRS)	Administrator of Real Estate Division
Interpreters and Realtime Captioning Providers (Chapter 656A of NRS)	Aging and Disability Services Division
Medical Laboratories (Chapter 652 of NRS)	State Board of Health
Mortgage Bankers (Chapter 645E of NRS)	Commissioner of Mortgage Lending
Mortgage Brokers and Mortgage Agents (Chapter 645B of NRS)	Commissioner of Mortgage Lending
Music Therapists (Chapter 640D of NRS)	State Board of Health
Real Estate Brokers and Salespersons (Chapter 645 of NRS)	Real Estate Division and Real Estate Commission

PURSUITS REGULATED BY GOVERNMENT OFFICIALS OR PRIVATE LEGAL ENFORCEMENT

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

Title 54 of the NRS—Professions in Nevada Not Regulated by an Agency or Board	
Profession	**Enforcement Authority**
Dealers in Junk and Secondhand Materials; Scrap Metal Processors (Chapter 647 of NRS)	Sheriff, Police Department, or local government officials

Title 54—Professions in Nevada Not Regulated by an Agency or Board (*continued*)	
Profession	**Enforcement Authority**
Disbursement of Money by Construction Controls (Chapter 627 of NRS)	Civil Action
Financial Planners (Chapter 628A of NRS)	Civil Action
Locksmiths and Safe Mechanics (Chapter 655 of NRS)	Permit from County Sheriff
Pawnbrokers (Chapter 646 of NRS)	District Attorney, Sheriff, Chief of Police
Public Accommodations (Chapter 651 of NRS)	Criminal or Civil Action

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

LICENSING REQUIREMENTS

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

DISCIPLINARY POWERS OF REGULATORY BODIES

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

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

Most licensing bodies have detailed statutory grounds for discipline. These grounds range from general prohibitions against fraud, deceit, habitual intoxication, repeated acts of malpractice, or conduct involving moral turpitude to profession-specific provisions such as falsifying an entry on a

patient's medical chart concerning a controlled substance (nurses), willful failure to pay for materials or services when due (contractors), or using a towel on one patron that has already been used on someone else unless the towel has been laundered (barbers).

RECENT LEGISLATIVE AND EXECUTIVE CHANGES AFFECTING OCCUPATIONAL AND PROFESSIONAL LICENSING

Legislature

The 2011 Legislature created the Sunset Subcommittee of the Legislative Commission. The Subcommittee is responsible for conducting reviews of all boards and commissions which are not provided for in the *Nevada Constitution* or established by an executive order of the Governor. The Subcommittee must: (1) determine whether each board or commission should be terminated, modified, consolidated with another agency, or continued; (2) make recommendations for improving the boards or commissions which are to be modified, consolidated, or continued; and (3) determine whether any tax exemptions, abatements, or money set aside for a board or commission should be terminated, modified, or continued. Finally, the Sunset Subcommittee must make recommendations for direct legislative action to carry out its recommendations regarding the termination, modification, consolidation, or continuation of a board or commission.

Executive Branch

On January 3, 2011, Governor Brian Sandoval issued Executive Order 2011-01, which established a freeze on proposed regulations. All proposed administrative regulations propounded by an Executive Branch agency, department, board, or commission within the purview of the Governor were frozen until January 1, 2012. Under the freeze, no new regulations could be proposed or acted on unless excepted from the application of this order. However, regulations that: (1) affected public health; (2) affected public safety and security; (3) were necessary in the pursuit of federal funds and certifications; (4) affected the application of powers, functions, and duties essential to the operation of the State agency, department, board, or commission at issue; (4) affected pending judicial deadlines; or (5) were necessary to comply with federal law were not subject to the freeze. On January 18, 2011, Governor Sandoval amended Executive Order 2011-01 to provide that regulations which will have a positive economic impact for the people of Nevada were not subject to the freeze.

ADDITIONAL RESOURCES

A list of members and contact information for Nevada's occupational and professional licensing boards may be viewed at: http://www.leg.state.nv.us/Division/Research/Publications/Directory/index.cfm. *Please note that the list is updated manually and may be out of date.*

Copies of disciplinary records of the independent occupational and professional boards may be viewed at: http://www.leg.state.nv.us/App/OL/A/.

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Housing

Research Division

January 2012

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

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COMMON-INTEREST COMMUNITIES

Over the last several decades, common-interest communities (CICs), often referred to as homeowners' associations because associations are formed to manage the CICs, have become an important feature of everyday life in Nevada. Currently, more than 40 percent of Nevada's housing units are in CICs with 3,000 homeowners' associations registered with the State.

While most associations are nonprofit corporations, these resemble small local governments in many ways. The Nevada Legislature adopted the Uniform Common-Interest Ownership Act in 1991, which has been codified in Chapter 116 ("Common-Interest Ownership [Uniform Act]") of the *Nevada Revised Statutes* (NRS). Chapter 116 extends to most CICs created within the State of Nevada.

Evolution of CIC Legislation in Nevada

After addressing the initial legal establishment of CICs in 1991, the Legislature was confronted with operational issues concerning the conduct of association business. Several measures were enacted in 1995 to address this issue. Legislators were presented with many complaints regarding disputes over the proper interpretation and application of Covenants, Conditions, and Restrictions and provisions in association bylaws. In an attempt to provide an expeditious, inexpensive, and simple mechanism for resolving these controversies, the Legislature required that any civil action based on a claim relating to the bylaws, rules, or procedures for changing assessments in a CIC must be submitted to mediation or arbitration before the action is filed with a court.

Association members are supposed to have direct control over the executive board. Regrettably, there were instances when members were prevented from effectively participating in the governance process. Some boards never met or only met at very infrequent intervals. On occasion, critical association business was handled privately by individual board members without input from the homeowners. Lawmakers felt strongly that democratic principles should apply even in private associations because such organizations directly affect individuals in their most expensive and cherished possession—their homes.

As a result, changes were made regarding notification of matters relating to homeowners' association meetings and other CIC ownership proceedings. The number of annual association meetings was increased from at least one to a minimum of two. Additionally, legislation required an association to provide owners with a 21-day written notice of a meeting if a capital improvement assessment will be considered.

The Legislature also established procedures for filing an action to recover damages resulting from constructional defects and authorized the claimant to recover attorney's fees and certain other costs. These complex lawsuits, which frequently involve homeowners' associations, were becoming increasingly common and expensive. The Legislature wanted to encourage parties to settle disputes without resorting to litigation and enacted procedures requiring parties to specify what defects were at issue while providing opportunities to affect repairs rather than seek damages.

As a result of further input from stakeholders, lawmakers recognized the need to expand and modify existing protections that ensure members retained ultimate control of their associations. The result was the enactment of further legislation in 1997 authorizing a homeowner to attend any meeting of the association or the executive board, except when the executive board meets in executive session. Meetings of the association must be held at least once a year and the executive board must meet at least once every 90 days. Further, legislation prescribed requirements for the content of meeting agendas.

Lawmakers also established requirements for a reserve account for common area repairs and imposed preconditions before the association can commence certain civil actions. In addition, restrictions were imposed on an association's ability to foreclose a lien assessed for a violation of association rules, as well as the association's ability to exercise the power of eminent domain.

The Legislature created the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels and provided a funding mechanism. Although the Ombudsman does not regulate associations, such an official can be effective through superior knowledge of the applicable laws, education of board members and homeowners, and facilitation of private dispute resolution.

When lawmakers heard testimony in 1999 that indicated ongoing problems with obtaining access to association information and with proper financial management, they required an association to prepare and distribute operating and reserve budgets. They also required the executive board to conduct a study of the reserves at least once every five years. Notice requirements for board meetings were revised and the term of office for board members was limited to two years. In addition, the

HOUSING

"Recent CIC Legislation"

In the 2011 Session, the Legislature considered nearly two dozen measures concerning CICs; only a few of them were enacted. Some made changes to the laws concerning the formation, management, and organization of homeowners' associations, while others addressed dispute resolution and the information that must be provided to prospective buyers.

Among the highlights of these measures, an omnibus CIC bill was enacted that places limits on an association's authority to amend a declaration, requires certain associations to have an executive board, and subjects association officers and executive board members to conflict of interest rules for nonprofit corporations. The bill also revised the duties of an association concerning election requirements, enforcement actions, insurance requirements, meeting requirements, and voting by unit owners. The extent to which a unit owner is liable for damages arising from the condition or use of common elements was also determined.

Mediation between homeowners and associations was the subject of much debate and deliberation by the Legislature in 2011. Lawmakers passed Senate Bill 254 which would have established a mandatory mediation program for certain claims of aggrieved persons and required a claimant to exhaust all administrative remedies before entering mediation. Both parties would have been required to act in good faith and if they could not resolve their dispute, the matter would have been referred to arbitration or the Real Estate Division, Department of Business and Industry, for a hearing. An arbiter's decision in nonbinding arbitration would have been final before a civil action could commence. However, Governor Sandoval vetoed S.B. 254 on June 17, 2011.

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Legislature provided for the election of board members by secret written ballot with the votes counted in public. Additional requirements were established for proxy voting under certain circumstances.

Finally in 1999, the Real Estate Commission was authorized to subpoena books, records, and other information of an association. Upon request by a homeowner, a board must make available books, records, and other papers of the association. Finally, lawmakers required the Commission to establish standards of practice and disciplinary procedures for persons engaged in property management for associations.

Recent CIC Legislation

The next significant legislation was enacted in 2003. In order to give homeowners an expeditious and inexpensive forum to resolve disputes, the first bill created a five-member Commission for Common-Interest Communities appointed by the Governor. The measure also contained provisions relating to a variety of issues such as access to CIC documents, executive board conflict of interest prohibitions, penalties, and voting procedures.

A second measure reinforced the Legislature's concern about due process for association members. A homeowner must have adhered to a schedule required by a CIC for the commencement, completion of construction, completion of the design, or issuance of a permit for a unit or an improvement to a unit. An association could have also imposed and enforced a construction penalty if an owner failed to adhere to the schedule, as long as the CIC complied with certain notice and hearing requirements.

In 2005, several measures again addressed ongoing issues with CICs. One bill authorized the Commission for Common-Interest Communities to petition a district court for the appointment of a receiver to take over an association in certain circumstances. The measure required professional certification for community managers, prohibited restrictions on rental units, required audits of financial statements, allowed for the display of political signs on an owner's property, required disclosure of litigation by the executive board, and modified procedures for electing or recalling executive board members.

A second bill prohibited a community manager from accepting or soliciting any form of compensation that was based on the number or amount of fines imposed against owners or their guests or any percentage or proportion of those fines. A community manager would have been compensated pursuant to a contract with an association, if the contract complied with Commission standards.

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

However, a second measure was signed by the Governor to address associations formed in condominium hotels. In Nevada, these are a developing feature of the real estate landscape but do not easily conform to the traditional homeowner association laws.

The bill created a new chapter in Nevada law dedicated solely to these condominium hotels which established provisions governing the administration and enforcement of the new laws; alteration, creation, and termination of condominium hotels; the management of condominium hotels; and the protection of purchasers.

Common-interest communities continue to be one of the fastest-growing forms of housing in Nevada. During the 2009 Legislative Session, State lawmakers passed over a dozen bills directly relating to CICs. These measures were enacted to solve continuing concerns regarding CIC governance, particularly in the areas of board member conduct, election of board members, fees and penalties, financial accountability, and the rights of homeowners.

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Among the highlights of these measures, an omnibus CIC bill was enacted that places limits on an association's authority to amend a declaration, requires certain associations to have an executive board, and subjects association officers and executive board members to conflict of interest rules for nonprofit corporations. The bill also revised the duties of an association concerning election requirements, enforcement actions, insurance requirements, meeting requirements, and voting by unit owners. The extent to which a unit owner is liable for damages arising from the condition or use of common elements was also determined.

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MANUFACTURED AND MOBILE HOMES

Manufactured homes are a major source of affordable housing for low- and moderate-income families. Approximately 80,000 of Nevada's 1 million housing units are mobile homes. According to the AARP, around 2.8 million or 41 percent of manufactured homes occupied as a primary residence are owned or rented by a person age 50 or older. During the 2005-2006 Interim, the Legislative Commission's Subcommittee to Study the Availability and Inventory of Affordable Housing recommended improving the availability of affordable housing by providing more information to decision-makers on the impacts of closures or conversions of mobile home parks. The study led to legislation in 2007 that required a landlord to submit a residential impact statement to the local planning commission or governing board before it made a final decision on closing or converting a park. The statement must contain an analysis of the replacement housing needs of the residents, and potential sites to which their homes could be moved.

The Legislature has declared that manufactured and mobile homes may pose hazards to health, life, and safety if not properly installed, manufactured, and transported. To that end, extensive regulation of the industry has been provided in Nevada law, under the administration of the Manufactured Housing Division of the Department of Business and Industry. The Division has adopted regulations consistent with federal construction and safety standards.

To protect consumers, all dealers, distributers, installers, rebuilders, salespersons, and servicepersons must be licensed by the Division and numerous grounds exist for disciplining licensees, such as deceptive advertising, failure to honor warranties, misrepresentation or failure to disclose, substandard or unsafe workmanship, and using unlicensed personnel. A serviceperson must enter into a written agreement with the consumer that covers the cost, schedule, and scope of the work. A separate written agreement is required before the serviceperson does any additional work or adds charges. Civil penalties of not more than $1,000 for each violation may be assessed, to a maximum of $1 million for any related series of violations occurring within one year.

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

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

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

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

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

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

In 2011, legislation was enacted that required a landlord of a manufactured home park, who is closing or converting the park, to pay costs associated with moving a tenant's manufactured home to a new location that is within 150 miles from the manufactured home park. Under prior law, the landlord was required to pay the costs of moving a tenant's home to a new location within 100 miles.

LANDLORD/TENANT

In addition to specific statutes addressing tenancy issues involving manufactured housing, Nevada has a general law regarding discrimination in housing known as the Nevada Fair Housing Law (NFHL). This law can be found in Chapter 118 ("Discrimination in Housing; Landlord and Tenant") of NRS. The NFHL, administered by the Nevada Equal Rights Commission, establishes the rights and obligations of landlords and tenants. Among other matters, the NFHL:

- Defines certain prohibited acts and practices involving discrimination on the basis of ancestry, color, creed, disability, familial status, national origin, race, religion, or sex;

- Requires disclosure of the property tax portion of rent; and

- Provides rules governing the abandonment of real property by a tenant.

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

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

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

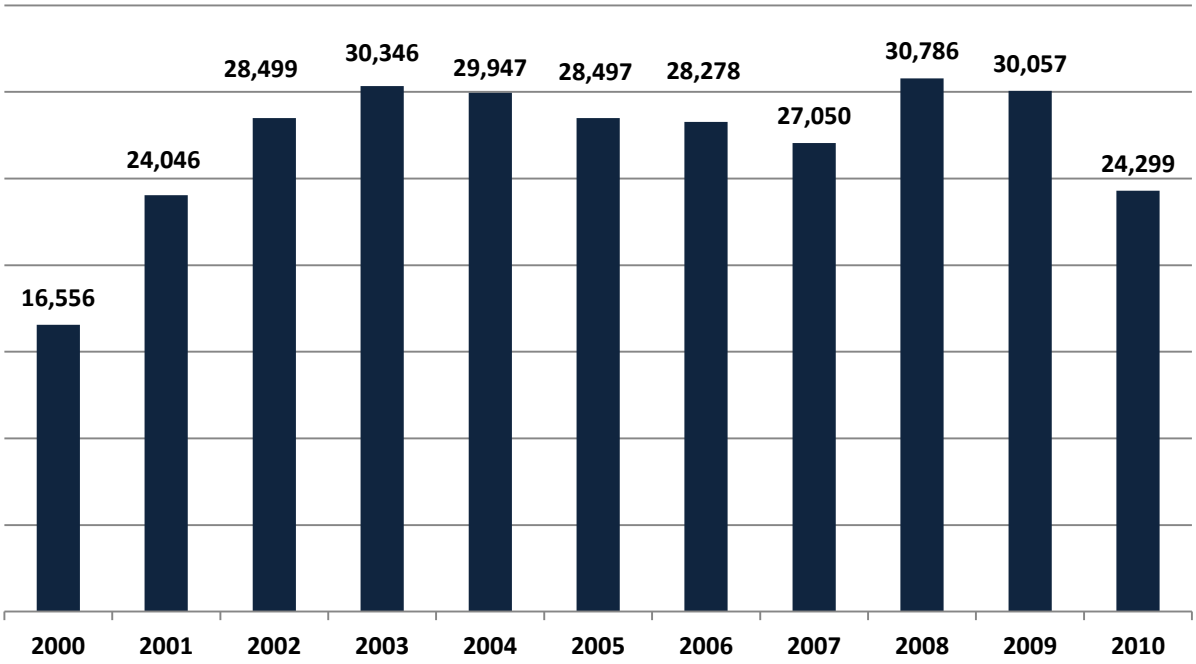
Because of the spike in residential foreclosures in Nevada over the last several years, the 2009 Legislature felt it necessary to make various changes to the foreclosure statutes. Of high concern was the eviction of tenants when a rental property goes into foreclosure. With so many homes entering foreclosure,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

Prior to 1999, existing law gave tenants who resided in a foreclosed rental property only three days to vacate the property. With passage of legislation in 2009, a tenant could be removed only after the expiration of a specified period not to exceed 60 days. The law also specified that a notice of foreclosure must not only be served on the property owner, but also to a tenant who occupied the actual property entering foreclosure.

In 2011, the Legislature enacted measures to ensure tenants (both residential and commercial) were treated fairly by landlords, and landlords who acted in good faith were able to maintain their investments. One measure prohibited various forms of discrimination based on gender identity or expression and sexual orientation in certain real estate transactions. Among other provisions, the bill declared it to be the policy of the State of Nevada that all people shall, without discrimination, distinction, or restriction because of gender identity expression or sexual orientation, have equal opportunity to reasonably seek and obtain housing accommodations. The measure prohibited access to certain services associated with the sale or rental of a dwelling, discrimination involving the sale or rental of a dwelling, and eviction. The Nevada Equal Rights Commission may investigate and hold hearings with regard to these issues.

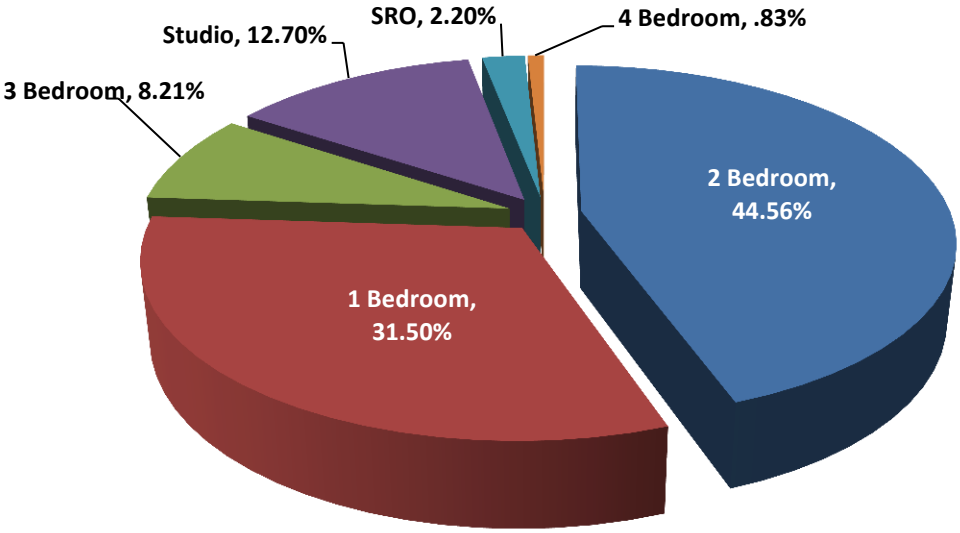
Another bill prohibited a landlord from: (1) interfering in the tenant's use of the premises unless under certain circumstances; (2) removing items from the premises; (3) preventing a tenant's access to commercial property; or (4) changing the door lock of a commercial property due to delinquency of payment without providing information to the tenant about how to obtain a new key. The landlord could also dispose of abandoned personal property if the landlord provided written notice by certified mail to the tenant.

Total Number of Units
Reno/Sparks Area
June 2000—June 2010



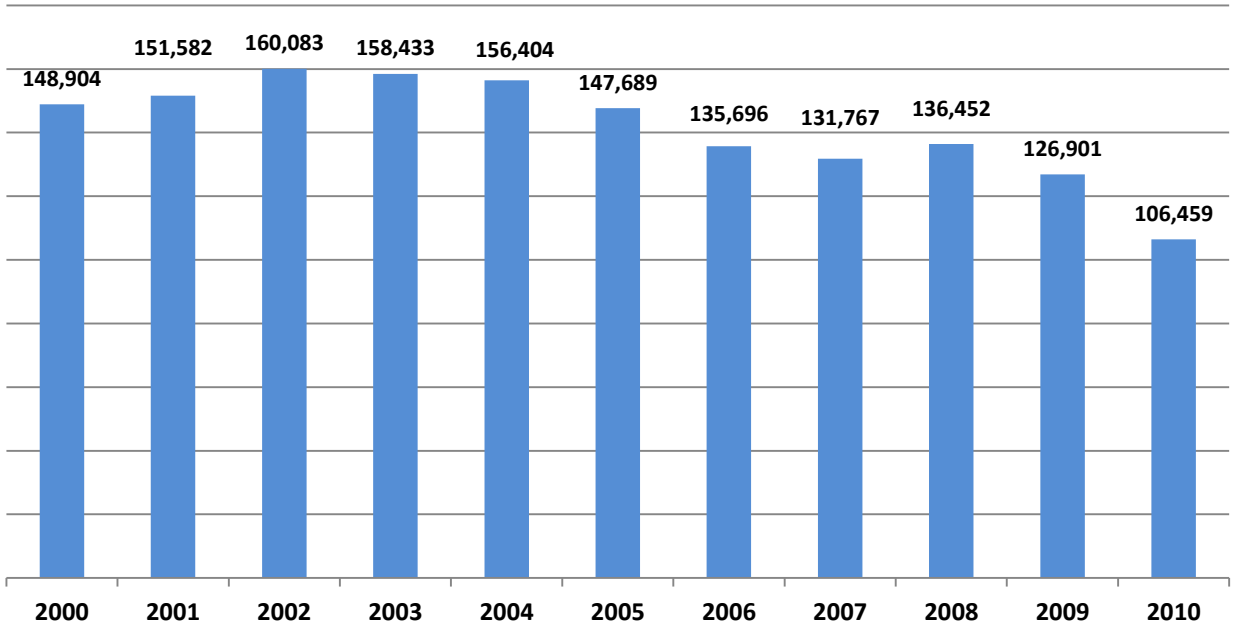
Source: Housing Division, Nevada's Department of Business and Industry.

Distribution of Apartment Units by Size
Reno/Sparks Area
June 2010



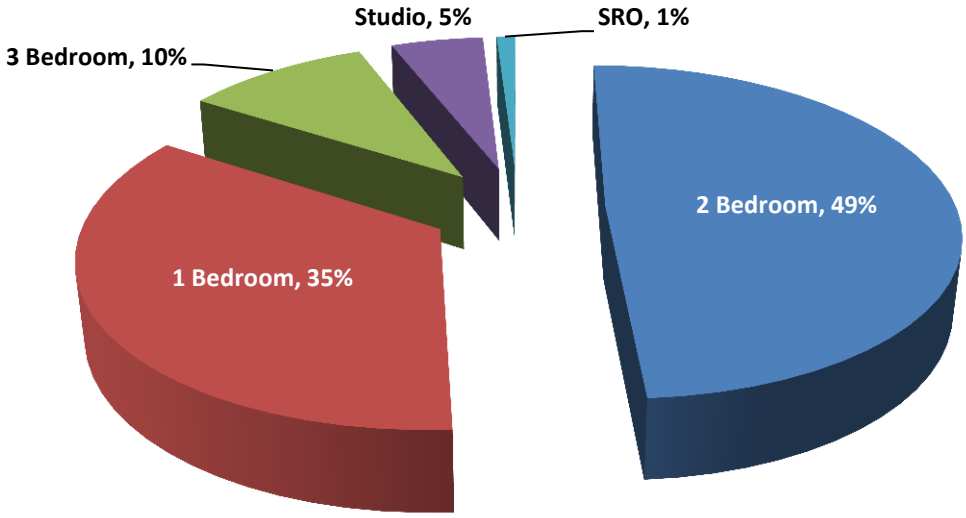
Source: Housing Division, Nevada's Department of Business and Industry.

Total Number of Units
Greater Las Vegas Valley
June 2000—June 2010



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

Distribution of Apartment Units by Size
Greater Las Vegas Valley
June 2010



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

HOMESTEAD LAW

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

To be eligible for the homestead exemption, State law requires a person to declare a homestead and to record that declaration with the county recorder. During the 2009 Session, State lawmakers enacted a measure that required the Real Estate Division to create a standardized form for the Declaration of Homestead. This form is available, free of charge, by the Division and the recorder in each of Nevada's counties.

The protection afforded by the homestead exemption does not apply to a mortgage used to purchase or improve the property, legal taxes imposed on the property, or prior liens. If a person accumulates other debts, defaults on a loan, or if a judgment is entered against the person in a suit, the exemption protects the homeowner. The exemption covers up to $550,000 equity in the property. Furthermore, Federal Bankruptcy Law acknowledges that a state law providing for a homestead exemption, such as Nevada's, will be honored in any proceeding.

ADDITIONAL RESOURCES

Commission for Common-Interest Communities and Condominium Hotels

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

Legal Administrative Officer
Real Estate Division
Department of Business and Industry
2501 East Sahara Avenue, Suite 303
Las Vegas, Nevada 89104
Telephone: (702) 486-4036
Fax: (702) 486-4067
Website: http://red.state.nv.us/cic/commission_info.htm

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels

The Department of Business and Industry has published a document titled the *Nevada Common-Interest Community Manual,* which contains references to NRS and *Nevada Administrative Code* (NAC) chapters relevant to common-interest communities. The publication is available through the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels.

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels
Real Estate Division
Department of Business and Industry
2501 East Sahara Avenue, Suite 202
Las Vegas, Nevada 89104
Telephone: (702) 486-4480
Toll-free Telephone: (877) 829-9907
Website: http://www.red.state.nv.us/CIC/cic.htm

Office of the Attorney General

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

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

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

Legislative Counsel Bureau—Research Division

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

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

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

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

Chapter 116A ("Common-Interest Communities: Regulation of Community Managers and Other Personnel") of NRS may be viewed in its entirety at: http://www.leg.state.nv.us/NRS/NRS-116A.html.

Chapter 116B ("Condominium Hotel Act") of NRS may be viewed in its entirety at: http://www.leg.state.nv.us/NRS/NRS-116B.html.

State Contractors' Board

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

Website: http://www.nvcontractorsboard.com

Manufactured Housing Division—Department of Business and Industry

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

Department	Location	Telephone Number
Codes and Compliance	Las Vegas	(702) 486-4138
Compliance Investigator	Las Vegas	(702) 486-4115
Continuing Education	Carson City	(775) 687-2059
Inspections	Carson City	(775) 687-2062
	Elko	(775) 738-6601
	Las Vegas	(702) 486-4002
Landlord/Tenant Investigator	Carson City	(775) 687-2061
	Las Vegas	(702) 486-4310
Licensing	Las Vegas	(702) 486-4590
Lot Rent Subsidy Program	Carson City	(775) 687-2060
Titling	Las Vegas	(702) 486-4135

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Insurance Regulation

Research Division

January 2012

REGULATING INSURANCE

Historically, states have exercised their inherent "police power" to protect the public health, safety, and welfare when regulating insurance. Congress affirmed the states' authority over insurance regulation in 1945 when it passed the McCarran-Ferguson Act. Further, 15 U.S.C. § 1011:

> . . . declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

This policy declaration has been interpreted to mean that the operations of the insurance industry are so vital to society they require public oversight and regulation.

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Consequently, state legislatures are largely responsible for establishing the rules under which the complex insurance industry must operate in their respective state. Generally, states have created boards or commissioners to oversee insurance companies doing business within their borders.

Regulating Insurance in the State of Nevada

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

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

- Improve and thereby preserve State regulation of insurance;
- Insure that policyholders, claimants, and insurers are treated fairly and equitably;
- Encourage full cooperation of the office of Commissioner with other regulatory bodies, both of this and other states and of the federal government;
- Insure that the State has an adequate and healthy insurance market characterized by competitive conditions and the exercise of initiative;
- Prevent misleading, unfair, and monopolistic practices in insurance operations; and
- Continue to provide the State of Nevada with a comprehensive, modern and adequate body of law, in response to the McCarran Act (Public Law No. 15, 79th Congress, 15 U.S.C. §§ 1011 to 1015, inclusive), for the effective regulation and supervision of insurance business transacted within, or affecting interests of the people of this State.

DIVISION OF INSURANCE

The Division of Insurance, under the auspices of the Department of Business and Industry, is responsible for protecting the rights of Nevada consumers in their experience with the insurance industry and for ensuring the financial solvency of insurers. Under the direction of Nevada's Commissioner of Insurance Scott J. Kipper, the Division regulates and licenses insurance agents, brokers, and other professionals; sets ethical and financial standards for insurance companies; and reviews rates. The Division also reviews programs operated by self-insured employers for workers' compensation, and investigates claims of insurance fraud.

Consumer Services

Consumers with questions concerning insurance claims, companies, policies, or with complaints can contact the Consumer Services Section of the Division of Insurance (contact information is provided at the end of this report). The Consumer Services Section can answer questions regarding problems with all types of insurance, including auto insurance, bail bonds, health insurance, homeowners insurance, preneed and funeral plans, and title insurance. In addition, the Section advises insurance companies and agents of their obligations and ensures compliance with the Nevada Insurance Code.

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

Nevada Life and Health Insurance Guaranty Association Act

In 1973, the Nevada Legislature passed the Nevada Life and Health Insurance Guaranty Association Act (codified in Chapter 686C of NRS), requiring most insurance companies licensed in Nevada to become members of the Guaranty Association. The purpose of this association is to assure that

Nevada policyholders will be protected, within limits, in the event that a member insurer becomes financially unable to meet its obligations. If this should happen, the Guaranty Association assesses its other member insurance companies for the money to pay the claims of insured persons who live in Nevada and, in some cases, to keep coverage in force.

FEDERAL REGULATION OF INSURANCE

Terrorism Risk Insurance Act

Signed into law in 2002, the Terrorism Risk Insurance Act is a federal insurance guarantee mechanism intended to serve as a "backstop" for the insurance industry in the event of future terrorist attacks. The law was originally designed to be a temporary stabilizer in the property, casualty, and life insurance markets following the events of September 11, 2001. However, the Act has been extended twice, and is currently set to expire in December 2014.

Health Care Reform

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

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

RELEVANT CONTACT INFORMATION

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Nevada's Division of Insurance (*continued*)

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POLICY AND PROGRAM REPORT

Public Utilities and Energy

Research Division

January 2012

PUBLIC UTILITY REGULATION

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

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

The nature and extent of regulation varies from industry to industry. Generally, there is a certain amount of shared jurisdiction over public utilities by federal and state (and sometimes local) governmental bodies.

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The authority of these entities may overlap and lines of demarcation between them may become blurred. Electric utilities are one of the most important types of public utility. They have traditionally been highly regulated but, in recent decades, have experienced varying degrees of deregulation.

Federal Regulation of Energy Companies

Federal Power Act of 1935

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

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

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

Public Utility Regulatory Policies Act of 1978

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

About the time PURPA was enacted, traditional utilities were becoming reluctant to build new power plants due to declining demand, environmental concerns, and nuclear power problems. Concurrently, technological advances that utilize combined cycle natural gas turbines and circulating fluidized bed boilers, allowed newer, smaller generating plants to be brought on-line more economically and with shorter lead times. Such conditions led to the rise of independent power producers (IPPs). These entities, also referred to as merchant power companies, build power plants for a fee and then sell the electricity to utilities at wholesale.

Energy Policy Act of 1992

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

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

This array of federal actions prompted debate at the state level on how to promote greater wholesale and retail competition among power producers and led to steps in many states to authorize retail electric competition. However, in the aftermath of the problems experienced in California in 1999 and 2000, a number of states, including Nevada, largely abandoned deregulation at the retail level.

Energy Policy Act of 2005

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

Energy Independence and Security Act of 2007

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

American Recovery and Reinvestment Act of 2009

A severe recession during 2008 and 2009 caused congressional attention to shift its focus from crafting a sustainable national energy policy towards seeing energy as an economic recovery tool. Massive federal stimulus packages were enacted which included large amounts for research, development, and deployment of a wide variety of renewable energy technologies and domestic transportation fuel resources. Judgments on the success of these programs have been mixed. A lingering weak economy has shifted concern to longer-term impacts of a growing national debt, leading to debate about continuing subsidies for renewable energy projects. Concomitantly, greatly increased domestic production of natural gas due to technological developments such as "fracking" have kept energy prices low, further reducing political support for alternative domestic energy sources. Despite continuing instability in foreign oil-producing regions and the accompanying volatility in commodity prices, these relatively low energy costs and concern about the fiscal impacts of government subsidies will likely reduce pressure on Congress to develop an updated comprehensive national energy policy.

State Regulation of Energy Companies

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

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

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

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

STATE ENERGY POLICY

Nevada has a statutorily enacted energy policy statement in *Nevada Revised Statutes* 701.010, which is set forth in the following text box:

Energy Policy

1. The Legislature finds that:

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

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

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

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

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

(f) Government and private enterprise need to accelerate research and development of sources of renewable energy and to improve technology related to the research and development of existing sources of energy.

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

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

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

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

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

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

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

- A renewable energy portfolio standard (RPS) that requires power suppliers to gradually increase the percentage of electricity derived from renewable sources and energy efficiency measures from 12 percent in 2010 (the current level) to 25 percent in 2025;

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

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

In 1997, the Legislature authorized a transition to a competitive retail environment which was refined in 1999. In the aftermath of the western energy crisis in 1999 and 2000, that process was first delayed and then largely reversed in 2001. However, large customers who use more than 1 MW of power can secure their own power sources if they meet certain conditions. One MW is enough electricity to supply approximately 600 average homes.

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

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

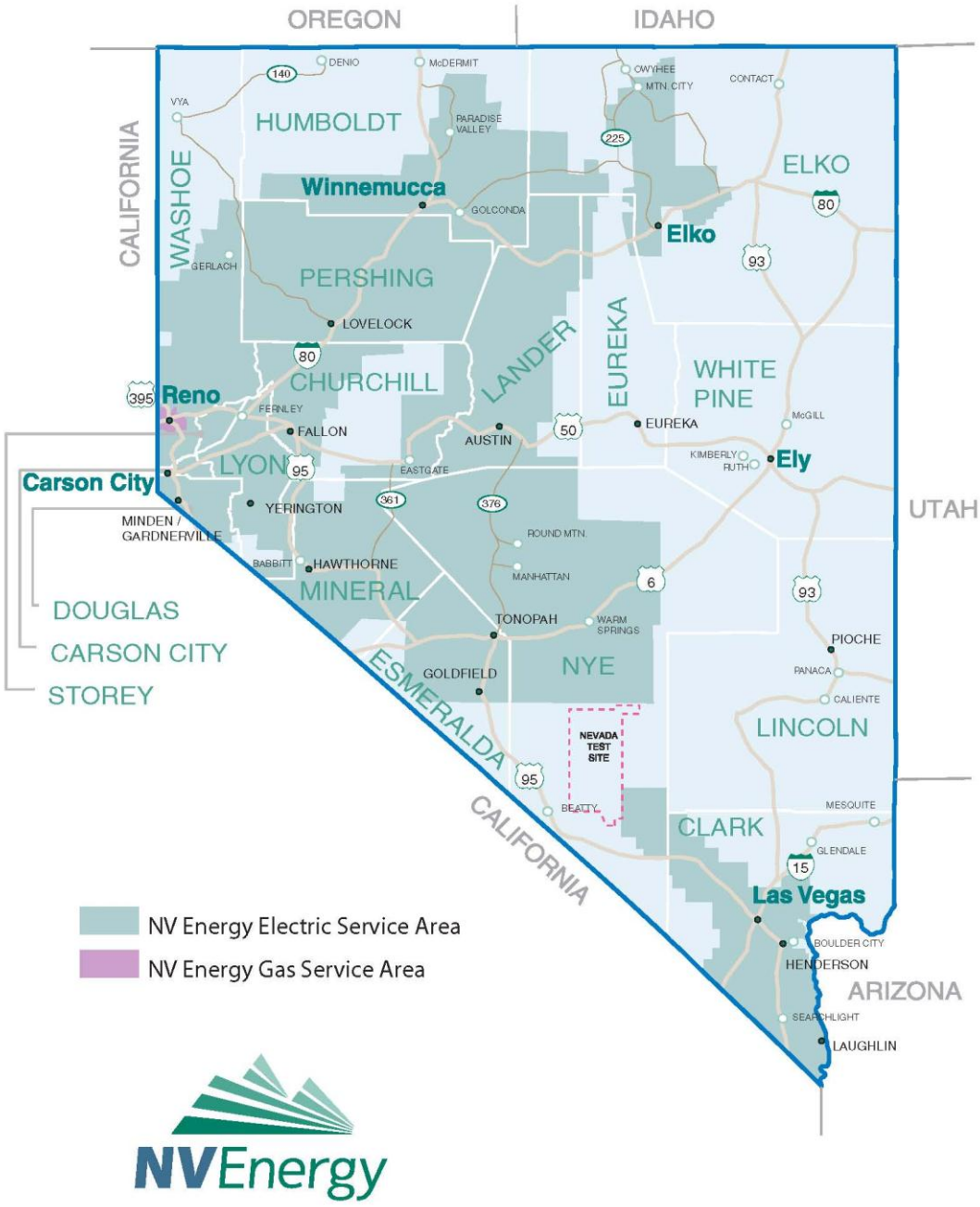
During the 2009 Session, the Legislature, like Congress, responding to the severe economic crisis, focused policy directives on stimulating "green energy" jobs and on increasing the amount of renewable energy generated in Nevada, both for domestic consumption and for export, as part of long-term efforts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

STATE ENERGY UTILITIES

Formerly there were two major electric utilities in the State: Nevada Power Company in the southern portion of the State and Sierra Pacific Power Company in the north. These companies merged in 1999 and now both operate under the name of NV Energy. Southwest Gas Corporation supplies natural gas in the south, as does NV Energy in the north. Additionally, there are several rural electrical cooperatives and power districts. Formation of cooperatives and power districts must be approved by the PUCN but thereafter the Commission has little authority over these entities; instead, they are answerable to their members through an election process.

NV Energy

NV Energy covers a service territory of 45,592 square miles. The company supplies electricity to 2.4 million citizens, as well as some 40 million tourists each year. The all-time peak electric usage in northern Nevada occurred on July 5, 2007, at 1,743 MWs. In southern Nevada, the all-time peak usage of 5,866 MWs occurred on the afternoon of July 5, 2007.



Source: NV Energy, http://www.nvenergy.com/brochures_arch/NVEnergy_Service_area_map.pdf.

Southwest Gas Corporation

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

POTENTIAL ENERGY ISSUES FOR THE FUTURE

Generation Facilities

While Nevada and the rest of the western states presently enjoy adequate power supplies, concerns exist about the need for additional generation in the region. Until the recent economic problems developed, Nevada was one of the fastest growing states in the country. As conditions improve, pressure on existing generation resources will increase. Concerns about the impacts of global warming have led to cancelation of a number of proposed coal-fired power plants in the region, including several major projects in eastern Nevada, causing planners to stress the need for development of new sources of electric power. Responding to these challenges, Nevada has made significant progress with solar installations and new geothermal plants. Because of legislative policy initiatives, Nevada has also made significant strides with energy efficiency measures, helping to lessen the need for more electricity.

Transmission and Distribution Facilities

Adequate development of transmission capacity is another issue of concern for utilities. Since Nevada's investor-owned utilities (IOUs) do not generate all the electricity they use, power lines are needed to transport additional supplies into the State. Additionally, merchant generation plants need access to the interstate transmission system in order to sell their power in other states. Currently, northern and southern Nevada have no direct transmission interconnections. This situation makes it difficult to transfer power between the regions when there is excess capacity in one and greater demand in the other.

To address this issue, a 236-mile 500-kilovolt transmission interconnection between the two regions was commenced by a joint venture involving NV Energy and LS Power, LLC of New Jersey. The project is known as the "Nevada One Project," usually shortened to "One Nevada." Independently, LS Power plans to extend the line into southern Idaho where it will connect with existing transmission lines that will allow power from wind farms in Montana, Oregon, Washington, and Wyoming to be imported to Nevada and the southwest, greatly increasing the region's access to renewable energy.

The expanded transmission system will also allow more development of northern Nevada's extensive geothermal resources. Presently, more than 300 MWs of capacity have been built with another 300 MWs planned. Estimates of the total feasible geothermal capacity exceed 2,000 MWs. With a

transmission line connecting northern and southern Nevada, this base-load electric potential can be made available to the southern portions of the State in the summer to help meet its enormous air conditioning load. In turn, the large southern solar resources can be shipped north in winter to offset the increased cold weather heating needs.

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

So-called distributed generation is a concept with impacts on transmission issues that is gaining support. This technology involves smaller power generators located on or near the site of power usage, thus reducing the need for new or upgraded transmission facilities to serve an increasing load. Distributed generation can be small natural gas-fired microgenerators, diesel or gasoline generators, or any of a variety of renewable energy generators such as wind, solar, or geothermal. In some instances, small hydroelectric generators can be installed as well. Perhaps the most significant potential source of distributed generation in Nevada is solar, given the State's huge endowment of sun. During the 2009 Session, the Legislature built on earlier efforts to foster small-scale solar development by specifically including a so-called "carve out" for solar distributed generation.

AIR QUALITY AND OTHER ENVIRONMENTAL ISSUES ASSOCIATED WITH ELECTRIC GENERATION FACILITIES

Electric generation plants have increasingly come under criticism for their role in air quality problems and related health issues. In April 2004, the U.S. Environmental Protection Agency (EPA) identified the Las Vegas Valley as exceeding federal standards for ground-level ozone, a component of smog. During the first week of January 2010, the EPA announced plans for even more stringent air quality standards which will be even more difficult for southern Nevada to meet. Ultimately, a region that violates air quality standards after a grace period for compliance faces federal sanctions. Although the newer power plants in the Las Vegas area are cleaner, more efficient natural gas-fired units, they still contribute to overall air quality issues. Continued residential and commercial growth increases the need for electricity, which puts further pressure on air quality. This situation requires planning to ensure future power demands can be met within acceptable environmental limits.

Additionally, all electric power plants, even the solar ones, require water for cooling or cleaning purposes. Given the prolonged drought in the west, water consumption in connection with electric power production is an increasingly important consideration. A wet-cooled solar thermal power plant consumes about 2.61 million gallons of water per MW; while solar photovoltaic plants use much less water, it still takes nearly 17,000 gallons per MW to keep the panels clean. To put this in perspective, an acre-foot of water is 325,851 gallons, approximately enough to serve a family of five people for one year. While generation plants, including solar facilities, can be designed to use air cooling technology, this lowers their efficiency and hence increases the cost of operation in hot weather.

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

TRANSPORTATION ENERGY ISSUES

Nevada imports virtually all of its transmission fuels and they are almost exclusively fossil fuels. This situation poses both economic and environmental problems. During the 2009 Session, the Legislature began to emphasize the linkage between transportation and energy issues. Discussions of mass transit systems, alternative fuel vehicle fleets, and the potential for domestic production of some forms of biofuels led to proposals to spur support for cleaner vehicles, especially hybrid and all electric cars, truck stop electrification, increased biofuel use, and light rail systems. While not all these proposals were adopted, these subject areas are likely to continue to generate interest and discussion in future legislative sessions.

LOW-INCOME ENERGY ASSISTANCE PROGRAMS

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

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

DISTRIBUTION OF UNIVERSAL ENERGY CHARGE REVENUES

Seventy-five percent of the amount collected from the UEC is distributed to the Division of Welfare and Supportive Services (DWSS), Department of Health and Human Services, to assist eligible households in paying for electricity and natural gas. The Division is authorized to use not more than 5 percent of the funds distributed to it for administrative expenses. The remaining 25 percent of the money is distributed to the Housing Division, Department of Business and Industry, for programs of energy conservation, weatherization, and energy efficiency. The Housing Division may use not more than 6 percent of the money distributed to it for administrative expenses. Additionally, 30 percent of any unspent and unencumbered DWSS UEC funds must be transferred to the Housing Division at the end of a fiscal year for further energy conservation and efficiency aid to qualifying residential

customers. Both the DWSS and the Housing Division limit eligibility for assistance to households with incomes less than 110 percent of the federally designated poverty level.

RELATED PROGRAMS

The DWSS also administers the federally funded Low Income Home Energy Assistance (LIHEA) Program. This program is likewise available to households with incomes less than 150 percent of the federally designated poverty level. Due to the severe economic crisis during 2009, Congress substantially increased LIHEA funding and modified the 150 percent requirement to 200 percent to make assistance available to a greater spectrum of needy people. Assistance is available from July 1 through May 31 and a new application must be submitted each year. Additionally, the utilities have established funds composed of voluntary contributions from customers and matching company donations for the assistance of low-income consumers.

ADDITIONAL WEBSITE REFERENCES

- Public Utilities Commission of Nevada: http://pucweb1.state.nv.us/PUCN/PUCHome.aspx?AspxAutoDetectCookieSupport=1
- Nevada's Office of Energy: http://www.energy.state.nv.us/
- Federal Energy Regulatory Commission: http://www.ferc.gov/
- U.S. Federal Energy Information Administration: http://www.eia.doe.gov/

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GLOSSARY OF ACRONYMS

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

BCP ..... Bureau of Consumer Protection
Btu ..... British thermal units
CRC ..... Colorado River Commission
DOE ..... United States Department of Energy
DSM ..... demand side management
EPAct ..... Energy Policy Act of 1992
F&PP ..... fuel and purchase power
FERC ..... Federal Energy Regulatory Commission
FPA ..... Federal Power Act of 1935
IOU ..... investor-owned utility
IPP ..... independent power producer
ISO ..... independent system operator
kW ..... kilowatt
kWh ..... kilowatt hour
MW ..... megawatt
MWh ..... megawatt hour
NERC ..... North American Electric Reliability Council
NOPR ..... Notice of Proposed Rulemaking
OASIS ..... Open Access Same-Time Information System
PEC ..... Portfolio Energy Credit
PUCN ..... Public Utilities Commission of Nevada
PUHCA ..... Public Utility Holding Company Act of 1935
PURPA ..... Public Utility Regulatory Policies Act of 1978
QF ..... qualifying facility
RPS ..... Renewable Energy Portfolio Standard
RTO ..... Regional Transmission Organization
SNWA ..... Southern Nevada Water Authority
TMWA ..... Truckee Meadows Water Authority
TRED ..... Temporary Renewable Energy Development Program
UEC ..... Universal Energy Charge
WSCC ..... Western Systems Coordinating Council

Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Financial Institutions and Mortgage Lending

Research Division

January 2012

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DEPOSITORY INSTITUTIONS

There are three main types of depository institutions in the United States: (1) commercial banks; (2) credit unions; and (3) thrifts (including savings banks and savings and loan associations). These institutions have become more like each other in recent decades. However, they still differ in structure, specialization, and their regulatory and supervisory systems.

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

Commercial Banks

The federal Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises the federally chartered banks, known as "national" banks. The Federal Reserve Board (FRB) and the

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

Credit Unions

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

Thrifts, Savings Banks, and Savings and Loan Associations

These institutions, originally established to promote personal savings and home ownership through mortgage lending, today provide a range of services similar to commercial banks. As a result of the national savings and loan crisis of the 1980s, the U.S. Congress abolished the Federal Home Loan Bank Board, created the Office of Thrift Supervision (OTS) of the U.S. Department of the Treasury, eliminated the Federal Savings and Loan Insurance Corporation (FSLIC), and transferred the FSLIC's duties to the FDIC. Effective July 21, 2011, the OTS merged with the Office of the Comptroller of the Currency (OCC). Currently, the OCC and the FDIC regulate federally chartered entities. In Nevada, the FID regulates state-chartered entities under the provisions of Chapter 673 ("Savings and Loan Associations") and Chapter 677 ("Thrift Companies") of NRS.

DEPOSITORY INSTITUTIONS—REGULATORY AGENCIES		
Agency	**Jurisdiction**	**Contact Information**
Office of the Comptroller of the Currency (OCC), U.S. Department of the Treasury	National banks	http://www.occ.treas.gov Consumer Assistance: (800) 613-6743
Office of the Comptroller of the Currency, U.S. Department of the Treasury	Federal savings associations; thrift holding companies	http://www.occ.treas.gov Consumer Affairs Hotline: (800) 842-6929 E-mail: consumer.complaint@ots.treas.gov
Federal Reserve Board (FRB)	All bank holding companies and their nonbank subsidiaries; state-chartered member banks; foreign banks	http://www.federalreserve.gov Consumer Help: (888) 851-1920

DEPOSITORY INSTITUTIONS—REGULATORY AGENCIES (*continued*)		
Agency	**Jurisdiction**	**Contact Information**
Federal Deposit Insurance Corporation (FDIC)	State-chartered banks not members of the Federal Reserve System; savings banks; foreign bank branches	http://www.fdic.gov Call Center: (877) 275-3342
National Credit Union Administration (NCUA)	Federal credit unions; federally insured state-chartered credit unions	http://www.ncua.gov Consumer Assistance: (800) 755-1030
Division of Financial Institutions, Nevada's Department of Business and Industry	State-chartered banks, credit unions, and thrifts	http://www.fid.state.nv.us (702) 486-4120 (775) 687-5522

NONDEPOSITORY INSTITUTIONS

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

Collection Agencies

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

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

Debt-Management Services

In 2009, Nevada adopted the Uniform Debt-Management Services Act which is codified under Chapter 676A of NRS. Under the Act, the Commissioner of Financial Institutions regulates debt-management services including credit counseling, the development and implementation of debt-management plans, and debt settlement services. All such companies must register with the Commissioner and follow detailed requirements for registration, including a surety bond in the amount of at least $50,000.

The Act governs contracts between a debtor and a debt-management services company, prescribes the duties and obligations of a company, identifies prohibited activities, and grants the Commissioner investigative and regulatory authority, including the authority to regulate advertising. A violation of the Act is a deceptive trade practice.

Development Corporations and Economic Revitalization and Diversification Corporations

Although the NRS authorizes the formation of development corporations and corporations for economic revitalization and diversification, the FID has no current licensees of this type. Such corporations, which are typically nonprofits, encourage economic development through lending and other practices and are subject to the statutes in Chapter 670 ("Development Corporations") and Chapter 670A ("Corporations for Economic Revitalization and Diversification") of NRS.

Installment Lenders

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

Installment lenders who make or solicit loans in Nevada, or who are located in Nevada, must obtain a license from the FID. Licensees must pay an application fee, an annual fee, and also comply with the various requirements of Chapter 675 ("Installment Loans") of NRS.

Money Transmitters

Any person who is in the business of selling or issuing checks, or of transmitting money or credits, must be licensed by the FID. This requirement, however, does not apply to depository institutions or telegraph companies. A licensee must post a bond or other security for each location covered by the license and otherwise comply with the statutory requirements in Chapter 671 ("Issuers of Instruments for Transmission or Payment of Money") of NRS.

Payday Lending

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

Payday lending businesses must obtain a license from the FID and comply with the extensive provisions of State law in Chapter 604A ("Deferred Deposit Loans, High-Interest Loans, Title Loans and Check-Cashing Services") of NRS, including:

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

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

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

Trust Companies

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

Trust companies must obtain a license from the FID, maintain a minimum amount of stockholder equity, pay annual fees, and otherwise comply with the laws in Chapter 669 ("Trust Companies") of NRS.

MORTGAGE LENDING

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

Mortgage Bankers

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

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

Mortgage Brokers

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

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

Mortgage Agents

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

Escrow Agencies and Agents

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

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

Foreclosure and Loan Modification Consultants

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

Pursuant to Chapter 645F ("Mortgage Lending and Related Professions") of NRS and Chapter 645F of the *Nevada Administrative Code*, foreclosure consultants and loan modification consultants must obtain a license from the MLD, pay applicable fees, post a corporate surety bond payable to the State of Nevada, demonstrate a history of reputable behavior, and comply with all other statutory and regulatory requirements.

FINANCIAL INSTITUTIONS AND MORTGAGE LENDING—CURRENT ISSUES

Mortgage Lending Concerns

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

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

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

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

This scenario has been very evident in Nevada, not only in the two largest counties—Clark and Washoe—but also in other counties experiencing robust growth including Carson City, Douglas, Elko, Lyon, and Nye. Throughout the nation, Nevada has had the highest foreclosure rate since 2007. One in 11 homes received a foreclosure filing in 2010 despite a 5 percent decrease in activity from 2009.

Foreclosure rates continue to be well above historical averages. Consequently, many economists and realtors are skeptical of a turnaround in the housing market this year.

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

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

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

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

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

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

The State of Nevada Foreclosure Mediation Program (FMP) began its first year of operation in July 2009 and conducted its first mediations on September 14, 2009. Fiscal Year (FY) 2011 marked the second year of the program. In FY 2011, 54,191 Notices of Default (NOD) were filed in the state, as reported by Nevada's county reporters. The FMP received 8,133 requests from homeowners to participate in mediation, totaling 15 percent of the statewide NOD total. A total of 6,370 mediations resulted in no foreclosure. Of that number, agreements between the lender and homeowner was 3,227 or 51 percent. The number of agreements allowing the homeowner to remain

in the home, through loan modification or other options, totaled 1,941, or 60 percent. Agreements by homeowners to vacate the home and proceed with an alternative to foreclosure, such as a deed in lieu, short sale agreement, or cash for keys, totaled 1,279, or 40 percent of the agreements reached in mediation. The number of mediations completed in FY 2011 increased by 76 percent from the previous fiscal year's total of 4,212. A total of 7,424 mediations were completed in FY 2011.

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

DEPOSITORY INSTITUTIONS AND FEDERAL PREEMPTION OF STATE AUTHORITY

Over a period of many years, the U.S. government has preempted many aspects of state authority over banks, thrifts, lending, and related matters. This is a complex, controversial, and constantly changing issue. The level of preemption, which began over 70 years ago, has increased in recent years:

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

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

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

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

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

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

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

According to the National Conference of State Legislatures:

> Federal preemptions adopted through regulation, legislative enactments, or adverse judicial determinations have far-reaching consequences. They impose liabilities on states. They curtail state creativity and state authority. They often seek uniformity when uniformity is not necessarily the most effective means for resolving issues.

In addition, the National Consumer Law Center has stated that federal preemption has harmed consumers by allowing credit card abuses, irresponsible mortgage lending, overdraft fees, and predatory consumer lending.

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

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

2011 LEGISLATION AFFECTING FINANCIAL INSTITUTIONS AND MORTGAGE LENDING

Mortgage Agents and Lending—Assembly Bill 283

To protect consumers in mortgage transactions, A.B. 283 (Chapter 266, *Statutes of Nevada*) made various changes concerning persons who process mortgage loans. For instance, the bill revised provisions governing continuing education requirements for persons who are exempt from registering with the Nationwide Mortgage Licensing System and Registry. It also exempted investors who deposit money with a mortgage broker from criminal and civil liability for the act or omissions of the mortgage broker. Additionally, a person licensed as a mortgage agent may not be associated with or employed by more than one licensed or registered mortgage broker or mortgage banker or person who holds a certificate of exemption at the same time. The measure repealed provisions governing the duties of a mortgage banker upon termination of a mortgage agent.

The measure provided that a mortgage agent, mortgage banker, mortgage broker, or an employee of a mortgage banker or mortgage broker was not required to register or renew with the Registry, or provide reports of financial condition to the Registry, if the person was not a residential mortgage loan originator or the supervisor of a residential mortgage loan originator, and the person was not required to register pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act. A person who voluntarily registered or renewed with the Registry would comply with all requirements of the federal Act.

Trust Companies—Senate Bill 136

Pursuant to S.B. 136 (Chapter 425, *Statutes of Nevada*), the Commissioner of Financial Institutions, Department of Business and Industry, must consider certain criteria related to the potential long-term success of a trust company before approving the company's application for licensure to operate as a retail trust company. The bill also revised provisions governing stockholders' equity and minimum capital requirements for a retail trust company.

The Commissioner may approve locating a branch of a retail trust company in another state if the company provides written documentation from an appropriate State agency that the company is authorized to do business in that state. Additionally, the measure made certain changes to the procedure for denying an application for licensure as a retail trust company and for removal of an official or employee of such a company.

Family Trust Companies—Senate Bill 259

For several sessions, Nevada has been promoting a receptive regulatory climate for family trust creation. Senate Bill 259 (Chapter 324, *Statutes of Nevada*) enhanced the ability of the State to attract these entities by revising provisions governing the management of a trust by a family trust company or a licensed family trust company. The Uniform Prudent Investor Act is applicable to a trust managed by such companies and makes specific provisions regarding aspects of trust management, including: (1) liability for an act or decision made in good faith and in reasonable reliance on the terms of a consent agreement, court order, or trust instrument; (2) investment in certain securities; (3) entry into and compliance with a nonjudicial settlement agreement; (4) provision of annual reports to an interested person; and (5) transactions with a family affiliate.

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POLICY AND PROGRAM REPORT

Telecommunications and Communication Technology

Research Division January 2012

TELECOMMUNICATIONS REGULATION BACKGROUND

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

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

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

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Universal Service

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

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

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

National Do Not Call Registry

Since October 2003, the Federal Trade Commission (FTC) has managed the national Do Not Call registry. Telemarketers must search the registry every three months and avoid calling any registered telephone numbers. Organizations with which a person has an established business relationship may call for up to 18 months after the last purchase, payment, or delivery. Companies to which a person has made an inquiry or submitted an application can call for up to three months. The law does not apply to calls from or on behalf of political organizations, charities, and telephone surveys.

Streamlined Sales and Use Tax Agreement

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

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

TELECOMMUNICATIONS REGULATION IN NEVADA

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

Public Utilities Commission of Nevada

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

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

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

Nevada's Universal Service Programs

Nevada's universal service programs include the Lifeline and Link Up telephone services, governed by NRS 707.400 through NRS 707.500. The Lifeline program provides a discount on basic local service charges and federal end-user charges to residential customers. The Link Up program allows

for a reduction in a carrier's customary connection charges for a single connection at a consumer's principal residence. Both programs are available to consumers who meet the income eligibility requirements of the PUCN. In 1999, the Legislature authorized automatic enrollment in Lifeline service for qualified low-income residents. Lifeline and Link Up usage has been increasing.

Long-Distance Service

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

Wireless Service

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

- Senate Bill 10 (Chapter 237, *Statutes of Nevada*) prohibited an agency, board, commission, or political subdivision of the State from regulating the use of a cellular phone or other portable phone by a person operating a motor vehicle (NRS 707.375);

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

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

Broadband

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

Nevada's Do Not Call Registry

In 2003, the Legislature passed A.B. 232 (Chapter 464, *Statutes of Nevada*), requiring the Attorney General to establish and maintain a registry of telephone numbers of persons not wishing to receive unsolicited calls from telemarketers. (These provisions are now codified in NRS 228.500

through NRS 228.640.) The measure prohibited unsolicited telephone calls for the sale of goods or services to a number included in the registry, with certain exceptions:

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

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

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

2007 LEGISLATION AFFECTING TELECOMMUNICATIONS

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

Telecommunications Deregulation—Assembly Bill 518

Assembly Bill 518 (Chapter 216, *Statutes of Nevada 2007*) (amending Chapter 704 of NRS) provided that a telecommunication provider, other than a small-scale provider of last resort, is a competitive supplier, not subject to any review of earnings or other regulation by the PUCN. However, a competitive supplier that is also an incumbent local exchange carrier may not increase the price of basic network service before January 1, 2011. Further, for one year after that date, the supplier may not increase the per-month price of basic network service by more than $1, unless the supplier files a general rate application and proves to the PUCN that the increase is "absolutely necessary to avoid rates or prices that are confiscatory under the *Constitution of the United States* or the *Constitution* of this State."

Cable TV and Video Services—Assembly Bill 526

Also amending Chapter 704 of NRS, A.B. 526 (Chapter 326, *Statutes of Nevada 2007*) addressed competitive issues in the cable television industry. The bill:

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

2009 LEGISLATION AFFECTING TELECOMMUNICATIONS

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

Cyber Crimes

The hallmark of telecommunications is innovation. Unfortunately, sometimes new technologies can spawn new crimes or provide methods to commit old crimes in new ways. Assembly Bill 309 (Chapter 497, *Statutes of Nevada 2009*) added text messaging to the existing list of ways in which the crime of stalking can be committed (see NRS 200.575). In a related vein, S.B. 163 (Chapter 188, *Statutes of Nevada 2009*) revised provisions under Chapters 388, 389, and 392 of NRS governing safe and respectful learning environments in schools to prohibit cyber-bullying.

Theft of Scrap Metal

With the rise in commodity prices for metal, theft of copper wire and other metals has increased dramatically. In some instances, thieves have stripped whole houses or school scoreboards of their wiring in order to sell the metal for cash to scrap dealers. These can be expensive and disruptive losses. Assembly Bill 233 (Chapter 290, *Statutes of Nevada 2009*) made it a crime to steal utility wires in order to sell the metal. The bill also increased certain penalties for stealing scrap metal and requires more stringent reporting requirements for such transactions to make it easier for law enforcement to identify suspects (see NRS 202.582, NRS 205.267, and Chapter 647 of NRS).

CURRENT ISSUES IN TELECOMMUNICATIONS POLICY

Other Telecommunications Issues

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

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

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

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

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

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

Federal Communications Commission National Broadband Plan

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

The press release provided the following rationale for the plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A year after the release of the plan, the following update analysis appeared in PCMag.com:[1]

> ***FCC National Broadband Plan One Year Later: Where Are We Now?***
>
> The national broadband plan is now a year old, and while you're probably more likely to toast St. Patrick today than the FCC's 376-page plan, it's worth taking a look at how much (or how little) the commission has accomplished since March 2010. To be fair, the plan—which was mandated by the 2009 stimulus bill—outlines suggestions for providing the country with broadband service over the next ten years, so no one expected everything to be in place by the end of this week. But you have to start somewhere, and the commission and supporting agencies have taken some steps when it comes spectrum allocation, broadband mapping, and public safety, among other things.
>
> ***Spectrum***
>
> Spectrum probably seems like a dull, technical issue that doesn't really affect you, but when your Netflix movie stalls on your iPad or your phone doesn't load your e-mail because of overloaded systems, I imagine you'll care. At this point, wireless carriers have enough spectrum to run their day-to-day activities. But as more and more people drop feature phones for smartphones and adopt data-intensitive gadgets like tablets, the need for more spectrum intensifies.
>
> The national broadband plan recognized this looming spectrum crunch, and called for an additional 500 MHz of spectrum to be used for broadband over the next decade, 300 MHz of which would be used for mobile. In June, President Obama took up the issue and ordered the Commerce Department to work with the FCC to free up that 500 MHz. Commerce later released a ten-year timetable, as well as a fast track option for what can be done in the next five years.
>
> One thing FCC Chairman Julius Genachowski has been pushing is the idea of volunteer auctions—allowing TV broadcasters to sell off unused spectrum that would then be used for broadband purposes. Last month, President Obama said that such auctions could raise an estimated $27.8 billion, which would be put toward his plan to provide 98 percent of Americans with access to next-generation wireless technology in the next five years, as well as pay down the deficit by $9.6 billion. But if the 2008 700 MHz auctions were any indication, getting these types of auctions off the ground is often a lengthy process.

[1] Chloe Albanesius, *PC Magazine*, March 17, 2011, http://www.pcmag.com/article2/0,2817,2382115,00.asp.

Mapping

Having plans to increase broadband adoption is great, but how do we know who really needs it? In addition to the broadband plan, the stimulus bill also provided $350 million for the creation of a national broadband inventory map. Commerce and the FCC followed through on that last month with the release of broadbandmap.gov. It is a searchable database with more than 25 million records that show where broadband Internet service is available, the technology used to provide the service, the maximum advertised speeds of the service, and the names of the service providers. Users can search by address, view data on a map, or use other interactive tools to compare broadband across various geographies, such as states, counties, or congressional districts.

Public Safety

As we approach the ten-year anniversary of the September 11, 2001 terrorist attacks, something that still eludes us is interoperable public safety network that would let first responders from different states, counties, or departments communicate with one another during an emergency. The broadband plan calls on the government to use the power of broadband to improve public safety and create an interoperable public safety wireless broadband communication networks by 2020.

In April, the FCC created the Emergency Response Interoperability Center (ERIC), which will create a framework for this public safety network. In January, the FCC also adopted a rulemaking on a public safety network; stakeholders will have several months to submit their comments and suggestions.

The FCC estimated that the interoperable network would require as much as $6.5 billion over ten years, with most of that money needed between the second and fifth year. The wireless plan Obama unveiled last month calls for a $3 billion Wireless Innovation (WIN) Fund, which will support basic research, experimentation and testbeds, and applied development in areas like public safety, education, energy, health, transportation, and economic development. About $500 million of the WIN Fund's $3 billion would be used for R&D related to the deployment of an interoperable public safety network. Overall, Obama called for a $10.7 billion investment in such a network, including $3.2 billion to re-allocate D-Block spectrum to public safety, and $7 billion for the deployment of the network.

Looking Ahead

Clearly, there's still a long way to go. While the broadband map showed that 68 percent of households in the U.S. have broadband access - up from 63.5 percent last year—work still needs to be done to get to 100 percent. The topics addressed in the last year cover just a fraction of the broadband plan's nearly 400 pages of

recommendations for the next nine years. The commission touched on everything from infrastructure and health IT to telecommuting and energy issues, so stay tuned for more rulemakings, committees, proposals, and hopefully, results.

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POLICY AND PROGRAM REPORT

Transportation

Research Division January 2012

Convenient and efficient transportation is imperative to the economic well-being of Nevada. Nevada is the seventh largest state in the nation encompassing some 109,781 square miles of diverse geographic topography. Conversely, Nevada is the 39th largest state with respect to population. Nevada continues to be the nation's fastest-growing state with over 85 percent of the population living within a metropolitan area. The diverse characteristics of the State are served by a transportation system that extends from the interstate level to the back country byway (gravel), and from high-speed, ten-lane thoroughfares to nonmotorized trails and paths just mere feet wide.

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DEPARTMENT OF TRANSPORTATION

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

The NDOT's mission is to provide a better transportation system for Nevada through unified and dedicated efforts. Each year, NDOT identifies transportation projects, programs, and funding sources for transportation facilities. Most of the projects are developed in cooperation with other transportation providers such as the metropolitan planning organizations, local airport authorities, and local governments.

The responsibility for roads and highways is divided between local governments and the State. The NDOT is responsible for the construction, improvement, and maintenance of the State's 5,472-mile highway system, which includes interstate highways and frontage roads, United States highways, State highways, and farm-to-market roads. In addition, local governments maintain 32,473 miles of county roads and city streets, bringing the total number of public road miles in Nevada to an estimated 37,945 miles. Nevada's maintained, functionally classified roads contain 2,176 miles of principal arterials, 882 miles of minor arterials, and 2,059 miles of connectors. In addition to the roadway system, there are approximately 1,916 bridges in Nevada. The NDOT maintains 1,092 bridges with 710 bridges being maintained by county, city, or other governmental agencies. Thirty-nine bridges are privately maintained.

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

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

The following comprise the State Highway Revenue sources:

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

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

The Fund is composed of the following taxes and fees:

- Gasoline Tax—The Nevada Legislature first enacted a gasoline tax in 1923. The balance of these revenues went to the counties and was based upon the number of licensed vehicles in each county. Today, the statewide tax on gasoline is 24.75 cents per gallon, with 17.65 cents going to the State Highway Fund, 6.35 cents to the counties and cities, and .075 cents to the Fund for Cleaning Up Discharges of Petroleum. Additionally, there is up to 9 cents per gallon of optional fuel taxes in certain counties, with a slightly higher rate in Washoe County where the rate is indexed to inflation.

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

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

- Driver's License Fees—$22 for passenger cars and $87 for operating commercial vehicles.

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

DEPARTMENT OF MOTOR VEHICLES

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

1. Division of the Office of the Director;

2. Division of Compliance Enforcement;

3. Division of Field Services;

4. Division of Central Services and Records;

5. Division of Management Services and Programs;

6. Division of Information Technology;

7. Administrative Services Division; and

8. Motor Carrier Division.

Nevada's motor vehicle laws are primarily contained in Chapters 481 through 486 of NRS, which address vehicle registration; vehicle titles; consignment of vehicles; licensing and regulation of vehicle manufacturers, rebuilders, distributors, dealers, brokers, salespersons, and lessors; special license plates; antitheft laws; operators' licenses; vehicular accidents and financial responsibility; civil and criminal liability with regard to vehicle operators; vehicle size, weight, and load restrictions and limits; vehicles and the powers of State and local authorities; driving schools and driving instructors; body shops; garages; and salvage vehicles.

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

LICENSING OF DRIVERS

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

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

NEVADA'S DRUNK DRIVING LAWS

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

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

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

Driving Under the Influence

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

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

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

Vehicular homicide was added as a crime in Nevada and is defined as a person who has previously committed at least three offenses of DUI or a controlled or prohibited substance and drives while under the influence and proximately causes the death of another person. The crime is a category A felony punishable by imprisonment in the State prison for life with the possibility of parole or a definite term of 25 years. The number of offenses is determined in the same manner as DUI;

however, the offenses are not restricted to offenses committed within the immediately preceding seven years. "Homicide by vessel" was also established as a crime. It is defined as a person who has previously committed at least three offenses of operating a vessel under the influence and who operates a vessel under the influence in violation of law and proximately causes the death of another person. This crime is a category A felony and is punishable in the same manner prescribed for vehicular homicide.

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

Implied Consent

Nevada has an implied consent statute (NRS 484C.160) for an individual who refuses a lawful request by a police officer to submit to an evidentiary test of the individual's blood, urine, breath, or other bodily substance. In Nevada, a person driving or in actual physical control of a vehicle is deemed to have given consent to breath or blood testing. Refusal is grounds for an arrest. A police officer may use reasonable force to obtain blood samples from the person.

REGULATION OF MOTOR CARRIERS

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

TAXICAB AUTHORITY

The Taxicab Authority, located within the Department of Business and Industry, is responsible for regulating the taxicab industry in any county with a population of 700,000 or more (NRS 706.881). Currently, only Clark County, which includes Las Vegas, meets this criterion. There are currently 16 taxicab companies in Clark County, employing approximately 9,500 drivers and operating a taxicab fleet of approximately 3,000 vehicles.

The Taxicab Authority is governed by a five-member Board appointed by the Governor. No elected officer of the State or any political subdivision is eligible for appointment, and no more than three Board members may be of the same political party. Board members may serve up to six years on the Board. The Board conducts hearings and renders decisions regarding the administration and enforcement of provisions contained in Chapter 706 of NRS, as well as the issuance and transfer of

certificates of public convenience for taxicab companies. The Board determines the number of taxicabs authorized per certificated company and the fares to be charged. Also, the Board hears appeals involving the issuance, suspension, and revocation of drivers' permits.

MAJOR POLICY ISSUES OF THE 2011 LEGISLATIVE SESSION

Toll Roads

Measures allowing the establishment of public-private partnerships to build highways in Nevada have been considered several times by the Legislature. During the 2011 Session, a demonstration project, to be conducted by the Regional Transportation Commission of Southern Nevada, was approved in connection with the Boulder City Bypass Project.

Distracted Driving

Prohibiting handheld cell phone use while driving has been considered by previous Legislatures, but it was never enacted. The 2011 Legislature considered five different bills relating to texting or talking on cell phones while driving. Ultimately, the sponsors of several of the bills were added to one measure, which was approved. Drivers in Nevada are now prohibited from engaging in voice communications using such a device unless it is used with a hands-free accessory and from manually texting using a cellular telephone or similar device.

Protection of Pedestrians and Cyclists

Laws were strengthened to protect vulnerable roadway users. Under a new law, a driver who, while violating certain rules of the road relating to bicycles, crosswalks, pedestrians, school crossing guards, school zones, or speeding, is the proximate cause of a collision with a pedestrian or person riding a bicycle, has committed the offense of reckless driving. Additionally, a driver is now required to overtake and pass a bicycle or electric bicycle at a distance of not less than three feet from the bicycle or electric bicycle in most instances.

Autonomous Vehicles

Foreseeing advances in automotive technology, legislation was enacted to require the DMV to adopt regulations to authorize the operation of autonomous vehicles on highways within the State of Nevada and to establish a driver's license endorsement for the operation of such vehicles. Within this same bill were certain privileges for qualified alternative fuel vehicles, such as a free parking program and permission to use the high-occupancy vehicle lanes irrespective of the occupancy of the vehicle, if NDOT has adopted the necessary regulations.

FREQUENTLY ASKED QUESTIONS

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

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

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

A: A person can apply for an instruction driver's permit at the age of 15 years and 6 months or older. A person must present proof of name, date of birth, and Social Security number to the DMV. A parent or legal guardian must be present to sign a financial responsibility statement. An applicant must also pass the vision and knowledge test and pay a licensing fee of $22.

Q: Who qualifies for disabled parking license plates?

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

ADDITIONAL RESOURCES

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

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

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

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

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POLICY AND PROGRAM REPORT

Elementary-Secondary Education

Research Division January 2012

The State supervises and regulates public elementary and secondary education through the Department of Education (DOE), headed by the Superintendent of Public Instruction. The Department is responsible for regulating and supporting the State's 17 school districts and 626 public schools. In Nevada, the responsibility for the education of elementary and secondary students is divided or shared among the State, local school districts, and charter schools.

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CONSTITUTIONAL BASIS AND HISTORY

The *Nevada Constitution*, Article 11, Section 2 makes the State responsible for the establishment of the public school system. Specifically, the *Nevada Constitution* states:

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

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

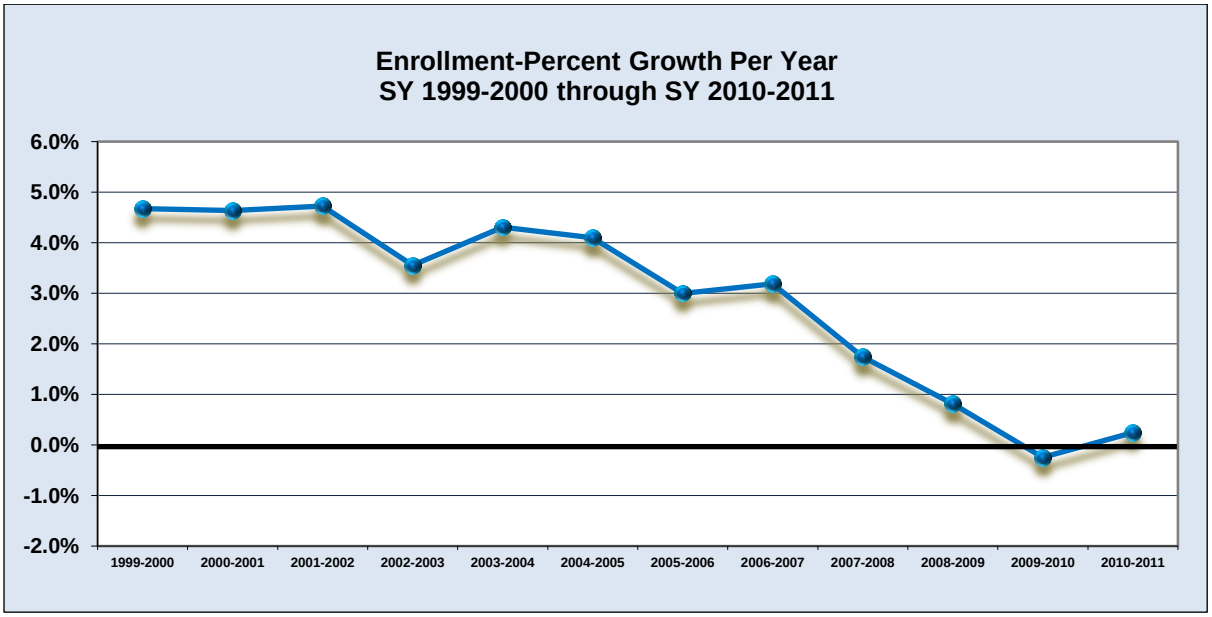
Over the years, the Nevada Legislature has adopted a body of law within the *Nevada Revised Statutes* (NRS) (Title 34, "Education") regarding the system of public schools. Sections of Title 34 address the local administrative organization; financial support of the school system; the system of public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

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

SCHOOL DISTRICT CHARACTERISTICS AND ENROLLMENT

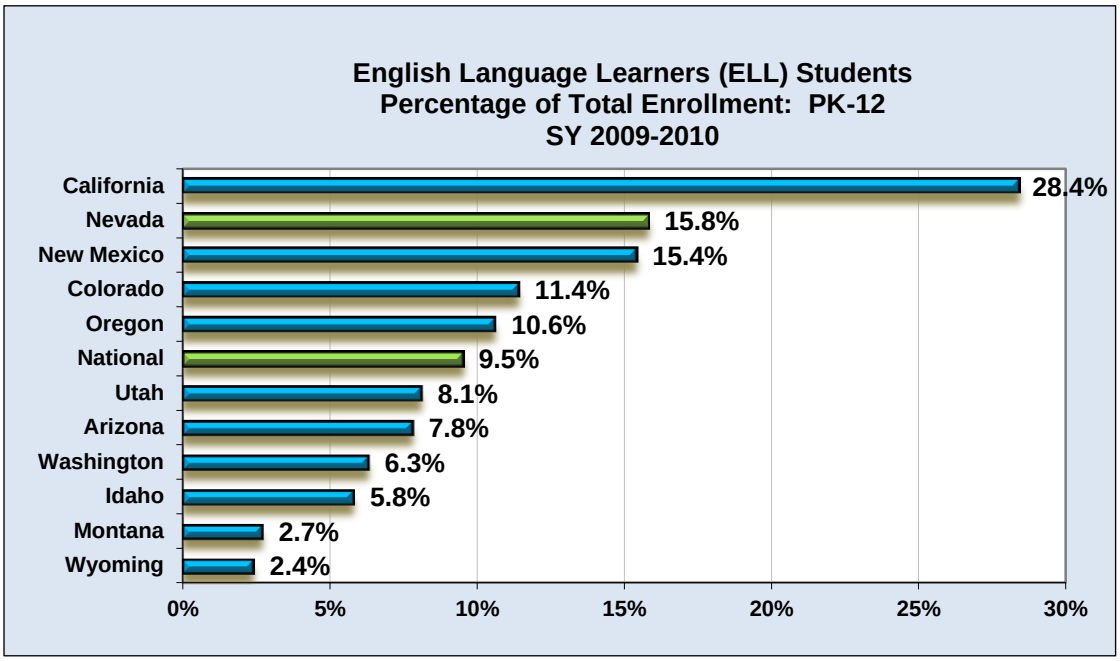
For the past three decades a primary focus of the State and many local governments has been the impact of Nevada's explosive growth. The effect of this growth upon government services has been significant, and the associated increase in student enrollment upon public schools is an important part of that overall picture. According to the National Center for Education Statistics (NCES) within the United States Department of Education, from 2000 to 2006, Nevada's PK through 12 enrollment in public schools grew by 24.5 percent, leading the nation. The NCES has issued projections that show Nevada second only to Arizona in the nation in enrollment growth, with a projected percent increase of approximately 40 percent from 2006 through 2018.

Although past enrollment growth has had a profound impact upon both district staffing and infrastructure in Nevada, especially in Clark County, review of more recent enrollment growth percentages shows enrollment growth leveling off. Throughout the 1990s until School Year (SY) 2001-2002, enrollment growth in Nevada averaged 5 percent per year. Beginning with SY 2002-2003, enrollment growth began to level off, with 4 percent growth in SY 2002-2003 declining to 0 percent through SY 2010-2011.



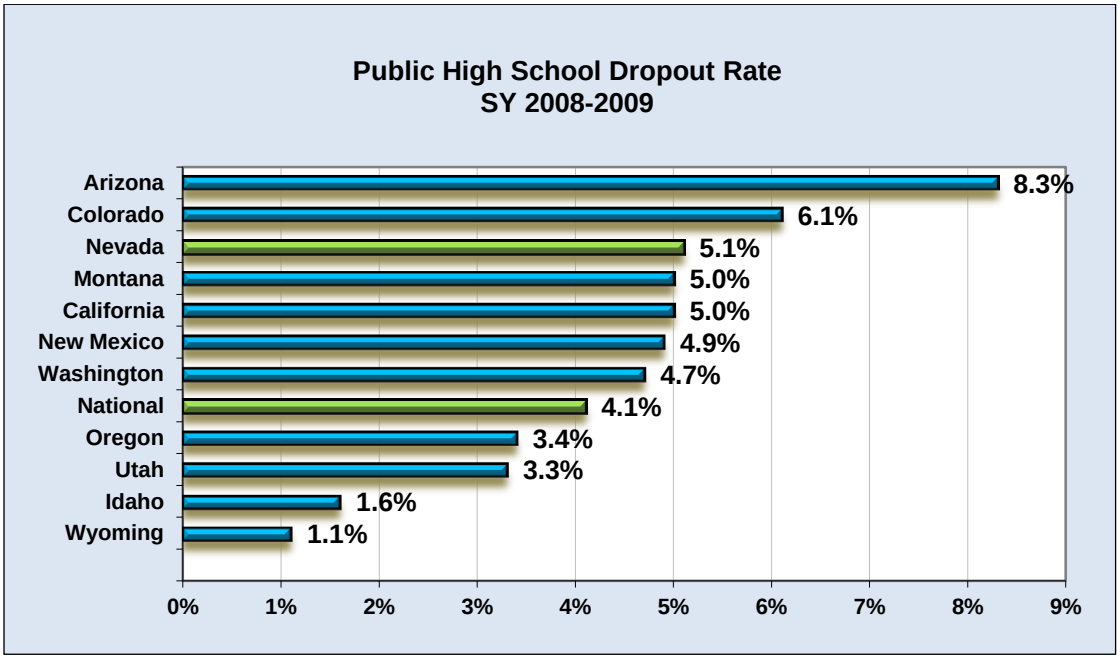
Source: DOE, Research Bulletin, Volume 52, February 2011.

Part of Nevada's large enrollment growth has involved an increase in ethnic minority student populations.



Source: Education State Rankings 2011-2012, CQ Press, 2012.

There are several areas of concern with regard to Nevada's student population. According to the NCES, for SY 2008-2009, Nevada had the lowest graduation rate in the U.S. at 56.3 percent. The State's annual dropout rate for SY 2008-2009 was 5.1 percent, which is one of the highest dropout rates in the country.



Source: Education State Rankings 2011-2012, CQ Press, 2012.

FINANCING

The *Nevada Plan* is the means used to finance elementary and secondary education in the State's public schools. This document may be accessed in the Research Library of the Legislative Counsel Bureau (LCB) or at the following website: http://leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan_2011_JW.pdf. Through the *Nevada Plan*, the State develops a guaranteed amount of funding for each of the local school districts, and the revenue, which provides the guaranteed funding, is derived from both State and local sources. On average, this guaranteed funding contributes approximately 75 percent to 80 percent of school districts' general fund resources. The *Nevada Plan* funding for the districts consists of State support received through the Distributive School Account[1] (DSA) and locally collected revenues from the 2.25[2] percent Local School Support Tax (LSST) (sales tax) and 25 cents of the Ad Valorem Tax (property tax).

To determine the level of guaranteed funding for each district, a Basic Per-Pupil Support Rate is established. The rate is determined by a formula that considers the demographic characteristics of the school districts. In addition, transportation costs are included using 85 percent of the actual historical costs adjusted for inflation according to the Consumer Price Index. A Wealth Adjustment, based on a district's ability to generate revenues in addition to the guaranteed funding, is also included in the formula.

Each district then applies its Basic Per-Pupil Support Rate to the number of students enrolled. The official count for apportionment purposes is taken in each district on the last day of the first school month. The number of kindergarten children and disabled 3- and 4-year-olds is multiplied by 0.6 percent and added to the total number of all other enrolled children, creating the Weighted Enrollment. Each district's Basic Per-Pupil Support Rate is multiplied by its Weighted Enrollment to determine the guaranteed level of funding, called the Total Basic Support.

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

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

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[1] The DSA is financed by legislative appropriations from the State General Fund and other revenues, including a 2.25-cent tax on out-of-state sales, an annual slot machine tax, mineral land lease income, and interest from investments of the State Permanent School Fund.

[2] The 2009 Legislature, through the passage of Senate Bill 429 (Chapter 395, *Statutes of Nevada*), temporarily increased the LSST from 2.25 percent to 2.60 percent for the 2009-2011 Biennium. The 2011 Legislature, through the passage of Assembly Bill 561 (Chapter 476, *Statutes of Nevada*), extended the temporary increase to the LSST through the 2011-2013 Biennium.

Special Education is funded on a "unit" basis, with the amount per unit established by the Legislature. These units provide funding for licensed personnel who carry out a program of instruction in accordance with minimum standards prescribed by the State Board of Education. Special education unit funding is provided in addition to the Basic Per-Pupil Support Rate.

The difference between total guaranteed support and local resources is State aid, which is funded by the DSA. Revenue received by the school district from the 2.25 percent LSST (2.60 percent for the 2011-2013 Biennium) and 25 cents of the property tax is deducted from the school district's Total Basic Support Guarantee to determine the amount of State aid the district will receive. If local revenues from these two sources are less than anticipated, State aid is increased to cover the total guaranteed support. If these two local revenues come in higher than expected, State aid is reduced.

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

In addition to revenues recognized by the *Nevada Plan*, school districts receive "categorical" funds from the federal government, State, and private organizations that may only be expended for designated purposes. Examples include the State-funded Class-Size Reduction program, Early Childhood Education, remediation programs, and student counseling services. Federally funded programs include the Title I program for disadvantaged youngsters, the No Child Left Behind Act, the Race to the Top Program, the National School Lunch program, and the Individuals with Disabilities Education Act. Categorical funds must be accounted for separately in special revenue funds. Funding for capital projects, which may come from the sale of general obligation bonds, "pay-as-you-go" tax levies, or fees imposed on the construction of new residential units are also accounted for in separate funds (the Capital Projects Fund and Debt Service Fund).[3]

GOVERNANCE AND OVERSIGHT

State Board of Education and the State Superintendent

Assembly Concurrent Resolution No. 2 (File No. 89, *Statutes of Nevada*), as approved by the 2009 Legislature, directed the Legislative Commission to conduct an interim study concerning the governance and oversight of the system of K through 12 public education in Nevada. In response to this legislation, the Legislative Commission appointed three members of the Senate and three members of the Assembly to form a Committee and carry out the study. Based upon the findings of the interim study, the Committee recommended actions necessary for the efficient and effective operation of the statewide system to ensure the steady progression of Nevada's public schools and the achievement of

[3] **Source:** Fiscal Analysis Division, LCB, 2012.

Nevada's pupils. A report of the results of the study and recommendations for legislation was submitted to the 76th Session of the Nevada Legislature (2011). The report may be accessed in the Research Library of the LCB or on the Research Division's website at: http://leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-03.pdf. Recommendations of the Committee were subsequently incorporated into S.B. 197 (Chapter 380, *Statutes of Nevada*) for consideration by the 2011 Legislature.

Senate Bill 197, as approved by the 2011 Legislature, made numerous changes affecting the structure and governance of Nevada's system of public elementary and secondary education. These include revising the selection process for members of the State Board of Education to consist of voting members elected by the voters in each of the State's four congressional districts and three members appointed by the Governor. In addition to the voting members, the Board will include four nonvoting members appointed by the Governor after being nominated by various entities specified in the bill. Prior to the approval of S.B. 197, the State Board of Education consisted of ten members chosen statewide in nonpartisan elections.

The measure also changed the selection process of the Superintendent of Public Instruction to require the Governor to appoint the State Superintendent from a list submitted by the State Board of Education. Prior to the passage of S.B. 197, the State Superintendent was appointed by the State Board of Education. The measure further revised the current vision and mission statements of the Board, and it provided the Superintendent with the authority to enforce the K through 12 education laws in Nevada and for ensuring the duties and responsibilities of various councils and commissions are carried out.

School Districts

Under the authority granted to it by the *Nevada Constitution*, the Legislature established a system of school districts to provide for a mechanism of local control. The Nevada Legislature, in a Special Session held in 1956, made extensive changes to the structure of Nevada's public school system. Among other changes, the Legislature eliminated the 208 legally active local school districts that had existed in Nevada and replaced them with just 17 districts, each of which is coterminous with county boundaries.

Under current law, boards of trustees are composed of either five or seven members; districts with more than 1,000 pupils have seven-member boards. Members serve four years and vacancies are filled by the remaining trustees at a public meeting with the appointee serving until the next general election. Except in certain circumstances, members of Nevada's 17 local school boards are elected "at large" in each school district. Nevada school district boards of trustees carry out a number of policy roles which include: approving curriculum; enforcing courses of study prescribed by statute and administering the State system of public instruction; establishing district policies and procedures; and providing oversight of the school district's funds and budget.

History of the Governance Structure in Nevada

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

GRADUATION STANDARDS

Default Curriculum

Pursuant to NRS 389.018, high school pupils must enroll in four credits of English; four credits of mathematics, including Algebra I and geometry; three credits of science, including two laboratory courses; and three credits of social studies, including American government, American history, and world history or geography. A pupil may request a modified course of study that will satisfy at least the requirements for a standard high school diploma or an adjusted diploma, as applicable.

Diplomas

There are currently four types of high school diplomas granted in Nevada: (1) standard; (2) advanced; (3) adult; and (4) adjusted. A standard diploma is awarded upon successful completion of 22.5 units (15 credits for required courses and 7.5 elective credits) and passage of the High School Proficiency Examination (HSPE). An advanced diploma requires completion of a minimum of 24 credits including all requirements for a standard diploma plus 1 additional credit each of mathematics, science, and social studies. In addition, the advanced diploma requires a minimum 3.25 Grade Point Average (GPA), which includes all credits applicable toward graduation. An adult diploma may be granted to a student who withdrew from high school before graduation, but has completed 20.5 units in a program of adult education or an alternative program for the education of pupils at risk of dropping out of high school, and passed the HSPE. An adjusted diploma may be earned by any disabled student who meets the standards prescribed by the student's Individualized Education Plan.

A "Certificate of Attendance" must be awarded to any student who is 17 years of age or older if the student has satisfied all the requirements for graduation from high school or completion of a program of adult education except that a pupil has not passed one or more of the assessments of the HSPE. The certificate of attendance is not equivalent to nor does it replace or include a standard diploma, advanced diploma, adjusted diploma, or adult standard diploma.

Required Courses for a Standard Diploma 15 credits	
English/Language	4 credits
Mathematics	3 credits
Science	2 credits
Physical Education	2 credits
American History	1 credit
American Government	1 credit
Arts/Humanities or Career and Technical Education	1 credit
Computer Literacy	1/2 credit
Health	1/2 credit

TESTING IN NEVADA PUBLIC SCHOOLS

Following several sessions of discussion, in 1977 the Legislature adopted a mandated student testing program—the Nevada Proficiency Examination—to provide a statewide measure of student accountability that was not previously available. Since 1977, the Legislature has required statewide testing.

Nevada Education Reform Act

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

No Child Left Behind Act of 2001

To comply with the federal No Child Left Behind Act (NCLB), the 2003 Legislature enacted S.B. 1 (Chapter 1, *Statutes of Nevada, 19th Special Session*). The measure modified the NERA to add tests aligned to the State academic standards in reading and mathematics for grades 3 through 8. Further, the 2003 Legislature made substantive revisions to the linkage between these tests and the State accountability system to meet federal requirements for making Adequate Yearly Progress (AYP) and imposing sanctions on schools and school districts that are consistently unsuccessful in meeting their target increases in student progress.

The standards-based CRTs required by NCLB are linked to the school accountability program and are considered "high stakes" for schools and districts. The standards-based CRTs have been expanded to include a science examination at grades 5 and 8.

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

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

Current System of Statewide Examinations for *All Students* (19 Tests) 2011-2012 Testing Schedule										
	3	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Norm-Referenced Test (NRT)[1]—currently Iowa Tests of Basic Skills and Iowa Tests of Educational Development		▲			▲			▲		
National Assessment of Education Progress (NAEP)[2] (sample only)		▲				▲				▲
Writing Exam[3]			▲			▲			▲	▲
High School Proficiency Examination (HSPE)[4] (reading, math, and science)								▲	▲	▲
Nevada Criterion-Referenced Tests (CRTs)[5] (reading, math, and science)	▲	▲	▲	▲	▲	▲				
Current System of Statewide Examinations for *Special Student Populations*										
Nevada Alternate Assessment[6]	▲	▲	▲	▲	▲	▲			▲	
English Language Proficiency Assessment (ELPA)[7]	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲

[1] Due to budget reductions, the NRT has been temporarily suspended since SY 2008-2009.
[2] The NAEP is administered to 9-, 13-, and 17-year-old pupils.
[3] The Writing Examinations in grades 11 and 12 are part of the HSPE. Only those 12th graders who have failed the Writing Examination in grade 11 are required to take the examination.
[4] The Class of 2010 was the first class required to pass the science portion of the HSPE.
[5] In order to prepare students to take the science portion of the HSPE, pupils in grades 5 and 8 are now required to take a science CRT.
[6] Eligible students are only required to participate in the assessment once during high school; participation must occur during the 11th grade school year.
[7] All Limited English Proficient (LEP) students (K through 12) must take the ELPA to determine English proficiency.

EDUCATIONAL PERSONNEL

During SY 2010-2011, Nevada's school districts employed 27,088 licensed personnel; of these, 22,526 (83 percent) were classroom teachers.

Average Teacher Salaries

Teacher pay is often viewed as a major factor in attracting qualified people into the profession. The National Education Association's (NEA) *2010 Rankings and Estimates* reported Nevada's average teacher salary at $53,023 for SY 2010-2011; the national average was reported at $56,069. According to the NEA report, Nevada received a ranking of 21 concerning average salaries of public school teachers for SY 2009-2010. Please note that the NEA estimates do not include the compensation package that contains the employee portion of retirement contributions, which the local school districts pay for employees.

Collective Bargaining

Although the State budget often includes funding for raises for education personnel, salary increases that are utilized by the Legislature to construct the budget are not necessarily what is passed on to the school district employees. Salaries for teachers are set at the school district level utilizing the collective bargaining process outlined in Chapter 288 ("Relations Between Governments and Public Employees") of NRS. Following the lead of other states, the Nevada Legislature adopted the Local Government Employee-Management Relations Act in 1969 to regulate collective bargaining between local units of government and their employees, including school districts and teachers. The requirements for recognition of an employee organization and definitions of bargaining units are set forth in Chapter 288 of NRS. There is only one recognized employee organization for each bargaining unit. There are 17 organizations representing teachers; one in each school district.

2011-2013 Budget Reductions: Teacher and State Employee Salaries

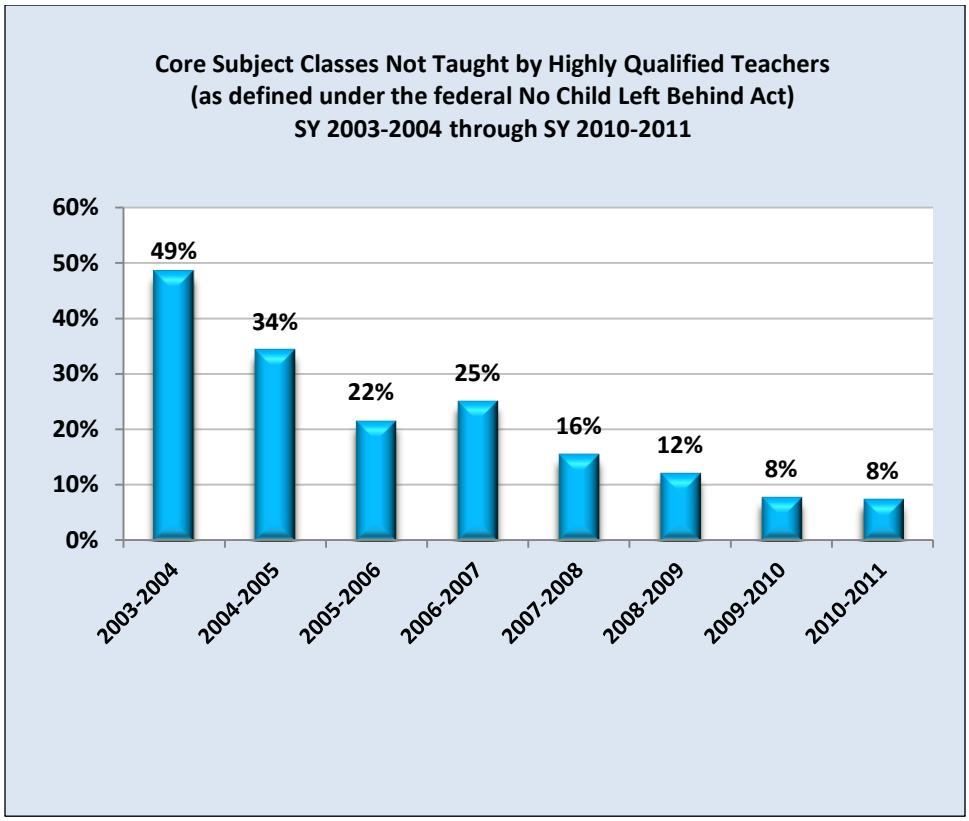
To help meet projected revenue shortfalls, the 2011 Legislature reduced funding for State employee salaries, including those for school employees, 2.5 percent in each fiscal year of the 2011-2013 Biennium. In addition, for the first time, the budget was reduced the equivalent of 5.3 percent of the employee contribution to the Public Employees' Retirement System (PERS) for school employees. Until now, though school employees participate in the employer-paid PERS, funding for salaries has not been reduced for the employee contribution to PERS. In comparison, State employees who elect the employer-paid PERS option receive a salary reduction of 10.615 percent as their contribution to PERS.[4]

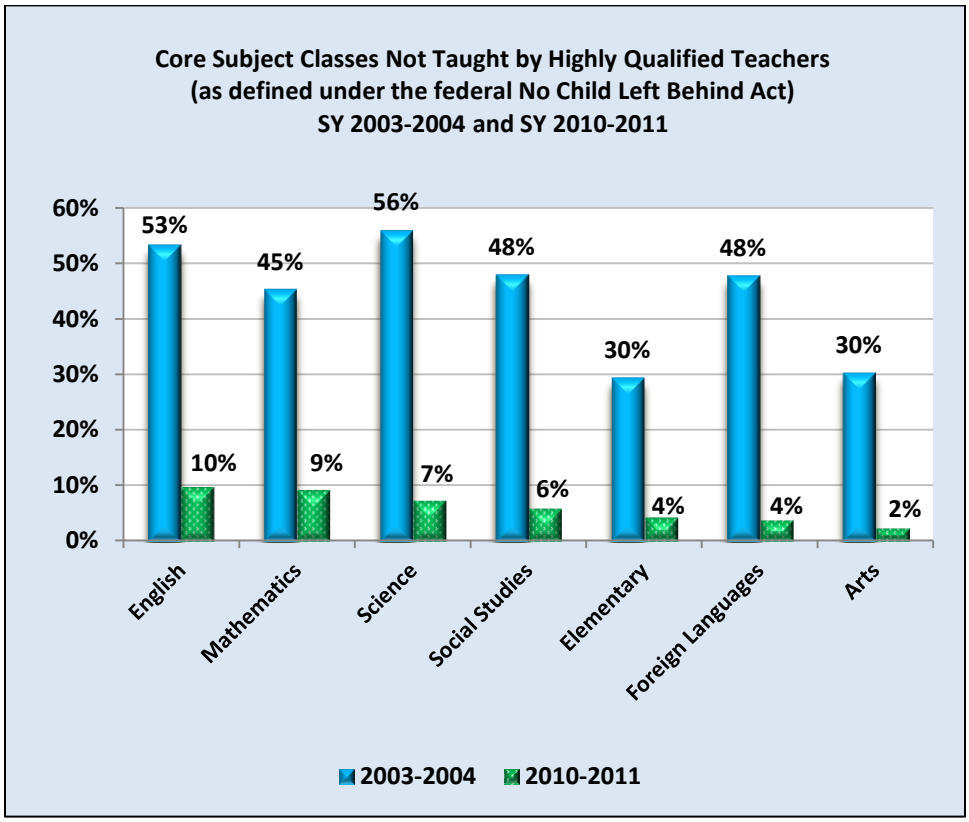
For school employees, the 2011 Legislature authorized the board of trustees of a school district and the governing body of a charter school to request a waiver of up to five noninstructional days during an economic hardship. The purpose of the waiver must be to avoid layoffs of teachers and other educational personnel. The school employees who are subject to furlough must be held harmless in the accumulation of retirement service credit and reported salary. For all other State employees, six-day furloughs were approved by the 2011 Legislature in each fiscal year of the biennium; this results in a reduction in pay of approximately 4.8 percent each year. In addition, the 2011 Legislature continued the temporary suspension of longevity pay and merit pay increases for all other State employees.

Highly Qualified Teachers

A key focus of NCLB is the importance of highly qualified teachers. Highly qualified teachers must have: (1) a bachelor's degree; (2) full State certification or licensure; and (3) proof that they know each subject they teach. Under the federal law, all teachers of core academic subjects were to be highly qualified by SY 2005-2006. For SY 2010-2011, approximately 92 percent of teachers in Nevada met the criteria for highly qualified teachers. For elementary schools, 96 percent of teachers met the criteria. For secondary schools, the percent of core subject areas taught by highly qualified teachers ranged from approximately 90 percent in English to 98 percent in Arts.

[4] The actual salaries of teachers continue to be subject to local collective bargaining agreements. Therefore, it is not known if the reduction will result in actual pay decreases for teachers in any of the school districts.


Core Subject Classes Not Taught by Highly Qualified Teachers
(as defined under the federal No Child Left Behind Act)
SY 2003-2004 through SY 2010-2011
60%
50%
40%
30%
20%
10%
0%
49%
34%
22%
25%
16%
12%
8%
8%
2003-2004
2004-2005
2005-2006
2006-2007
2007-2008
2008-2009
2009-2010
2010-2011


Core Subject Classes Not Taught by Highly Qualified Teachers
(as defined under the federal No Child Left Behind Act)
SY 2003-2004 and SY 2010-2011
60%
50%
40%
30%
20%
10%
0%
53%
10%
45%
9%
56%
7%
48%
6%
30%
4%
48%
4%
30%
2%
English
Mathematics
Science
Social Studies
Elementary
Foreign Languages
Arts
2003-2004
2010-2011

CLASS-SIZE REDUCTION PROGRAM

A key reform initiative for nearly two decades is Nevada's program to reduce pupil-to-teacher ratios, commonly known as the Class-Size Reduction (CSR) Program. Following a review of the topic by a 1987-1988 Interim legislative study, the 1989 Legislature enacted the Class-Size Reduction Act (Assembly Bill 964, Chapter 864, *Statutes of Nevada*). The measure was designed to reduce the pupil-to-teacher ratio in public schools, particularly in the earliest grades where the core curriculum is taught. By the end of SY 2012-2013, the Legislature will have approved approximately $2.11 billion for the direct costs of funding the CSR Program, excluding any local capital expenditures or other local costs.

Implementation of the CSR Program in the State of Nevada

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

After achieving the target ratio of 15 pupils to 1 teacher in the primary grades, the original program proposed that the pupil-to-teacher ratio be reduced to 22 pupils per class in grades 4, 5, and 6, followed by a reduction to no more than 25 pupils per class in grades 7 to 12. Until the 2005 Legislative Session, only the primary grades (K through 3) had been addressed.

Flexibility in the Pupil-to-Teacher Ratios

Based upon a pilot program in Elko County, the 2005 Legislature enacted S.B. 460 (Chapter 457, *Statutes of Nevada*), which provided flexibility in implementing pupil-to-teacher ratios in grades 1 through 6 for school districts other than Clark and Washoe. Pupil-to-teacher ratios are limited to not more than 22 to 1 in grades 1 through 3, and not more than 25 to 1 in grades 4 through 6 (NRS 388.720).

In addition to the flexibility provided to certain school districts to implement alternative pupil-to-teacher ratios in grades 1 through 6, the Legislature has authorized all school districts, subject to the approval of the State's Superintendent of Public Instruction, to operate alternative programs for reducing the ratio of pupils per teacher or to implement programs of remedial education that have been found to be effective in improving pupil achievement in grades 1, 2, and 3.

Temporary Revisions to the CSR Program (26th Special Session of the Nevada Legislature)

During the 26th Special Session of the Nevada Legislature, which convened on February 23, 2010, to address the State's ongoing fiscal crisis, the Legislature passed A.B. 4 (Chapter 7, *Statutes of Nevada 2010*) which ***temporarily*** revised provisions governing class-size reduction to allow school districts flexibility in addressing budget shortfalls. The 2011 Legislature, through the passage of

A.B. 579 (Chapter 370, *Statutes of Nevada*) temporarily continues the flexibility criteria through June 30, 2013, as follows:

- For each fiscal year of the 2011-2013 Biennium, school districts are authorized to increase class sizes in grades 1, 2, and 3 by no more than 2 pupils per teacher in each grade, to achieve pupil-to-teacher ratios of up to 18 to 1 in grades 1 and 2 and up to 21 to 1 in grade 3;

- If a school district elects to increase class sizes in this manner, all money that would have otherwise been expended by the school district to achieve the lower class sizes in grades 1 through 3 must be used to minimize the impact of budget reductions on class sizes in grades 4 through 12; and

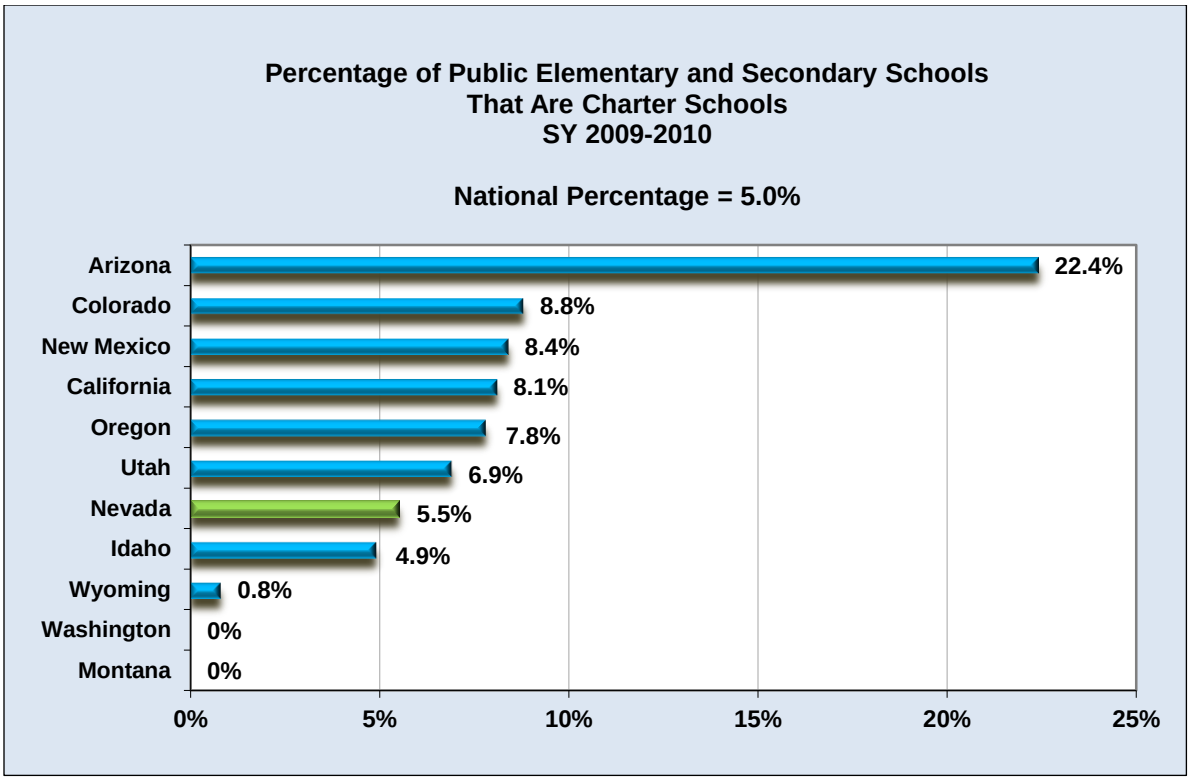
- For reporting purposes, school districts that elect to increase class sizes in grades 1 through 3 will be required to report the pupil-teacher ratios achieved for each grade level from grade 1 through grade 12.

CHARTER SCHOOLS

Charter schools are independent public schools, responsible for their own governance and operation. In exchange for this independence there is increased accountability for their performance. The first charter school legislation in Nevada was enacted in 1997, and Nevada's charter school law was substantially amended in subsequent sessions. While private schools can "convert" to a charter school, homeschools may not.

There are 31 charter schools operating in Nevada for SY 2011-2012. Local school boards sponsor 16 of the charter schools and the State Board of Education sponsors 15 of the charter schools. Seventeen schools are located in the Clark County School District, ten in the Washoe County School District, two in the Carson City School District, one in the Churchill County School District, and one in the Elko County School District.

Nationally, approximately 5 percent of public elementary and secondary schools are charter schools. The State of Nevada is slightly higher than the national average with charter schools encompassing 5.5 percent of the public schools in the State. The State of Arizona continues to have the highest percentage of charter schools with 22.4 percent. There are ten states that have no charter schools: Alabama, Kentucky, Maine, Montana, Nebraska, North Dakota, South Dakota, Vermont, Washington, and West Virginia.



Source: Education State Rankings 2011-2012, CQ Press, 2012.

Sponsors

The 2011 Legislature, through the passage of S.B. 212 (Chapter 381, *Statutes of Nevada*), revised provisions governing the sponsorship of charter schools in Nevada. The legislation created a seven-member State Public Charter School Authority (Authority). In so doing, the measure transferred the ability to sponsor charter schools from the State Board of Education to the Authority, and abolished the State Board of Education's Subcommittee on Charter Schools. Local school boards and the institutions of the Nevada System of Higher Education (NSHE) continue to be endorsed as potential sponsors of charter schools.

Governance

Each charter school is overseen by a governing body, which must include teachers and may include parents, or representatives of nonprofit organizations, businesses, or higher education institutions.

Revenue and Expenditures

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

Sponsors of charter schools are authorized to request reimbursement from the charter schools for the administrative costs associated with sponsorship for that school year, if the sponsor provided administrative services during that school year. The yearly sponsorship fee may not exceed 2 percent of the total amount of money apportioned to the charter school during the school year.

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

ACTIONS OF THE 2011 SESSION

The education function includes three subfunctions: (1) Nevada's Department of Education (grades K through 12); (2) the NSHE; and (3) other educational programs, which include the Department of Tourism and Cultural Affairs, the Western Interstate Commission for Higher Education; and the Commission on Postsecondary Education. Historically, education has been the largest function in the State's budget supported by the State General Fund, and the 2011 Legislature continued this tradition.

Once again, education funding commanded much of the Legislature's attention in 2011, particularly because of the economic downturn affecting State revenues. Although extraordinary efforts were made to reduce the impact of budget cuts on public education, in the end, reductions were necessary. Within the State budget, approximately $3.1 billion in the State General Fund was earmarked for education over the biennium, including $2.2 billion for elementary and secondary schools, and almost $1 billion for higher education.

The 2011 Legislature also addressed a number of important policy issues concerning education, including the structure of public school governance and sponsorship of charter schools. The employment, evaluation, and licensing of educational personnel were also highly debated topics throughout the Session.

Concerns for the budgets of school districts and the higher education institutions led to revisions of employee salaries, retirement and health benefits, collective bargaining agreements, and furloughs. In an effort to assist school districts in working with reduced budgets, increased flexibility was granted in areas such as class-size reduction and professional development.

EDUCATION ISSUES FOR THE 2013 LEGISLATURE

Due to the economic downturn in Nevada, federal and State funding of education will most likely continue to be an issue of high priority for the 2013 Legislature.

One of the most important ongoing statutory committees is the Legislative Committee on Education. During the 2011-2012 Interim, several issues will come before the Committee. For example, the Committee will receive regular updates on progress made in implementation of the new governance structure for education in Nevada. Flexibility under the federal NCLB will also be a focus of the Committee, including the need to better understand the impact of the proposed flexibility on Nevada's schools. Effective teachers and leaders will continue to be a focus of the Committee, including the extent to which a uniform performance evaluation system of teachers and administrators is being developed. Finally, implementation of a Statewide Longitudinal Data System and how that system creates a seamless P-20 system in Nevada will be of significant importance.

FREQUENTLY ASKED QUESTIONS

Q: At what age is compulsory attendance enforced?

A: Any person having under his or her control or charge a child who is between the ages of 7 and 18 years shall send the child to a public school during the time school is in session in the school district of residence (NRS 392.040).

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

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

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

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

Q: Who determines if an absence is excused?

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

School districts may also adopt policies to exempt from the ten-day rule absences due to physical or mental inability to attend school so long as the pupil completes course work requirements for promotion to the next grade. Attendance is also excused if a child has a physical or mental condition that prevents attendance or renders such attendance inadvisable (NRS 392.050).

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

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

ADDITIONAL REFERENCES

The LCB has produced a number of documents related to K through 12 education:

- The 2011 Bulletin of the Legislative Committee on Education may be ordered from LCB's Publications Office (LCB Bulletin No. 11-15, *Legislative Committee on Education, January 2011*). The telephone number for LCB's Publications Office is (775) 684-6835 in Carson City, Nevada. The Bulletin may also be found online at: http://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-15.pdf.

- Data concerning Nevada's public education system, including national and western states comparisons may be found in the *Nevada Education Data Book*, available through LCB's Publications Office, or online at: http://leg.state.nv.us/Division/Research/Publications/EdDataBook/2011/index.cfm.

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

- Research Briefs titled "Career and Technical Education"; "Full-Day Kindergarten"; and "History of Empowerment Schools Program in Nevada"; and an Issue Paper titled "History of Selected Components of Nevada's Public Elementary-Secondary Education Governance Structure" may be found at: http://leg.state.nv.us/Division/Research/Publications/ResearchBriefs/index.cfm.

Finally, Fact Sheets on "Charter Schools"; "Class-Size Reduction"; "Elementary-Secondary Education"; and "The P-16 Advisory Council" may be found at: http://leg.state.nv.us/Division/Research/Publications/Factsheets/index.cfm.

SELECTED WEBSITES FOR EDUCATION

American Association of School Administrators	http://www.aasa.org/
American Federation of Teachers	http://www.aft.org/
Center for Education Reform (Charter Schools)	http://www.edreform.com/
Council of Chief State School Officers	http://www.ccsso.org/
Department of Education, Nevada's	http://www.doe.nv.gov/
Department of Education, United States	http://www.ed.gov/
Education Commission of the States	http://www.ecs.org/
Education Trust, The	http://www.edtrust.org/
Education Week	http://www.edweek.org/
ERIC (Education Resources Information Center) (Online Searching)	http://www.eric.ed.gov/
National Association of State Boards of Education	http://www.nasbe.org/
National Board for Professional Teaching Standards	http://www.nbpts.org/
National Center for Education Statistics	http://nces.ed.gov/
National Education Association	http://www.nea.org/
National School Boards Association	http://www.nsba.org/
Nevada Association of School Administrators	http://www.nvadministrator.org/

Nevada Association of School Boards	http://www.nvasb.org/
Nevada School Districts	http://nde.doe.nv.gov/SD.htm
Nevada State Education Association	http://www.nsea-nv.org/
No Child Left Behind	http://www.ed.gov/nclb/landing.jhtml

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GLOSSARY OF ACRONYMS AND SELECTED TERMS

ACT ..... ACT® Exam
AFT ..... American Federation of Teachers
AP ..... Advanced Placement (Courses)
ARRA ..... American Recovery and Reinvestment Act of 2009 (Also see RTTT)
AYP ..... Adequate Yearly Progress
CBE ..... Council for Basic Education
CCSSO ..... Council of Chief State School Officers
CRT ..... Criterion-Referenced Test
CSN ..... College of Southern Nevada, Las Vegas
CSR ..... Class-Size Reduction
CTE ..... Career and Technical Education
DOE..... Department of Education
DRI..... Desert Research Institute
DSA ..... Distributive School Account
ECE ..... Early Childhood Education
ECS ..... Education Commission of the States
ELL ..... English Language Learners (used interchangeably with ESL and LEP)
ESEA ..... Elementary and Secondary Education Act
ESL ..... English as a Second Language (used interchangeably with ELL and LEP)
ETS ..... Educational Testing Service
FERPA ..... Family Education Rights and Privacy Act
FRL ..... Free and Reduced-Price Lunch
GBC..... Great Basin College, Elko
GATE..... Gifted and Talented Education
GED..... General Education Diploma
GPA..... Grade Point Average
HOUSSE ..... High Objective Uniform State Standard of Evaluation (applied to teachers)
HSPE ..... High School Proficiency Examination
IDEA..... Individuals with Disabilities Education Act (Federal Special Education Law)
IEP ..... Individualized Education Program
iNVest ..... Investing in Nevada's Education, Students, and Teachers
IPEDS ..... Integrated Postsecondary Education Data Systems
ITBS ..... Iowa Test of Basic Skills
LAS ..... Language Assessment Scales
LBEAPE ..... Legislative Bureau of Educational Accountability and Program Evaluation
LCE ..... Legislative Committee on Education
LEA ..... Local Education Agency (i.e., School District)
LEP ..... Limited English Proficient (used interchangeably with ELL and ESL)
LSST ..... Local School Support Tax
NAC ..... *Nevada Administrative Code*
NAEP..... National Assessment of Educational Progress
NASA..... Nevada Association of School Administrators

NASB ..... Nevada Association of School Boards
NASS ..... Nevada Association of School Superintendents
NBPTS ..... National Board for Professional Teaching Standards
NCATE..... National Council for Accreditation of Teacher Education
NCES ..... National Center for Education Statistics
NCHEMS ..... National Center for Higher Education Management Systems
NCLB..... No Child Left Behind Act of 2001
NEA..... National Education Association
NELIP ..... Nevada Early Literacy Intervention Program
NERA..... Nevada Education Reform Act of 1997
NIAA ..... Nevada Interscholastic Activities Association
NRT..... Norm Referenced Test
NSC ..... Nevada State College
NSEA ..... Nevada State Education Association
NSHE..... Nevada System of Higher Education
NWEA..... Northwest Evaluation Association
PSAT ..... PSAT® Exam
PTA ..... Parent Teacher Association
PTO ..... Parent Teacher Organization
RPDP ..... Regional Professional Development Program
RTTT ..... Race to the Top grant program (part of the American Recovery and Reinvestment Act of 2009)
SAGE ..... Student Achievement Gap Elimination
SAIN..... System of Accountability Information for Nevada
SAT ..... SAT® Exam
SBE ..... State Board of Education
SEA ..... State Education Agency (i.e., State Department of Education)
SHEEO ..... State Higher Education Executive Officers
SIOP ..... Sheltered Instruction Observation Protocol
SIP..... School or State Improvement Plan
SLDS..... Statewide Longitudinal Data System
STEM..... Science, Technology, Engineering, and Mathematics
TESL..... Teaching English as a Second Language
TMCC ..... Truckee Meadows Community College, Reno
UNLV ..... University of Nevada, Las Vegas
UNR ..... University of Nevada, Reno
USDE..... United States Department of Education
WICHE..... Western Interstate Commission for Higher Education
WNC..... Western Nevada College, Carson City

Adequate Yearly Progress (AYP)

The Federal No Child Left Behind Act requires schools and districts to measure and report students' annual academic progress toward proficiency in English/language arts and mathematics by 2013-2014. The AYP is the minimum level of progress that schools, districts, and states must achieve each year.

Progress is based on whether the school or district met its Annual Measurable Objectives and demonstrated 95 percent participation on standardized tests, achieved its target on the Academic Performance Index and, for high schools, met target graduation rates.

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

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

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

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

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

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

Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Postsecondary Education

Research Division January 2012

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

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NEVADA SYSTEM OF HIGHER EDUCATION

The NSHE consists of two research universities, one State college, four community colleges, and one research institute (http://system.nevada.edu/). It is governed by the Board of Regents of the University of Nevada, which has stated the following mission:

> The mission of the Nevada System of Higher Education is to provide higher education to the citizens of the state at an excellent level of quality consistent with the state's resources. It accomplishes this mission by acquiring, transmitting, and preserving knowledge throughout the region, nation, and world. The System provides an educated and technically skilled citizenry for public service, economic growth and the general welfare, contributes to an educated and trained workforce for industry and commerce, facilitates the individual quest for personal fulfillment, and engages in research that advances both theory and practice.

Campuses

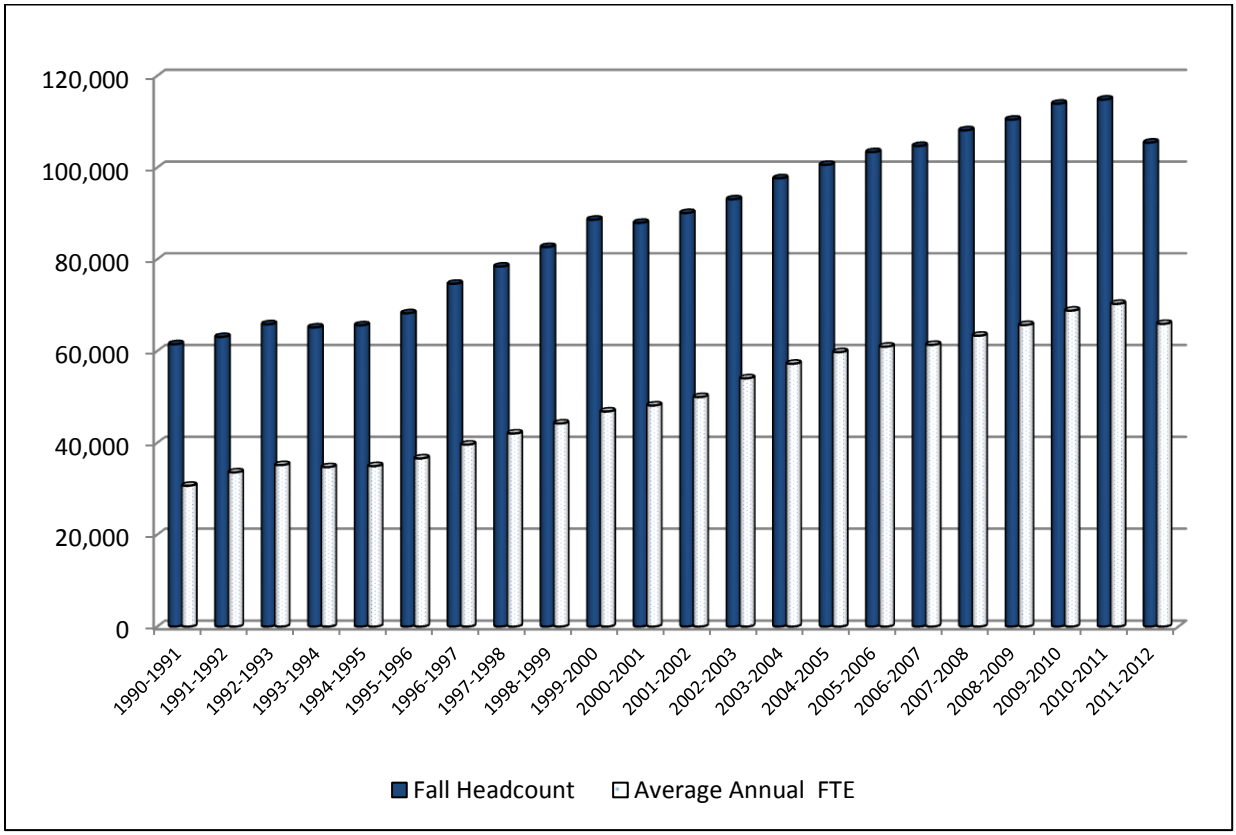
The four-year institutions include the University of Nevada, Reno (UNR), and the University of Nevada, Las Vegas (UNLV). Nevada State College (NSC) in Henderson offers baccalaureate degrees with special emphasis in nursing and teacher education.

The two-year institutions include the College of Southern Nevada with 3 main campuses and 11 academic centers. Truckee Meadows Community College includes the main campus and four satellite sites in Reno. Western Nevada College maintains the main campus in Carson City, two satellite centers, and several rural instructional centers. Great Basin College, Elko, operates four branch campuses and numerous satellite centers. In 2007, the Regents approved requested name changes to reflect their authorization of selected baccalaureate degrees at three of the two-year institutions.

Finally, the Desert Research Institute is the nonprofit research campus of the NSHE, which is overseen by the Chancellor and the Board of Regents.

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

Fall Headcount and FTE Enrollments in NSHE Institutions



The preliminary Fall 2011 headcount enrollment for the NSHE was 105,428 students at all institutions, including all divisions and degree levels. According to the NSHE Office of Academic and Student Affairs, the calculations to determine FTE are based on 15 credit hours for undergraduate students, 12 credit hours for master's level students, and 9 credit hours for doctoral students.

Governance of the NSHE

The NSHE is governed by an elected 13-member Board of Regents. Article 11 of the *Nevada Constitution* provides for the establishment and administration of the Board of Regents of the University of Nevada. Section 4 of Article 11 provides that the State university shall be controlled by a Board of Regents whose duties shall be prescribed by law. Section 5 authorizes the Legislature to establish normal schools (teacher training institutions) and other grades from primary level to university as needed. Section 6 directs the Legislature to appropriate revenues for the support and maintenance of the schools and university. Finally, Section 7 provides that the Board of Regents is to control and manage the affairs and funds of the university under such regulations as may be provided by law.

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

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

The second opinion resulted from a 1979 Board policy, enacting mandatory faculty retirement. Since *Nevada Revised Statutes* (NRS) 281.370 prohibits the discharge of a person because of age, a suit was brought by a university professor. In 1981, the Court modified the *King* ruling somewhat. Legislative Counsel stated:

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

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

- Direct the NSHE, composed of branches and facilities as the Regents deem appropriate;
- Prescribe rules for its own government;

- Employ a Chancellor of the system and establish personnel contract policies;
- Receive and disburse State appropriations to the NSHE;
- Accept property in the name of the NSHE;
- Admit students without discrimination; and
- Determine the courses of study and issue diplomas.

Admission

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

Universities

To qualify for admission to the two universities, an applicant must be a graduate of an accredited or approved high school with a minimum of 13 high school credits in specified subjects and at least an overall 3.0 grade point average (GPA). As an alternative to the required GPA, a student may submit a combined score from the Scholastic Assessment Test (SAT) Critical Reading and SAT Math sections of at least 1040 or an American College Testing, Inc. (ACT) composite score of at least 22. A student may also submit a Nevada Advanced High School Diploma as qualification for admission. Students with a transferable associate degree from a NSHE community college will be admitted into the universities regardless of their GPA at the community college.

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

Nevada State College

Incoming freshmen must have graduated from an accredited high school with a minimum GPA of 2.0 plus a minimum of 12 high school credits in specified subjects. High school students who are at least 15 years of age may be enrolled as nondegree students in a maximum of six undergraduate credits or equivalents per semester. Students who have completed the junior year of high school with at least a 2.0 GPA may be provisionally admitted.

Two-Year Colleges

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

Tuition and Fees

Pursuant to NRS 396.540, tuition at all NSHE institutions is free to legal residents of Nevada; however, registration fees apply. Nonresident students pay tuition in addition to the registration fees that are required of residents. The Board of Regents establishes the tuition and fee rates for all NSHE institutions, and the Legislature concurs in the rates used to establish General Fund Appropriations as part of the NSHE budget.

The following tables provide the registration fees and nonresident tuition rates for 2010-2013.

NSHE Registration Fees Schedule Per Credit			
	2010-2011	**2011-2012***	**2012-2013***
Universities (undergraduate)	$142.75	$177.25	$177.25
Universities (graduate)	$239.50	$251.50	$264.00
NSC (undergraduate)	$103.25	$128.00	$128.00
Community Colleges (upper division)	$103.25	$128.00	$128.00
Community Colleges	$63.00	$78.25	$78.25
*Includes student surcharges.			

Source: Board of Regents, *Procedures & Guidelines Manual*, September 2011.

NSHE Nonresident Tuition Assessed in Addition to Registration Fees Per Year			
	2010-2011	**2011-2012**	**2012-2013**
Full-time*, Universities	$13,290	$13,595	$13,910
Full-time*, NSC	$9,818	$10,045	$10,275
Full-time*, Community Colleges	$6,347	$6,495	$6,645
*Nonresident tuition is assessed on the basis of full-time or part-time enrollment. Full-time nonresident tuition rates are assessed to students enrolled in seven or more credits. Part-time students pay on the basis of a calculation multiplying the registration fees times 110 percent.			

Source: Board of Regents, *Procedures & Guidelines Manual*, September 2011.

The registration fees include surcharges that were put in place for academic year 2011-2012 and for 2012-2013. These ranged from $24.50 per credit hour at the universities to $9 per credit hour at the community colleges.

Articulation

Articulation refers to the process whereby individual higher education institutions agree to accept for transfer the academic credits earned at other higher education institutions. The Board of Regents has established a NSHE Articulation Board to review and to evaluate current articulation policies and formulate additional policies. The Board of Regents has also mandated a website outlining the transfer process and protections given to baccalaureate degree-seeking students. The site includes the rights and responsibilities of a transfer student and the responsibilities of all the NSHE institutions.

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

Financial Aid

All State-supported institutions are accredited by organizations recognized by the United States Department of Education and, therefore, are eligible to participate in federal financial aid programs, which include grants, loans, and work-study. Forty percent of the State's annual revenues from the Tobacco Master Settlement Agreement have been allocated to fund the Governor Guinn Millennium Scholarship, which is overseen by the State Treasurer. In the 26th Special Session, however, the Legislature revised that allocation to permit the money in the Millennium Scholarship Trust Fund to be used for any other purpose authorized by the Legislature.

Statutorily, any qualifying Nevada high school graduate who has resided in this State for a minimum of two years may use the scholarship funds to attend a State institution or a nonprofit accredited institution organized in Nevada. To be eligible, a student must obtain a specified high school GPA and apply for the scholarship within a designated period of years following graduation. A postsecondary student must maintain a certain GPA to retain the scholarship. Nevada does not have a statewide need-based student financial aid program similar to the merit-based Millennium Scholarship, although the institutions allocate State appropriations and revenues from student registration fees according to Board of Regents policies and institutional procedures. In addition, the institutions allocate some of their resources to financial aid in the form of scholarships, grants, employment, and loans.

Financing the NSHE

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

Because of the reduction in available State General Fund revenues, the 2011 Legislature reduced the appropriation over the total of $1.58 billion appropriated for the 2009-2011 Biennium. The final General Fund appropriation was $472.4 million in each year of the 2011-2013 Biennium (not including General Fund appropriations for WICHE), a 15.3 percent decrease from Fiscal Year (FY) 2011's $557.9 million.

The following table displays the summary of appropriations for the NSHE for the 2011-2013 Biennium:

NSHE Appropriations for 2011-2013 Biennium			
	2011-2012	**2012-2013**	**Total**
General Fund[1]	$473,255,848	$473,257,970	$946,513,818
Federal Fund	2,854,072	2,856,142	5,710,214
Other	225,410,514	226,412,942	451,823,456
Total	**$701,520,434**	**$702,527,054**	**$1,404,047,488**

[1]Total General Fund appropriations include funds for the Western Interstate Commission for Higher Education, which was transferred to the NSHE, effective in Fiscal Year 2010.

Source: Fiscal Analysis Division, Legislative Counsel Bureau, *Nevada Legislative Appropriations Report*, 2011.

The existing higher education funding formula for the distribution of State aid to the NSHE was revised following the recommendations of the Committee to Study the Funding of Higher Education (Senate Bill 443, Chapter 505, *Statutes of Nevada 1999*), 1999-2000. The formula is driven by a cost reimbursement model and uses a three-year weighted average methodology. The report of the Committee may be found at: http://www.leg.state.nv.us/Division/Research/Publications/Interim Reports/2001/index.cfm. Due to the continuing economic downturn, funding for the 2011-2013 Biennium was based upon a projection of a "flat" enrollment using FY 2011 preliminary enrollment numbers. In a related action, the NSHE proposed and the Legislature approved a 2011-2012 Interim study of the funding formula for higher education.

As the consultant to the Committee to Evaluate Higher Education Programs (Assembly Bill 203, Chapter 443, *Statutes of Nevada 2003*) in the 2003-2004 Interim, the NCHEMS observed that the formula is not currently linked to the achievement of the goals set forth in the Board of Regents' Master Plan. The NCHEMS also stated that without incentives for performance funding, the formula encourages competition among the institutions, rather than cooperation.

NONPUBLIC INSTITUTIONS

Most postsecondary education in Nevada is provided by state-supported institutions. A number of two-year and four-year nonpublic institutions in Nevada are regionally accredited by organizations recognized by the U.S. Department of Education. Nevada's Commission on Postsecondary Education (http://www.cpe.state.nv.us/) is the sole authority for licensing a proprietary postsecondary educational institution in this State.

Colleges and Universities

Nevada has one accredited, private, nonprofit, four-year degree-granting institution, Sierra Nevada College, which was founded in 1969. Sierra Nevada College is located in Incline Village. Since the college's inception, many academic programs have been integrated with the environment of Lake Tahoe. Another accredited, nonprofit institution, Roseman University of Health Sciences, started in Las Vegas as the Nevada College of Pharmacy, enrolling its first class in 2001. Emphasizing health care professions, the university offers degrees in nursing and business as well as certain other postdoctoral training and continuing education opportunities.

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

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

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

- Anthem Institute;
- Career College of Northern Nevada;
- Everest College;
- International Academy of Design and Technology;
- Kaplan College;
- Le Cordon Bleu College of Culinary Arts; and
- Pima Medical Institute.

Proprietary Schools

Proprietary schools represent another form of postsecondary education. Such schools may be distinguished from other educational entities based largely on their for-profit education and training programs. According to the Commission on Postsecondary Education, many of these for-profit schools provide training in a variety of occupational fields including, but not limited to, bartending, construction, culinary arts, and real estate.

COLLEGE SAVINGS PLANS

Nevada's two college savings plans are codified in Chapter 353B ("College Savings Plans of Nevada") of the NRS.

Nevada Prepaid Tuition Program

In 1997, the Legislature enacted S.B. 271 (Chapter 687, *Statutes of Nevada*), providing for a prepaid tuition program to be administered by the State Treasurer. Family members can choose to pay a lump sum, spread the payment out over five years with 60 equal payments, or pay each month from the time of enrollment until the child is ready to start college. This program is fully transferable to private or public out-of-state colleges and universities and can be transferred to another family member. The purchaser does not have to pay federal tax on any interest or the increased contract value each year. This program qualifies under Section 529 of the Internal Revenue Code. Additional information may be obtained at the website of the State Treasurer at https://nvprepaid.gov/.

Nevada College Savings Program

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

ACTIONS OF THE 2011 LEGISLATIVE SESSION

A major focus during the 2011 Legislative Session concerned funding for higher education. The Legislature approved State General Fund support for the NSHE totaling $945 million, or $203 million more than the $742 million originally recommended in the *Executive Budget*. Also approved were $456.6 million in non-General Fund revenues from authorized sources, including student registration fees, application fees, and federal funds. In addition, the Board of Regents is required to determine and implement the manner in which its professional employees will participate in the State employee furlough requirement for the 2011-2013 Biennium. Senate Bill 374 (Chapter 375, *Statutes of Nevada 2011*) provides for an interim study concerning funding for the NSHE.

A State General Fund appropriation of $10 million also was provided within S.B. 486 (Chapter 447, *Statutes of Nevada 2011*) to continue support for the Millennium Scholarship Program. Assembly Bill 220 (Chapter 44, *Statutes of Nevada 2011*) encourages the Board of Regents to examine and audit the function, strengths, and most efficient use of the facilities, resources, and staff of each institution within the system. Another measure, S.B. 449 (Chapter 397*, Statutes of Nevada 2011*), authorizes the Board of Regents to adjust fees and tuition for different academic programs or majors based upon demand or upon program costs. In addition, the bill requires a biennial report linking degree and certificate programs to the State's economic development goals, completion rates, completion times, and success rate in placing new graduates in targeted industries.

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GLOSSARY OF ACRONYMS

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

ECS—Education Commission of the States

GED—General Educational Development credential

GPA—grade point average

ICR—indirect cost recovery

IPEDS—Integrated Postsecondary Education Data Systems

NCES—National Center for Education Statistics

NCHEMS—National Center for Higher Education Management Systems

NSHE—Nevada System of Higher Education

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

SHEEO—State Higher Education Executive Officers

WICHE—Western Interstate Commission for Higher Education

Supplement to the January 2012
Policy and Program Report
December 2012

GAMING IN NEVADA

"2011 Significant Gaming Legislation"

Internet poker was the subject of A.B. 258 (Chapter 302, *Statutes of Nevada*), which declared that the State of Nevada leads the U.S. in gaming enforcement and regulation, is uniquely positioned to regulate interactive gaming, and must be prepared for possible federal legislation. The measure required the Nevada Gaming Commission to adopt regulations governing the licensing and operation of interactive gaming, including Internet poker, by January 31, 2012. (Nevada Gaming Commission Regulation 5A was adopted on December 22, 2011, to fulfill this requirement.) However, any license to operate interstate interactive gaming does not become effective until the U.S. Congress enacts a federal law authorizing it, or the U.S. Department of Justice notifies the Commission that it is permissible.

The Nevada Gaming Commission issued the first two interactive gaming licenses on June 21, 2012, and—as of October 2012—had issued 12 licenses, with a number of applications still pending. After completing tests and receiving final clearance from the Gaming Control Board, operators may begin to offer player-to-player poker over the Internet to individuals located within the State of Nevada starting in early 2013. Players must register with the operator and must be at least 21 years old.

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POLICY AND PROGRAM REPORT

Gaming in Nevada

Research Division

January 2012

The Legislature has declared that "the gaming industry is vitally important to the economy of the State and the general welfare of the inhabitants." Nevada has developed a comprehensive system designed to regulate many of the aspects of gaming, including the taxation of gaming establishments. *Nevada Revised Statutes* (NRS) 463.0129 sets forth the State's policy concerning gaming. The statute stresses strict regulation of the gaming industry by means of licensing, controlling, and assisting activities related to gaming.

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HISTORY OF GAMING IN NEVADA

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

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

Gaming has also been controversial to one degree or another. In 1861, the Territorial Legislature prohibited all forms of gaming and provided criminal penalties. Conducting a gambling game was a felony punishable by a fine of not more than $5,000 and up to two years imprisonment. Betting was punishable by a fine of not more than $500 and up to six months imprisonment. The law was generally ignored and various forms of gaming, particularly faro, poker, and roulette, were widely and openly played.

The Initial Legalization of Gaming

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

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

The Prohibition of Gaming

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

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

The Relegalization of Gaming

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

The supporters of Assembly Bill 98 (Chapter 99, *Statutes of Nevada 1931*) were victorious as it was passed by the Legislature (Senate vote: 13 to 3; Assembly vote: 24 to 1) and signed by Governor Fred B. Balzar on March 19, 1931. Nevada would never be the same.

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

The Modern Regulation of Gaming

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

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

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

THE REGULATION OF GAMING IN NEVADA

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

The Role of NRS

To effectuate this State's policy on gaming under NRS 463.0129, the Legislature has adopted various laws that strictly control gaming. Chapter 463 of NRS, referred to as the "Nevada Gaming Control Act," is the principal authority in gaming regulation. The Act addresses ownership, operation, licensing, financing, financial practices, penalties, fees, and taxes of gaming establishments. Supplementing this central program, Chapter 462 addresses "Lotteries"; Chapter 463A, "Gaming Employees' Labor Organizations"; Chapter 463B, "Supervision of Certain Gaming Establishments"; Chapter 464, "Pari-Mutuel Wagering"; Chapter 465, "Crimes and Liabilities Concerning Gaming"; Chapter 466, "Horse Racing"; and Chapter 467, "Unarmed Combat" (boxing).

In order to implement these laws, various agencies have been created and authorized to adopt regulations to further the laws that generally regulate the gaming industry.

State Gaming Agencies

The principal State agencies concerned with gaming control are the Nevada Gaming Commission (Commission) and the State Gaming Control Board (Board). The three primary responsibilities of these agencies are to assure that: (1) gaming is conducted honestly; (2) the industry is free from organized crime and corruption; and (3) the State receives its full entitlement of gaming tax revenues.

In addition to these agencies, a Gaming Policy Committee was created to discuss matters of gaming policy and make recommendations to the Commission and Board.

State Gaming Control Board

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

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

Nevada Gaming Commission

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

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

Gaming Policy Committee

Created in 1961, Nevada's Gaming Policy Committee is an administrative body consisting of government, public, and industry representatives who are charged with the responsibility of recommending gaming policy. The committee consists of 11 members: the Governor (chair), a Commission member, a Board member, a member of the Senate, a member of the Assembly,

two members of the general public, two representatives of nonrestricted gaming licensees, one representative of restricted gaming licensees, and one enrolled member of a Nevada Indian tribe appointed by the Inter-Tribal Council of Nevada, Inc. In general, only the Governor may call meetings of the Gaming Policy Committee. After discussing matters of gaming policy, the Committee may make recommendations. These recommendations are advisory only and are not required to be implemented by the Board or Commission. In 1997, the Gaming Policy Committee received the statutory responsibility to hear appeals of decisions by local governing bodies to grant or deny a petition to designate certain locations as gaming enterprise districts.

Although inactive in recent years, Governor Brian Sandoval revived the Gaming Policy Committee in late 2011, with the appointment of new members and an expressed intent to explore mobile gaming, Internet gaming, and other forms of new gaming technology.

GAMING LICENSES

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

1. A State gaming license for, or an operation consisting of, 16 or more slot machines;

2. A license for, or operation of, any number of slot machines together with any other game, gaming device, race book, or sports pool at one establishment;

3. A license for, or the operation of, a slot machine route;

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

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

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

Gaming Employee Registration

The State Gaming Control Board also administers the statewide Gaming Employee Registration Program. In Nevada, a person cannot be employed as a gaming employee unless the person has registered as a gaming employee. Applications for registration are filed through the licensee for whom the applicant will start working, unless otherwise filed with the Board as prescribed by regulation (see NRS 463.335 for additional information).

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

TAXES AND REVENUE

Gaming taxes and sales tax are the State's two largest revenue sources. In the 2011-2013 Biennium, State gaming taxes are forecast to comprise 27 percent of the State's General Fund revenue ($1.4 billion).

The largest source of gaming revenue is the monthly percentage fee based on gross gaming revenue from nonrestricted licensees. The rate of the fee is 3.5 percent for the first $50,000 during the month, plus 4.5 percent of the next $84,000, plus 6.75 percent of revenue exceeding $134,000 (NRS 463.370). In Fiscal Year (FY) 2009-2010 alone, this fee generated $630 million in revenue, which was down 3.8 percent over the previous fiscal year. Other sources of gaming revenue include license fees, quarterly fees on games, slot fees, and gaming penalties.

Gaming/Live Entertainment Tax

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

In FY 2009-2010, this tax brought in approximately $120 million, including $108 million from the gaming portion of the tax and $11.5 million from the nongaming portion. Compared to the previous fiscal year, the gaming portion was down 3.7 percent while the nongaming portion was up 25 percent.

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

2011 SIGNIFICANT GAMING LEGISLATION

Each session, the Legislature considers numerous proposals involving the regulation of the gaming industry. In 2011, technological advancements in gaming were the subject of several enacted bills.

Internet poker was the subject of A.B. 258 (Chapter 302, *Statutes of Nevada*), which declared that the State of Nevada leads the U.S. in gaming enforcement and regulation, is uniquely positioned to regulate interactive gaming, and must be prepared for possible federal legislation. The measure required the Nevada Gaming Commission to adopt regulations governing the licensing and operation of interactive gaming, including Internet poker, by January 31, 2012. (Nevada Gaming Commission Regulation 5A was adopted on December 22, 2011, to fulfill this requirement.) However, any license to operate interstate interactive gaming does not become effective until the U.S. Congress enacts a federal law authorizing it, or the U.S. Department of Justice notifies the Commission that it is permissible.

Another measure, A.B. 294 (Chapter 296, *Statutes of Nevada*), allowed the use of handheld mobile gaming devices anywhere within a nonrestricted gaming establishment that has at least 200 slot machines. Previously, mobile gaming had been restricted to public areas of those casinos. This bill also allowed the computer systems that operate mobile gaming systems to be located outside the gaming establishment, provided they are located in the State of Nevada.

Senate Bill 218 (Chapter 49, *Statutes of Nevada*) authorized the registration of off-site "hosting centers" housing computers, switches, and other technology involved in gaming systems. The bill also called for licensing of service providers who assist nonrestricted licensees with cash access, computer hardware, interactive gaming, software, and wagering instruments.

Finally, A.B. 219 (Chapter 457, *Statutes of Nevada*) pertained to cashless "ticket-in-ticket-out" slot machines that have become a standard in how Nevada patrons play. It has become apparent that some customers do not cash out their slot machine winnings, particularly for small sums. This bill provided that a nonrestricted gaming licensee is not required to pay on unclaimed slot machine vouchers after the printed expiration date or 180 days, whichever is earlier. The licensee must report all expired vouchers to the Commission quarterly, and remit payment equal to 75 percent of their value. The Commission must then transfer the money to the State Treasurer for credit to the State General Fund.

ADDITIONAL INFORMATION

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

Nevada Gaming Commission	State Gaming Control Board
Peter C. Bernhard (Chair) Tony Alamo, M.D. Joseph W. Brown John T. Moran Jr. Randolph J. Townsend	Mark A. Lipparelli (Chair) A. G. Burnett Shawn R. Reid
Office Address: 1919 College Parkway Carson City, Nevada 89706-7941 ***Mailing Address:*** P.O. Box 8003 Carson City, Nevada 89702-8003 Telephone: (775) 684-7750 (Commission) Telephone: (775) 684-7700 (Board) Website: http://gaming.nv.gov/ (Includes links to other state, federal, and international bodies involved in the regulation of gaming.)	

Gaming Associations

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

American Gaming Association 1299 Pennsylvania Avenue, N.W. Suite 1175 Washington, D.C. 20004 Telephone: (202) 552-2675 Website: http://www.americangaming.org/	**Nevada Resort Association** P.O. Box 81526 Las Vegas, Nevada 89180-1526 Telephone: (702) 735-4888 Fax: (702) 735-4620 Website: http://www.nevadaresorts.org/

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GLOSSARY OF GAMING TERMS

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

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

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

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

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

Candidate
Any person who the Board believes should be placed on the list of persons who are to be excluded or ejected from licensed gaming establishments. (Reg. 28.020[1] and [3])

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

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

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

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

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

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

Drop
1. For table games, the total amount of money, guaranteed drafts, chips, tokens, and wagering vouchers contained in the drop boxes and any electronic money transfers made to the game through the use of a cashless wagering system.

2. For slot machines, the total amount of money, tokens, and wagering vouchers contained in the drop box, and any electronic money transfers made to the slot machine through the use of a cashless wagering system. (Reg. 1.095)

Drop box
1. For table games, a locked container permanently marked with the game, shift, and a number corresponding to a permanent number on the table.

2. For slot machines, a container in a locked portion of the machine or its cabinet used to collect the money and tokens retained by the machine that is not used to make automatic payouts from the machine. (Reg. 1.100)

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

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

Excluded person
Any person who has been placed upon the list of persons who are to be excluded or ejected from licensed gaming establishments by the Board and who has failed to timely request a hearing as provided in NRS 463.153, or who remains on the list after a final determination by the Commission. (NRS 463.151) (Reg. 28.020[2] and [3]) (See "Black book.")

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

Gaming device
Any object used remotely or directly in connection with gaming or any game which affects the result of a wager by determining win or loss and which does not otherwise constitute associated equipment. (NRS 463.0155)

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

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

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

Independent agent
Any person who:

1. Approves or grants the extension of gaming credit on behalf of a State gaming licensee or collects a debt evidenced by a credit instrument; or

2. Contracts with a State gaming licensee or its affiliate to provide services outside of Nevada consisting of arranging complimentary transportation, food, lodging or other services, or any combination thereof, whose combined retail price per person exceeds $1,000 in any seven-day period for guests at a licensed gaming establishment. (NRS 463.0164[1])

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

1. Line, point spread, or odds;

2. Information, advice, or consultation considered by a licensee in establishing or setting any line, point spread, or odds; or

3. Advice, estimate, or prediction regarding the outcome of an event. (NRS 463.01642)

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

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

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

Nonrestricted license or nonrestricted operation
1. A State gaming license for, or an operation consisting of, 16 or more slot machines;

2. A license for, or operation of, any number of slot machines together with any other game, gaming device, race book, or sports pool at one establishment;

3. A license for, or the operation of, a slot machine route;

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

5. A license for, or the operation of, a mobile gaming system. (NRS 463.0177)

Off-track pari-mutuel system
A computerized system, or component of such a system, that is used with regard to a pari-mutuel pool to transmit information such as amounts wagered, odds, and payoffs on races. (NRS 464.005[2])

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

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

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

Operator of a system
A person engaged in providing an off-track pari-mutuel system. (NRS 464.005[4])

Pari-mutuel system of wagering
Any system whereby wagers with respect to the outcome of a race or sporting event are placed in a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against that person. The term includes off-track pari-mutuel wagering. (NRS 464.005[5]) (See next entry.)

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

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

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

Progressive payoff schedule
A game or machine payoff schedule, including those associated with contests, tournaments or promotions, that increases automatically over time or as the game(s) or machine(s) are played. (Reg. 5.110[1])

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

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

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

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

Registered as a gaming employee
Authorized to be employed as a gaming employee in this State. (NRS 463.01858)

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

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

1. More than 200 rooms (1,000 for purposes of Chapter 466 of NRS) available for sleeping accommodations;

2. At least one bar with permanent seating capacity for more than 30 patrons that serves alcoholic beverages sold by the drink for consumption on the premises;

3. At least one restaurant with permanent seating capacity for more than 60 patrons that is open to the public 24 hours each day and 7 days each week; and

4. A gaming area within the building or group of buildings. (NRS 463.01865)

Restricted license or restricted operation
A State gaming license for, or an operation consisting of, not more than 15 slot machines and no other game or gaming device at an establishment in which the operation of slot machines is incidental to the primary business of the establishment. (NRS 463.0189)

Slot machine
Any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator in playing a gambling game which is presented for play by the machine or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or any thing of value, whether the payoff is made automatically from the machine or in any other manner. (NRS 463.0191)

Sports pool
The business of accepting wagers on sporting events by any system or method of wagering. (NRS 463.0193)

Temporarily registered as a gaming employee
Authorized to be employed as a gaming employee in this State from the date of submitting a complete application for registration or renewal of registration for a period not to exceed 120 days following receipt of the complete application by the Board, including classifiable fingerprints, unless otherwise suspended. (NRS 463.01955)

Tilt condition
A programmed error state for a gaming device. A tilt condition has occurred when the device detects an internal error, malfunction, or attempted cheating, and it disallows further play until the error is resolved. (Technical Standard 1.010[29])

Token
A metal representative of value issued by a licensee for use in slot machines or for use in slot machines and at table games or counter games at the licensee's gaming establishment. (Reg. 12.010[3])

Tournament
A series of contests. (NRS 463.0196)

User
An operator of a race book, sports pool, or gambling game who is licensed in this State and receives and displays a live broadcast within this State and uses information contained in the broadcast to determine winners of, or payoffs on, wagers he or she accepts. (NRS 463.4218)

Wager
A sum of money or representative of value that is risked on an occurrence for which the outcome is uncertain. (NRS 463.01962)

Wagering credit
A representative of value, other than a chip, token or wagering instrument, that is used for wagering at a game or gaming device and is obtained by the payment of cash or a cash equivalent, the use of a wagering instrument or the electronic transfer of money. (NRS 463.01963)

Wagering instrument
A representative of value, other than a chip or token, that is issued by a licensee and approved by the Board for use in a cashless wagering system. (NRS 463.01967)

Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Elections

Research Division January 2012

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

> Inside the polling booth, every American man and woman stands as the equal of every other American man and woman. There they have no superiors. There they have no masters save their own minds and consciences.

Nevada typically enjoys trouble-free elections, which indicates that the State's election system functions well. However, such a system is neither simple to create nor easy to maintain. It is vitally important that Nevada keep pace as new technologies become available and our State's demographics continue to change, if we are to ensure that our citizens continue to enjoy an accessible, transparent, and fair election system.

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VOTER ELIGIBILITY, REGISTRATION, AND TURNOUT

Qualified Electors and Applications to Register to Vote

Qualifications to register to vote and cast a ballot are set forth in the *Nevada Constitution* and in the *Nevada Revised Statutes* (NRS). Specifically, Article 2, Section 1 of the *Nevada Constitution* sets forth the "right of suffrage" by declaring:

> All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; provided, that no person who has been or may be convicted of treason

> or felony in any state or territory of the United States, unless restored to civil rights, and no person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector.

Several provisions in the NRS discuss the question of residency—when it is gained or lost—and how qualified electors residing outside of Nevada (such as military personnel) may register to vote. Nevada law also requires the Secretary of State to prescribe a standard voter registration form, and sets forth the contents of the application to register to vote. After the form is received and processed by the county election office, the county election officer provides a voter registration card to the applicant.

Nevada law provides that county election officers must make mail-in voter registration applications available at various public places in their respective counties. Similarly, *Nevada Administrative Code* 293.425 requires county clerks and voter registrars to make voter registration applications available to individual candidates, political parties, civic groups, and groups organized for or against questions on a ballot. Groups requesting more than 50 applications must complete a request form setting forth how the applications will be distributed. On this form, the county clerk records "control numbers" from the voter registration applications. While some rural Nevada counties use this control number as the voter's identification number with the county (to identify the voter in the poll book during an election), most counties only use the control numbers to track which applications are distributed to voter registration groups.

To ensure that new voter registration applications are processed properly, Nevada law requires that the following notice be placed on applications to register to vote by mail:

NOTICE: You are urged to return your application to register to vote to the County Clerk in person or by mail. If you choose to give your completed application to another person to return to the County Clerk on your behalf, and the person fails to deliver the application to the County Clerk, you will not be registered to vote. Please retain the duplicate copy or receipt from your application to register to vote.

This language was added to the law in 2001 to remind voters of the risks involved with relying on another person to return their voter registration application. Other voter registration changes passed by the Legislature in recent years include the following:

- In 2005, the Legislature passed Assembly Bill 455 (Chapter 376, *Statutes of Nevada*) to require that a receipt be included on all voter registration applications. Anyone who assists a voter in completing an application and then retains the application for later submission to the county election office must record his or her name on the duplicate copy retained by the voter (NRS 293.505).

- To help ensure that those who register by mail do so in time to be able to vote, the 2009 Legislature passed Senate Bill 162 (Chapter 295, *Statutes of Nevada*), which provides that an applicant shall be deemed to be registered either on the date the application is postmarked or on the date received by the county clerk, whichever is earlier (NRS 293.5235).

- In 2011, the Legislature approved Assembly Bill 82 (Chapter 365, *Statutes of Nevada*), relevant portions of which provide that the Secretary of State will prescribe procedural and system requirements to be used for any system of online voter registration offered by a county clerk (NRS 293.250). A person who registers online must vote in person at the first election after he or she registers and must cast a provisional ballot if acceptable proof of identity is not provided. At present, only Clark County offers online voter registration.

National Voter Registration Act of 1993

Many of Nevada's provisions concerning voter registration were added to the NRS in 1993 and 1995 in response to the National Voter Registration Act (NVRA) of 1993, commonly known as the "Motor Voter Act." The response to the NVRA was widespread, and all states approved legislation in the mid-1990s to comply with the NVRA requirements. The Act provided a set of national voter registration standards designed to improve registration access and established a national mail-in voter registration application. Many of the NVRA requirements were incorporated into two comprehensive election and voter registration measures in Nevada—S.B. 250 (Chapter 523, *Statutes of Nevada*), which was approved by the Governor on July 12, 1993, and A.B. 619 (Chapter 608, *Statutes of Nevada*) of the 1995 Legislative Session. These measures set forth new requirements authorizing voter registration not only at the Department of Motor Vehicles (DMV), but also at "offices that provide public assistance as are designated by the Secretary of State" and at "each office that receives money from the State of Nevada to provide services to persons in this State who are disabled." In 2011, the Legislature added military recruiting offices to the list of approved voter registration agencies (A.B. 82) and also increased penalties concerning voter registration fraud, voter intimidation, and vote tampering.

Legislative Declaration of Voters' Rights
NRS 293.2546

The Legislature hereby declares that each voter has the right:

1. To receive and cast a ballot that: (a) Is written in a format that allows the clear identification of candidates; and (b) Accurately records the voter's preference in the selection of candidates.
2. To have questions concerning voting procedures answered and to have an explanation of the procedures for voting posted in a conspicuous place at the polling place.
3. To vote without being intimidated, threatened or coerced.
4. To vote on election day if the voter is waiting in line at his or her polling place to vote before 7 p.m. and the voter has not already cast a vote in that election.
5. To return a spoiled ballot and is entitled to receive another ballot in its place.
6. To request assistance in voting, if necessary.
7. To a sample ballot which is accurate, informative and delivered in a timely manner.
8. To receive instruction in the use of the equipment for voting during early voting or on election day.
9. To have nondiscriminatory equal access to the elections system, including, without limitation, a voter who is elderly, disabled, a member of a minority group, employed by the military or a citizen who is overseas.
10. To have a uniform, statewide standard for counting and recounting all votes accurately.
11. To have complaints about elections and election contests resolved fairly, accurately and efficiently.

Statewide Voter Registration System

In October 2002, the Help America Vote Act (HAVA) (Public Law 107-252) was passed by the U.S. Congress and signed into law by President George W. Bush. This Act requires states, among other things, to implement statewide voter registration lists. In 2003, the Nevada Legislature codified this requirement in Chapter 293 ("Elections") of NRS. Pursuant to NRS 293.675, the Secretary of State's office is charged with establishing and maintaining this statewide list in consultation with each county and city clerk and voter registrar. The Secretary of State's office and Nevada's county election officials have implemented this statewide system, which serves as a uniform, centralized, and computerized voter registration list.

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

Voter Registration Figures

According to statistics compiled by the Secretary of State's office, total voter registration in Nevada has decreased by approximately 40,000 voters since reaching a high point in 2008. As of December 2011, a total of 1,322,782 people were registered to vote in Nevada. This includes 565,753 Democrats and 464,686 Republicans (a difference of 101,067 voters). In addition, 214,677 people were registered as Nonpartisans, 60,233 as Independent Americans, 8,459 as Libertarians, and 4,086 as Greens. Pursuant to NRS 293.530, registered voters shall be designated as "inactive" in Nevada if those voters do not respond to an address verification card sent by their local clerk or registrar. There are currently 169,540 "inactive" voters in Nevada. Should an inactive voter fail to vote in an election before the polls have closed on the day of the second general election following the mailing of the verification card, his or her voter registration may be cancelled.

Voter Turnout

There was a notable decrease in the number of registered Nevada voters who actually voted at the 2010 General Election as compared to the 2008 General Election. The 2010 voter turnout of 64.64 percent was well below 2008's 80.27 percent. Overall, voter turnout in Nevada at the 2010 General Election ranged from a high of 81.55 percent in Storey County to a low of 58.40 percent in Nye County. If history is a good indicator, 2012 should see an increase in voter registration and turnout given that presidential election years typically generate more voter interest than elections in off years.

GENERAL ELECTION VOTER TURNOUT—1990 THROUGH 2010		
General Election	**Voter Turnout**	**Percent of Registered Voters Who Voted**
1990	325,959	63.1
1992*	513,387	79.0
1994	386,582	61.7
1996*	467,657	60.1
1998	440,042	49.0
2000*	613,360	70.1
2002	512,433	58.9
2004*	831,833	77.5
2006	586,274	59.2
2008*	970,019	80.3
2010	723,515	64.6
*Presidential election year		

Source: Secretary of State's website at: http://nvsos.gov/.

Voting, Absentee Ballots, and Early Voting

Nevada operates under a "closed primary" election system. In a fully closed primary election system, voters must register with a political party in advance of the primary election. Members of political parties can vote only for candidates on their party's ballot and any nonpartisan offices appearing on the primary election ballot. The party's election is closed to members of other political parties. Independent candidates and candidates representing minor political parties only appear on the general election ballot. Nonpartisan offices include city and town officers, county sheriffs, the judiciary, members of boards of trustees for public hospitals, members of the State Board of Education, members of the Board of Regents of the University of Nevada, and school board members.

For over 80 years (with the exception of 1954), primary elections had been held on the first Tuesday of September in each even-numbered year. In 2006 and 2008, primary elections in Nevada were held on the twelfth Tuesday before the general election (NRS 293.175). The 2005 Legislature approved this change because local election officials were finding it increasingly difficult to meet an ever-growing list of important federal and State election deadlines relating to ballot preparation and voting by overseas military personnel.

For these same reasons, and to shorten the primary election season and hopefully increase voter turnout, in 2009 the Legislature voted to move primary elections to the second Tuesday in June. Pertinent filing and reporting deadlines were adjusted accordingly. Statewide and county general elections in Nevada are held on "the first Tuesday after the first Monday of November in each even-numbered year" (NRS 293.12755). Polls for all primary and general elections must open at 7 a.m. and close at 7 p.m.

Most incorporated cities in Nevada hold municipal elections in the spring of each odd-numbered year. The cities of Carlin, Reno, Sparks, and Wells, however, have amended their city charters and ordinances to coincide their elections with the State and county election schedule. Other incorporated

cities have also expressed an interest in amending their charters and ordinances to hold elections on the same schedule as State and county elections. Because recent legislative efforts to shift the city election schedule to the State and county election time frames had been unsuccessful, in 2011 the Legislature approved A.B. 132 (Chapter 218, *Statutes of Nevada*), which allows certain charter cities to move their elections to the statewide cycle by ordinance and to shorten future terms of office as necessary to accomplish the switch. Currently, primary city elections are held "on the first Tuesday after the first Monday in April" (NRS 293C.175), and general elections for cities are held "on the first Tuesday after the first Monday in June" (NRS 293C.140).

ABSENTEE BALLOTS AND ACCOMMODATIONS FOR PEOPLE WHO ARE ELDERLY AND DISABLED

Absentee Ballots Generally

Like other states, Nevada offers voting by absentee ballot. Any registered voter who provides sufficient written notice may request an absentee ballot any time before 5 p.m. on the seventh day preceding any election. Nevada differs from some other states in that it does not require the applicant to provide a reason for requesting an absentee ballot. A Nevada registered voter living overseas may also request an absentee ballot electronically. The county clerk or registrar of voters shall use a fax machine to send an absentee ballot to an overseas registered voter who, in turn, shall mail or fax his or her absentee ballot back to the county election office. Nevada law specifically declares it unlawful for a person to fraudulently request an absentee ballot in the name of another person or to induce or coerce another person to request an absentee ballot in the name of another person.

Absentee Ballots and Special Accommodations for People Who Are Elderly and Disabled

Nevada law makes numerous accommodations for people who are elderly and physically disabled to receive absentee ballots. For example, NRS 293.313 permits a registered voter who is at least 65 years of age or has a physical disability or condition which prevents him or her from going to the polls to request an absentee ballot for the entire election year. Options are also available should a voter fall ill or become disabled and be unable to go to the polls on election day. Specifically, NRS 293.316 provides that:

> 1. Any registered voter who is unable to go to the polls:
>
> (a) Because of an illness or disability resulting in confinement in a hospital, sanatorium, dwelling or nursing home; or
>
> (b) Because the registered voter is suddenly hospitalized, becomes seriously ill or is called away from home after the time has elapsed for requesting an absent ballot as provided in NRS 293.315,
>
> may submit a written request to the county clerk for an absent ballot. The request may be submitted at any time before 5 p.m. on the day of the election.

If the request contains all the required information, the county clerk or voter registrar shall deliver an absent ballot to the registered voter. Such a request must be made, and the ballot delivered, marked, and returned to the county clerk or voter registrar no later than 7 p.m. on election day. Finally, NRS 293.3165 provides that "a registered voter who, because of a physical disability, is unable to

mark or sign a ballot or use a voting device without assistance may submit a written statement . . . requesting that the registered voter receive an absent ballot . . .” for all elections occurring in the following year. The statement must designate the person who will assist the voter in marking and signing the absentee ballot and include a statement from a licensed physician certifying that the voter’s disability renders him or her unable to mark or sign a ballot or use a voting device.

Accommodations at Polling Places for People Who Are Elderly and Disabled

Polling places in Nevada must be completely accessible to people who are elderly and disabled. Nevada law provides that the county clerk or voter registrar must establish at least one polling place for a precinct in any residential development exclusively for seniors, provided that: (1) more than 100 residents of the development are registered to vote; (2) there is a common area which is adequate for a polling place; and (3) the owner of the development consents to establishing a polling place on the property. While separate polling places may be established in senior communities, it should be noted that all polling places “must be accessible to a voter who is elderly or disabled.” Each polling place must have at least one voting booth designated for use by a voter who is elderly or disabled that is designed to allow a voter in a wheelchair to cast his or her ballot. The voting booth must also allow any voter who is elderly or disabled to vote with the same privacy as a voter who is not elderly or disabled.

At each polling place, the county clerk or voter registrar is encouraged to post in a visible location instructions for voting printed in at least 12-point type and provide ballots in alternative audio and visual formats. Finally, any registered voter who is unable, by reason of a physical disability or an inability to read or write English, to mark a ballot or cast a vote without assistance is entitled to assistance from a consenting person of his or her own choice. The voter may not, however, utilize the assistance of his or her employer or an agent of his or her labor organization.

EARLY VOTING

Since its inception in 1993, early voting by personal appearance in Nevada has become quite popular. At both the 2004 and 2006 General Elections, nearly 42 percent of all votes were cast during early voting. In 2008 and 2010, well over 50 percent of all votes were cast early. The period for early voting by personal appearance begins on the third Saturday preceding a primary or general election and extends through the Friday before election day (Sundays and holidays excepted). The locations, dates, and hours of early voting must be published in a newspaper of general circulation during the week before the early period.

Indeed, early voting aims to maximize the opportunity to vote by making voting convenient and easy. All voters may cast their ballots during this 14-day period before election day at one of many early voting sites. Typically, counties and cities will establish a permanent early voting site within the election office. Any permanent early voting location must be open during the first week of early voting from 8 a.m. to 6 p m., and until 8 p.m. during the second week, if required by the county clerk or voter registrar. The permanent early voting location must be open for a period of at least four hours between 10 a.m. to 6 p.m. during any Saturday that falls within the early voting period. Larger counties and cities often set up additional temporary early voting locations in community

centers, libraries, shopping malls, and supermarkets. Hours of operation for these satellite locations are set by each individual county. County and city clerks must adopt rules or regulations setting forth the criteria for selecting permanent and temporary early voting polling places and inform the local governing body of the location of each polling place for early voting.

FILING OFFICER AND DEADLINES FOR DECLARING AND WITHDRAWING CANDIDACY

Running for Office

The Secretary of State is the filing officer for statewide offices and those offices that are elected from districts comprised of more than one county. The county clerk or registrar of voters is the filing officer for offices elected from districts comprising only one county or part of one county. The city clerk is the filing officer for municipal elections.

The first day of candidate filing for all candidates in statewide and county elections, excluding judicial offices other than municipal judge, begins on the first Monday in March and ends at 5 p.m. on the second Friday after the first Monday in March. Any declaration of candidacy that is mailed must be received by the appropriate filing officer by 5 p.m. on the last day to file for office. The candidate filing period for city elections extends from 70 days before the primary city election through 5 p.m. on the 60th day before the primary city election. A candidate for State or county office may withdraw his or her candidacy in writing within seven days (excluding weekends and holidays) after the last day for filing. Candidates for city offices may withdraw from the election within two days after the last day to file.

All candidates for elective office must file a declaration of candidacy form. This form primarily asks the candidate to provide his or her name and physical residence and requires the candidate to affirm, under penalty of perjury, that he or she qualifies for the elective office and "will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this State." Candidates for the office of State Senator or State Assembly Member must also complete a "declaration of residency," which requires the candidate to list his or her residences since November 1 of the year preceding the election.

CANDIDATE FILING FEES (NRS 293.193)
Fees for filing declarations of candidacy or acceptances of candidacy must be paid to the filing officer by cash, cashier's check, or certified check.

Office	Filing Fee
United States Senator	$500
Representative in Congress	$300
Governor	$300
Justice of the Supreme Court	$300
Any State Office, Other Than Governor or Justice of the Supreme Court	$200

CANDIDATE FILING FEES (NRS 293.193) (*continued*) Fees for filing declarations of candidacy or acceptances of candidacy must be paid to the filing officer by cash, cashier's check, or certified check.	
Office	**Filing Fee**
District Judge	$150
Justice of the Peace	$100
Any County Office	$100
State Senator	$100
Assemblyman or Assemblywoman	$100
Any District Office Other Than District Judge	$30
Constable or Other Town or Township Office	$30
Board of Regents of the University of Nevada	$0
State Board of Education	$0
No filing fee is required from a candidate for an office the holder of which receives no compensation (NRS 293.193).	

Using a Nickname on the Ballot

A nickname of not more than ten letters may be used on the ballot; however, it must be in quotation marks and appear immediately before the candidate's surname. A nickname must not indicate any political, economic, social, or religious view or affiliation and must not be the name of any person, living or dead, whose reputation is known on a statewide, nationwide, or worldwide basis. The nickname must not, in any way, deceive a voter regarding the person or principles for which he or she is voting (NRS 293.2565).

Deadline for Changing Political Party Affiliation Prior to Declaring Candidacy

A person may not run for partisan office of a major political party if he or she has changed from one political party to another or has changed his or her designation from nonpartisan to a designation of a political party affiliation in the State of Nevada or in any other state beginning on December 31 of the year prior to the election and ending on the date of the election.

CAMPAIGN PRACTICES

The activities and behavior of political candidates are governed primarily in Chapter 294A ("Campaign Practices") of NRS. Candidates are expected to conduct campaign activities in a professional and ethical manner and are encouraged to sign and file the "Code of Fair Campaign Practices." In addition to requiring the reporting of campaign contributions and expenses, Nevada's Campaign Practices law provides guidance on the proper use of campaign funds and sets forth procedures for appropriate campaign activity.

Code of Fair Campaign Practices

There are basic principles of decency, honesty and fair play which every candidate for public office in the State of Nevada has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, the voters may exercise their constitutional right to vote for the candidate of their choice and that the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

1. I will conduct my campaign openly and publicly and limit attacks against my opponent to legitimate challenges to my opponent's voting record or qualifications for office.

2. I will not use character defamation or other false attacks on a candidate's personal or family life.

3. I will not use campaign material which misrepresents, distorts or otherwise falsifies the facts, nor will I use malicious or unfounded accusations which are intended to create or exploit doubts, without justification, about the personal integrity of my opposition.

4. I will not condone any dishonest or unethical practice which undermines the American system of free elections or impedes or prevents the full and free expression of the will of the voters.

I, the undersigned, as a candidate for election to public office in the State of Nevada, hereby voluntarily pledge myself to conduct my campaign in accordance with the principles and practices set forth in this Code.

_____ _____

Date Signature of Candidate

Campaign Contributions and Expenditures

In the State of Nevada, all candidates for State, district, county, or township offices are statutorily required to file Campaign Contributions and Expenses (C&E) Reports. The reports must be filed with the filing officer with whom the candidate filed his or her declaration of candidacy or acceptance of candidacy (statewide and multicounty candidates file with the Secretary of State; single county and local office candidates file with their respective county clerk/registrar of voters). With the passage of A.B. 452 (Chapter 309, *Statutes of Nevada 2011*), beginning in 2012, and except under certain circumstances, candidates are required to file C&E reports online with the Secretary of State. The due dates for C&E reports for the 2012 election cycle are:

2012 ELECTION CYCLE C&E REPORTS	
Annual Report:	Due January 15, 2012
Report No. 1:	Due May 22, 2012
Report No. 2:	Due June 8, 2012
Report No. 3:	Due October 16, 2012
Report No. 4:	Due November 2, 2012
Report No. 5:	Due January 15, 2013
Annual Report:	Due January 15, 2013

All reports must be received no later than midnight. A candidate who submits an affidavit stating that he or she cannot submit the filing via the Internet may do so in person, via fax, or by mail. If certified mail is used, the date of the postmark shall be deemed the date of filing. If sent via U.S. mail, the date received shall be considered the date of filing.

Campaign Accounts

Every candidate for State, district, county, city, or township office shall open and maintain a separate account in a financial institution for the deposit of any campaign contributions, within one week of receiving a minimum of $100. The candidate shall not commingle the money in the account with money collected for other purposes. It is unlawful for a candidate to spend money received as a campaign contribution for his or her personal use.

Campaign Contribution Limits

A person shall not make a contribution to a candidate for any office, except a federal office, in an amount that exceeds $5,000 for the primary election or primary city election, and $5,000 for the general election or general city election. There are no constitutional or statutory limits on contributions made to groups such as political parties, committees sponsored by political parties, or committees for political action.

Every candidate for a State, district, county, city, or township office who is defeated at a primary or primary city election and received a contribution from a person in excess of $5,000 shall, not later than the fifteenth day of the second month after his or her defeat, return any money in excess of $5,000 to the contributor.

Contributions in Excess of $10,000 Report

Every candidate who receives contributions in excess of $10,000 in any year before the year of an election is required to file a C&E Report for that year and every year thereafter up to the election. This "off-year" report must be filed with the appropriate filing officer on or before January 15 of the year immediately after the year for which the report is made. The report must include all contributions received and expenditures made in that year.

Restrictions on Receipt of Campaign Contributions Prior to Legislative Session

A legislative caucus, legislator, Governor, Governor-Elect, Lieutenant Governor, and Lieutenant Governor-Elect may not receive or solicit a contribution during the period beginning 30 days before and ending 30 days after a regular session of the Legislature (January 5, 2013, through July 4, 2013). If a special session is called, none of the persons named above may receive or solicit a campaign contribution during the period beginning the day after the Governor issues a proclamation calling for a special session and ending 15 days after the final adjournment of a special session.

Candidates who are elected or defeated, or who withdraw from a race, must file with the appropriate filing officer a C&E Report that shows how any remaining funds were disposed of or used. State law specifically limits the manner in which unspent contributions may be disposed.

The Secretary of State may impose civil penalties on any candidate who fails to file his or her Campaign C&E Report, or who files the report late.

Each violation is subject to a civil penalty of up to $5,000 and payment of court costs and attorney's fees. The amounts of the civil penalties are as follows: (1) if the report is 1 to 7 days late, $25 for each day the report is late; (2) if the report is 8 to 15 days late, $50 for each day the report is late; (3) if the report is more than 15 days late, $100 for each day the report is late—up to a maximum of $5,000.

Financial Disclosure Statement

Most states require some form of personal financial disclosure for public officers. In Nevada, the Financial Disclosure Statement includes information regarding general income sources, debt, business ventures, real estate, and contributions of certain gifts. The following individuals must file Financial Disclosure Statements: (1) every candidate for public office who, if elected, is entitled to receive compensation of $6,000 or more annually for serving in the office in question; (2) every elected public officer; and (3) every appointed public officer who is entitled to receive compensation of $6,000 or more annually for serving in the office in question. In 2005, the Nevada Legislature approved legislation exempting any elected supervisor of a conservation district from the requirement to file a Financial Disclosure Statement.

Financial Disclosure Statements for all public officers and candidates for public office must be filed with the Office of the Secretary of State. Candidates for public office must file the statement no later than the tenth day after the last day to qualify for office (ten days after the close of candidate filing). Meanwhile, elected public officers must file the statement on or before January 15 of each year of their term and appointed public officers must file within 30 days of their appointment and annually thereafter on or before January 15. Finally, elected and appointed public officers who leave office on a day other than the expiration of their term must file the statement within 60 days of leaving office.

Failure to File a Financial Disclosure Statement	Civil Penalties
1 to 10 days late	$25
11 to 20 days late	$50
21 to 30 days late	$100
31 to 45 days late	$250
45 or more days late (or not filed)	$2,000

RECALL OF PUBLIC OFFICERS

Recall is a procedure that allows citizens to remove and replace a public official before the end of a term of office. Historically, recall has been used most frequently at the local level. Indeed, by some estimates, three-fourths of recall elections nationwide are at the city council or school board level. Recall differs from another method for removing officials from office, impeachment, in that it is a political device while impeachment is a legal process. The recall started as a local phenomenon—in Los Angeles, California—in 1903. Michigan and Oregon, in 1908, were the first states to adopt recall procedures for state officials, while Minnesota was the most recent (1996).

Proponents of the recall process maintain that it provides a way for citizens to retain control over elected officials who are not representing the best interests of their constituents or who are

unresponsive or incompetent. Meanwhile, opponents argue that: (1) it can lead to an excess of democracy; (2) the threat of a recall election lessens the independence of elected officials; (3) it undermines the principle of electing good officials and giving them a chance to govern until the next election; and (4) it can lead to abuses by well-financed special interest groups.

The Recall in Nevada

Nevada is 1 of 19 states and the District of Columbia that authorizes the recall of statewide public officers. The State's recall provisions were added to the *Nevada Constitution* in 1912 by a vote of the people after being proposed and approved during the 1909 and 1911 Legislative Sessions. The use of the recall in Nevada tracks with national trends. It has been used more often at the local level, and a majority of these efforts have been unsuccessful. Prior to the 1990s, recall drives were quite rare in Nevada. However, beginning in the early 1990s, the number of recall efforts increased dramatically. Despite the increased use of recalls, though, the success rate remains generally low.

The Recall Process

The first step in the recall process is the filing of a "notice of intent" to recall a public officer with the same filing officer with whom the subject of the recall filed his or her declaration of candidacy. Once the notice of intent has been filed, a recall petition may be circulated for signatures. The petition must contain the signatures of at least 25 percent of the number of registered voters in the State, county, or district which the public officer represents. *Nevada Revised Statutes* 306.015 stipulates that recall petitions circulated for signatures must be submitted to the filing officer "within 90 days after the date on which the notice of intent was filed." These signatures are then examined and verified to determine the sufficiency of the petition. Once the signatures have been verified, the results of the examination are forwarded to the Secretary of State who then finds the petition either sufficient or insufficient.

Between 10 and 20 days after the Secretary of State gives notice that the petition is sufficient, the filing officer must issue a call (an announcement of the date) for the special recall election. The recall election must take place within 30 days after the filing officer issues the call.

A ballot for the recall of a public officer may vary in form depending on several circumstances. If the public officer who is the subject of the recall chooses not to resign his or her position and there are no other candidates to appear on the ballot for the recalled office, the words "For Recall" and "Against Recall" must be placed on the ballot as voting choices. If there are other candidates to appear on the ballot, the names of the public officer subject to the recall and any other authorized candidate must appear. Article 2, Section 9 of the *Nevada Constitution* provides that statements be placed on the ballot from the petitioners and the public officer who is the subject of the recall:

> On the ballot at said election shall be printed verbatim as set forth in the recall petition, the reasons for demanding the recall of said officer, and in not more than two hundred (200) words, the officer's justification of his course in office.

However, NRS 306.060 stipulates that if a mechanical voting system is used for the recall election, such statements need not be printed on the ballot, but rather on the sample ballots.

A person may be nominated as a candidate for the office involved in the recall through a petition process. This petition must be signed by at least 25 percent of the registered voters who actually voted for the office in question at the last general election. The petition forms, an acceptance of candidacy, and the appropriate candidate filing fee must be filed with the filing officer at least 20 days before the special recall election.

INITIATIVE AND REFERENDUM IN NEVADA AND OTHER STATES

The initiative and referendum (I&R) process was popularized in the late nineteenth and early twentieth centuries during a wave of populist feeling that swept the country at the time. During the late 1890s, the Populist Party was gaining influence on the American political scene. Its platform included women's suffrage, direct election of U.S. Senators, and the use of I&R. In 1897, Nebraska became the first state to allow I&R for city elections. In 1898, South Dakota became the first state to adopt a statewide I&R. Utah became the second state to adopt a statewide I&R, followed by Oregon in 1902, which was the first state to place a statewide initiative measure on the ballot in 1904. By 1905, Nevada adopted its popular referendum. However, it was not until 1912 that Nevada adopted its statewide initiative process. With a few exceptions, this process remains the same today as it was in the early 1900s.

The popularity of the I&R was so great during the early part of the twentieth century that by 1918, 19 of the 24 states that currently have I&R had adopted the process. Mississippi was the last state to adopt I&R in 1992. Interestingly, most of the states that have adopted I&R are west of the Mississippi River. Some theorize that the expansion of I&R in the West fits more with Westerners' independent, populist belief system. For the most part, I&R operated quietly in the background of state politics for much of the twentieth century. However, during the last two decades, it has come back into vogue.

THE INITIATIVE AND REFERENDUM PROCESS IN NEVADA

Today, more initiatives are circulated, more qualify for the ballot, and more money is spent on the process than ever before. Since its inception in 1898, there have been nearly 2,000 initiative measures on ballots in the 24 I&R states. Nearly half of these initiative measures (about 900) appeared on the ballot in the last 30 years.

The initiative is a procedure whereby citizens, through a petition process, place measures on the ballot proposing changes or additions to laws or state constitutions. There are two types of initiatives—direct and indirect. In Nevada, a *direct initiative* seeks to amend the *Nevada Constitution*, while an *indirect initiative* seeks to amend an existing statute. The direct initiative involves a petition process which, if successful, goes *directly* on the ballot at the next general election. The *indirect* initiative, however, involves the consideration and input of the Legislature. In other words, an initiative proposal to change Nevada state law *does not* go directly to the ballot. In the indirect initiative process, a proposed initiative (if the petition has enough qualified signatures) is first referred to the Legislature.

In Nevada, I&R petitions may address only one subject and matters necessarily connected with that subject. An explanation of the effect of the petition must also appear on each signature page of the petition. These provisions also require the Secretary of State to post a copy of the initiative or referendum petition, the description of the effect of the petition proposal, and the fiscal note on his or her Internet website.

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

Constitutional Amendments

An initiative petition to amend the *Nevada Constitution* must be signed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last statewide general election. Before any initiative petition to amend the *Nevada Constitution* may be circulated for signatures, a copy of the petition must be filed with the Secretary of State not earlier than September 1 of the year prior to the election. The petition may then be circulated for signatures until the third Tuesday in June of the following year (the election year), at which time it must be submitted to the appropriate county election offices for signature verification. Upon completion of the signature verification process, all petitions must be filed by the county election officer with the Secretary of State no later than 90 days before the general election. If it is determined that the petition contains a sufficient number of valid signatures, the initiative question will appear on the general election ballot. An initiative petition to amend the *Nevada Constitution* must be approved in identical form at two successive elections before becoming law.

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

INITIATIVE PROPOSALS TO AMEND THE *NEVADA CONSTITUTION*
Action by the Voters: 2000–2010

Year of Election	Topic	Election Result
2000	Authorizes possession and use of marijuana for certain medical purposes	Passed (Second vote of people)
2000	Recognizes marriage only between persons of the opposite sex	Passed (First vote of people)
2002	Recognizes marriage only between persons of the opposite sex	Passed (Second vote of people)
2002	Allows for the use and possession of three ounces or less of marijuana	Failed (First vote of people)
2004	Requires funding public education before funding any other budget item	Passed (First vote of people)
2004	Requires that the funding per pupil in Nevada's public schools meets or exceeds the national average	Failed (First vote of people)
2004	Adds provisions regarding insurance rates and practices in Nevada	Failed (First vote of people)

INITIATIVE PROPOSALS TO AMEND THE *NEVADA CONSTITUTION* Action by the Voters: 2000–2010 (*continued*)		
Year of Election	**Topic**	**Election Result**
2004	Authorizes penalties for lawyers participating in frivolous lawsuits and prohibits changes to limits on monetary damage awards	Failed (First vote of people)
2004	Raises the minimum wage for working Nevadans	Passed (First vote of people)
2006	Requires funding public education before funding any other budget item	Passed (Second vote of people)
2006	Raises the minimum wage for working Nevadans	Passed (Second vote of people)
2006	Nevada Property Owner's Bill of Rights (PISTOL)	Passed (First vote of people)
2008	Nevada Property Owner's Bill of Rights (PISTOL)	Passed (Second vote of people)
2008	Removes unconstitutional 6-month residency requirement for voter registration and replaces it with 30-day requirement	Failed (First vote of people)
2008	Requires the Legislature to make certain findings before enacting certain tax exemptions	Passed (First vote of people)
2010	Provides for the initial appointment of Supreme Court justices and District Court judges by the Governor	Failed (First vote of people)
2010	Establishes intermediate appellate court	Failed (First vote of people)
2010	Repeals PISTOL and replaces it with new provisions governing eminent domain proceedings	Failed (First vote of people)

Enacting or Amending a State Statute

An initiative petition may also be used to enact a new statute or to amend an existing one. The same number of registered voters that are required to sign a constitutional initiative must also sign a statutory initiative. Proponents must first file a copy of the petition with the Secretary of State not earlier than January 1 of the year prior to the next legislative session. The petition may then be circulated for signatures until the second Tuesday in November at which time it must be submitted to the county election offices for signature verification. Upon completion of the signature verification, all petitions to amend or create a statute must be filed by the county with the Secretary of State no later than 30 days before the start of the next legislative session.

If the petition contains a sufficient number of valid signatures, the Secretary of State shall transmit the initiative proposal to the Legislature as soon as it convenes. The Legislature must either enact or reject the petition without amendment within the first 40 days of the legislative session. Depending on the Legislature's action, the proponents may continue the process by placing it on the ballot. If the Legislature defeats or fails to act on the initiative proposal within the first 40 days, it is automatically placed on the ballot at the next general election for consideration by the voters. Some states, including Nevada, allow the Legislature to place an alternative measure (regarding the same subject) on the ballot to be considered along with an initiative question.

If the Legislature enacts the statute proposed in the petition and it is approved by the Governor, it becomes law. It should be noted that a statutory initiative approved by the voters shall not be amended, annulled, or repealed by the Legislature within three years from the date it takes effect.

INITIATIVE PROPOSALS TO AMEND OR ENACT A STATE STATUTE Action by the Voters: 2000–2010		
Year of Election	**Topic**	**Election Result**
2004	Limits the fees an attorney could charge a person seeking damages against a negligent health care provider in a medical malpractice case	Passed
2006	Responsibly Protect Nevadans from Second Hand Smoke	Failed
2006	Clean Indoor Air Act	Passed
2006	Regulation of Marijuana	Failed
2008	Amend Sales and Use Tax Act of 1955 to allow the Legislature to repeal or change portions of the Act in accordance with federal law without holding a vote of the public	Failed
2010	Amend Sales and Use Tax Act of 1955 to allow the Legislature to repeal or change portions of the Act in accordance with federal law without holding a vote of the public	Failed

Geographic Distribution Requirement for Petition Signatures

Until recently, Nevada was one of ten states that had a "geographic distribution" signature requirement to qualify petitions for the ballot, whereby signatures had to be gathered in 75 percent (13 out of 17) of Nevada's counties. In a recent challenge to this provision, a federal judge agreed with plaintiffs who argued that requiring the collection of signatures in different areas of the State gave added weight or influence to voters' signatures in rural areas and diminished the relative weight of voters' signatures in urban centers. In making his ruling, the federal judge relied heavily upon an earlier Ninth Circuit Court of Appeals ruling declaring unconstitutional similar signature requirements in Idaho.

In response, the 2007 Nevada Legislature approved S.B. 549 (Chapter 484, *Statutes of Nevada*) and Senate Joint Resolution No. 3 (File No. 105, *Statutes of Nevada*), both of which required that signatures totaling 10 percent of the number of voters who voted in the preceding general election must be gathered. However, S.B. 549 went further, creating a formula whereby signatures must be gathered in each county in proportion to that county's share of the State's total population. Instead of the previous geographic distribution requirement, under this measure an initiative petition had to be signed by a number of registered voters from each of the 17 counties in the State. In a new court challenge, the formula created by S.B. 549 was also found unconstitutional and in 2009 the Legislature took a different approach to this contentious issue. Senate Bill 212 (Chapter 460, *Statutes of Nevada 2009*) required the Legislature to create petition districts from which signatures for a petition for initiative must be gathered. The bill defined "petition district" to mean congressional

district until July 1, 2011, at which time the Legislature must have established petition districts for the period after that date. In 2011, the Legislature confirmed that it wanted to continue using congressional districts as petition districts with the passage of S.B. 133 (Chapter 320, *Statutes of Nevada*). An initiative petition must be signed by a number of registered voters equal to at least 10 percent of the voters who voted in the last preceding general election divided equally among Nevada's congressional districts.[1]

The Director of the Legislative Counsel Bureau is required to retain a copy of maps of the petition districts and make them available to any interested person for a reasonable fee not to exceed the actual cost of producing the copy.

The Referendum in Nevada

A referendum typically allows the citizens to register, through a vote of the people, their support or disapproval of a current law or statute. In some states, the referendum is advisory in nature and does not create or abolish any laws. However, in Nevada, a referendum is binding and serves either to "set in stone" a particular statute (except by another vote of the people) or to render a law or resolution void.

REFERENDUM ON EXISTING STATE LAW
Action by the Voters: 1908–2010

Year of Election	Topic	Election Result
1908	Police Bill	Passed
1930	Rabies Commission Law	Failed
1934	Fish and Game Law	Passed
1956	Sales and Use Tax Act	Passed
1990	Abortion Law	Passed

Expenditure Reporting for Ballot Measures

The Nevada Legislature frequently approves legislation intended to help address another concern regarding initiatives—identifying who pays for campaigns supporting or opposing them. Most recently, the body approved A.B. 81 (Chapter 501, *Statutes of Nevada 2011*), which requires persons, committees for political action, and political parties that expend more than $100 on public communication advocating for or against a question or candidate to disclose their identity on the communication itself, be it a mailer, billboard, radio or television commercial, or other form of public communication.

Signature Requirements for Referendum Petitions

The first day a statewide referendum can be filed is August 1 in the year prior to the next general election. In order to qualify for the ballot, a statewide referendum must be signed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last statewide general election divided equally among the congressional districts. The petition may be circulated for

[1] On March 14, 2012, the Ninth Circuit Court of Appeals affirmed a lower court's ruling that Nevada's geographic distribution signature requirement does not violate the Equal Protection Clause or the First Amendment of the *United States Constitution*.

signatures until the third Tuesday in June of the following year, at which time it must be submitted to the appropriate county election office for signature verification. Upon completion of the signature verification, the petitions must be filed with the Secretary of State no later than 90 days prior to the general election who shall, if there are enough valid signatures, place the referendum to approve or disapprove a current State law on the general election ballot.

Various Opinions Relating to Initiative and Referendum

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

Nonetheless, the I&R process continues to generate a number of concerns as state legislatures struggle to find ways to: (1) prevent fraud in the signature gathering process; (2) disclose information about who is behind initiative campaigns; and (3) add flexibility to the process to accommodate more debate, deliberation, and compromise.

KEY ELECTION OFFICIALS IN NEVADA

Many elected officials and other individuals are involved in the daily administration of election-related activities at the State and county levels in Nevada. The following table contains the primary officials responsible for election administration in this State:

ELECTION ADMINISTRATION Primary Officials	
Ross Miller Secretary of State 101 North Carson Street, Suite 3 Carson City, Nevada 89701-3714 Telephone: (775) 684-5708 Fax: (775) 684-5725 E-mail: sosmail@sos.nv.gov Website: http://nvsos.gov/	Scott F. Gilles Deputy Secretary of State for Elections 101 North Carson Street, Suite 3 Carson City, Nevada 89701-3714 Telephone: (775) 684-5793 Fax: (775) 684-5718 E-mail: nvelect@sos.nv.gov Website: http://nvsos.gov/
Carson City Alan Glover, Clerk/Recorder 885 East Musser Street, Suite 1028 Carson City, Nevada 89701-3796 Telephone: (775) 887-2260 Fax: (775) 887-2146 E-mail: aglover@carson.org Website: http://www.carson.org	**Churchill County** Kelly G. Helton, Clerk/Treasurer 155 North Taylor Street, Suite 110 Fallon, Nevada 89406-2763 Telephone: (775) 423-6028 Fax: (775) 423-7069 E-mail: khelton@churchillcounty.org Website: http://www.churchillcounty.org

ELECTION ADMINISTRATION Primary Officials (*continued*)	
Clark County Harvard (Larry) Lomax, Registrar of Voters Clark County Election Center 965 Trade Drive, Suite A North Las Vegas, Nevada 89030-7802 Telephone: (702) 455-2784 Fax: (702) 455-2793 E-mail: hll@clarkcountynv.gov Website: http://www.clarkcountynv.gov/depts/election/pages/default.aspx	**Douglas County** Ted Thran, Clerk/Treasurer 1616 Eighth Street Old Courthouse, Second Floor Minden, Nevada 89423-4227 Telephone: (775) 782-9014 Fax: (775) 782-9016 E-mail: tthran@co.douglas.nv.us Website: http://cltr.co.douglas.nv.us
Elko County Carol Fosmo, Clerk 550 Court Street, Third Floor Elko, Nevada 89801-3518 Telephone: (775) 753-4600 Fax: (775) 753-4610 E-mail: cfosmo@elkocountynv.net Website: http://www.elkocountynv.net	**Esmeralda County** Cindy Elgan, Clerk/Treasurer P.O. Box 547 Goldfield, Nevada 89013-0547 Telephone: (775) 485-6309 Fax: (775) 485-6376 E-mail: celgan@citlink.net Website: http://www.accessesmeralda.com
Eureka County Jackie Berg, Clerk and Treasurer P.O. Box 677 Eureka, Nevada 89316-0677 Telephone: (775) 237-5262 Fax: (775) 237-6015 E-mail: jberg.ecct@eurekanv.org Website: http://co.eureka.nv.us	**Humboldt County** Tami Rae Spero, County Clerk 50 West Fifth Street, Room 207 Winnemucca, Nevada 89445-3150 Telephone: (775) 623-6343 Fax: (775) 623-6309 E-mail: coclerk@hcnv.us Website: http://www.hcnv.us
Lander County Sadie Sullivan, Clerk 315 South Humboldt Street Battle Mountain, Nevada 89820-1982 Telephone: (775) 635-5738 Fax: (775) 635-0394 E-mail: landercountyclerk@gmail.com Website: http://www.landercountynv.org	**Lincoln County** Lisa C. Lloyd, County Clerk P.O. Box 90 Pioche, Nevada 89043-0090 Telephone: (775) 962-5390 Fax: (775) 962-5180 E-mail: llloyd@lincolnnv.com Website: http://www.lincolncountynv.org
Lyon County Nikki Bryan, Clerk/Treasurer 27 South Main Street Yerington, Nevada 89447-2571 Telephone: (775) 463-6501 Fax: (775) 463-5305 E-mail: nbryan@lyon-county.org Website: http://www.lyon-county.org	**Mineral County** Cherrie A. George, Clerk/Treasurer P.O. Box 1450 Hawthorne, Nevada 89415-1450 Telephone: (775) 945-2446 Fax: (775) 945-0706 E-mail: clerk-treasurer@mineralcountynv.org Website: http://www.mineralcountynv.us/

ELECTION ADMINISTRATION Primary Officials *(continued)*	
Nye County Sandra (Sam) Merlino, Clerk P.O. Box 1031 Tonopah, Nevada 89049-1031 Telephone: (775) 482-8134 Fax: (775) 482-8133 E-mail: smerlino@co.nye.nv.us Website: http://www.nyecounty.net	**Pershing County** Lacey Donaldson, Clerk/Treasurer 398 Main Street P.O. Box 820 Lovelock, Nevada 89419-0820 Telephone: (775) 273-2208 Fax: (775) 273-3015 E-mail: ldonaldson@pershingcounty.net Website: http://www.pershingcounty.net
Storey County Vanessa DuFresne, Clerk/Treasurer Drawer D Virginia City, Nevada 89440-0139 Telephone: (775) 847-0969 Fax: (775) 847-0921 E-mail: clerk@storeycounty.org Website: http://www.storeycounty.org/	**Washoe County** Daniel G. Burk, Registrar of Voters 1001 East Ninth Street Reno, Nevada 89512-2845 Telephone: (775) 328-3670 Fax: (775) 328-3747 E-mail: electionsdepartment@washoecounty.us Website: http://www.co.washoe.nv.us/voters
White Pine County Linda (Lin) Burleigh, Clerk 801 Clark Street, Suite No. 4 Ely, Nevada 89301-1994 Telephone: (775) 293-6509 Fax: (775) 289-2544 E-mail: wpclerk@mwpower.net Website: http://www.whitepinecounty.net/	

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POLICY AND PROGRAM REPORT

Homeland Security

Research Division January 2012

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

The Nevada Legislature had already concluded the 2001 Session when the terrorist attacks occurred. Thus, before the next session in 2003, the Legislature had time to carefully review the Federal Patriot Act, the recommendations of the National Conference of State Legislatures' Task Force on Protecting Democracy, and the laws of other states, to craft legislation specifically tailored to Nevada's needs.

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In order to facilitate coordination between federal, state, and local emergency management and law enforcement agencies, the Governor of Nevada created the Office of Homeland Security and the Joint Information Center to ensure quick and effective responses to catastrophic events within the State. As of 2011, the functions of the Office of Homeland Security and the Joint Information Center are housed within the Division of Emergency Management in the Department of Public Safety.

HOMELAND SECURITY COMMISSION

As an additional resource in the fight against terrorism, the Nevada Commission on Homeland Security was created by the Nevada Legislature in 2003. The Governor appoints 16 voting members who serve at the pleasure of the Governor. The voting members must include the sheriffs and fire chiefs of Clark and Washoe Counties, and an employee of the City of Las Vegas. Additional voting members include a representative from each of the following: the Clark County medical community, the broadcaster community, and tribal governments. The Governor or the Governor's designee serves as the chair of the Commission, and the chair appoints the vice chair.

Nonvoting members include the head of Nevada's office of the Federal Bureau of Investigation, a representative of the DHS, and the Chief of the Division of Emergency Management. Additionally, the Senate Majority Leader and the Speaker of the Assembly each appoint one legislator from their respective houses to serve as a nonvoting member of the Commission.

The duties of the Commission include:

- Making recommendations to the Governor, Legislature, State agencies, local governments, businesses, and private citizens about actions to be taken to protect against terrorism;
- Making recommendations, through the Division of Emergency Management, on the use of money received by the State from homeland security grants or related programs;
- Proposing goals and programs to counteract acts of terrorism;
- Ensuring the safety of Nevada's residents and the critical infrastructures of the State by identifying the susceptibility of those infrastructures to terrorist acts;
- Examining the use and deployment of response agencies;
- Reviewing the interoperability of the State's communications systems and the efficacy of emergency (911) telephone systems, including establishment of a State plan for the compatibility and interoperability of the State's information and communication systems for response agencies and advising the Governor about such systems with particular emphasis on public safety radio systems;
- Coordinating between government agencies to avoid duplication; and
- Submitting an annual briefing to the Governor on the assessment of the State's preparedness, including an assessment of response plans and vulnerability assessments of utilities, and public and private entities.

RECENT LEGISLATIVE ACTION

Nevada Commission on Homeland Security

In the 2011 Session, the Legislature enacted Assembly Bill 549 (Chapter 474, *Statutes of Nevada*), which made several changes to the Commission and its duties. The bill increased the size of the Commission by adding two voting members: one to represent the broadcast community and one to represent tribal governments in Nevada. The Chief of the Division of Emergency Management was added as a nonvoting member.

The measure spelled out the process and respective responsibilities of the Division, the Governor, and the Commission for making recommendations and decisions about homeland security grants. The Commission's duties were amended to include an annual briefing to the Governor on the State's level of preparedness. Chapter 239C ("Homeland Security") of the *Nevada Revised Statutes* was revised to include tribal governments on a par with local governments in the State's homeland security provisions to ensure that tribal governments are included in the planning and other activities undertaken by the Division and the Commission.

Disclosure of public documents related to homeland security requires balancing the State's public records law that favors disclosure, with the need for maintaining confidentiality to prevent certain information from falling into the wrong hands. Assembly Bill 549 clarifies the level of access to certain confidential documents by the Legislative Auditor. In addition, vulnerability assessments and emergency response plans submitted by utilities, and public and private entities were added to the list of documents that may be declared confidential by executive order. Every ten years, the Governor must review the documents declared by executive order to be confidential and decide whether there is a continued need for confidentiality.

Emergency Response and Disaster Preparedness

In late August 2005, Hurricane Katrina devastated the Gulf Coast, focusing the brunt of its destructive power on New Orleans, Louisiana. The inadequacy of governmental response to Hurricane Katrina at all levels illustrated the need to continually review and update Nevada's emergency response planning and preparedness. Since that time, the Legislature has enacted several bills to address gaps in emergency response efforts that came to light during Hurricane Katrina. Examples include:

- Senate Bill 81 (Chapter 105, *Statutes of Nevada 2007*)—requiring emergency management plans to include provisions addressing pets and service animals;

- Assembly Bill 95 (Chapter 119, *Statutes of Nevada 2007*)—clarifying provisions on confiscation of guns during an emergency;

- Senate Bill 144 (Chapter 187, *Statutes of Nevada 2009*)—requiring a State plan addressing notice of actual or suspected bombs to public safety bomb squads and clarifying responsibilities in such situations; and

- Senate Bill 147 (Chapter 140, *Statutes of Nevada 2009*)—addressing the role of broadcasters and their equipment during an emergency.

In a similar vein, the 2011 Legislature enacted A.B. 98 (Chapter 216, *Statutes of Nevada*) titled the "Uniform Emergency Volunteer Health Practitioners Act." The model act was promoted by the National Conference of Commissioners on Uniform State Laws and organizations such as the Red Cross. The bill provides for advance registration of health practitioners and the adoption of regulations so that, in an emergency, Nevada is prepared to handle the surge of medical personnel from other states who come to assist.

REAL ID ACT OF 2005

On May 11, 2005, President George W. Bush signed into law the REAL ID Act of 2005, which was attached to the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005" (H.R. 1268, Public Law 109-13). Title II of REAL ID, "Improved Security for Drivers' Licenses and Personal Identification Cards," repeals the provisions of a December 2004 law that established a cooperative state-federal process to create federal standards for drivers' licenses and instead imposes prescriptive federal driver's license standards.

The REAL ID Act places federal requirements on all state driver's licenses. The goal of the Act is to combat terrorism, identity theft, and other crimes, by strengthening the integrity and security of driver's licenses and State-issued identification cards. The Act will require persons to have a compliant card to board an aircraft or to enter a nuclear power plant or certain federal buildings.

Although the REAL ID Act was originally set to be implemented earlier, currently the effective date on the REAL ID driver's license provisions has been delayed until January 15, 2013.

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

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

Under Nevada law, applicants for driver's licenses and identification cards are already required to submit proof of identity, date of birth, Social Security numbers, and lawful status. According to the Department of Motor Vehicles, when REAL ID is implemented, the primary change will be the requirement of two documents to prove residency and the verification of source documents.

ADDITIONAL REFERENCES

- Department of Motor Vehicles: http://dmvnv.com/realid
- Office of Homeland Security, Department of Public Safety: http://homelandsecurity.nv.gov/
- U.S. Department of Homeland Security: http://www.dhs.gov/index.shtm

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THE LEGISLATURE

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

The Legislature

Research Division

January 2012

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The State Legislature is Nevada's political institution closest to the people. Not only does it enact laws, the Nevada Legislature also creates the machinery for carrying out those enactments. The Legislature establishes departments, boards, commissions, and bureaus and defines the scope of their powers and the extent of their responsibilities. It also regulates the activities of these State agencies by granting or denying them the authority to hire employees and expend public funds. In addition, the Legislature sets down the fundamental rules of government in Nevada in the form of administrative procedures acts, civil service rules, and election laws.

LEGISLATIVE STRUCTURE

Nevada has a two-house (bicameral) Legislature consisting of a Senate and an Assembly. The two houses jointly are designated by the *Nevada Constitution* as "The Legislature of the State

of Nevada." The Legislative Branch is one of three separate and distinct branches of government at the state level, the other two being the Executive Branch (headed by the Governor) and the Judicial Branch (with the Nevada Supreme Court at the top of the structure). According to the *Nevada Constitution*, ". . . no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others . . . " except in certain specified instances.

Size and Apportionment

Unlike some states, Nevada does not fix the number of its Senators and members of the Assembly in its constitution. Instead, the constitution sets a maximum limit of 75 legislators from the combined total of the two houses. No minimum limit is set on the size of the Legislature, but the *Nevada Constitution* provides ". . . the number of senators shall not be less than one-third nor more than one-half of that of the members of the assembly." The actual size of the Legislature is set by statute. Since 1983, the Nevada Legislature has had a 21-member Senate and a 42-member Assembly.

The *Nevada Constitution* states that Senators and members of the Assembly must be apportioned among the several counties of the State or among legislative districts in accordance with law. The United States Supreme Court has held that both houses of state legislatures must be apportioned on a population basis under the principle of one person, one vote. Membership in both houses of the Legislature is geographically apportioned throughout the State on the basis of population. Normally, the Legislature redistricts once every ten years during the session next following the federal decennial census, as required by the *Nevada Constitution*. The federal decennial census was held in 2010, and at public hearings both before and during the 2011 Legislative Session, members of the Legislature heard from dozens of parties regarding the redistricting process. To facilitate public involvement and understanding of the process, the Legislature provided public workstations for mapping in both its Carson City and Las Vegas offices and included comprehensive information on its website that featured a dedicated reapportionment and redistricting webpage for meeting announcements, submitted fact sheets, historical data, informational items, plans, and reports.

The Nevada Legislature, however, was unable to complete the legislative and congressional redistricting process during the 120-day regular session. Two redistricting measures, Senate Bill 497 and Assembly Bill 566, were approved by the Legislature, generally on party-line votes, on May 10 and May 25, 2011, respectively. However, both bills were vetoed by the Governor and returned to the Legislature. No attempts were made to override or sustain those vetoes during the regular session. When Governor Brian Sandoval indicated that he would not call the Legislature into special session for redistricting, the task fell to the courts. Following a number of hearings, judicial briefs, motions, and pleas, First Judicial District Court Judge James T. Russell appointed three Special Masters to accomplish redistricting. As directed by the court, the Special Masters held public hearings in Las Vegas and Carson City on October 10 and 11, 2011, respectively. Their report and completed plans were submitted to the District Judge on October 14, 2011. Following certain plan changes requested by the court, an order adopting and approving the Special Masters' report and redistricting maps as modified by the court was filed on October 27, 2011. An addendum to the October 27, 2011, order to facilitate the transitional period was filed on December 8, 2011. When no appeals were filed to these court orders, they and their redistricting plans were considered to be adopted.

The plan includes four congressional districts (an increase of one), while the size of the Nevada Legislature is retained at 63—21 members in the Senate and 42 members in the Assembly. More information on reapportionment and redistricting can be found on the Nevada Legislature's website at: www.leg.state.nv.us.

Membership Qualifications

To be eligible to serve as a Senator or member of the Assembly, a person must be at least 21 years of age, a qualified elector in the respective county and district, and an actual citizen resident of Nevada for a minimum of one year next preceding the election. However, the *Nevada Constitution* declares that "each House shall judge of the qualifications, elections and returns of its own members . . . and with the concurrence of two-thirds of all the members elected, expel a member."

No person holding a federal office of profit (with the exception of postmasters earning less than $500 per year or commissioners of deeds) or a lucrative office under any other power may serve as a legislator. Persons are also disqualified from holding legislative office if they have been convicted of embezzlement of public funds or bribery in the procurement of election or appointment to office. A legislator may not be appointed to any civil office of profit in the State that was created, or the salary for which was raised, during the legislator's term of office and for a period of one year after the expiration of the term.

Members of the Assembly are elected every two years by the qualified electors in their respective districts. Senators, on the other hand, serve four-year terms, which are staggered so that, as near as possible, one-half of the number of Senators is elected every two years. A constitutional amendment approved by the voters in 1996 limits legislators to 12 years of service in each house (six terms for members of the Assembly and three terms for Senators). Therefore, a legislator may serve up to 12 years in one house and up to another 12 years in the other house. An opinion issued by the Nevada Supreme Court states that the term limit amendment only applies to periods of service commencing after November 27, 1996. As applied to members of the Legislature, term limits first had an impact during the 2010 election cycle.

Members of both houses are elected on the first Tuesday after the first Monday in November of even-numbered years, at intervals of two or four years, depending upon the house in question. Their terms of office begin on the day following their election, but members are not typically sworn in by oath of office until the first day of the legislative session (first Monday of the following February for a regular session).

Legislator Compensation and Allowances

Legislators are paid a salary for the first 60 days of a regular session and for up to 20 days of a special session. The daily salary for legislators is $146.29. Thus, for the 2011 Regular Session, a legislator received a maximum salary of $8,777.40; for a special session in 2011 or 2012, the maximum salary is $2,925.80.

Legislators receive additional payments for their travel and per diem during a legislative session. The per diem, which is intended to cover the legislator's lodging, meals, and incidental expenses, is equal to the federal rate for the Carson City area, which is currently $154. This per diem amount is paid each day that the Legislature is in session.

For travel to and from Carson City for the legislative session and for a presession orientation conference, each legislator is entitled to one day's per diem plus reimbursement of actual travel expenses. Each legislator whose permanent residence is more than 50 miles from Carson City, and who enters into a lease or other agreement for housing during session, is also entitled to a supplemental housing allowance during the session. This allowance is equal to the fair market rent for a one-bedroom unit in Carson City, as published, and revised each year, by the United States Department of Housing and Urban Development. The most recent rate for the Carson City area is $736 per month. Costs associated with travel during a session (moving expenses, housing and furniture rental, and travel related to legislative business) are reimbursed, subject to an overall limit of $10,000 during a regular session and $1,200 during a special session.

In addition to these amounts, each legislator is entitled to a communications allowance of $2,800 and a postage allowance of $60. Legislators who chair standing committees or hold leadership positions are entitled to an additional $900 allowance. Each member also is entitled to a certain number of business cards, stationery, and envelopes from the State Printing Office of the Legislative Counsel Bureau (LCB).

When the Legislature is not in session, each Senator and member of the Assembly is entitled to receive a salary and the per diem allowance and travel expenses provided by law for each day of attendance at a conference, meeting, seminar, or other gathering at which the legislator officially represents the State of Nevada or its Legislature. The salary per day varies depending on the activity, but does not exceed $146.29.

Ethics and Conflicts of Interest

The *Nevada Revised Statutes* (NRS) expands upon what constitutes legislators' and other public officers' breaches of ethics and conflicts of interest in the "Nevada Ethics in Government Law." This law contains a code of ethical standards for a public officer relative to accepting gifts, services, favors, employment, or honoraria; negotiating or executing contracts in which the public officer has a significant pecuniary interest; accepting compensation from private sources for the performance of public duties; using information acquired through public duties to further the pecuniary interests of himself or herself or other persons or business; suppressing any governmental report that might tend to affect unfavorably the officer's pecuniary interests; and using government time, property, or equipment for the private benefit of the public officer. During the 2009 Session, the Legislature enacted legislation codifying the constitutional doctrines of separation of powers and legislative privilege and immunity, protecting legislators from having to defend themselves from various legal challenges when they perform certain legitimate legislative activities. The measure also clarifies that statutory provisions concerning disclosure, voting, and abstention do not apply to State legislators or allow the Commission on Ethics to exercise jurisdiction over State legislators with regard to these activities.

In addition to the general requirements of the code of ethical standards, the Nevada Ethics in Government Law requires the disclosure of any significant pecuniary interest in matters under consideration. The law further specifies that a public officer of the Legislative Branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in, the consideration of a matter with respect to which the independence of judgment of a reasonable person in the same position would be materially affected by: (1) acceptance of a gift or loan; (2) pecuniary interest; or (3) commitment in a private capacity to the interest of others.

Standing Rule 23 of both houses addresses legislators' ethics. In each house, a Committee on Ethics will be established to consist of members appointed by both majority and minority party leadership. Standing Rule 23 provides in part that:

> . . . if a Legislator knows he or she has a conflict of interest . . . the Legislator shall make a disclosure of the conflict of interest on the record in a meeting of a committee or on the floor . . . as applicable. . . . If, on one or more prior occasions during the current session of the Legislature, a Legislator has made a general disclosure of a conflict of interest on the record in a meeting of a committee or on the floor . . . the Legislator is not required to make that general disclosure at length again regarding the same conflict of interest if . . . the Legislator makes a reference on the record to the previous disclosure.

Further, Standing Rule 23 provides in part that:

> [i]n determining whether to abstain from voting upon, advocating or opposing a matter concerning which a Legislator has a conflict of interest . . . the Legislator should consider whether: (a) The conflict impedes his or her independence of judgment; and (b) His or her interest is greater than the interests of an entire class of persons similarly situated.

This rule does not prohibit a legislator from requesting or introducing legislation or require a legislator to take any particular action before or while requesting or introducing a legislative measure.

Financial Disclosure

Every candidate for the Legislature is required to file financial disclosure statements with the Secretary of State. Such statements must be filed no later than the tenth day after the last day to qualify as a candidate for the office and then once a year thereafter, including the year that the term expires, on or before January 15.

Under the law, statements of financial disclosure are required to contain specified information concerning the candidate's: (1) length of residence in Nevada and the legislative district; (2) sources of income; (3) real estate holdings valued at $2,500 or more (except for a personal residence); (4) specified creditors to whom the candidate or members of the candidate's household owe more than $5,000; (5) certain gifts received by the candidate with a value of $200 or more; and (6) a list of all

business entities in which the candidate or a member of the candidate's household is involved as a trustee, beneficiary, director, officer, owner, partner, or shareholder of at least 1 percent of the stock. A legislator who fails to file the statement of financial disclosure in a timely manner is subject to a civil penalty and payment of court costs and attorney's fees.

Officers and Employees

Each house of the Legislature employs such staff as is necessary to its operation. During the legislative session, this staff expands to approximately 210 committee managers, secretaries, assistants, and others who ensure that the session functions smoothly. Several positions are permanent and full-time when the Legislature is not in session: the Secretary of the Senate, the Chief Clerk of the Assembly, and at least one executive assistant and one technical assistant for each house.

The legislative employees are under the supervision of the elected officer of each house. In the Senate, this is the Secretary; in the Assembly, the Chief Clerk. The Secretary of the Senate and the Chief Clerk of the Assembly are elected as officers by the members of the houses they serve. They, in turn, supervise the work of the legislative employees.

The Secretary and Chief Clerk perform many varied duties. They are present at each daily session of their respective houses, and during those sessions they "read" each bill and resolution—though in greatly abbreviated form—to the members of the house. The Secretary and Chief maintain all records of the Senate and Assembly, supervise compilation of the daily journals and histories of their respective houses, and advise the officer of each house on matters of parliamentary procedure or the house rules.

When the Legislature is not in session, the permanent legislative officers and employees assist legislative leaders with administrative matters that arise during the interim, oversee the publication of the final certified journals and histories, speak with school and civic groups about the legislative process, represent the State at national conferences of legislative officers, and prepare for the next session. Although the legislative officers and employees are not part of the Legislative Counsel Bureau, their offices are located in the Legislative Building, and they may attend certain staff meetings of the LCB's Director and Division Chiefs.

Study of the Structure and Operation of the Legislature

A comprehensive review of the Nevada Legislature has not been conducted in more than 20 years. To ensure the Legislature continues to serve Nevada residents by responding to their changing needs, the Legislative Commission's Committee to Study the Structure and Operations of the Nevada Legislature is charged with examining the timing, frequency, and length of regular legislative sessions, including the efficiency and effectiveness of annual regular sessions. The study must include, without limitation, legislative procedures and legislative compensation. This 2011-2012 Interim study will report its findings and any recommended legislation to the Legislative Commission for submission to the 2013 Legislative Session.

INTEREST GROUPS AND MEDIA

Press

The news corps is an important adjunct to the Legislature. Public awareness is vital to the democratic process, and it is the function of the press to present, analyze, and interpret the news so that the public is informed and can, therefore, more effectively express itself to and through its elected representatives. Press representatives are granted official accreditation in each chamber through adoption of a simple motion to accredit named individuals at the beginning of the session or at selected times during the session. Space in each chamber is provided for members of the news media to televise or otherwise cover legislative proceedings.

Lobbyists

Legislative agents or representatives, commonly known as lobbyists, represent various organizations, interests, and causes before the Legislature. Like the news media, they are important to the legislative process as sources of information, channels of communication between constituents and their representatives, and major protagonists in efforts to influence legislation. They frequently point out concerns in bills, suggest amendments, provide valuable testimony, and in general assist the Legislature in assessing the merits of proposed legislation.

The activities of lobbyists in Nevada are controlled by the "Nevada Lobbying Disclosure Act." The law requires lobbyists to register with the Director of the LCB and provide various information about themselves and the groups or individuals they represent. A lobbyist must file a report each month during a legislative session and within 30 days after the close of a session concerning his or her lobbying activities. Each report must include the total expenditures for the month and, if the lobbyist had expenditures of $50 or more during the month, the report must itemize expenses in connection with any event hosted by an organization that sponsors the registrant; expenditures for entertainment, gifts, and loans; and other expenditures directly associated with legislative action. With the exception of expenditures associated with a function to which every legislator was invited, the reports must identify the legislators on whose behalf the expenditures were made. Data on each lobbyist's personal expenditures for food, lodging, and travel expenses or membership dues are not required in the monthly reports. Violation of the Act is a misdemeanor.

Other sections in the NRS also address improper influence exerted upon legislators. For example, any person who interferes with the legislative process is guilty of a gross misdemeanor. Any person who improperly obtains money or other things of value to influence a member of a legislative body in regard to any vote or legislative action is also guilty of a gross misdemeanor. It is a misdemeanor to misrepresent any fact knowingly when testifying or otherwise communicating to a legislator, though witnesses are absolutely privileged to publish defamatory material that is relevant to a proceeding. Moreover, both the giving of a bribe to a legislator and receiving a bribe are crimes against the legislative power and are subject to severe punishments under the law. Although lobbying activities are customarily prohibited on the floor of both chambers, lobbyists may appear before any committee of the Legislature.

LEGISLATIVE PROCEDURE

Regular sessions of the Nevada Legislature are held biennially in odd-numbered years. They convene on the first Monday in February after the election of members of the Senate and Assembly unless the Governor, by proclamation, convenes a special session at another time.

Legislative activities, including committee hearings, are open to the public. The *Nevada Constitution* also stipulates that neither house may, without the consent of the other, adjourn for more than three days nor move to any place other than where it is holding its session. The Joint Rules of the Senate and Assembly specify that one or more adjournments, for a duration of more than three days, may be taken to permit standing committees, select committees, or the LCB to prepare the matters respectively entrusted to them for the consideration of the Legislature as a whole. The total time taken for all such adjournments is not to exceed 20 days during any regular session. The 1991, 1993, and 1995 Legislatures adjourned for two weeks early in the session to allow the Senate Committee on Finance and Assembly Committee on Ways and Means to work full-time on the review of proposed State agency budgets. During this same period, the remaining "morning" committees of the Legislature held hearings on bills and other legislative matters in the Las Vegas area. Beginning in 1999, the two "money" committees have conducted informational hearings in Carson City during the two weeks immediately preceding the start of session.

In the case of a disagreement between the two houses with respect to the time of the Legislature's final adjournment, the Governor is constitutionally empowered to adjourn the Legislature to such a time as deemed proper, but not, however, beyond the time fixed for the meeting of the next Legislature.

Legislator Duties

The *Nevada Constitution* vests the lawmaking authority for the State in the Nevada Legislature. Generally, the Legislature is empowered to enact the laws of the State; levy taxes on individuals, businesses, property, and sales; appropriate the funds collected for the support of public institutions and the administration of State government; propose amendments to the constitutions of the U.S. and Nevada; and consider legislation proposed by initiative petitions. In addition, the Legislature is directed to establish a State university; a public school system; and a statewide, uniform system of county and township government. The Legislature also has the power to create, revise, or abolish certain county positions; determine the compensation of legislative officers and employees, certain State officials, Supreme Court Justices, and District Court Judges, and specified county officers; decide the winner of a tied election for a district or State office or the office of U.S. Senator or Representative; impeach the Governor, other State official, or any judge, except a justice of the peace; and pardon, reprieve, or compel the enforcement of a sentence for the conviction for treason. The Legislature also provides oversight of the Executive and Judicial Branches of government through the budget and audit processes and reviews the regulations developed by State agencies.

The majority of the Legislature's work, however, consists of generating, revising, and occasionally repealing the laws of the State. Through a process defined by the *Nevada Constitution*, State law, and legislative rules, the members of the Legislature consider over 1,000 bills and resolutions throughout

each regular session. The regular sessions of the Senate and Assembly are required to be held during each odd-numbered year, beginning on the first Monday of February. At other times, the Governor may, for a specific purpose, call the Legislature into special session.

During the session, legislators have several responsibilities. They shepherd the measures they introduce through the legislative process by providing testimony at hearings, working with others to improve the legislation, and encouraging their colleagues to vote in favor of their bills. Legislators also serve on the committees that review each piece of legislation. Each legislator is typically assigned to three standing committees. As committee members, legislators listen to and question witnesses about the provisions of a measure, participate in subcommittees created to focus on a specific bill or issue, and vote on whether the bill or resolution should be transmitted to the full house.

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

At times, all legislators may be required to participate in a committee of the whole. Such a committee is formed only once or twice during a session. Much more common are the conference committees, formed to resolve differences between amendments proposed by each house to the same bill. Occasionally, legislators may be assigned to a joint committee of the two houses.

When not on the floor or in meetings, legislators confer with constituents who call or visit, with lobbyists who represent organizations or certain opinions, and with staff who provide assistance and requested information. Legislators are frequently asked to speak to various groups and attend numerous community functions, most often on days when the Legislature is not in session.

When the session ends, legislators continue to make speeches, assist constituents, serve on special legislative committees, and compile information in preparation for the next session. Often, legislators serve as facilitators among various groups. For example, a legislator might contact a government agency on behalf of a constituent or bring opposing factions together to solve a problem. In addition, legislators monitor the implementation of certain bills passed during the preceding session. In this capacity, a legislator might attend a hearing conducted by a State agency formulating pertinent regulations.

Between sessions, a legislator may serve on one or more interim committees. Some of these committees study a specific subject, provide oversight of ongoing issues, or are part of national organizations that bring together legislators from the various states to discuss similar problems. Permanent committees of the Legislature are created through statute. Temporary committees usually originate in concurrent resolutions passed in one session and are dissolved by the beginning of the next.

The foregoing description of legislative responsibilities is not comprehensive. Like employees in the private sector, legislators are often responsible for other duties as assigned. Any legislator who chairs a committee or assumes a leadership role conducts those duties in addition to the ones mentioned. Legislators are also expected by their political parties and communities to perform certain functions, such as attending party caucuses and important local events. In addition, most legislators hold full-time jobs and must fulfill their responsibilities to their employers. Although Nevada prides itself on having a citizen Legislature, it demands a significant commitment of time and effort from each of its citizen representatives.

Session Deadlines

Sessions are limited to 120 calendar days following the approval by voters of a constitutional amendment in 1998. Previous sessions were unlimited in length following the repeal in 1958 of a constitutional provision setting a 60-day maximum limit on the duration of a session. Since 1958, there has been only one regular session of less than 60 days, that being the single annual session of 1960, which lasted 55 days. Between 1975 and 1997, regular sessions in Nevada ran between 113 and 169 days.

Prior to each session, the Legislative Commission's Committee to Consult with the Director considers methods of improving the operation of the session. The recommendations of the Committee to the next Legislature may affect many procedural rules, including limitations on the number of bills that may be requested; deadlines for the submission, introduction, and passage of legislation; and the procedure for obtaining waivers. These procedures are generally contained in the Joint Rules of the Senate and Assembly, which are adopted at the beginning of each session. Measures within the jurisdiction of the Senate Committee on Finance or the Assembly Committee on Ways and Means; bills required to carry out the business of the Legislature; and concurrent or simple resolutions are generally exempted from these limitations. Also exempt are emergency requests submitted by the Majority Leader of the Senate, the Speaker of the Assembly, and the Minority Leaders in the Senate and the Assembly.

LEGISLATIVE COUNSEL BUREAU

In March of 1945, the Nevada Legislature recognized a need for more information and assistance to deal with increasingly complex tasks. This need is described in the preamble to the bill creating the Legislative Counsel Bureau:

> At each biennial session of the legislature, that body is confronted by requests for legislation expanding and changing the functions of and increasing the appropriations of numerous offices, departments, institutions, and agencies of the state government; and . . . not withstanding the information provided by the messages and budgets of the governor and the reports of public officers, it is impossible for the legislature or its committees to secure sufficient information to act advisedly on such requests in the time limited for its sessions.

The 1945 law establishing the Bureau charged it with assisting the Legislature to find facts concerning government, proposed legislation, and various other public matters.

During the next several years, the duties of the Bureau and its staff were modified and expanded. In 1963, the Nevada Legislature reorganized the LCB, giving it structure and responsibilities similar to those it has today. One part of this change was the incorporation of the Statute Revision Commission into the LCB as the Legal Division. The Statute Revision Commission was originally created by the Nevada Supreme Court in 1951 and became involved in bill drafting as an adjunct to its statute revision work. The 1963 legislation also added a Fiscal and Auditing Division and a Research Division.

Today, the LCB consists of the Legislative Commission, an Interim Finance Committee, a Director, and five divisions (Administrative, Audit, Fiscal Analysis, Legal, and Research). The divisions are made up of highly professional nonpartisan staff who provide a variety of services to legislators. The following sections describe activities of these units.

Legislative Commission

The Legislative Counsel Bureau is supervised by the Legislative Commission, which also takes actions on behalf of the Legislative Branch of government when the full Legislature is not in session. At every regular session of the Legislature, the Senate and the Assembly each designate six members and their alternates to serve on the Commission. Between sessions, the Commission meets every few months to provide guidance to staff of the LCB and to deal with other interim matters. A prominent subcommittee to the Commission reviews the permanent administrative regulations of Executive Branch agencies.

A primary responsibility of the Commission is to provide oversight to and establish the priorities for interim studies. During each regular session, the Legislature passes several bills and resolutions directing the Legislative Commission to study particular subjects and report when the Legislature reconvenes. The Commission accomplishes its tasks by creating subcommittees drawn from the entire membership of the Legislature and assigning staff resources to the subcommittees. The interim subcommittees hold hearings, direct research, and deliberate on proposed legislation for the next session of the Legislature.

Typically, every member of the Legislature is involved in interim subcommittee work between sessions. In addition, several ongoing statutory committees meet regularly, including the Committees on Child Welfare and Juvenile Justice, Education, Health Care, High-Level Radioactive Waste, Public Lands, the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System, and Senior Citizens, Veterans and Adults with Special Needs.

Interim Finance Committee

In 1969, the Legislature created the Interim Finance Committee to function within the LCB between sessions and administer a contingency fund. This fund was set up to provide provisional funds for State agencies when the Legislature is not in session. The Interim Finance Committee also reviews State agency requests to accept certain gifts and grants, to modify legislatively approved budgets, and to reclassify State merit system positions in certain circumstances. Composed of the members of the Senate Committee on Finance and the Assembly Committee on Ways and Means who served during the preceding session, the Interim Finance Committee makes final decisions for the Legislature during the period between regular sessions and endeavors to maintain an adequate fund balance to meet unforeseen financial emergencies.

Director

The Director is the Chief Executive Officer of the LCB and supervises all of its daily administrative and technical activities. The Legislative Commission appoints the Director and, in turn, the Director, with the Commission's approval, appoints the chiefs of the various divisions. The Director serves as Secretary to the Legislative Commission, has the statutory responsibility of registering lobbyists, and consults with a committee of the Legislative Commission concerning the general management, organization, and function of the LCB and the necessary preparations for the next regular legislative session.

Administrative Division

The Administrative Division provides operating and technical support to the other divisions of the LCB and to the Legislature. The Division is responsible for accounting and human resources; lobbyist registration; audio and video services; communications equipment; control of inventory; information technology services; janitorial services; maintenance and remodeling of buildings; maintenance of legislative grounds and vehicles; purchasing; legislative police; parking; shipping and receiving; utilities; and warehouse operations.

The Director of the LCB is the Chief of the Administrative Division. The Deputy Director of the LCB manages the units of the Administrative Division that are based in Carson City, and the Legislative Services Officer oversees the Las Vegas Office.

<u>Las Vegas Office of the Legislative Counsel Bureau</u>
The Las Vegas Office provides complete assistance to legislators with full access to all LCB information and services, including computer laptop support and videoconferencing capabilities. Similar information assistance is provided to the public, subject to legislative priorities. Meeting rooms are also available at this location for viewing and participating in videoconference hearings during the session and the interim. In addition, legislators may reserve a room for meetings with constituents or other legislative purposes.

Audit Division

The Audit Division performs audits of the Executive and Judicial Branches of State government. The Audit Division also performs special audits of local governments as required by legislation or at the direction of the Legislative Commission. The purpose of the legislative audits is to improve government by providing independent and reliable information to the Legislature about the operations of State agencies, programs, and functions. The findings of the Audit Division are published in audit reports, which include constructive suggestions for improvements.

Audit reports are presented to the Audit Subcommittee of the Legislative Commission, and later to the full Commission, at public meetings. After becoming a public document, the reports are distributed to legislators, State and local officials, and the public. The Legislative Auditor is the Chief of the Audit Division.

Fiscal Analysis Division

The Fiscal Analysis Division provides the Legislature with the capability for independent review and analysis of budgetary, tax, and fiscal matters. The Division examines the Governor's *Executive Budget* and suggests possible changes; provides expenditure and revenue analyses to aid the legislative budget and tax committees; and assists the Legislature in the interpretation of factual data related to fiscal aspects of the operation of State and local governments. The Division is headed by the Senate Fiscal Analyst and the Assembly Fiscal Analyst. The Division serves as the primary staff to the Interim Finance Committee, the Senate Committee on Finance, the Assembly Committee on Ways and Means, the Senate Committee on Revenue, the Assembly Committee on Taxation, and interim studies relating to budget or tax issues.

Legal Division

The Legal Division, with a staff of lawyers, paralegals, editors, indexers, and document technicians, drafts bills and resolutions, reviews administrative regulations, and provides certain other legal assistance when requested. The Division is headed by the Legislative Counsel. The Legislative Counsel is the legal adviser to the Legislative Branch of government and provides legal counsel for legislative committees. Just as the Attorney General responds to requests within the Executive Branch, the Legislative Counsel issues opinions during the legislative sessions and the interim upon the request of a member or committee of the Legislature, the Legislative Commission, or LCB staff. The Legislative Counsel also represents the interests of the Legislature in court and administrative proceedings.

The Legislative Counsel is responsible for assimilating, codifying, indexing, and publishing the *Advance Sheets*, *Statutes of Nevada*, *Nevada Revised Statutes* with Annotations, *Nevada Administrative Code* and several compilations of selected portions of NRS, as well as creating and publishing the Bill Index and Tables during the legislative sessions. As part of the Legal Division, the State Printing Office prints copies of bills, statutes, and other legislative publications, and provides printing services to the divisions of the LCB and other State agencies.

The Legal Division also sells and provides customer service for these publications as well as souvenirs of the Nevada Legislature and the State of Nevada in the Gift Shop.

Research Division

The Research Division functions as the general information arm of the Legislature. The Division's primary responsibilities include responding to legislators requesting information and policy analysis; serving as lead staff (committee policy analysts) to standing committees of both houses (except appropriations and revenue committees); functioning as the primary administrative and policy staff for most interim study committees between legislative sessions; and assisting legislators in responding to their constituents' problems with State and local government agencies. Legislative documents and research materials are available through the Division's Legislative Research Library.

The Research Division also answers requests for information from national organizations, government agencies in Nevada and other states, and the public. In addition, the Division prepares numerous publications, reports, and issue papers relating to public policy. The Research Director administers the Division.

SUMMARY

The staff services of the Legislative Counsel Bureau are furnished throughout the year for any legislator. Legal advice, fiscal information, and background research are furnished upon request. Services of a more extensive nature are executed when the Legislature so orders by means of a law or resolution. Between sessions, such projects may be requested through the Legislative Commission.

SELECTED PUBLICATIONS OF THE LEGISLATIVE COUNSEL BUREAU

- *Appropriations Report*: http://www.leg.state.nv.us/Division/Fiscal/Appropriation%20Reports/.
- Research Briefs or Issue Papers on issues determined to be of interest during the next legislative session: http://www.leg.state.nv.us/Division/Research/Publications/ResearchBriefs/index.cfm.
- *Biennial Report of the Legislative Auditor*: http://www.leg.state.nv.us/Division/Audit/documents/BiennialReport2010.pdf.
- Bulletins—reports from interim committees: http://www.leg.state.nv.us/Division/Research/Publications/DivStudyLegReport.cfm.
- *Fiscal Report*: http://www.leg.state.nv.us/Division/Fiscal/Fiscal%20Report/.
- Policy and Program Reports: http://www.leg.state.nv.us/Division/Research/Publications/PandPReport/index.cfm.
- End of Session Speech (only available to legislators).

- *Summary of Legislation*: http://www.leg.state.nv.us/Division/Research/Publications/SoL/index.cfm. You may also search for individual bill summaries at: http://search.leg.state.nv.us/ResearchBillSummaries/BillSummaries.html.

- *The Guide to the Nevada Legislature*: http://www.leg.state.nv.us/Division/Research/Publications/Guide/Guide2011.pdf.

- *Nevada Legislative Manual*: http://www.leg.state.nv.us/Division/Research/Publications/LegManual/2011/index.cfm.

- *Directory of State and Local Government:* http://www.leg.state.nv.us/Division/Research/Publications/Directory/index.cfm.

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

- Bill Indexes of the Senate and Assembly (various indexes are available under the Tables and Index heading on this page): http://www.leg.state.nv.us/Session/76th2011/Reports/.

- Histories of the Senate and Assembly: http://www.leg.state.nv.us/Session/76th2011/History/.

- Journals of the Senate and Assembly: http://www.leg.state.nv.us/Session/76th2011/Journal/.

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WEBSITES

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

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Open Meeting Law

Research Division

January 2012

The famous orator and politician William Jennings Bryant said:

> The government being the people's business, it necessarily follows that its operations should be at all times open to the public view. Publicity is therefore as essential to honest administration as freedom of speech is to representative government.

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

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Public Policy for Nevada's Open Meeting Law

The statement of legislative intent in NRS 241.010 declares that: ". . . all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

OPEN MEETING LAW

The Open Meeting Law (OML) in Nevada was first enacted in 1960 and is codified in Chapter 241 ("Meetings of State and Local Agencies") of the *Nevada Revised Statutes* (NRS). Nevada has one of the strongest open meeting laws in the United States because there are so few exceptions to the general rule that all meetings of public bodies must be open to the public.

To that end, the provisions of the OML are liberally construed in favor of the public and the courts will not imply exceptions to the general rule. To assist public bodies in complying with the OML, the Nevada Attorney General's office publishes the *Nevada Open Meeting Law Manual* (OML Manual) and makes it available online at: http://www.ag.state.nv.us/opengovt/oml/omlmanual.pdf. The Attorney General also publishes an OML "compliance checklist" at: http://ag.state.nv.us/opengovt/oml/omlcchecklist.pdf.

DEFINITIONS

Definitions of terms are critical to the application of the open meeting provisions, especially the definitions of "public body" and "meeting." The term "public body" is broadly defined in NRS 241.015(3) to include:

> . . . Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by: (1) The Constitution of this State; (2) Any statute of this State; (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law; (4) The Nevada Administrative Code; (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government; (6) An executive order issued by the Governor; or (7) A resolution or an action by the governing body of a political subdivision of this State . . .

The definition further provides that a "public body" includes:

> . . . Any board, commission or committee consisting of at least two persons appointed by: (1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government; (2) An entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee otherwise meets the definition of a public body pursuant to this subsection; or (3) A public officer who is under the direction of an agency or other entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee has at least two members who are not employed by the public officer or entity . . .

Finally, the definition also provides that a "public body" includes:

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

The definition above was amended significantly in 2011 to add provisions clarifying the method by which the public body is created and to specify that boards, commissions, and other committees appointed by the Governor are also considered public bodies. Because the definition of public bodies includes subcommittees and advisory committees, they are subject to the open meeting provisions to the same extent as the public body that created them. Executive directors and the staff of executive or other governmental agencies are not subject to the OML and most private nonprofit organizations are not considered public bodies.

Since open government is the goal, formal or informal polling of members to reach a decision, whether by telephone, mail, electronically, or through a group of meetings attended by less than a full quorum, is considered a violation of the OML.

What is a meeting under the Open Meeting Law?

As defined in subsection 2 of NRS 241.015, a "meeting" is:

> The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

A meeting also includes:

> Any series of gatherings of members of a public body at which:
> (I) Less than a quorum is present at any individual gathering;
> (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
> (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

Excluded from the definition of a "meeting" is a:

> . . . gathering or series of gatherings of members of a public body . . . at which a quorum is actually or collectively present:
> (1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.
> (2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

EXCEPTIONS

There are specific statutory exceptions for certain entities from the OML, including the Legislature, certain meetings of the State's Commission on Ethics, the Nevada Commission on Homeland Security, hearings by school boards to expel students, certain labor negotiations, and investigative hearings of the State Gaming Control Board. Closed sessions may also be held, for limited purposes, by the Certified Court Reporters' Board of Nevada, the Public Employees' Retirement Board, the State Board of Pharmacy, the Nevada Tax Commission, and public housing authorities. Portions of disciplinary hearings conducted by occupational and licensing boards are also exempt unless the licensee requests an open meeting. An agency or board may close a portion of a meeting to receive information deemed confidential by law. Although judicial proceedings are exempt from the open meeting requirements, Nevada law requires sitting courts to be open to the public, with some exceptions.

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

In 2005, the Legislature made several significant changes relating to closed meetings, including allowing a person who is the subject of a closed meeting to waive closure of the meeting and requiring a public body to honor such a request. Meetings may not be closed to discuss the character, conduct, or competence of an appointed public officer or a person who serves at the pleasure of a public body, as a chief executive or administrative officer. This includes county and city managers, school district superintendents, or university and college presidents. These changes and others were made in Senate Bill 267 (Chapter 466, *Statutes of Nevada 2005*).

As the result of litigation over a Nevada Tax Commission decision made in a closed session, Assembly Bill 433 (Chapter 296, *Statutes of Nevada*) of the 2007 Legislative Session clarified when the Tax Commission may meet in closed session. The bill also clarified that <u>any</u> meeting of a public body closed pursuant to a specific statute may only be closed to the extent specified in law. In addition to clarifying the use of taxpayer records by the Tax Commission, S.B. 33 (Chapter 160, *Statutes of Nevada*) of the 2011 Legislative Session clarified that a taxpayer may request a closed hearing of the Commission in writing not later than 14 calendar days before the date of the hearing or, if authorized by the Executive Director for good cause shown, not later than 5 calendar days before the hearing.

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

Assembly Bill 59 (Chapter 383, *Statutes of Nevada*) of the 2011 Legislative Session clarified that proceedings of a public body that are quasi-judicial in nature are subject to the Open Meeting Law. An exception to this provision are meetings of the State Board of Parole Commissioners when acting to continue, deny, grant, or revoke parole of a prisoner. Finally, S.B. 187 (Chapter 368, *Statutes of Nevada 2011*) provided that panels charged with making an evaluation for the Board as to whether prisoners who were convicted of certain sexual offenses are likely to reoffend in a sexual manner are subject to the OML.

LEGISLATURE

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

NOTICE OF MEETINGS

In order to give the public an opportunity to observe or participate in meetings of public entities, the law requires that notice must be given no less than three full working days prior to the meeting. Thus, if a meeting is to be held on a Wednesday, notice must be given no later than 9 a.m. on the preceding Friday. Notice is given by posting notice in at least four places, one of which should be the principal office of the public body, and by mailing copies of the notice to any person who requests notification of meetings. If the public body maintains a website, then supplemental notice must be posted on the website.

Notice must include the time, location, and date of the meeting, and the agenda for the meeting. The agenda shall consist of a clear and complete statement of the topics to be considered and shall designate those items on which action may be taken. All meetings must provide an opportunity for public comment. If a meeting will be closed to consider the character, conduct, competence or health of a person, or if administrative action may be taken against a person during a meeting, the agenda must include the name of any such person.

Two measures approved in 2011 made notable changes to the meeting notice requirements set forth in the OML. Specifically, A.B. 59 required meeting agendas to include "for possible action" next to agenda items on which action may be taken and to state if there are any time, place, or manner of restrictions on public comments. Agendas must also include a notice that items may be taken out of order, combined, or removed. In addition, A.B. 257 (Chapter 459, *Statutes of Nevada*) required meeting agendas to provide at least two periods for public comment—one at the beginning of the meeting before any action items and one prior to adjournment. Alternatively, the public body may choose to include public comment after each action item on the agenda, but before the public body takes action on the item. Finally, the public body must, at some time before adjournment of the meeting, allow the general public to comment on any matter that is not specifically included as an action item on the agenda.

The public body must also provide, upon request and at no charge to the requestor, a copy of the agenda and any ordinances or regulations or other supporting materials to be discussed at the meeting. Special notice requirements apply in certain situations, such as a meeting to acquire property by eminent domain or a closed meeting to consider the character, alleged misconduct, professional competence, or the physical or mental health of a person.

Emergencies sometimes arise that necessitate either a meeting on less than three days' notice or the late addition of an agenda item to an already scheduled meeting. The statutes do not define "emergency" but the guidance in the OML Manual limits emergencies to situations where:

- The need to discuss or act on an item is truly unforeseen at the time the agenda was posted or the meeting was called; <u>and</u>

- The item is truly of such a nature as to require immediate action.

Although not required by law, the OML Manual recommends providing as much advance supplementary notice of emergency meetings or agenda additions as possible to the public and news media to comply with the spirit of the law.

MEETING RECORDS

For the members of the public who cannot attend a meeting, the OML requirements to maintain records of meetings provide an important substitute. Minutes must be prepared for all meetings of a public body and must include the: (1) date, time, and place of the meeting; (2) names of the members present and absent; and (3) substance of all matters proposed, discussed, or decided. Upon the request of a member, the minutes shall also include a record of the vote taken on a matter and any other information the member wishes to include. At the request of a member of the public, the minutes shall include the substance of remarks made by the member of the public or a copy of prepared written remarks if submitted for inclusion.

Since October 1, 2005, public bodies have been required to make an audio recording of a meeting or provide a transcript prepared by a certified court reporter. However, if a public body is prevented from doing so due to factors beyond its control, such as power outages or mechanical breakdowns, the failure will not be considered a violation of the OML. Recordings and transcripts must be preserved for at least one year and made available to the public.

ATTORNEY GENERAL OPINIONS

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

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

PENALTIES FOR VIOLATION

The OML recommends corrective action for violations of the law to mitigate the effect of a violation. For example, improper notice can be corrected by rescheduling the meeting. The law states that actions taken in violation of the OML are void. Suits alleging violations may be brought by private citizens or the Attorney General. Any member of a public body who knowingly violates the open meeting statutes, or wrongfully excludes a person from a meeting, is subject to misdemeanor criminal sanctions (up to six months in jail and/or a fine of not more than $1,000). A member of a public body who is convicted of a violation of the OML must vacate his or her office.

Assembly Bill 59 of the 2011 Legislative Session also made several changes and additions to provisions relating to OML violations. The measure added a civil penalty of not more than $500 for any member of a public body who participates in an action in violation of the OML with knowledge of the violation. The action may be brought by the Attorney General in any court and must be commenced within one year of the action in violation of the law. Assembly Bill 59 also clarified that the Attorney General shall investigate and prosecute any violation of the OML and is authorized to issue subpoenas when investigating OML complaints. Finally, A.B. 59 required a public body to include, on its next agenda, an acknowledgement of the Attorney General's findings and conclusions relating to a violation of the OML.

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Public Records

Research Division January 2012

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PUBLIC RECORDS

Throughout the country, lawmakers must strike the delicate balance between protecting access to government documents and restricting the availability of certain personal and sensitive information included in those documents. Recent concerns regarding homeland security and identity theft coupled with the public's "right to know" make this balance particularly difficult to achieve.

Nevada's Public Records Law—What Is a Public Record?

Chapter 239 ("Public Records") of *Nevada Revised Statutes* (NRS) governs the handling of public records for State and local governments in Nevada. The original public records law was created by the 1911 Nevada Legislature and for many years, the law simply stated that "all books and records of the state and county officers . . . shall be open at all times during office hours to inspection by any person, and the same may be fully copied." While the law stated that records were to be open and publicly accessible, no definition existed explaining precisely what constituted a public record. Indeed, since 1913, over two dozen Attorney General's Opinions have attempted to clarify the intent of the public records law, determine whether a particular document constitutes a public record, and define when a public record should be stored and preserved.

Years of legal opinions, court rulings, and interpretations finally led to some clarification of the law in the 1960s when the 1965 Legislature passed Assembly Bill 19 (Chapter 46, *Statutes of Nevada*), which provided that all public records are open except those "declared by law to be confidential." Even today, no broad definition of "public record" is provided in Chapter 239 of NRS. Therefore, provisions throughout NRS set forth a host of documents that are considered confidential. These range from documents at Nevada's Department of Motor Vehicles containing personal information, blood bank data, and certain work permit information, to data contained in welfare assistance documents, well owner records, and some occupational licensing documents.

Defining precisely what constitutes a public record has been a difficult debate for quite some time. Two legislative interim studies—one during the 1981-1982 Interim and one during the 1991-1992 Interim—tackled this complex issue. Much of what was discussed during these interim studies (especially during the latter study) has shaped Chapter 239 of NRS in its current form. The current law stipulates that:

> All public books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public.

> The issues involved with public records are difficult ones. There are few areas of public policy that have as many competing interests. The government's need for information, the people's right to have access to that information, and the fundamental right to privacy must be delicately balanced.
>
> Gene T. Porter
> Former Assemblyman and
> Majority Floor Leader
> April 1993

The law goes on to say that public records must be supplied in any format in which the record is "readily available." Also provided in the law are legal protections for requesters of public records who may be denied the inspection or copy of a record. In such cases, the requester may apply to the district court in the county in which the book or record is located for an order permitting the requester to inspect or copy it. A requester may also apply to the district court for authorization to inspect or copy a confidential public record, if that document has been in the custody of a governmental entity for at least 30 years, or if the person to whom the record relates is deceased (whichever is later).

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

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

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

REPRODUCTION OF RECORDS AND ASSOCIATED FEES

Chapter 239 of NRS also sets forth requirements for the microfilming of records or saving records in an electronic recordkeeping system prior to their destruction. A governmental entity may charge a fee for copies of records, not exceeding the actual cost of the copy, unless a specific statute or regulation sets a different fee. In addition, governmental entities must prepare and post a list of fees or give notice as to where a list may be obtained. A governmental entity is also permitted to recover the cost of extraordinary use of personnel or resources related to a request for a copy of a public record.

Chapter 239 of NRS authorizes a fee, based upon reasonable costs, for providing information from a geographic information system. For transcripts of administrative proceedings, a governmental entity must charge the fee per page established by its contract with the court reporter and remit that fee to the court reporter.

RECORDS RETENTION AND DISPOSAL

In 1993, the Nevada Legislature created the Committee to Approve Schedules for the Retention and Disposition of Official State Records. Membership on this Committee includes the Secretary of State, the Attorney General, and within the Department of Administration, the Director of the Department, the Administrator of the Division of State Library and Archives, and the Administrator of the Division of Enterprise Information Technology Services. The Committee is charged with reviewing and approving (or disapproving) the records retention and disposal schedules which must be developed by each State agency, board, and commission. Prior to 1993, the State Board of Examiners reviewed and approved records retention schedules. Provisions also exist to protect documents that have historic or unique value as determined by the submitting State or local government agency and the Division of State Library and Archives.

Such retention and disposal schedules apply to the following "official state records" as defined in NRS 239.080:

1. Papers, unpublished books, maps, and photographs;

2. Information stored on magnetic tape or computer, laser, or optical disc;

3. Materials which are capable of being read by a machine, including microforms and audio/visual materials; and

4. Materials which are made or received by a State agency and preserved by that agency or its successor as evidence of the organization, operation, policy, or any other activity of that agency or because of the information contained in that material.

Court Records: In 2011, the Legislature addressed the retention of court documents and set forth a definition of "court record." Assembly Bill 195 (Chapter 382, *Statutes of Nevada 2011*) provided that court records may only be destroyed in accordance with a schedule for retention and disposition approved by the Nevada Supreme Court. Records of the Supreme Court and district courts may only be destroyed after a copy of the record is saved on microfilm or in an electronic recordkeeping system. Records of the municipal and justice courts may be destroyed without making a copy.

Local Governments: Local governments are authorized to "establish a program for the management of records, including the adoption of schedules for the retention of records and procedures for microfilming." These procedures must be approved by the local governing body and comply with the applicable provisions in Chapter 239 of NRS. Local governments are also permitted to submit historical records to the Division for safekeeping. Finally, the law sets forth procedures for replicating or restoring important lost or destroyed public records and makes it a category C felony to steal, forge, deface, falsify, or obliterate a public record. Assembly Bill 330 (Chapter 452, *Statutes of Nevada*), enacted in 2011, clarified that privatization contracts entered into by local governments are public records and must be made available for inspection.

HOMELAND SECURITY AND PUBLIC RECORDS

Since the tragic attacks on September 11, 2001, legislators across the country have grappled with the growing need to limit public exposure to sensitive documents while, at the same time, protecting the public's right-to-know. Many Nevada lawmakers were immediately concerned that the amount and specificity of the information available under public records provisions could lead to a disruptive or disastrous attack on the State's infrastructure. In response to these and other concerns, the Nevada Legislature, along with over two dozen other states, passed laws limiting access to the most sensitive documents that could be used to plan and coordinate terrorist attacks.

In 2003, the Legislature approved legislation providing for the confidentiality of certain documents or records, including, among other things, drawings, maps, or plans of security systems and important public buildings and facilities. Computerized and electronic records were also addressed in the 2003 legislation. Nevada law now stipulates that records and portions of records assembled by the Division of Enterprise Information Technology Services in the Department of Administration that would, if in the wrong hands, create a substantial likelihood of threatening the safety of the general public are confidential and not subject to inspection by the general public.

These records include: (1) information regarding the infrastructure and security of information systems, including access codes, passwords, and programs; (2) assessments and plans that relate to the vulnerability of an information system; and (3) results from security tests of information systems that may reveal specific vulnerabilities. The Administrator of the Division must maintain a list of each record that has been determined to be confidential. The list must be prepared and maintained so as to

indicate the existence of a particular record without revealing its contents. At least once each biennium, the Administrator shall review the list of confidential documents to determine whether records should remain on the list, no longer be deemed confidential, or be considered obsolete.

In the 2011 Session, the Legislature made changes and clarifications to the provisions related to documents prepared for the purpose of preventing or responding to acts of terrorism, which are declared confidential by the Governor through an executive order, and are protected from discovery or subpoena. Inspection of such confidential documents and records is limited to public safety and public health personnel. In 2011, A.B. 549 (Chapter 474, *Statutes of Nevada*) expanded the authority of the Governor by adding vulnerability assessments and emergency response plans prepared by private businesses, public entities, and utilities to the list of documents and records eligible for protection by the Governor. The bill also clarified that the Legislative Auditor has access to confidential materials when conducting a postaudit, subject to certain conditions and limitations.

PROTECTION OF PERSONAL INFORMATION IN GOVERNMENT RECORDS

In recent years, lawmakers have become increasingly concerned over the use and possible dissemination of personal information held by State and local governments. Particular focus has been given to the protection of Social Security numbers, addresses, electronic mail addresses, and telephone numbers. In the late 1990s, legislation was approved prohibiting some State government agencies from requiring the use of Social Security numbers on certain documents and forms, including drivers' licenses, identification cards, and voter registration applications.

Several measures approved during the 2005 Legislative Session set forth further protections and guidelines relating to the use and access of personal information. Specifically, A.B. 334 (Chapter 486, *Statutes of Nevada*) provided that if the Social Security number of a person is required on government documents filed after January 1, 2007, it must be kept confidential by the government agency except as necessary to carry out a specific law, for the administration of a public program, or for use on a grant application. The measure also required government agencies, by 2017, to eliminate Social Security numbers in documents filed prior to 2007. Assembly Bill 600 (Chapter 324, *Statutes of Nevada*) of the 2007 Legislative Session, which served as a follow-up measure to A.B. 334, provided additional protections to personal information beyond the previously protected Social Security numbers on documents submitted to a public entity. The bill allowed a person to request the removal of personal information in certain government documents, gave immunity to governmental agencies regarding the disclosure of personal information, and provided that the last four digits of a Social Security number are not considered personal information.

In recent years, the Legislature has approved legislation prohibiting, with some limited exceptions, the disclosure of names, addresses, telephone numbers, and other personal information collected by local governments in connection with the registration for a recreational or instructional activity, event, or facility. Nevada law now expressly prohibits a local government from requiring a Social Security number for such purposes. In addition, the Social Security number is no longer required on marriage certificates and lists of divorces or annulments.

Several measures approved by the Legislature in 2005, 2007, and 2009 addressed the confidentiality of information contained in local government records. Of particular concern to the law enforcement community was A.B. 142 (Chapter 384, *Statutes of Nevada*) of the 2005 Legislative Session, which allowed peace officers and judges to request a court order directing that their personal information contained in county assessor records be made confidential. Finally, the release of personal information contained in government records was also covered in A.B. 188 (Chapter 307, *Statutes of Nevada*) of the 2005 Legislative Session. The bill required a government entity to maintain a secure database of electronic mail addresses and telephone numbers of persons who provide such information to the entity. Under this measure, the database is not considered a public record. However, the database may be disclosed in response to a court order or by the governmental entity upon a finding that such disclosure is necessary to protect the public safety or to assist in a criminal investigation.

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

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POLICY AND PROGRAM REPORT

Ethics in Government and Whistle-Blower Laws

Research Division January 2012

The issue of governmental ethics is complex and often controversial. Indeed, maintaining public trust in our process of representative democracy is vital to the success of our governing system. In a message to Congress in April 1961, President John F. Kennedy said:

> The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.

Assuring the public's confidence in government requires elected officials and all who work in public service to place the public's interest over personal interests and exhibit the highest levels of ethical standards and behavior. Laws exist in all 50 states to clarify ethical matters such as personal financial disclosures, honoraria, conflicts of interest, gifts, and unwarranted privileges.

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ETHICS IN GOVERNMENT

The Nevada Ethics in Government Law is set forth in Chapter 281A ("Ethics in Government") of the *Nevada Revised Statutes* (NRS). These provisions were created by the Legislature in the mid-1970s to separate the roles of persons who are both public servants and private citizens and ensure that public officers and employees exercise their duties for the sole benefit of Nevada's residents. These statutes also govern policies regarding personal financial disclosure, abstentions in voting by elected public officers, and the operations of Nevada's Commission on Ethics. In 2007, the Legislature moved the Nevada Ethics in Government Law from Chapter 281 ("General Provisions for Public Officers and Employees") into its own NRS chapter.

Public Policy for Nevada Ethics in Government Law

The Nevada Legislature adopted certain findings and declarations to govern the administration and implementation of the ethics laws. These provisions are codified in NRS 281A.020, which is set forth below:

> NRS 281A.020 Legislative findings and declarations.
> 1. It is hereby declared to be the public policy of this State that:
> (a) A public office is a public trust and shall be held for the sole benefit of the people.
> (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.
> 2. The Legislature finds and declares that:
> (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.
> (b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.
> (c) In interpreting and applying the provisions of this chapter that are applicable to State Legislators, the Commission must give appropriate weight and proper deference to the public policy of this State under which State Legislators serve as "citizen Legislators" who have other occupations and business interests, who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of the Legislator, including, without limitation, professional, family and business experiences, and who are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted.
> (d) The provisions of this chapter do not, under any circumstances, allow the Commission to exercise jurisdiction or authority over or inquire into, intrude upon or interfere with the functions of a State Legislator that are protected by legislative privilege and immunity pursuant to the Constitution of the State of Nevada or NRS 41.071.

Constitutional Doctrine of Separation of Powers

In December 2008, the First Judicial District Court in Carson City found that, in light of the constitutional doctrine of separation of powers and legislative privilege and immunity, any inquiry into the ethical propriety of legislative actions concerning disclosure, voting, and abstention must be conducted by the Legislative Department and cannot be conducted by an administrative agency of the Executive Department, such as the Commission on Ethics. In response, the 2009 Legislature passed Senate Bill 160 (Chapter 257, *Statutes of Nevada*), which implemented in statute the constitutional doctrine of separation of powers and legislative privilege and immunity, protecting legislators from having to defend themselves from various legal challenges when they perform certain action—such as speech, deliberation, and debate—within the sphere of legitimate legislative activity. Additionally, the measure clarified that statutory provisions concerning disclosure, voting, and abstention do not apply to State legislators or allow the Commission on Ethics to exercise jurisdiction over State legislators with regard to these activities.

Definition of Public Officer

Senate Bill 160 also amends certain provisions concerning public officers' and employees' ability to contract with governmental agencies under certain circumstances, and clarifies the definition of "public officer" in the Ethics Law by making it consistent with the definition of the term as it is found in NRS 281.005.

NRS 281A.160 "Public officer" defined.

1. "Public officer" means a person elected or appointed to a position which:
   (a) Is established by the Constitution of the State of Nevada, a statute of this State or a charter or ordinance of any county, city or other political subdivision; and
   (b) Involves the exercise of a public power, trust or duty. As used in this section, "the exercise of a public power, trust or duty" means:
      (1) Actions taken in an official capacity, which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
      (2) The expenditure of public money; and
      (3) The administration of laws and rules of the State or any county, city or other political subdivision.
2. "Public officer" does not include:
   (a) Any justice, judge or other officer of the court system;
   (b) Any member of a board, commission or other body whose function is advisory;
   (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
   (d) A county health officer appointed pursuant to NRS 439.290.
3. "Public office" does not include an office held by:
   (a) Any justice, judge or other officer of the court system;
   (b) Any member of a board, commission or other body whose function is advisory;
   (c) Any member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money; or
   (d) A county health officer appointed pursuant to NRS 439.290.

Code of Ethical Standards

In Nevada, public officers and employees are governed by a "Code of Ethical Standards" (NRS 281A.400) that is intended to prevent abuse of public office by prohibiting situations in which conflicts of interest may arise.

Gifts

A public officer or employee shall not seek or accept any gift, service, favor, or employment, which would improperly influence a reasonable person to depart from the faithful and impartial discharge of his or her public duties.

Unwarranted Privileges

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

Contracting With Government

A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant interest. Certain exceptions apply to those public officers who operate as a "sole-source" provider of a particular service in the area served by the governing body. A member of any board, commission, or similar body who is engaged in a business regulated by that board, commission or body may, in the ordinary course of his or her business, bid or enter into a contract with a governmental agency (other than the board) if the member has not taken part in developing the contract plans and the member will not be personally involved in opening, considering, or accepting offers. Finally, certain public officers or employees may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the rules of open competitive bidding are not employed due to an emergency situation, or the sources of supply are limited. The public officer or employee must not take part in developing the contract plans or specifications, and the public officer or employee may not be personally involved in opening, considering, or accepting offers.

Private Compensation for Performing Public Duties

A public officer or employee shall not accept any salary, retainer, or other compensation from any private source for the performance of his or her duties as a public officer or employee.

Private Use of Confidential Information

A public officer or employee who acquires, through his or her public duties, any information which by law or practice is not at the time available to the people generally shall not use the information to further the pecuniary interests of himself or herself or any other person or business entity.

Suppressing Information for Pecuniary Interests

A public officer shall not suppress any governmental report or other document because it might tend to affect unfavorably his or her pecuniary interests.

Misuse of Government Resources

A public officer or employee, except State legislators who are subject to certain restrictions described below, shall not use governmental time, property, equipment, or other facility to benefit his or her personal or financial interest. However, a limited use of governmental property and equipment is permissible if: (1) a policy allowing that use in emergency situations has been established; (2) the use does not interfere with the performance of duties; (3) the cost or value related to the use is nominal; and (4) the use does not create the appearance of impropriety. If a governmental agency incurs a cost as a result of a use specified above or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

Misuse of Government Resources (Legislator)

A State legislator shall not use governmental time, property, or equipment for a nongovernmental purpose or the private benefit of the State legislator or another person. However, a limited use of State property and resources is permissible if: (1) the use does not interfere with the performance of the State legislator's duties; (2) the cost or value related to the use is nominal; and (3) the use does

not create the appearance of impropriety. Ethics laws do not prohibit legislators from using, for nongovernmental purposes, mailing lists, computer data, or other information lawfully obtained from a governmental agency if the lists, data, and information are also available to members of the general public. The use of telephones and other means of communication are permitted if there is not a special charge for that use. Furthermore, a member of the Legislature shall not require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except in rare situations where the employee's service is necessary for the legislator or employee to perform his or her duties or when the service has been established as legislative policy. Finally, a legislator shall not attempt to benefit personally or financially through the influence of a subordinate or seek other employment or contracts through the use of the State legislator's official position.

Honoraria

Nevada Revised Statutes 281A.510 prohibits a public officer or employee from accepting or receiving an honorarium, which is defined as "the payment of money or anything of value for an appearance or speech by the public officer or public employee in the officer's or employee's capacity as a public officer or public employee." Certain things are excluded from the definition of "honorarium," such as: (1) payment of the actual and necessary costs incurred by the public officer or employee or his or her spouse or staff for transportation, meals, and lodging while away from the public officer's or employee's residence; (2) compensation which would otherwise be earned in the normal course of the public officer's office or employment; (3) a fee for a speech that is related to the public officer's outside occupation; and (4) a fee for a speech or presentation delivered to an organization of legislatures, legislators, or other elected officials.

Financial Disclosure Statement

Most states require some form of personal financial disclosure for public officers. In Nevada, the Financial Disclosure Statement includes information regarding general income sources, debt, business ventures, real estate, and contributions of certain gifts. The following individuals must file Financial Disclosure Statements: (1) every candidate for public office who, if elected, is entitled to receive compensation of $6,000 or more annually for serving in the office in question; (2) every elected public officer; and (3) every appointed public officer who is entitled to receive compensation of $6,000 or more annually for serving in the office in question. Any elected supervisor of a conservation district is exempt from the requirement to file a financial disclosure statement.

Nevada Revised Statutes 281.581 provides civil penalties for willful failure to file a statement of financial disclosure. The following table sets out those penalties.

Failure to File a Financial Disclosure Statement	Civil Penalties
1 to 10 days late	$25
11 to 20 days late	$50
21 to 30 days late	$100
31 to 45 days late	$250
45 or more days late (or not filed)	$2,000

Financial Disclosure Statements for elected public officers and candidates for public office must be filed with the Secretary of State. All other public officers who receive an annual compensation of $6,000 or more must also file the statement with the Secretary of State. Candidates for public office must file the statement no later than the tenth day after the last day to qualify for office (ten days after the close of candidate filing). Meanwhile, elected public officers must file the statement on or before January 15 of each year of their term and appointed public officers must file within 30 days of their appointment and annually thereafter on or before January 15.

Abstention and Disclosure

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

Abstention: In addition to the requirements of the "Code of Ethical Standards," a legislator or public officer is prohibited from voting upon or advocating the passage or failure of a matter if the legislator or public officer, in the "judgment of a reasonable person in the public officer's situation," would be materially affected by the legislator's or public officer's:

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

It should be noted that even if a legislator must abstain, the legislator may provide factual information to colleagues as long as the legislator remains a provider of facts and does not engage in statements of advocacy regarding the matter.

Disclosure for public officers and employees: NRS 281A.420 provides that:

> . . . a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:
> (a) Regarding which the public officer or employee has accepted a gift or loan;
> (b) In which the public officer or employee has a pecuniary interest; or
> (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others, without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity.

A public officer must make such a disclosure at the time and each time the matter is considered unless the public officer is a member of the Legislature.

The provisions concerning the above disclosure do not apply to State legislators or allow the Commission on Ethics to exercise jurisdiction or authority over State legislators. The responsibility of a State legislator to make disclosures concerning gifts, loans, interests, or commitments and the responsibility of a State legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered, and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to Section 6 of Article 4 of the *Nevada Constitution*.

Opinions issued by the Commission on Ethics have stated that the burden is appropriately on the public officer to disclose private commitments and the effect those private commitments have on the decision-making process. The public officer should make a proper determination regarding abstention where a reasonable person's independence of judgment would be materially affected by those private commitments. It should be noted that NRS provides some minor exceptions and parameters to the abstention requirements for certain local policy-making boards.

Nevada's Commission on Ethics

Nevada's Commission on Ethics (NRS 281A.200 through NRS 281A.300) is responsible for the enforcement of the Code of Ethical Standards summarized above. The mission of the Commission on Ethics is to "enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties." The Commission enforces guidelines set forth by the Legislature to separate the roles of persons who are both public servants and private citizens, while at the same time, ensuring that public officers and public employees retain the public trust by exercising their powers and duties for the sole benefit of the people of the State.

Established by the Nevada Legislature in 1975, the Commission on Ethics is an independent executive commission of State government and serves in a "quasi-judicial" capacity. The Commission has a staff of five full-time employees—an Executive Director, a General Counsel, a Research Analyst, a Senior Investigator, and an Office Manager. The Attorney General may appoint a deputy to act in place of the Commission's counsel or employ outside legal counsel if the Commission counsel is unable to act on a particular matter. The Commission has eight members, four of whom are appointed by the Legislative Commission and four of whom are appointed by the Governor. Commission members serve four-year terms. Main functions are performed by the Commission:

1. Interpreting and providing guidance to public officers and employees on Nevada's "Ethics in Government" laws;

2. Investigating and adjudicating third-party ethics complaints against public officers and employees for violating certain ethics provisions; and

3. Educating public officers and employees regarding ethical provisions and prohibitions under Nevada law.

Willful Violations of Ethics Laws

As defined in NRS 281A.170, a willful violation is one where a public officer or employee acted intentionally or knowingly or intentionally or knowingly failed to act where action was called for by law. Until 2005, the Commission, upon finding a violation of ethics law, deliberated on the willfulness of an ethics violation. Since 2005, NRS 281A.480 has required a public officer or employee to establish by sufficient evidence that he or she satisfied all three of the following requirements to overcome the statutory presumption that his or her actions were willful:

1. The public officer or employee relied in good faith upon the advice of the legal counsel retained by the public body that the public officer represents or upon the manual published by the Commission on Ethics;

2. The public officer or employee was unable, through no fault of his or her own, to obtain an opinion from the Commission on Ethics before the action was taken; and

3. The public officer or employee took action that was not contrary to a prior published opinion issued by the Commission on Ethics.

Pursuant to the provisions of NRS 281A.480, if the Commission finds that a legislator has committed one or more willful violations of the ethics laws, the Commission shall submit its opinion to the leadership of the appropriate body of the Legislature for consideration.

Federal Ruling on Nevada Ethics in Government Law

In 2011, the United States Supreme Court upheld certain provisions of Chapter 281A (the Nevada Ethics in Government Law) of NRS in *Commission on Ethics of the State of Nevada v. Michael A. Carrigan* (10-568). Six years earlier, Michael A. Carrigan was a member of the Sparks City Council, when a development company applied to the city for approval of a hotel/casino project. The developer hired a consultant who had previously served as Carrigan's manager during his election campaigns. Carrigan sought the advice of the Sparks City Attorney regarding his potential conflict of interest. The City Attorney advised Carrigan that his obligations under the law would be discharged by publicly disclosing his relationship before voting on the matter, which Carrigan did.

The Commission on Ethics censured Carrigan for failure to abstain from voting, holding that his previous relationship with the consultant created a disqualifying relationship. Carrigan challenged the Commission's ruling, asserting that Nevada's ethics statutes violated his First Amendment rights. The Nevada Supreme Court struck down a portion of NRS 281A.420 as unconstitutionally overbroad, holding elected officials have a First Amendment right to vote on official business. The U.S. Supreme Court reversed the State court and held that those empowered with legislative authority have no First Amendment right in a legislative vote. Legislative power is not personal to the legislator; it belongs to the people.

Whistle-Blower Statutes

First enacted in 1991, the Nevada "whistle-blower" statutes (NRS 281.611 through NRS 281.671) originally provided protection only for State government employees who report government waste or wrongdoing. Whistle-blower protection was expanded in 2001 to include local government employees. The Legislature has declared that the public policy of the State is to encourage State and local officers and employees to disclose improper governmental action and that the Legislature will protect the rights of persons making such disclosures (NRS 281.621).

Separate and apart from the whistle-blower statutes in Chapter 281 of NRS, other provisions of the law protect police officers who report improper governmental action. In addition, certain types of disclosures of wrongdoing are protected; for example, specific protection is provided for school personnel reporting testing irregularities, persons reporting violations of occupational health and safety laws, and persons filing complaints against long-term care facilities.

Nevada whistle-blower statutes define "improper governmental action" as actions taken in the performance of official duties, whether or not the action is within the scope of employment, that are:

- In violation of State law or regulation;
- For local government officers and employees, in violation of local ordinances;
- In abuse of authority;
- A substantial and specific danger to public health or safety; or
- A gross waste of money.

State or local officers or employees are prohibited from using their position to prevent disclosure of an improper government action by another officer or employee. Government officers or employees who report improper governmental action are protected from "reprisal or retaliatory action" by their employer for two years after the disclosure.

Officers or employees who believe that they have been subject to reprisal or retaliatory action within two years of a disclosure of improper government action must file a written appeal with either the Division of Human Resource Management within Nevada's Department of Administration or the entity designated by the local ordinance, as applicable. State law requires local governments to adopt procedures for hearing appeals of local government officers and employees alleging reprisal or retaliatory action, subject to certain minimum State standards.

What Types of Conduct Are Considered Retaliation or Reprisal in Nevada?

Examples of conduct considered a reprisal or retaliatory action include:

- Refusal to assign meaningful work;
- Issuance of reprimands or poor evaluations;
- Demotions or reductions in pay;
- Denial of promotions;
- Suspension, transfer, or dismissal; or
- Conditions creating an adverse working environment.

For State appeals, if the appeal is filed within ten days of the alleged reprisal or retaliatory action, a hearing is scheduled before a hearing officer to take evidence and testimony. If the hearing officer finds that the whistle-blower has been subjected to reprisal or retaliation, then the hearing officer may issue an order directing the person responsible for the reprisal to refrain from such action. The hearing officer shall also file a copy of the decision with the Governor or elected State person who supervises the person found responsible. Details of the appeal process for State officers and employees are spelled out in Chapter 281 of the *Nevada Administrative Code*.

Although not traditionally considered whistle-blower protection, any person who in good faith communicates information or a complaint to a legislator, officer, or employee of the federal or State government in Nevada, on a matter reasonably of concern to that entity, is protected from personal or civil liability by NRS 41.635 to NRS 41.670.

WEBSITES AND CONTACTS

Ethics in Government
Commission on Ethics
Telephone: (775) 687-5469
Website: http://ethics.nv.gov

Whistle-Blower Law
Division of Human Resource Management
Department of Administration
Telephone: (775) 684-0109
Website: http://dop.nv.gov/whistleblower.html

FREQUENTLY ASKED QUESTIONS

Ethics in Government

Q: How can I request an opinion concerning an ethics issue?

A: Legislators may contact either the Commission on Ethics (for questions regarding nonlegislative actions) or the Legal Division of the Legislative Counsel Bureau for assistance with ethics-related matters. Clarification on legislator conflicts of interest, abstentions, and other legislative actions are to be handled by the Legal Division. Other public officers are encouraged to contact the Commission on Ethics regarding alleged ethics violations. The Executive Director of the Commission on Ethics is also authorized to conduct training on Nevada's ethics laws for public agencies.

Q: Where can I get copies of ethics opinions?

A: Previously issued opinions of the Commission on Ethics can be found on the Commission's website, organized by number and also by the statutory provision the opinion is interpreting. There are also annotations to recent ethics opinions in the NRS following the pertinent sections.

Q: Who are the members of the Commission on Ethics?

A:

Governor Appointees	Legislative Commission Appointees
Erik Beyer (Chair)	Paul H. Lamboley, Esq. (Vice Chair)
Gregory J. Gale, CPA	Tim Cory, Esq.
Magdalena M. Groover	John W. Marvel*
Keith A. Weaver, Esq.	James M. Shaw

*John C. Carpenter appointed as a replacement on February 14, 2012.

Q: Does Nevada have a "cooling off" period or other provisions concerning a conflict of interest in future business opportunities for a public officer or employee?

A: Yes. The *Nevada Constitution* sets forth a one-year cooling off period for legislators. Specifically, Article 4, Section 8, provides that:

> No Senator or member of Assembly shall, during the term for which he shall have been elected, nor for one year thereafter be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by elections by the people.

A "cooling off" period for some former public officers and employees in certain agencies is set forth in Chapter 281A of NRS. A "cooling off" period limits a former public officer or employee from going to work, for a specified period of time, in a business or industry regulated by the public officer's or employee's former employer. The provision primarily affects former members of the Public Utilities Commission of Nevada, former members of the State Gaming Control Board, and any public officer or employee who seeks employment in a business for which the officer or employee: (1) formulated policy contained in State administrative regulations; (2) had control over an audit, decision, or investigation affecting the business; or (3) possesses knowledge of trade secrets of a direct business competitor.

In addition to the "cooling off" period for business and industry, a public officer or employee must refuse any offer or promise of future employment, a business opportunity, money, or anything of value from a person who has provided a bid on a purchasing contract to be awarded by a public body. An employee must report such an offer to his or her supervisor or agency head within 72 hours. In addition, a State or local government or any public officer or employee shall not offer or provide to a bidder any proprietary information regarding the contract or details regarding a bid on the contract from another person, and the bidder is prohibited from requesting such information. A one-year "cooling off" period is also required for certain former public officers and employees before they may be employed by a person or company to whom a purchasing contract has been awarded.

Whistle-Blower Law

Q: What advice should I give to someone who has or may have a whistle-blower complaint?

A: If the person is a State employee, that person should be immediately directed to Division of Human Resource Management within Nevada's Department of Administration for assistance in obtaining the correct forms and filing the complaint. Because State employees only have ten days after an act of reprisal or retaliation in which to file a complaint, any potential whistle-blower should be advised about the short deadline for filing a complaint and the need for prompt action. It may also be advisable to suggest that the employee consider consulting a private attorney or the Nevada State Employees' Association for assistance.

If the person is a local government employee, that person should immediately contact his or her human resources department for assistance with filing a complaint. Each local jurisdiction is

required to adopt procedures for whistle-blower complaints and each local jurisdiction may have a different deadline and procedures. Again, it may also be advisable to suggest that the employee consider consulting a private attorney or a representative of the employee's collective bargaining unit for assistance.

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POLICY AND PROGRAM REPORT

State and Local Government

Research Division

January 2012

Nevada has the distinction of being the fastest growing state over the past decade with a 124 percent increase in population since 1990 and a current population of over 2.7 million. Although Nevada ranks 44th in the nation in the density of population (24.6 persons per square mile), paradoxically it ranks very high in the percentage of persons living in metropolitan areas and is one of the most urbanized states in the nation. One reason for the high level of urbanization is that more than 85 percent of Nevada is owned by the federal government and so most of the State's population is concentrated in its cities and towns. Clark County accounts for over 72 percent of the State's entire population and Washoe County accounts for more than 15 percent, leaving less than 13 percent of the population in the remaining 15 counties.

Like the federal system, Nevada state government has three branches: Executive, Judicial, and Legislative. The Executive Branch, primarily directed by the Governor, is responsible for carrying out the laws enacted by the Legislature and providing statewide services to the people of Nevada. Nevada's 17 counties, along with over two dozen cities and towns, provide additional services and governance at the local level. Other forms of local government include school districts, general improvement districts, and local improvement districts.

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EXECUTIVE BRANCH

The Executive Branch consists of the elected offices created by the *Nevada Constitution*: Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, and Attorney General. The persons who hold these offices may also be referred to as constitutional officers.

Constitutional Officers

Constitutional officers are elected for four-year terms and their duties are set forth in the *Nevada Constitution* and by statute. Their duties can be summarized as follows:

- Governor—chief executive of the State.

- Lieutenant Governor—presides over the Nevada Senate and casts a vote in the case of a tie, fills any vacancy during the term of the Governor, and chairs the Advisory Council on Economic Development and the Committee for the Development of Projects Relating to Tourism.

- Secretary of State—responsible for overseeing elections, commercial recordings, securities, and notaries.

- State Treasurer—oversees the State Treasury, sets investment policies for State funds, and administers the Unclaimed Property Division and the Millennium Scholarship Program, along with the other college savings programs.

- State Controller—responsible for paying the State's debts, including State employees' salaries; maintains the official accounting records; and prepares the annual statement of the State's financial status and public debt.

- Attorney General—acts as the chief law enforcement officer, provides legal services to the State and State agencies, and defends or prosecutes litigation involving the State or its agencies.

The Governor, Secretary of State, and Attorney General sit on the State Board of Examiners, which is charged with reviewing tort claims, independent contracts, leases, and requests for payments from specified accounts.

Governor and Executive Branch Departments

As the head of the Executive Branch, the Governor oversees a number of statutorily created departments to carry out the laws. Many of the departments are further divided into divisions with specialized duties and expertise. During the 2011 Legislative Session, several departments were dismantled and consolidated into other departments or divisions within departments. The Nevada Legislature also combined the duties of various divisions into departments and eliminated certain boards and commissions in an effort to reorganize and streamline State government. In addition, several state-level commissions were shifted under the purview of the Governor's Office. The departments with directors appointed by the Governor are:

- Administration;

- Agriculture;

- Business and Industry;

- Conservation and Natural Resources;
- Corrections;
- Employment, Training and Rehabilitation;
- Health and Human Services;
- Motor Vehicles;
- Public Safety;
- Taxation;
- Tourism and Cultural Affairs; and
- Wildlife.

The Governor also appoints the director of the Offices of Military, State Climatologist, and Veterans' Services. The Director of the Department of Transportation is selected by the Board of Directors of the Department, of which the Governor is a member. Four of the seven members of the State Public Works Board are appointed by the Governor, two members are legislative appointments, and the Director of the Department of Administration is the seventh member.

In addition to these executive departments, the Governor also has appointing authority for numerous agencies or commissions, as well as over 80 independent boards, commissions, councils, and professional occupational licensing boards. During the 2011 Legislative Session, the Legislature approved Senate Bill 251 (Chapter 480, *Statutes of Nevada*) (*Nevada Revised Statutes* [NRS] 232B.210), which created the Sunset Subcommittee of the Legislative Commission to review each board and commission in the State and make recommendations for improvement, consolidation, or other action. The Sunset Subcommittee is also charged with reviewing tax abatements, exemptions, and set-asides for such entities, and making recommendations for termination, modification, or other action. At least 20 boards and commissions must be reviewed each year and each board and commission must be reviewed at least every ten years. The Sunset Subcommittee must make its recommendations to the Legislature no later than June 30 of each odd-numbered year. Please refer to the *Directory of State and Local Government* on the Legislature's website (http://www.leg.state.nv.us) for lists of various State entities, including agencies, commissions, and divisions.

The State Board of Education consists of elected members and oversees the Department of Education and appoints the Superintendent of Public Instruction. Senate Bill 197 of the 2011 Legislative Session (Chapter 380, *Statutes of Nevada*) revised the selection process for the State Board of Education beginning with the 2012 election cycle. Specifically, the Board will consist of four members elected by the voters in each congressional district and three members appointed by the Governor. In addition to the seven voting members, the Board will include four nonvoting members appointed by the Governor. The bill also required the Governor to appoint

the Superintendent of Public Instruction from a list of persons submitted by the Board. The budget for the State Board and Department of Education is part of the *Executive Budget*.

The Nevada System of Higher Education (NSHE) is governed by a 13-member elected Board of Regents that oversees the NSHE and appoints the Chancellor. Although the NSHE operates as part of the Executive Branch, it has a unique hybrid status due to a certain level of independence granted to the NSHE by the *Nevada Constitution*. During the 2011 Legislative Session, the Nevada Legislature adjusted the district boundaries of the Board as part of the reapportionment and redistricting process.

Many State departments, boards, and commissions have authority to adopt regulations to carry out their duties. These regulations are codified and compiled in the *Nevada Administrative Code*. The process for review and adoption of regulations is controlled by Chapter 233B ("Nevada Administrative Procedure Act") of the NRS.

The Governor plays a pivotal role in the legislative process. One of the Governor's most important duties is to prepare and present the two-year (biennial) *Executive Budget* to the Legislature for its consideration and action each session. The *Nevada Constitution* gives the Governor the power to veto a bill, but the Governor does not have line item veto powers. After a veto by the Governor, the bill is returned to the Legislature for a possible vote to override the veto. If the Governor fails to sign or veto a bill within a certain number of days after delivery, the bill becomes law without the Governor's signature. Historically, very few bills are vetoed, although in 2005, three bills were vetoed, and in 2007, seven bills were vetoed. In 2009, however, the Governor set a record in the number of bills vetoed, and the Legislature set a record in the number of vetoes it overrode. Governor Jim Gibbons vetoed 48 bills from the 2009 Legislative Session, 41 of which were vetoed during the Session. The Legislature overrode the Governor's veto on 25 of these bills and sustained the Governor's veto on the remaining 16 bills. The last seven bills were vetoed after the Legislature had adjourned *sine die* and were returned to the 2011 Session of the Legislature. The 2011 Legislature did not consider any returning bills from 2009 in order to sustain or override the Governor's vetoes. Finally, in 2011, the Governor vetoed 28 bills, none of which were overridden.

HOME RULE LIMITS

Home rule refers to the concept of local self-government and the powers granted to the citizens of a local area to structure, organize, and empower their local government. The *Nevada Constitution*, in Article 8, Section 8, states:

> The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; *provided, however*, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.

Article 4 of the *Nevada Constitution* requires the Legislature to establish a uniform system of county government (Section 25); requires the Legislature to provide for the election of boards of county commissioners and to prescribe by law their duties and compensation (Section 26); and gives the Legislature power to prescribe, among other things, the duties and compensation of certain county officers, including clerks, recorders, auditors, sheriffs, district attorneys, and public administrators (Section 32). However, there are no constitutional or statutory provisions in Nevada relating to home rule authority for county governments, and so Nevada is considered a state without home rule for local governments. In other words, county and city governments generally have only those powers that are granted to them by the Legislature.

Often debated is the effect of Dillon's Rule on Nevada's counties and other local governments. Without home rule, the general application of Dillon's Rule is to limit the powers of counties, cities, and towns. According to *Black's Law Dictionary*, Sixth Edition, Dillon's Rule is a rule from an 1868 Iowa case that is used in interpreting statutes delegating authority to local government. The rule states:

> [A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable.

It should be noted that the effect of Dillon's Rule on specific fact situations is not always clear and is often a subject of debate. The lack of home rule in Nevada generates a significant amount of legislation each session as counties and cities seek to expand or clarify their powers.

During the 2009 Legislative Session, the Legislature approved S.B. 264 (Chapter 462, *Statutes of Nevada*), which directed the Legislative Commission to conduct an interim study concerning the powers delegated to local governments. The interim study committee examined the structure, formation, functions, and powers of local governments in Nevada and discussed the feasibility of increasing the powers of local governments. While none of the Committee's recommendations were approved during the 2011 Legislative Session, the interim study did serve to raise awareness among policymakers throughout the State of the challenges associated with home rule and the powers delegated by the Legislature to local governments.

One legislative measure was approved during the 26th Special Session of the Nevada Legislature in an attempt to provide a money-saving tool and grant a small amount of home rule to county government. Specifically, the Legislature approved A.B. 2 (Chapter 9, *Statutes of Nevada 2010, 26th Special Session*), which authorized the deviation from required hours of operation for the offices of county assessor, auditor, clerk, district attorney, recorder, sheriff, treasurer, and any county office where marriage licenses may be issued. Any plan for office hour deviation must be approved by the board of county commissioners and must be fiscally neutral or result in cost savings. During the 2011 Legislative Session, the Legislature approved some bills to enhance local government control over certain business licensing practices (for contractors) and streamline the review of interlocal agreements. A bill was also approved to provide greater authority for local governments to crack down on abandoned, chronic, and dangerous nuisances. Along with these increased powers

given to local governments, the Legislature also chose to transfer the costs of some public services to local governments relating to certain presentence and investigation reports made by the Department of Public Safety and some assessments made at the local government level by the Department of Health and Human Services.

COUNTY GOVERNMENTS

With the admission of Nevada as a state in 1864, the *Nevada Constitution* declared that existing counties, towns, and cities shall continue. However, the continued existence of the counties, including their boundaries, county seats, and powers, is within the control of the Legislature. The names, county seats, and boundaries of the 17 counties are set by statute. Counties may be abolished by an act of the Legislature, but such an act does not become effective until approved by a majority of the voters in the affected county. The creation of the county commissions, and provisions relating to ordinances, general and financial powers, regulatory powers, and other matters, are found in Chapter 244 ("Counties: Government") of the NRS . Counties are granted the authority to levy taxes for the purposes prescribed by law and to the extent authorized by law.

Because laws cannot be written to apply to a particular county or group of counties, certain provisions of the NRS may apply only to certain subsets of counties based on the population of the county at the time of the preceding national decennial census. At each legislative session immediately following the decennial census (the 2011 Legislative Session, for example), the Legislature considers a "population bill," which shifts certain population thresholds higher, based on current Census data, to accommodate Nevada's growth. Assembly Bill 545 (Chapter 253, *Statutes of Nevada 2011*) retained, with limited exceptions, the applicability of provisions in Nevada law only to those counties (and cities, if applicable) which they were intended to affect. The following table sets forth the population thresholds by which certain legislation is applied as set forth in A.B. 545:

POPULATION RANGE	COUNTY	POPULATION (2010)
700,000 or more	Clark	1,951,269
100,000 or more - Less than 700,000	Washoe	421,407
55,000 or more - Less than 100,000	Carson City	55,274
47,500 or more - Less than 55,000	Lyon	51,980
	Elko	48,818
45,000 or more - Less than 47,500	Douglas	46,997
30,000 or more - Less than 45,000	Nye	43,946
20,000 or more - Less than 30,000	Churchill	24,877
15,000 or more - Less than 20,000	Humboldt	16,528
9,000 or more - Less than 15,000	White Pine	10,030

POPULATION RANGE (*continued*)	COUNTY	POPULATION (2010)
4,500 or more - Less than 9,000	Pershing	6,753
	Lander	5,775
	Lincoln	5,345
	Mineral	4,772
3,000 or more - Less than 4,500	Storey	4,010
Less than 3,000	Eureka	1,987
	Esmeralda	783

CITIES AND TOWNS

Nevada law also provides for the creation of cities and towns. Cities can be incorporated by a special act (often called "charter cities") or incorporated by general law through the petition process as set forth in Chapter 266 ("General Law for Incorporation of Cities and Towns") of the NRS. There are 12 charter cities: Boulder City, Caliente, Carlin, Carson City, Elko, Henderson, Las Vegas, North Las Vegas, Reno, Sparks, Wells, and Yerington. General law cities include: Ely, Fallon, Fernley, Lovelock, Mesquite, West Wendover, and Winnemucca. Cities must have at least 1,000 residents to incorporate and a city will be automatically disincorporated if the population drops below 150.

The Legislature sets the structure and powers of city councils, and grants various powers as codified in Chapter 268 ("Powers and Duties Common to Cities and Towns Incorporated Under General or Special Laws") of the NRS. Cities are categorized for different purposes as follows:

CATEGORIES OF CITIES (NRS 266.055)	POPULATION
I	50,000 or more
II	5,000 up to 49,999
III	4,999 or less

The population of Nevada's incorporated cities and their respective categories are shown below:

CHARTER CITIES	2010 POPULATION (CATEGORY)	GENERAL LAW CITIES	2010 POPULATION (CATEGORY)
Boulder City	15,023 (II)	Ely	4,255 (III)
Caliente	1,130 (III)	Fallon	8,606 (II)
Carlin	2,368 (III)	Fernley	19,368 (II)
Carson City	55,274 (I)	Lovelock	1,894 (III)
Elko	18,297 (II)	Mesquite	15,276 (II)
Henderson	257,729 (I)	West Wendover	4,410 (III)
Las Vegas	583,756 (I)	Winnemucca	7,396 (II)
North Las Vegas	216,961 (I)		
Reno	225,221 (I)		
Sparks	90,264 (I)		
Wells	1,292 (III)		
Yerington	3,048 (III)		

Nevada law also provides for the formation of two types of unincorporated towns: those with a town board form of government and those formed under the Unincorporated Town Government Law. In Clark and Washoe Counties, unincorporated towns may be formed only under the provisions of the Unincorporated Town Government Law. Towns in other counties may choose to operate under either type.

The town board form of government allows the unincorporated town to be governed by an independent governing board whose powers are granted by State law rather than county ordinance. Towns established under the Unincorporated Town Government Law, however, are governed by the board of county commissioners rather than by an independent town board. A town board is established to assist the county commission by acting as a liaison between the commissioners and the residents of the town.

LAND USE AND PLANNING

The Nevada model for planning and land use decisions assigns primary responsibility to the counties. In NRS 321.640, the Legislature finds that unregulated growth and development will harm the public safety, health, comfort, and general welfare and that counties and cities have responsibilities for guiding development within their boundaries while coordinating with other planning processes. State participation is limited to coordinating information, acquiring and using federal lands and, if requested, providing assistance in areas of critical environmental concern and resolving inconsistencies between local plans.

Due to the general lack of home rule for counties and cities, State law sets many of the parameters and requirements related to land use and zoning matters. Still, most of the substantive decision making regarding development approvals and land use designations are made at the local level. Chapters 277 through 279B ("Rehabilitation of Abandoned Residential Property") of the NRS set forth the general requirements for land use and planning by local governments and cover such topics as: (1) cooperative agreements among State and local governments, subdivisions, and planning commissions; (2) the preparation and filing of tentative and final maps, regional and master plans, and variances; (3) the handling of enforcement issues and planned development; (4) regional planning commissions and impact fees; (5) redevelopment; and (6) the rehabilitation of property and abandoned property in residential neighborhoods.

Regional Planning

In response to specific areas of concern and to facilitate coordination among local governments, the Legislature has authorized three major regional planning entities as follows:

- The Southern Nevada Regional Planning Coalition (Coalition) in Clark County has a ten-member board with representatives from Clark County, the Clark County School District, and the Cities of Boulder City, Henderson, Las Vegas, and North Las Vegas. Created in 1999, the Coalition's regional plan was approved by the Legislature in March 2001. To address the demands of continued urbanization, the comprehensive regional policy plan must include elements related to

air quality, conservation, land use and development, population, public facilities and services, strategies to promote the interspersion of new housing and businesses in established neighborhoods, and transportation. Further, the Coalition must define a "project of regional significance" and is required to review local master or facility plans for conformance with regional plan policies not less than every five years. The local air pollution control agency and regional transportation commission are required to coordinate with the Coalition to achieve integrated long-range air quality planning. Regional plan requirements and other provisions governing the Coalition are set forth in Chapter 278 ("Planning and Zoning") of the NRS.

In conjunction with the creation of the Coalition, Section 2 of S.B. 191 (Chapter 481, *Statutes of Nevada 1999*) required a person proposing a project of significant impact within the Las Vegas urban growth zone, as defined in NRS 463.3094, to prepare an impact statement for the local government with authority over the project.

- Through a bistate compact with California as ratified by the United States Congress, the Tahoe Regional Planning Agency (TRPA) has jurisdiction over the California and Nevada portions of the Lake Tahoe Basin. The Tahoe Regional Planning Compact was first enacted in 1969 but the California and Nevada Legislatures, with the approval of Congress, agreed upon extensive amendments to the Compact in 1980. The TRPA has a 14-member appointed board, with 7 members from California and 7 members from Nevada. The Tahoe Regional Planning Compact is codified in NRS 277.200.

  During the 2011 Legislative Session, the Legislature approved S.B. 271 (Chapter 530, *Statutes of Nevada*), which provided for the withdrawal of the State of Nevada from the Tahoe Regional Planning Compact under certain circumstances. This withdrawal will take effect on October 1, 2015, unless the governing body of the TRPA adopts an updated Regional Plan, the State of California adopts certain proposed amendments to the Compact, and the U.S. Congress approves the amendments. These amendments include: (1) changing certain voting requirements for the TRPA Board; (2) requiring the Regional Plan of the TRPA to consider the Lake Tahoe Basin's changing economic conditions; and (3) adding language to the Compact providing that a person who challenges the Regional Plan has the burden of proof to show that the plan violates the Compact. The Governor may issue a proclamation extending this withdrawal deadline to October 1, 2017. The bill specified that if Nevada withdraws from the Compact, the Nevada TRPA will assume the duties and powers currently held by the bistate Agency for the portion of the Lake Tahoe Basin within this State and any approval for a project that was issued by the TRPA remains valid. Finally, S.B. 271 requires the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System to prepare a report detailing certain issues relating to Nevada's participation in the Compact. For more information on the TRPA, see the January 2012 *Policy and Program Report* entitled "General Environmental Issues and Matters Concerning Lake Tahoe."

- The Truckee Meadows Regional Planning Agency (TMRPA) within Washoe County has a ten-member governing board consisting of representatives from Washoe County and the Cities of Reno and Sparks. The TMRPA was created in 1989 and the regional plan requirements and other provisions are codified in Chapter 278 of the NRS. The regional plan, as adopted and updated by

TMRPA, focuses on the coordination of local government planning as it relates to land use, infrastructure, resource management, and implementation strategies. After the 2002 update of the regional plan, litigation between the member entities of the TMRPA resulted in a settlement agreement and judicial oversight of the settlement. Key elements of the settlement include adjustments to spheres of influence and service areas, cooperative planning, and regional plan amendments.

OTHER FORMS OF LOCAL GOVERNMENT

In addition to counties, cities, and towns, there are other types of local government. The NRS authorizes the creation of general improvement districts (GIDs), local improvement districts, tourism improvement districts, and special districts. General improvement districts can be created by a resolution of the county commission or by a petition presented by an owner of property in the district. These districts are usually governed by elected boards of trustees. Services provided by GIDs may include cemeteries, emergency medical services, fire protection, recreation facilities, sanitation, sewer, sidewalks, storm drainage, television and radio, utilities, and water. Funding for GIDs can come from ad valorem taxes, connection and usage fees, and special assessments. Such districts also have borrowing powers and may issue revenue bonds and securities, in addition to other forms of financing.

Special districts can also be created by the county commission or by petition filed with the county commission. Special districts include GIDs as well as water and sanitation districts, swimming pool districts, municipal power districts, or any other quasi-municipal districts, with the exception of local improvement districts. Local improvement districts are governed by Chapter 309 ("Local Improvement Districts") of the NRS and may be proposed by a majority of the owners of land to be benefited by the construction of power plants and distribution of electrical energy, sewer systems, or the acquisition or construction of water systems. School districts are also considered local governments in Nevada and the boundaries of the 17 school districts are the same as county boundaries. The size and election procedures for school boards are set in statute and are based, in part, upon the size of the county school district.

UNFUNDED MANDATES

Unfunded mandates are a continuing concern of Nevada's local governments. Just as the federal government imposes unfunded mandates on the states, the Legislature may require local governments to provide new services or to expand existing programs without identifying a source of funding. The Nevada Legislature enacted legislation relating to unfunded mandates in 1993 and 1999. Assembly Joint Resolution No. 8 (File No. 190, *Statutes of Nevada*) in 1993 urged Congress not to require the states to provide services or benefits unless it provides related funding. Senate Bill 381 (Chapter 419, *Statutes of Nevada*) in 1993 required that a source of revenue be authorized by statute if the Legislature mandates a local government to take an action which requires additional funding. This requirement is codified in NRS 354.599. However, the Legislature sometimes exempts bills from this statutory requirement. In 1999, the Legislature enacted S.B. 471 (Chapter 282, *Statutes of Nevada*) requiring a disclosure on the face of each legislative measure that contains an unfunded mandate placed upon a local government, as codified in NRS 218D.270.

STATE AND LOCAL EMPLOYEES

The Executive Branch of State government employs over 15,000 people and is one of the largest single employers in Nevada. The combined employment figure for State and local governments (full- and part-time employees) is over 100,000 persons. To provide health insurance and other benefits to State employees, the Legislature created the Public Employees' Benefits Program (PEBP). For more information, see the January 2012 *Policy and Program Report* on PEBP. The State also provides retirement benefits for its employees in conjunction with local governments. Retirement benefits for State and local employees are provided by the Public Employees' Retirement System (PERS) and participation in PERS is mandatory for all State and local government employers and employees. For more information, see the January 2012 *Policy and Program Report* on PERS.

Collective Bargaining for Local Government Employees

The Local Government Employee-Management Relations Act was enacted in 1969 (and codified in Chapter 288 ["Relations Between Governments and Public Employees"] of the NRS) to allow collective bargaining for local government employees and address strikes by public employees. The Act created the three-member Local Government Employee-Management Relations Board (EMRB) which is appointed by the Governor. Chapter 288 of NRS legislatively declares it to be the public policy of the State that strikes by State or local government employees are illegal (NRS 288.230). Collective bargaining is defined in NRS 288.033 as "a method of determining conditions of employment by negotiation between representatives of the local government employer and employee organizations, entailing a mutual obligation . . . to meet at reasonable times and bargain in good faith . . . ."

Mandatory subjects of collective bargaining (NRS 288.150) include: (1) salaries/wages, sick leave, vacation, holidays, and leaves of absence; (2) insurance benefits; (3) hours of work required (by day or week) and safety of employees; (4) discharge and disciplinary procedures; (5) methodology for classification of employees in a bargaining unit; (6) deduction of employee organization dues and protection from discrimination due to participation in employee organizations; (7) procedures and requirements for the reopening of collective bargaining agreements that exceed one year in duration for certain negotiations during periods of fiscal emergency; (8) grievance/arbitration procedures for resolution of disputes over agreements; and (9) for teachers, preparation time, classroom materials/supplies, transfers/reassignments, and workforce reduction procedures.

Matters <u>not</u> subject to collective bargaining and reserved to the local government employer include: (1) transfer/reassignment (except as to teachers or as a form of discipline); (2) workforce reduction due to lack of work or money except as limited by bargained procedures; (3) safety of the public; and (4) determination of staffing levels, content of workday, quality/quantity of services to the public, and means/methods of offering services to the public.

Local government employers may take whatever action is necessary—including suspension of a collective bargaining agreement—in emergency situations such as civil disorder, military actions, natural disasters, or riots. Chapter 288 of the NRS also spells out procedures for: (1) recognition of employee organizations; (2) determination of bargaining units; (3) submittal of disputes to mediation,

fact finding, or arbitration; (4) timelines for such actions; and (5) the role of the EMRB in appeals and other matters. Finally, negotiations, mediations, arbitrations, fact finding, and EMRB deliberations are not required to be open to the public (NRS 288.220).

Senate Concurrent Resolution No. 1 of the 26th Special Session

Legislators during the 26th Special Session of the Nevada Legislature recognized the potential financial impact the authority granted in Chapter 288 of the NRS could have on local government budgets. Therefore, the Legislature approved Senate Concurrent Resolution No. 1 (File No. 9, *Statutes of Nevada 2010, 26th Special Session*), which urged local government employers and local government employee organizations to mutually address the impacts of Nevada's budget shortfall. The resolution encouraged these entities to work cooperatively and recognize the "shared sacrifice" necessary to reduce the impact of the budget deficit and to jointly consider ways to avoid employee layoffs and cuts to vital public services. The resolution explained that local governments should also consider temporary salary reductions and that a more transparent collective bargaining process would benefit the public and allow for a better understanding of negotiated employee agreements.

2011 Legislation Relating to Collective Bargaining for Local Government Employees

As with public employee benefits, many states are reconsidering their collective bargaining laws due to fiscal concerns and shrinking budgets. For many of the same reasons that public employee benefits came under review, Nevada's collective bargaining laws spawned nearly a dozen bills in 2011 which sought changes to the process. Changes to collective bargaining were identified early in the Session as a key concern of certain legislators. Two of these measures were S.B. 98 and A.B. 229.

- Senate Bill 98 (Chapter 477, *Statutes of Nevada*) created a new class of supervisory employees and prevents that class from being members of an employee organization. Also excluded from participating in future collective bargaining agreements are local government employees who are attorneys, doctors, and physicians assigned to a civil department or agency. The measure also required a collective bargaining agreement that exceeds one year in length to include provisions for reopening the agreement during fiscal emergencies and relating to measures of revenue shortfalls.

- Assembly Bill 229 (Chapter 379, *Statutes of Nevada*) made changes to collective bargaining agreements involving licensed educational personnel. Each school district must establish, and negotiate through a collective bargaining agreement, programs for performance pay and for recruitment and retention of licensed personnel. The bill also required reduction in workforce provisions in collective bargaining agreements to include factors other than seniority.

Efforts to Extend Collective Bargaining to State Employees

The Legislature has considered bills extending collective bargaining to State employees beginning in the 1970s, but only two such bills have passed:

- Assembly Bill 130 in 1991 was vetoed by Governor Robert J. Miller and the veto was sustained in 1993; and

- Assembly Bill 395 in 2009 was vetoed by Governor Jim Gibbons but the 2011 Nevada Legislature did not take action to sustain or override the veto.

WEBSITES AND CONTACTS

State of Nevada: http://www.nv.gov (with links to constitutional officers and State agencies)

STATE GOVERNMENT	
Governor The Honorable Brian Sandoval 101 North Carson Street, Suite 1 Carson City, Nevada 89701-4786 (775) 684-5670	Lieutenant Governor Brian K. Krolicki 101 North Carson Street, Suite 2 Carson City, Nevada 89701-4786 (775) 684-7111
Secretary of State Ross Miller 101 North Carson Street, Suite 3 Carson City, Nevada 89701-3714 (775) 684-5708	Treasurer Kate Marshall 101 North Carson Street, Suite 4 Carson City, Nevada 89701-4786 (775) 684-5600
Controller Kim R. Wallin 101 North Carson Street, Suite 5 Carson City, Nevada 89701-4786 (775) 684-5632	Attorney General Catherine Cortez Masto 100 North Carson Street Carson City, Nevada 89701-4717 (775) 684-1100
LOCAL GOVERNMENT ASSOCIATIONS	
Nevada Association of Counties Jeff Fontaine, Executive Director Wes Henderson, Deputy Director 304 South Minnesota Street Carson City, Nevada 89703-4270 (775) 883-7863 Website: http://www.nvnaco.org	Nevada League of Cities and Municipalities J. David Fraser, Executive Director 310 South Curry Street Carson City, Nevada 89703-4613 (775) 882-2121 Website: http://www.nvleague.org
REGIONAL PLANNING ENTITIES	
Tahoe Regional Planning Agency Joanne Marchetta, Executive Director P.O. Box 5310 Stateline, Nevada 89449-5310 (775) 588-4547 Website: http://www.trpa.org	Southern Nevada Regional Planning Coalition Debi Leigh, Secretary 240 Water Street, MS 115 Henderson, Nevada 89015-7227 (702) 267-1530 Website: http://www.snrpc.org
Truckee Meadows Regional Planning Agency Kimberly H. Robinson, Interim Director One East First Street, Suite 1100 Reno, Nevada 89501-1626 (775) 321-8385 Website: http://www.tmrpa.org	

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Revenue and Budget

Research Division January 2012

EXECUTIVE BUDGET

The major fiscal document used by legislators in Nevada is the *Executive Budget*, which is prepared by the Budget Division, Department of Administration. The *Executive Budget* contains actual appropriation and expenditure figures for past fiscal years, agency requests for the upcoming biennium, and the gubernatorial recommendations that endorse or modify agency budgetary requests. Included in the *Executive Budget* are program statements that preface the detailed fiscal information for the various departments, boards, commissions, and other agencies of the State. Starting in 1993, the budget segregated each account into base and current services level budgets, and all requested program enhancements were separately identified. In addition, quantitative indicators of each program's performance were added to the budget document in 1993. The *Executive Budget* is organized functionally, by agency, with summaries relating to personnel, operating expenses, travel, and requests for equipment.

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The introductory materials located at the front of the budget document provide general interest data relating to the Nevada taxation, revenue, and fiscal trends. This information is useful in understanding the factors involved in calculating budget projections, and it is also useful as a statistical reference on the State of Nevada.

FISCAL ANALYSIS DIVISION

The Fiscal Analysis Division of the Legislative Counsel Bureau provides the Legislature with the capability for independent review and analysis of budgetary and fiscal matters. It examines the *Executive Budget* and suggests possible changes, provides expenditure and revenue projections to aid the Senate Committee on Finance and the Assembly Committee on Ways and Means, and assists the Legislature in the interpretation of factual data related to the fiscal aspects of the operation of State and local government.

Other duties of the Fiscal Analysis Division, pursuant to *Nevada Revised Statutes* (NRS) 218F.600, include:

- Analyzing the history and probable future trends of the State's financial position in order that a sound fiscal policy may be developed and maintained;

- Analyzing appropriation bills, revenue bills, and bills having a fiscal impact upon the operation of the government of the State of Nevada or its political subdivisions; and

- Examining State agencies with special regard to their activities and the duplication of efforts between them.

The Fiscal Analysis Division prepares a *Fiscal Report* each session, which summarizes the financial status of the State and the Governor's budget recommendations for the next biennium. The report contains general information, including highlights of the various governmental functions, and focuses on changes and expansion of existing programs and recommended new programs.

After each legislative session, the Division prepares and publishes *The Appropriations Report*, which describes in detail the fiscal actions of the Legislature, all appropriation and authorization acts, and changes to the State tax and revenue structure. This report highlights legislative budget actions and serves as a valuable reference document.

These reports, as well as other reports prepared by the Fiscal Analysis Division including the *Revenue Reference Manual*, are available through the Legislature's website at: http://www.leg.state.nv.us/Division/Fiscal/.

ECONOMIC FORUM

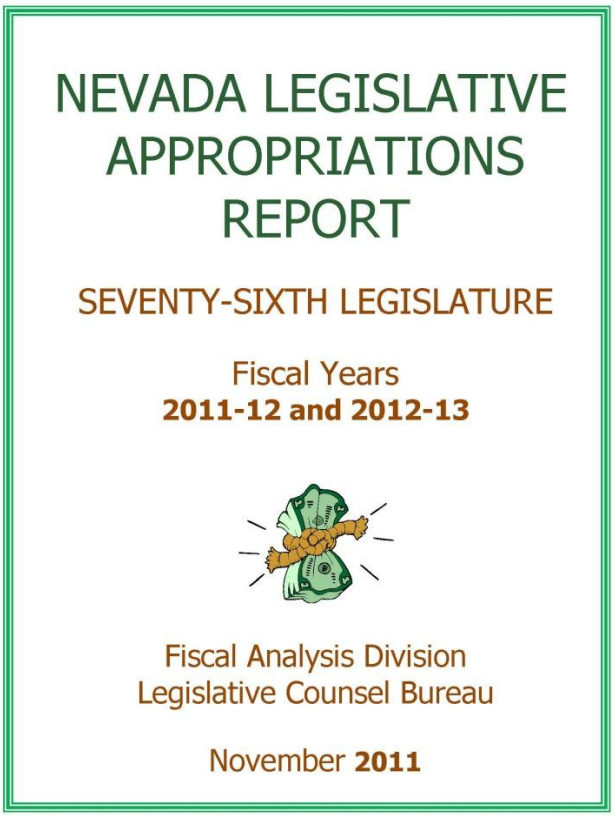
The Economic Forum was created by the Legislature during the 1993 Legislative Session (NRS 353.226 through 353.229). The Economic Forum is responsible for providing forecasts of the State's General Fund revenues for each biennium budget period. By statute, the Economic Forum is required to provide forecasts on or before December 3 of even-numbered years and on or before May 1 of odd-numbered years. The December 3 estimates are used by the Governor in preparing budget recommendations presented to the Legislature in January of odd-numbered years. The May 1 forecast is the final official revenue estimate that must be used by the Legislature in balancing General Fund appropriations with projected General Fund revenues for each biennial budget period.

Assembly Bill 332 (Chapter 491, *Statutes of Nevada*), approved during the 2011 Legislative Session, requires the Economic Forum to meet on or before June 10 of each even-numbered year, and December 10 of each odd-numbered year. At each of these meetings, the Economic Forum receives an update on the status of actual State General Fund revenue collections compared to the Economic Forum's most recent forecast. The provisions of A.B. 332 are not intended to authorize the Economic Forum to make additional forecasts of State General Fund revenue at these meetings. The Economic Forum also considers information on current economic indicators, such as employment, unemployment, personal income, and any other indicators deemed appropriate by the

Economic Forum. The Chair of the Economic Forum is required to provide a report of each of these two additional meetings to the Interim Finance Committee (IFC), and the information presented to IFC must be made available on the website of the Legislature.

The Economic Forum is a five-member committee whose members cannot be employees or officers of the State Government. The Governor appoints three members to the Forum, and the Majority Floor Leader of the Senate and the Speaker of the Assembly each appoint a member. The Forum is assisted in preparing the forecast by a seven-member Technical Advisory Committee on Future State Revenues made up of the Senate and Assembly Fiscal Analysts, the Chief of the Budget Division of the Department of Administration, the head of the Research Division of the Employment Security Division within the Department of Employment, Training and Rehabilitation, the State Demographer, the Vice Chancellor for Finance of the Nevada System of Higher Education (NSHE), and the Chair of the Committee on Local Government Finance.

Attached below is data from page 23 of the Fiscal Analysis Division's *2011 Appropriations Report* that reflects the Economic Forum forecast of State General Fund revenue for the 2011-2013 Biennium, as adjusted by certain actions of the 2011 Legislature.


NEVADA LEGISLATIVE APPROPRIATIONS REPORT

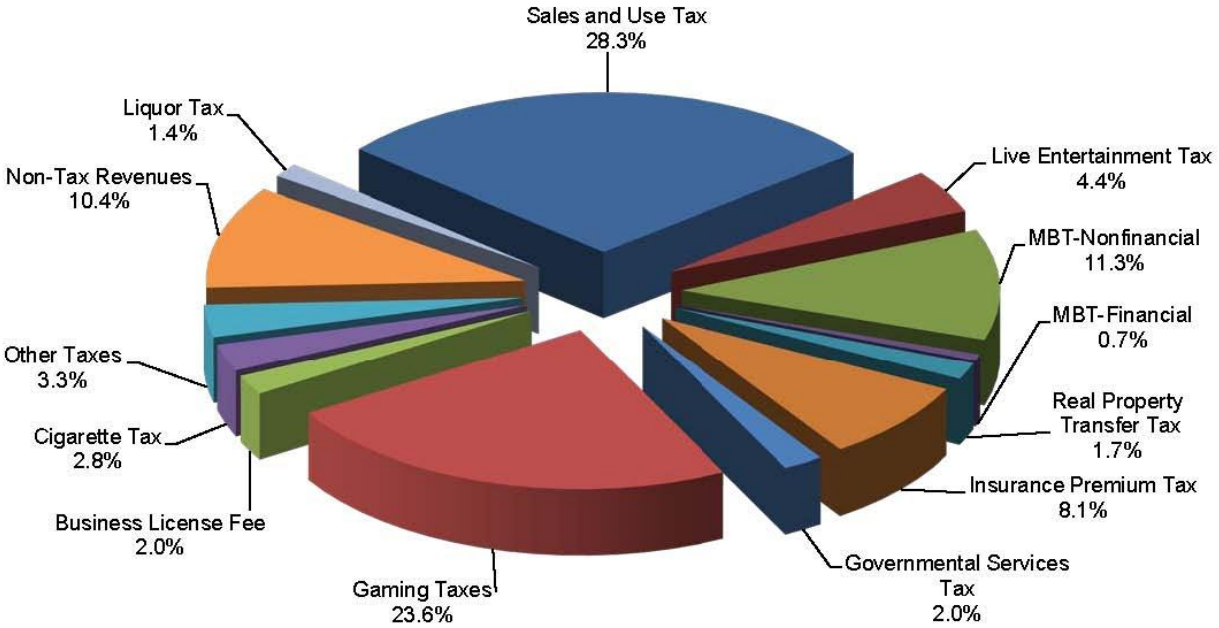
SEVENTY-SIXTH LEGISLATURE

Fiscal Years
2011-12 and 2012-13

Fiscal Analysis Division
Legislative Counsel Bureau

November **2011**

NEVADA GENERAL FUND REVENUE
ADJUSTED* ECONOMIC FORUM FORECAST, 2011-13 BIENNIUM



ESTIMATED GENERAL FUND REVENUE: 2011-13 BIENNIUM
ADJUSTED* ECONOMIC FORUM MAY 2, 2011 FORECAST

	Millions $'s	% of Total
Taxes:		
State Gaming Taxes	$1,411.1	23.6%
Sales and Use Taxes	$1,691.4	28.3%
Insurance Premium Taxes	$484.5	8.1%
Cigarette Tax	$166.3	2.8%
Live Entertainment Tax:		
Gaming Establishments	$239.2	4.0%
Non-Gaming Establishments	$22.2	0.4%
Modified Business Tax (MBT):		
Non-Financial Institutions	$673.8	11.3%
Financial Institutions	$39.8	0.7%
Governmental Services Tax	$122.0	2.0%
Real Property Transfer Tax	$102.6	1.7%
Business License Fee	$120.1	2.0%
Liquor Tax	$79.3	1.4%

	Millions $'s	% of Total
Other Taxes:		
Business License Tax**	$0.0	0.0%
Mining Tax	$162.0	2.7%
Annual Slot Tax Transfer	$10.0	0.2%
Other Tobacco Tax	$20.5	0.3%
Branch Bank Excise Tax	$6.2	0.1%
Subtotal Other Taxes	$198.7	3.3%
Subtotal Taxes	$5,351.0	89.6%
Non-Tax Revenues		
Licenses	$256.8	4.3%
Fees and Fines	$118.8	2.0%
Use of Money and Property	$8.8	0.1%
Miscellaneous Revenues	$237.9	4.0%
Subtotal Non-Tax Revenues	$622.3	10.4%
Total General Fund	$5,973.3	100.0%

* Adjusted for Legislative actions approved by the 2011 Legislature (76th Session).

** Business License Tax was repealed by S.B. 8 (20th Special Session), but residual amounts are still collected from audits.

The table on pages 18-20 provide a description of the Legislative actions approved by the 2011 Legislature reflected in the above table and chart.

The reports of the Economic Forum are available through the Legislature's website at: http://www.leg.state.nv.us/Division/Fiscal/Economic%20Forum/.

BUDGET CALENDAR

Budget preparation typically begins in the spring of an even-numbered year when the Budget Division issues instructions to Executive Branch agencies. Agency budgets must be submitted for review to the Budget Division and the Fiscal Analysis Division by September 1. On or before December 3, the Economic Forum must prepare a written report of its projections of economic indicators and estimate of future State revenue and present the report to the Governor and the Legislature. This estimate of revenue must be used by the Budget Division in preparing a final version of the proposed budget, which must be submitted to the Legislature not later than 14 calendar days before the commencement of the regular legislative session (NRS 353.230).

During the legislative session, the Senate Committee on Finance and the Assembly Committee on Ways and Means hold hearings to consider budget requests. Often, these committees meet jointly to hear testimony concerning agency budgets. On or before May 1 during the legislative session, the Economic Forum must prepare a written report confirming or revising its earlier projections of economic indicators and estimate of future State revenue.

INTERIM FINANCE COMMITTEE

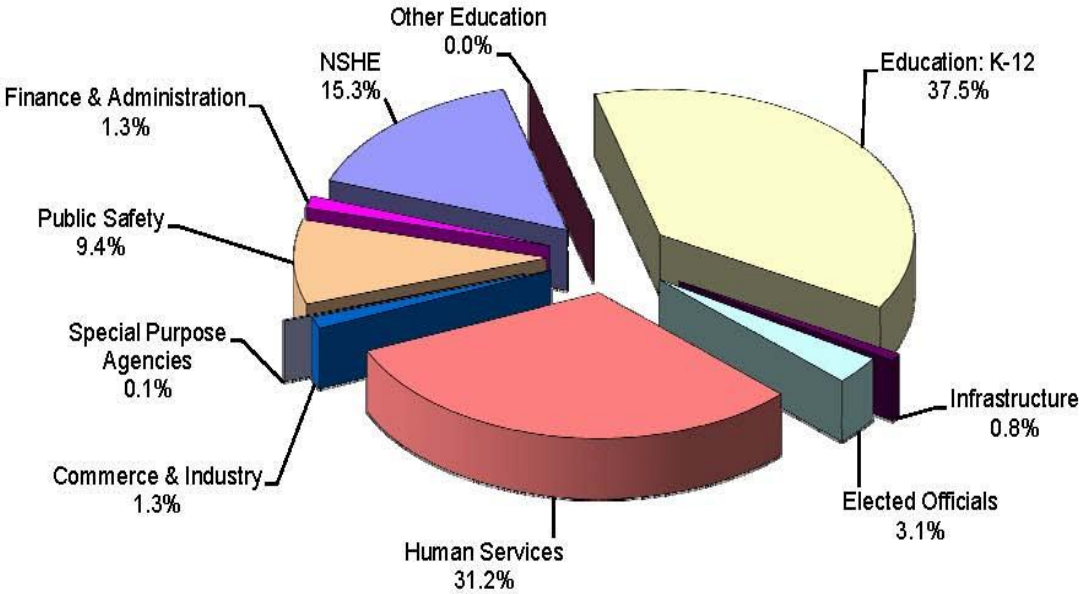
In 1969, the Legislature created the IFC to function between sessions and to administer a contingency fund. This fund was set up to provide monies for State agencies to address unforeseen needs or emergencies when the Legislature is not in session. The IFC also reviews State agency requests to accept certain gifts and grants, to modify legislatively approved budgets, and to reclassify State merit system positions in certain circumstances. The IFC is composed of the members of the Senate Committee on Finance and the Assembly Committee on Ways and Means.

STATE GENERAL FUND

The 2011 Legislature approved a State General Fund operating budget for the 2011-2013 Biennium totaling approximately $6.205 billion. Following is data from page 30 of the Fiscal Analysis Division's *2011 Appropriations Report* that details the percentage of general funds appropriated to the different areas of State government, including:

- K through 12 education;
- The NSHE;
- Public safety;
- Commerce and industry; and
- Human services.

NEVADA GENERAL FUND APPROPRIATIONS
LEGISLATURE APPROVED – 2011-13 BIENNIUM



ESTIMATED GENERAL FUND REVENUE: 2011-13 BIENNIUM
ADJUSTED* ECONOMIC FORUM MAY 2, 2011 FORECAST

	Millions $'s	% of Total
Taxes:		
State Gaming Taxes	$1,411.1	23.6%
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Insurance Premium Taxes	$484.5	8.1%
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The table on pages 18-20 provide a description of the Legislative actions approved by the 2011 Legislature reflected in the above table and chart.

BUDGET STABILIZATION ACCOUNT

In 1991, the Legislature created the Fund to Stabilize the Operation of the State Government (NRS 353.288). The 2011 Legislature, through the enactment of S.B. 74 (Chapter 100, *Statutes of Nevada*), changed the name to the "Account to Stabilize the Operation of State Government." This account—often referred to as the "Rainy Day Account"—is a source of money that can be used under certain circumstances to offset a budget shortfall or a fiscal emergency. In general, if the State General Fund surplus reaches a certain threshold at the end of a fiscal year (FY), a portion of the excess is maintained in the account to help the State through financial emergencies. As of June 30, 2011, there were no funds remaining in the Rainy Day Account.

As noted in the Fiscal Analysis Division's *2011 Appropriations Report,* A.B. 165 (Chapter 322, *Statutes of Nevada*), as approved by the 2009 Legislature, amended the statutes governing the Rainy Day Account. The bill required the Governor, beginning on July 1, 2011, to reserve 1 percent of the total anticipated revenue projected for each FY of the biennium by the Economic Forum at its meeting in December of even-numbered years in the Governor's recommended budget that is submitted to the Legislature. The bill also required, beginning in FY 2012, that the State Controller transfer from the State General Fund to the Rainy Day Account at the beginning of each FY 1 percent of the total anticipated revenue projected by the Economic Forum at its meeting in May of an odd-numbered year adjusted by any legislation enacted by the Legislature that affects State revenue. As recommended by the Governor, the 2011 Legislature delayed the effective date of these requirements until July 1, 2013 (A.B. 561 [Chapter 476, *Statutes of Nevada*]).

Additional information on the Rainy Day Account and the *2011 Appropriations Report* is available on the Fiscal Analysis Division's website at: http://www.leg.state.nv.us/Division/fiscal/Appropriation%20Reports/2011AppropriationsReport/2011AppropriationsReport.cfm.

FISCAL MEASURES

The General Appropriations Act is one of the most significant and comprehensive bills the Legislature passes during a regular session. This act establishes the biennial spending plan and makes appropriations from the State General Fund and the State Highway Fund for all State agencies and the NSHE. In addition, the Legislature enacts other fiscal bills, including a bill that establishes the maximum salaries for State employees in the unclassified service, a bill to fund the cost of conducting the legislative session, and bills to appropriate money to cover unanticipated shortfalls in budgets of various agencies and funds.

Following is a list of the major fiscal measures from the 2011 Legislature:

- General Appropriations Act (A.B. 580, Chapter 371, *Statutes of Nevada*);
- Unclassified Pay Bill (S.B. 505, Chapter 374, *Statutes of Nevada*);
- Authorized Expenditures Act (S.B 503, Chapter 372, *Statutes of Nevada*);

- Capital Improvements Program Act (S.B. 504 Chapter 373, *Statutes of Nevada*); and

- School Funding Bill/State Distributive School Account (DSA) and Class-Size Reduction Bill (A.B. 579, Chapter 370, *Statutes of Nevada*).

Other Fiscal Measures From 2011

In addition to the major fiscal measures listed above, the Legislature passed two other bills relating to the budgeting process:

- Assembly Bill 248 (Chapter 137, *Statutes of Nevada*) requires the *Executive Budget* to include: (1) a summary of the long-term performance goals for core and other governmental functions; (2) an explanation of how the budget will provide adequate funding and enable progress toward the goals; and (3) an outline of any other important features of the budget.

- Senate Bill 233 (Chapter 310, *Statutes of Nevada*) raises the thresholds for IFC review of State agency work program revisions, as well as the review threshold for a State agency's acceptance of a gift or a grant.

For additional information on any measures referenced in this document, please visit the Nevada Legislature's website at: http://www.leg.state.nv.us.

ADDITIONAL REFERENCES

Budget Division, Department of Administration: http://nevadabudget.org/index.php

Fiscal Analysis Division, Legislative Counsel Bureau: http://www.leg.state.nv.us/Division/Fiscal/

Department of Taxation: http://tax.state.nv.us/

GLOSSARY OF TERMS

Appropriation
A legislative grant of money for a specific purpose.

Biennial
Occurring every two years; applied to the scheduled regular session of the Legislature.

Biennium
A two-year period beginning on July 1 of an odd-numbered year and ending on June 30 of the next odd-numbered year (e.g., July 1, 2011, through June 30, 2013).

Budget
Estimate of the receipts and expenditures needed to carry out programs for a fiscal period.

Fiscal Year
A period beginning on July 1 of a calendar year and ending on June 30 of the next calendar year (e.g., July 1, 2011, through June 30, 2012).

General Appropriations Act
An omnibus act appropriating funds for government departments or programs, from the State General Fund or State Highway Fund.

Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Public Employees' Benefits Program (PEBP)

Research Division January 2012

The State of Nevada, like most states, offers certain benefits for its employees. Along with retirement benefits, the State of Nevada also offers its employees various health benefits. The first group insurance program was created in 1963 and restructured into the Public Employees' Benefits Program (PEBP) in 1999 by Senate Bill 544 (Chapter 573, *Statutes of Nevada*). Over time, the State's health insurance program has evolved into a self-funded program that is also open to local governments that wish to join. The Legislature oversees PEBP, but it has an independent board with an Executive Officer who handles the day-to-day operations.

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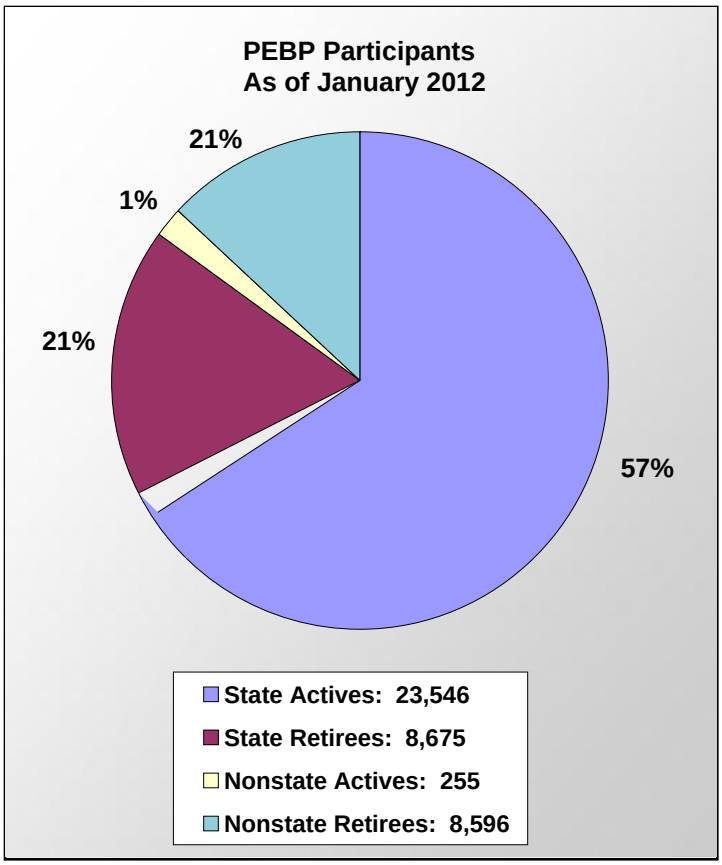
PUBLIC EMPLOYEES' BENEFITS PROGRAM

The PEBP is a State agency that administers the health plan for State and other public employees. It is legislatively mandated to provide group life, accident, or health insurance, or any combination of these (*Nevada Revised Statutes* [NRS] 287.043).

The PEBP currently administers various benefits, including: health insurance benefits such as dental, pharmacy, and vision insurance; accidental death and dismemberment insurance; basic life insurance; long-term disability insurance; group travel accident insurance; and flexible spending accounts. Voluntary insurance products are also available, including short-term disability, long-term care, home and auto, and additional life insurance.

The program serves over 41,000 participants, plus approximately 29,000 family members and survivors. Participating government entities include:

- State employees and officers;
- State retirees;
- State legislators;
- Certain Nevada System of Higher Education (NSHE) professional employees;
- Nonstate participating public agency employees and retirees; and
- Certain nonstate, nonparticipating public agency retirees.



A nonstate active participant is a person who is currently employed by a local government that opted to join PEBP pursuant to NRS 287.045. A nonstate retiree is a retired public employee from a participating local government, or a retired employee from a local government who opted into PEBP individually but whose former employer does not participate in PEBP.

Prior to 1969, only school districts with 25 or less employees were eligible to join the State health insurance plan. In the 1969 Legislative Session, the Legislature enacted a bill allowing all counties, municipal corporations, political subdivisions, and school districts to negotiate with the State's group insurance for inclusion. Senate Bill 278 (Chapter 304, *Statutes of Nevada*) in the 1993 Session allowed participation by those retirees who were employed by local governments that did not take part in the State's group insurance program. Prior to 1993, separate treatment of retirees and rating pools were not addressed in the statutes but, in 1993, the Legislature prohibited "commingling" of the claims experience of nonstate retirees with other groups when setting insurance rates.

The commingling issue was also addressed in 2001. Assembly Bill 564 (Chapter 546, *Statutes of Nevada 2001*) required the commingling of State active employees and State retirees for purposes of rate-setting. Due to large rate increases for nonstate retirees, A.B. 286 (Chapter 493, *Statutes of Nevada 2003*) dictated that nonstate active employees and nonstate retirees be commingled when setting rates thereby creating a larger pool and improving chances for a better claims experience.

The rule allowing retirees of nonparticipating local governments to join PEBP changed significantly in 2007 under S.B. 544 (Chapter 496, *Statutes of Nevada*). If a local government's active employees do not participate in PEBP, then its retirees may not join PEBP upon retirement unless they enrolled in PEBP on or before November 30, 2008.

Currently, 11 nonstate governmental entities participate in PEBP. The nonstate members consist of two charter schools, the Cities of Caliente and Elko, two general improvement districts, and five local special districts.

FUNDING

State Appropriations/Subsidies

The operations of PEBP are funded through legislative appropriation as part of the budget. Insurance plans within PEBP are funded through contributions of program participants and their employers. State employees are subsidized by their State agency employer for their health insurance coverage and State agencies must build the cost of providing the active employee subsidy into their budgets. State retirees are subsidized by the State based on the number of years employed in State service in an amount determined by the Legislature each session. In the 2011 Session, A.B. 553 (Chapter 503, *Statutes of Nevada*) ended retiree subsidies by the State for State employees initially hired on or after July 1, 2012.

Nonstate Subsidies

Nonstate participants may also receive a subsidy from their participating local government while they are actively employed. As required by A.B. 286 of the 2003 Session, nonstate retirees with at least five years of service with a local government and who joined PEBP upon retirement from the local government employer, must receive a subsidy from their local government employer that is proportionate to the subsidy paid by the State for State retirees. In the 2009 Session, eligibility for these subsidies was modified for PEBP participants hired on or after July 1, 2010, as set forth in S.B. 427 (Chapter 426, *Statutes of Nevada*). See explanation in later section titled "Legislative Changes in Recent Sessions."

Investment Fund

In the 2007 Session, the Legislature required the Public Employees' Retirement Board, acting as the Retirement Benefits Investment Board, to establish a fund for the purpose of investing money from State and local government trust funds created to fund liabilities associated with post-employment benefits other than retirement. The Retirement Benefits Investment Board has created the Retirement Benefits Investment Fund subject to the powers, duties, and limitations set forth in S.B. 457 (Chapter 253, *Statutes of Nevada 2007*). In 2011, assets of the Investment Fund totaled over $120 million.

PLAN OPTIONS AND RULES

Several insurance plan options are available for PEBP participants, including a self-funded preferred provider organization (PPO) and Health Maintenance Organizations (HMOs) in both southern and northern Nevada. Levels of participation in the PPO and HMOs are approximately evenly split.

The plan rates depend upon whether the PPO or HMO is chosen in a particular region, whether the participant is an active employee or retiree, the date of retirement, and how many people in the family are covered. Rate charts are available on the PEBP website at: http://www.pebp.state.nv.us.

LEGISLATIVE CHANGES IN RECENT SESSIONS

To address budget concerns, the 2009 Legislature made a number of changes to health benefits for public employees. The provisions of S.B. 427 changed subsidy requirements for PEBP participants who are hired on or after January 1, 2010. The State will only pay subsidies for such employees who continuously participate in PEBP after retirement and who have at least 15 years of service or at least 5 years of service and receive disability payments from the Public Employees' Retirement System (PERS) or the NSHE retirement program for professional employees. Local governments must pay the same subsidy as the State if the local government retiree has continuously participated in PEBP since retirement and has at least 15 years of service or at least 5 years of service and receives disability payments from PERS or the NSHE retirement program for professional employees.

The 2011 Legislature made more changes to public employee health benefits although most of the changes were made by the Board of the Public Employees' Benefits Program to address an $85 million budget shortfall. Looking to the future, A.B. 553 (Chapter 503, *Statutes of Nevada*) eliminated retiree subsidies for State employees who are hired on or after July 1, 2012, but allowed them (as retirees) to participate in PEBP until they reach Medicare age. Among the changes made by the PEBP Board, was the decision to move Medicare-eligible retirees to an individual market Medicare exchange, making Nevada the first state to offer a Medicare exchange to its retirees. The Legislature supported this decision by providing subsidies to Medicare-eligible retirees to offset the cost of purchasing supplemental coverage (A.B. 562, Chapter 502, *Statutes of Nevada*).

The biennial reinstatement period was eliminated by A.B. 76 (Chapter 120, *Statutes of Nevada 2011*) but eligible persons may now re-enroll annually before the start of a plan year. The bill also clarified that some retirees may only reinstate coverage once and some retirees may not reinstate coverage if they are covered by certain other plans or trusts. Assembly Bill 80 (Chapter 453, *Statutes of Nevada 2011*) updated Nevada law to comply with the federal Patient Protection and Affordable Care Act by removing the cap on the age of a dependent child and addressing the exclusion of preexisting conditions. Finally, A.B. 365 (Chapter 202, *Statutes of Nevada 2011*) provided that the option for groups of 300 or more State employees to leave the Program requires the departing group to include both its active and retired members.

ADDITIONAL INFORMATION AND RESOURCES

The Las Vegas Chamber of Commerce published a review: *Fiscal Analysis Brief, Volume 1, Issue 4, An Overview and Comparative Analysis of Nevada's State Retiree Health Insurance Subsidy*, 2008, which is available at: http://www.lvchamber.com/files/pdf/FAB-retiree-health-subsidy.pdf.

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POLICY AND PROGRAM REPORT

Public Employees' Retirement System (PERS)

Research Division January 2012

The State of Nevada, like most states, offers certain benefits for its employees. The Public Employees' Retirement System (PERS) provides retirement and disability benefits to State workers as well as other public employees. Participation in PERS is mandatory for public employees and provides retirement portability for persons in government service—an important incentive in attracting and retaining public employees. The Legislature oversees PERS, although PERS has an independent board with an Executive Officer and staff who handle day-to-day operations.

CREATION OF PERS

The PERS is a statewide entity that administers the retirement plans for State and other public employees. Originally established in 1947, PERS was substantially restructured in 1971 in response to a legislatively commissioned study. Based on recommendations from the 1971 study, PERS moved to full actuarial funding and the *Nevada Constitution* was amended to create a trust fund and independent board.

Article 9, Section 2 of the *Nevada Constitution* reads, in relevant part:

> 2. Any money paid . . . for the purpose of funding and administering a public employees' retirement system, must be segregated in proper accounts in the state treasury, and such money must never be used for any other purposes, and they are hereby declared to be trust funds for the uses and purposes herein specified.
>
> 3. Any money paid for the purpose of funding and administering a public employees' retirement system must not be loaned to the state or invested to purchase any obligations of the state.

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To provide legislative oversight, the Interim Retirement Committee was created in 1977. Later renamed the Interim Retirement and Benefits Committee, the Committee also monitors the Public Employees' Benefits Program.

OPERATION OF PERS

Today PERS is run by a seven-member board in conformance with the *Nevada Constitution* and Chapter 286 ("Public Employees' Retirement") of the *Nevada Revised Statutes* (NRS), as well as applicable federal law, including Internal Revenue Service (IRS) regulations. The PERS provides a tax-qualified defined benefit plan for public employees in Nevada and is a consolidated system with two subfunds (Regular and Police and Firefighters' Retirement Fund) that are pooled for investment purposes. Assets at the end of Fiscal Year 2011 totaled approximately $25.3 billion and PERS is over 70 percent funded with full funding targeted using rolling 30-year periods.

DECLARATION OF STATE POLICY FOR PERS (NRS 286.015)

It is the policy of this State to provide, through PERS:

1. A reasonable base income to qualified employees who have been employed by a public employer and whose earning capacity has been removed or has been substantially reduced by age or disability;

2. An orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure, which is available to employees at retirement or upon becoming disabled; and

3. A system which will make government employment attractive to qualified employees . . . and which will encourage these employees to remain in government service for such periods of time as to give the public employer full benefit of the training and experience gained by these employees while employed by public employers.

Membership

With 181 public employers participating in the system, PERS serves over 99,900 members (approximately 87,975 regular members and 11,930 police/firefighter members), along with over 46,000 retirees and beneficiaries. Members include State employees, police and firefighters, nonprofessional staff at the Nevada System of Higher Education (NSHE), county and city employees, and school district and other local district employees.

Separate retirement programs have been created for State legislators (Legislative Retirement System or LRS) and Supreme Court justices, district court judges, and local judges (Judicial Retirement System or JRS).

The Board of Regents of the University of Nevada is required by statute (NRS 286.802) to provide a separate retirement and death benefits program for its professional staff.

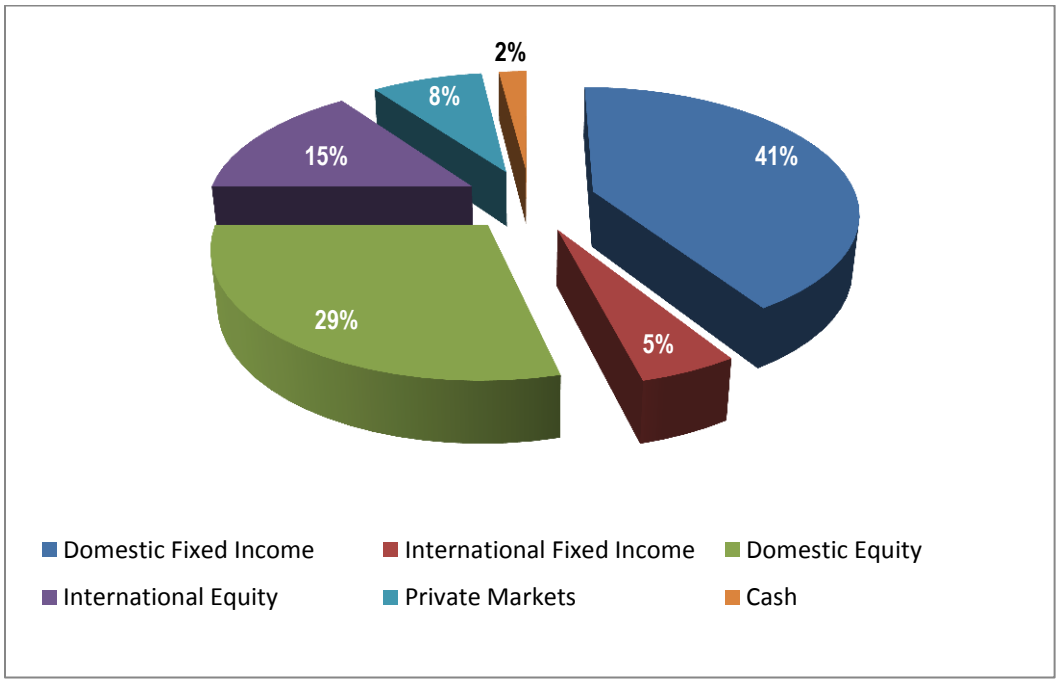
Investment Strategy

The investment objectives of PERS are to:

- Generate an 8 percent average annual return;
- Minimize risk;
- Maintain a high-quality, cost-effective program; and
- Emphasize a consistent, transparent investment strategy.

According to PERS, the fund has generated a 25-year average annual return of 9 percent and continues to rank in the top 15 percent of public pension plans for risk and return efficiency.

PERS Target Asset Allocation
June 2011



PLAN FOR REGULAR MEMBERS

PERS Contributions

Depending upon their employer, public employees may have a choice of contribution plans: employee/employer joint contributory plan or employer pay plan. The majority of employees are under the employer pay plan. Under either plan, employees pay one-half of the contributions towards their retirement.

For 2011, the contribution rate under the employee/employer plan is 12.25 percent from each, while the rate for the employer pay plan is 23.75 percent. These rates are adjusted biennially based on the preceding year's actuarial valuation. Employees under the employee/employer plan may withdraw their contributions upon termination from State service and forfeit any retirement benefits.

In the 2009 Session, the Legislature amended the provisions governing the biennial adjustments to contribution rates to "smooth out" the biennial adjustments. These changes are intended to minimize the impact of contribution rate adjustments when preparing State and local government budgets and to allow PERS to put additional funds toward the System's unfunded liability.

Retirement Ages, Vesting, and Service Credits

Eligibility for retirement differs depending on the retirement plan. Currently, the average age at retirement for regular members is 64 years after an average of 19 years of service.

Members are fully vested after five years of service and are then eligible to purchase up to five additional years of service credit. The cost to purchase a year of service credit ranges from approximately 20 percent to 40 percent of the employee's annual pay.

Eligible members with active military service in Operations Desert Storm, Enduring Freedom, or Iraqi Freedom may purchase up to three additional years of service credit depending upon the number of months served.

In the 2009 Session, the Legislature changed the eligibility for retirement for persons initially hired on or after January 1, 2010 (hereafter referred to as "post-2009 members/employees").

PERS Benefits

Determination of benefits is calculated based on years of service, age at retirement, and compensation. First, a percentage is derived by multiplying the number of years of service times a multiplier. For service prior to July 1, 2001, the multiplier is 2.5 percent. For service after July 1, 2001, the multiplier is 2.67 percent except that post-2009 employees are subject to a lower multiplier of 2.5 percent. The resulting percentage is then applied to the average monthly compensation (defined as the highest 36 consecutive months of earnings) to determine the monthly retirement benefit.

For post-2009 employees, the calculation of average monthly compensation is subject to a cap on salary increases of no more than 10 percent per year in the 24 months leading up to, and during, the 36 months of highest compensation. Assignment-related and promotion compensation are not subject to the cap. Persons whose retirement benefits are affected by this cap are entitled to a refund of contributions related directly to the affected pay. Post-2009 employees are also restricted as to what type of "call-back pay" is considered as compensation for purposes of determining their benefits.

If a member desires to retire early, the monthly benefit is reduced by 4 percent for each full year prior to regular retirement age. For post-2009 members, the monthly benefit is reduced by 6 percent for

each full year. The retirement plan also offers survivor and disability benefits to qualified persons. Retirees may choose one of seven benefit options and the option selected may change the monthly benefit amount.

There are also different restrictions on post-retirement increases for members hired on or after January 1, 2010. Post-retirement increases for pre-2010 employees are limited after the thirteenth year to the lesser of 5 percent or the three-year average increase in the Consumer Price Index (CPI); while post-2009 employees are limited after the twelfth year to the lesser of 4 percent or the three-year average increase in the CPI.

Sample Calculation of Determination of Benefits

20 years multiplied by 2.5 percent = **50 percent**

50 percent multiplied by **$2,000** (monthly salary)

= $1,000 monthly benefit

$1,000 is the monthly benefit
for a person retired after
20 years of service at 2.5 percent

NOTE: The PERS website (http://www.nvpers.org) offers calculators that can be used to determine monthly benefits based upon a number of variables, including age, years of service, and average compensation. The information on calculations for retirement benefits provided above is for general information purposes only.

RETIREMENT AGE ELIGIBILITY	
Regular Members and Judicial Retirement System	**Police/Firefighters**
30 years—At any age	25 years—At any age
10 years—Age 60	20 years—Age 50
5 years—Age 65	10 years—Age 55
Legislative Retirement System	
10 years—Age 60	
Post-2009 Employees	
Regular Members	**Police/Firefighters**
30 years —At any age	30 years—At any age
10 years—Age 62	20 years—Age 50
5 years—Age 65	10 years—Age 60
	5 years—Age 65

PLAN FOR POLICE AND FIREFIGHTERS

The Police and Firefighters' Retirement Fund was created in 1977. In some instances, police and firefighters may retire at a younger age than regular members. The average age at retirement for police and firefighters is 58 years after an average of 22.5 years of service. Contribution rates are 39.75 percent under the employer pay plan and 20.25 percent under the employee/employer plan.

LEGISLATIVE RETIREMENT SYSTEM

The Legislative Retirement System was created in 1967 and, although overseen by PERS, is a separate retirement system. The LRS is 74 percent funded with full funding targeted for 2029. Legislators contribute 15 percent of their pay each session (approximately $1,170) and the employer contribution is determined actuarially. Legislators must serve at least ten years to vest in the system. The LRS has survivor (but not disability) benefits. Legislators who leave before vesting have the option of withdrawing their contributions.

The LRS defined benefit is calculated by multiplying $25 by the years of service to determine the monthly benefit. For example, a legislator with ten years of service would receive a monthly retirement benefit of $250.

JUDICIAL RETIREMENT SYSTEM

Members of the Judicial Retirement System include Supreme Court justices and district court judges, as well as local judges. In 2001, the JRS replaced a prior judicial retirement plan and some justices and judges are still members of PERS or have vested under the prior judicial retirement program. The JRS plan and benefits are essentially the same as PERS; however, benefit calculations are made using a higher multiplier and contributions are made by the employer in an amount determined by the System's actuary to pay the normal costs of benefits.

The JRS for the State-level justices is 64.3 percent funded. Assuming appropriations for the JRS are approved as projected, full funding for State-level justices is targeted for 27.5 years. The JRS for local judges is fully funded.

REEMPLOYMENT OF RETIREES

In 2001, legislation was enacted which permits the rehiring of retired employees in positions designated as "critical labor shortages," without loss of retirement benefits. These statutes were originally set to sunset in June 2005 but have been extended twice. The current sunset date is June 30, 2015. A study of the impact on PERS of the reemployment of retirees is due before the 2015 Session.

RETIREMENT BENEFITS INVESTMENT BOARD

In the 2007 Session, the Legislature required the Public Employees' Retirement Board, acting as the Retirement Benefits Investment Board, to establish a fund for the purpose of investing money from State and local government trust funds created to fund liabilities associated with post-employment benefits other than retirement. The Retirement Benefits Investment Board has created the Retirement Benefits Investment Fund subject to the powers, duties, and limitations set forth in Chapter 287 of the NRS. As of June 30, 2011, assets of the Investment Fund totaled over $120 million.

2011 LEGISLATION

In the 2011 Session, the Legislature passed Assembly Bill 405 (Chapter 527, *Statutes of Nevada*) directing the Interim Retirement and Benefits Committee to conduct a study of alternative ways of providing retirement benefits to public employees, such as the use of a defined contribution plan. Other items to be studied are Social Security retirement and disability benefits and the recovery of losses caused by fraud in the stock markets. A legislative appropriation of $250,000 is contingent upon matching funds from private sources and the study will not begin until the funding is received. The results of the study will be provided to the 2013 Legislature.

ADDITIONAL RESOURCES AND PERS CONTACT INFORMATION

Public Employees' Retirement System website: http://www.nvpers.org
Executive Officer, Dana Bilyeu: (775) 687-4200

Reports on the subject of retirement benefits for public employees or websites with additional information include:

- Las Vegas Chamber of Commerce, *Fiscal Analysis Brief, Volume 1, Issue 3, An Overview and Comparative Analysis of the Nevada Public Employees' Retirement System*, 2008: http://www.lvchamber.com/files/pdf/FAB-retirement-system.pdf.

- National Institute on Retirement Security, *A Better Bang for the Buck, The Economic Efficiencies of Defined Benefit Pension Plans*, August 2008: http://www.nirsonline.org/storage/nirs/documents/Bang%20for%20the%20Buck%20Report.pdf.

- Nevada Policy Research Institute, *Reforming Nevada's Public Employees Pension Plan*, November 2011: http://npri.org/docLib/20111102_Biggs_PERS_Study.pdf.

- The Pew Center on the States: http://www.pewtrusts.org/our_work_report_detail.aspx?id=32390.

- Wisconsin Legislative Council, *2010 Comparative Study of Major Public Employee Retirement Systems, December 2011*, at: http://legis.wisconsin.gov/lc/publications/crs/2010_retirement.pdf.

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POLICY AND PROGRAM REPORT

Health Care and Health Insurance

Research Division January 2012

The State's involvement in health care and health insurance issues is primarily through two agencies: the Department of Health and Human Services (DHHS) and the Division of Insurance in the Department of Business and Industry.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The mission of the DHHS is to promote "the health and well-being of Nevadans through the delivery or facilitation of essential services to ensure families are strengthened, public health is protected, and individuals achieve their highest level of self-sufficiency."

State General Fund expenditures for the DHHS are projected at $1.9 billion, or 29 percent of the State General Fund.

The following offices and their administrators are within the jurisdiction of the DHHS:

Aging and Disability Services Division–
Carol Sala, Administrator

Division of Child and Family Services–
Amber Howell, Acting Administrator

Health Division–Richard Whitley, M.S., Administrator

Division of Health Care Financing and Policy–
Charles Duarte, Administrator

Division of Mental Health and Developmental Services–Richard Whitley, M.S., Acting Administrator

Division of Welfare and Supportive Services–
Diane J. Comeaux, Administrator

Office of the State Public Defender–
Diane R. Crow, J.D., State Public Defender

Office for Consumer Health Assistance–
Marilyn G. Wills, Director

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In addition to these divisions and offices, the DHHS administers a variety of other programs and grants, including grants from the Fund for a Healthy Nevada, which is a fund established by the State's Master Settlement Agreement with the tobacco industry. The Fund must be used for tobacco cessation programs, improvements in health services for children and for persons with disabilities; prescription drugs and pharmaceutical services for senior citizens and for eligible persons with disabilities; certain dental and vision benefits for senior citizens to the extent revenues are available; and services to assist senior citizens with independent living. Information about Healthy Nevada programs and grants may be obtained from the DHHS's website at: http://dhhs.nv.gov/Grants/Grants_HealthyNevada.htm.

DIVISION OF INSURANCE

The mission of the Division of Insurance, Department of Business and Industry, is "to protect the rights of Nevada consumers in their experiences with the insurance industry and to ensure the financial solvency of insurers."

The following seven sections within the Division are available to assist consumers and insurers in conducting business in Nevada:

1. Captive;

2. Consumer Services;

3. Corporate and Financial;

4. Life and Health (including Health Insurance Portability and Accountability Act);

5. Producer Licensing;

6. Property and Casualty; and

7. Self-Insured Workers' Compensation.

The Division's website (http://doi.state.nv.us) has information for consumers as well as companies that do business in Nevada. The "Consumers" link has a complaint form that consumers may use concerning health insurance companies. Additional information may be obtained from the Division by calling (775) 687-0700 in Carson City or (702) 486-4009 in Las Vegas.

MAJOR COVERAGE PROGRAMS

Medicaid

The Nevada Medicaid Program is administered by the Division of Health Care Financing and Policy, DHHS. The program makes health care services available to low-income persons who are aged, blind, or disabled and to women and children. Medicaid is the largest low-income health care

program in the State, and the program is financed through a combination of money from the State General Fund, local governments, and the federal government.

The federal government through the Centers for Medicare and Medicaid Services (CMS) provides matching funds, known as Federal Medical Assistance Percentage (FMAP), to support state-administered Medicaid medical services. The average FMAP rates for the current fiscal biennium are 55.05 percent for State Fiscal Year (SFY) 2012, and 58.86 percent for SFY 2013. In addition to the FMAP for medical services, there are different FMAP rates for other types of services: administrative services; direct care services provided by skilled professional medical personnel employed by the State of Nevada; information systems design, development, and implementation costs; and operations of a federally certified Medicaid Management Information System. All of these FMAP rates are defined by federal regulation.

Nevada Medicaid administers both fee-for-service and managed care programs. Mandatory Medicaid managed care requires certain persons who receive Medicaid to obtain their medical care from health maintenance organizations (HMOs). For the Division of Health Care Financing and Policy to require persons who receive Medicaid assistance to enroll in a managed care program, there must be at least two managed care companies in a region. Both Clark and Washoe Counties require that medical services to Medicaid recipients be delivered via HMOs. In the other areas of the State, because of a lack of managed care companies, health care providers are paid on a fee-for-service basis when they treat a patient who is enrolled in Medicaid.

Medicaid services and the policies that govern these services can be found in the *Medicaid Services Manual*, which may be reviewed on the Internet at: https://dhcfp.nv.gov/index.htm. In addition, a brochure intended for use by the public, which contains an explanation of the Medicaid and Nevada Check-Up programs and information on where and how to apply, is available on the Internet at: http://dhcfp.state.nv.us/pdf%20forms/Info/Medicaid%20Guide%20_English_.pdf.

Medicare

Medicare is the nation's health insurance program for people 65 years of age or older, certain younger people with disabilities, and people with End-Stage Renal Disease (ESRD), which is permanent kidney failure requiring dialysis or a transplant. Unlike the Medicaid program, Medicare eligibility is not based upon low income, nor does Medicare generally cover long-term care. The United States Social Security Administration is responsible for the application and eligibility processes, and the CMS also administers the Medicare program. In 2011, Medicare spending is estimated to account for 15 percent of total federal spending and 21 percent of total national health spending.

More than 29 million Medicare beneficiaries were participating in the Medicare Part D prescription drug benefit in 2011.[1]

The State Health Insurance Assistance Program (SHIP) is located within the Aging and Disability Services Division of the DHHS. Through a statewide network of volunteers, SHIP offers free one-on-one assistance and counseling to Medicare beneficiaries in Nevada with respect to many

[1] "Medicare at a Glance" Fact Sheet, November 2011, Kaiser Family Foundation (http://www.kff.org/medicare/upload/1066-14.pdf).

problems seniors encounter regarding Medicare, supplemental health insurance, and long-term care options. Volunteers may be reached at: (800) 307-4444 or (702) 486-3478 in Las Vegas. Additional information is available on the Internet at: http://www.nvaging.net/ship/ship_main.htm.

A more in-depth description of the federal Medicare program is included in the January 2012 *Policy and Program Report* on Senior Citizens.

Nevada Check-Up

The Nevada Check-Up Program is the State's Children's Health Insurance Program (CHIP) and it is the second largest health care delivery program administered by the Division of Health Care Financing and Policy. According to the Division, the mission of the Nevada Check-Up Program is "to provide low-cost, comprehensive health care coverage to low-income, uninsured children (birth through 18 years of age) who are not covered by private insurance or Medicaid; while: (1) promoting health care coverage for children; (2) encouraging individual responsibility; and (3) working with public and private health care providers and community advocates for children."

This program also is jointly funded by federal and State funds and is overseen by the federal agency, CMS. The FMAP rate for SFY 2012 is 68.54 percent federal and 31.46 percent State. The rate for SFY 2013 is 71.2 percent federal and 28.51 percent State. Due to budget constraints, capping the enrollment for the Nevada Check-Up program was considered. However, maintenance of eligibility requirements in the federal Affordable Care Act (ACA) currently prevents Nevada from capping Nevada Check-Up enrollment.

Medical care to children enrolled in Nevada Check-Up also is delivered by HMOs. Where there is insufficient HMO coverage, health care providers are paid on a fee-for-service basis.

Toll-free telephone numbers are available for families to determine their eligibility for the program: (877) 543-7669 (in-state) and (800) 360-6044 (out-of-state). Additional details about the program are available on the Division's website at: https://dhcfp.nv.gov/index.htm or on the Nevada Check-Up website at: http://nevadacheckup.state.nv.us/.

Senior Prescription Drug Program

Senior Rx is funded with a portion of Nevada's share of tobacco settlement funds. The program is administered by the DHHS and was enacted during the 1999 Legislative Session. The program provides up to $5,100 in prescription drug benefits per year to eligible seniors. Currently, many of the most commonly prescribed drugs are available through Senior Rx for a copayment of $10 per drug. Following are the copayment requirements of the program for a maximum 30-day supply of a drug dispensed by a retail pharmacy:

- $10 generic;
- $25 nongeneric preferred drug; or
- $25 nonpreferred name brand drugs (if authorized as medically necessary).

Additionally, for prescription drugs that are not covered or not authorized as medically necessary, there is an opportunity for the senior to purchase that drug at a discounted rate. Further, enrollees who take certain drugs on a regular basis may experience savings by arranging for mail-order purchases of larger quantities of their medication. Many of the program's benefits are administered through a contracted pharmacy benefit manager called Catalyst Rx. Other benefits are coordinated directly with the Medicare Part D plans that serve as the first prescription drug resource for enrolled members.[2]

More information about Senior Rx may be found on the DHHS's website at: http://dhhs.nv.gov/SeniorRx.htm; by calling (775) 687-4210 from the Reno, Carson City, or Gardnerville areas; or by calling toll-free at (866) 303-6323 if outside these areas.

Office for Consumer Health Assistance

For assistance when a health insurance claim is denied or with other problems with a person's individual or group policy, questions may be directed to the Office for Consumer Health Assistance, DHHS, at: (888) 333-1597. This Office acts as "a single point of contact for consumers and injured workers to assist them in understanding their rights and responsibilities under Nevada law and health care plans, including industrial insurance policies." The Office also will assist Medicaid consumers.

FEDERAL HEALTH CARE REFORM—AFFORDABLE CARE ACT

The federal Affordable Care Act is legally designated H.R. 3590, the Patient Protection and Affordable Care Act (PPACA, Public Law 111-148), and H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (HCERA, P.L. 111-152). The $960 billion federal health law aims to expand coverage to 32 million more Americans. It relies on a combination of Medicaid expansions, subsidies, tax credits, and mandates. The law also allocates money to improve quality and halts certain widely criticized insurance practices. The biggest changes come in 2014 when Medicaid expands and states create exchanges or marketplaces for health insurance. The federal changes provide a list of competitive grants and funding to help states set up consumer assistance offices, review insurers' rate hikes, support home nurse visits to high-risk pregnant women, and provide sex education and abstinence programs, among other things. In addition, the federal law directly allocates $11 billion to support community health centers.

According to a report issued in June 2009 and posted on the U.S. Department of Health and Human Services website (http://www.healthcare.gov/), the immediate benefits of the ACA for Nevada residents were predicted to include the following nine items:

1. **Small business tax credits.** [An estimated] 30,300 small businesses in Nevada . . . [may benefit] from a new small business tax credit that makes it easier for businesses to provide coverage to their workers and makes premiums more affordable. . . .

2. **Closing the Medicare Part D donut hole.** Last year, roughly 28,000 Medicare beneficiaries in Nevada hit the donut hole, or gap in Medicare Part D drug coverage . . . .

[2] Nevada Senior Rx, Department of Health and Human Services website (http://dhhs.nv.gov/SeniorRx.htm).

Medicare beneficiaries in Nevada who hit the gap . . . [in 2010 were] automatically mailed a one-time $250 rebate check. . . . The new law continues to provide additional discounts for seniors on Medicare in the years ahead and completely closes the donut hole by 2020.

3. **Support for health coverage for early retirees.** An estimated 38,600 people from Nevada retired before they were eligible for Medicare and have health coverage through their former employers. . . . the number of firms that provide health coverage to their retirees has decreased over time. Beginning June 1, 2010, a $5 billion temporary early retiree reinsurance program will help stabilize early retiree coverage and help ensure that firms continue to provide health coverage to their early retirees. Companies, unions, and state and local governments are eligible for these benefits.

4. **New consumer protections in the insurance market beginning on or after September 23, 2010, include:**

   - Insurance companies will no longer be able to place lifetime limits on the coverage they provide . . . .

   - Insurance companies will be banned from dropping people from coverage when they get sick . . . .

   - Insurance companies will not be able to exclude children from coverage because of a pre-existing condition. . . .

   - Insurance plans' use of annual limits will be tightly regulated to ensure access to needed care. . . .

   - Health insurers offering new plans will have to develop an appeals process to make it easy for enrollees to dispute the denial of a medical claim.

   - Patients' choice of doctors will be protected by allowing plan members in new plans to pick any participating primary care provider, prohibiting insurers from requiring prior authorization before a woman sees an ob-gyn, and ensuring access to emergency care.

5. **Extending coverage to young adults.** Beginning on or after September 23, 2010, plans and issuers that offer coverage to children on their parents' policy must allow children to remain on their parents' policy until they turn 26, unless the adult child has another offer of job-based coverage in some cases. This provision will bring relief to approximately 9,470 individuals in Nevada who could now have quality affordable coverage through their parents. . . .

6. **Affordable insurance for uninsured with pre-existing conditions.** [Approximately] $61.1 million federal dollars are available to Nevada starting July 1[, 2010,] to provide coverage for uninsured residents with pre-existing medical conditions through a new transitional high-risk pool program, funded entirely by the Federal government. The program is a bridge to 2014 when Americans will have access to affordable coverage

options in the new health insurance exchanges and insurance companies will be prohibited from denying coverage to Americans with pre-existing conditions. If states choose not to run the program, the Federal government will administer the program for those residents.

7. **Strengthening community health centers.** Beginning October 1, 2010, increased funding for Community Health Centers will help nearly double the number of patients seen by the centers over the next five years. The funding . . . [may be used to support] the 33 Community Health Centers [currently] in Nevada . . . [and to] support the construction of new centers.

8. **More doctors where people need them.** Beginning October 1, 2010, the Act will provide funding for the National Health Service Corps ($1.5 billion over five years) for scholarships and loan repayments for doctors, nurses and other health care providers who work in areas with a shortage of health professionals. This will help the 13% of Nevada's population who live in an underserved area.

9. **New Medicaid options for states.** For the first time, Nevada has the option of Federal Medicaid funding for coverage for all low-income populations, irrespective of age, disability, or family status.[3]

HEALTH CARE SERVICES AND FACILITIES

Health Care Services

For the most part, people who have health insurance have access to high-quality health care services. However, there is limited access to providers for persons who do not have health insurance. Without health insurance, access to specialist physicians is particularly limited.

Nevada consistently ranks at or near the bottom nationally on major indicators of health status for the State's population. In addition, the Great Basin Primary Care Association (GBPCA) reports that the health status of some groups falls far below the State mean. Some populations in Nevada have mortality and morbidity rates that are among the highest in the nation. Native Americans, immigrants, homeless people, uninsured individuals, and low-income families tend to have chronic and acute health problems worse than the norm. In addition, oral health and behavioral health problems are severe for the State's overall population, due in part to limited health care resources for underserved people.

Community health centers fill the void for many who do not have health insurance. Community health centers are local, nonprofit, community-owned health care providers that serve low-income and medically underserved communities. Community and tribal clinics in the State provide high-quality, affordable primary care and preventive services, and often offer on-site dental, pharmaceutical, and mental health and substance abuse services. Also known as Federally Qualified Health Centers, they are located in areas where care is needed but scarce.

[3] *The Affordable Care Act: Immediate Benefits for Nevada* (http://www.healthreform.gov/reports/statehealthreform/nevada.html).

More information about the State's community and tribal clinics may be obtained from GBPCA's website at: http://www.gbpca.org. Additionally, information on all Nevada public health policymaking organizations and population-based health service providers, including their missions, duties, and jurisdictions, may be accessed on the website of the Nevada Public Health Foundation at: http://www.nevadapublichealthfoundation.org/home.asp.

Major hospitals in Nevada are required to reduce or discount the total billed charge of a hospital stay by at least 30 percent for hospital services provided to an inpatient who:

- Has no insurance or other contractual provision for the payment of the charge by a third party;
- Is not eligible for coverage by a federal or State program of public assistance that would provide for the payment of the charge; and
- Makes reasonable arrangements within 30 days after discharge to pay the hospital bill.

Health Care Facilities

Health care facilities such as hospitals and nursing homes are regulated in Nevada by the Bureau of Health Care Quality and Compliance (HCQC) in the Health Division, DHHS. Additionally, entities such as assisted living facilities and group homes are regulated by the HCQC. Complaints about the quality of care in these facilities may be directed to the HCQC by calling (775) 687-1030 in Carson City or (702) 486-6515 in Las Vegas.

The Aging and Disability Services Division of the DHHS is able to assist consumers in locating information about nursing homes. It also assists seniors with complaints about quality of care issues. Consumers may obtain additional information about the Division's services at: http://www.nvaging.net.

Complaints about the quality of care provided by individual employees in the facilities may be directed to the employee's licensing board, particularly if the employee is a certified nursing assistant, nurse, physician, psychiatrist, or other licensed medical or mental health professional. For information on how to find contact information for these licensing boards, see the section on "Health Care Professionals—Disciplinary Action," below.

HEALTH CARE PROFESSIONALS

Health Care Professionals—Disciplinary Action

The Legislative Counsel Bureau maintains a list of disciplinary reports from the State's occupational and health care provider licensing boards on its website at: http://www.leg.state.nv.us/App/OL/A/. Relevant contact information for the boards is available in these reports.

Supply of Health Professionals

Based on 2010 data, when compared to all states in relation to the supply of health professionals per 100,000 population, Nevada ranked 45th in number of physicians, and according to 2008 data, ranked 49th in number of nurses. The aging population, the increased access to health care through the ACA, and a national shortage of nurses to work in hospitals and nursing homes, as well as shortages of specific specialists, further illustrate a need to develop a statewide system that allows policymakers to be proactive in determining the State's needs for health care professionals to provide care.

INTERNET AND ADDITIONAL RESOURCES

Department of Health and Human Services
Website: http://dhhs.nv.gov/
Telephone: (775) 684-4000

Office for Consumer Health Assistance
Website: http://dhhs.nv.gov/CHA.htm
Website: http://rxhelp4nv.org/
Toll-free Telephone: (888) 333-1597

Aging and Disability Services Division
Website: http://www.nvaging.net
E-mail (general information for all offices): adsd@adsd.nv.gov
Carson City Telephone: (775) 687-4210
Elko Telephone: (775) 738-1966
Las Vegas Telephone: (702) 486-3545
Reno Telephone: (775) 688-2964

Senior Rx
Website: http://dhhs.nv.gov/SeniorRx.htm
Telephone: (775) 687-4210 (from Reno-Carson City-Gardnerville areas)
Toll-free Telephone: (866) 303-6323 (from outside Reno-Carson City-Gardnerville areas)

Division of Health Care Financing and Policy
Website: https://dhcfp.nv.gov
Telephone: (775) 684-3676

Nevada Check-Up
Website: https://nevadacheckup.nv.gov/
Toll-free Telephone (in-state): (877) 543-7669
Toll-free Telephone (out-of-state): (800) 360-6044

Nevada Medicaid
Website: https://dhcfp.nv.gov/index.htm
Telephone: (775) 684-3676

Health Division
Website: http://health.nv.gov/
Telephone: (775) 684-4200

Division of Welfare and Supportive Services
Website: http://dwss.nv.gov/
Telephone: (775) 684-0500

Field Offices
Website: http://dwss.nv.gov/index.php?option=com_content&task=view&id=122&Itemid=319
Welfare Customer Service
Toll-free Voice Response System Telephone: (800) 992-0900

Division of Insurance, Department of Business and Industry
Website: http://doi.state.nv.us/
Carson City Office Telephone: (775) 687-0700
Las Vegas Office Telephone: (702) 486-4009

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POLICY AND PROGRAM REPORT

Human Services

Research Division January 2012

Human services in Nevada includes services designed to meet the basic subsistence needs of those individuals and families who are unable to meet those needs on their own; provide the means for those who are able to become productive members of society; provide for their public health and welfare; or enhance the quality of life for all citizens of the State of Nevada.

Nevada has been one of the fastest growing states in the United States for the last 20 years, increasing in total population from 1,201,833 in 1990 to 2,700,551 in 2010. It was also the fourth consecutive decade in which Nevada was the country's fastest-growing state and had a population growth rate over 50 percent. The two major age groups, which grew at a faster rate than the general population, are children, representing 24.6 percent of the total population, and senior adults, 65 and older, at 12 percent of the total State population.

In human services terms, the significance of these growth patterns cannot be ignored. Traditionally, children and seniors have represented the most vulnerable segments of society. The first line of defense in protecting those that are most vulnerable is achieved by developing and maintaining strong families. Strong families have parenting skills that promote children's optimal development; adequate nutrition; access to appropriate health care services; the absence of violence and alcohol and drug abuse; and opportunities that lead to employment that provides wages which enable the family to thrive. In Nevada, human services are constructed around the goal of supporting this effort. Approximately 30 percent of the State's budget is committed to human services. This brief provides an overview of economic assistance programs, child welfare services, mental health and developmental services, and substance abuse services in the State of Nevada.

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ECONOMIC ASSISTANCE PROGRAMS

Described below are programs that provide economic support to eligible persons.

Temporary Assistance for Needy Families

The Division of Welfare and Supportive Services of the Department of Health and Human Services (DHHS) administers the Temporary Assistance for Needy Families (TANF) program, while counties, private agencies, and tribes provide services under the terms of contracts signed with DHHS. Low-income persons may also be eligible for the Food Stamp Program or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

Temporary Assistance to Needy Families replaced the Aid to Families with Dependent Children (AFDC) program. The TANF program is funded by State General Fund revenue, federal TANF block grant funds from the U.S. Department of Health and Human Services, and program revenue, which is primarily from child support collections assigned to the State by public assistance recipients.

Eligibility Requirements

The TANF program offers time-limited cash assistance to families that meet certain financial and nonfinancial eligibility requirements. Nonfinancial eligibility requirements include all of the following:

- Being a custodial parent who is at least 18 years old;
- Being a U.S. citizen or qualifying immigrant;
- Residing within Nevada;
- Cooperating in efforts to establish paternity of a dependent child and in obtaining child support payments; and
- Not receiving federal Supplemental Security Income (SSI), State supplemental payments, or federal Social Security disability insurance payments.

The individual, his or her spouse or other eligible adults, and any dependent children and grandchildren who reside together must have a gross income at or below 185 percent of the federal poverty level. In addition, applicants must not have assets in excess of $2,000. In determining eligibility, certain items are not counted as assets, including the following: one's home and surrounding property; burial plot; personal possessions such as clothes, jewelry, furnishings, household goods, or pets; and resources or income of an SSI recipient. However, the following items, among others, are counted as assets: (1) checking and savings accounts; (2) Individual Retirement Accounts; (3) certificates of deposit; (4) stocks and bonds; (5) recreational vehicles; and (6) property other than that listed above. All trust funds are referred to the Office of the Attorney General for a ruling on the type and availability of the funds to determine how they should be attributed for eligibility purposes.

Limitations on Receiving Assistance

Federal law allows a five-year lifetime limit to receive TANF cash assistance. In Nevada, recipients may receive 24 months of assistance after which they must remain off for 12 months, unless they meet hardship criteria. Receipt of benefits may continue within these time limits until the lifetime limit of five years is reached. The five-year lifetime limit does not apply to food stamps or medical coverage.

Medicaid and TANF

The TANF application is also a Medicaid application. Medicaid eligibility is determined in conjunction with TANF and a decision on the application is made within 45 days. Under certain circumstances, a family may be eligible for Medicaid but not eligible for cash assistance through TANF.

Measurements for Program Success

Program success is measured by the number of households that leave the TANF cash assistance program due to employment. In Fiscal Year (FY) 2011, the average number of recipients receiving cash benefits each month was 30,043; another 136,416 received medical assistance only. The total cash grant expenditure for TANF in FY 2011 was $47.2 million with an average monthly grant of $127.43 per recipient. The average TANF grant household size was 2.57 people.

Countable Work Activity

Federal law requires that all participants in TANF complete a minimum of 30 hours of countable work activity or risk losing eligibility for assistance. Countable work activities include such things as unsubsidized employment, community work experience, on-the-job training, and vocational counseling and education. In certain circumstances, other types of counseling and rehabilitation services necessary to make the person employable may be counted toward the required time.

To fulfill this requirement, the Division of Welfare and Supportive Services provides education and training to individuals via the New Employees of Nevada (NEON) program, the Food Stamp Employment and Training program, and the Welfare-to-Work (WtW) program. Certain clients are further assisted through other social services to facilitate self-sufficiency.

New Employees of Nevada Program

The NEON program provides TANF recipients with a means to acquire basic and vocational skills and overcome barriers to achieve economic independence through employment. With few exceptions, a TANF applicant begins participation in the NEON program at the same time his or her eligibility is determined. A TANF applicant is assessed to determine employability and what services are necessary (i.e., child care, transportation, work clothing, et cetera) to facilitate a rapid transition into the workforce. For those TANF applicants unsuccessful in obtaining employment or determined to be unprepared to enter the workforce, services are provided to enhance their future success.

For TANF participants, further assessment and evaluation occurs to determine vocational abilities and interests. Recipients are screened to determine if personal issues such as domestic violence, parenting, substance abuse, et cetera, are inhibiting a successful transition to productive employment. After completing the assessment, the participant enters into a Personal Responsibility Plan with the

Division of Welfare and Supportive Services. The Personal Responsibility Plan specifies the services the participant will receive from the agency and identifies what the participant must do to achieve certain goals. The period to fulfill the expectations of the contract is limited to 24 months with few exceptions. Services are determined based on the individual's needs and can range from short-term classroom training to placements in public or nonprofit settings where job skills are gained through practical experience.

Funding for the NEON Program

The NEON program receives funding through the TANF Block Grant and State General Fund. In State Fiscal Year (SFY) 2011, the NEON program expended $1,534,829.63 for training and employment-related support services, assisting 5,511 work-eligible individuals. The NEON program expended $1,349,572.28 through social service contracts to provide domestic violence services and substance abuse treatment to 350 work-eligible individuals and their families and provide teen parenting and teen pregnancy prevention education. Funding to provide child care services to work-eligible individuals is obtained from the Child Care and Development Fund. The TANF NEON program is measured based on the percentage of work-eligible individuals engaged in an average of 30 or more hours (with a few exceptions) of "countable" work activities each week. The following is Nevada's preliminary* work participation rate (WPR) percentages for Federal Fiscal Year (FFY) 2011:

FFY 2011	All Family	Two-Parent
1st Quarter	35.61 percent	47.88 percent
2nd Quarter	35.34 percent	45.42 percent
3rd Quarter	36.02 percent	45.75 percent
4th Quarter	35.62 percent	46.32 percent
YTD FFY 2011	**35.65 percent**	**46.34 percent**

*The WPR numbers are preliminary, not final. Federal Fiscal Year 2011 WPR numbers are open to federal and divisional edits through April/May 2012.

Food Stamp Employment and Training Program

Nevada operates a Food Stamp Employment and Training (FSE&T) program statewide to provide employment, education, training, and support services to food stamp recipients required to participate in a work activity as a condition of eligibility for food coupons. Each mandatory participant is invited to attend an orientation workshop. After a group orientation is completed, an individual assessment is performed to determine the appropriate FSE&T activity for the individual (i.e., job search, job readiness, or workfare). Support services such as child care reimbursement, money for work-related costs, and transportation are available to participants. Food stamp eligibility is approved or denied within 30 days of application for benefits. The eligibility worker determines each approved household member's FSE&T participation status. Persons who are elderly, disabled, employed at least 30 hours per week, or temporarily laid off from a job are exempt from the requirement to participate in a work activity.

Welfare-to-Work

The WtW formula grant funds provide employment-related services for the hardest to employ recipients and associated noncustodial parents. All services are based on a "work first" philosophy, which helps the TANF recipient and noncustodial parent to receive employment-focused services leading to economic self-sufficiency. The WtW funding passes through the Division of Welfare and Supportive Services to the two Private Industry Councils (PICs) located in Nevada. With assistance from the Division, the PICs determine services that will be contracted for the hardest to employ.

Eligibility is determined by the Division of Welfare and Supportive Services, and program monitoring is conducted by the State Job Training Office of the Department of Employment, Training and Rehabilitation. Program oversight and fiscal monitoring for WtW services is the Division of Welfare and Supportive Services' responsibility.

Social Service Programs

The Division of Welfare and Supportive Services' social workers address the challenges faced while working with the hardest to employ participants. These families experience a multitude of barriers and issues that prevent them from becoming self-sufficient. Some issues addressed by social workers serving the hardest to employ participant families are caring for children with severe medical or emotional problems, domestic violence, health, mental health, and substance abuse.

Child Care Assistance

The Child Care and Development Fund assists low-income Nevadans with their child care needs as long as they are going to school, in training, or working. The program is funded with federal Child Care and Development funds as well as State General Fund revenue. Nevada's Program for Child Care and Development has grown from an $18 million program in SFY 1998 to a $51.7 million program in SFY 2011. The program targets low-income families with incomes at or below 130 percent of the federal poverty level but can serve families with incomes up to 75 percent of the State's median income.

The Division of Welfare and Supportive Services contracts with two nonprofit agencies that manage the child care program. In northern Nevada The Children's Cabinet and in southern Nevada The Las Vegas Urban League outstation staff in Division of Welfare and Supportive Services field offices throughout the State to provide resource and referral services as well as child care subsidy services to welfare clientele in need of those services to become self-sufficient.

Food Stamps

The purpose of the Food Stamp Program is to raise the nutritional level among low-income households whose limited food purchasing power contributes to hunger and malnutrition among members of these households. Food Stamps is a federal entitlement program; however, effective November 22, 1996, some individuals aged 18 through 49 may be classified as Able-bodied Adults

Without Dependents and limited to receiving food coupons for 3 months in a 36-month period if they are not meeting certain work requirements. The food coupons are entirely federally funded. However, administrative costs for the Food Stamp Program are covered with 50 percent federal funding and a 50 percent State match.

Applications for Food Stamps are generally processed within 30 days of application; however, a household, which has less than $100 in income and/or $150 in resources, or has shelter expenses, which exceed its income, may be entitled to expedited service. For those households eligible for expedited services, food coupons are made available no later than the seventh day, which includes the date of application.

The Nevada Food Stamp Program utilizes the Electronic Benefits Transfer (EBT) system. The EBT is an electronic system that allows recipients to authorize transfer of their government Food Stamp benefits from their EBT account (a bank account Welfare sets up for each Food Stamp household) to a food retailer's account to pay for products received. The EBT accounts are accessed by the use of an EBT card (similar to a debit or credit card) and a personal identification number. Each time the card is used, the benefit account balance is reduced by the amount of the purchase. Food Stamp recipients in Nevada have received their Food Stamp benefits via EBT since July 1, 2002.

Women, Infants, and Children

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federally funded short-term nutrition program operated by the Health Division of the DHHS. Its purpose is to improve the health of Nevada women, infants, and children who are eligible for the program by providing supplemental nutritious foods, nutrition education, and other health and social services.

To be eligible to participate in the WIC Program, applicants must meet the following requirements:

- Reside in Nevada;
- Be a pregnant or recently pregnant woman, an infant, or a child up to age 5;
- Have a moderately low income; and
- Be determined to have a nutritional risk.

The income guidelines for WIC are noticeably higher than for other welfare programs. Many families with employed members can qualify for WIC that would not qualify for other welfare programs. For example, an average family of three could have an annual income up to $28,990 and remain eligible. A nutritional risk is evaluated at the clinic and includes any problem, medical or dietary, which is caused by or is associated with a person's diet. Some examples are poor growth in a child, poor eating habits, and tooth decay.

CHILD WELFARE SERVICES

The Division of Child and Family Services (DCFS) within the DHHS is responsible for child protective and welfare service delivery in rural Nevada and oversight of urban county-operated child protective and welfare services.[1] Urban Nevada includes counties with a population of 100,000 or more (Clark and Washoe Counties). The DCFS is also responsible for children's mental/behavioral health treatment and residential services (outpatient and inpatient acute) in urban Nevada.[2]

Child protective services includes:

- Preventative services;
- Investigations of abuse and neglect;
- Family assessments;
- Emergency shelter care and/or short-term foster care; and
- In-home services.

Child welfare services includes:

- Placement services (family foster care, higher levels including group and residential care);
- Case management for foster care and adoptions;
- Independent living;
- Family preservation; and
- Family foster home recruitment, training, and licensing.

Nevada Law Governing Protection of Children From Abuse and Neglect

Chapter 432B ("Protection of Children From Abuse and Neglect") of *Nevada Revised Statutes* (NRS) sets forth the court procedures involved when a child is removed from the home. These procedures include the following:

- Protective custody hearings;
- Petitions from the protective services agencies alleging a child is in need of protection;

[1] Division of Child and Family Services, DHHS, "Agency Budget Presentation 2011-2013 Biennium," February 1, 2011 (http://www.dcfs.state.nv.us/Budget/2012-2013/2011-02-01_Final.pdf).

[2] In rural Nevada, rural clinics under the Division of Mental Health and Developmental Services within DHHS are responsible for providing children's mental health services.

- Appointment of a guardian *ad litem*;
- Adjudicatory hearing on the need of protection for the child and disposition;
- The court's determination of custody of a child;
- Semiannual review by the court; and
- Permanency hearings.

Foster Care

Foster (substitute) care is a family-focused service that provides for the temporary care of children in need of protection. Foster care strives to support children while their parents are preparing to once again be able to care for their children who are temporarily placed out of the home due to neglect and/or abuse. Services are provided to strengthen the family unit so that reunification is possible. When reunification is not possible, permanent placements are sought for children. These placements include adoption, emancipation, independent living, guardianship, relative placement, or long-term foster care. The Independent Living Program serves all youth in foster care from the ages of 16 to 21. This program helps to prepare youth for the transition from foster care to self-sufficiency as young adults living on their own. The Independent Living Program provides training materials and life skills classes.

The rules governing the determination of a child's need for protection or removal from his or her home are set forth under NRS 432B.330. The circumstances calling for the removal of a child from the home include, but are not limited to, the child having been abandoned by a person responsible for the child's welfare or the child having been subjected to abuse or neglect by a person responsible for his or her welfare.

Placement of a child into a foster home (family foster home or group foster home) typically is determined by a court order. Pursuant to subsection 1 of NRS 432B.410, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection. The agency that provides child welfare services related to the case is required to assist the court during all stages of any proceeding. The court can become involved in one of two ways:

1. Child welfare services determines a child to be in immediate danger and the agency takes direct custody of the child. Within 72 hours, a protective custody hearing is held for the child. If the court upholds the original determination of abuse, the agency is given ten days to file a petition for legal custody of the child; or

2. Child welfare services finds a determination of abuse, yet the child is not in immediate danger. The agency may need a court oversight to compel the parents to comply with the case plan. The child welfare agency can then file for legal custody of the child if this is deemed necessary.

A foster home is licensed by DCFS or, in counties whose population is 100,000 or more, the agency which provides child welfare services. A foster family home is licensed by the appropriate agency to provide care and maintenance to no more than six children. A group foster home is licensed to provide care and maintenance for 7 to 15 children. Wherever possible, an effort is made to keep siblings together.

Foster care payments are made to a licensed foster parent who is caring for a child. The amount of the foster care payment is based on the treatment level classification of the child. Specifically, if the child needs more than the usual amount of care because of individual needs, the payment is greater.

MENTAL HEALTH AND DEVELOPMENTAL SERVICES

The general provisions of mental health care in Nevada are outlined in Chapter 433 of the NRS. Several levels of mental health care are provided in Nevada through inpatient and outpatient programs. Clients requiring intensive care are supported by inpatient services and intensive outpatient programs. Other outpatient programs are designed to help the client gain greater independence, confidence, and the ability to function in the community.

Three regional centers make up the Developmental Services branch of the Division of Mental Health and Developmental Services, DHHS. The purpose of Developmental Services is to support people with disabilities in their pursuit to live independent and satisfactory lives. The regional centers help clients plan and access services through service coordination (case workers) that support the client's personal choices and needs. The services, choices, and options presented to a client focus on best practices, community integration, family support, and employment.

Chapter 433B ("Additional Provisions Relating to Children") of the NRS requires the State to provide certain mental health services to persons less than 18 years of age or, if in school, until graduation from high school. In accordance with this law, the DCFS provides a range of mental health services to both severely emotionally disturbed and behaviorally disordered children, adolescents, and their families through Southern Nevada Child and Adolescent Services and Northern Nevada Child and Adolescent Services.

Involuntary Commitment

Commitment to a mental health facility is governed by Chapter 433A ("Admission to Mental Health Facilities; Hospitalization") of NRS. Under this chapter, there are three types of admission: voluntary, emergency, and involuntary. Under NRS 433A.200, a proceeding for a court-ordered admission of a person alleged to be mentally ill (see NRS 433A.115 for definition of mentally ill person) may be commenced by the filing of a petition by a spouse, parent, adult children, or legal guardian of the person to be treated, or by any physician, psychologist, social worker or registered nurse, an accredited agent of the DHHS, or by any officer authorized to make arrests.

After the petition is filed, a hearing on the petition is held by the district court. Under NRS 433A.310, if the court finds that "there is clear and convincing evidence that the person with respect to whom the hearing was held has a mental illness and, because of that illness, is likely to

harm himself or herself or others if allowed his or her liberty, the court may order the involuntary admission of the person for the most appropriate course of treatment."

SUBSTANCE ABUSE SERVICES

The Substance Abuse Prevention and Treatment Agency (SAPTA) was established to work to reduce the impact of substance abuse in Nevada. The organization accomplishes this goal by identifying alcohol and drug abuse needs of Nevadans and by supporting a continuum of services including prevention, early intervention, and treatment. The SAPTA also provides regulatory oversight and funding for community-based public and nonprofit organizations. In addition, SAPTA is responsible for the development and implementation of a State plan for prevention and treatment; coordination of State and federal funding; and development of standards for the certification and approval of prevention and treatment programs. The SAPTA serves as the single State authority for the federal Substance Abuse Prevention and Treatment Block Grant, but does not provide any direct substance abuse prevention or treatment services. As of December 4, 2006, SAPTA was merged into the Division of Mental Health and Developmental Services.

In SFY 2011, the SAPTA budget totaled nearly $24.6 million, including approximately $14.5 million in federal support and approximately $10.2 million in State funds. For FFY 2011, Nevada was authorized to receive nearly $12.9 million from the SAPTA block grant, and by federal requirement, 20 percent of the block grant is allocated to prevention programming and 70 percent is allocated to treatment programming.

INTERNET RESOURCES

Department of Employment, Training and Rehabilitation: http://detr.state.nv.us/

Department of Health and Human Services: http://dhhs.nv.gov/

- Division of Child and Family Services: http://www.dcfs.state.nv.us/
- Division of Mental Health and Developmental Services: http://mhds.state.nv.us/
  - Substance Abuse Prevention and Treatment Agency: http://mhds.nv.gov/index.php?option=com_content&view=article&id=61&Itemid=72
- Division of Welfare and Supportive Services: http://dwss.nv.gov/

Clark County Department of Family Services: http://www.clarkcountynv.gov/depts/family_services/pages/default.aspx

Washoe County Department of Social Services: http://www.co.washoe.nv.us/socsrv/socsrv.html

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POLICY AND PROGRAM REPORT

Senior Citizens

Research Division January 2012

According to the United States Census Bureau, between 2000 and 2010, Nevada's senior population (age 65 and older) increased 48.2 percent, nearly four times the national average of 12.9 percent. The Bureau estimates that there are approximately 324,359 Nevadans age 65 and older (2010), which represents 11.2 percent of the State's population. Nevada's Office of the State Demographer estimates that this number will more than double by 2026 to over 627,000 seniors. Many of these seniors are healthy; live active lifestyles; contribute positively to the State's economy in many ways; and initially, require few senior services. However, as seniors age, there may be significant impacts on services that are provided by public and private institutions. Projections suggest that the demand for enhanced programs and services for our escalating senior population will continue to grow at an increasing rate over the next several decades.

To address the concerns of this population, the 2009 Legislative Session created a statutory committee named the Legislative Committee on Senior Citizens, Veterans and Adults With Special Needs (*Nevada Revised Statutes* [NRS] 218E.750) to meet during the interim between legislative sessions.

The Committee may review, study, and comment on issues relating to senior citizens, veterans, and adults with special needs, including: initiatives to ensure financial and physical wellness; the prevention of abuse, neglect, isolation, and exploitation; public outreach and advocacy; the enhancement of service programs to ensure that services are provided in the most appropriate setting; programs that allow seniors to live outside institutional care by providing services

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and care in the home; the availability of useful information and data for the State to effectively make decisions; the improvement of laws relating to the appointment of guardians; and the improvement of facilities for long-term care in Nevada. Information about this Committee can be found at: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/ SeniorVetSpecial/?ID=27.

HEALTH CARE

Medicare

Medicare is the federal health insurance program for people 65 years of age or older, certain younger people with disabilities, and people with End-Stage Renal Disease (permanent kidney failure with dialysis or a transplant, sometimes called ESRD). The Social Security Administration is responsible for the application and eligibility processes while the Centers for Medicaid and Medicare Services (CMS) administers the Medicare program. Currently, Medicare is the country's largest health insurance program. It provides coverage to approximately 49 million Americans and spends approximately $518 billion in health care benefits (2010).

Medicare has four main parts:

1. Hospital insurance (also called Medicare "Part A"), which helps pay for care in a hospital or skilled nursing facility, home health care services, and hospice care;

2. Medical insurance (also called Medicare "Part B"), which helps pay for doctors, outpatient hospital care, and some preventative services;

3. Medicare Advantage Plans (also called Medicare "Part C"), which is a way to get Medicare benefits through private companies that are approved and under contract with Medicare. These plans include Parts A and B and usually cover other benefits that Original Medicare does not, such as prescription drug coverage; and

4. Prescription drug coverage (also called Medicare "Part D"), which helps Medicare beneficiaries have access to prescription drug coverage once they select one of the many discount options that are available. Part D was established with passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Part D beneficiaries must enroll in a Medicare-approved private drug plan to receive the drug coverage.

Most people age 65 or older who are citizens or permanent residents of the United States are eligible for Medicare Part A without paying a monthly premium if they or their spouse paid Medicare taxes while working. Before age 65, individuals are eligible for premium-free Medicare hospital insurance if they have been entitled to Social Security disability benefits for 24 months. Anyone who is eligible for free Medicare hospital insurance (Part A) can enroll in Medicare medical insurance (Part B) and Prescription coverage (Part D) by paying a monthly premium.

It is important for a person to enroll in Medicare as soon as they are eligible, because late enrollment penalties in the form of higher premiums may be applied if too many months elapse. Anyone

interested in finding out if or when they are eligible for Medicare should contact the Nevada State Health Insurance Assistance Program at: (800) 307-4444; http://www.nvaging.net/ship/ship_main.htm; or Social Security at (800) 772-1213.

Original Medicare provides basic health care coverage; however, it does not pay for all medical expenses. Consequently, many private insurance companies sell insurance to fill in the gaps in Medicare coverage. This kind of insurance is called "Medigap" and can help pay for Medicare copayments, coinsurance, or deductibles. Anyone interested in more information about Medigap coverage should visit Medicare's website at: http://www.medicare.gov/Publications/Pubs/pdf/02110.pdf to view the booklet *Choosing a Medigap Policy: A Guide to Health Insurance for People with Medicare*, or call (800) MEDICARE (800-633-4227).

Health Reform

The Affordable Care Act of 2010 added several important benefits for Medicare participants. Current Medicare-covered benefits, which include the ability to choose one's own doctor, must not be reduced or eliminated. The first year the new health reform law was enacted, almost 4 million Medicare recipients with Prescription Drug Coverage were eligible for a one-time, tax-free rebate of $250 as a cost relief for out-of-pocket costs paid for prescription drugs due to a coverage gap commonly known as a "donut hole." For those individuals who fall into a donut hole because of high prescription drug costs, one can now receive a 50 percent discount on brand-name drugs. By 2020, the donut hole will be completely closed due to health reform.

SENIOR RX

Senior Rx is a State program that provides assistance with the cost of prescription drugs for individuals eligible for Medicare Part D and also for those who are not eligible for Medicare Part D. The program is funded with a portion of Nevada's share of tobacco settlement funds and was passed into law during the 1999 Legislative Session. To qualify for the program, a senior must be 62 years old, and the household income must not exceed $26,054 (for singles) or $34,731 (for married couples) as of July 1, 2011.

Senior Rx members who *are* eligible for prescription coverage under Medicare Part D are required to enroll in a Part D plan and also utilize federal low-income subsidies if eligible. If these conditions are met, Senior Rx will subsidize an eligible member's monthly Medicare Part D premium. The subsidy is applicable to any Medicare Part D prescription drug plan the member selects (minus any help Medicare may already be providing with this expense). The member may also receive 100 percent coverage of prescription medications during the Part D coverage gap. During the gap, members must continue to follow the formulary, step therapies, and prior authorization requirements of their Part D plans.

Senior Rx members who are *not* eligible for prescription drug coverage under Medicare Part D participate in a cost-sharing program that has no premium, no deductible, and copayments of $10 for generic drugs and $25 for preferred or medically necessary brands. The annual coverage limit is $5,100. The cost-sharing benefit package is administered by Catalyst Rx, a pharmacy benefit manager contracted with Nevada's Department of Health and Human Services (DHHS).

The 2005 Legislature addressed the need for increased dental and vision benefits by allowing part of the revenues from the Fund for a Healthy Nevada to be used for dental and vision benefits for senior citizens. The Legislature authorized the DHHS to contract with private health insurers to provide coverage for these benefits to persons who meet Senior Rx eligibility criteria, and the vision benefits are now available.

SERVICES FOR THE ELDERLY

The life expectancy of Americans has increased and with it the demand for services for elderly adults. While some elderly adults require nursing home care, others need minimal assistance with daily care, which makes it possible for them to maintain independence. During the 2009 Legislative Session, the Aging Services Division, the Office of Disability Services, the Senior Rx Program, and the Disability Rx Program merged to create the Aging and Disability Services Division (http://www.nvaging.net/) in the DHHS. While programs and services for seniors are administered through various offices in Nevada, the coordination of services for individuals age 60 years and older, and those with disabilities, is the responsibility of the Aging and Disability Services Division. Certain services are also offered through local county agencies as well.

The Administration on Aging in the U.S. Department of Health and Human Services administers an aging network and a variety of programs, which support elderly persons in the community. Some of these programs provide support to caregivers of elderly persons. The Administration on Aging distributes funds to the states. In Nevada, the Aging and Disability Services Division distributes federal as well as state funding to area agencies through a competitive grant process.

Facing severe revenue shortfalls, the 2011 Legislature eliminated the Senior Citizens Property Tax Assistance Program (also known as the Senior Tax Assistance/Rent Rebate [STARR] Program). For eligible individuals over the age of 62 years, the STARR program provided a reimbursement of a portion of property tax previously paid by an individual. This program was eliminated in an effort to fund other critical services, such as Elder Protective Services, due to a projected revenue shortfall in the Aging and Disability Services Division's budget.

National Family Caregiver Support Program

The National Family Caregiver Support Program (NFCSP) was signed into law as part of the Older Americans Act (OAA) Amendments of 2000. The NFCSP provides grants to states to enable area agencies on aging to provide an array of support services to informal caregivers of any age and grandparents or other relatives 60 years of age or older caring for a child 18 years of age or younger. In Nevada, in addition to counseling, respite programs, and a website for caregivers, a chief portion of this funding is used toward the development of a single point of entry to access support services and provide information to caregivers and seniors about available services.

The Nutrition Service Incentive Program

The Nutrition Service Incentive Program (formerly the Elderly Nutrition Program) is authorized under the OAA. The Aging and Disability Services Division provides grants to entities to provide these nutrition services. This program focuses on meeting the nutrition and nutrition-related health needs of seniors by providing meals in the community. There are no income eligibility requirements for the nutrition program; however, the home-delivered nutrient services are for persons who are 60 or older and are homebound due to health reasons. Through direct funding or in-kind contributions, grantees provide the matching funds required to receive this funding.

Elder Rights Unit

The Aging and Disability Services Division's Elder Rights Unit provides several services for elderly persons that strive to protect their health and quality of life. During the 2009 Legislative Session, Senate Bill 65 (Chapter 21, *Statutes of Nevada*) renamed and reorganized some of the protection services offered by the Elder Rights Unit pursuant to Chapter 427A ("Services to Aging Persons and Persons With Disabilities") of NRS, including the Office of the State Long-Term Care Ombudsman and the Community Advocate for Elder Rights.

Elder Protective Services helps those 60 years and older who may experience abuse, exploitation, isolation, or neglect. Elder Protective Services serves all of Nevada and includes investigation (within three working days of being reported), evaluation, counseling, referral for other services, and protective services.

Anyone may report an incident of abuse if they have reason to believe that an elderly person has been abused, exploited, isolated, or neglected. The report may be made to the local office of the Aging and Disability Services Division during business hours or to any police department or sheriff's office. After normal business hours, the reporter should contact local law enforcement or the Crisis Call Center at (800) 273-8255. If a worker with Elder Protective Services believes that a crime has been committed against an older person, a referral is made to the appropriate law enforcement agency for possible investigation and prosecution. All information obtained during the reporting process is kept confidential.

The Community Advocate for Elder Rights (formerly the Ombudsman for Aging Persons) provides assistance to persons who are 60 years of age or older who are not residing in facilities for long-term care. In addition to other duties, the Advocate provides assistance related to the coordination of resources and services available to aging persons within their respective communities, disseminates information to aging persons, provides public presentations relevant to Aging and Disability Services Division programs and services, and advocates for issues relating to aging persons. There is an Advocate in Las Vegas (702-486-3545), and one in Reno (775-688-2964).

Program to Assist Relatives Who Have Legal Guardianship of Children

The Program to Assist Relatives Who Have Legal Guardianship of Children was established by the Legislature in 2001. The program provides cash payments to a caretaker who has obtained the guardianship of a relative child. The program, also known as the Kinship Care Program, is funded through the Temporary Assistance for Needy Families (TANF) Program which is administered by the Division of Welfare and Supportive Services, DHHS. The payments provided must not exceed the amount the State would have provided if the child had been placed in foster care.

To receive cash payments, a caretaker must meet TANF Non-Needy Caretaker eligibility requirements, plus the caretaker must: (1) be related to the child; (2) be 62 years of age or older; (3) be a Nevada resident; (4) have exercised parental control and care of the child in his or her home for a least six consecutive months; and (5) have obtained legal guardianship through a Nevada court and met the court requirements. More information about eligibility guidelines can be found in the following brochure at: https://dwss.nv.gov/dmdocuments/Gen_KinshipCareBrochure.pdf.

Community-Based Programs

The Aging and Disability Services Division administers the Community Home-Based Initiatives Program (CHIP) and the Community Service Options Program for the Elderly (COPE), which provide the nonmedical, community-based services necessary to enable elderly people to maintain their independence and remain in their own homes. Services may include adult companionship, adult day care, chore services, nutrition counseling and therapy, personal emergency response systems, and respite for the primary caregiver. Programs such as CHIP and COPE are aimed at helping the elderly avoid placement in a facility for long-term care.

Another community-based program administered by the Aging and Disability Services Division is the Homemaker Program, which provides in-home care to aged, chronically ill, or disabled persons who are financially eligible. The amount of help available varies by the needs of each individual and the number of homemaker hours available. Basic services may include assistance with bathing, errands, general housekeeping, home management, laundering, limited meal preparation, and shopping.

OPPORTUNITIES FOR SENIORS

While retirement is often thought of as a rest and relaxation period, there are many opportunities for seniors to be active in the community, as well as improving one's own skills and abilities.

Volunteerism

The Senior Corps, a program of the Corporation for National and Community Service (an independent federal agency), was conceived during the presidency of John F. Kennedy. Designed specifically for volunteers over the age of 55, Senior Corps oversees three primary programs. All of the programs offer training and supplemental insurance to volunteers while on duty.

- The Retired and Senior Volunteer Program (RSVP) recruits volunteers to serve nonprofit and public agencies such as day care centers, hospitals, museums, schools, and other organizations to meet critical community needs. Hours can range from a few to over 40 a week, and a volunteer's interest and skills are matched to the organization. The number of Nevada RSVP volunteers in 2011 totaled 2,415 participants.

- The Foster Grandparent Program trains individuals to serve as one-on-one mentors, role models, and tutors to children through youth facilities such as Head Start Centers or schools. Volunteers who meet income eligibility guidelines receive a tax-free hourly stipend to offset the cost of volunteering. Foster Grandparents can serve up to 40 hours a week. For 2011, 315 volunteers participated in the Foster Grandparent Program throughout the State.

- The Senior Companion Program connects volunteers with adults with disability, frail elders, and persons with terminal illness to offer friendship, assistance with simple chores, and transportation. The Senior Companion can also offer respite services to caregivers. Volunteers can serve up to 40 hours a week, and may qualify for a tax-free, hourly stipend if they meet income eligibility guidelines. During 2011, there were 232 Senior Companions in Nevada.

For more information about how to become involved in Senior Corps programs in Nevada, call (775) 784-7474 or e-mail nv@cns.gov. General information about Senior Corps is available at: http://www.seniorcorps.gov/Default.asp.

Education

Seniors are often encouraged to continue activities that challenge their mind and body. The University of Nevada, Las Vegas (UNLV) offers Senior Programs which are different learning opportunities for retired and semiretired adults. Those programs include the Osher Lifelong Learning Institute which members participate in noncredit, academic learning activities and are offered discounts on other courses as well as ticket discounts to various UNLV functions such as athletic events, concerts, and plays. A Wellness Program provides a holistic approach to assist seniors in achieving self-responsibility for health and wellness. Lastly, the UNLV Senior Adult Theatre Program offers specialized classes in Acting and Oral History Theatre for older students. Information about these programs can be found at: http://seniorprograms.unlv.edu/index.html.

LONG-TERM CARE

Decisions relating to whether one should enter a long-term care facility or find services in the home to help extend independent living are difficult ones involving several options with varying levels of care. The Aging and Disability Services Division publishes a brochure explaining the different options in long-term care at: http://www.nvaging.net/Long-TermCareHousingBrochure.pdf.

Social Security-Medicaid Waiver for the Elderly in Adult Residential Care

The Waiver for the Elderly in Adult Residential Care (WEARC) (formerly known as the Group Care Waiver Program) allows Medicaid-covered individuals who are 65 and older to utilize home and community-based services in lieu of being institutionalized. This program is administered by the Aging and Disability Services Division.

Board of Examiners for Long-Term Care Administrators

The Nevada State Board of Examiners for Administrators of Facilities for Long-Term Care was created in 1969 by NRS 654.050. This Board of Examiners for Long-Term Care Administrators (BELTCA) serves as the licensing and regulatory agency for long-term care administrators in Nevada, including nursing homes and group care facilities/assisted living facilities. The BELTCA protects public and consumer interests by ensuring long-term care administrators are of good moral character, properly educated, and trained to care for Nevada's citizens in a dignified and caring manner.

Office of the State Long-Term Care Ombudsman

The Office of the State Long-Term Care Ombudsman is a federally mandated service administered by the Aging and Disability Services Division. The State Ombudsman advocates for seniors over the age of 60 residing in long-term care settings. Certified staff of the Office visit facilities to listen to residents, help resolve problems, and provide information. The Office of the State Ombudsman does not investigate cases of alleged abuse, exploitation, isolation, or neglect. The Elder Protective Services Unit in the Aging and Disability Services Division has that responsibility.

STUDYING THE NEEDS OF NEVADA'S SENIORS

With one of the largest senior populations in the nation, Nevada has State entities dedicated to reviewing and addressing the needs of older adults.

Nevada Commission on Aging

The 1983 Legislative Session created the Nevada Commission on Aging (NRS 427A.032*)* which is compromised of 11 voting members, and 4 or more nonvoting members. The Governor appoints voting members who include two representatives of a county governing body, two from a city governing body, and seven individuals with experience and knowledge of aging issues. Nonvoting members consist of the Director of the DHHS, the Administrator of the Aging and Disability Services Division, and one member of the Senate and Assembly who are appointed by the Legislative Commission. The Commission is responsible for evaluating the needs of Nevada's seniors, establishing work priorities, and promoting community-based programs while also seeking ways to avoid unnecessary duplication of services. More information about the Commission can be found on its website at: http://www.nvaging.net/boards-commissions/coa/home.htm.

Nevada Silver Haired Legislative Forum

In 1997, the Legislature established the Nevada Silver Haired Legislative Forum to discuss and act upon issues of importance to aging persons. The Legislative Commission appoints members to the Forum. In consultation with the members of the Assembly who reside within the Senatorial district, members of the Senate nominate potential members for the Forum. In addition to other items, the Forum may hold public hearings to discuss issues of importance to Nevada seniors. Additionally, the Forum may submit a report containing recommendations for legislative action to the Legislative Commission and the Governor. The activities of the Forum may be tracked through its website at: http://www.leg.state.nv.us/Interim/76th2011/Committee/NonLeg/Silver/?ID=22.

ADDITIONAL RESOURCES

- *Elders Count Nevada: Key Health Indicators for Nevada's Elders 2009*. A publication of the Sanford Center for Aging, in partnership with Nevada's Health Division and Division for Aging Services: http://www.unr.edu/sanford/documents/EldersCount09release1.pdf

- *Portrait of Nevada's Seniors: A Two-Year Study, 2006-2008*. A survey of over 5,000 individuals over the age of 50 in Nevada, conducted by the Cannon Survey Center, University of Nevada, Las Vegas: http://surveys.unlv.edu/pdfs/2008Portrait%20of%20Nevadas%20Seniors.pdf

- Nevada 2-1-1: Dial 2-1-1 from any phone in Nevada or visit http://www.nevada211.org for information about all types of health and human services in Nevada

- Clark County Senior Services: http://www.clarkcountynv.gov/Depts/social_service/Services/pages/SeniorCitizenProtectiveServices.aspx; (702) 455-7051

- Washoe County Senior Services: http://www.co.washoe.nv.us/seniorsrv/info.htm; (775) 328-2575

- Nevada Aging and Disability Resource Center: http://www.nevadaadrc.com/; Southern Nevada (702) 333-1038; Northern Nevada (775) 328-2575

- AARP: http://www.aarp.org

- Benefits Check Up—a Service of the National Council on Aging: http://www.benefitscheckup.org

- Centers for Medicare and Medicaid Services: http://www.cms.hhs.gov; Toll-free Telephone: (877) 267-2323

- "Do Not Call" Registry: http://www.donotcall.gov; Toll-free Telephone: (888) 382-1222; Toll-free TDD: (866) 290-4236

- Nevada Care Connection: http://nevadacareconnection.org/; Help for caregivers: (775) 829-4700

- SeniorNet—Senior Net's mission is to provide older adults education for and access to computer technologies to enhance their lives and enable them to share their knowledge and wisdom: http://www.seniornet.org

- Administration on Aging, U.S. Department of Health and Human Services: http://www.aoa.gov
- Nevada Legislative website: http://www.leg.state.nv.us
- Thomas—Federal Legislative Information on the Internet: http://thomas.loc.gov/home/thomas.php

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POLICY AND PROGRAM REPORT

Nevada's Court System

Research Division

January 2012

Nevada's court system is the core of the Judicial Branch of State government. It encompasses the Nevada Supreme Court, district courts, justice courts, and municipal courts and their justices, judges, and staff. This section of the *Policy and Program Report* describes the court system and related topics, including attorneys, court reporters, district attorneys, juries, public defenders, the State Bar of Nevada, and other subjects. It also describes the role of the Office of the Attorney General.

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ORGANIZATION OF NEVADA'S COURTS

Supreme Court

The Supreme Court is composed of a Chief Justice and six associate justices. The Chief Justice is the administrative head of the court system, with authority to divide the work of the Supreme Court among the justices, to assign district judges to assist in other judicial districts or to special functions, and to assign retired judges or justices to appropriate temporary duty.

The Supreme Court has appellate jurisdiction in all civil cases arising in district court and in questions of law in criminal cases within the original jurisdiction of the district courts.

In 1997, the Legislature authorized the Supreme Court to hear and decide cases in panels of three justices. The full Court must consider any case in which two members of a panel make such a request.

District Courts

The district courts have original jurisdiction over all matters excluded from the jurisdiction of the justice and municipal courts, and appellate jurisdiction in cases arising from those courts. Nevada's district courts also have jurisdiction over juvenile justice, as described later in this report.

In Clark and Washoe Counties, the Legislature has established family courts, which are divisions of the district courts. Those counties may levy an ad valorem tax on all taxable property in the county for the support of the family court.

In the 2011 Session, the Legislature increased from nine to ten the number of judicial districts in the State, by removing Churchill County from the Third Judicial District and making the County the Tenth Judicial District. The Legislature sets the number of judges serving each district. The Second Judicial District (Washoe County) and the Eighth Judicial District (Clark County) have the largest numbers of judges, and those two districts also have a family court as a division of the district court.

Specialty Courts

Nevada's court system also includes four specialty courts handling matters related to drugs, mental health, problem gambling, and veterans. The specialty courts operate within the district courts and direct persons charged with or convicted of crimes into treatment programs to enable them to address basic problems with alcohol, drugs, mental illness, post-traumatic stress disorder, and problem gambling.

In 1993, Nevada became one of the first states to authorize drug courts. A court may establish a treatment program or assign a person to an appropriate, certified treatment facility. Such an assignment must establish the terms and conditions for successful completion and must provide for regular progress reports. Persons in the program who were charged with the use or possession of a controlled substance must be subject to frequent urinalysis to determine that they are not using a controlled substance. If the offender successfully completes the program, the court must dismiss the charges.

In 2001, the Legislature authorized a court to establish an appropriate program for the treatment of mental illness, and to assign a defendant to the program. As in the drug courts, an assignment must establish the terms and conditions for successful completion and, if the offender successfully completes the program, the court must dismiss the charges.

In 2009, the Legislature declared that combat service can exact a psychological toll on members of the military and that establishment of specialty treatment courts for veterans who are nonviolent offenders allows them to heal and reenter society. The Legislature established the veterans courts, under rules similar to those applicable to drug and mental health courts. After a defendant is discharged from probation under the program, the court must order the criminal records sealed.

In 2009, the Legislature also authorized a court to establish a program for the treatment of problem gambling and to assign persons to the program, provided that they agree to pay restitution as a condition of electing treatment. If an offender completes the program successfully, the court must set aside the conviction, and the records may be sealed.

Justice Courts

Nevada's justice courts are courts of limited jurisdiction. They handle civil matters not exceeding $10,000 in damages; evictions, misdemeanors, small claims, traffic cases, and other matters. Justice courts also determine whether probable cause exists for felony and gross misdemeanor cases to be bound over to the district court.

There must be one justice court in each of the townships into which the board of county commissioners has divided the county, and at least one justice of the peace in each justice court. The Legislature establishes the number of justices in a township, according to its population.

Municipal Courts

Municipal courts are also courts of limited jurisdiction. They handle violations of city ordinances, proceedings to abate a nuisance within a city, actions for collection of city taxes or assessments up to $2,500, and similar matters.

Each of Nevada's cities must have a municipal court, except that the governing body of a city may provide that the justice of the peace is the ex officio municipal judge, with the consent of the county commission and the justice of the peace.

Court Caseloads

Nevada, like ten other states, does not have an intermediate court of appeals. In the 2010 General Election, Nevada's voters did not approve a constitutional amendment to allow for an intermediate court of appeals with jurisdiction over civil and criminal cases within the original jurisdiction of the district courts. Therefore, the caseload of the Nevada Supreme Court is relatively high, compared to other states.

See the following table for a summary of court caseloads throughout Nevada's court system:

Table 1. Reported Total Nevada Statewide Trial Court Caseload, Fiscal Years 2007-11.

Court	Fiscal Year	Criminal [a,b]	Civil [b]	Family [b]	Juvenile	Total Non-Traffic Caseload	Traffic and Parking Cases [c,d]	Traffic and Parking Charges [c,d]
District	2011	14,998	34,849	67,648	14,080	131,575	4,661	6,133
	2010	13,585 [r]	36,960	67,141	13,783 [r]	131,469 [r]	5,464 [r]	7,162 [r]
	2009	13,607	41,011	63,791	13,771	132,180	5,285	8,223
	2008	14,730	34,519	62,448	14,673	126,370	(c)	9,265
	2007	15,049	31,434	61,729	15,862	124,074	(c)	6,536
Justice	2011	96,111	118,812	NJ	NJ	214,923	363,185	505,957
	2010	95,662 [r]	123,788	NJ	NJ	219,450 [r]	373,352	516,383
	2009	89,238	142,501	NJ	NJ	231,739	376,376	543,745
	2008	86,894	148,473	NJ	NJ	235,367	(c)	559,982
	2007	82,304	141,212	NJ	NJ	223,516	(c)	530,703
Municipal	2011	62,735	1	NJ	NJ	62,736	203,310	301,077
	2010	55,519	0	NJ	NJ	55,519	236,453	347,175
	2009	57,497	0	NJ	NJ	57,497	247,685	368,440
	2008	55,752	4	NJ	NJ	55,756	(c)	349,432
	2007	58,849	7	NJ	NJ	58,856	(c)	324,225
Total	2011	173,844	153,662	67,648	14,080	409,234	571,156	813,167
	2010	164,766 [r]	160,748	67,141	13,783 [r]	406,438 [r]	615,269 [r]	870,720 [r]
	2009	160,342	183,512	63,791	13,771	421,416	629,346	920,408
	2008	157,376	182,996	62,448	14,673	417,493	(c)	918,679
	2007	156,202	172,653	61,729	15,862	406,446	(c)	861,464

NJ Not within court jurisdiction.
[a] Criminal includes felony, gross misdemeanor, and non-traffic misdemeanor filings and are counted by defendant.
[b] Reopened cases are included in totals.
[c] Prior to fiscal year 2009, traffic and parking filings were reported on the charge level. Accordingly, both case and charge information is provided in the table.
[d] Traffic cases and charges include juvenile traffic statistics.
[r] Data totals revised from previous annual reports.
Source: Uniform System for Judicial Records, Nevada AOC, Research and Statistics Unit.

Annual Report of the Nevada Judiciary, Fiscal Year 2011, p. 22, website: http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/7760/.

JUSTICES AND JUDGES

Nevada's voters elect the State's justices and judges, who are nonpartisan. Supreme Court justices, district court judges, and justices of the peace serve six-year terms, except that some first-term district court judges serve four-year terms. The city charter or a city ordinance fixes the term of office of a municipal judge. In 1994 and 1996, the voters disapproved a proposed constitutional amendment that would have established term limits for Nevada's justices and judges.

The Legislature has established the minimum qualifications for candidates running for judicial office, as set forth in the following table:

MINIMUM QUALIFICATIONS—CANDIDATES FOR JUDICIAL OFFICE IN NEVADA				
Category	Supreme Court	District Court	Justice Court	Municipal Court
Practice of law	Must be an attorney licensed and admitted to practice in Nevada at the time of the election or appointment.	Must be an attorney licensed and admitted to practice in Nevada at the time of the election or appointment.	In some townships, must be an attorney licensed and admitted to practice in Nevada at the time of election or appointment.[1]	
Experience/ Education	Must have been licensed and admitted to practice law in Nevada, another state, or the District of Columbia for not less than 15 years, at least 2 of which were in Nevada.	Must have been licensed and admitted to practice law in Nevada, another state, or the District of Columbia for not less than 10 years, at least 2 of which were in Nevada.	High school diploma or equivalent. In some townships, must have been licensed and admitted to practice law in Nevada, another state, or the District of Columbia for not less than 5 years.[2]	
Residency	Must be a qualified elector and have been a bona fide resident of Nevada for 2 years preceding the election or appointment.	Must be a qualified elector and have been a bona fide resident of Nevada for 2 years preceding the election or appointment.	Must be a qualified elector.	Must be a Nevada citizen and a qualified elector in the city, and must have been a bona fide resident of the city for not less than 1 year preceding the election or appointment, unless otherwise provided in city charter.
Other	Must not have been removed from any judicial office by the Legislature or the Commission on Judicial Discipline.	Must not have been removed from any judicial office by the Legislature or the Commission on Judicial Discipline.	Must not have been removed from any judicial office by the Commission on Judicial Discipline.	Must not have been removed from any judicial office by the Commission on Judicial Discipline.

[1] Applies in a township whose population is 100,000 or more in a county whose population is 700,000 or more (currently Clark County) and in a township whose population is 250,000 or more in other counties, but does not apply to a person who held the office of justice of the peace on June 30, 2001.
[2] See Note 1.

The Legislature sets the salaries of a Supreme Court justice and a district court judge, the board of county commissioners sets the minimum salary of a justice of the peace, and the governing body of a city or the city charter sets the compensation of a municipal court judge.

When a vacancy occurs before the expiration of the term of office of a Supreme Court justice or a district court judge, the Governor must appoint a person from a list of three names the Commission on Judicial Selection submits. The membership of the Commission varies, depending on whether the vacancy occurs in the Supreme Court or in a district court.

The Commission on Judicial Discipline receives and reviews complaints, and may discipline, any Supreme Court justice, district court judge, justice of the peace, or municipal judge.

JURIES

The *Nevada Constitution* guarantees the right of every person to a trial by jury, unless the parties in a civil matter waive the requirement in a method prescribed by law. The Nevada Supreme Court has ruled that the guarantee does not apply to some proceedings, such as proceedings for petty offenses, small claims actions, and certain others.

All qualified electors, whether or not registered to vote, are qualified jurors in the county in which they reside, provided that they have a sufficient knowledge of English, have not been convicted of a felony, treason, or other infamous crime, and are not incapable by reason of infirmity. A convicted felon is not a qualified juror until his or her civil right to serve as a juror has been restored. Certain persons, including members of the Legislature (when in session), police officers, persons over the age of 70 who do not wish to serve, and others are exempt from jury duty. The court may also temporarily excuse a juror on account of hardship, illness, public necessity, or other factors.

The Legislature has established laws regarding the selection of jury pools, the formation of jury panels, and the summoning of grand juries. (Only Clark and Washoe Counties have grand juries at this time.) It is unlawful for an employer to terminate, or threaten to terminate, an employee who is a juror or who has been summoned for jury duty, and persons who are unlawfully discharged may commence a civil action against their employers for lost wages and benefits, reinstatement, damages, and attorney's fees. Furthermore, an employer may not require an employee to use sick leave or vacation time to serve as a juror or prospective juror.

STATE AND COUNTY LEGAL PERSONNEL

Attorney General

The Attorney General and the appointed deputies of the Attorney General are the legal advisers to the executive department of State government, and no member of the executive department may employ an attorney to represent the State or be compensated by state funds, directly or indirectly, unless the Attorney General is disqualified to act in the matter or the Legislature specifically authorizes employment of other attorneys.

In criminal cases, a district attorney may request assistance from the Attorney General with the consent of the board of county commissioners. The Attorney General also prosecutes or defends, in the Supreme Court, cases to which the State, a State officer, or a county is a party.

With the consent of the Governor, the Attorney General may commence an action or defend the State in proceedings necessary to determine and establish the rights of the State or its residents as they relate to interstate waters and the public lands.

The Office of the Attorney General includes special units for children endangered by exposure to drugs; consumer protection; domestic violence; insurance fraud; the investigation and prosecution of crimes against older persons; Medicaid fraud; telephone solicitation; and workers' compensation fraud.

The voters elect the Attorney General to terms of four years and the Legislature sets the Attorney General's salary.

District Attorneys

The district attorney in each county is the public prosecutor for the county. The district attorney also prepares all indictments required by a grand jury; defends all suits against the county; prosecutes actions for the recovery of debts, fines, and forfeitures owed to the county; brings actions for the abatement of public nuisances; and issues legal opinions to county officers. The district attorney also handles legal duties for the school district in the county, unless the board of trustees of the school district has employed private counsel.

The voters in each county elect the district attorney to terms of four years.

Public Defenders

Indigent defendants charged with a crime may ask a district court judge, justice of the peace, or municipal judge to appoint an attorney to represent them. If the request is granted, the judge must designate the State or county public defender, as appropriate, to represent the defendant or, for good cause, appoint another attorney. A city must reimburse the public defender or other attorney for appearing in municipal court, and a county must reimburse the State public defender or other attorney for appearing in justice court.

In Clark and Washoe Counties, the board of county commissioners must create, by ordinance, the office of public defender, and in all other counties, the board may create such an office. Two or more counties may join together to establish an office. Once the county commission creates an office, it also appoints the public defender, who serves at the pleasure of the commission. Any county that has created an office of public defender may contract for the services of the State Public Defender when the county public defender is disqualified or otherwise unable to represent a defendant.

The Office of State Public Defender is located within the Department of Health and Human Services. The Governor appoints the State Public Defender to a four-year term. Except when operating under a contract with a county and in postconviction proceedings presented to the Nevada Supreme Court, the State Public Defender serves only those counties in which there is no office of the county public defender.

Court Reporters

To promote efficiency and establish a standard of competency for court reporters, the Legislature has declared that the practice of court reporting is subject to regulation. The Certified Court Reporters' Board of Nevada, consisting of five Governor's appointees, administers the regulations. It examines applicants for competency, handles disciplinary matters, issues registration certificates, and licenses court reporting firms. It is unlawful to practice court reporting without a certificate or to conduct business as a court reporting firm without a license.

A district court judge may appoint a certified court reporter as the official reporter for the court or a court department. In a civil action, the court reporter must make a record of all testimony and rulings when requested by either party or the court. In a criminal case, the court reporter must make a record of all arraignments, pleas, sentences, and testimony at the request of the district attorney or the attorney for the defendant.

In justice court, the proceedings are recorded using sound recording equipment, except where the board of county commissioners authorizes and the justice of the peace appoints a certified court reporter to record the proceedings as in district court.

ATTORNEYS AND THE STATE BAR

The State Bar of Nevada, a public corporation created by statute, is under the exclusive control and jurisdiction of the Nevada Supreme Court. It is unlawful for a person to practice law in Nevada without active membership in the State Bar or other authorization under the Supreme Court rules, or if suspended or disbarred from membership.

Under the rules of the Supreme Court, the Board of Governors of the State Bar, elected by the members of the Bar, is responsible for administrative and enforcement functions. The Board of Governors appoints bar counsel, an executive director, a treasurer, disciplinary boards to serve the northern and southern districts of the State, and a standing committee on ethics and professional responsibility.

The Board of Bar Examiners, in consultation with the Board of Governors, determines the qualifications for admission to the State Bar and administers the bar examination.

ALTERNATIVE DISPUTE RESOLUTION

All civil actions filed for damages in district court must be submitted to nonbinding arbitration if the amount in issue does not exceed $50,000 (excluding attorney's fees, interest, and court costs), unless the parties have agreed or are required to take part in a settlement conference, mediation, a short trial, or other alternative method of resolving disputes. A short trial is one that is conducted pursuant to procedures designed to limit its length, including restrictions on the amount of discovery, time limits for presenting each party's case, and the use of a jury of not more than eight persons.

All civil actions filed for damages in justice court may be submitted to binding arbitration, mediation, a settlement conference, or other alternative method of resolving disputes if the parties agree.

In certain types of cases involving domestic issues, foreclosures, homeowners' associations, telemarketing, and other subjects, arbitration or mediation is required.

The parties to an arbitration agreement may agree on the method for appointing an arbitrator. If they do not agree, if the method fails, or if the arbitrator is unable to act, the court must appoint the arbitrator.

In Clark and Washoe Counties, the board of county commissioners must establish a neighborhood justice center to provide, at no charge, a forum for the impartial mediation of minor disputes between businesses and their customers, family members, landlords and tenants, neighbors, and others. In other counties, the board of county commissioners may establish such a center. The centers are supported by the county's account for dispute resolution, funded by fees charged on the commencement of action and the appearance of parties in justice court.

COURT ADMINISTRATION AND FINANCES

The Nevada Supreme Court appoints a Court Administrator who serves at the pleasure of the Court. The Court Administrator and staff, known as the Administrative Office of the Courts (AOC), collect and compile statistics on court operations; determine whether courts are in need of assistance; develop accounting and procurement procedures; examine court dockets; prepare and submit biennial budgets for operation of the State court system, recommend administrative procedures, policies, and proposed legislation; and carry out other duties as assigned.

The State of Nevada is responsible for district court judges' salaries, but the counties are responsible for the costs of courtrooms, facilities, staff, and related items.

When a defendant pleads guilty or is found guilty of a crime, the sentence must include an administrative assessment, in addition to any fine imposed. The proceeds of the administrative assessments help support the AOC; the Central Repository for Nevada Records of Criminal History; the district, justice, juvenile, and municipal courts; the Fund for Compensation of Victims of Crime; the Peace Officers' Standards and Training Commission; and other programs and uses the Legislature has identified.

The Legislature has enacted various laws governing the collection of unpaid assessments. Assembly Bill 196 (Chapter 203, *Statutes of Nevada*) of the 2011 Session established procedures for collecting unpaid administrative assessments, as well as fees and fines, from criminal defendants found guilty of a felony or gross misdemeanor. The court forwards the assessment to the county for collection and, if the county is unable to collect after 60 days, the county may assign responsibility for collection to the Office of the State Controller, if the Controller concurs.

The district courts and justice courts also charge fees for the commencement of civil actions, including the filing of appeals, objections, petitions, and related items. The fees are for services rendered and also for support of the State General Fund, the special account for the benefit of the court, neighborhood justice centers, and programs for abused or neglected children, legal aid, victims of domestic violence, and other purposes.

ADVISORY BODIES

In 1997, the Legislature established the seven-member Advisory Council for Prosecuting Attorneys to develop and carry out a program for training and assisting prosecutors in conducting civil and criminal cases, and to coordinate the development of proposed legislation.

In 2007, the Legislature created the 17-member Advisory Commission on the Administration of Justice (ACAJ), which replaced the Advisory Commission on Sentencing. The appointed members serve two-year terms after the biennial legislative sessions. Among other duties, the ACAJ must recommend changes in the structure of sentencing and evaluate the effectiveness of the Department of Corrections and the State Board of Parole Commissioners, the effectiveness of specialty court programs, issues relating to juvenile justice, and policies and practices related to presentence investigations. The ACAJ must submit a report to each regular session of the Legislature.

The Judicial Council of the State of Nevada, which the Chief Justice of the Supreme Court chairs, develops and recommends policies for court administration; develops minimum standards for court security, education of judges and staff, and other subjects; makes recommendations for the improvement of courts; reviews proposed legislation; and carries out other duties. The AOC provides staff support to the Council.

ACTIVITIES DURING THE 2011-2012 INTERIM

The ACAJ will meet periodically during the 2011-2012 Interim to carry out its assigned duties and prepare a report for the 2013 Legislative Session. Concerning the court system, the ACAJ must, among its other duties, evaluate the effectiveness of specialty court programs in Nevada and their effect upon reentry of offenders and parolees into the community.

SOURCES OF ADDITIONAL INFORMATION

Advisory Commission on the Administration of Justice: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/AdminJustice/?ID=30.

"The Nevada Judiciary" website of the Nevada Supreme Court: www.nevadajudiciary.us.

Annual Report of the Nevada Judiciary, *Fiscal Year 2011*: http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/7760/.

State Bar of Nevada: www.nvbar.org.

William S. Boyd School of Law, University of Nevada, Las Vegas: http://law.unlv.edu/.

In the last ten years, the Audit Division of the Legislative Counsel Bureau (LCB) has prepared the following audit reports related to Nevada's court system and this section of the *Policy and Program Report*:

- Department of Health and Human Services, Office of State Public Defender (LA10-06); and
- Office of Attorney General (LA08-23).

Legislative committees have studied many aspects of the court system over the decades and have published their findings in numerous LCB bulletins since 1961. Some of the more recent bulletins concerning the court system are:

- Bulletin No. 05-13, *Study of the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders*, January 2005; and
- Bulletin No. 09-3, *Implementation of Courts of Chancery*, January 2009.

STATE CONTACT INFORMATION

Nevada Supreme Court and the Administrative Office of the Courts
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Robin Sweet, Court Administrator and Director of the Administrative Office of the Courts
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Carson City, Nevada 89701-4702
Telephone: (775) 684-1600
Website: http://www.nevadajudiciary.us

Nevada Supreme Court Law Library
Christine Timko, Law Librarian
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Telephone: (775) 684-1640
Website: http://lawlibrary.nevadajudiciary.us/index.php

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Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Criminal Procedure

Research Division

January 2012

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This section of the *Policy and Program Report* covers the procedural aspects of the criminal justice system in Nevada. Although many persons may be generally familiar with such terms as "arraignment," "bail," "detention," "grand jury," "indictment," and "sealing of criminal records," the following review of what these terms mean and how they relate to each other may be helpful.

Over the years, many important constitutional cases at the federal and State level have revolved around procedural matters arising from arrest, detention, and trial.

DETENTION AND ARREST

The justice system follows different procedures relating to detention and arrest, depending on whether a complaint has been filed and a judge has issued an arrest warrant.

Detention and Arrest Under a Warrant

When a person with personal knowledge of a crime files a complaint with the court and it appears from the complaint that there is probable cause to believe that the defendant has committed the offense, the magistrate must issue a warrant to any peace

officer for the arrest of the defendant. ("Magistrate" means a Supreme Court justice, district court judge, justice of the peace, or municipal judge.) The warrant must describe the offense and command that the defendant be arrested and brought before the nearest available magistrate. If the complaint is against a corporation, the magistrate must issue a summons requiring the corporation to appear before the judge at a specified time and place within ten days.

If the offense is a felony or gross misdemeanor, a peace officer may make the arrest on any day, at any time of day or night. If the offense is a misdemeanor, the arrest cannot be made between the hours of 7 p.m. and 7 a.m. unless the warrant directs otherwise.

Detention and Arrest Without a Warrant

A peace officer may detain any person whom the officer encounters under circumstances indicating the person has committed or is about to commit a crime, or has violated the conditions of parole or probation. The person who is detained must identify himself or herself, but may not be compelled to answer any questions. The detention must not be longer than necessary and in no event longer than one hour, and must remain in the immediate vicinity where the detention occurred unless the person is arrested.

At any time after the detention begins, the peace officer must arrest the person if probable cause appears. If there is no probable cause for arrest, the peace officer must release the person. If the officer believes the person may be armed with a dangerous weapon, the officer may search the person and seize any such weapon or any evidence of a crime.

Detention and Arrest, Generally

A peace officer may break open a door or window of a house or other place where the officer believes the person to be arrested is located, after demanding admittance and explaining the reason for the demand. If necessary to prevent escape, a peace officer may, after giving a warning, use deadly force to carry out the arrest if there is probable cause to believe the person has committed a felony involving serious bodily harm or the use of deadly force, or poses a threat of serious bodily harm to the officer or others. Any person arrested has the right to make a reasonable number of completed telephone calls—including one to a friend or bail agent and one to an attorney—from the police station or other place where booking occurs, not later than three hours after the arrest.

Under certain circumstances, a person other than a peace officer may make an arrest.

MISDEMEANOR CITATIONS

When a peace officer detains a person for an offense punishable as a misdemeanor, the person must be taken before a magistrate without unnecessary delay in the following instances: when the person demands it; when the person is detained pursuant to an arrest warrant; when the person has been arrested; if the person is issued a misdemeanor citation and refuses to give a written promise to appear in court; or if the person does not furnish satisfactory evidence of identity.

If the person is not required to be taken before a magistrate, the peace officer may issue a misdemeanor citation, electronically or manually. The citation must include a notice to appear in court at a specific time and place, the offense charged, and other information, and must be signed by the peace officer.

Other public officials, including officials responsible for animal control, building inspections, fire, health, parking, solid waste, zoning, and other functions may—if authorized—also issue misdemeanor citations within their field of enforcement.

The peace officer or other officer issuing the citation must file a copy with the court having jurisdiction over the offense. If the form of the citation is proper, it is deemed a complaint for the purpose of prosecuting the misdemeanor.

Justice courts and municipal courts have jurisdiction over misdemeanor offenses. When a person alleged to have committed such an offense appears in court as required by a misdemeanor citation, the person enters a plea and the case proceeds to trial and sentencing.

PROCEDURE AFTER ARREST

After an arrest, the defendant must be brought before a magistrate without unnecessary delay, normally within 72 hours excluding nonjudicial days. The magistrate must inform the defendant of the complaint and of the right to retain counsel or request assignment of counsel. The magistrate must also inform the defendant that the defendant is not required to make a statement and that any statement made may be used against him or her.

If the case will not be tried in justice court, the defendant does not enter a plea, and has a right to a preliminary examination. If the defendant waives the preliminary examination, the magistrate must immediately transfer the matter to the district court. If the defendant requests a preliminary examination, the magistrate must hear the evidence within 15 days, unless the period is extended for cause. Unless the defendant waives the right to have an attorney, the judge must allow reasonable time for the attorney to appear. The county district attorney must be present and conduct the prosecution.

If, from the evidence presented in the preliminary examination, the magistrate finds there is probable cause to believe the defendant has committed an offense, the magistrate must require the defendant to answer in district court and transfer all papers from the proceeding to the district court. In these circumstances, or if the defendant has waived a preliminary hearing, the prosecuting attorney then files a formal criminal charge, known as an "information," with the district court. The information must be filed within 15 days of the preliminary examination or waiver.

GRAND JURIES

In Clark and Washoe Counties, the district attorney may also seek a criminal charge by bringing the case before the grand jury. The grand jury may return an indictment, which is a written accusation

charging a person with a public offense, or a presentment, which is an informal written statement representing to the court that a triable public offense has been committed and there is reasonable ground to believe that a particular person has committed it.

A grand jury must elect from its members a foreman, deputy foreman, and secretary. The grand jury may administer oaths, enter the jail, examine all public records, issue subpoenas for witnesses, engage additional counsel or experts, and receive evidence. The grand jury is not required to hear evidence from the defendant, but must weigh all evidence submitted to them and, if they believe other evidence would explain away the charge, order such evidence to be produced. If the district attorney is aware of evidence that would explain away the charge, the district attorney must submit it.

Only the district attorney, a witness and the witness' attorney, the court reporter, interpreters when necessary, and persons the grand jury requests to be present may attend a session of a grand jury. Only the grand jurors may be present when the grand jury is deliberating or voting.

Persons who are the subject of the grand jury proceedings may request to appear if they have not been subpoenaed to appear, but only if they execute a written waiver of their constitutional privilege against self-incrimination. The district attorney or a peace officer must serve notice on a person who is the subject of grand jury proceedings unless the court determines adequate cause exists to withhold notice.

A grand jury consists of 17 jurors and may return an indictment or presentment only upon the concurrence of 12 or more jurors. The grand jury should return an indictment when all the evidence presented to them establishes probable cause to believe an offense has been committed and the defendant committed it.

BAIL

In general, a person who is arrested in Nevada for an offense other than first-degree murder must be allowed to post bail, known as being "admitted to bail," by posting a bond for the person's appearance. A person may be admitted to bail at various stages of criminal procedure, including after arrest, after trial and before sentencing, and after conviction and pending appeal.

The Legislature has placed limits and conditions on admission to bail for a person arrested for:

- A felony, who has been released on parole or probation for a different offense;
- A felony, whose sentence was suspended or who was sentenced to a term of residential confinement for a different offense;
- Driving under the influence or a related offense;
- Battery that constitutes domestic violence; or
- Violating a protective order against domestic violence.

Someone who was arrested for first-degree murder may be admitted to bail in the discretion of any competent court or magistrate authorized to do so.

Before releasing a person on bail, a court may require the surrender of the person's passports or impose other conditions to protect the public health, safety, and welfare and ensure the person will appear in court as ordered. Upon a showing of good cause, a court may also release without bail a person who is entitled to bail, and a sheriff or chief of police may release without bail a person charged with a misdemeanor, pursuant to court standards.

ARRAIGNMENT AND PREPARATION FOR TRIAL

Nevada's courts may exercise jurisdiction and try criminal cases either after the district attorney has filed information or a grand jury has returned an indictment.

Arraignment takes place in open court and consists of reading the indictment or information to the defendant or stating the substance of the charge and calling on the defendant to enter a plea. A defendant may plead guilty, guilty but mentally ill, not guilty, not guilty by reason of insanity, or with the consent of the court, nolo contendere (i.e., no contest). The court must determine that a plea of guilty, guilty but mentally ill, or nolo contendere is made voluntarily with an understanding of its consequences. The defendant has the burden to prove insanity or mental illness by a preponderance of the evidence.

If a defendant does not plead or the court refuses to accept a plea of guilty or guilty but mentally ill, the court must enter a plea of not guilty. With certain conditions and restrictions, a defendant may enter a plea of guilty or guilty but mentally ill pursuant to a plea bargain with the prosecuting attorney.

Defense counsel may raise any defense or objection that can be determined without trial of the general case. Defenses and objections based on defects in the prosecution, other than insufficiency of the evidence, must be raised before trial and, except with the permission of the court, before a plea is entered. Motions which, by their nature, may delay or postpone a trial if granted, must be made before trial unless there was no opportunity to do so. A motion raising defenses or objections must be determined before trial unless the court orders it be determined during the trial. An issue of fact must be tried by a jury if a jury trial is required by law.

If the defendant will be tried for a felony or gross misdemeanor, the defendant and the prosecuting attorney must file and serve on each other a list of witnesses they intend to call during the case. If the defendant or prosecutor expects to offer testimony of an expert witness, they must file and serve a specific notice on the opposing party at least 21 days before the trial. After complying with these requirements, each party has a continuing duty to the other party to provide the names and addresses of additional witnesses as soon as practicable. If a party acts in bad faith, the court must prohibit the additional witness from testifying.

At the request of the defendant, the prosecuting attorney must allow the defendant to copy or inspect any written or recorded statements made by the defendant or a witness, results of mental or physical examinations, and documents or objects the prosecutor intends to introduce in evidence that are not privileged or protected from disclosure by law. Likewise, at the request of the prosecuting attorney, the defendant must allow the prosecuting attorney to copy or inspect the same items.

TRIAL

Trial by Jury

In Nevada's district courts, jury trials are required unless the defendant waives a jury trial in writing, the court approves, and the State consents. If a defendant pleads not guilty to a capital offense, there must be a jury trial. In Nevada's justice courts, cases are tried by jury only if a defendant demands a jury trial at least 30 days in advance.

In district court, a jury normally consists of 12 jurors; in justice court, a jury on a criminal case consists of 6 jurors. The court may impanel up to 6 alternate jurors to replace, when called, jurors who are disqualified or unable to perform.

The presiding judge or justice of the peace conducts the initial examination of the jurors, and the defense and prosecution are entitled to make further reasonable inquiries. Either side may challenge an individual juror, and each side is entitled to four peremptory challenges or, if the charge is punishable by death or imprisonment for life, eight peremptory challenges.

A criminal action may be removed from the court in which it is pending, upon an application by either the defense or the prosecution, on the grounds that a fair and impartial trial cannot be accomplished in that county. The court must not grant the application until after the examination of jurors has been conducted and the court finds that the selection of a fair and impartial jury cannot be accomplished.

Conduct of the Trial

After the jury is impaneled, the court administers a specific oath to the jury and admonishes the jury regarding the disclosure of personal knowledge of a fact in controversy. In a felony case, the clerk must then read the indictment or information and state the defendant's plea. The district attorney opens the case and defense counsel may then make an opening statement or reserve it until before the presentation of the defense.

The prosecution then offers its evidence in support of the charge, the defendant may offer evidence in defense, and both sides may offer rebuttal testimony. The testimony of witnesses must be taken orally in open court, unless the law provides otherwise. After the presentation of evidence and rebuttal, unless either side submits the case to the jury without argument, the prosecution makes a concluding argument. The judge must then charge the jury and, unless the parties agree, the charge must be in writing. The judge must inform the jury of all matters of law the judge believes are necessary for reaching a verdict.

A defendant in a criminal action is presumed innocent until proven otherwise. If there is reasonable doubt whether the prosecution has satisfactorily proven guilt, the defendant is entitled to acquittal.

Conduct of the Jury

In a criminal case, the court may in its discretion allow the jurors to go home overnight before the case is submitted to the jury, and after jury deliberation commences. If the jury is kept in the charge of a proper officer, the officer must not allow any communications with them, except by court order, except to ask whether they have reached a verdict. Each time the court adjourns, the court must admonish the jurors not to converse among themselves or with anyone else concerning the trial; listen to, read, or watch any news report on the trial; or form an opinion before the case is finally submitted to them.

The jury must not be discharged until it has reached a verdict and presented it in open court or, after a proper time, it appears there is no reasonable probability the jury can agree.

Verdict

The jury's verdict must be unanimous. At the request of any party or the court, the jury must be polled to determine whether there is unanimous concurrence.

If a defendant is found guilty or guilty but mentally ill of first-degree murder, the court must hold a separate penalty hearing. If a jury reached the verdict, the penalty hearing must take place before the same jury. If the defendant pled guilty or guilty but mentally ill, a jury must be impaneled for the penalty phase if the prosecution seeks the death penalty.

In cases where the prosecution seeks the death penalty, the jury must determine upon the evidence presented whether aggravating and mitigating circumstances exist. The jury may impose a death sentence only if it finds at least one aggravating circumstance and no mitigating circumstance sufficient to outweigh it.

If the jury cannot reach a unanimous verdict in the penalty phase, and the prosecution seeks the death sentence, the judge must sentence the defendant to life without the possibility of parole or impanel a new jury for the penalty phase. If the prosecution does not seek the death sentence, the trial judge must impose the sentence.

SENTENCING

Imposition of the Sentence

After trial, the court must impose a sentence without unreasonable delay. However, before imposing a sentence, the court must give the defendant's attorney an opportunity to speak, give the defendant an opportunity to make a statement or present mitigating information, and give the victim or the victim's representative an opportunity to express any views.

The sentence must cover any term of imprisonment; the amount and terms of any fine, restitution, or administrative assessment; a reference to the statute under which the person is sentenced; and any statutory provision necessary to determine eligibility for parole.

Concurrent and Consecutive Sentences

Whenever a person is convicted of two or more offenses, the court may provide that the sentences to be served will run either concurrently or consecutively.

Presentence Investigations

With some exceptions, for each person who pleads guilty or no contest to a felony, or who is found guilty of a felony, the Division of Parole and Probation, Department of Public Safety (DPS), must make a presentence investigation and report to the court. No report is required if a jury fixes the sentence, if a report has been made previously within the last five years, or for most convictions for a category E felony. Except for disclosures to the parties, corrections and law enforcement agencies, and as necessary for mental health evaluations and administration of the State's gaming laws, presentence investigation reports are confidential.

The report must cover the defendant's prior criminal record; information about the defendant and the effect of the offense on the victim; a recommendation of a minimum and maximum term of imprisonment, fine, or both; and other information.

For persons convicted of felony sexual offenses, additional requirements apply to the presentence investigations. For more information, see the January 2012 *Policy and Program Report* titled "Justice System: Focus on Sex Offenders."

APPEALS

A party who is aggrieved by a decision in a criminal case may appeal to a higher court in some circumstances. Either the defendant or the State may:

- Appeal to the district court from a final judgment in justice court;
- Appeal to the Nevada Supreme Court a district court order granting a motion to dismiss, granting a motion for acquittal, or granting or refusing a new trial; or
- Appeal to the Nevada Supreme Court a district court determination on whether a defendant is mentally retarded.

For good cause, the State may also appeal to the Nevada Supreme Court a pretrial district court order granting or denying a motion to suppress evidence.

A defendant may not appeal a final judgment or verdict resulting from a voluntary plea of guilty, guilty but mentally ill, or nolo contendere unless the defendant reserved that right in writing or the appeal is based on constitutional or other grounds that challenge the legality of the proceedings.

Unless the defendant waives the appeal, an appeal to the Nevada Supreme Court is automatic in cases where the defendant pled not guilty or not guilty by reason of insanity and was convicted and sentenced to death. Even where such a defendant waives the appeal, the Supreme Court must still review the sentence.

An appeal to the Nevada Supreme Court must be made only on questions of law, not evidence. All appeals from a district court to the Supreme Court must be heard on the original record and the reporter's transcript of the proceedings. The Supreme Court may reverse, affirm, or modify the judgment that was appealed, or order a new trial.

RECORDS OF CRIMINAL HISTORY

Sealing of Records

After a convicted person is released from custody or discharged from parole or probation, the person may petition the court where the conviction occurred to seal all records relating to the conviction. The person must wait a certain number of years before submitting a petition, ranging from 2 years for a misdemeanor conviction to 15 years for a category A or B felony conviction, and no person may petition the court to seal records relating to a conviction for a crime against a child or a sexual offense. After notifying the prosecuting attorney and conducting a hearing, the court may grant such a petition if the convicted person does not have a conviction or pending charge, except for minor traffic violations, during the waiting period.

If a person was arrested for alleged criminal conduct and acquitted, or if the charge was dismissed or the conviction was set aside, that person may also petition the court to seal all records related to the arrest and the proceedings. After notifying the prosecuting attorney and conducting a hearing, the court may grant such a petition.

The effect of a court order sealing a record is that the covered proceedings are deemed never to have occurred, the person to whom the order applies may answer any inquiry accordingly, and the person's rights to hold office, serve on a jury, and vote are immediately restored.

Sealed records may be reopened for inspection upon a petition from the person who is the subject of the records, or by court order. Also, the Nevada Gaming Commission and the State Gaming Control Board may inspect sealed records, if the event or conviction was related to gaming, to determine a person's suitability for a State gaming license or registration.

Central Repository

In 1985, the Legislature created the Central Repository for Nevada Records of Criminal History in the Records and Technology Division, DPS. Each agency of criminal justice and any agency dealing with delinquency of children must collect and submit required information to the Central Repository. The Department may disseminate information from the Central Repository to other criminal justice agencies, exchange information with federal repositories and those of other states, and request and

receive background information from the Federal Bureau of Investigation on any person who applies to the State of Nevada or one of its local governments for a license, with whom the State or a local government intends to enter into an employment relationship, who has applied to attend an academy for training police officers, and other persons as authorized by law.

The Central Repository must investigate the criminal history of any person who has applied to the Superintendent of Public Instruction for a license, has applied to a public or private school for employment, or is employed by a public or private school, and must notify the Superintendent or school administrator, as appropriate, if the person has been convicted of a felony, an offense involving moral turpitude, or certain other crimes.

The Central Repository must also make annual reports of statistical crime data to the Governor and the Legislature.

The Legislature has placed conditions and limits on the dissemination of records of criminal history, depending on the need for the records, the purpose of the request, the source of the request, the types of records, and other factors. A record of criminal history must be used only for the purpose for which it was requested, and may not be disseminated further without express authority or a court order. The Central Repository and each police agency in the State must allow a person to inspect a record of criminal history pertaining to that person during regular business hours, subject to reasonable charges or fees, and the DPS must adopt regulations covering the correction of any records found to be inaccurate.

ACTIVITIES DURING THE 2011-2012 INTERIM

Assembly Bill 107 (Chapter 80, *Statutes of Nevada*) of the 2011 Session requires each law enforcement agency to adopt policies and procedures applicable to identification procedures, including live lineups, photo lineups, and show-ups.

The bill also directs the Advisory Commission on the Administration of Justice to place a discussion of the progress of the law enforcement agencies on the agendas of the two meetings prior to the 77th Session of the Nevada Legislature, and it directs a representative of the Nevada Sheriffs' and Chiefs' Association to attend the meetings and present the reports.

SOURCES OF ADDITIONAL INFORMATION

Advisory Commission on the Administration of Justice: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/AdminJustice/?ID=30.

Legal Information Institute (LII), Cornell University: http://www.law.cornell.edu/.

State Bar of Nevada: http://www.nvbar.org/.

In the last ten years, the Audit Division of the Legislative Counsel Bureau (LCB) has prepared the following audit reports related to criminal procedure in Nevada and this section of the *Policy and Program Report*:

- Peace Officers' Standards and Training Commission (LA10-01);
- Department of Public Safety, Records and Technology Division, Records Bureau (LA08-21); and
- Department of Public Safety, Division of Parole and Probation (LA08-12).

Legislative committees have studied various aspects of criminal procedure in Nevada and have published their findings in LCB bulletins since 1961. Some of the more recent bulletins concerning criminal procedure are:

- Bulletin No. 07-9, *Sentencing and Pardons, Parole and Probation*, January 2007; and
- Bulletin No. 11-11, *Advisory Commission on the Administration of Justice, Final Report*, February 2011.

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POLICY AND PROGRAM REPORT

Crimes, Punishments, and Aid to Crime Victims

Research Division January 2012

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There are many types of crimes involving unlawful acts against people, property, public decency, public health and safety, and the State itself. In Nevada, the most serious crimes, for which the courts may impose State prison terms, are felonies. Misdemeanors and gross misdemeanors are less serious crimes, for which the courts may sentence a defendant to a term in the county jail. This section of the *Policy and Program Report* describes types of crimes and their punishments, and also explains a variety of programs intended to assist crime victims.

CLASSIFICATION OF CRIMES

Nevada classifies crimes in three main categories: felonies, gross misdemeanors, and misdemeanors. A felony is a crime that is punishable by death or imprisonment in the State prison. A misdemeanor is a crime punishable by a fine of not more than $1,000, or by imprisonment in the county jail for not more than 6 months. All other crimes are gross misdemeanors.

Nevada law further classifies felonies in categories A through E, as follows:

- Category A, for which a sentence of death or imprisonment for life, with or without the possibility of parole, may be imposed;

- Category B, for which a sentence of imprisonment in the State prison for not less than 1 year and not more than 20 years may be imposed;

- Category C, for which a sentence of imprisonment in the State prison for not less than 1 year and not more than 5 years may be imposed, plus a fine of not more than $10,000, unless a greater fine is authorized or required by law;

- Category D, for which a sentence of imprisonment in the State prison for not less than 1 year and not more than 4 years may be imposed, plus a fine of not more than $5,000, unless a greater fine is authorized or required by law; and

- Category E, for which a sentence of imprisonment in the State prison for not less than 1 year and not more than 4 years may be imposed, plus a fine of not more than $5,000 and, with some exceptions, the court must suspend the sentence and grant probation with appropriate conditions, which may include a term of confinement in the county jail.

If the *Nevada Revised Statutes* (NRS) do not specify the penalty for a particular offense, the offense is a misdemeanor.

TYPES OF CRIMES

Nevada's laws relating to crimes and punishments identify a number of different types of criminal offenses, which generally fall into the following subject areas:

- Crimes against public justice, including bribery, conspiracy, corruption, falsifying evidence, impersonating an officer, malicious prosecution, perjury, resisting a public officer, and other similar offenses;

- Crimes against persons, including abuse, neglect, or exploitation of older or vulnerable persons; assault; battery; bodily injury; child abuse and neglect; child pornography; homicide; false imprisonment; kidnapping; mayhem; robbery; sexual assault; stalking; and related offenses;

- Crimes against public decency, including criminal gang recruitment; incest; indecent exposure; nonsupport of a child, former spouse, or spouse; obscenity; pandering; paternity fraud; prostitution; and similar offenses;

- Crimes against public health and safety, including offenses related to: acts of terrorism; dangerous and vicious dogs; the possession, manufacture, or use of firearms and other weapons; the sale of alcoholic beverages; the sale or use of tobacco; the transportation of explosives; and other offenses of a similar nature;

- Crimes against property, including arson; burglary; counterfeiting; embezzlement; extortion; forgery; fraud; home invasion; identity theft; larceny; offenses relating to credit and debit cards; receiving stolen goods; theft; and related crimes;

- Malicious mischief, including offenses related to: defacing notices or proclamations; destruction of property; destruction or removal of boundary markers; graffiti; killing or maiming animals or livestock; trespass; and other similar offenses; and

- Other types of crimes, such as: crimes against the legislative power; crimes by and against the executive power of the State; crimes against the public peace; crimes against the revenue and property of the State; and miscellaneous crimes.

Nevada's laws concerning crimes and punishments define habitual criminals, habitual felons, and habitually fraudulent felons, and prescribe specific enhanced penalties for such persons if they are convicted of a felony in Nevada. In some circumstances, the prosecuting attorney has discretion whether to include such a count in information or with an indictment, while in other circumstances involving specific offenses, such a count is required.

PUNISHMENTS

Probation and Alternative Sentencing

Except in cases of such serious crimes as murder and sexual assault, or where a court has found a convicted person to be a habitual criminal, a court may place a person convicted of a felony, gross misdemeanor, or misdemeanor on probation and suspend the person's sentence. For most category E felony convictions, the district court must grant probation. If the court determines that a person convicted of a category C, D, or E felony has the financial ability to post a bond to ensure compliance with the conditions of probation, the court must order the person to execute a surety bond.

When a person is granted probation, the defendant is placed under the supervision of the Division of Parole and Probation, Department of Public Safety (DPS). The period of probation is normally limited to 3 years for a gross misdemeanor and 5 years for a felony. The court may impose reasonable conditions on a probation order relating to conduct, contacts with other persons, restitution, residency, weapons, and other matters. If a probationer violates the conditions of probation, the court may issue a warrant for his or her arrest or, if the person agrees, order the person to a term of residential confinement.

Punishment for Misdemeanors

A person convicted of a misdemeanor in Nevada must be punished by imprisonment in the county jail for not more than 6 months, by a fine of not more than $1,000, or both, unless the applicable statute prescribes a different penalty. In lieu of all or part of the punishment, the court may sentence the convicted person to perform a fixed period of community service.

If a corporation is convicted of an offense that, for a natural person, would be punishable as a misdemeanor, the punishment is a fine of not more than $1,000, unless a different penalty is prescribed by law.

Punishment for Gross Misdemeanors

A person convicted in Nevada of a gross misdemeanor must be punished by imprisonment in the county jail for not more than 1 year, by a fine of not more than $2,000, or both, unless the applicable statute prescribes a different penalty. The court may order the person to perform a fixed period of community service as a condition of probation.

Punishment for Felonies

A person convicted of a felony in Nevada must be punished as set forth in the penalties for felonies charts listed on the Legislative Counsel Bureau (LCB) website at: http://www.leg.state.nv.us/Division/Research/Publications/Factsheets/CrimeCharts/index.cfm. The court may order the person to perform a fixed period of community service as a condition of probation.

Death Penalty

A person convicted of first-degree murder must be punished by death, only if one or more aggravating circumstances are found that are not outweighed by any mitigating circumstance. Nevada's laws identify the only aggravating circumstances, which include—among others—murder committed by a person already under a sentence of imprisonment; murder by a person who knowingly created a great risk of death to more than one person; murder committed while engaged in or attempting to engage in arson, burglary, home invasion, kidnapping, or robbery; murder for hire; murder of a firefighter or peace officer engaged in the performance of official duty; murder involving mutilation or torture; murder committed at random; murder of a person under the age of 14; and murder committed as a hate crime.

Mitigating circumstances may include a defendant with no significant history of prior criminal activity; murder committed under the influence of extreme emotional or mental disturbance; a victim who was a participant in the defendant's criminal act or who consented to the act; a murder in which the defendant was a relatively minor accomplice; a defendant who was under duress or domination of another person; a youthful defendant; and other circumstances.

In 2011, the Legislature revised the maximum punishment a court may impose for a crime by a person who was under 18 years old when the crime was committed. If the crime would otherwise be punishable by death, the maximum punishment is life imprisonment without the possibility of parole. For other crimes, the maximum punishment is life imprisonment with the possibility of parole.

Fines

All fines imposed and collected for violations of Nevada's criminal laws must be paid into the State Treasury. A judgment that imposes a fine constitutes a lien like a money judgment in a civil action. The *Constitution of the State of Nevada* pledges all fines collected under the penal laws of the State for educational purposes and provides that the money from fines must not be transferred to other funds for other purposes.

AID TO VICTIMS OF CRIME

The NRS include a variety of provisions designed to assist victims of crime. In addition to providing direct financial or other assistance to victims, these laws address confidentiality; disclosures and notices to victims; fictitious addresses; mandatory conditions of parole and probation; mandatory reporting of certain crimes; procedural consideration; protection of victims from intimidation and threats; restitution; victims' attendance at school; victims' recovery of damages; and related subjects.

Fund for Compensation of Victims of Crime

An eligible person may apply to the State Board of Examiners for compensation from the Fund for Compensation of Victims of Crime. The Board may pay compensation to or for the benefit of victims, to a victim's caregivers for their expenses or losses, to a victim's dependents if the victim dies, and to members of the victim's immediate family or household for psychological counseling.

Revenues for the Fund come from various sources, including: a portion of fees charged by justices of the peace; a portion of the administrative assessments imposed on persons found guilty of a misdemeanor; money paid as restitution when the recipient cannot be located; a portion of money from forfeitures of bail bonds; a portion of the proceeds from the sale of forfeited property; amounts deducted from the wages of prisoners in State prison; civil penalties recovered by the Attorney General for crimes against older persons; and civil penalties imposed on persons convicted of driving under the influence.

Account for Aid for Victims of Domestic Violence

The Division of Child and Family Services, Department of Health and Human Services, administers the Account for Aid for Victims of Domestic Violence. Eligible nonprofit entities may apply to the Division for grants to provide services to victims.

Revenues for the Account come from sources including: a portion of fees charged by justices of the peace; a portion of marriage license fees; a portion of the fee paid to a commissioner of civil marriage for solemnizing a marriage; a portion of the fee for obtaining a certified copy of a marriage certificate; and a portion of fines imposed by the Department of Taxation for infractions related to certified programs for alcohol education.

Assistance to Victims of Sexual Assault

Each county in Nevada must provide, by ordinance, a program for counseling and medical treatment of victims of sexual assault, and must pay for any medical care for injuries resulting from the assault provided to the victim within 72 hours after the victim arrives for treatment. In addition, the victim or the victim's spouse may apply to the board of county commissioners for treatment of emotional trauma at the county's expense.

Confidentiality

Information related to victims of abuse of older or vulnerable persons, domestic violence, sexual assault, and other sexual offenses is confidential and may be disseminated only to the court, law enforcement agencies, parole and probation officers, and other persons who need the information for official purposes. Information on individual victims of sex offenders must not be disclosed on the community notification website, from a record of registration, or from the statewide registry.

Disclosure and Notice

Nevada's laws require disclosure or notification to victims of a variety of events that may affect them. In the juvenile system, victims must be notified of the disposition of the cases involving them and of petitions alleging that a juvenile is delinquent for committing a sexual offense against them.

In the adult justice system, victims must be notified of the following types of events if those events might affect them or their cases: an application for a pardon; an application for a concealed weapon permit; the discharge, escape, or release of an offender; the disposition of a harassment, sexual assault, stalking, or theft case; a meeting to consider clemency; a meeting to consider parole; a postconviction petition for genetic marker analysis; a recommendation for a modified sentence of probation; a request to serve a term of residential confinement; the results of a test for the HIV virus or sexually transmitted disease on a person arrested for a crime; and other events.

Fictitious Address Program

An adult, a parent or guardian for a child, or a guardian acting on behalf of an incompetent person may apply to the Secretary of State for designation of a fictitious address if the subject of the application has been a victim of domestic violence, sexual assault, or stalking. The Secretary of State must approve the application if it is accompanied by specific evidence demonstrating that the person has been a victim, and may make records pertaining to the fictitious address available for inspection only upon the request of a law enforcement agency or by court order.

Intimidation of Victims

A person who, by intimidation or threat, discourages, hinders, or prevents a crime victim or witness from causing an arrest, commencing a prosecution, or reporting a crime is guilty of a category D felony. A court may issue an injunction restraining a defendant or other person from such conduct.

Procedural Considerations for Victims

In consideration of victims of acts against older or vulnerable persons, acts committed against a child, domestic violence, and sexual assault and other sex offenses, the courts may adjust trial dates and must in many cases provide an attendant to support the victim during proceedings. The Legislature has modified the statutes of limitation for prosecution of attempted murder, kidnapping, and sexual assault; has provided that a victim of a sexual offense is not required to submit to a polygraph examination; and has also placed specific restrictions on jury instructions in cases of sexual assault and statutory sexual seduction.

In the 2011 Session, the Legislature authorized a court to vacate a judgment against a victim of human trafficking or involuntary servitude who was convicted of prostitution or solicitation of prostitution.

In juvenile court, a judge may allow a victim to be admitted to proceedings, which are otherwise closed.

Restitution

In many circumstances, persons convicted of a crime or falling within the jurisdiction of the juvenile court must provide restitution to their victims. A juvenile court may include restitution in an agreement for informal supervision and may order restitution from a child adjudicated delinquent or the child's parent or guardian. In the adult system, the court may require restitution as a condition of parole or probation, and the order of restitution is deemed a money judgment against the offender. The Department of Corrections may deduct amounts required to pay restitution from an offender's personal account and wages. For crimes of theft and similar crimes, a district attorney may require restitution and suspend prosecution under certain conditions.

Victims' Attendance at School

Unless the juvenile court has terminated the requirement or approved an alternative plan of supervision as provided for in the NRS, the court must prohibit a child adjudicated delinquent for a sexual offense or sexually motivated act from attending the same school the victim is attending, and must order the parent or guardian of the delinquent child to inform the parole or probation officer each time the child expects to change schools. The parole or probation officer must notify the school district in which the delinquent child resides, or the private school if the child attends private school, and the notice must include the name of the victim if the victim's parent or guardian consents.

In addition, a child covered by the fictitious address program may attend school outside a normal zone of attendance established by the board of trustees of the school district, or attend in another school district.

Other Considerations for Victims of Crime

Among the numerous statutes that consider the needs and rights of crime victims, the Legislature has authorized crime victims to seek recovery of damages for their injuries and to appear at sentencing hearings. The family of a victim of a capital offense may request notice of execution of the death penalty against the offender and must be given preference in attending the execution.

As a condition of lifetime supervision imposed on a sex offender and as a condition of parole or probation for a person convicted of a sexual offense, the offender must not have any contact with the crime victim except as authorized by the court.

For more information, see the January 2012 *Policy and Program Reports* titled "Justice System: Focus on Domestic Violence," and "Justice System: Focus on Sex Offenders."

ACTIVITIES DURING THE 2011-2012 INTERIM

During the current interim period, the Advisory Commission on the Administration of Justice (ACAJ) will meet and, among its other duties, evaluate the effectiveness and fiscal impact of policies and practices regarding sentencing and recommend changes in the structure of sentencing in Nevada in accordance with the goals and objectives set forth in the NRS.

The ACAJ will also evaluate the policies and practices concerning presentence investigations and reports by the Division of Parole and Probation and compile and develop statistical information concerning sentencing.

The ACAJ's Subcommittee on Victims of Crime will consider issues related to crime victims and evaluate, review, and submit a report to the ACAJ with recommendations.

SOURCES OF ADDITIONAL INFORMATION

Advisory Commission on the Administration of Justice: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/AdminJustice/?ID=30.

State Bar of Nevada: http://www.nvbar.org/.

Nevada Supreme Court, Self Help Resources: http://lawlibrary.nevadajudiciary.us/selfHelp/nvProSe.php.

In the last ten years, the Audit Division of the Legislative Counsel Bureau (LCB) has prepared the following audit reports related to crimes, punishments, and aid to crime victims and this section of the *Policy and Program Report*:

- Department of Public Safety, Division of Parole and Probation (LA08-12); and
- Department of Administration, Hearings Division and Victims of Crime Program (LA08-07).

Legislative committees have studied various aspects of crime, punishments, and aid to crime victims in Nevada and have published their findings in LCB bulletins since 1961. Some of the more recent bulletins on these subjects are:

- Bulletin No. 03-4, *Categories of Misdemeanors*, January 2003;
- Bulletin No. 03-5, *Death Penalty and Related DNA Testing*, January 2003;
- Bulletin No. 07-9, *Sentencing and Pardons, Parole and Probation*, January 2007; and
- Bulletin No. 11-11, *Advisory Commission on the Administration of Justice, Final Report*, February 2011.

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POLICY AND PROGRAM REPORT

Corrections

Research Division January 2012

When a defendant is convicted of a crime in Nevada, the sentence may include a term of confinement in the county jail or, for felony crimes, in the State prison. In addition to those offenders confined in local detention facilities, the Department of Corrections currently houses over 12,000 persons in its 18 different correctional institutions, camps, and centers.

The State Board of Parole Commissioners may release an offender who is eligible for parole from State prison after considering a list of factors set forth in the *Nevada Revised Statutes* (NRS). The Division of Parole and Probation in the Department of Public Safety (DPS) supervises parolees until the expiration of their court-imposed terms of imprisonment.

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LOCAL DETENTION FACILITIES

Each county in Nevada must build or provide a jail and maintain it in good condition, at the county's expense. The county is responsible for the condition and treatment of prisoners and jail security, and the county sheriff is the jail custodian. With the concurrence of the sheriff, a board of county commissioners may enter into an interlocal agreement with another county or city in Nevada to provide a jail.

The board of county commissioners and the governing body of any incorporated city must make all necessary arrangements, in accordance with State law, to use the labor of prisoners committed to jail by a district or justice court. In addition, a sheriff or chief of police may establish a program to release prisoners from jail for education or work.

A board of county commissioners or the governing body of an incorporated city may seek reimbursement from a prisoner who is not indigent for the county's or city's actual costs of keeping the prisoner in jail or supervising the prisoner in an alternative program.

Unless the sentencing court orders otherwise, the county sheriff or chief of police may supervise a convicted prisoner electronically, instead of confining the prisoner in jail, if the prisoner has a suitable residential living situation and poses no unreasonable risk to public safety.

For each month in which a prisoner in a local jail appears to have been faithful, obedient, and orderly, the sheriff or chief of police may deduct up to 5 days from the term of imprisonment and, if the prisoner completes an educational program, completes a program of treatment for drug or alcohol abuse, or performs assigned work diligently, additional days as provided by statute.

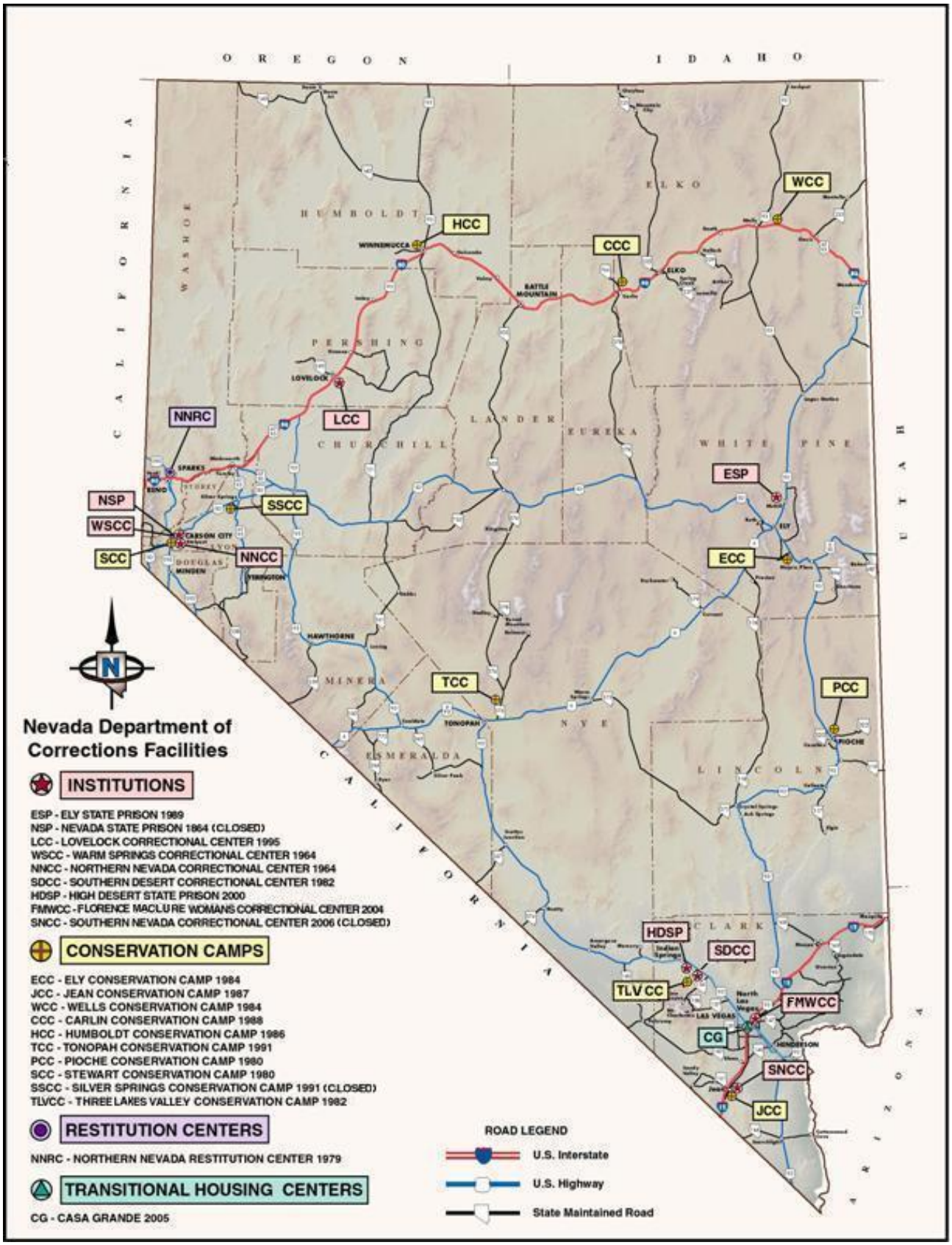
STATE CORRECTIONAL FACILITIES

The Department of Corrections and the Board of State Prison Commissioners are responsible for the housing and treatment of offenders sentenced to State prison. The Board consists of the Governor, who serves as president, the Secretary of State, who serves as secretary, and the Attorney General.

The Department of Corrections operates the State's correctional facilities and institutions, which are publicly financed. The Department classifies prisoners based on risk assessment and assigns them to an appropriate risk-defined facility. The Department may not assign a prisoner to a minimum-security facility if the prisoner is not eligible for parole or release within a reasonable period, has recently committed a serious infraction of Department rules, has not performed assigned duties in a faithful and orderly manner, has ever been convicted of a felony sexual offense, has been convicted within the last year of a felony involving the use or threat of force or violence, or has escaped or attempted to escape.

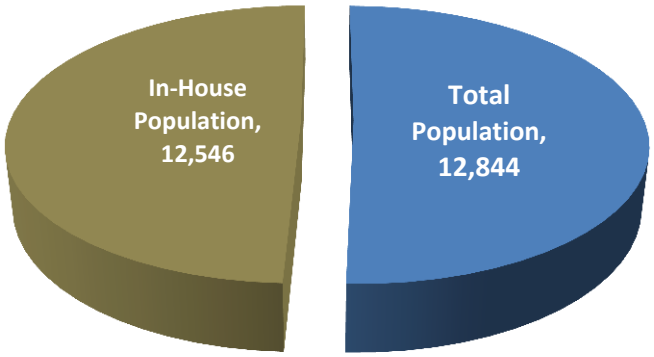
The Department of Corrections must require each prisoner to spend 40 hours per week in vocational training or employment, unless the prisoner's behavior precludes participation or the prisoner is excused to attend class or for medical reasons. Offenders receive hourly wages for their work, and the Department may deduct amounts from those wages to support the Fund for the Compensation of Victims of Crime, to provide support for the offender's family, for construction of new facilities for prison industry, to offset the cost of keeping the prisoner in prison, to pay the unpaid balance of fees and administrative assessments imposed on the offender, and for other purposes.

The Committee on Industrial Programs, which includes the Director of the Department of Corrections, the Administrator of the Purchasing Division of the Department of Administration, four members from the Legislature, and four other members representing business, manufacturing, and organized labor, is responsible for reviewing current and proposed agricultural and industrial programs.

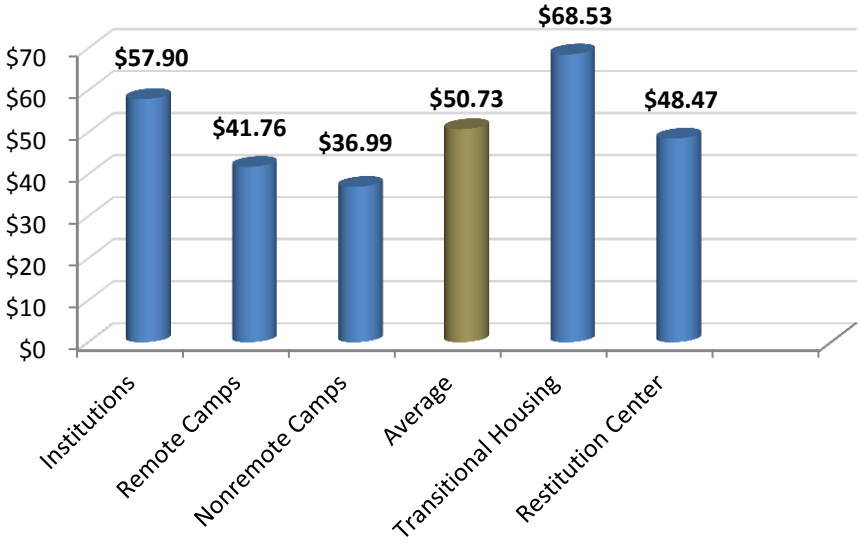


Source: Department of Corrections website at: http://www.doc.nv.gov/?q=node/10.

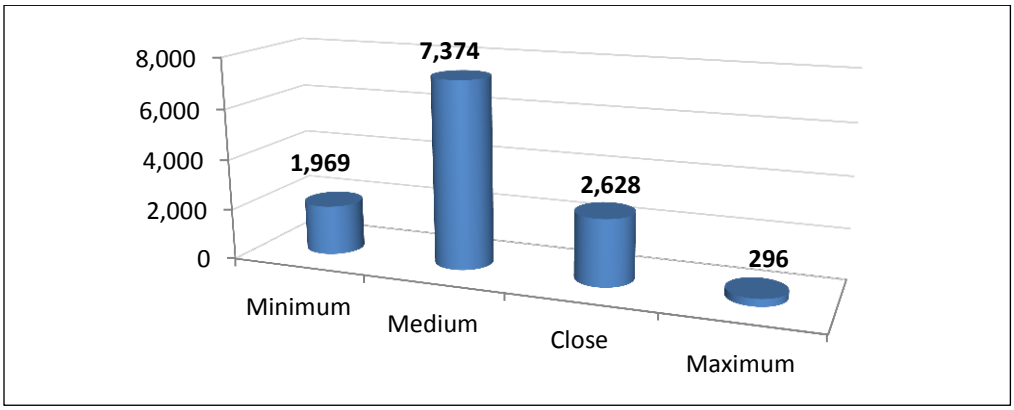
Total Population
(As of February 9, 2012)



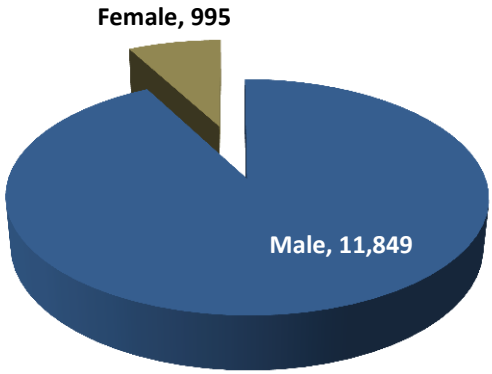
Average Daily Inmate Cost
Fiscal Year 2012



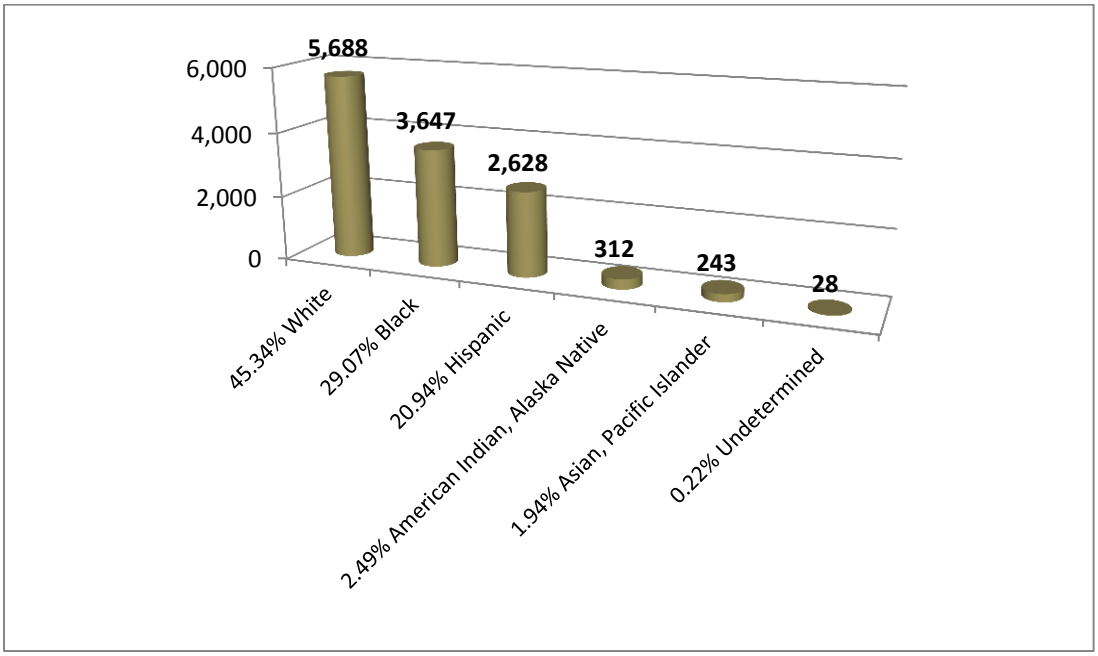
Offenders by Custody Level
(In-House/Exclusive of Unassigned)



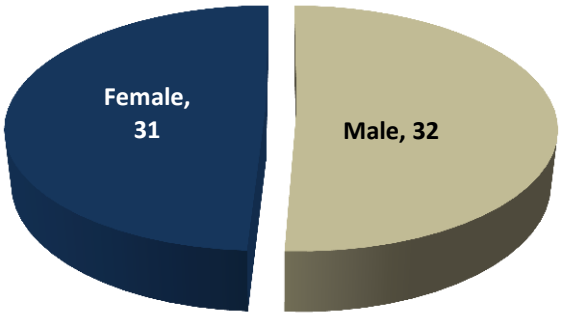
Sex of Inmates
(As of February 9, 2012)



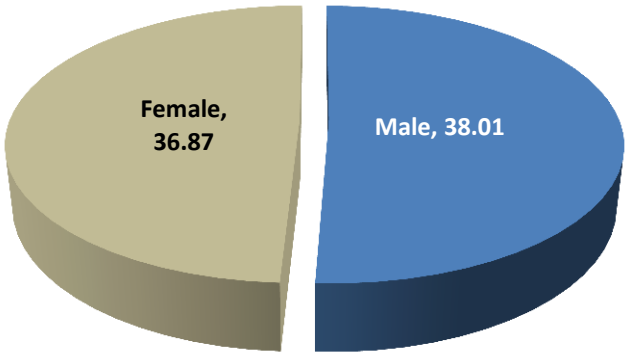
Race/Ethnicity



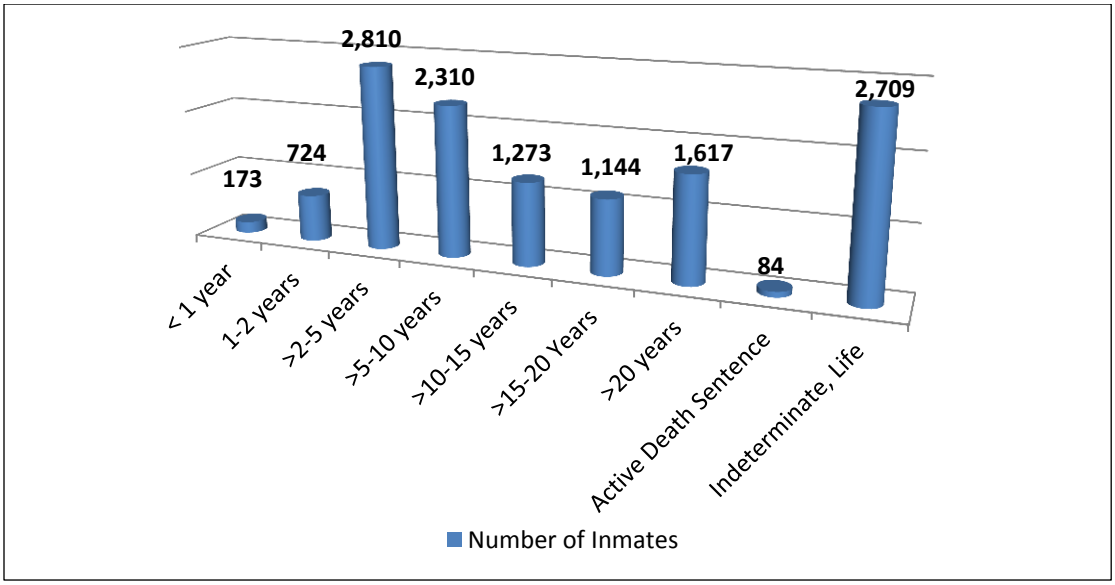
Age at Intake (Calendar Year 2012)



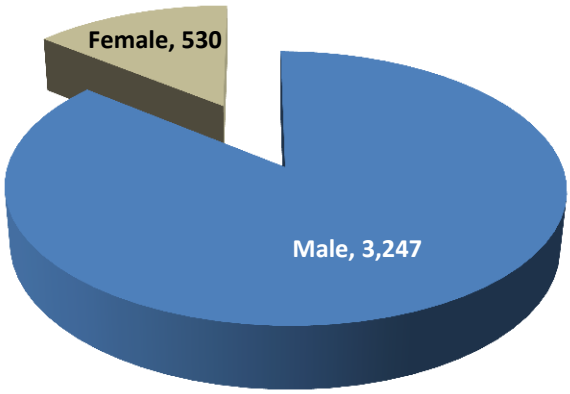
Average Current Age



Longest Sentence Length



Offenders on Parole
(As of February 1, 2012, Division of Parole and Probation)



In 2011, the Legislature appropriated nearly $500 million in State General Fund support for the Department of Corrections in the biennium beginning July 1, 2011. This funding will provide housing for an average of about 12,500 inmates. The Legislature approved the closure of the Nevada State Prison in Carson City, effective April 2012, and appropriated money to reopen two housing units at the High Desert State Prison to house inmates from the State Prison.

PARDONS AND PAROLE

The State Board of Parole Commissioners determines whether to grant parole to a convicted person. The Governor appoints the Board and its chair to four-year terms. The Board appoints an executive secretary.

The State Board of Parole Commissioners must adopt, by regulation, objective standards to assist the Board in determining whether to grant or revoke parole. The standards must address the parole of a person who committed a capital offense, who was sentenced to a life term, who was convicted of a violent sexual offense, or who is a repeat offender, and other types of convicted persons.

The Board may release an offender who is eligible for parole after considering factors set forth in the NRS. If the offender was imprisoned for a felony, the offender remains under the jurisdiction of the Board from the time of release on parole until the expiration of the maximum term of imprisonment the court imposed, less any credits earned to reduce the sentence pursuant to the NRS.

A prisoner who was sentenced for a crime committed before July 1, 1995, is eligible for parole when the prisoner has served one-third of the sentence, less any credits earned to reduce the sentence. A prisoner who was sentenced for a crime committed on or after July 1, 1995, is eligible when the prisoner has served the minimum term imposed by the court, less any applicable credits earned.

The Chief Parole and Probation Officer and the Division of Parole and Probation (Division) supervise parolees and investigate cases referred to them by the State Board of Parole Commissioners. (The Division also supervises probationers; see the January 2012 *Policy and Program Report* titled "Criminal Procedure.") Officers of the Division must stay informed of the conduct and condition of all persons under their supervision and aid and encourage them to bring about improvements.

The State Board of Pardons Commissioners, consisting of the Governor, the justices of the Nevada Supreme Court, and the Attorney General, considers applications for the commutation of punishments; remission of fines; restoration of civil rights; and pardons. Before the Board considers an application at a meeting, the Board must notify the district attorney for the county in which the conviction occurred, and the district attorney must submit a statement to the Board. Both the Board and the district attorney must also notify any victim of the applicant who has requested notice in writing.

ACTIVITIES DURING THE 2011-2012 INTERIM

During the current interim period, the Advisory Committee on the Administration of Justice (ACAJ) will meet and consider, among its other duties, the effectiveness and fiscal impact of policies and practices regarding imprisonment, parole, credits against sentences, residential confinement, and alternatives to incarceration.

The ACAJ will also evaluate the effectiveness and efficiency of the Department of Corrections and the State Board of Parole Commissioners and identify and study issues relating to the operation of the Department.

SOURCES OF ADDITIONAL INFORMATION

Advisory Commission on the Administration of Justice: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/AdminJustice/?ID=30.

Committee on Industrial Programs: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/Industrial/?ID=5.

In the last ten years, the Audit Division of the Legislative Counsel Bureau (LCB) has prepared the following audit reports related to corrections and this section of the *Policy and Program Report*:

- Board of Parole Commissioners (LA10-21);
- Department of Corrections – Inmate Programs, Grievances, and Access to Health Care (LA08-19);
- Department of Public Safety, Division of Parole and Probation (LA08-12);
- Department of Corrections, Offender Trust Accounts (LA06-26); and
- Department of Corrections, Administration (LA06-25).

Legislative committees have studied various aspects of corrections in Nevada and have published their findings in LCB bulletins since 1961. Some of the more recent bulletins on these subjects are:

- Bulletin No. 07-9, *Sentencing and Pardons, Parole and Probation*, January 2007; and
- Bulletin No. 11-11, *Advisory Commission on the Administration of Justice, Final Report*, February 2011.

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POLICY AND PROGRAM REPORT

Domestic Relations and Family Law

Research Division January 2012

One subset of the justice system in Nevada addresses the interactions that take place within family units, including adoption, divorce, marriage, and related matters. These important subjects figure prominently in the well-being of all Nevadans.

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MARRIAGE

Marriage in Nevada is a civil contract requiring the consent of each party and a formal ceremony before witnesses known as "solemnization." Nevada does not recognize common-law marriages after March 29, 1943. Nevada allows a male and female who are at least 18 years old to marry. A person who is 16 or 17 years old may marry with the consent of a parent or guardian, and a person less than 16 years old may marry with the consent of a parent or guardian and the approval of a district court. No two persons who are closer in relationship than second cousins may marry.

In 2002, Nevada's voters approved a constitutional amendment specifying that Nevada recognizes only a marriage between a male and a female.

Persons who wish to marry in Nevada must obtain a marriage license from the county clerk, but there is no residency requirement.

Any appointed, licensed, or ordained minister or other person authorized to solemnize a marriage who is in good standing with his or her church or religious organization organized in Nevada may perform a marriage, after obtaining a certificate of permission from the county clerk. The Secretary of State must maintain a statewide database of persons authorized to solemnize a marriage. A commissioner of civil marriage, Supreme Court justice, district court judge, justice of the peace, or municipal judge may also perform a marriage. In Clark County, the county clerk is the commissioner of civil marriages, and in other counties containing a township whose population is 15,500 or more, the board of county commissioners may appoint the county clerk to act as the commissioner.

DOMESTIC PARTNERSHIPS

In 2009, the Legislature enacted statutes relating to domestic partnerships. Two persons may register a domestic partnership with the Secretary of State if they have a common residence, are not married or a member of another domestic partnership, are not related by blood in a way that would prevent them from being married to each other in Nevada, are both at least 18 years old, and are both competent to consent to the partnership.

Domestic partners have the same benefits, duties, obligations, protections, responsibilities, and rights as are granted to and imposed upon spouses. However, no employer is required to provide health care benefits to the domestic partner of an employee.

Domestic partners may terminate the partnership by filing a statement with the Secretary of State declaring that both partners have chosen to terminate the partnership, but only if the partnership has been registered for five years or less; there are no minor children of the relationship or the parties have executed an agreement regarding child custody and support; there is no community or joint property or the parties have executed an agreement regarding the division of property and liabilities; the parties waive any rights to support or have executed an agreement setting forth the amount and manner of support; and the parties waive any right to conduct of divorce proceedings. Otherwise, to terminate a partnership, the partners must follow the procedures for a divorce.

DIVORCE

To file for divorce, a person must have resided in Nevada for at least six weeks, unless the cause of action occurred in Nevada while both parties were actually domiciled here. There are three causes of action for divorce: incompatibility, insanity, or one year of separation without cohabitation.

Nevada is a community property state. Unless the action is contrary to an enforceable premarital agreement, the court must, to the extent practicable, make an equal disposition of the community property, except that the court may make an unequal distribution as it deems just.

In granting a divorce, the court may award alimony to either party and may set apart a portion of either party's property for child support or spousal support. The Legislature has identified a list of factors the court must consider in determining whether to award alimony and the amount of the award.

A husband and wife may commence a summary proceeding for divorce by filing a joint petition with the court, provided that they have been separated for one year without cohabitation or are incompatible; there are no minor children of the relationship and the wife is not pregnant, or the parties have executed an agreement regarding child custody and support; there is no community or joint property or the parties have executed an agreement regarding the division of property and liabilities; the parties waive any rights to spousal support or have executed an agreement setting forth the amount and manner of support; and the parties waive their rights to written notice of entry of the divorce decree, to appeal, to request findings of fact and conclusions of law, and to move for a new trial.

CHILD CUSTODY AND VISITATION

The Legislature has declared that it is the policy of the State to ensure that minor children have frequent associations and a continuing relationship with both parents after a separation or divorce, and to encourage parents to share the rights and responsibilities of raising children. In determining custody of a minor child in a divorce action, the sole consideration of the court is the best interest of the child. The Legislature has identified an order of preference for awarding custody—with the first preference being joint custody or custody by either parent—and a list of factors the court must consider in determining the best interest of the child.

If a court determines, after a hearing, that there is evidence that the parent or other person seeking custody of a child has perpetrated domestic violence or has abducted the child, there is a rebuttable presumption that sole or joint custody by the perpetrator is not in the child's best interest. The same presumption exists when a parent has been convicted of murder of the other parent.

A court may award a noncustodial parent the right to visit his or her child and, if the court finds the parent is being wrongfully deprived of that right, may order the custodial parent to permit additional visits in compensation. A custodial parent who fails to comply with a judgment ordering an additional visit may be found guilty of contempt.

If a parent of a child is deceased, is divorced or separated from the custodial parent, or has never been legally married to the other parent, or if his or her parental rights have been terminated, the district court may grant reasonable visitation rights to the great-grandparents and grandparents of the child, to other children of either parent, and to unrelated persons with whom the child has established a meaningful relationship. Visitation rights may be granted in a divorce decree, an order of separate maintenance, or upon petition of an eligible person.

A custodial parent who intends to move outside Nevada and take the child must attempt to obtain the written permission of the noncustodial parent in advance. If the noncustodial parent does not consent, the custodial parent must petition the court for permission to move the child.

The Legislature has enacted the Uniform Child Custody Jurisdiction and Enforcement Act, which addresses issues involving child custody cases that cross state lines, and the Uniform Child Abduction Prevention Act, which authorizes a court to order measures to prevent an abduction in a child custody proceeding if the court determines there is a credible risk of abduction.

In 2011, the Legislature enacted child custody laws relating to parents who are members of the military. The laws limit modifications in existing custody orders based on an actual or potential military deployment, authorize temporary modifications to accommodate a deployment, authorize a court to hold expedited hearings or allow testimony by affidavit or electronic means, and require parents to cooperate to reach a mutually agreeable resolution if military duties preclude adjudication of custody orders prior to deployment.

CHILD SUPPORT AND PARENTAGE

In Nevada, parents have a statutory duty to provide for a child's necessary education, health care, maintenance, and support, whether the child was born in or out of wedlock. Nevada's statutes contain a child support formula, based on the parent's gross monthly income and the number of children, subject to a minimum and presumptive maximum amount. The court may award a greater or lesser amount, if supported by evidence, and may modify the amount in some situations.

The obligation to support a minor child ends when the child turns 18 years old or, if the child is enrolled in high school, 19 years old.

A person may bring an action in district court to determine parentage. Such an action is not barred until three years after the child turns 18 years old. After a hearing, the court may recommend a settlement including dismissal of the action or compromise by agreement, in which the alleged father assumes a defined economic obligation.

In some circumstances involving abandonment, neglect, or unfitness, a court may terminate parental rights. There is a procedure for the restoration of parental rights if the child has not been adopted.

ADOPTION OF CHILDREN

An adult person or married couple may petition a district court to adopt a child. A child welfare agency or licensed child-placing agency may accept children from parents or guardians for adoption, and may consent to adoption of children. The person who adopts a child must be at least 10 years older than the child, and if the child is over the age of 14, the child must consent to the adoption.

With some exceptions, all adoption proceedings are confidential and must be held in closed court. The Division of Child and Family Services in the Department of Health and Human Services maintains the State Register for Adoptions, which includes information submitted voluntarily to identify adults who were adopted and persons related to them.

A child welfare agency may grant financial assistance for the costs of adopting and maintaining a child with special needs due to age, mental or physical problems, or race.

Nevada has entered into the Interstate Compact on Placement of Children, relating to cooperation among the states in the interstate placement of children, and the Interstate Compact on Adoption and Medical Assistance, relating to the interests of the states in obtaining adoptive families for children with special needs.

SOURCES OF ADDITIONAL INFORMATION

Annual Report of the Nevada Judiciary, *Fiscal Year 2011*: http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/7760/.

Clark County Family Law Self-Help Center: http://www.clarkcountycourts.us/shc/.

National Council of Juvenile and Family Court Judges: http://www.ncjfcj.org/.

National Court Appointed Special Advocate Association: http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9A/Home.htm.

Nevada Legal Resources Directory: http://www.nvlawdirectory.org/bysubfamily.html.

Second Judicial District Court, State of Nevada, Washoe County, Family Self Help Center: http://www.washoecourts.com/index.cfm?page=selfhelp.

Washoe County Law Library – Lawyer in the Library Program: http://www.nvlawdirectory.org/org/org007.html.

Legislative committees have studied family law in Nevada and have published their findings in Legislative Counsel Bureau bulletins since 1961. One recent bulletin on this subject is:

- Bulletin No. 99-9, *Family Courts*, January 1999.

STATE CONTACT INFORMATION

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POLICY AND PROGRAM REPORT

Juvenile Justice

Research Division January 2012

The system of juvenile justice applies to children who are not old enough to be held responsible as adults for criminal acts. In Nevada, "child" generally means a person who is under 18 years old, with certain qualifications and exceptions discussed later in this report.

In 2003, the Legislature declared that children subject to the jurisdiction of the juvenile court must receive care and guidance, preferably in their own home, conducive to the children's welfare and the State's interests, and when a child is removed from parental control, the court must secure an equivalent or nearly equivalent level of care. The Legislature said that one of the purposes of the juvenile laws is to promote programs designed to prevent children from becoming subject to the jurisdiction of the juvenile court.

The Nevada Supreme Court has ruled that constitutional and statutory provisions related to criminal procedure are not applicable to proceedings in juvenile court, which are not criminal in nature, and that jury trials are not required in juvenile court.

Nevada has entered into the Interstate Compact for Juveniles, which addresses cooperative efforts and mutual assistance among states related to juvenile offenders who have run away from home and have left their state of residence.

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JUVENILE COURTS

Nevada's district courts have jurisdiction over juvenile justice and, when exercising that jurisdiction, are known as "juvenile courts." Juvenile court expenses are charged to the county, except for expenses related to State juvenile detention facilities. The county is entitled to reimbursement from

the parent or guardian of a child who becomes subject to the jurisdiction of the juvenile court and receives ancillary medical, psychiatric, psychological, or transportation services.

In general, the juvenile court has jurisdiction over a child who is alleged or adjudicated to be in need of supervision, to have committed a delinquent act, or to be in need of commitment to an institution for the mentally retarded.

"Child" means a person who:

- Is less than 18 years of age;
- Is less than 21 years of age and is subject to juvenile court jurisdiction for an unlawful act committed before the age of 18; or
- Is subject to the jurisdiction of the juvenile court as a juvenile sex offender.

A "child in need of supervision" means one who is a habitual truant from school, who habitually disobeys the reasonable demands of the parent or guardian, or who runs away from home and is in need of care or rehabilitation. A "child in need of supervision" is not considered a delinquent child.

A child has committed a delinquent act if the child violates a county or municipal ordinance, violates a regulation or rule having the force of law, or commits a criminal offense pursuant to State law.

There are four situations in which young offenders are handled in the adult rather than the juvenile justice system. First, for such very serious crimes as murder and attempted murder, the juvenile court has no jurisdiction. Second, upon the motion of the district attorney and after an investigation and hearing, the juvenile court must transfer certain cases, usually involving felonies, to adult court. This process is known as "presumptive certification." Third, upon the motion of the district attorney and after an investigation and hearing, the juvenile court may transfer other types of cases. Finally, if a child is charged with a minor traffic offense, the juvenile court may transfer the case to justice or municipal court, with some restrictions.

For additional details on situations in which young offenders are handled in the adult courts, see the following table:

Crime	Age of Child	Who Has Jurisdiction?	Process
Murder, attempted murder	Any	Adult court	Automatic *Nevada Revised Statutes* (NRS) 62B.330
Sexual assault or attempted sexual assault involving use or threat of force or violence	16 years or older at time of offense	Adult court, if the child was previously adjudicated delinquent for an act that would have been a felony if committed by an adult	Automatic NRS 62B.330
		Otherwise, adult court, after certification for proceedings as an adult by the juvenile court	Nondiscretionary NRS 62B.390[1]

Crime	Age of Child	Who Has Jurisdiction?	Process
Offense or attempted offense involving use or threat of use of firearm	16 years or older at time of offense	Adult court, if the child was previously adjudicated delinquent for an act that would have been a felony if committed by an adult	Automatic NRS 62B.330
		Otherwise, adult court, after certification for proceedings as an adult by the juvenile court	Nondiscretionary NRS 62B.390[2]
Felony resulting in death or substantial bodily harm committed on school property when pupils or employees present, at an activity sponsored by a school, or on a school bus, with intent to create a great risk of death or severe bodily harm to more than one person	Any	Adult court	Automatic NRS 62B.330
Category A or B felony	At least 16 years but less than 18 years when offense committed, but not identified by law enforcement and charged before age of 20 years and 3 months but less than 21 years, or not identified by law enforcement until reaching 21 years	Adult court	Automatic NRS 62B.330
Offense that would have been a felony if committed by an adult	At least 14 years at time of offense	Adult court, if certified for proceedings as an adult by the juvenile court	At the discretion of the juvenile court NRS 62B.390
Escape or attempted escape from lawful custody in facility for detention or correctional care of children[3]	At least 14 years at time of escape or attempted escape	Adult court, if certified for proceedings as an adult by the juvenile court	At the discretion of the juvenile court NRS 62B.400

[1] However, the juvenile court must not certify a child for criminal proceedings as an adult if the court finds by clear and convincing evidence that the child is developmentally or mentally incompetent to understand the situation and the court proceedings or to aid the child's attorney in those proceedings, or the child has substance abuse or emotional or behavioral problems that may be appropriately treated through the jurisdiction of the juvenile court.
[2] See note 1.
[3] But only if the child was committed to the facility because the child had been charged with or had been adjudicated delinquent for an unlawful act that would have been a felony if committed by an adult or the child or another person aiding the child used a dangerous weapon to facilitate the escape or attempted escape.

JUVENILE PROCEDURE

Initial Custody and Detention

A peace officer or probation officer may take a child into custody if the officer has probable cause to believe the child has violated a State or local law, ordinance, regulation, or rule having the force of law, or if the child's conduct indicates the child is in need of supervision. The officer must attempt to

notify the child's parent or guardian without delay, and the detention facility must notify a probation officer and attempt to notify the parent or guardian if they have not already been contacted.

The child must usually be released to the custody of a parent, guardian, or other responsible adult who agrees, in writing, to bring the child before the juvenile court as the court specifies. If the child is not released, he or she must either be taken to juvenile court or the court must be notified of the detention, at which time the court may order the child detained, released to the custody of a parent or guardian, or conditionally released for supervised detention at home.

For some offenses involving domestic violence or violation of a protective order, the child must remain in custody for at least 12 hours, unless another appropriate alternative is available.

If a child is not alleged to be delinquent or in need of supervision, the child must not be detained in a detention facility, jail, or police station. If a child is alleged to be delinquent or in need of supervision, the child must not be detained in a secure facility unless the child is a fugitive, the child was taken into custody pursuant to a warrant, or there is probable cause to believe that the child will commit another offense, run away, or be taken away. A child under the age of 18 years may not be detained at a jail or police station unless no alternative is available and the child is kept separate from adults who are detained there.

Complaint and Petition

When a child, parent, peace officer, school official, or other person alleges or complains that a child is delinquent or in need of supervision, a probation officer must investigate the complaint to determine whether a petition alleging delinquency or need of supervision should be filed with the juvenile court or the interests of the child or the public would be better served by placing the child under informal supervision. If the probation officer recommends filing of a petition, the district attorney has final authority to determine whether to file the petition.

Informal Supervision

A child may be placed under the informal supervision of a probation officer if the child voluntarily admits participation in the acts alleged in the complaint and—if the alleged acts would constitute a gross misdemeanor or felony if committed by an adult—the district attorney gives written approval. The terms and conditions of informal supervision must be stated in writing, and may require the child to perform community service or provide restitution. The period of informal supervision must not exceed 180 days. If the child successfully completes the supervision, the court may dismiss any petition filed against the child.

Supervision and Consent Decree

If the district attorney files a petition with the juvenile court and the court does not refer the child for informal supervision, the court may place the child under the supervision of the court pursuant to a consent decree without a formal adjudication of delinquency, upon the recommendation of the probation officer and with the consent of the district attorney and the child's parent or guardian.

Rights of Children

A child alleged to be delinquent or in need of supervision is entitled to be represented by an attorney at all stages of the proceedings. If the child's parent or guardian is indigent, the court must appoint an attorney and may order the parent or guardian to reimburse the county or the State in accordance with their ability to pay.

At intake and in juvenile court, children must be advised of their rights, informed of the allegations against them, and given the opportunity to affirm or deny the allegations. If a child denies the allegations, the court must conduct a hearing and determine whether the allegations have been established.

Rights of Parents and Guardians

A parent or guardian of a child alleged to be delinquent or in need of supervision may also be represented by an attorney at all stages of the proceedings. The parent or guardian must be given written notice of any proceedings after the initial detention hearing. It is unlawful for an employer to terminate, or threaten to terminate, an employee who gives the employer notice of an appearance with or on behalf of a child in any court, and persons who are unlawfully discharged may commence a civil action against their employers for lost wages and benefits, reinstatement, damages, and attorney's fees.

Disposition of Cases

When a child is adjudicated in accordance with these procedures, the juvenile court may:

- Place the child in the custody of a suitable person for supervision in the child's home or another home;
- Commit the child to the custody of a licensed public or private institution or agency authorized to care for children;
- Permit the child to reside in a residence without the immediate supervision of an adult, if the child is at least 16 years old, would benefit from the arrangement, and is under the strict supervision of the court;
- Order the child, the child's parent or guardian, or both, to perform community service;
- If the child was not previously found delinquent or in need of supervision and the offense did not involve the use or threatened use of force or violence, order the child to complete a program of cognitive training and human development, a program for the arts, or a program of sports or physical fitness;
- Order the child's driver's license to be suspended for at least 90 days but not more than 2 years;

- Impose a fine;
- Order medical, psychiatric, psychological, or other care, examination, or treatment in the best interests of the child; or
- Order the parent or guardian to refrain from any conduct the court believes has caused the child to come under the court's jurisdiction.

If the case involves a child who is or is alleged to be in need of supervision, the court must:

- Admonish the child and refer the child to counseling or other similar services if the child has not previously been under the purview of the juvenile court; and
- Impose a fine or order community service and suspend the child's driver's license if the child is found to be a habitual truant.

If the case involves a child who is adjudicated delinquent, the court may:

- Commit the child to a detention facility if the child is at least 12 years old;
- Commit the child to the custody of the Division of Child and Family Services (DCFS), Department of Health and Human Services (DHHS), for suitable placement;
- Order the child, the parent or guardian, or both, to provide restitution to the victim;
- In some circumstances, order the child to undergo an evaluation to determine whether the child is an abuser of alcohol or other drugs; or
- Take other actions specified in State law.

Confidentiality

With some exceptions, the records of any case brought before the juvenile court may be opened to inspection to persons who have a legitimate interest in the records only by court order. If a child is less than 21 years old, the child or a probation officer may petition the juvenile court for an order sealing all records relating to the child. However, the petition may not be filed earlier than three years after the child was last adjudicated or referred to the juvenile court. If the court finds that the child has not been convicted of a felony or a misdemeanor involving moral turpitude, and that the child has been rehabilitated, the court must order the records sealed.

When a child reaches 21 years of age, all records must be automatically sealed, except that records related to sex offenses or acts that would have been a felony if committed by an adult and that involved the use or threatened use of force or violence must not be sealed before the child reaches 30 years of age. Once a person's records are sealed, all proceedings covered in the records are deemed never to have occurred, and the person may reply accordingly to any inquiry concerning the proceedings.

Youth Parole

After a child has been committed to a State detention facility, the superintendent of the facility may grant parole, if the child is eligible and parole would be in the child's best interests. The superintendent must first consult with the Chief of the Youth Parole Bureau in the DCFS. Upon being released on parole, the child is under the supervision of the Chief. Each child who is paroled must be placed in a home and an educational program or work program.

After a child has been paroled, the Chief of the Youth Parole Bureau must apply to the juvenile court for a dismissal of all proceedings against the child if the child has been able to make an acceptable adjustment outside the facility or is no longer amenable to treatment as a juvenile. If there is probable cause to believe that a child has violated parole, a peace officer may take the child into custody on the written order of the Chief, pending the child's return to juvenile court.

JUVENILE PROBATION

County juvenile probation departments have jurisdiction over children placed on probation who are in need of supervision or who have committed delinquent acts. The requirements for county juvenile probation departments vary, depending on the county's population. Unlike adult probation, juvenile probation is a county function.

In 2003, the Legislature authorized special supervision programs to improve and strengthen local supervision of children placed on probation and reduce the necessity for commitment of delinquent children to a State detention facility. Such programs include an unusually high level of supervision and the use of new techniques. The juvenile court in each county may apply to the DHHS for a share of the costs of a special supervision program.

JUVENILE SEX OFFENDERS

If a child is adjudicated delinquent for an unlawful act and the juvenile court determines at a hearing that the act was sexually motivated, or if a child is adjudicated delinquent for an act that would have been a sexual offense if committed by an adult, the court must place the child under the supervision of a parole or probation officer for at least three years and must impose a number of other conditions concerning attendance at school and community notification. For more information, see the January 2012 *Policy and Program Report* titled "Justice System: Focus on Sex Offenders."

FACILITIES FOR JUVENILE DETENTION

There are local, regional, and State facilities for the detention of children. The individual counties administer local facilities. Regional facilities, administered by or for the benefit of more than one government entity include the Spring Mountain Youth Camp in Clark County, the China Springs Youth Camp in Douglas County, and the Western Nevada Regional Youth Facility in Lyon County.

ACTIVITIES DURING THE 2011-2012 INTERIM

The Advisory Committee for the Administration of Justice's (ACAJ) Subcommittee on Juvenile Justice will meet and consider issues related to juvenile justice and submit a report to the ACAJ with recommendations concerning those issues.

The ACAJ will evaluate issues relating to juvenile justice including the establishment of evidence-based programs and a continuum of sanctions and the impacts of the juvenile justice system on the adult system.

The Legislative Committee on Child Welfare and Juvenile Justice will also meet and consider such matters as statewide juvenile justice reform, the crossover of issues affecting both child welfare and juvenile justice, sex trafficking of minors, and child prostitution.

The Commission on Statewide Juvenile Justice Reform is co-chaired by the Chief Justice and one associate justice of the Nevada Supreme Court and includes the Attorney General, district court judges, justices of the peace, members of the Legislature, State and local government staff members, and representatives of the nonprofit community. The Commission will study and evaluate the continuum of care, possible reorganization of Nevada's correctional commitment facilities, limiting State commitments to the most serious youth offenders, stabilization of long-term funding, and related subjects.

SOURCES OF ADDITIONAL INFORMATION

Commission on Statewide Juvenile Justice Reform: http://www.nevadajudiciary.us/index.php/commission-on-statewide-juvenile-justice-reform.

Legislative Committee on Child Welfare and Juvenile Justice: http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/ChildWelfare/?ID=10.

Clark County Department of Juvenile Justice Services: http://www.clarkcountynv.gov/Depts/jjs/Pages/default.aspx.

National Council of Juvenile and Family Court Judges: http://www.ncjfcj.org/.

National Court Appointed Special Advocate Association: http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301295/k.BE9A/Home.htm.

State of Nevada Juvenile Justice Commission, Division of Child and Family Services: http://www.dcfs.state.nv.us/DCFS_JJCommission.htm.

Washoe County Juvenile Services: http://www.co.washoe.nv.us/juvenilesvs.

Legislative committees have studied juvenile justice in Nevada and have published their findings in Legislative Counsel Bureau bulletins since 1961. Some of the more recent bulletins on this subject include:

- Bulletin No. 99-11, *System of Juvenile Justice in Nevada*, January 1999;
- Bulletin No. 01-11, *Commission on School Safety and Juvenile Violence*, January 2001;
- Bulletin No. 01-13, *Study of the System of Juvenile Justice in Nevada*, January 2001;
- Bulletin No. 05-6, *Study of Juvenile Justice System*, January 2005; and
- Bulletin No. 11-16, *Legislative Committee on Child Welfare and Juvenile Justice*, January 2011.

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POLICY AND PROGRAM REPORT

Justice System: Focus on Sex Offenders

Research Division

February 2012

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This section of the *Policy and Program Report* focuses on sex offenders, a subject that affects every aspect of the justice system, including aid to victims, corrections, courts, criminal procedure, family law, juvenile justice, and punishments.

The combination of federal and Nevada laws addressing sex offenders calls for lifetime supervision of serious offenders, provides notice to the public about offenders residing or working in the community, requires nationwide tracking of records on offenders, requires offenders to register with local law enforcement agencies, and set limits on parole and probation in order to protect the public health and safety.

FEDERAL SEX OFFENDER LAWS

Since 1994, the United States Congress has passed at least eight laws relating to sex offenders. The following paragraphs describe four of the most widely known federal sex offender laws.

Jacob Wetterling Act

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, enacted in 1994, requires states to maintain a

registry of sex offenders and persons who commit crimes against children. States must verify the addresses of sex offenders for at least 10 years and sexually violent predators must verify their addresses quarterly for life. The Act has been amended several times since 1994.

Megan's Law (1996)

In 1996, the Congress amended the Jacob Wetterling Act by passing the federal version of Megan's law, which requires state and local law enforcement agencies to release information necessary to protect the public about persons registered with the state under the Jacob Wetterling Act. The law provides for the public dissemination of information from state sex offender registries for any purpose permitted under state law.

Pam Lychner Act of 1996

The Pam Lychner Sex Offender Tracking and Identification Act of 1996 requires the U.S. Attorney General to establish a national database, known as the National Sex Offender Registry (NSOR) for tracking certain sex offenders. The Act allows for the dissemination of information collected by the Federal Bureau of Investigation (FBI) to federal, state, and local law enforcement officials and includes provisions relating to notification of the FBI and state agencies when a sex offender moves to another state.

Adam Walsh Act of 2006

The Adam Walsh Child Protection and Safety Act of 2006 created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, known as the "SMART Office," within the U.S. Department of Justice. The Office administers grant programs authorized by the Act, coordinates training and technical assistance, and administers standards for sex offender notification and registration.

Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act, creates a NSOR on the Internet, which integrates state sex offender registries and is available to law enforcement regardless of location. Offenders are assigned to one of three tiers; offenders in the higher tiers must check in with law enforcement more frequently.

STATUS OF NEVADA'S SEX OFFENDER LAWS

In 2007, the Legislature passed two bills, Assembly Bill 579 (Chapter 485, *Statutes of Nevada*) and Senate Bill 471 (Chapter 528, *Statutes of Nevada*), to implement the federal Adam Walsh Act of 2006.

Together, A.B. 579 and S.B. 471:

- Require community notification for sex offenders within three tiers related to the crime committed;

- Require community notification of all sex offenders and other offenders who committed a crime against a child, regardless of their tier classification;
- Require sex offenders to register with a local law enforcement agency every 90 days for Tier III, every 180 days for Tier II, and annually for Tier I;
- Require sex offenders to register for the first time prior to release from prison or, if not imprisoned, within three days of sentencing;
- Require sex offenders to provide a biological specimen at the time of registration;
- Require electronic monitoring of certain offenders;
- Increase the number of years a person convicted of sexual assault of a child not resulting in substantial bodily harm must serve before becoming eligible for parole;
- Prohibit some Tier III offenders from living within 1,000 feet of locations frequented by children;
- Prohibit some offenders from knowingly being within 500 feet of locations frequented by children;
- Make a violation of certain provisions by a Tier III offender under lifetime supervision punishable as a category B felony;
- Expand the types of information provided by the community notification website;
- Make certain juveniles subject to offender notification and registration requirements;
- Provide a criminal penalty for using information obtained from the community notification website to commit a crime; and
- Repeal *Nevada Revised Statutes* (NRS) sections that are inconsistent with the Adam Walsh Act.

The provisions of A.B. 579 and S.B. 471 were set to take effect on July 1, 2008. However, prior to that date, lawsuits were filed in both State and federal court seeking to stop implementation of the two bills in Nevada.

On April 15, 2008, the Honorable William O. Voy, Eighth Judicial District Court, Family Division-Juvenile, declared the provisions of A.B. 579 and S.B. 471, as applied to juvenile sex offenders, unconstitutional, and on June 26, 2008, the Honorable David Wall, Eighth Judicial District Court, granted a preliminary injunction staying the implementation of the provisions in Clark County.

On June 30, 2008, the Honorable James Mahan, United States District Court, District of Nevada, granted a preliminary injunction staying the provisions of A.B. 579 and S.B. 471 for the entire State, and on October 7, 2008, granted a permanent injunction. The State of Nevada, represented by the

Attorney General, appealed, and on February 10, 2012, the United States Court of Appeals for the Ninth Circuit reversed Judge Mahan's order enjoining the implementation of A.B. 579 and, finding that the dispute over S.B. 471 was moot, directed the federal district court to consider vacating its order on S.B. 471 in favor of a binding consent decree.

Given these facts and the possibility of subsequent appeals and judicial proceedings, Nevada's sex offender laws are unsettled and will require further clarification from the courts and the parties to the litigation. Prior to the ruling of the Ninth Circuit on February 10, 2012, Nevada's sex offender laws in effect were those that existed prior to the enactment of A.B. 579 and S.B. 471 in 2007, with additional substantive revisions made after 2005 in other bills, as described in the rest of this report, "Justice System: Focus on Sex Offenders."

NEVADA ADULT SEX OFFENDER LAWS (PRE-2007 AND PASSAGE OF A.B. 579)

Requirements After Conviction

If a defendant is convicted of a crime against a child or a sexual offense, the court must notify the Central Repository for Nevada Records of Criminal History and inform the defendant of the registration requirements. The registration requirements include:

- Registration in Nevada during any period in which the defendant is a Nevada resident or a nonresident student or worker;
- Registration in any other jurisdiction during any period in which the defendant is a resident of that jurisdiction or a nonresident student or worker;
- Registration with the appropriate law enforcement agency if the defendant moves from Nevada;
- Notice to the local law enforcement agency where the defendant previously resided of any change of address;
- Notice to the local law enforcement agency if the defendant enrolls or expects to enroll in an institution of higher education or changes the date of commencement or termination of enrollment; and
- Notice to the local law enforcement agency if the defendant is, or expects to be, a worker at an institution of higher education or changes the date of commencement or termination of such work.

If the Central Repository receives notice from a court that an offender has been convicted of a crime against a child or a sexual offense, the Repository must notify the local law enforcement agency so that a record of registration may be established. If a record was previously established, the Repository must update the record and notify the law enforcement agency. If the offender is granted probation or otherwise not confined, the Repository must immediately notify the appropriate law enforcement agency where the offender resides. If the offender is confined or incarcerated, before the

offender is released, the Repository must update the record of registration and notify the appropriate law enforcement agency where the offender will reside. Finally, if the Central Repository receives notice from another jurisdiction or the FBI that an offender is now residing in Nevada or is in the State as a nonresident student or worker, the Repository must notify the appropriate local law enforcement agency and establish a record of registration.

Each offender convicted of a crime against a child or a sexual offense must register with the local law enforcement agency or agencies, not later than 48 hours after arriving, establishing a residence, or becoming a nonresident student or worker in a county or city. To register, the offender must appear in person, provide all information requested, and sign and date the record in the presence of an officer. After an offender registers, the law enforcement agency must forward the record to the Central Repository.

The offender must continue to comply with the registration requirements until that responsibility is terminated in accordance with the NRS. In general, the offender may file a petition in district court for termination of registration if the offender has complied with the requirements for 15 consecutive years, during which the offender has not been convicted of any offense that poses a threat to the safety or well-being of others. After a hearing, the court must terminate the duty of the offender to register if the court determines the offender is not likely to pose a threat to the safety of others. However, offenders who are sentenced to lifetime supervision, who are declared to be sexually violent predators, or who are repeat offenders may not petition for termination of the registration requirements.

A person may not petition a court to seal records relating to a conviction of a crime against a child or a sexual offense, either after a conviction or after completing a program of reentry into the community. The Central Repository may inspect any sealed records that contain information relating to sexual offenses and may notify employers of the information. Upon request, the Central Repository must disseminate to a current or prospective employer information contained in a record of registration concerning a current or prospective employee or volunteer who is a sex offender or was convicted of a crime against a child.

Lifetime Supervision

A defendant convicted of certain sexual offenses must be sentenced, in addition to any other penalties, to lifetime supervision, commencing after any period of probation or release from prison and parole. A person sentenced to lifetime supervision may petition the sentencing court or the State Board of Parole Commissioners for release from lifetime supervision if the person meets requirements set forth in the NRS. A person who is released nevertheless remains subject to the provisions for registration and community notification.

The special sentence of lifetime supervision applies to the following offenses or attempted offenses: battery with intent to commit sexual assault; certain acts of murder and other crimes determined to be sexually motivated; incest; lewdness with a child; luring; production of child pornography; promotion of a sexual performance by a minor; possession of child pornography (subsequent offense); a sex act with a dead body; sexual assault; and solicitation of a minor.

Probation

If a defendant is convicted of a sexual offense for which probation or a suspended sentence is allowed, the Division of Parole and Probation, Department of Public Safety (DPS), must arrange for a psychosexual evaluation of the defendant as part of its presentence investigation and report, in accordance with the detailed requirements of the NRS. If the court grants probation or suspends the sentence, the order must include 18 specific conditions.

The defendant must—among other conditions—submit to search and seizure at any time without a warrant; reside only at an approved location; work or volunteer only in an approved position; participate in a program of professional counseling; abstain from consumption of alcohol; not use aliases or fictitious names; not access the Internet without approval; and not be in or near a school, playground, park, motion picture theater, or business that caters primarily to children without approval.

After receiving an honorable discharge from probation, the defendant is still subject to the community notification and registration requirements described in this report.

Statewide Registry and Community Notification Website

As required by the NRS, the DPS has established, within the Central Repository, a statewide registry of sex offenders and offenders convicted of a crime against a child and a community notification website. Except as otherwise provided by law, the registry is available only to law enforcement officers in the regular course of their duties, employees and officers of the Repository, and other persons conducting investigations or research with the permission of the Director of the Department.

A person requesting information from the website must provide the name of the subject of the search and other required information concerning the identity and location of the subject. For each inquiry, the Repository must explain the levels of notification assigned to sex offenders and explain that the Repository is prohibited from disclosing certain information concerning offenders listed in the registry. If the request matches a record in the registry, the Repository must disclose information concerning an offender who is assigned to Tier II or Tier III, but not Tier I. The Repository must provide the offender's address, name, offense resulting in conviction, physical description, year of birth, and other information.

Information from the website must not be used for any purpose related to accommodations, credit, education, employment, fellowships, housing, insurance, loans, or scholarships, or for benefits, privileges, or services provided by a business establishment. A person who violates these restrictions is liable in a civil action brought by an injured party or the State of Nevada.

Information accessed at or disclosed by the statewide registry or community notification website must not reveal the name of any individual victim of the offense.

Community Notification

The Attorney General, in consultation with the Advisory Council for Community Notification, must establish guidelines and procedures for community notification. The guidelines and procedures address assessing the risk of recidivism of sex offenders within Nevada, and incorporate such relevant factors as the offender's age and criminal history and whether the offender receives therapy or treatment.

The Attorney General's guidelines must provide for three levels of community notification:

- Tier I indicates a low risk of recidivism, and the local law enforcement agency where the offender resides or is a student or worker must notify other law enforcement agencies likely to encounter the offender;

- Tier II indicates a moderate risk of recidivism, and the local law enforcement agency must also notify schools and religious and youth organizations likely to encounter the offender; and

- Tier III indicates a high risk of recidivism, and in addition to the requirements for Tier I and Tier II, the local law enforcement agency must notify the public by appropriate means.

If the sex offender is assigned to Tier II or Tier III, and has committed a sexual offense against a person less than 18 years old, the local law enforcement agency must also notify motion picture theaters and businesses that are likely to encounter the offender.

After a sex offender other than a sexually violent predator has been subject to community notification for at least 10 consecutive years, during which the offender is not convicted of an offense that poses a threat to the safety or well-being of others, the offender may petition the Attorney General for a reassessment of the risk of recidivism. After a reassessment, an offender may be reassigned to one tier below the current assignment and, if currently assigned to Tier I, may be relieved from being subject to community notification.

Sexually Violent Predators

If a sex offender has been convicted of a sexually violent offense, the prosecuting attorney may petition the sentencing court for a declaration that the offender is a sexually violent predator. After a hearing and an evaluation by a panel, if the court determines that the offender suffers from a mental disorder or personality disorder, the court must enter an order declaring the offender to be a sexually violent predator. Each sexually violent predator must be assigned to Tier III for purposes of community notification, and may not receive a risk reassessment.

Every 90 days, the Central Repository must mail a verification form to each resident offender who is declared to be a sexually violent predator and who is not incarcerated. The offender must complete the form and return it to the Repository within 10 days to verify that he or she still resides at the address last registered. The verification form must include a current set of fingerprints, a current photograph, and other information necessary to update the record.

Parole

The State Board of Parole Commissioners may not release an offender convicted of a sexual offense until the local law enforcement agency where the offender will be released has had the opportunity to give notice under the community notification guidelines and procedures. If the Board releases a sex offender on parole it must, in addition to any conditions, require the parolee to comply with a list of mandatory conditions similar to those imposed on a sex offender who is placed on probation (as described earlier in this report).

If the offender was convicted of committing lewdness with a child, luring, sexual assault, solicitation of a minor, or other serious crimes against a child under the age of 14, the Board must, as appropriate, require the parolee to participate in psychological counseling, prohibit the parolee from being alone with a child, and prohibit the parolee from being on or near the grounds of a place primarily designed for use by children.

JUVENILE SEX OFFENDERS

Jurisdiction

As discussed earlier in this report, Nevada's juvenile courts have jurisdiction over children alleged or adjudicated to be in need of supervision or to have committed a delinquent act. In certain situations, however, young offenders are handled in the adult rather than the juvenile justice system. One of these situations is when a juvenile who is at least 16 years old and who has previously been adjudicated delinquent for an act that would have been a felony if committed by an adult is charged with committing sexual assault or attempted sexual assault involving the use or threat of force or violence against the victim.

Also, upon the motion of the district attorney and after an investigation and a hearing, the juvenile court must transfer certain cases to adult court, through the process known as "presumptive certification." This process applies when a juvenile who is at least 16 years old is charged with a sexual assault involving the use or threatened use of force against the victim. Finally, upon the motion of the district attorney and after an investigation and hearing, the juvenile court may transfer other cases to adult court if a child is charged with an offense that would be a felony if committed by an adult and was at least 14 years old at the time.

Procedure

When a district attorney files a petition with the juvenile court alleging that a child committed an unlawful act that would have been a sexual offense if committed by an adult, the district attorney must provide the victim and the victim's parent or guardian with a document advising them of their rights.

If the juvenile court finds a child delinquent for an unlawful act that, if committed by an adult, would have constituted burglary, false imprisonment, home invasion, or kidnapping, the court must at the request of the district attorney conduct a hearing to determine whether the act was sexually motivated.

If the court determines at the hearing that the act was sexually motivated, it must enter its finding in the record.

Supervision and Community Notification

If a child is adjudicated delinquent for an unlawful act and the juvenile court determines at a hearing that the act was sexually motivated, or if a child is adjudicated delinquent for an act that would have been a sexual offense if committed by an adult, the court must:

- Place the child under the supervision of a parole or probation officer for at least 3 years;
- Notify the Attorney General, so that the Attorney General can arrange for a risk assessment pursuant to the guidelines on community notification;
- Notify the child and the parent or guardian that the child is subject to community notification as a juvenile sex offender and may be subject to community notification as an adult sex offender; and
- Order the child and the child's parent or guardian, while the child is subject to community notification, to inform the parole or probation officer of any change of address at which the child resides within 48 hours of the change.

In addition, the parole or probation officer must notify the local law enforcement agency in the jurisdiction where the child resides and keep the applicable law enforcement agencies informed of any change of address of the child's residence.

Further, unless the juvenile court has terminated the requirement as provided in the NRS:

- The court must prohibit the child from attending a school that the victim of the act is attending, and must order the parent or guardian to inform the parole or probation officer each time the child expects to change the school the child attends; and
- The parole or probation officer must notify the school district in which the child resides, or the private school if the child attends private school, and the notice must include the name of the victim if the victim attends school in Nevada and the parent or guardian of the victim consents.

However, the juvenile court may allow a child adjudicated delinquent for a sexually motivated act or sexual offense to attend the school the victim is attending if, upon request, the court develops and approves an alternative plan of supervision that protects the interests and safety of the victim.

Child Subject to Adult Registration and Community Notification Requirements

If a child who has been adjudicated delinquent for a sexual offense or sexually motivated act is still subject to community notification as a juvenile sex offender when the child reaches 21 years of age, the juvenile court must hold a hearing to determine whether the child should be deemed an adult sex offender, for purposes of registration and community notification.

If the juvenile court determines that the child has been rehabilitated to its satisfaction and is not likely to pose a threat to public safety, based on factors set forth in the NRS, the juvenile court must relieve the child from registration and community notification requirements. Otherwise, the court must deem the child to be an adult sex offender, for purposes of registration and community notification, and must notify the Central Repository.

Records and Reports

While a child is subject to community notification as a juvenile sex offender, the records relating to the child must not be sealed. If the child is deemed an adult sex offender, the records must not be sealed and each delinquent act the child committed that would have been a sexual offense if committed by an adult is considered a criminal conviction for purposes of community notification and registration.

The Division of Child and Family Services, Department of Health and Human Services, must collect from the juvenile courts, juvenile probation departments, and youth correctional facilities detailed confidential information on each child adjudicated delinquent for an unlawful act that would have been a sexual offense if committed by an adult. The Director of the Department must establish a program to compile and analyze the data, to provide statistical data on recidivism and to assess the effectiveness of treatment programs. The Director must submit a report to the Advisory Commission on the Administration of Justice and the Legislature every biennium.

ACTIVITIES DURING THE 2011-2012 INTERIM

The Advisory Commission on the Administration of Justice will, among its other duties, evaluate policies and practices relating to the involuntary civil commitment of sexually dangerous persons, pursuant to A.B. 181 (Chapter 54, *Statutes of Nevada*) of the 2011 Session.

SOURCES OF ADDITIONAL INFORMATION

Advisory Commission on the Administration of Justice (NRS 176.0123): http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/AdminJustice/?ID=30.

Dru Sjodin National Sex Offender Public Website: http://www.nsopw.gov/Core/Portal.aspx?AspxAutoDetectCookieSupport=1.

Nevada Sex Offender Registry: http://www.nvsexoffenders.gov/.

Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office, U.S. Department of Justice: http://www.ojp.usdoj.gov/smart/.

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POLICY AND PROGRAM REPORT

Justice System: Focus on Domestic Violence

Research Division January 2012

The topic of domestic violence cuts across many aspects of the justice system in Nevada. The need to address crimes that constitute domestic violence influences the laws on aid to victims, corrections, court administration, criminal procedure, juvenile justice, and domestic relations, among others. This section of the *Policy and Program Report* focuses on domestic violence and related definitions, penalties, procedures, and programs.

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ACTS THAT CONSTITUTE DOMESTIC VIOLENCE

The definition of domestic violence involves an act of violence against a spouse, family member, or other person who has a close relationship with the perpetrator. The specific violent acts include assault, battery, coercion by force or the threat of force, false imprisonment, sexual assault, unlawful or forcible entry, or intentional conduct intended to harass the victim, including by arson, carrying a concealed weapon without a permit, destruction of property, injuring or killing an animal, larceny, stalking, trespassing, or similar conduct. The act constitutes domestic violence if it is committed against:

- A relative by blood or marriage;
- Someone with whom the perpetrator has a child in common or a dating relationship, or with whom he or she is residing;
- A spouse or former spouse;
- A child of any of these persons; or
- The perpetrator's minor child.

JURISDICTION

Nevada's district courts, family courts, and justice courts share jurisdiction over domestic violence matters. The family court, where established, and the justice court have concurrent jurisdiction over the issuance of protective orders against domestic violence. The family court, where established, and the district court have concurrent jurisdiction over actions for damages brought by a person who was injured by an act of domestic violence.

PROCEDURE

The courts and peace officers must follow special procedures in cases that involve battery constituting domestic violence.

A peace officer must arrest a person, with or without a warrant, if the officer has probable cause to believe the person has committed battery within the preceding 24 hours against a relative, spouse, former spouse, or one of the other persons listed earlier. In instances of mutual battery, the officer must attempt to determine who was the primary physical aggressor.

A person arrested for battery that constitutes domestic violence must not be admitted to bail sooner than 12 hours after arrest. If the person is released on bail without appearing before a magistrate, the *Nevada Revised Statutes* (NRS) specify minimum bail amounts. If the person is a juvenile and does not meet the criteria for secure detention, and if other appropriate arrangements can be made, the person may be released before 12 hours have passed.

During an investigation of domestic violence, an officer must make a good faith effort to explain the mandatory arrest procedures and to advise victims of all reasonable means to prevent further abuse, and must provide information to the victim in writing covering the victim's right to file a criminal complaint, the procedures for seeking a protective order, and where to go for emergency assistance and shelter. After an investigation, the officer must submit a written report to the officer's supervisor, whether or not an arrest was made.

If an officer detains a person for a misdemeanor offense that constitutes domestic violence and issues a citation instead of taking the person before a magistrate, the officer must obtain at least one fingerprint and forward the print and the incident report to the Central Repository for Nevada Records of Criminal History.

PENALTIES

Nevada imposes enhanced, mandatory penalties upon persons convicted of battery constituting domestic violence. Unless the court must sentence an offender to a greater penalty under the general battery statute (for battery committed with the use of a deadly weapon, for example), the penalties are as shown in the following table:

	Type of Crime	Imprisonment (Jail or Prison)	Community Service	Fine	Participation in Domestic Violence Treatment Program	Assessment*
First Offense Within 7 Years	Misdemeanor	Jail—2 days to 6 months	48 to 120 hours	$200 to $1,000	At least 1.5 hours per week for 6 to 12 months	$35
Second Offense Within 7 Years	Misdemeanor	Jail—10 days to 6 months	100 to 200 hours	$500 to $1,000	At least 1.5 hours per week for 12 months	$35
Third or Subsequent Offense Within 7 Years	Category C Felony	Prison— 1-year minimum and 5-year maximum		Optional Not more than $10,000		$35

*Administrative assessment for domestic violence programs (NRS 228.460)

In addition, the court may require convicted persons to participate, at their own expense, in a certified alcohol or drug abuse treatment program and, if it appears that a child may need counseling as the result of a battery constituting domestic violence, the court may refer the child to a child welfare agency for counseling and order the offender to reimburse the agency for its costs.

A prosecuting attorney may not dismiss a charge of battery constituting domestic violence in exchange for a guilty plea to a lesser charge if the prosecuting attorney knows the charge is supported by probable cause or can be proven at trial.

If a person is convicted of a misdemeanor that constitutes domestic battery, the justice of the peace or municipal judge may suspend the remainder of the sentence after the person has served a mandatory minimum period of confinement, on the condition that the person actively participate in a certified alcohol or drug abuse treatment program, a certified program for treatment of those who commit domestic violence, or both. A court must not grant probation or suspend the sentence of a person charged with battery constituting domestic violence.

PROTECTIVE ORDERS

Upon request, a court may grant a temporary or extended order for protection against domestic violence if the court is satisfied that domestic violence has occurred or there is a threat of domestic violence. The court may require the adverse party, the applicant, or both to appear before deciding whether to grant the order. A temporary order does not require notice to the adverse party, and must be decided upon within one judicial day of the application. However, an extended order may be granted only after notice to the adverse party and a hearing.

In Carson City, Clark County, and Washoe County, the court must be available 24 hours a day, 7 days a week, including weekends and holidays, to receive telephone communications from alleged victims of domestic violence and to issue temporary protective orders, as provided for in NRS.

The payment of costs and fees for a protective order must be deferred for any applicant. The court may assess the costs and fees against the adverse party, or reduce or waive them. The clerk of the court, or other person designated by the court, must assist any applicant with completing the application and any necessary papers related to a protective order, but must not offer legal advice.

A temporary protective order expires in 30 days or a shorter time fixed by the court, unless an application for an extended order has been filed. An extended order expires after the period fixed by the court, not to exceed 1 year.

Before the end of the next business day after an order is issued, the court must transmit the order to the appropriate law enforcement agency with jurisdiction over the child care facility, place of employment, residence, or school of the applicant or minor child, and must serve the adverse party with the order as set forth in the NRS. The court must also transmit information about the order to the Central Repository, for receipt by the end of the next business day.

Every protective order must include an order to any law enforcement officer to arrest an adverse party if the officer has probable cause to believe there has been a violation. After an arrest, the adverse party must not be admitted to bail until 12 hours have passed if the arresting officer determines there is a threat of harm, there was a previous violation, or the party is intoxicated.

A violation of a protective order against domestic violence is a misdemeanor, unless a more severe penalty is prescribed for the act that constituted the violation. A person who commits a felony in the course of violating a protective order is subject to an additional enhanced penalty of imprisonment in the State prison for not less than 1 year and not more than 20 years (or not more than 5 years if the felony was a category A or B felony). The additional sentence must not exceed the sentence for the underlying crime and may run either concurrently or consecutively.

A person may register a protective order against domestic violence issued in another jurisdiction. Such an order must be given full faith and credit and must be enforced by the Nevada courts if the issuing court had jurisdiction and the adverse party had notice and an opportunity to be heard.

HARASSMENT AND STALKING

The crimes of harassment and stalking are frequently associated with domestic violence. They include the act of stalking by e-mail, over the Internet, or using similar means of communication. The penalties range from a misdemeanor for a first offense to a category B felony for aggravated stalking. A court may grant a protective order against harassment or stalking under rules similar to those that apply to domestic violence.

The Peace Officers' Standards and Training (POST) Commission must require each peace officer to be trained concerning stalking crimes.

CHILD CUSTODY AND DOMESTIC VIOLENCE

In addition to Nevada's general laws for the protection of children, discussed elsewhere in this *Program and Policy Report*, the Legislature has enacted laws designed specifically to protect a child when a parent or guardian is a perpetrator or victim of domestic violence. In a divorce involving acts of domestic violence, there is a rebuttable presumption that joint or sole custody of the child by the perpetrator is not in the child's best interest. There are similar laws regarding visitation orders.

Child welfare agencies must provide protective custody of a child upon the death of a parent that is or may be the result of domestic violence. The appropriate court must hold a protective custody hearing within 72 hours after the child is placed in custody, and the agency must file a petition within 10 days of the hearing for a judicial determination of whether the child is in need of protection.

ASSISTANCE FOR VICTIMS OF DOMESTIC VIOLENCE

Types of Assistance

The Legislature has made significant assistance available to victims of domestic violence. The Account for Aid for Victims of Domestic Violence, with revenues from justice court fees, marriage license fees, and other sources provides grants to nonprofit agencies to provide services to victims. Victims may participate in the fictitious address program, receive restitution payments, and take advantage of other types of assistance available to crime victims in Nevada. For more details, see the January 2012 *Policy and Program Report* titled "Crimes, Punishments, and Aid to Crime Victims."

Ombudsman

The Office of Ombudsman for Victims of Domestic Violence, within the Office of the Attorney General, provides assistance to victims, prepares reports from information contained in the Central Repository, and provides education on domestic violence and available assistance, available treatment, and prevention.

Committee on Domestic Violence

The Attorney General also appoints the Committee on Domestic Violence, which includes judges, justices of the peace, law enforcement officers, prosecuting attorneys, representatives of victims, treatment providers, and victims. The Committee must:

- Adopt regulations for certifying, evaluating, and monitoring programs for the treatment of persons who commit domestic violence;

- Certify, monitor, and review such programs;

- Review and evaluate training programs provided to peace officers and related to domestic violence and make recommendations to the POST Commission concerning such training;

- To the extent money is available, arrange for the provision of legal services, including assisting a person in an action for divorce; and

- Submit a biennial report to the Legislature summarizing its work and recommending any necessary legislation.

Nevada Council for the Prevention of Domestic Violence

The Nevada Council for the Prevention of Domestic Violence, also within the Office of the Attorney General, is responsible for increasing awareness regarding domestic violence in Nevada, recommending any necessary legislation, and providing financial support for prevention programs. The Council consists of up to 30 members appointed by the Attorney General.

The Council must also study and review the criminal justice system in rural Nevada as it relates to domestic violence and the availability of counseling services; solicit comments and recommendations from district judges, justices of the peace, and municipal judges in rural Nevada; and must submit a biennial report to the Legislature summarizing its work, recommending any necessary legislation on domestic violence, and including all comments and recommendations received.

SOURCES OF ADDITIONAL INFORMATION

Clark County Family Law Self-Help Center: http://www.clarkcountycourts.us/shc/.

Legal Aid Center of Southern Nevada, Domestic Violence Project: http://www.lacsn.org/domestic-violence-project.

Nevada Legal Resources Directory: http://www.nvlawdirectory.org/bysubfamily.html.

Nevada Network Against Domestic Violence: http://www.nnadv.org/.

Second Judicial District Court, State of Nevada, Washoe County, Family Self Help Center: http://www.washoecourts.com/index.cfm?page=selfhelp.

Supreme Court of Nevada, Self Help Resources: http://lawlibrary.nevadajudiciary.us/selfHelp/nvProSe.php.

Washoe County Law Library – Lawyer in the Library Program: http://www.nvlawdirectory.org/org/org007.html.

STATE CONTACT INFORMATION

Office of the Attorney General
Office of Ombudsman for Victims of Domestic Violence
and Nevada Council for the Prevention of Domestic Violence
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511-2062
Telephone: (775) 688-1872
Statewide Domestic Violence Toll-free Telephone: (800) 500-1556
Fax: (775) 688-1822
Website: http://ag.state.nv.us/victims/dv/dvunit/ombud.html

Department of Public Safety
Division of Parole and Probation
1445 Old Hot Springs Road, Suite 104
Carson City, Nevada 89706-0662
Telephone: (775) 684-2600
Website: http://dps.nv.gov/npp/contact_us.shtml

Department of Public Safety
Records and Technology Division
Pat Conmay, Chief
333 West Nye Lane, Suite 100
Carson City, Nevada 89706-0866
Telephone: (775) 684-6262
Website: http://www.nvrepository.state.nv.us/index.shtml

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POLICY AND PROGRAM REPORT

General Environmental Issues and Matters Concerning Lake Tahoe

Research Division January 2012

The health of Nevada's environment and the preservation and conservation of its most critical natural resources contribute significantly to quality of life and economic prosperity. Clean air and water, open space, recreational opportunities, and scenic beauty make Nevada a desirable place to live and visit.

Historically, Nevada was known to have limited environmental regulations when compared with other more populous states. In recent decades, however, Nevada has undertaken significant state-sponsored programs to improve and protect its natural environment and to address new and changing federal regulations, particularly since passage of the federal Clean Air and Clean Water Acts in the early 1970s—some of the first laws ever written that establish a national framework for protecting the environment.

In addition to statewide environmental programs and regulations, Nevada shares responsibility for the preservation of Lake Tahoe with the State of California. Situated in the heart of the Sierra Nevada, one-third of the Lake Tahoe Basin is in the State of Nevada and two-thirds in the State of California. Regulatory responsibility for the Lake Tahoe Basin rests with the Tahoe Regional Planning Agency (TRPA), originally established in 1968.

AIR QUALITY

Air pollution can come from a variety of sources. These include "stationary sources" such as factories, power plants, and smelters; "smaller sources" such as dry cleaners and degreasing operations; "mobile sources" such as cars, trucks, buses, and planes; and "natural sources" such as dust and wildfires.

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In Nevada, the State Department of Conservation and Natural Resources has primary authority for the control of air pollution. Within the Department, Nevada's Division of Environmental Protection (NDEP) and the State Environmental Commission (SEC) (*Nevada Revised Statutes* [NRS] 232.090 and 445B.200, respectively) work together on the adoption of regulations and the implementation of programs to maintain and improve air quality.

Nevada's Division of Environmental Protection is charged with enforcement responsibility for the federal Clean Air Act. Within NDEP, the Bureau of Air Pollution Control has jurisdiction over all air quality programs in Nevada with the exception of Clark and Washoe Counties. The Bureau of Air Pollution Control also has jurisdiction over fossil fuel-fired power plants that generate steam for electricity production. The Bureau of Air Quality Planning is responsible for ambient air quality monitoring, mobile sources, regional haze, and smoke management.

Nevada's air pollution control laws are found in Chapter 445B ("Air Pollution") of the NRS. With regard to air pollution, NRS 445B.100 acknowledges that it is the policy of the State of Nevada "to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State." The air pollution statutes were added to NRS by the Nevada Legislature in 1971, following passage by Congress of the Clean Air Act in 1970.

Federal Clean Air Requirements

The foundation for most of the federal clean air requirements and standards is the federal Clean Air Act, which became law in 1970 and was most recently amended in 1990. Many of the Clean Air Act programs are driven by the National Ambient Air Quality Standards, which identify and set minimum standards for several harmful pollutants. The six principal air pollutants (known as "criteria" pollutants) are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulate matter or "dust" (with an aerodynamic size less than or equal to 10 microns, or PM-10 and 2.5 microns, or PM-2.5), and sulfur dioxide (SO2).

The Clean Air Act also recognizes that states should take the lead in carrying out the Clean Air Act and deciding how best to meet the air quality standards because pollution control problems often require an understanding of local industries, geography, weather, transportation patterns, and other regional influences on air quality.

In addition to setting standards, states are required to develop State Implementation Plans (SIPs) to direct implementation of air quality regulations of the United States Environmental Protection Agency (EPA) and attainment of the National Ambient Air Quality Standards. A SIP contains regulations and measures that will be used to clean up areas in violation of air quality standards and to address pollution control in other areas to maintain air quality.

As part of these SIPs, states are divided into air quality control regions and attainment areas designated at the county level. If monitoring in a control region shows that air quality has fallen below any of the air quality standards, the EPA designates that control region as a nonattainment area

for that particular pollutant and a SIP must be prepared. If a SIP is required of a local jurisdiction, the county prepares the SIP and submits it to the NDEP for review and approval. Once approved by the NDEP, the SIP is then submitted to the EPA for federal review and approval. The following Internet website for the EPA has pollutant-specific information about the nonattainment status of counties nationwide: http://www.epa.gov/oaqps001/greenbk/ancl2.html.

Local Air Quality Programs

Air quality programs in Clark County are managed by the Department of Air Quality and Environmental Management. In Washoe County, these programs are managed by the Air Quality Management Division of the Washoe County Health District. Up-to-date information on air quality in Clark and Washoe Counties is available on the following websites: http://www.clarkcountynv.gov/Depts/daqem/Pages/Monitoring_AirMonitoring.aspx and http://www.washoecounty.us/health/aqm/home.html.

Air Pollution Control Laws

Emission Credits

So-called "cap and trade" programs are becoming an increasingly common means of controlling pollutants. Assembly Bill 67 (Chapter 278, *Statutes of Nevada*) was enacted by the 2007 Legislature, amending NRS 445B.235, to authorize the State Department of Conservation and Natural Resources to collect money from the sale of emission credits or allocations for any pollutant. Any money collected is deposited in the Account for the Management of Air Quality in the State General Fund. The 2007 Legislature also amended the State's air pollution policy to include periodic retirement of a portion of the emissions credits and allocations that would otherwise be available for banking or sale.

Vehicle Emissions Programs

An important goal of Nevada's air pollution control laws is to reduce vehicle emissions to improve air quality, especially in populated areas with air quality concerns. In Nevada, this is accomplished through the "smog check program," with fees deposited in the Pollution Control Account.

The Vehicle Emissions Programs are authorized under NRS 445B.770, which requires the SEC to adopt regulations in designated areas, for the control of emissions from motor vehicles in Clark and Washoe Counties. In all other counties, the SEC has the option to adopt regulations if the Commission determines that it is feasible and practicable to carry out an emissions testing program, and if carrying out the program is deemed necessary to achieve or maintain air quality standards.

Nevada's Pollution Control Account

The Pollution Control Account is created in the State General Fund by NRS 445B.830. Nevada's Department of Motor Vehicles (DMV) deposits money in the Account that is collected from fees for licensing and renewing licenses of smog check facilities. Also deposited in the Account are fees collected for forms certifying emission control compliance. At this time, only the urbanized areas of Clark and Washoe Counties have smog check programs; thus, the money in the Account comes mainly from the owners of automobiles in these two areas.

The Account is administered by the DMV as follows:

- One-sixth of the money received from the issuance of emission test certificates is distributed quarterly to local governmental agencies in nonattainment or maintenance areas for air pollution (Clark and Washoe Counties).

- Pursuant to legislative appropriation or with the approval of the Interim Finance Committee, money is available to air pollution control agencies in the following priority order:

    1. Department of Motor Vehicles (for administration of the program);

    2. State Department of Conservation and Natural Resources (for the Division of Environmental Protection's statewide air quality control programs);

    3. State Department of Agriculture (for its fuels testing program under Chapter 590 ["Motor Vehicle Fuel, Petroleum Products and Antifreeze"] of NRS);

    4. Local governmental agencies in nonattainment or maintenance areas for air pollution; and

    5. The TRPA (for air quality programs at Lake Tahoe).

- Following these deductions, money remaining in the Account in excess of $1 million is available as grants to local governmental agencies in nonattainment or maintenance areas, for programs related to the improvement of air quality.

Efforts to Encourage the Use of Alternative Fuels

In addition to the air pollution control laws in Chapter 445B of NRS, Nevada encourages the use of alternative fuels. Chapter 486A ("Alternative Fuels; Clean-Burning Fuels") of NRS was added by the Legislature in 1991, and is aimed at reducing, especially in metropolitan areas, the contaminants resulting from the combustion of conventional fuels in motor vehicles. In 2001, the Legislature added NRS 486A.200, which authorizes an incentive program for the use of clean-burning fuel. As a result, the NDEP developed the "Alternative Fueled Vehicles in Fleets Program" to reduce motor vehicle-related pollution by converting fleet vehicles to use cleaner burning fuels. State and local government fleets in Clark and Washoe Counties operating ten or more vehicles are regulated under this program.

Alternative fueled vehicles are also exempt from emissions testing, and benefit from a reduced special fuels tax rate (NRS 366.190).

Greenhouse Gas Emissions

"Greenhouse gases" are defined as carbon dioxide, hydro fluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulphur hexafluoride. On May 21, 2010, President Barack Obama requested that the EPA and the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) work together to develop a national program that would improve the fuel economy of and reduce greenhouse gas emissions from U.S. light-duty vehicles for model years

2017-2025. President Obama's proposal expands the first phase of the national program, which established coordinated greenhouse gas emissions and fuel economy standards for model years 2012-2016. The EPA is proposing national greenhouse gas emissions standards under the Clean Air Act, and the NHTSA is proposing Corporate Average Fuel Economy (CAFÉ) standards under the Energy Policy and Conservation Act as amended by the Energy Independence and Security Act.

WATER QUALITY

(Note: This report will address the issue of water quality as an environmental issue in Nevada. The topic of water quantity will be addressed in another report dealing with natural resources.)

Growing public awareness and concern for controlling water pollution led to enactment of the Federal Water Pollution Control Act Amendments of 1972. As amended in 1977, this law became known as the Clean Water Act. It establishes the basic structure for regulating discharges of pollutants into the waters of the U.S. and gives the EPA authority to implement pollution control programs such as setting wastewater standards for industry. The Clean Water Act also continues requirements to set water quality standards for all contaminants in surface waters. Under this Act, it is unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit is obtained.

The Nevada Water Pollution Control Law is set forth in NRS 445A.300 through 445A.730, and establishes Nevada's compliance with the federal Clean Water Act. The SEC has the authority to adopt regulations to carry out the provisions of the Nevada Water Pollution Control Law, including standards of water quality and amounts of waste that may be discharged into the waters of the State. Administration and implementation of these regulations are the responsibility of the NDEP. Legislation enacted in 2009 authorizes the NDEP to award subgrants for set-aside programs authorized by the federal Safe Drinking Water Act.

An important aspect of the Clean Water Act is the Total Maximum Daily Load (TMDL). A TMDL is an assessment of the amount of pollutant a water body can receive and not violate water quality standards. In other words, a TMDL determines how much pollutant load a lake or stream can assimilate. It is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. A "point source" is a discharge from discernible points, including pipes, ditches, channels, and tunnels; while a "nonpoint source" is a discharge over a wide area of land not from a specific location (such as runoff).

The Clean Water Act requires each state to:

- Identify waters not meeting water quality standards;
- Set priorities for TMDL development of "impaired" water bodies; and
- Develop a TMDL for each pollutant for each listed body of water.

The Act also requires the EPA to approve or disapprove submissions by the states.

Water quality in Nevada is generally affected by agriculture, municipal, and industrial sources. Overall, water quality has generally been improving in Nevada due to the removal of many point sources and more stringent standards being implemented on other point sources. Most exceedances are seasonal and are of a natural condition. As for nonpoint sources, improvements are anticipated as a result of promoting public awareness, improved grazing and irrigation practices, erosion control measures, and implementation of Best Management Practices.

Perchlorate

Nearly 90 percent of the drinking water for Southern Nevada comes from the Colorado River via Lake Mead. This vital source of drinking water is under constant scrutiny to maintain water quality. Perchlorate, a toxic chemical used in rocket fuel and explosives, was first detected in Lake Mead in 1997. Perchlorate was produced from World War II through the 1990s at two sites in Henderson, one owned by Kerr-McGee LLC and the other by American Pacific Corporation (APC). Kerr-McGee stopped making the chemical in 1998 and a cleanup project began in 1999 (the project is ongoing). The site owned by APC was destroyed by an explosion in 1988. If ingested in high doses, perchlorate can decrease function of the thyroid gland and result in hypothyroidism or possibly thyroid tumors.

Although perchlorate is not regulated under the federal Safe Drinking Water Act, the NDEP established 18 parts per billion (ppb) as a provisional action level based upon EPA guidance standards established in 1999 for perchlorate in drinking water. In 2005, the National Research Council recommended a reference dose of 0.0007 mg/kg/day, which translates to a Drinking Water Equivalent Level (DWEL) of 24.5 ppb. As a result of cleanup efforts, Lake Mead has seen decreasing levels of perchlorate.

Nitrates

A water quality issue in recent years has been the level of nitrates in the groundwater of some outlying valleys where septic tanks have leaked, threatening the drinking water in individual water wells. Where standards are exceeded, the NDEP may require development of a community sewage system and elimination of the use of individual septic tanks, such as in the case of Spanish Springs north of Reno.

Clean Water Act Versus Safe Drinking Water Act

It is important to note that the Clean Water Act and the Safe Drinking Water Act are two different pieces of federal legislation. The Clean Water Act pertains to water quality as an environmental issue, while the Safe Drinking Water Act addresses drinking water quality and public water systems as a health issue. A “public water system” is a system that provides the public with piped water for human consumption, if the system has 15 or more service connections or regularly serves 25 or more persons.

In Nevada, primary enforcement responsibility for the Safe Drinking Water Act rests with the NDEP, which is responsible for licensing and monitoring public water systems consistent with national drinking water standards. The NDEP also administers Nevada’s Drinking Water State Revolving

Fund to provide free technical assistance and low-interest loans to private and public water systems to ensure compliance with the Safe Drinking Water Act. State financial assistance for drinking water systems was created by the Nevada Legislature in 1991 to provide grants to water purveyors to pay for costs of capital improvements to publicly owned water systems as required by the State Board of Health or the Safe Drinking Water Act. The grant program seeks to enable communities to comply with health regulations, and to ensure that the costs of improvements do not overwhelm or cripple the system.

In recent years, changes to federal drinking water standards have been significant in certain Nevada communities that must improve their water treatment facilities to meet higher standards. One example is the national standard for arsenic that was changed by the EPA from 50 ppb to 10 ppb, effective on January 23, 2006. New water treatment plants were constructed in Fallon and Fernley in order to bring their drinking water into compliance with the new national standard for arsenic.

RECYCLING

The following three recycling-related bills were enacted by the 2011 Nevada Legislature:

- Senate Bill 236 (Chapter 283, *Statutes of Nevada*) addressed the use of recycled aggregate, pavement, and rubber from tires in road and highway projects;

- Senate Bill 417 (Chapter 254, *Statutes of Nevada*) addressed the placement of recycling containers on the premises of apartment complexes and condominiums where services for the collection of solid waste are provided; and

- Assembly Bill 427 (Chapter 462, *Statutes of Nevada*) addressed an interim legislative study regarding deposits and refunds on recycled products.

MERCURY

Mercury is a naturally occurring metal that can contaminate air, water, and soil. In Nevada, the largest source of atmospheric mercury is from the processing of gold in mining operations. Historically, mining has also resulted in mercury contamination of certain lakes and rivers in Nevada. Ingestion of methyl mercury by eating contaminated fish or other exposures to mercury may have negative health impacts, including nervous system damage.

The Clean Water Act requires that states develop a list of water bodies ("List of Impaired Waters") needing additional work beyond existing controls to achieve or maintain water quality standards. There are several water bodies included on the 2006 list developed by the NDEP for exceeding the allowable level of certain contaminants. The Carson River from New Empire to the Carson Sink is included on the National Priorities List (Superfund) due to mercury contamination from historic mining activities. The list may be viewed online: http://ndep.nv.gov/bwqp/303dlist.htm.

The Health Division, Nevada's Department of Health and Human Services, has issued species-specific health advisories for waters where a fish species has an average methylmercury level above 1.0 ppm, based on the Federal Drug Administration mercury action level. The health advisories recommended no consumption of the following species in six Northern Nevada waters throughout 2011:

1. Fish from Lahontan Reservoir and the Carson River from Dayton downstream to the reservoir;

2. White bass from Little and Big Washoe Lakes;

3. Wipers and walleye from Rye Patch Reservoir;

4. More than one eight-ounce meal per week of any other fish from Rye Patch Reservoir;

5. Walleye from Chimney Dam Reservoir; and

6. Largemouth bass or northern pike from Comins Lake.

In 2006, the NDEP implemented the Mercury Air Emissions Control Program to reduce emissions at precious metal mining facilities processing mercury-containing ore by means of thermal treatment that may result in mercury emissions. Prior to this regulatory program, Nevada had implemented a voluntary mercury reduction program for Nevada gold mines that reduced annual emissions by 82 percent over three years.

After the federal government announced plans to store more than 4,500 tons of mercury at the Hawthorne Army Depot that had previously been stored in Indiana, New Jersey, Ohio, and Tennessee, the 2007 Nevada Legislature passed legislation (S.B. 118, Chapter 173, *Statutes of Nevada*) to require the SEC to adopt regulations on the handling and storage of mercury in quantities of 200,000 pounds or more. The SEC had already adopted such regulations as part of the Chemical Accident Prevention Program; however, the SEC supported the addition of a statutory requirement.

NEVADA'S BROWNFIELDS PROGRAM

Brownfield properties are vacant or abandoned properties that are unused or underutilized due to environmental contamination from past use. Examples typically include former automotive, railroad, or light industrial sites. The Bureau of Corrective Actions, NDEP, implements Nevada's Brownfields Program, also referred to as the Land Recycling Program.

The Nevada Brownfields Program was created in 1999 to model the federal Brownfields Revitalization Act of 2002. Nevada's program is codified in NRS 459.610 through 459.658. The intent of the program is to provide incentives for people to voluntarily remediate and use environmentally contaminated property while providing protection from liability for additional, future cleanup costs. In other words, the program encourages the revitalization of vacant, unproductive, and environmentally contaminated lands throughout Nevada.

Nevada's program allows the owner, prospective purchaser or innocent purchaser of contaminated property, or the owner of contiguous property, to reach an agreement with the NDEP to undertake

corrective cleanup actions. The property owner can obtain a certificate as a result of the agreement, releasing the property owner from liability for contamination occurring before the cleanup took place. However, the relief from liability does not limit the State's authority to require a specified action or cleanup by persons who are responsible for the actual contamination.

To implement the Brownfields Program, the State of Nevada received a $2 million grant from the EPA. These funds are being used in the Fund for Brownfields Projects, a revolving loan administered by the NDEP to provide no- or low-interest grants to eligible recipients. Payments from these grants have been leveraged to make additional loans.

Nevada's program also provides for recovery by the State of a portion of the cleanup costs if the State funded the cleanup effort at the property and that cleanup increased the land's value.

In 2005, the Legislature adopted the Uniform Environmental Covenants Act, which is codified in Chapter 445D ("Environmental Covenants [Uniform Act]") of the NRS, to allow for the recordation of long-term institutional controls on remediated properties. The Act provides for a perpetual real estate interest, known as an environmental covenant, to be recorded for the purpose of giving notice of use restrictions on the land when ownership is transferred. Giving notice of any such restrictions facilitates future enforcement for the protection of both public and private interests.

An environmental covenant stays with the property unless limited to a specific duration or terminated by various means. However, while an environmental covenant may restrict uses of real property authorized by zoning or by another law, the covenant cannot authorize a use that is otherwise prohibited by law or a recorded instrument with priority over the covenant.

MINING AND MINE RECLAMATION

In 2010, gold prices and production contributed to Nevada's mining industry setting an all-time record in the value of mineral output, which was $7.7 billion, not including oil and geothermal. According to the Nevada Bureau of Mines and Geology's Special Publication P-22, "Major Mines of Nevada 2010," Nevada produced approximately 72 percent of U.S. gold and approximately 7 percent of the world's gold production. The State was also the nation's leading producer of barite and lithium. Copper ranked second only to gold in terms of value in 2010.

Additionally, Nevada is second only to California in producing geothermal power. There are 20 geothermal electric generating plants in 12 locations that sold approximately 2.1 million megawatt hours of electricity in 2010 (enough power to supply nearly 110,000 homes). Finally in 2010, approximately 427,000 barrels of oil were produced from oil fields in Elko, Eureka, and Nye Counties.

The economic significance of mining is especially great in rural areas where mining activities are centered. In 2010, there were, on average, 12,211 Nevadans directly employed in the mineral industry at an average salary of $83,172. This is the highest average salary of any employment sector in the State. It is estimated that another 51,000 jobs are involved in supplying goods and services to the industry.

State Oversight of Mining

The 2011 Legislature passed S.B. 493 (Chapter 449, *Statutes of Nevada*) to create the Mining Oversight and Accountability Commission whose duties include oversight of the activities of the various State agencies that have responsibility for the environmental regulation, operation, safety, and taxation of mines and mining in this State.

The following agencies are subject to supervision by the Oversight Commission and must submit annual reports to the Oversight Commission:

- Nevada Tax Commission and Department of Taxation;
- Division of Industrial Relations of the Department of Business and Industry;
- Commission on Mineral Resources and its Division of Minerals;
- Bureau of Mines and Geology of the Nevada System of Higher Education; and
- The NDEP.

The Department of Taxation is required to report annually to the Oversight Commission on the expenses and deductions of each mining operation in the State and must submit a comprehensive audit program for each mining operator at the first meeting of the Oversight Commission. In addition, the Oversight Commission may ask the Legislative Commission to direct the Legislative Auditor to undertake an audit or investigation of the supervised entities with respect to mining issues.

The Division of Minerals, Nevada's Commission on Mineral Resources, administers programs and activities to further the responsible development and production of the State's mineral resources. The Division regulates drilling operations of oil, gas, and geothermal wells; administers a program to identify, rank, and secure dangerous conditions at abandoned mines; and manages the State Reclamation Bond Pool. The statutes relating to the programs administered by the Division of Minerals are generally found in Chapter 513 ("Commission on Mineral Resources"), Chapter 517 ("Mining Claims, Mill Sites and Tunnel Rights"), Chapter 519A ("Reclamation of Land Subject to Mining Operations or Exploration Projects"), Chapter 522 ("Oil and Gas"), and Chapter 534A ("Geothermal Resources") of NRS.

Mining regulation, mine closure, and mine reclamation are the responsibility of the NDEP and its Bureau of Mining Regulation and Reclamation. The Regulation Branch is responsible for ensuring that the quality of Nevada's water resources is not adversely impacted by active mining operations.

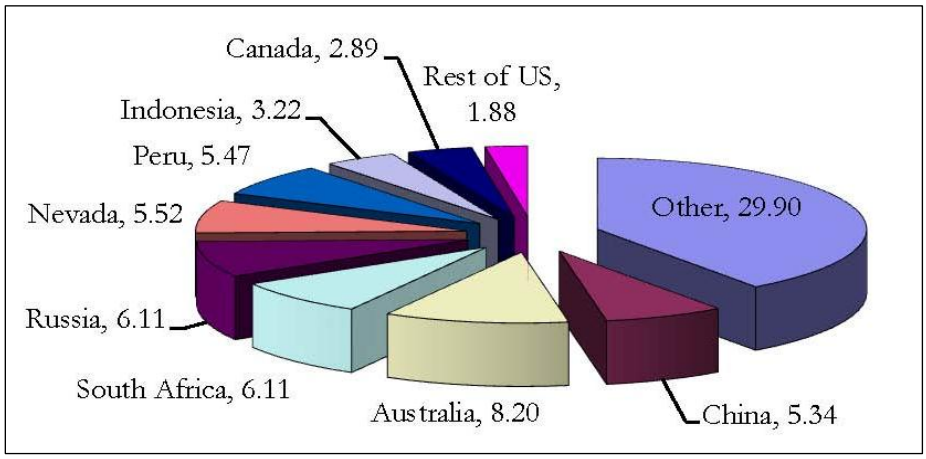
The Mine Closure Branch regulates mines in closure, ensuring chemical stabilization of all components. Finally, the Mining Reclamation Branch ensures that land disturbed by mining and exploration activities is returned to a productive post-mining land use. Statutory authority for these programs is found in NRS 445A.300 through 445A.730 ("Nevada Water Pollution Control Law") and Chapter 519 ("Mining Reclamation") of NRS.

Steamboat Geothermal Power Plant, Washoe County, Nevada

Mine Reclamation

Mine reclamation is an important environmental issue, especially in rural Nevada. In 1991, the State Reclamation Bond Pool was created to ensure that sufficient resources exist in the event a mining company goes bankrupt and cannot pay to reclaim the land. In Nevada, mine operators are required to obtain a reclamation permit and to file a surety with the NDEP or federal land manager. The Bond Pool is administered by the Division of Minerals; however, the NDEP is responsible for reviewing the mine operator's estimate of the cost for reclamation to determine if the estimate is reasonably sufficient to conduct all required reclamation.

World Gold Production, 2010 (Millions of Ounces)



Source: U.S. Geological Survey

Toxics Release Inventory

Another important environmental issue relative to mining is the Toxics Release Inventory (TRI). The TRI is part of the Federal Emergency Planning and Community Right-to-Know Act of 1986. The Act is intended to inform communities and residents of potential chemical hazards in their area by requiring certain businesses to report the locations and quantities of designated chemicals stored on site.

The TRI Program has expanded significantly since its inception. It now includes 593 individual chemicals combined with chemical categories for a list of 682 listed chemicals, and covers many industries beyond manufacturing, such as the mining industry. The TRI requires mining companies to report releases of large quantities of naturally occurring substances within the rock. These releases are often the result of simply moving and handling the rock as part of the regular mining process. After the process is complete, these reportable substances remain on site. Nevertheless, because they are moved and handled, they must be reported as having been "released" into the environment. As a result, for four years immediately following the new reporting requirements, Nevada and its mining industry led the nation in the release of toxic substances. For four consecutive years, beginning in 2002, Alaska had been the leader for toxic releases and Nevada ranked second. A federal court ruled in 2002 that trace amounts of potentially harmful substances need not be reported if they are less than 1 percent of the weight of the pile of rock material.

According to the data reported on the website of the EPA, 99 percent of the reported toxics released in Nevada were categorized as "on-site" versus "off-site." On-site disposal or other releases are defined by the EPA to include emissions to the air, discharges to bodies of water, disposal at the facility to land, and disposal in underground injection wells. An off-site disposal or other release is generally defined by the EPA as a discharge of a toxic chemical to the environment that occurs as a result of a facility's transferring a waste containing a TRI chemical off-site for disposal or other release.

LAKE TAHOE

The natural beauty and outstanding water quality at Lake Tahoe have resulted in ongoing efforts to preserve and enhance the natural environment within the Lake Tahoe Basin. More than a hundred years ago, conservationists voiced concern about the impacts of logging, tourism, and other development on the Lake's environment. While their efforts to designate the Basin as a national forest or national park failed, they continued lobbying for environmental protection. Although Lake Tahoe's water clarity has set it apart as a national treasure, the Lake's clarity has been declining by as a much as a foot per year in recent decades. To address this situation, the states of Nevada and California began discussions about how best to protect the Lake.

The debate climaxed in the 1960s after two decades of rapid growth. The Governors and lawmakers of Nevada and California approved the Tahoe Regional Planning Compact that created a regional planning agency to oversee development at Lake Tahoe. In 1969, the U.S. Congress ratified the agreement and created the TRPA. With ratification of the Compact, the TRPA was the first bistate regional environmental planning agency in the country.

The early years of the Agency were beset with controversy as procedures and regulations were established and imposed, and people adjusted to this new level of regulation and bureaucracy. Specifically, the basic structure of the TRPA's Governing Board, as well as a voting system through which a project could be "deemed approved" unless a majority of the Board's representatives in each state voted to deny the project, proved unworkable in achieving the objectives of the Compact. Other controversies centered on provisions for the location and control of gaming, inadequate requirements for establishing planning standards, and criteria for environmental evaluations.

During the 1970s, the Governors and lawmakers of both states again debated about how to amend the bistate Compact to addresses these controversies. Finally in 1980, the Compact was revised to give the TRPA authority to adopt environmental quality standards (called thresholds), and to enforce ordinances designed to achieve those thresholds.

National attention was again turned to Lake Tahoe in 1997, with the Lake Tahoe Presidential Forum. President Bill Clinton issued an Executive Order designed to ensure increased coordination and cooperative efforts in planning and implementing environmental measures in the Basin. Among the efforts is the Environmental Improvement Program (EIP), an integrated plan for identifying the projects, continuing programs, and studies necessary to achieve environmental goals at Lake Tahoe. The total funding for projects identified in the EIP is $908 million, while the allocation for projects funded by the State of Nevada on the Nevada side of the Basin is $82 million.

Following the Presidential Forum, Nevada Governor Bob Miller signed a Memorandum of Understanding pledging the State's support for carrying out its full $82 million share of the EIP. At the time, the State of Nevada already had a portion of this amount allocated for EIP projects. The remainder was approved in the 1999 Legislative Session, with authorization of the sale of $53.2 million in bonds staggered throughout the life of the EIP. General obligation bonds have been authorized each session since 1999 to fund the implementation of the EIP, and the final installment of these bonds was authorized in 2007. The 2009 Legislature authorized the issuance of not more than $100 million in general obligation bonds for the State of Nevada's apportioned share of the costs of the EIP for the next decade. The bonds are to be issued between July 1, 2009, and June 30, 2020.

In every regular session since 1985, with one exception, the Nevada Legislature has authorized an interim committee to oversee the activities associated with the TRPA and the bistate Compact. In 2003, the Nevada Legislature created the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System as a statutory committee (NRS 218E.555).

Nevada's Future Under the Tahoe Regional Planning Compact

The 2011 Legislature passed S.B. 271 (Chapter 530, *Statutes of Nevada*) in the final minutes of the Session, and it was signed by Governor Brian Sandoval. The bill provides for the withdrawal of the State of Nevada from the Compact, if the TRPA Governing Board does not adopt an updated Regional Plan and certain amendments to the Compact are not enacted by California and ratified by Congress by October 1, 2015. The Governor may issue a proclamation extending this withdrawal

deadline to October 1, 2017. The Nevada TRPA (NRS 278.792) assumes duties and powers of regulating environmental and land-use matters on the Nevada-side of the Lake Tahoe Basin, should the withdrawal occur.

Reauthorization of the Lake Tahoe Restoration Act

Seventy-five percent of the land in the Lake Tahoe Basin is owned by the Federal Government. Legislation was introduced in both houses of the U.S. Congress on November 3, 2009 (H.R. 4001 and S. 2724) to reauthorize the Lake Tahoe Restoration Act. The identical measures included a $415 million appropriation over eight years to enable the Chief of the U.S. Forest Service, the Director of the U.S. Fish and Wildlife Service, and the Administrator of the EPA, in cooperation with the TRPA and the States of California and Nevada, to fund, plan, and implement significant new environmental restoration and forest management activities in the Lake Tahoe Basin. Both bills died, and the four Senators representing California and Nevada subsequently co-sponsored S.B. 432, which was introduced on March 2, 2011. The legislation introduced in 2011 also includes a $415 million appropriation, but it is spread over ten years. This latest bill has yet to be approved.

The Tenth Anniversary of the 1997 Lake Tahoe Presidential Forum was celebrated in August 2007 with national and state dignitaries attending the environmental summit hosted by Sierra Nevada College in Incline Village, Nevada. Residents of the Lake Tahoe Basin, environmentalists, businesses, scientists, and numerous public agencies continue to collaborate on a new 20-year plan for Lake Tahoe's future. Key partner agencies in the effort to prepare an updated regional plan are: California's Lahontan Regional Water Quality Control Board, the NDEP, the TRPA, and the U.S. Forest Service Lake Tahoe Basin Management Unit.

Water quality continues to be an important issue at Lake Tahoe and the TRPA's environmental thresholds and ordinances are structured to focus on that concern. The impact of these thresholds and ordinances on private property (and the ability of private landowners to develop their parcels) has been a subject of ongoing controversy and debate in the Basin. During the Regional Plan update process, thresholds and ordinances are being reviewed and opportunities for public involvement are being provided.

In recent years concern has turned to the issue of forest health and the need to reduce forest fuels. It has been widely believed that a fire in the Lake Tahoe Basin would quickly spread, and the environment, private property, tourism, and overall economy of the region would be devastated by fire. The Angora Fire of 2007, which spread four miles in three hours and burned over 3,000 acres and 250 structures on private property, demonstrates the urgent need for forest fuel reduction and widespread education and implementation of defensible space. To this end, the 2009 Legislature enacted legislation to expand the duties of the State Forester Fire Warden to include cooperation with the State Fire Marshal in the enforcement of laws and the adoption of regulations relating to fire prevention through vegetation management within the Lake Tahoe and Lake Mead Basins. The State Fire Marshal is charged with assessing the codes and regulations adopted by other agencies impacting both basins to ensure consistency with fire-related codes, rules, and regulations.

WEBSITES AND ADDITIONAL REFERENCES

The following websites contain additional information and further detail on the programs and topics described in this report. In some cases, such as the EPA and NDEP sites, information is available for multiple subjects such as air quality, water quality, brownfields, mining regulation, and more.

- Clark County Department of Air Quality and Environmental Management: http://www.clarkcountynv.gov/depts/daqem/pages/default.aspx
- Nevada's Division of Environmental Protection: http://www.ndep.nv.gov/
- Nevada's Division of Minerals: http://minerals.state.nv.us/
- Tahoe Regional Planning Agency: http://www.trpa.org
- U.S. Environmental Protection Agency: http://www.epa.gov
- Washoe County Air Quality Management: http://www.washoecounty.us/health/aqm/home.html

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GLOSSARY OF COMMON ACRONYMS

As with any policy area, acronyms are common in environmental and natural resources subjects. Following is a list of the most common acronyms one might expect to encounter:

AML ..... Abandoned mine lands

BLM ..... Bureau of Land Management, U.S. Department of the Interior

BMP.....Best Management Practices

CAA .....Clean Air Act of 1990

CAFÉ.....Corporate Average Fuel Economy

CFR ..... *Code of Federal Regulations*

CWA..... Clean Water Act of 1977

DOI ..... U.S. Department of the Interior

EA..... Environmental Assessment

EIP .....Lake Tahoe's Environmental Improvement Program

EIS ..... Environmental Impact Statement

EPA .....U.S. Environmental Protection Agency

ESA ..... Endangered Species Act of 1973

NAAQS .....National Ambient Air Quality Standards

NEPA.....National Environmental Policy Act of 1969

TMDL .....Total Maximum Daily Load

TRI ..... Toxics Release Inventory

TRPA ..... Tahoe Regional Planning Agency

USDA.....U.S. Department of Agriculture

Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Public Lands and General Natural Resource Issues

Research Division January 2012

Many of the State agency responsibilities related to natural resources are housed in the State Department of Conservation and Natural Resources (SDCNR). Other State agencies with responsibilities for natural resources and related issues include the State Department of Agriculture (SDA), the Commission on Mineral Resources (through its Division of Minerals), and Nevada's Department of Wildlife (NDOW).

More than 85 percent of Nevada's land area is owned and administered by the federal government. In some rural counties, the federal government controls more than 90 percent of the land. As a result, federal laws, regulations, and policies play a very important role in the management of vast areas of the State's natural resources and significantly influence local public policy.

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AGRICULTURE

Although agriculture is an industry rather than a resource, it depends heavily on Nevada's natural resources and the availability of public land for grazing. Therefore, agricultural, natural resources, and public lands issues are closely related in this State, and measures pertaining to agriculture are generally considered by the Legislature's natural resources committees.

Overview of Agriculture in Nevada

Agriculture is one of Nevada's most important industries, contributing significantly to the economies of rural communities and the State as a whole. The SDA was established in 1915 by Chapter 561 ("State Department of Agriculture") of the *Nevada Revised Statutes* (NRS) to promote the efficient, orderly, and economic conduct of various activities for the advancement, encouragement, and protection of

Nevada's livestock and agricultural industries. Due to the breadth of agricultural subjects and issues in Nevada, Titles 49 ("Agriculture") and 50 ("Animals") of NRS cover the administrative responsibilities and programs of the SDA.

Nevada agriculture is directed primarily toward range livestock production; cattle and calves are the leading agricultural industry. With more than 85 percent of Nevada land owned by the federal government, most of Nevada's ranchers graze their livestock, at least in part, on public land. Most of the federal land in Nevada that is used for agriculture is overseen by the Bureau of Land Management (BLM), United States Department of the Interior, and by the U.S. Forest Service (USFS), U.S. Department of Agriculture (USDA). These entities determine how much livestock can be grazed on any one area at any time. Assessments are made periodically to ensure grazing is at an optimum level, taking into account other uses such as recreation, wildlife, and plant diversity.

Dairy cows, sheep, lambs, and hogs are among Nevada's other livestock enterprises. The larger cattle and sheep ranches are in the northern half of the State. While most of the dairies are in northern Nevada, the largest dairies are in the south.

Despite Nevada's arid climate, excellent crops are produced where land can be irrigated. Alfalfa hay is the leading cash crop of the State and much of the hay is sold to dairy operations in surrounding states. Significant quantities of alfalfa cubes and compressed bales are exported overseas each year. Additional crops produced in Nevada include potatoes, barley, winter and spring wheat, corn, oats, onions, garlic, and honey. Smaller acreages of mint, fruits, and vegetables are grown throughout the State.

Federal laws and regulations can significantly affect ranching in Nevada since livestock production depends heavily on the use of grazing permits on federal land. In 1994, for example, the U.S. Department of the Interior began to revise existing grazing regulations that had been in effect for decades. This program was called "Rangeland Reform '94." The three major issues involved in Rangeland Reform '94 were grazing preference, ownership of range improvements, and mandatory qualifications for permit applicants. The regulations were seen by many as a means to restrict grazing on public lands.

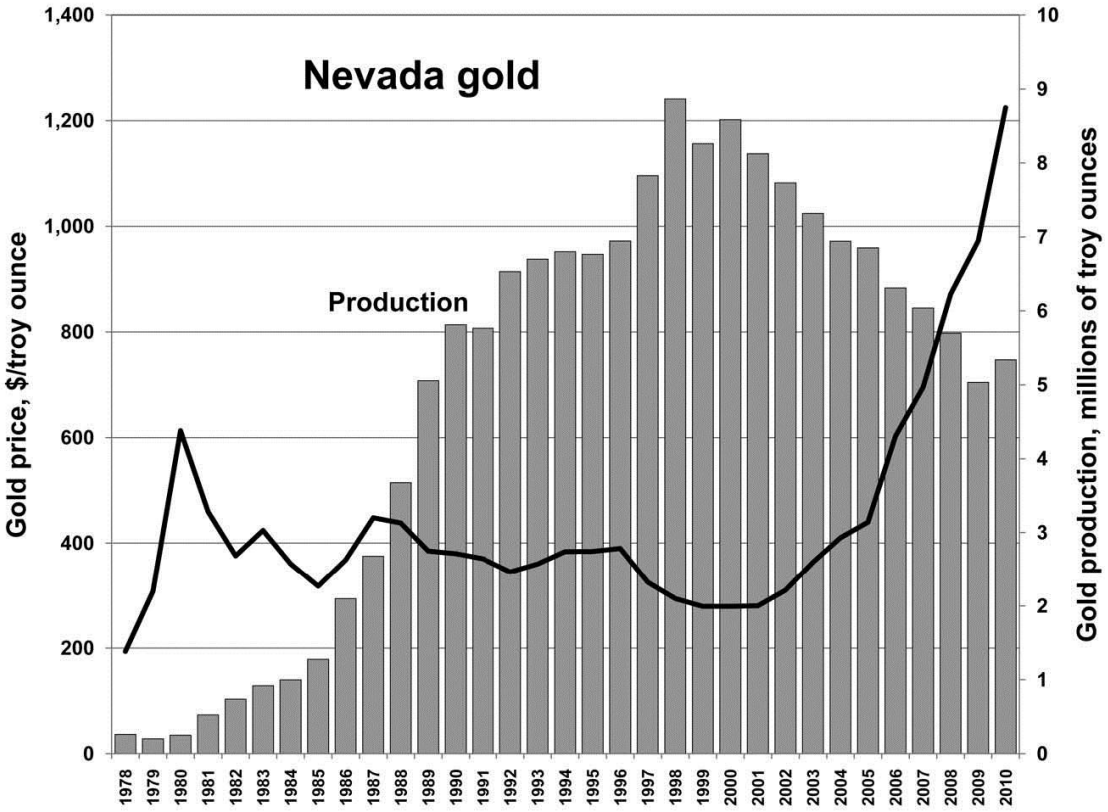
In 2003, the BLM proposed changes to its grazing rules in an attempt to resolve several controversial components of the Rangeland Reform '94 regulations. However, a federal judge blocked the new rules in a 2007 decision that concluded the rules would loosen restrictions, limit public comment, and dilute BLM's authority to sanction violators.

Following implementation of Rangeland Reform '94, the Nevada Legislature created the Rangeland Resources Commission in 1999, in response to concerns about the decreasing viability of Nevada ranching. The Commission is funded by the livestock industry through an assessment on public land use with the goal of promoting the benefits of rangelands through information, education, and collaboration. Its stated mission is to inform the public that Nevada's rangelands are a vital economic resource, protected and preserved for all citizens by a stable, sustainable livestock industry.

State laws on grazing are found primarily in Chapter 568 ("Grazing and Ranging") of NRS and are complementary to federal law, including the Taylor Grazing Act of 1934. Chapter 568 of NRS creates State grazing boards and provides for the disbursement of the federal funds received by the State under the Taylor Grazing Act and related federal acts and executive orders. The federal grazing fee for 2011 is $1.35 per animal unit month for public lands administered by the BLM and $1.35 per head month for lands managed by the USFS.

MINERAL RESOURCES

In 2010, gold prices and production contributed to Nevada's mining industry setting an all-time record in the value of mineral output, which was $7.7 billion, not including oil and geothermal. According to the Nevada Bureau of Mines and Geology's Special Publication P-22, *Major Mines of Nevada 2010*, Nevada produced approximately 72 percent of U.S. gold and 7 percent of the world's gold production. The State was also the nation's leading producer of barite and lithium. Copper ranked second only to gold in terms of value in 2010.



Source: *Major Mines of Nevada 2010*; *Mineral Industries in Nevada's Economy*, Nevada Bureau of Mines and Geology, Special Publication P-22, 2010.

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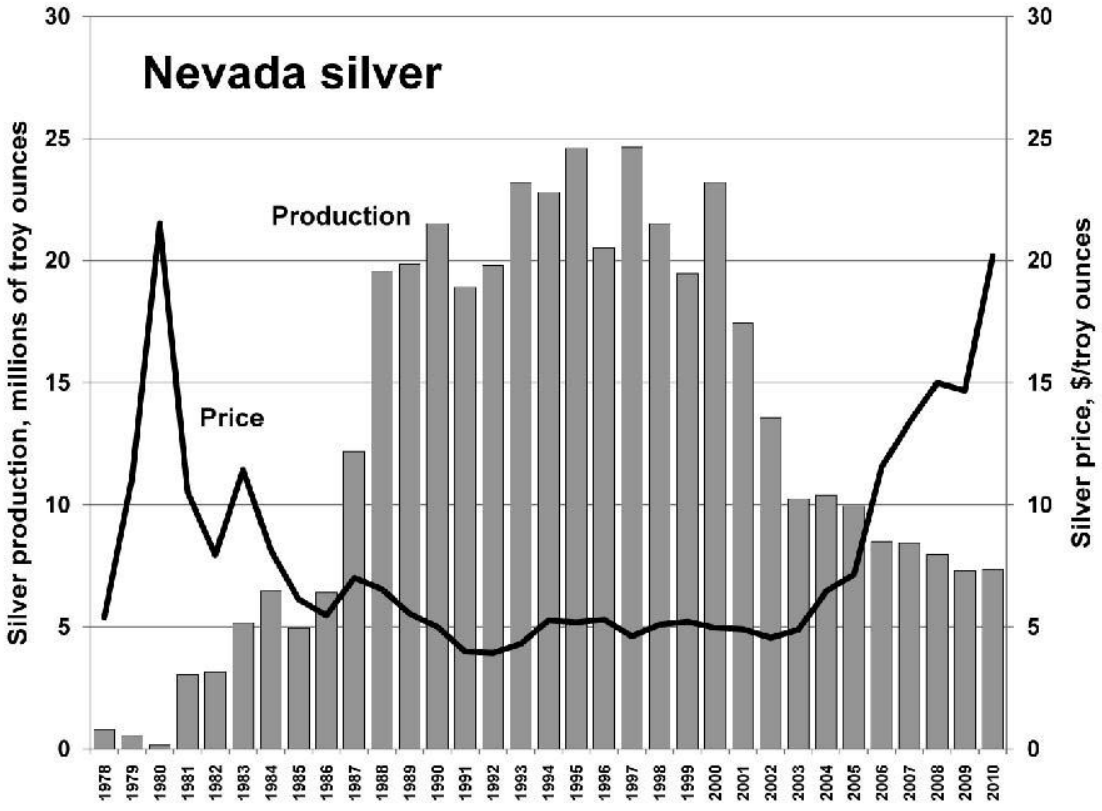


Source: *Major Mines of Nevada 2010*; *Mineral Industries in Nevada's Economy*, Nevada Bureau of Mines and Geology, Special Publication P-22, 2010.

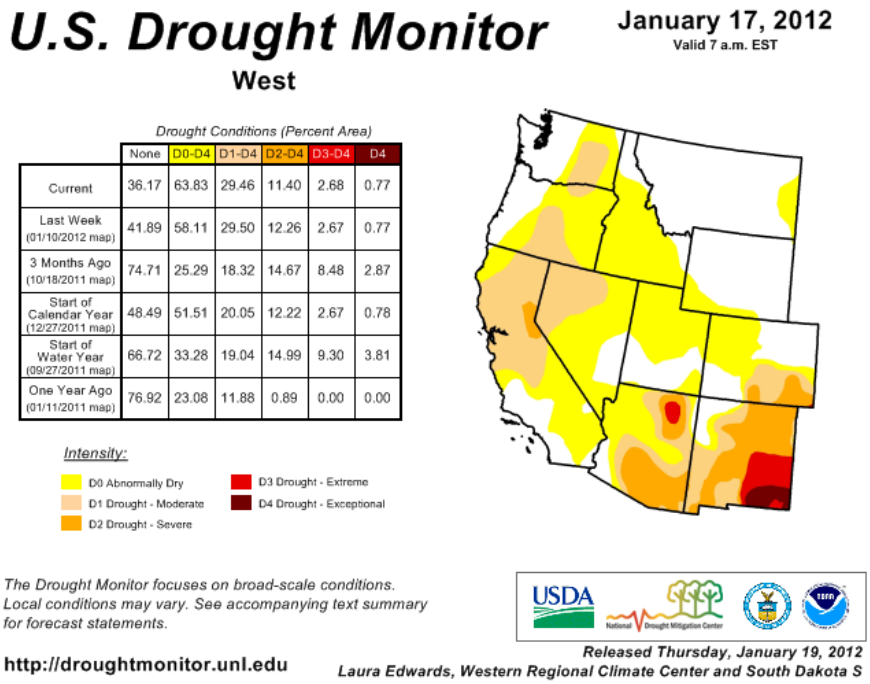
The General Mining Law of 1872 is one of the major federal statutes that direct the federal government's land management policy. The law grants free access to individuals and corporations to prospect for minerals on public domain lands, and allows them, upon making a discovery, to stake (or "locate") a claim on that deposit. A claim gives the holder the right to develop the minerals and may be "patented" to convey full title to the claimant. A continuing issue is whether this law should be reformed, and, if so, how to balance mineral development with competing land uses.

In 2011, bills were again introduced in both the U.S. Senate (S. 26) and the U.S. House of Representatives (H.R. 3446) to revise provisions in the 140-year-old mining law. Similar legislation has been introduced in previous sessions of the U.S. Congress but not enacted. While there appears to be consensus that the 140-year-old law should be revised, Nevada's federal delegates, including U.S. Senate Majority Leader Harry Reid, have opposed provisions in the different bills. Debate continues on mining reform, particularly on the amount for royalties included in the bills. For more information from an environmental standpoint, see the January 2012 *Policy and Program Report* on General Environmental Issues and Matters Concerning Lake Tahoe.

MISCELLANEOUS NATURAL RESOURCES TOPICS

Drought

Several western states, including Nevada, have experienced drought conditions for many years. Drought conditions create severe economic and environmental conditions in Nevada. During an average year, much of the State regularly receives less than 10 inches of rain, with some areas receiving even less. Nevada's already dry and arid conditions are exacerbated by drought, leaving the land parched and subject to catastrophic fires and much-needed water bodies dry. The impacts to agriculture and wildlife can be disastrous.



	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	36.17	63.83	29.46	11.40	2.68	0.77
Last Week (01/10/2012 map)	41.89	58.11	29.50	12.26	2.67	0.77
3 Months Ago (10/18/2011 map)	74.71	25.29	18.32	14.67	8.48	2.87
Start of Calendar Year (12/27/2011 map)	48.49	51.51	20.05	12.22	2.67	0.78
Start of Water Year (09/27/2011 map)	66.72	33.28	19.04	14.99	9.30	3.81
One Year Ago (01/11/2011 map)	76.92	23.08	11.88	0.89	0.00	0.00

During severe drought conditions, the USDA may identify specific counties as eligible for emergency assistance due to losses caused by drought, heat, and wildfires. Among the assistance available are low-interest loans from the USDA Farm Service Agency to qualified family-sized farm operators to help cover actual losses as a result of crop and livestock conditions.

In southern Nevada alone, the drought has spurred the Southern Nevada Water Authority (SNWA) to continue its efforts to import water from rural areas. Programs by the SNWA to replace water-hungry turf with drought-tolerant plants have met with significant success. For more information on water resources, see the January 2012 *Policy and Program Report* on Water Resources.

Noxious Weeds and Invasive Plants

Invasive plant species increasingly affect Nevada's lands in both urban and rural areas. Nonnative plants across the State's rangelands are often flammable and increase fire intensity and frequency. They typically out-compete native plant species, thereby decreasing natural biodiversity and wildlife habitat. Thorny, spiny plants make areas inaccessible for recreation, and the spread of invasive plants, coupled with the need to control these weeds in crops, drives up the price of food. Some species are so detrimental to the State's economy and environment that they are designated as "noxious weeds" through formal legislative action. Chapter 555 ("Control of Insects, Pests and Noxious Weeds") of NRS deals specifically with noxious weeds. According to the USDA, noxious weeds are defined as "species of plants that cause disease or are injurious to crops, livestock or land, and thus are detrimental to agriculture, commerce or public health."

One of the most prominent and insidious invasive plants in Nevada is cheatgrass. Originating in Europe, cheatgrass is an exotic, fine-stemmed annual grass that is highly flammable. In fact, cheatgrass rangelands are 500 times more likely to burn than rangelands of native vegetation. Cheatgrass easily reestablishes after a fire and becomes a "monoculture" (or a solid stand of a single plant species) on the burned land. Competitive monocultures of cheatgrass now exist on approximately 10 million acres in Nevada. Before the invasion of cheatgrass, significant fires burned once every 40 to 100 years, and native shrubs had a chance to become well established. Today, however, regular fires occur every ten years or less, thereby ensuring that cheatgrass remains the dominant species.

Beyond their contribution to wildland fire, invasive species have the potential to severely displace native and diverse plant communities with unproductive single plant communities that severely impact the environment. They jeopardize the ecological diversity of the region, with significant impacts to native habitat, wildlife, agriculture, and recreation. Nevada's Noxious Weed Program, undertaken by the SDA, is an action plan to: (1) address weed management; (2) prevent new infestations; (3) educate and create awareness; (4) foster coordination, cooperation, and partnerships; and (5) promote research. The Nevada Weed Action Committee (a committee of the SDA) and others have identified funding as the primary need in the fight against noxious weeds in Nevada.

Wildland Fires

Hundreds of wildfires occur during each fire season in Nevada, burning about 1 million acres annually. Years of unusually dry conditions and the spread of invasive plants like cheatgrass have left the State vulnerable to dangerous fire seasons. During drought years, the acreage burned by wildfires increases significantly. Dry fuels contribute to more erratic burning conditions and increased fire intensity, and fire fighting agencies may not have enough money and resources to suppress fires.

Several agencies share responsibility for fire prevention and suppression in Nevada. At the State level, the Division of Forestry, SDCNR, provides fire protection through fire suppression and prevention programs and other emergency services. Chapters 472 through 477 of the NRS pertain to protection from fire and explosives. Chapters 527 ("Protection and Preservation of Timbered Lands, Trees and Flora") and 528 ("Forest Practice and Reforestation") of the NRS address forestry, forestry products, and flora. At the federal level, the BLM and USFS participate extensively in fire-related efforts throughout Nevada. Local fire protection districts and volunteer fire departments are also located across the State. The cooperation of these entities at all levels is significant and contributes greatly to successful fire prevention and suppression efforts.

Nevada's Wildfire Support Group includes a network of trained and certified fire teams that help to reduce fire risk by controlling fuel loads; rehabilitating and restoring burned areas; and working with federal, state, and local governments to implement a successful fire suppression strategy. Finally, the Nevada Fire Safe Council serves as a bridge between fire services, public agencies, and communities threatened by wildfire and strives to build a network of local community support. The Council provides assistance to threatened communities by improving residents' understanding of fire threats, encouraging personal responsibility for community protection, helping individuals and communities identify fire risks, developing fire mitigation projects, and procuring funding assistance to implement mitigation measures.

PUBLIC LANDS

The Division of State Lands, SDCNR, conducts land ownership surveys for each Nevada county. The Division's 2005 survey found about 85.9 percent of the land within Nevada was federally owned with an additional 1.6 percent in tribal lands. More than 85 percent of the land in Nevada is owned by the federal government, including tribal lands, which amounts to approximately 60 million acres. In 16 of Nevada's 17 counties, more than 50 percent of the land is in federal or tribal control; in five counties, more than 90 percent of the land is in federal or tribal control.

FEDERAL LAND OWNERSHIP IN NEVADA BY COUNTY

County	Total Federal Acres	Total Acres in County	Percent Federal
Carson City	51,736	97,920	52.8
Churchill	2,584,808	3,144,320	82.2
Clark	4,484,766	5,173,760	86.7
Douglas	247,055	480,640	51.4
Elko	8,158,162	10,995,840	74.2

FEDERAL LAND OWNERSHIP IN NEVADA BY COUNTY (*continued*)			
County	Total Federal Acres	Total Acres in County	Percent Federal
Esmeralda	2,239,867	2,284,800	98.0
Eureka	2,112,431	2,676,480	78.9
Humboldt	5,057,119	6,210,560	81.4
Lander	2,993,252	3,597,440	83.2
Lincoln	6,671,694	6,816,000	97.9
Lyon	901,771	1,295,360	69.6
Mineral	2,320,153	2,455,680	94.5
Nye	11,345,228	11,560,960	98.1
Pershing	2,916,364	3,859,840	75.6
Storey	15,336	167,780	9.1
Washoe	3,320,483	4,229,120	78.5
White Pine	5,439,707	5,699,200	95.4
NEVADA	60,859,932	70,745,600	86.0
Source: Division of State Lands, SDCNR, "Nevada Federal Land Statistics 2005."			

Because federally managed land is exempt from property taxes, the estimated annual impact of this property tax exemption on western lands has been estimated at billions of dollars, placing some fiscal burdens on local governments. In a state like Nevada, some have argued the quantity of federal land ownership hinders the ability to develop and prosper economically.

Public Land Acts

Payment in Lieu of Taxes Act of 1976

The Payment in Lieu of Taxes (PILT) Act of 1976 requires the federal government to make annual payments to local governments as compensation for the loss of revenue they experience due to the presence of federally owned land within their jurisdictions. The PILT payments began in 1977 and have distributed nearly $5.5 billion to local governments nationwide.

The formula used to determine the payments is based on population and the amount of federal land within an affected county or census area. The states whose local governments received the most in PILT payments in 2011 are (listed in order of the amount received): California, Utah, New Mexico, Arizona, Colorado, Wyoming, Idaho, Alaska, Montana, and Nevada. Nevada typically ranks tenth in the amount of PILT funding received, although more federally owned land exists within its borders than any other of the 48 contiguous states. The irony of the PILT formula is that counties with the most federal land typically have the smallest populations but, because the formula is, in part, population-dependent, counties with the highest percentage of federal land do not receive the greatest payments.

After years of inadequate PILT funding and a decrease in 2007 of payments under PILT, Congress increased PILT by over 50 percent in the Economic Stabilization Act of 2008. As a result, Nevada received approximately $22.6 million in 2008, $23.2 million in 2009, $22.7 million in 2010, and $22.9 million in 2011.

Federal Land Policy Management Act

In 1964, Congress created the Public Land Law Review Commission to review all current federal land management laws and enacted the Classification and Multiple Use Act. The Commission was created to study federal lands, their management, history, and current laws and to make recommendations for reforms and modernization. These recommendations led to the enactment of the Federal Land Policy and Management Act (FLPMA) of 1976.

In the FLPMA, Congress expressly stated a policy of retaining the remaining federal lands in federal ownership; repealed many executive withdrawal authorities and imposed controls on future executive withdrawals; provided for review of existing withdrawals; required land use planning; and directed the use of the "multiple-use" concept whereby the uses to be allowed on particular lands would be determined directly through the land use planning process.

Southern Nevada Public Land Management Act

The Southern Nevada Public Land Management Act (SNPLMA) of 1998 allows the BLM to sell public land within a specific boundary around Las Vegas. The revenue derived from land sales is shared between the State's General Education Fund (5 percent), the SNWA (10 percent), and a special account available to the Secretary of the Interior for: (1) acquiring environmentally sensitive land in Nevada; (2) capital improvements at various areas administered by the BLM in Clark County, Nevada, and the Spring Mountains National Recreation Area; (3) developing a multispecies habitat conservation plan in Clark County; (4) parks, trails, and natural areas development in Clark County; and (5) various conservation initiatives on federal land administered by the U.S. Department of the Interior or the USDA.

Other provisions in the SNPLMA set forth certain land sale and acquisition procedures, direct the BLM to convey title to land in the McCarran Airport noise zone to Clark County, and provide for the sale of land for affordable housing. Recent amendments to the SNPLMA have expanded the expenditure categories in the special account pertaining to fire suppression, Nevada State Parks, affordable housing, and parks and trails access.

Federal Land Transaction Facilitation Act

The Federal Land Transaction Facilitation Act (FLTFA) of 2000 provides for the use of revenues from the sale or exchange of public lands identified for disposal under land use plans in effect at the time the Act was passed. The revenue derived from land sales is shared between the State of Nevada (4 percent) for educational purposes or for the construction of public roads, and a special account available to the Secretary of the Interior and Secretary of Agriculture for certain land acquisitions and administrative expenses necessary to carry out the land disposal program under the FLTFA. In Nevada, the FLTFA does not apply to lands eligible for sale under the SNPLMA, Santini-Burton Act, Mesquite Lands Act, or Lincoln County Conservation, Recreation, and Development Act

(LCCRDA). The FLTFA also does not apply to lands identified for disposal after July 25, 2000, such as through a land use plan amendment approved after that date.

The Act was originally authorized for a ten-year period, but it was later extended for another year through July 25, 2011. As of January 2012, the FLTFA has not been reauthorized despite reauthorization bills being introduced in both houses of the U.S. Congress in 2011 (S. 714 and H.R. 3365).

LCCRDA

The LCCRDA of 2004 (Public Law 108-424) authorizes the sale of federal land in Lincoln County, Nevada. The LCCRDA further designates 770,000 acres of federal land in Nevada as wilderness. The Act also designates a specified corridor for utilities in Clark and Lincoln Counties and grants rights-of-way to the SNWA and Lincoln County Water District for roads, wells, pipelines, and other facilities necessary for the construction and operation of a water conveyance system.

Other provisions designate a trail system in Lincoln County ("Silver State Off-Highway Vehicle [OHV] Trail") and authorize the Secretary of the Interior to convey specified land to Lincoln County and the State of Nevada to be used for natural resources conservation or public parks, and transfer administrative jurisdiction of specified lands between the U.S. Fish and Wildlife Service (USFWS) and the BLM.

White Pine County Conservation, Recreation, and Development Act of 2006

The White Pine County Conservation, Recreation, and Development Act of 2006 (WPCCRDA) (Public Law 109-432) authorizes the sale of up to 45,000 acres of federal land in White Pine County. The WPCCRDA sets up a special account similar to other federal lands acts, with 5 percent of land sales proceeds earmarked for the State education fund; and 10 percent to White Pine County for law enforcement, fire protection, transportation, and natural resource planning. The remaining 85 percent goes to the U.S. Department of the Interior to protect wilderness areas in White Pine County, study a potential extension of the Silver State OHV Trail, promote resource protection, and carry out a countywide recreation study.

The Act designates approximately 538,000 acres of wilderness in 12 new wilderness areas and expands the Mount Moriah and Currant Mountain Wilderness Areas. The bill also simplifies the land management structure around the Great Basin National Park by transferring jurisdiction of land from the USFS to the BLM. It also transfers land from the BLM to the USFWS for inclusion in the Ruby Lake National Wildlife Refuge and simplifies management of the Bald Mountain Wilderness by transferring land from the BLM to the USFS.

The WPCCRDA conveys federally managed land for two existing State parks and one State wildlife management area to expand and improve the management of these areas, along with conveyances of parcels for the expansion of the Ely airport and industrial park. In addition, the Act transfers four parcels of land totaling 3,526 acres to the Ely Shoshone Tribe for traditional, ceremonial, commercial, and residential purposes.

The Act directs the Secretary of the Interior to complete a study of routes for the Silver State OHV Trail. Following the study, the Secretary must designate the trail if it is consistent with certain principles in the Act. Finally, the WPCCRDA provides for the implementation and enhancement of the Eastern Nevada Landscape Restoration Project.

Red Rock Canyon Conservation Area and Adjacent Land Act

Located just 20 miles from Las Vegas, the Red Rock Canyon National Conservation Area boasts great scenic and geologic beauty and is a major tourist destination for over 1.2 million people annually. The BLM is charged with the Area's stewardship and protection. In 1993, the Nevada Legislature approved legislation requiring any county or city whose territory includes all or part of the Red Rock Canyon National Conservation Area (see Title 16 of the *United States Code*) to prohibit any use other than recreation, the excavation or extraction of any substance, and the erection of any structure, in that area. The county or city may permit such activities within the boundaries of a mining claim only to the extent permitted by federal law. Nevada's Division of Environmental Protection (NDEP), SDCNR, must issue a permit for any of these activities and must not approve any activity that is "detrimental to the environment outside the Red Rock Canyon National Conservation Area or would preclude the designation of the national conservation area as wilderness."

In 2003, the Legislature expanded protections of the Red Rock area. Nevada law specifies that the various planning and zoning powers in the NRS are subordinate to the limits on development in the Red Rock Canyon area. In addition, the 1993 Act was renamed the "Red Rock Canyon Conservation Area and Adjacent Lands Act." The Act was amended to add new sections defining adjacent tracts of land in the Red Rock Canyon. Finally, the Legislature declared that development shall be limited in areas of land adjacent to Red Rock Canyon and further that a local government is prohibited from increasing the number of residential dwelling units allowed by zoning regulations (except in certain circumstances) and from establishing any new, or expanding any existing, nonresidential zoning districts (other than public facilities). The local government shall, at its discretion, continue to regulate buffering, landscaping, lighting, screening, and signage.

OFF-HIGHWAY VEHICLES

In recent years, the number of OHVs operated on public lands in Nevada has increased dramatically. It is estimated that Nevadans own between 200,000 to 400,000 OHVs (including dirt bikes and snowmobiles). The increased popularity of OHVs as a form of recreation poses significant land management challenges, since careless and unauthorized uses can cause erosion, impact wildlife, and interfere with other uses of public lands.

The BLM is tasked with protecting public land resources and managing BLM lands for multiple uses. Under the BLM process, there are three designations for OHV use: (1) open; (2) limited; or (3) closed. Travel management planning for the BLM may take place as part of the standard Resource Management Plan update process or as a separate travel management planning process. The National Park Service, another agency in the U.S. Department of the Interior but with a different mandate, determines OHV restrictions based on the specific characteristics of each park and its enabling legislation.

In 2005, the USFS published its final travel management rule, followed by the final travel management directives in 2008. According to the USFS, its goal is to secure a wide range of recreational opportunities while ensuring the best possible care of the land. The rule requires each national forest or ranger district to designate those roads, trails, and areas open to motor vehicles and to include the "class" of vehicle and, if appropriate, the time of year for motor vehicle use.

The Legislature grappled with the issue of OHV titling and registration for several sessions and a task force of interested parties worked on proposed legislation. Efforts to implement a registration and titling program were finally realized in the passage of S.B. 394 (Chapter 504, *Statutes of Nevada*) in the 2009 Session. The bill required licensing of OHV dealers and titling of all new OHVs and OHVs resold through an authorized dealer. Titling fees will cover administrative costs to the Department of Motor Vehicles (DMV). Annual registration is mandatory for all OHVs and stickers with unique identification numbers will be issued. Initial registration will require certain evidence of ownership and payment of applicable sales tax and can be done by an authorized dealer. The bill limited the registration fee to between $20 and $30 and the majority of the registration fee will be deposited into the Fund for Off-Highway Vehicles created by the legislation. Exceptions include OHVs operated by government agencies, for husbandry purposes, utilities, or those which were manufactured prior to 1976.

The bill created the Commission on Off-Highway Vehicles whose members are appointed by the Governor to administer the Fund for Off-Highway Vehicles. The Commission includes 11 appointees representing dealers, enforcement personnel, local governments, ranchers, resource specialists, sportsmen, and users. An advisory committee with membership representing federal and State agencies will also be formed.

During the first year of implementation, 85 percent of the registration fees went to the DMV and 15 percent to the Fund for Off-Highway Vehicles to be used for public education. After the first year, 85 percent of the registration fees will go to the Fund for Off-Highway Vehicles to be split between OHV projects (60 percent), enforcement (20 percent), education (15 percent), and administrative costs (5 percent).

In order to provide funds for start up costs, the bill required $500,000, from non-State sources, to be deposited in an account for the benefit of the DMV. In December 2009, Clark County agreed to contribute $500,000 from the Clark County Multiple Species Habitat Plan in exchange for receiving mitigation credits from the USFWS. Improved enforcement and regulation of OHVs, along with grants from the OHV Fund, are expected to improve habitat for the desert tortoise and other threatened or protected species.

The final administrative transfer of the money to DMV occurred in January 2011, at which time it was necessary for the Legislature to extend the deadline for implementation of the registration and titling program to allow DMV time to make the necessary software changes. Senate Bill 130 (Chapter 68, *Statutes of Nevada*) in the 2011 Session set a new deadline of July 1, 2012, or 30 days after the DMV notifies the public it is ready to begin the program, whichever occurs first.

WILDLIFE AND WILD HORSES

Historically, Nevada has been home to 892 species of mammals, reptiles, fish, birds, and amphibians. Of that number, 790 species are native, 64 are only found in Nevada, 102 have been brought into the State, and 32 are now extinct.

Wildlife Generally

According to data presented by the NDOW at the Department's budget overview before the Joint Meeting of the Assembly Committee on Ways and Means and the Senate Committee on Finance on February 9, 2011, the total estimated value of wildlife and boating to Nevada's economy is $1,942,442,151 each year. Management of Nevada's wildlife is the responsibility of the NDOW, which oversees 12 wildlife management areas totaling approximately 117,000 acres of habitat. Additionally, the NDOW administers four fish hatcheries that raise more than 430,000 pounds of trout a year at a production cost of about $2.85 per pound. These fish are then stocked into lakes, ponds, reservoirs, and streams. Other warm water species are also stocked. Nevada's wildlife laws are primarily found in Chapters 501 ("Administration and Enforcement"), 502 ("Licenses, Tags and Permits"), and 503 ("Hunting, Fishing and Trapping; Miscellaneous Protective Measures") of NRS.

Nevada's Board of Wildlife Commissioners, a nine-member, Governor-appointed board, is responsible for establishing broad policy, setting annual and permanent regulations, reviewing budgets, and receiving input on wildlife and boating matters from entities such as the 17 county wildlife management advisory boards. The 2011 Legislature gave the Governor greater discretion in appointing the Director of the NDOW by removing a requirement that the Governor choose from nominees provided by the Board of Wildlife Commissioners.

Another agency with wildlife-related responsibilities is the Nevada Natural Heritage Program, an agency within the SDCNR. The Program provides information to developers and other interested parties so they can become aware of the possible biological effects of a project during the planning stages, before financial commitments are made. Inadvertent environmental impacts, as well as unexpected delays and expenses, can thereby be reduced. The Program does this by maintaining an inventory and current databases on the locations, biology, and conservation status of all threatened, endangered, and sensitive species and biological communities in the State.

Protection of threatened and endangered species falls under the Endangered Species Act of 1973, a federal law administered by the USFWS. The purpose of the Act is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. Under the law, species may be listed as either "endangered" or "threatened." Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future.

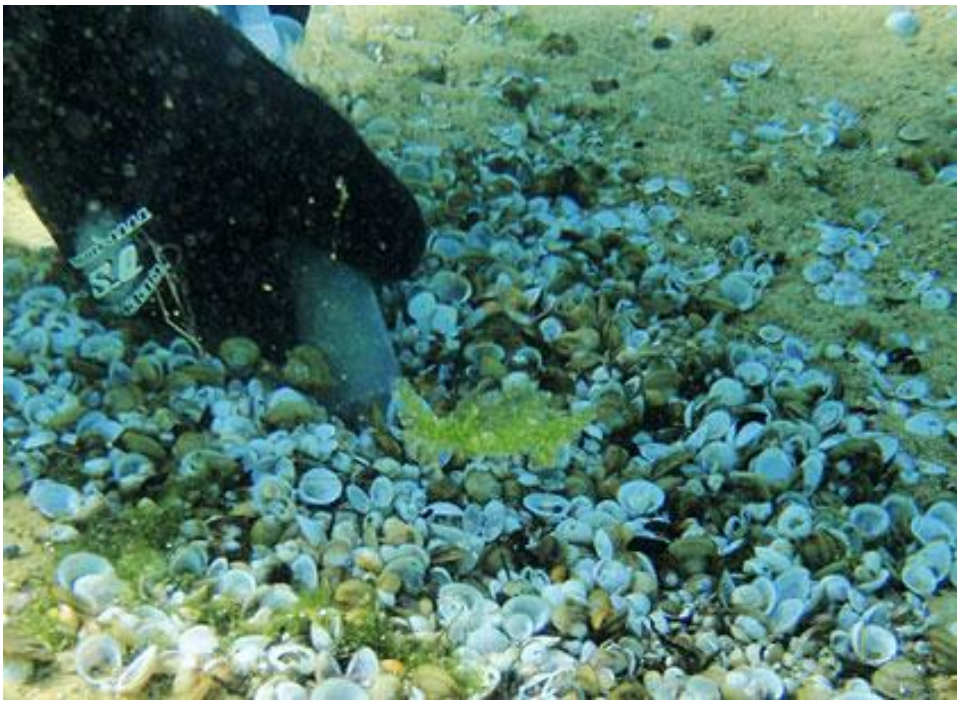
Wildlife Action Plan

The U.S. Congress enacted two new programs in 2000: the Wildlife Conservation and Restoration Program and the State Wildlife Grants Program. As a condition of receiving federal funds from these programs, Congress required state wildlife agencies to submit a strategic assessment and action plan

for wildlife to the USFWS for review by October 1, 2005. Nevada's Wildlife Action Plan was completed through a partnership between the NDOW, Nevada Natural Heritage Program, Lahontan Audubon Society, and the Nature Conservancy. The Plan focuses on the species and habitats deemed to be in greatest need of conservation in Nevada.

Invasive Species

Former U.S. President William J. Clinton issued Executive Order No. 13112 on February 3, 1999, which defined invasive species as an "alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health." An alien species is a species that is nonnative to the ecosystem under consideration. Some invasive species that pose problems in Nevada currently are Africanized honey bees, Asian clams, Norway rats, and Quagga mussels. First discovered in 2002, Asian clams have already invaded the south part of Lake Tahoe. Efforts to stop the spread of the clams are underway, but they are very cost-prohibitive.



Abundance of Asian clams at Lake Tahoe.
Source: http://news.discovery.com/animals/asian-clams-invade-lake-tahoe.html.
Photo credit: University of California, Davis.

Quagga mussels, which are similar to Zebra mussels, were found in Lake Mead in January 2007 and later in the Lake Mead Fish Hatchery, raising concerns that mussels may have been inadvertently moved from the hatchery to interior waters during trout stocking operations in 2006. Quagga mussels are prolific breeders that clog pipelines and threaten native species of fish by competing for their food. They are difficult to control and nearly impossible to eradicate. It is presumed they were introduced into Lake Mead and Lake Havasu by an infested private boat from the Great Lakes. With the discovery of Quagga mussels in California only a few hundred miles from Lake Tahoe, the Tahoe Regional Planning Agency implemented boat inspections in an effort to keep Quagga mussels from invading Lake Tahoe.

The 2011 Legislature strengthened laws prohibiting the intentional introduction of invasive species into any waters of the State and established a new aquatic invasive species fee, to be paid yearly by boaters.

Greater Sage-Grouse

The Greater Sage-Grouse is a small game bird found throughout the western U.S., including 15 of Nevada's 17 counties. The USFWS estimates that there are between 100,000 and 500,000 individuals in the region and that the population is on the decline. Concerns about the quality and quantity of their populations and habitat and the submission of three petitions resulted in the USFWS initiating a formal species status review in April 2004.

The listing of the Greater Sage-Grouse as a threatened or endangered species would affect land and water uses, and recreational activities. As a result, then Nevada Governor Kenny C. Guinn appointed a Sage-Grouse task force in August 2000, representing biological professionals, conservation organizations, industry, land management agencies, legislators, and Native American tribal governments. The task force was charged with creating a strategy for Local Area Conservation Planning groups to follow when creating Sage-Grouse conservation plans for their respective areas. The intent was to proactively address the issues and avoid a listing under the Endangered Species Act. The conservation plan defines programs to address localized problems before the species reaches a threshold of vulnerability from which recovery might be difficult. After four years of work, the *Greater Sage-Grouse Conservation Plan for Nevada and Eastern California* was released in June 2004.

The USFWS completed its status review of the Greater Sage-Grouse in December 2004, and determined that the species does not warrant protection under the Endangered Species Act at this time. However, in December 2007, a federal judge ordered the USFWS to reconsider its refusal to add the Sage-Grouse to the endangered species list, saying the agency decision ignored expert advice. The USFWS completed its re-review and submitted its findings to the court in March 2010 that listing is warranted but precluded by listings of other species with a greater need for protection. There are two different populations identified in Nevada. The Greater Sage-Grouse have been given a priority ranking of 8 and are found in several western states besides Nevada, including California, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The USFWS has identified a second distinct population (the Bi-State population) which are found in or near the Mono Basin on the California-Nevada border and given that population a priority ranking of 3.

Environmental organizations filed another lawsuit in 2010 against the USFWS in federal district court in Idaho arguing that the species must be listed immediately. Meanwhile, the BLM continues to work with the affected states on preserving Greater Sage-Grouse habitat on public lands and on developing a national planning strategy. The USDA is currently implementing a grant program designed to preserve and restore habitat on private lands. In October of 2011, the USFWS completed its annual review of the species' status and made no changes in the priorities but noted that the Bi-State population may be considered for listing before the next annual review.

Wild Horse and Burro Management

Nevada's commemorative quarter-dollar coin.

Wild Horses and Burros

The federal Wild and Free-Roaming Horse and Burro Act of 1971 requires the BLM and USFS to protect, manage, and control wild free-roaming horses and burros on public lands at population levels that assure a "thriving natural ecological balance" under the multiple use concept. Ecological balance is defined as the balance between populations of wild horses, burros and wildlife, livestock, and rangeland vegetation on the long-term yield basis. Management focuses on monitoring, removal of excess wild horses and burros, and the adoption program.

Wild horses and burros are found throughout the West, but the Nevada populations are by far the largest. As of December 2011, the BLM estimated a total of 38,500 wild horses and burros roamed BLM land in ten western states, of which 19,057 (49.5 percent) inhabited Nevada. The BLM has identified 102 Herd Management Areas (HMAs) in Nevada which vary in size from 4,000 acres to more than 800,000 acres, with most exceeding 100,000 acres.

Because forage in HMAs must be shared with wildlife and livestock, public land managers are required to set appropriate management levels (AMLs) for wild horses and burros for each HMA. The AML may be influenced by many factors, most notably fire and drought. As of December 2011, the BLM has determined the AML for Nevada is 12,688 wild horses and burros. Therefore, Nevada exceeds the AML by nearly 6,400 animals, which is an increase of 25 percent over the 2009 number of wild horses and burros exceeding the AML.

Achieving and maintaining AMLs may require periodic removal of horses but rounding up wild horses (known as "gathers") is controversial and often results in litigation. The options for wild horses removed from the range are BLM's adoption program, transport to long-term holding facilities (pastures) in the midwest, or, in certain cases, sale. The BLM has placed more than 225,000 wild horses and burros into private care, primarily through adoption, since 1971. Animals removed from the range include 14,000 animals in corrals and 31,000 in midwestern pastures. Since receiving limited authority for sale of wild horses or burros, the BLM has sold more than 5,000 animals. In Fiscal Year 2011, the Wild Horse and Burro Program budget was $75.8 million, of which $35.7 million went to holding costs, $8.7 million to the cost of gathers, and $7.3 million to adoption events. Recent BLM proposals relating to controlling the reproduction of wild horses have been met with a lawsuit.

Federal legislation, such as the Restore Our American Mustangs (ROAM) Act, that would expand protection of wild horses is often introduced in Congress but has failed to pass in recent sessions. Efforts to promote and legalize sanctuaries for wild horses on private lands or leases on public lands are being explored in Nevada and the BLM is considering pilot programs.

State laws pertaining to wild horses are found in Chapter 504 ("Management and Propagation") of NRS. Nevada's Commission for the Preservation of Wild Horses was created by the Legislature in 1985 with funding from a bequest from Leo Heil. The Commission provided grant funding and acted as an advocate for wild horses through participation with federal agencies. However, the Heil bequest expired around March of 2010 and the Legislature repealed the statutes creating the Commission in the 2011 Session.

Estray Horses

An interesting differentiation in the management of wild horses is whether the animals are found on federal or State land. If located on federal land, the animals are considered "wild horses" and are managed under the provisions of federal law. However, if the animals are located on State property, they are considered "estrays" subject to Nevada's estray and feral livestock laws as described in NRS 569.005 through NRS 569.130 and are the responsibility of the SDA. In Nevada, many of these estray horses are located in the Virginia Range near Virginia City.

The SDA estimates the current estray population in the Virginia Range to be approximately 2,000 which, according to the Department, is significantly more than the 500 to 600 horses the habitat can support. However, due to budget constraints, the SDA does not have any immediate plans to remove, gather, and relocate estrays.

USEFUL WEBSITES FOR PUBLIC LANDS AND GENERAL NATURAL RESOURCE ISSUES

The following websites contain additional information and further detail on the programs and topics described in this report.

Bureau of Land Management: http://www.blm.gov/wo/st/en.html

Humboldt-Toiyabe National Forest: http://www.fs.usda.gov/htnf/

Nevada State Office, BLM: http://www.blm.gov/nv/st/en.html

Nevada's Division of Environmental Protection: http://ndep.nv.gov/

Nevada's Division of Minerals: http://minerals.state.nv.us/

State Department of Agriculture: http://agri.nv.gov/

State Department of Conservation and Natural Resources: http://dcnr.nv.gov/

U.S. Department of Agriculture: http://www.usda.gov/

U.S. Department of the Interior: http://www.doi.gov/

U.S. Fish and Wildlife Service: http://www.fws.gov/

U.S. Forest Service: http://www.fs.fed.us/

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GLOSSARY OF ACRONYMS

As with any policy area, acronyms are common in environmental and natural resource subjects. Following is a list of the most common acronyms one might expect to encounter:

AML ..... Appropriate Management Level (for wild horses)
AUM ..... Animal Unit Month
BOR ..... Bureau of Reclamation, U.S. Department of the Interior
CFR ..... *Code of Federal Regulations*
CWMA ..... Cooperative Weed Management Area
DOI ..... U.S. Department of the Interior
EA ..... Environmental Assessment
EIS ..... Environmental Impact Statement
EPA ..... U.S. Environmental Protection Agency
ESA ..... Endangered Species Act of 1973
FLPMA ..... Federal Land Policy and Management Act of 1976
FLTFA ..... Federal Land Transaction Facilitation Act of 2000
HMA ..... Herd Management Area
LCCRDA ..... Lincoln County Conservation, Recreation, and Development Act of 2004
NCA ..... National Conservation Area
NDEP ..... Nevada's Division of Environmental Protection, State Department of Conservation and Natural Resources
NDF ..... Nevada's Division of Forestry, State Department of Conservation and Natural Resources
NDOW ..... Nevada's Department of Wildlife
NEPA ..... National Environmental Policy Act of 1969
NRA ..... National Recreation Area
OHV ..... Off-highway Vehicle
PILT ..... Payment in Lieu of Taxes
RMP ..... Resource Management Plan
SDA ..... State Department of Agriculture
SDCNR ..... State Department of Conservation and Natural Resources
SEC ..... State Environmental Commission
SNPLMA ..... Southern Nevada Public Land Management Act of 1998
SNWA ..... Southern Nevada Water Authority
TRI ..... Toxics Release Inventory
USDA ..... U.S. Department of Agriculture
USFS ..... U.S. Forest Service, U.S. Department of Agriculture
USFWS ..... U.S. Fish and Wildlife Service, U.S. Department of the Interior
USGS ..... U.S. Geological Survey, U.S. Department of the Interior
WPCCRDA ..... White Pine County Conservation, Recreation, and Development Act of 2006
WSA ..... Wilderness Study Area

Legislative Counsel Bureau

POLICY AND PROGRAM REPORT

Water Resources

Research Division

January 2012

For the most arid state in the nation, water resource management will always be a challenge. Other western states share many of our problems but Nevada's population explosion over the past decades, coupled with an ongoing drought, poses special challenges.

Since most surface waters in the State were put to use before the twentieth century and Nevada's allocation of Colorado River water is a mere 300,000 acre-feet per year, determining the sustainability of groundwater sources is a critical concern. Conservation measures, water banking, water transfers, and conversions of water to new uses are possible sources of relief, as is the promise of desalination in the future.

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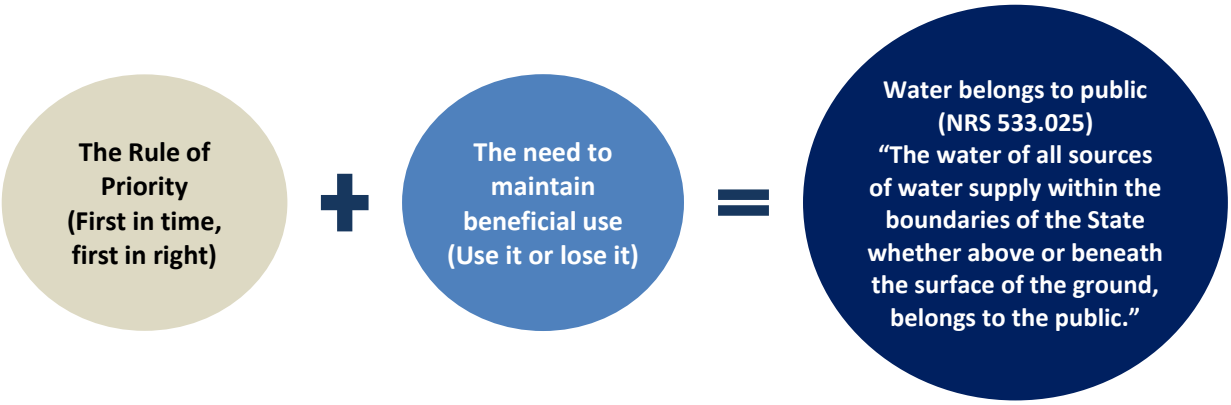
OVERVIEW OF NEVADA WATER LAW

Like 17 other western states, Nevada has adopted the prior appropriation doctrine. Unlike some of its neighbors, Nevada does not use the riparian doctrine. The prior appropriation doctrine was first developed in the nineteenth century in response to the water needs of mining and agricultural irrigation—uses which were not necessarily located near surface waters.

The cornerstone of the prior appropriation doctrine is beneficial use as "the basis, the measure and the limit of the right to use water." Beneficial use means the water is actually put to use for such recognized beneficial uses as: commercial, industrial, irrigation, mining, municipal, power generation, recreation, stockwatering, storage, or wildlife.

To resolve disputes when water supplies are inadequate to meet demand and to maximize use of the State's water resources, the two primary rules of western water law are:



The basic statutory principles of Nevada water law in use today were adopted in 1913. Nevada began regulating groundwater in 1939 although groundwater development was very limited until the 1960s. Nevada's water law is set forth in Chapters 533 and 534 of the *Nevada Revised Statutes* (NRS). Over the years, numerous court decisions and orders of the State Engineer have refined the law.

Water rights may be acquired by: (1) adjudicating a right beneficially used prior to the enactment of water law (known as "vested" rights); or (2) applying to the State Engineer to appropriate unallocated water and perfecting the right by putting the water to beneficial use (known as "certificated" or "perfected" rights). Domestic wells are generally exempt from the requirement to obtain water rights.

State Engineer

The Office of the State Engineer, created in 1903, is responsible for the administration of Nevada water law. The State Engineer is also the executive head of the Division of Water Resources in the State Department of Conservation and Natural Resources. The State Engineer determines the rights of claimants to water, the use to which water may be put, the quantity of water reasonably required for beneficial use, and where water may be used.

In addition, the State Engineer is responsible for:

- Quantifying existing water rights;
- Monitoring water use and maintaining related data and records;
- Processing reports of conveyances (transferring ownership of water rights);
- Reviewing recharge projects;
- Overseeing State and civil decrees, and assisting in federal decrees;
- Reviewing water availability for new subdivisions;
- Overseeing dam safety;
- Appropriating geothermal water;
- Licensing and regulating well drillers and water rights surveyors;
- Reviewing flood control projects;
- Coordinating water planning and conservation plans; and
- Providing technical assistance to the public and governmental agencies.

The State Engineer sits on the Nevada Commission of the California-Nevada Interstate Compact Commission, the State Environmental Commission, and the Board of Review for the Administration of Public Lands, while also serving as the technical adviser to the Board for Financing Water Projects.

Legislature's Role

Over the past 30 years, the Legislature has conducted several interim studies on water resources that have resulted in changes to Nevada water law. In 2007, the Legislature assigned responsibility for monitoring the activities of water districts and purveyors and for making recommendations on water resource policies to the Legislative Committee on Public Lands.

Interstate Water Resources

Colorado River

In addition to Nevada, the states of Arizona, California, Colorado, New Mexico, Utah, and Wyoming, as well as the Republic of Mexico, all use water from the Colorado River. The Law of the River is the collection of laws, court decisions, and regulations that determines the use of the Colorado River and the operation of its dams. In 1922, the seven states entered into an interstate compact that provides for the apportionment of the waters of the Colorado River system and divided the states into two basins—upper and lower—with an allocation of 7.5 million acre-feet annually (a.f.a.) to each basin. As part of the 1928 Boulder Canyon Project Act, Congress authorized the apportionment of the lower basin's 7.5 million a.f.a. as follows:

- Nevada—300,000 a.f.a.;
- California—4.4 million a.f.a.; and
- Arizona—2.8 million a.f.a.

Through a 1944 treaty, the United States agreed to deliver 1.5 million a.f.a. to Mexico.

Despite estimates in the early 1900s that the flow of the Colorado River was 17 million a.f.a., more current data puts the flow at 15 million a.f.a., much less than the 16.5 million a.f.a. apportioned by the Law of the River. Compounding the controversies relating to allocation of the Colorado River is the ongoing drought since 2000.

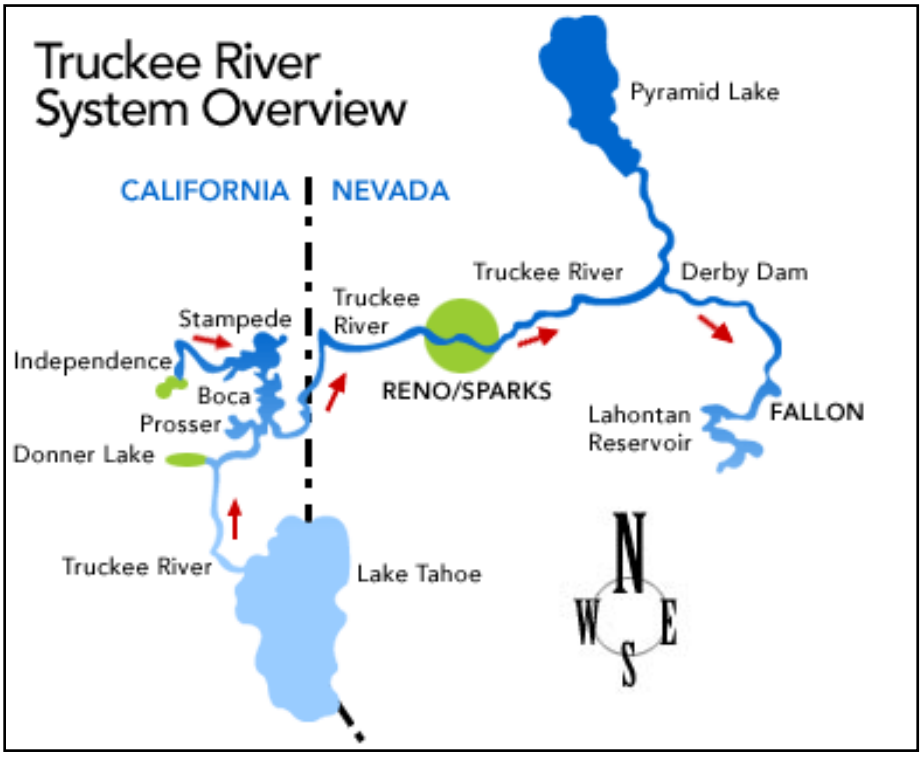
In 2007, the Secretary of the Interior approved an interstate agreement among the lower basin states that sets forth the rules for sharing shortages on the River and jointly operating Lake Mead and Lake Powell. Since 2000, Nevada and the other lower basin states have also reached water banking and reserve agreements. Due to the drought, the water level in Lake Mead has dropped by more than 100 feet since 2000 and the Southern Nevada Water Authority (SNWA) is currently working on a third intake line in Lake Mead.

The following map illustrates the Colorado River Basin and its division into the upper and lower basins.

Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990

Long-standing disputes over water in the Truckee and Carson Rivers led to the congressional enactment of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, also known as the "Negotiated Settlement." The main provisions in the legislation are:

- An interstate allocation between Nevada and California of the Truckee and Carson Rivers, and Lake Tahoe;
- A new operating agreement—Truckee River Operating Agreement or TROA;
- Reauthorization of the Newlands Project to serve additional purposes, including recreation, fish, and wildlife, and as a municipal water supply for the Fallon area;
- Development of a recovery program for the endangered Pyramid Lake cui-ui fish and threatened Lahontan cutthroat trout through a water right acquisition program; and
- A water rights purchase program for the Lahontan Valley wetlands.



The parties completed negotiations on the TROA in February 2007 and the Record of Decision on the environmental impact statement was issued by Secretary of the Interior Dick Kempthorne on September 5, 2008. The major parties, including the federal government, the States of California and Nevada, the Truckee Meadows Water Authority, and the Pyramid Lake Paiute Tribe, have signed the TROA and begun implementation of the final agreement.

State, Regional, and Local Water Entities

The distribution of water is generally handled by counties, cities, water districts, or other purveyors throughout the State. Most water districts and purveyors are municipal or public entities, but some small water companies remain.

Colorado River Commission

The Colorado River Commission (CRC) is a State agency with a seven-member board charged with protecting the water and power resources in Nevada from the Colorado River. The Commission oversees the distribution of approximately 25 percent of the hydropower generated by the Hoover and Davis Dams in Nevada and the Parker Dam in Arizona. Ensuring compliance with the Lower Colorado River Multi-Species Conservation Program is another responsibility.

Southern Nevada

In southern Nevada, the regional water authority—Southern Nevada Water Authority—is a joint powers authority that manages water supplies and water planning in most of Clark County. The SNWA works closely with the CRC to manage the Colorado River water supplies. Rate setting and typical utility functions are handled by the entities that comprise the SNWA: Boulder City, Henderson, Las Vegas, North Las Vegas, Big Bend Water District, Clark County Water Reclamation District, and Las Vegas Valley Water District.

Elsewhere in southern Nevada, water storage, conservation, and distribution are managed by entities such as the Lincoln County Water District, Moapa Valley Water District, Nye County Water District, and Virgin Valley Water District.

Northern Nevada

After a 2005-2006 Interim study on consolidation of water resources in Washoe County, the Legislature passed Senate Bill 487 (Chapter 531, *Statutes of Nevada 2007*) creating the Western Regional Water Commission (WRWC) to plan for the management of water supplies and to develop a comprehensive regional water plan for most of Washoe County. The bill also created the Northern Nevada Water Planning Commission to advise the Commission.

The cities of Reno and Sparks, Washoe County, Sun Valley General Improvement District, South Truckee Meadows Improvement District, and Truckee Meadows Water Authority entered into a cooperative agreement and, as authorized by S.B. 487, the WRWC may exercise certain powers that the entities may individually exercise, provided the powers are not inconsistent with the Western Regional Water Commission Act. The bill created the Legislative Committee to Oversee the WRWC that is required to report to the 2009, 2011, and 2013 Legislatures and then sunset in 2013.

In northern Nevada, the Truckee Meadows Water Authority (TMWA) and the Washoe County Department of Water Resources share responsibilities for managing water in Washoe County. In 2009, TMWA and the Department received approval of an interlocal agreement from their respective governing bodies that will govern a merger of the entities in conjunction with development

of the regional water plan in 2011. The parties are working on the development and implementation of a plan and the final merger will depend, in part, upon market conditions and debt refinancing.

Elsewhere in northern Nevada, communities' water supplies are managed by general improvement districts, as in Incline Village, South Truckee Meadows, and Sun Valley. The Carson Water Subconservancy District is a multicounty, bistate agency without regulatory authority that works cooperatively to protect and maximize the resources of the Carson River watershed.

The Truckee-Carson Irrigation District, a political subdivision of the State of Nevada, was organized and chartered in 1918 to represent the water right holders within the Newlands Project. The District was formed and is paid for by landowners within the boundaries of the Newlands Project who own water rights appurtenant to their land. Since 1926, the District has been responsible for operation of the Newlands Project under a contract with the U.S. Bureau of Reclamation.

Central Nevada

In rural counties, water is generally managed by the county, city, or a water district. Regional organizations, such as the Humboldt River Basin Water Authority and the Central Nevada Regional Water Authority, are used to coordinate water planning, data collection, and legislative efforts.

Legislation in 2003 created the Lincoln County Water District which, in cooperation with the SNWA and private development entities, is developing water resources for the development of the Coyote Springs Project (residential/commercial development), and the federal legislation titled Lincoln County Conservation, Recreation, and Development Act of 2004. The Nye County Water District was authorized in 2007 through S.B. 222 (Chapter 542, *Statutes of Nevada*).

Water Resource Issues

Although 90 percent of the State's population lives in urban areas, the 1995 State Water Plan estimated that 77 percent of Nevada's water is used for agricultural purposes. Public and municipal uses account for 13 percent. This scenario is typical of other western states due to high rates of population growth, increasing urbanization, and finite water resources. Since most surface waters in Nevada are allocated by a federal, state, or civil decree, or water rights permits, and the Colorado River allocation is only 300,000 a.f.a., determining the availability and sustainability of groundwater supplies has become an important issue. The Legislature has heard calls for additional studies and research and the integration of current data in order to better assess the State's groundwater supply.

Interbasin or Intercounty Transfers and Other Reallocations

Perhaps the most dominant and controversial trend in recent years is the reallocation of water from agricultural uses in rural counties to municipal uses in urban counties. Water importation projects are currently underway in both Clark and Washoe Counties. Reallocation can also occur through applications to change the use of water from agricultural use to municipal use.

The benefits of transferring water to urban areas to support residential and commercial growth must be balanced against potential impacts to the rural areas from which the water is being exported. Loss of water in rural areas may affect the local economies, present and future, as well as the environment. Similarly, changing water uses can affect the economy and environment by taking agricultural lands out of production thereby reducing return flows, vegetation, and habitat.

In 1991, the Legislature adopted statutory provisions authorizing the imposition of a tax on intercounty transfers by the county of origin. Since that time, the tax has been recharacterized as a fee and raised from $6 to $10 per acre-foot annually, effective January 1, 2007. Based upon recommendations from a 1997-1998 Interim study, the 1999 Legislature enacted specific findings that must be made by the State Engineer when approving interbasin transfers.

SNWA Eastern-Central Nevada Groundwater Project

Southern Nevada gets about 90 percent of its water from the Colorado River; the other 10 percent is from groundwater wells. Both of these sources are limited and so the regional water authority—SNWA—has been working on diversifying its water portfolio through the development of surface waters from the Virgin and Muddy Rivers, agreements with the lower basin states, and the appropriation and exportation of water from rural areas of eastern and central Nevada.

Applications filed in 1989 by the Las Vegas Valley Water District (one of the SNWA's member entities) to appropriate and pump 180,000 acre-feet over 300 miles from 27 basins in Clark, Lincoln, Nye, and White Pine Counties have generated statewide and federal concern. Over time, many of the original 147 applications have been withdrawn.

In 2003, the SNWA entered into an agreement with Lincoln County to resolve concerns about the applications in that county. To provide more information on groundwater reserves, federal legislation appropriated $6 million for a groundwater study by the U.S. Geological Survey—Basin and Range Carbonate Aquifer System Study or BARCASS. The BARCASS covers Lincoln and White Pine Counties and adjacent areas in Utah. The final report was submitted to Congress in December 2007.

Because the pipeline will cross public lands managed by the Bureau of Land Management (BLM), a federal environmental impact statement (EIS) is being prepared on the pipeline rights-of-way. The draft EIS was released for comment in June 2011 and the comment period closed in October 2011. The BLM is now working on responding to public comments and those responses will be included in the final EIS. Although several federal agencies, such as the BLM and U.S. Fish and Wildlife Service, filed protests against the applications, the federal agencies entered into complex stipulated agreements with the SNWA regarding the implementation of monitoring, management, and mitigation plans and subsequently withdrew their protests.

State Engineer Rulings on the SNWA Applications

In 2006, the State Engineer divided most of the remaining active applications into three groups and ruled on the Spring Valley applications in 2007. The second group of applications in Snake Valley was the subject of federal legislation. Under Section 301(e)(3) of Public Law 108-424, the States of Nevada and Utah are required to reach an agreement regarding "the division of water resources

of those interstate ground-water flow system(s)" from the SNWA project. The agreement must allow for the maximum sustainable beneficial use and protect existing water rights. A draft 2009 agreement is being circulated and considered by the respective State officials but has not been signed. The State Engineer will not hold hearings on the Snake Valley applications until the interstate agreement is resolved. The State Engineer's ruling on the last group of applications in Cave Valley, Delamar Valley, and Dry Valley was issued in 2008.

The State Engineer's rulings on the first and third groups of applications were challenged by the Great Basin Water Network and other protestants. The Seventh Judicial District Court in Lincoln County issued an order vacating and remanding (returning) the rulings to the State Engineer.

The District Court's order was appealed to the Nevada Supreme Court which reversed the lower court's order and remanded the case back to the District Court. The Supreme Court found that the State Engineer had failed to act on the contested applications within the one-year period required by NRS 533.370 and directed the District Court to determine the remedy—either the filing of new applications by the SNWA or renoticing and reopening the protest period on the pending applications.

Both sides petitioned the Nevada Supreme Court for clarification and the Supreme Court issued a new order in June 2010 granting equitable relief. The Court found that the appropriate remedy was for the State Engineer to renotice the applications and reopen the protest period before holding new hearings on the contested applications. After complying with the Supreme Court's order, the State Engineer held new hearings on the Cave Valley, Delamar Valley, Dry Valley, and Spring Valley applications in the fall of 2011. A ruling is expected in the spring of 2012.

Updates to State Water Law

In response to the *Great Basin Water Network* decision, the Legislative Committee on Public Lands requested a bill draft request in the 2011 Session for the purpose of making appropriate changes to the statutes relating to applications and protests. Assembly Bill 115 (Chapter 166, *Statutes of Nevada*) was passed in the 2011 Session and made several modifications to the application and protest procedures by:

- Changing the time within which the State Engineer must act from one year to two years;
- Deleting the requirement that a protestant must consent to the postponement of an application;
- Adding new grounds on which the State Engineer may postpone an application;
- Expanding the provisions regarding the reopening of the protest period to any application which has not been acted on in seven years; and
- Clarifying that the new provisions only apply to applications filed on or after July 1, 2011.

Groundwater Management

Nevada is divided into 232 groundwater basins, of which 119 are designated or partially designated. Designation occurs when the State Engineer determines that the groundwater basin is in need of further administration, usually due to overallocation. Groundwater appropriations are processed in the same manner as applications for surface water rights. As in many western states, domestic wells do not require a water right but their use is limited to 1,800 gallons per day. The general policy of the State Engineer is to limit groundwater withdrawals in a basin to the average annual recharge of the basin or its "perennial yield." Perennial yield is the maximum amount of water that can be taken each year over the long term without depleting (or mining) the groundwater reservoir.

To address domestic well issues, legislation in 2007 changed the daily limit of 1,800 gallons on a domestic well to an annual limit of 2 acre-feet and clarified that domestic wells could serve accessory dwellings, such as mother-in-law units, so long as the 2 a.f.a. limit is not exceeded and local zoning permits such accessory uses.

The 2007 legislation also provided for the assignment of a priority date to a domestic well based on the completion date for the well. To address the proliferation of domestic wells through the parcel map process and resulting concerns about overallocations in certain groundwater basins, the legislation authorized the State Engineer to require a dedication of water rights for a parcel map in designated basins if the local government does not require water rights dedications for parcel maps.

Enforcement

Most violations of water law are punishable criminally as a misdemeanor. For the past several legislative sessions, the Legislature has debated additional enforcement powers for the State Engineer. The 2007 Legislature granted the State Engineer the authority to impose administrative penalties and seek injunctive relief for violations of Nevada water law.

Conservation

Water conservation is an important issue throughout the U.S., and Nevada is no exception. Chapter 540 of the NRS requires each water district and purveyor to develop a water conservation plan and to update the plan at least every five years.

Overallocation

In Nevada, there are communities with overallocations of surface waters or groundwater. Drought conditions worsen these situations. Areas with overdraft issues include Pahrump in Nye County and the Humboldt River area. The Las Vegas Valley is dealing with a critical overdraft complicated by years of population growth. In 1997, at the direction of the Nevada Legislature, the SNWA developed a program to protect and manage the Las Vegas Valley's primary groundwater supply. The Las Vegas Valley Groundwater Management Program is working on recharge projects, plugging abandoned wells, connecting well owners to municipal systems, and protecting the aquifer from contamination. Funding is provided, in part, by a fee on groundwater users of $30 per year for domestic well owners and $30 per acre-feet permitted annually on other groundwater users.

Environment

Water resource issues are often intertwined with the Endangered Species Act and increasing emphasis on protection of instream flows for wildlife and recreational purposes. The controversy surrounding the Walker River Basin and Walker Lake is an example of limited water resources impacting the environment. Endangered species are also a continuing concern in the agreements involving the Truckee River and Pyramid Lake.

Federal

Generally speaking, there is no such thing as federal water law. As part of the early congressional acts disposing of western lands, state law was recognized as controlling the appropriation of water. However, the federal government may assert expressly reserved water rights and, since more than 85 percent of Nevada is federally owned, federal agencies play a significant role in water issues. Federal adjudications, such as the Alpine Decree (Carson River), Orr Ditch Decree (Truckee River), and Walker River Decree (Walker River), involved decades of litigation and federal agencies continue to monitor and, on occasion, file protests of water rights applications.

Tribal

Native American tribes may assert so-called "reserved water rights" claims under the Winters Doctrine, which is based on the assumption that Congress reserved water for tribal use when creating reservations. Tribes in Nevada have been active in asserting their claims throughout the State, including the Pyramid Lake area, Walker River Basin, and the Las Vegas Valley.

USEFUL WEBSITES FOR WATER ISSUES

The following websites contain additional information on the programs and topics in this report:

- BLM Groundwater Projects: http://www.blm.gov/nv/st/en/prog/planning/groundwater_projects.html
- Carson Water Subconservancy District: http://www.cwsd.org
- Great Basin Water Network: http://www.greatbasinwater.net
- Southern Nevada Water Authority: http://www.snwa.com/index.html
- State Engineer: http://www.water.nv.gov
- Truckee-Carson Irrigation District: http://www.tcid.org
- Truckee Meadows Water Authority: http://www.tmwa.com
- Washoe County Department of Water Resources: http://www.co.washoe.nv.us/water

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