

# Election 2014

## 2014 POLLING PLACE PRECINCTS

### STATE OF NEVADA - COUNTY OF CLARK

I, JOSEPH P. GLORIA, the duly appointed Registrar of Voters for the County of Clark, State of Nevada, do hereby certify that the General Election will be held on Tuesday, November 4, 2014. The polls will be open from 7:00 a.m. until 7:00 p.m. on said date. Pending candidate challenges may result in a candidate not appearing on the election ballot. A list of Election Day polling places is also included in this notice.

WITNESS MY HAND and SEAL this 10th day of September, 2014.

JOSEPH P. GLORIA  
Registrar of Voters

## LIST OF CANDIDATES TO BE VOTED UPON AT THE NOVEMBER 4, 2014 GENERAL ELECTION

Party Abbreviations as they will appear on the ballots are defined:

- Democratic:** DEM  
**Republican:** REP  
**Independent American Party:** IAP  
**Independent Candidate:** IND  
**Libertarian:** LIB

OFFICE	DISTRICT	CANDIDATE	PARTY		
<b>REPRESENTATIVE IN CONGRESS TWO-YEAR TERM DISTRICT 1</b>	IAP	Bakari, Kamau	IAP		
	LIB	Charles, Richard "Ricardo Carlos"	LIB		
	REP	Teijeiro, Annette	REP		
	DEM	Titus, Dina	DEM		
	DEM	Bilbray, Erin	DEM		
	IND	Goossen, David	IND		
	REP	Heck, Joe	REP		
	LIB	Kimmick, Randy	LIB		
	IND	St. John, Steven	IND		
	DEM	Best, Russell	DEM		
LIB	Brown, Steve	LIB			
REP	Hardy, Cresent	REP			
DEM	Horsford, Steven A.	DEM			
<b>GOVERNOR FOUR-YEAR TERM</b>	DEM	Goodman, Robert "Bob"	DEM		
	REP	Sandoval, Brian	REP		
	IAP	VanDerBeek, David Lory	IAP		
	DEM	None of These Candidates	DEM		
	<b>LIEUTENANT GOVERNOR FOUR-YEAR TERM</b>	DEM	Flores, Lucy	DEM	
		REP	Hutchison, Mark	REP	
		IAP	Little, Mike	IAP	
		DEM	None of These Candidates	DEM	
		<b>SECRETARY OF STATE FOUR-YEAR TERM</b>	REP	Cegavske, Barbara K.	REP
			DEM	Marshall, Kate	DEM
DEM			None of These Candidates	DEM	
<b>STATE TREASURER FOUR-YEAR TERM</b>			IAP	Cave, Kress K.	IAP
			REP	Schwartz, Dan	REP
			DEM	Wallin, Kim	DEM
	DEM		None of These Candidates	DEM	
	<b>STATE CONTROLLER FOUR-YEAR TERM</b>		IAP	Jones, Tom	IAP
			REP	Knecht, Ron	REP
			DEM	Martin, Andrew	DEM
		DEM	None of These Candidates	DEM	
		<b>ATTORNEY GENERAL FOUR-YEAR TERM</b>	IAP	Hansen, Jonathan J.	IAP
			REP	Laxalt, Adam Paul	REP
DEM			Miller, Ross	DEM	
DEM			None of These Candidates	DEM	
<b>STATE SENATE FOUR-YEAR TERM DISTRICT 2</b>			IAP	Baker, Louis J.	IAP
			DEM	Denis, Mo	DEM
	REP		Farley, Patricia	REP	
	IAP		Kamerath, Jon	IAP	
	DEM		Loop, Marilyn Dondero	DEM	
	REP		Harris, Becky	REP	
	DEM	Jones, Justin	DEM		
	DEM	Kihuen, Ruben	DEM		
	LIB	Uehling, Ed	LIB		
	REP	Hardy, Joe	REP		
DEM	Lowry, Teresa	DEM			
REP	Roberson, Michael	REP			
DEM	Manendo, Mark	DEM			
REP	McGinnis, Ron L.	REP			
<b>STATE ASSEMBLY TWO-YEAR TERM DISTRICT 1</b>	REP	Baum, Roger "OZ"	REP		
	DEM	Kirkpatrick, Marilyn	DEM		
	REP	Hambrick, John	REP		
	IAP	Maimbourg, A.J.	IAP		
	DEM	Araujo, Nelson	DEM		
	REP	Marquez, Jesus	REP		
	DEM	Fiore, Michele	DEM		
	REP	Hinton, Jeff	REP		
	REP	Nelson, Erv	REP		
	DEM	Strasser, Jerri D.	DEM		
DEM	Munford, Harvey J.	DEM			
REP	Leavitt, Brent	REP			
DEM	Neal, Dina	DEM			
DEM	Frierson, Jason	DEM			
REP	Moore, John	REP			
REP	Gardner, David M.	REP			
DEM	Yeager, Steve	DEM			
DEM	Holder, Jesse "Jake"	DEM			
REP	Shelton, Shelly M.	REP			
DEM	Diaz, Olivia	DEM			
DEM	Ohrenschall, James	DEM			
IAP	Warren, Troy	IAP			
REP	Anderson, Paul	REP			
DEM	Kramer, Christine Lynn	DEM			
DEM	Carlton, Maggie	DEM			
REP	Yarbrough, Matthew	REP			
DEM	Anderson, Elliot T.	DEM			
REP	Dorlon, Benjamin	REP			
LIB	Juarez, Roberto S.	LIB			
DEM	Swank, Heidi	DEM			
IAP	Little, Patricia "Pat"	IAP			
REP	Mendez, Patrick	REP			
DEM	Thompson, Tyrone	DEM			
DEM	Beaulieu, Amy	DEM			
LIB	Carrillo, Richard	LIB			
DEM	Edwards, Chris	DEM			
LIB	Hendon, Donald Wayne	LIB			
DEM	Zygodlo, James	DEM			
REP	Linton, Carol	REP			
DEM	Spiegel, Ellen	DEM			
REP	Armstrong, Derek W.	REP			
DEM	Eisen, Andy	DEM			
LIB	Sanacore, Adam-John	LIB			
<b>DISTRICT 22</b>	IAP	Lalley, Leroy T.	IAP		
	REP	Stewart, Lynn	REP		
	REP	Woodbury, Melissa	REP		
	DEM	Flores, Edgar R.	DEM		
	DEM	Cohen, Lesley Elizabeth	DEM		
	REP	Silberkraus, Stephen	REP		
	REP	Seaman, Victoria	REP		
	DEM	Smith, Meghan	DEM		
	DEM	Healey, James	DEM		
	REP	Jones, Brent A.	REP		
DEM	Oscarson, James	DEM			
LIB	Duncan, Wesley	LIB			
DEM	Mackin, Gerald	DEM			
IAP	Pombo, Lou	IAP			
DEM	Aizley, Paul	DEM			
REP	Dooling, Vicki	REP			
DEM	Bustamante Adams, Irene	DEM			
IAP	Scheff, Howard	IAP			
<b>COUNTY COMMISSION FOUR-YEAR TERM DISTRICT E</b>	DEM	Giunchigliani, Chris	DEM		
	REP	Thibodeau, Joe	REP		
	DEM	Brager, Susan	DEM		
	IAP	Darrel, Lylal S.	IAP		
	LIB	Smith, Jason G.	LIB		
	REP	Tracy, Mitchell T.	REP		
	REP	Lake, Cindy	REP		
	DEM	Scow, Mary Beth	DEM		
	LIB	Duensing, Jr., Raymond James "Jim"	LIB		
	DEM	Wolfson, Steve	DEM		
<b>COUNTY ASSESSOR FOUR-YEAR TERM</b>	IAP	Barnhill, Brad Lee	IAP		
	LIB	Hagan, Tim	LIB		
	DEM	Shafe, Michele W.	DEM		
	DEM	Goya, Lynn	DEM		
	REP	Hols, William	REP		
	DEM	Conway, Debbie	DEM		
	REP	Hotchkiss, Don	REP		
	LIB	Johnson, Douglas "Tractor"	LIB		
	IAP	Macleane, Shannon C.	IAP		
	DEM	Cahill, John J.	DEM		
REP	Klapproth, Ed	REP			
<b>CONSTABLE, BOULDER TOWNSHIP FOUR-YEAR TERM</b>	REP	Hampe, Steve	REP		
	DEM	Laub, Erik	DEM		
	REP	Dersch, Ken	REP		
	DEM	Rogers, Gary P.	DEM		
	REP	Mitchell, Earl	REP		
	DEM	Watson, Terry	DEM		
	REP	Ross, Jordan	REP		
	REP	Thurston, Duane L.	REP		
	REP	Leavitt, Gary L.	REP		
	REP	Frei, Leon S.	REP		
<b>CONSTABLE, NORTH LAS VEGAS TOWNSHIP FOUR-YEAR TERM</b>	DEM	Eliason, Robert L.	DEM		
	REP	Martin, John	REP		
	REP	Cochran, Jack	REP		
	DEM	Gibbons, Mark	DEM		
	REP	None of These Candidates	REP		
	DEM	Scotti, Richard	DEM		
	LIB	Watkins, John G.	LIB		
	DEM	Davidson, Michael D.	DEM		
	REP	Herdon, Douglas W.	REP		
	DEM	Earley, Kerry Louise	DEM		
<b>DISTRICT COURT JUDGE SIX-YEAR TERM DEPARTMENT 2</b>	REP	Smith, Steve	REP		
	DEM	Young, Mike	DEM		
	REP	Ballweg, David P.	REP		
	DEM	Waite, Douglas P.	DEM		
	REP	Hurd, Bill	REP		
	DEM	Metz, Judy	DEM		
	LIB	Miller, Steven	LIB		
	REP	Hughes, Shawn Lyle	REP		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
<b>DISTRICT COURT JUDGE SIX-YEAR TERM DEPARTMENT 3</b>	REP	Ballweg, David P.	REP		
	DEM	Waite, Douglas P.	DEM		
	REP	Hurd, Bill	REP		
	DEM	Metz, Judy	DEM		
	LIB	Miller, Steven	LIB		
	REP	Hughes, Shawn Lyle	REP		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
<b>DISTRICT COURT JUDGE SIX-YEAR TERM DEPARTMENT 4</b>	REP	Bunker, Robert	REP		
	DEM	Wilson, Michael F.	DEM		
	REP	Pugh, Jim	REP		
	DEM	Young, Mike	DEM		
	REP	Ballweg, David P.	REP		
	DEM	Waite, Douglas P.	DEM		
	REP	Hurd, Bill	REP		
	DEM	Metz, Judy	DEM		
	LIB	Miller, Steven	LIB		
	REP	Hughes, Shawn Lyle	REP		
<b>DISTRICT COURT JUDGE SIX-YEAR TERM DEPARTMENT 5</b>	REP	Hurd, Bill	REP		
	DEM	Metz, Judy	DEM		
	LIB	Miller, Steven	LIB		
	REP	Hughes, Shawn Lyle	REP		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
	DEM	None of These Candidates	DEM		
<b>DEPARTMENT 8</b>	IAP	Guerci-Nyhus, Christine	IAP		
	REP	Smith, Doug	REP		
	REP	Escobar, Adriana	REP		
	DEM	Root, Michael	DEM		
	DEM	Marcek, Cliff	DEM		
	REP	Perrino, Nicholas Anthony	REP		
	DEM	Tao, Jerry	DEM		
	DEM	Haffer, Jacob	DEM		
	DEM	Johnson, Susan	DEM		
	REP	Friedberg, Craig	REP		
<b>DEPARTMENT 14</b>	REP	Miley, Stefany A.	REP		
	REP	Crockett, Jim	REP		
	DEM	Hardy, Jr., Joe	DEM		
	LIB	Delaney, Kathleen E.	LIB		
	DEM	Connell, Sean P.	DEM		
	REP	Bush, Susan	REP		
	DEM	Israel, Ron	DEM		
	IAP	Rugg, Jeffrey S.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Bare, Rob	DEM		
<b>DEPARTMENT 19</b>	DEM	Tindall, Randall	DEM		
	REP	Wiese, Jerry A.	REP		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 20</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 21</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 22</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 23</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 24</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 25</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 26</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 27</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 28</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 29</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 30</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 31</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	IAP	Wiese, Jerry A.	IAP		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
<b>DEPARTMENT 32</b>	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	LIB	Wiese, Jerry A.	LIB		
	REP	Wiese, Jerry A.	REP		
	DEM	Wiese, Jerry A.	DEM		
	REP	Wiese, Jerry A.	REP		



# Election 2014

## 2014 BALLOT QUESTIONS STATE QUESTION NO. 1

### Amendment to the Nevada Constitution

Senate Joint Resolution No. 14 of the 76th Session

Shall the Nevada Constitution be amended to create a Court of Appeals that would decide appeals of District Court decisions in certain civil and criminal cases?

Yes

No

### EXPLANATION & DIGEST

**EXPLANATION**— This ballot measure proposes to amend the Nevada Constitution to create a Court of Appeals consisting of three judges. The Nevada Supreme Court would establish the types of District Court decisions to be heard by the Court of Appeals and also determine when a Court of Appeals decision may be reviewed by the Nevada Supreme Court.

**A “YES” vote would create a Court of Appeals within the existing court system.**

**A “NO” vote would retain the existing court system.**

**DIGEST**—Article 6 of the Nevada Constitution establishes the court system of the State of Nevada, which currently consists of the Nevada Supreme Court, District Courts, Justices of the Peace, and Municipal Courts. The Nevada Supreme Court is the only appellate court in Nevada that hears and decides all appeals from final judgments entered by Nevada's District Courts. This ballot measure would create a Court of Appeals to decide some of the appeals currently decided by the Supreme Court. The Supreme Court would establish the types of District Court decisions to be heard by the Court of Appeals and also determine when a Court of Appeals decision may be reviewed by the Supreme Court. This ballot measure would create, generate, or increase public revenue because existing law would require candidates for judgeships on the Court of Appeals to pay fees to run for judicial office. It also would create, generate, or increase public revenue because, if a party appeals a decision of the Court of Appeals to the Nevada Supreme Court, the Nevada Constitution would require the party to pay a fee for filing the appeal.

The Court of Appeals would consist of three judges, but this ballot measure would authorize the Legislature to increase the number of judges. The Governor would appoint the initial three judges from nominees provided by the Commission on Judicial Selection. The initial three judges would be appointed to two-year terms. Thereafter, Court of Appeals judges would be elected to six-year terms at the general election. Additionally, the Supreme Court would assign, as needed, one or more Court of Appeals judges to serve part-time as supplemental District Court judges.

If this ballot measure is approved by the voters, Senate Bill No. 463 of the 2013 Legislative Session would carry out the constitutional provisions creating the Court of Appeals.

### ARGUMENTS FOR PASSAGE

Nevada's Supreme Court has been overburdened for decades as it struggles to provide the public with speedy access to justice in the face of an ever-growing population. The increasing backlog of appeals is delaying justice in Nevada. Nevada is one of only ten states that do not have a Court of Appeals. Our Supreme Court is one of the busiest in the nation because it must hear and decide all appeals from final judgments entered by Nevada's 82 District Court judges. Although our Supreme Court has tried to manage and reduce its caseload through technological and procedural measures, more needs to be done to make our justice system work better for our citizens and businesses.

The American Bar Association (ABA) recommends that when the volume of appeals becomes so great that a state supreme court cannot decide cases in a timely fashion, a court of appeals should be created. Nevada has reached that point. The ABA's recommended annual caseload for an appellate judge is 100 cases. The Nevada Supreme Court's caseload for each justice was 333 cases in Fiscal Year (FY) 2013, more than three times the recommended caseload.

As a result of this heavy caseload, the Supreme Court must resolve most appeals through unpublished orders that bind only the parties in a single case, instead of published opinions that establish statewide precedent for all future cases. In recent years, because of the extensive time and effort involved in researching and writing published opinions, the Supreme Court has issued published opinions in only 3 to 4 percent of all cases. The lack of published opinions can lead to the same issues being litigated repeatedly. A Court of Appeals would decide the more routine cases, which would allow the Supreme Court to focus on precedent-setting published opinions.

A Court of Appeals would provide more timely access to justice for Nevadans and a more stable business climate for existing and new businesses. It would promote a quicker resolution of all cases, including such personal and time-sensitive matters as family law, foreclosure mediation, and business disputes. A “yes” vote will enable Nevada's court system to meet the demands of the twenty-first century and provide our citizens and businesses with an improved level of appellate review already available in 40 other states.

### ARGUMENTS AGAINST PASSAGE

Nevada's court system has been functioning without a Court of Appeals for the past 150 years, and voters rejected the creation of a Court of Appeals in 1972, 1980, 1992, and 2010. The backlog of appeals has not sufficiently increased since 2010 to justify creating a Court of Appeals now.

There are other methods to manage caseloads without creating a new court for appellate review. When necessary in the past, the Legislature has added more District Court judges and Supreme Court justices to handle increased workloads. Even if it is necessary to spend additional State money on improving the judicial system, it would be better to spend the money on increasing judicial resources within the existing court structure instead of creating a Court of Appeals.

Although a Court of Appeals would initially consist of three judges, the Legislature could add more judges, staff, and facilities to operate a Court of Appeals in the future, with no guarantee of an improved judicial system. Adding a new court could further delay justice for some litigants.

A “no” vote will stop the creation of another layer in Nevada's court system, prevent increased spending of our limited resources on the court system, and confirm, for the fifth time in four decades, that Nevada voters do not want a Court of Appeals.

### FISCAL NOTE

#### Financial Impact—Yes

The Administrative Office of the Courts has indicated that this ballot measure creating a Court of Appeals would require operating expenses of approximately \$800,000 in FY 2015, relating to judicial selection, salaries, and other expenses for the administration of a Court of Appeals. However, the Legislature, in Assembly Bill No. 474 of the 2013 Legislative Session, approved funding to the Interim Finance Contingency Account for the initial implementation of a Court of Appeals in FY 2015, contingent upon the passage of this ballot measure. Therefore, no additional funding beyond that which has already been approved would be necessary for the operation of a Court of Appeals in FY 2015.

The Administrative Office of the Courts has indicated that ongoing costs for administration of a Court of Appeals, if approved by the voters, would be approximately \$1.5 million per year. It is not known at this time, however, whether the Legislature and the Governor would choose to provide this funding from the State General Fund or from other sources.

Representatives of the Nevada Supreme Court have indicated that a Court of Appeals initially would be housed in existing court facilities in northern and southern Nevada, which would avoid the need for capital expenditures to establish a Court of Appeals. Thus, no immediate financial impact upon State government for capital costs is anticipated.

After the initial two-year terms of the three judges appointed to a Court of Appeals, candidates for future judgeships will be required by existing law to pay filing fees to the Office of the Secretary of State in order to seek judicial office. This will result in an increase in revenue to the State General Fund beginning in FY 2016, but the amount of the increase cannot be determined with any reasonable degree of certainty because the number of candidates cannot be predicted.

### FULL TEXT OF MEASURE

Senate Joint Resolution No. 14—Committee on Judiciary

FILE NUMBER.....

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to create an intermediate appellate court.

#### Legislative Counsel's Digest:

This resolution proposes an amendment to the Nevada Constitution to create an intermediate appellate court, known as the court of appeals. The court of appeals will consist of three judges, but the Legislature may by law increase the number of judges. The initial three judges must be appointed by the Governor from among three nominees for each seat chosen by the Commission on Judicial Selection. These initial judges will be appointed for a term of 2 years beginning on the first Monday of January of the year following the effective date of this constitutional amendment. After the initial terms, the judges of the court of appeals will be elected at the general election to serve a term of 6 years.

The court of appeals will have appellate jurisdiction in civil cases arising in district courts and in criminal cases within the original jurisdiction of the district courts. The Nevada Supreme Court must fix the jurisdiction of the court of appeals by rule and provide for the review of appeals decided by the court of appeals. In addition, the Nevada Supreme Court must provide by rule for the assignment of one or more judges of the court of appeals to devote a part of their time to serve as supplemental district judges, where needed.

EXPLANATION – Matter in **bolded italics** is new; matter between brackets [omitted material] is material to be omitted.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 3A, be added to Article 6 of the Nevada constitution to read as follows:

**Sec. 3A. 1. The court of appeals consists of three judges or such greater number as the Legislature may provide by law. If the number of judges is so increased, the Supreme Court must provide by rule for the assignment of each appeal to a panel of three judges for decision.**

**2. After the initial terms, each judge of the court of appeals must be elected by the qualified electors of this State at the general election for a term of 6 years beginning on the first Monday of January next after the election. The initial three judges of the court of appeals must be appointed by the Governor from among three nominees selected for each individual seat by the permanent Commission on Judicial Selection described in subsection 3 of section 20 of this Article. After the expiration of 30 days from the date on which the permanent Commission on Judicial Selection has delivered to the Governor its list of nominees for the initial judges, if the Governor has not made the appointments required by this Section, the Governor shall make no other appointment to any public office until the Governor has appointed a judge from the list submitted. The term of the initial judges is 2 years beginning on the first Monday of January next after the effective date of this Section, and an initial judge may succeed himself. If there is an increase in the number of judges, each additional judge must be elected by the qualified electors of this State at the first general election following the increase for a term of 6 years beginning on the first Monday of January next after the election.**

**3. The Chief Justice of the Supreme Court shall appoint one of the judges of the court of appeals to be chief judge. The chief judge serves a term of 4 years, except that the term of the initial chief judge is 2 years. The chief judge may succeed himself. The chief judge may resign the position of chief judge without resigning from the court of appeals.**

**4. The Supreme Court shall provide by rule for the assignment of one or more judges of the court of appeals to devote a part of their time to serve as supplemental district judges, where needed.**

And be it further RESOLVED, That Section 1 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 1. The judicial power of this State [shall be] *is* vested in a court system, comprising a Supreme Court, **a court of appeals**, district courts [ ] and justices of the peace. The Legislature may also establish, as part of the system, courts for municipal purposes only in incorporated cities and towns.

And be it further RESOLVED, That Section 4 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 4. **1.** The Supreme Court [shall] **and the court of appeals** have appellate jurisdiction in all civil cases arising in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. **The Supreme Court shall fix by rule the jurisdiction of the court of appeals and shall provide for the review, where appropriate, of appeals decided by the court of appeals.** The [court shall also] **Supreme Court and the court of appeals** have power to issue writs of mandamus, certiorari, prohibition, quo warranto [ ], and habeas corpus and also all writs necessary or proper to the complete exercise of [its appellate] **their** jurisdiction. Each [of the justices shall have power to] **justice of the Supreme Court and judge of the court of appeals** may issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of, any person held in actual custody [ ] **in this State** and may make such writs returnable [ ] before [himself] **the issuing justice or judge** or the [Supreme Court.] **court** of which the justice or judge is a member, or before any district court in the State or [before] any judge of [said courts.] **a district court.**

**2.** In case of the disability or disqualification, for any cause, of [the Chief Justice or one of the associate justices] **a justice** of the Supreme Court, [or any two of them,] the Governor [is authorized and empowered to] **may** designate [any] **a judge of the court of appeals** or a district judge [or judges] to sit in the place [or places] of [such] **the** disqualified or disabled justice. [or justices, and said judge or judges so designated shall receive their] **The judge designated by the Governor is entitled to receive his actual expense of travel and otherwise while sitting in the Supreme Court.**

**3.** **In the case of the disability or disqualification, for any cause, of a judge of the court of appeals, the Governor may designate a district judge to sit in the place of the disabled or disqualified judge. The judge whom the Governor designates is entitled to receive his actual expense of travel and otherwise while sitting in the court of appeals.**

And be it further RESOLVED, That Section 7 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 7. The times of holding the Supreme Court , **the court of appeals** and **the** district courts [shall] **must** be as fixed by law. The terms of the Supreme Court [shall] must be held at the seat of government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the State. **The terms of the court of appeals must be held at the place provided by law.** The terms of the district courts [shall] **must** be held at the county seats of their respective counties unless the Legislature otherwise provides by law.

And be it further RESOLVED, That Section 8 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 8. **1.** The Legislature shall determine the number of justices of the peace to be elected in each city and township of the State [ ] and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, according to the amount in controversy, the nature of the case, the penalty provided [ ] or any combination of these.

**2.** The provisions of this section affecting the number, qualifications, terms of office and jurisdiction of justices of the peace become effective on the first Monday of January, 1979.

**3.** The Legislature shall also prescribe by law the manner, and determine the cases, in which appeals may be taken from justices and other courts. The Supreme Court, **the court of appeals**, the district courts [ ] and such other courts [ ] as the Legislature [shall designate, shall be] **designates** **are** courts of record.

And be it further RESOLVED, That Section 11 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 11. The justices of the Supreme Court, **the judges of the court of appeals** and the district judges [shall be] **are** ineligible to any office, other than a judicial office, during the term for which they [shall] have been elected or appointed . [ ] and all] **All** elections or appointments of any such judges by the people, Legislature [ ] or otherwise [ ] during said period [ ] to any office other than judicial [ , shall be] **are** void.

And be it further RESOLVED, That Section 15 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 15. The justices of the Supreme Court , **the judges of the court of appeals** and **the** district judges [shall] **are** each **entitled** to receive for their services a compensation to be fixed by law and paid in the manner provided by law, which [shall] **must** not be increased or diminished during the term for which they [shall] have been elected, unless a vacancy occurs, in which case the successor of the former incumbent [shall] **is entitled** to receive only such salary as may be provided by law at the time of his election or appointment . [ ; and provision shall] **A provision must** be made by law for setting apart from each year's revenue a sufficient amount of money [ ] to pay such compensation.

And be it further RESOLVED, That Section 20 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 20. 1. When a vacancy occurs before the expiration of any term of office in the Supreme Court **or the court of appeals** or among the district judges, the Governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the Commission on Judicial Selection.

**2.** The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

**3.** Each nomination for the Supreme Court [shall] **or the court of appeals must** be made by the permanent Commission, composed of:

(a) The Chief Justice or an associate justice designated by him;

(b) Three members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and

(c) Three persons, not members of the legal profession, appointed by the Governor.

**4.** Each nomination for the district court [shall] **must** be made by a temporary commission composed of:

(a) The permanent Commission;

(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the Board of Governors of the State Bar of Nevada; and

(c) A resident of such judicial district, not a member of the legal profession, appointed by the Governor.

**5.** If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the **Supreme** Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

**6.** The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission [shall] **must** be appointed when a vacancy occurs, and their terms [shall] expire when the nominations for such vacancy have been transmitted to the Governor.

**7.** An appointing authority shall not appoint to the permanent Commission more than:

(a) One resident of any county;

(b) Two members of the same political party. No member of the permanent Commission may be a member of [a] **the** Commission on Judicial Discipline.

**8.** After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted. [If a commission on judicial selection is established by another section of this Constitution to nominate persons to fill vacancies on the Supreme Court, such commission shall serve as the permanent Commission established by subsection 3 of this Section.]

And be it further RESOLVED, That Section 21 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 21. 1. A justice of the Supreme Court, **a judge of the court of appeals**, a district judge, a justice of the peace or a municipal judge may, in addition to the provision of Article 7 for impeachment, be censured, retired, removed or otherwise disciplined by the Commission on Judicial Discipline. Pursuant to rules governing appeals adopted by the Supreme Court, a justice or judge may appeal from the action of the Commission to the Supreme Court, which may reverse such action or take any alternative action provided in this subsection.

**2.** The Commission is composed of:

(a) Two justices or judges appointed by the Supreme Court;

(b) Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and

(c) Three persons, not members of the legal profession, appointed by the Governor. The Commission shall elect a Chairman from among its three lay members.

**3.** If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the **Supreme** Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

**4.** The term of office of each appointive member of the Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. An appointing authority shall not appoint more than one resident of any county. The Governor shall not appoint more than two members of the same political party. No member may be a member of a commission on judicial selection.

**5.** The Legislature shall establish:

(a) In addition to censure, retirement and removal, the other forms of disciplinary action that the Commission may impose;

(b) The grounds for censure and other disciplinary action that the Commission may impose, including, but not limited to, violations of the provisions of the Code of Judicial Conduct;

(c) The standards for the investigation of matters relating to the fitness of a justice or judge; and

(d) The confidentiality or non-confidentiality, as appropriate, of proceedings before the Commission, except that, in any event, a decision to censure, retire or remove a justice or judge must be made public.

**6.** The Supreme Court shall adopt a Code of Judicial Conduct.

**7.** The Commission shall adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

**8.** No justice or judge may by virtue of this Section be:

(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or

(b) Retired except for advanced age which interferes with the proper performance of his judicial duties and which is likely to be permanent in nature.

**9.** Any matter relating to the fitness of a justice or judge may be brought to the attention of the Commission by any person or on the motion of the Commission. The Commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing is ordered, a statement of the matter [shall] **must** be served upon the justice or judge against whom the proceeding is brought. The Commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the Commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this Section is entitled thereafter to receive such compensation as the Legislature may provide.

**10.** If a proceeding is brought against a justice of the Supreme Court, no justice of the Supreme Court may sit on the Commission for that proceeding. If a proceeding is brought against a judge of the court of appeals, no judge of the court of appeals may sit on the Commission for that proceeding. **If a proceeding is brought against a district judge, no district judge from the same judicial district may sit on the Commission for that proceeding.** If a proceeding is brought against a justice of the peace, no justice of the peace from the same township may sit on the Commission for that proceeding. If a proceeding is brought against a municipal judge, no municipal judge from the same city may sit on the Commission for that proceeding. If an appeal is taken from an action of the Commission to the Supreme Court, any justice who sat on the Commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the Commission is disqualified by this subsection, the Supreme Court shall appoint a substitute from among the eligible judges.

**11.** The Commission may:

(a) Designate for each hearing an attorney or attorneys at law to act as counsel to conduct the proceeding;

(b) Summon witnesses to appear and testify under oath and compel the production of books, papers, documents and records;

(c) Grant immunity from prosecution or punishment when the Commission deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records; and

(d) Exercise such further powers as the Legislature may from time to time confer upon it.

And be it further RESOLVED, That Section 3 of Article 7 of the Nevada Constitution be amended to read as follows:

[Sec.] **Sec. 3.** For any reasonable cause to be entered on the journals of each House, which may [ ] or may not be sufficient grounds for impeachment, the [Chief Justice and associate] justices of the Supreme Court, **the judges of the court of appeals** and **the** judges of the district courts [shall] **must** be removed from office on the vote of two thirds of the members elected to each branch of the Legislature. [ , and the] **The** justice or judge complained of [ , shall] **must** be served with a copy of the complaint against him, and [shall] have an opportunity of being heard in person or by counsel in his defense. [ , provided, that no] **No** member of either branch of the Legislature [shall be] **is** eligible to fill the vacancy occasioned by such removal.

And be it further RESOLVED, That Section 8 of Article 15 of the Nevada Constitution be amended to read as follows:

[Sec.] **Sec. 8.** The Legislature shall provide for the speedy publication of all statute laws of a general nature [ ] and such decisions of the Supreme Court [ ] **and the court of appeals** as it may deem expedient. [ ; and all] **All** laws and judicial decisions [shall] **must** be free for publication by any person. [ ; provided, that no] **No** judgment of the Supreme Court **or the court of appeals** shall take effect and be operative until the opinion of the court in such case [shall be] **is** filed with the clerk of said court.

### STATE QUESTION NO. 2

#### Amendment to the Nevada Constitution

Senate Joint Resolution No. 15 of the 76th Session

Shall the Nevada Constitution be amended to remove the cap on the taxation of minerals and other requirements and restrictions relating to the taxation of mines, mining claims, and minerals and the distribution of money collected from such taxation?

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure would repeal existing provisions of the Nevada Constitution that impose requirements and restrictions relating to the taxation of mines, mining claims, and minerals and the distribution of money collected from such taxation. If this ballot measure is approved by the voters, the Legislature, or the people through the initiative process, would be able to propose and enact laws to change existing methods of taxing mines, mining claims, and mineral extraction that are currently set forth in the Nevada Constitution.

The Nevada Constitution exempts mines and mining claims from the real property tax except for certain patented mines and mining claims. The Nevada Constitution also requires a tax upon the net proceeds of all minerals extracted in this State, including ores, metals, oil, gas, hydrocarbons, geothermal resources, and all other mineral substances. The tax rate must not exceed 5 percent of the net proceeds. Net proceeds are determined by calculating the gross value of all minerals extracted by a mining operation and then subtracting various deductions for certain operating costs incurred by the mining operation. The Nevada Constitution also prohibits any other type of tax upon a mineral or its proceeds, such as any mining tax upon gross value or upon the privilege of extracting minerals in Nevada. This ballot measure would remove these existing constitutional provisions.

Additionally, the Nevada Constitution requires a certain amount of the net proceeds tax to be distributed to each county and the local governmental units and districts, including the school district, within the county where minerals are extracted. This distribution must be made to these entities in the same proportion as they share in the local property tax. This ballot measure would remove these existing constitutional provisions.

Finally, the Nevada Constitution establishes special rules for taxing land owned as a patented mine or mining claim. A person who has a patented mine or mining claim has an ownership interest in all the land, including its surface and any minerals beneath the land, regardless of whether the minerals are being mined. By contrast, a person who has an unpatented mine or mining claim has an ownership interest only in any minerals beneath the land. The Nevada Constitution states that a patented mine or mining claim is subject to real property tax, except that no value may be attributed to: (1) any minerals beneath the land; and (2) the surface of the land if \$100 of labor has been performed on the mine or mining claim during the preceding year. This ballot measure would remove these existing constitutional provisions.

**A “YES” vote would remove provisions of the Nevada Constitution that impose a cap on the taxation of minerals and would remove other constitutional requirements and restrictions on the taxation of mines, mining claims, and minerals and the distribution of money collected from such taxation.**

**A “NO” vote would keep provisions of the Nevada Constitution that impose a cap on the taxation of minerals and would keep other constitutional requirements and restrictions on the taxation of mines, mining claims, and minerals and the distribution of money collected from such taxation.**

**DIGEST**—This ballot measure would create, generate, or increase public revenue because it would remove existing provisions of Article 10 of the Nevada Constitution that exempt mines and mining claims from the real property tax, thereby making mines and mining claims subject to real property taxation. However, the Legislature passed Senate Bill No. 400 in 2013, which would become effective if this ballot measure is approved by the voters. The legislation would exempt unpatented mining claims from the real property tax and would provide that, in determining the taxable value of patented mining claims and other real property, the value of any mineral deposit in its natural state attached to the land must be excluded from the computation of the taxable value of the property.

The Nevada Constitution requires the Legislature to impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds. It also prohibits any other type of tax upon a mineral or its proceeds, such as any mining tax upon gross value or upon the privilege of extracting minerals in Nevada. Existing laws exempt certain extracted minerals from the personal property tax and impose a graduated tax rate upon the net proceeds of all minerals extracted in this State, with a minimum rate of 2 percent and a maximum rate of 5 percent. Existing laws also impose a mineral royalties tax of 5 percent.

Senate Bill No. 400, which would become effective if this ballot measure is approved by the voters, would replace the existing tax upon net proceeds and royalties with an excise tax upon mineral extraction and royalties for the privilege of mining in Nevada. The excise tax rates would be equivalent to existing tax rates. The legislation also would exempt extracted minerals and royalties from the personal property tax if they are subject to the excise tax.

The Nevada Constitution requires a certain amount of the existing net proceeds tax to be distributed to each county and the local governmental units and districts, including the school district, within the county where minerals are extracted. This distribution must be made to these entities in the same proportion as they share in the local property tax. Senate Bill No. 400, which would become effective if this ballot measure is approved by the voters, would require the same distribution to these entities from the excise tax upon mineral extraction and royalties.

### ARGUMENTS FOR PASSAGE

The time has come to remove provisions in the Nevada Constitution that grant the mining industry special tax treatment. Mining has enjoyed constitutional protection from various taxes since Nevada became a state in 1864. More recently, in the 1980s, the mining industry campaigned for the passage of a constitutional amendment preventing Nevada from taxing the industry in the same way as most other states and imposing a cap on the mining tax rate. While these protections may have made sense in the past, times have changed and the State must have the flexibility to adopt tax policies that better reflect current conditions and meet the needs of all Nevadans.

ballot questions continued...

Minerals, such as gold, silver, and lithium, are nonrenewable resources. When mineral resources are taken out of the ground, they are gone forever and the State is left with a scarred landscape. Given the eventual depletion of these resources, Nevada must be able to adjust its mining tax policies like other states do, and not be restricted by inflexible constitutional limits. Other states are able to tax mining in ways that better account for the industry's permanent removal of scarce and nonrenewable resources. Another factor to consider is that many of the major mines in the State are owned by companies headquartered outside of Nevada that are getting rich on our limited resources and taking the profits out of state.

As currently written, the *Nevada Constitution* limits taxes on mineral extraction to 5 percent of the net proceeds, which allows the mining companies to deduct numerous operating costs before paying the tax. Because of these deductions, the mining industry ends up paying taxes on mineral extraction that represent a mere 2 to 2.5 percent of its gross revenues. The mining industry's constitutional protections are not fair to other businesses and industries in our State and should be removed.

Nevada is rich in mineral resources—hence our nickname, the Silver State. We are the leading producer of gold in the United States and, in 2011, were the eighth largest producer in the world. Despite any claims to the contrary, mining companies will stay here as long as there are resources to mine.

A "yes" vote will remove the special constitutional protections for mining and give our State the ability to update its tax policies to fund schools, roads, and essential services appropriately.

## ARGUMENTS AGAINST PASSAGE

Since 1864, the *Nevada Constitution* has required taxation of the mineral proceeds generated by Nevada's important mining industry. In 1989, to ensure that the mining industry paid a greater share of taxes, voters approved a constitutional amendment that permitted an increase in the tax rate on the net proceeds of minerals. Today, the mining industry pays hundreds of millions of dollars in taxes, provides high-paying jobs, and supports our communities in countless other ways. Now is not the time to change the *Constitution* and threaten this vital Nevada industry and the communities it supports.

In addition to paying the net proceeds tax, mining companies pay fees and taxes just like other Nevada businesses, such as license and permit fees, taxes on employee wages, and personal property and sales taxes on expensive equipment required for mining operations. This ballot question is unnecessary. The Legislature already has the power to raise revenues by increasing existing fees and taxes or creating new ones that would apply equally to mining and other Nevada businesses.

Mining provides more than 12,000 jobs in Nevada, and it pays an annual average wage of over \$87,000, one of the highest averages in the State. By spending money in our communities, mining companies and their employees and families support our local businesses and help our economy thrive. Thousands of other jobs are created every year because the mining industry consumes goods and services provided by our local businesses. Without the mining industry's high-paying jobs, Nevada's economy would suffer and many of these jobs would be lost.

Mining is an expensive and speculative business requiring significant capital investment for exploration, extraction, transportation, processing, and environmental restoration, with no guarantee of finding minerals or making a profit. Mineral prices are unpredictable and can change rapidly, which leads to even greater uncertainty for the industry. Keeping the net proceeds tax in the *Nevada Constitution* retains our predictable tax structure and promotes the industry's vital investment in Nevada's economy.

A "no" vote will retain the constitutional provisions that help make Nevada a global leader in mining and ensure a strong mining industry which will continue to invest and create valuable jobs in our communities for many more years.

## FISCAL NOTE

### Financial Impact—No

This ballot measure would remove existing provisions of the *Nevada Constitution* that exempt mines and mining claims from the real property tax, thereby making mines and mining claims subject to real property taxation. However, Senate Bill No. 400 of the 2013 Legislative Session, which becomes effective if this ballot measure is approved by the voters, would provide similar exemptions from the real property tax. Thus, there are no anticipated financial effects on real property tax revenues received by State and local governments.

Additionally, this ballot measure would remove existing provisions of the *Nevada Constitution* that require the Legislature to impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds. However, Senate Bill No. 400 would replace the existing net proceeds tax with an excise tax upon mineral extraction and royalties. The tax rates under the excise tax would be equivalent to existing tax rates, so there will be no change in the formula for calculating the revenue generated by the excise tax for State and local governments. Senate Bill No. 400 also would use the same formula for distributing the excise tax to State and local governments that is currently used for the net proceeds tax. Thus, there are no anticipated financial effects on tax revenues from mineral extraction received by State and local governments.

Lastly, this ballot measure would remove existing provisions of the *Nevada Constitution* that exempt minerals and their proceeds from the personal property tax. However, Senate Bill No. 400 would exempt extracted minerals from the personal property tax if they are subject to the excise tax. Thus, there are no anticipated financial effects on personal property tax revenues received by State and local governments.

## FULL TEXT OF MEASURE

Senate Joint Resolution No. 15—Committee on Revenue

FILE NUMBER:.....

SENATE JOINT RESOLUTION—Proposing to amend the *Nevada Constitution* to repeal the provision establishing a separate tax rate and providing for assessing and disbursing the tax on the net proceeds of mines.

### Legislative Counsel's Digest:

Section 5 of Article 10 of the *Nevada Constitution* provides for a tax upon the net proceeds of mines which is separate from the tax imposed on all other property. This resolution proposes to repeal the constitutional provision establishing a separate tax on the net proceeds of mines.

EXPLANATION – Matter in **bolded italics** is new; matter between brackets [omitted material] is material to be omitted.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 1 of Article 10 of the *Nevada Constitution* be amended to read as follows:

Sec. 1. 1. The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory. [, except mines and mining claims, which shall be assessed and taxed only as provided in Section 5 of this Article.]

2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.

3. The Legislature may constitute agricultural and openspace real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the Legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.

4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

5. The Legislature may exempt motor vehicles from the provisions of the tax required by this Section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.

6. The Legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The Legislature may exempt any other personal property, including livestock.

7. No inheritance tax shall ever be levied.

8. The Legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this Section, taxes may be levied be conducted for profit in the State.

10. The Legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

And be it further RESOLVED, That Section 5 of Article 10 of the *Nevada Constitution* is hereby repealed.

## STATE QUESTION NO. 3

### Amendment to Titles 7, 32, 52, 53, 54, 55, 56, 57 of the Nevada Revised Statutes

Shall the *Nevada Revised Statutes* be amended to create a 2% tax to be imposed on a margin of the gross revenue of entities doing business in Nevada whose total revenue for any taxable year exceeds \$1 million, with the proceeds of the tax going to the State Distributive School Account to be apportioned among Nevada's school districts and charter schools?

Yes  No

## EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure proposes to impose a two-percent (2%) margin tax on business entities in Nevada with total revenue in excess of \$1,000,000, and it requires that the proceeds of the tax be used to fund the operation of the public schools in this State for kindergarten through grade 12. If this ballot measure is approved by the voters in the 2014 General Election, the applicable margins tax would take effect January 1, 2015.

The ballot measure includes an exemption from the tax for natural persons not engaged in business, passive entities, governmental entities, tax exempt organizations and credit unions authorized to do business in Nevada. Also, any business entities with total revenue of \$1 million or less are not subject to margin tax. The tax would apply to all other businesses and organizations with total revenue in excess of \$1 million in any taxable year.

The ballot measure would impose the 2% tax rate on the entity's taxable margin. Under the ballot measure, a business entity's taxable margin is determined by taking the lesser of:

- 70% of the entity's total revenue; or
- the entity's total revenue minus either: (a) the cost of goods sold; or (b) the amount of compensation paid to its owners and employees.

The 2% tax would be imposed on the percentage of this margin that corresponds to the percentage of the entity's total business that is done in Nevada. A business entity that pays the existing tax on payroll, commonly referred to as the modified business tax, would be credited for that amount against the amount it would owe under this measure.

If approved by the voters, proceeds from the tax would be deposited in the State's Distributive School Account (DSA) in the State General Fund and will be apportioned among the county school districts and charter schools in the manner provided by state law to fund K-12 public education. The DSA provides the primary source of public education funding for Nevada's 17 county school districts and its various charter schools. The DSA is funded by legislative appropriations from the State General Fund and other revenues. The ballot measure does not change how funds in the DSA can be spent or allocated.

**A "YES" vote would impose a 2% margins tax on Nevada businesses with revenue in excess of \$1 million with the tax proceeds being deposited in the State Distributive School Account in the State General Fund and used to fund K-12 public education.**

**A "NO" vote would retain the existing tax liability for businesses in Nevada and retain the existing sources of K-12 education funding.**

**DIGEST**— This ballot measure creates, generates and increases public revenue. Existing law provides for the collection and enforcement of various taxes by the Department of Taxation. This ballot measure would amend and add to these existing laws by creating a new tax. The new law would impose a 2% tax on a margin of the total revenue of certain businesses in Nevada whose total revenue exceeds \$1 million in any taxable year.

This measure would require that the tax be administered and collected by the Nevada Department of Taxation. To cover the cost of administering the tax before proceeds are collected, this measure would require a temporary increase in the modified business tax assessed to and paid by financial institutions in Nevada. The existing 2% modified business tax currently paid by financial institutions would temporarily be increased to 2.29% percent effective January 1, 2015. A second temporary increase to 2.42% would become effective on July 1, 2015. On July 1, 2016, the modified business tax rate on financial institutions will return to its current rate of 2%.

If approved, the following amount of funds will be appropriated from the State General Fund to the Department of Taxation for the initial costs of administering the tax: (i) \$1,400,000 for fiscal year 2014-2015; and (ii) \$4,200,000 for fiscal year 2015-2016. If the revenue raised by the increase in the modified business tax rate for financial institutions is not sufficient to cover the full amount of either appropriation, that appropriation will be reduced so that there is no deficiency.

## ARGUMENTS FOR PASSAGE

*The Education Initiative*

A "Yes" vote for Question 3 – the Education Initiative – will give our schools a predictable funding source needed to provide a better education for Nevada's children. Experts report that a better funded education system results in better jobs and higher wages. A quality education for our children will ensure their success and the success of Nevada's economy.

The money from this tax will go directly to K-12 education. The initiative "requires that the proceeds of the tax be used to fund the operation of the public schools in this state." This tax will provide money to pay for smaller class sizes, textbooks, technology, classroom materials, and programs resulting in increased student success and higher graduation rates.

Nevada is one of only three states that do not require big corporations to pay a corporate income or gross receipts tax. Big out-of-state corporations that operate in *Nevada do not pay taxes on their income in Nevada!* These big corporations pay corporate taxes in other states. Approval of Question 3 will require these big corporations -fewer than 14% of Nevada's businesses- to pay a 2% tax on a certain portion of their total revenue which will go directly toward funding public and charter schools.

Approval of Question 3 will not hurt small businesses! A business with a total revenue less than or equal to \$1 Million would not pay this tax. Businesses that pay the tax can take generous deductions. Any tax paid under the Education Initiative can be deducted from federal taxes.

Voting "Yes" on Question 3 is a vote to require the biggest corporations in Nevada to pay a 2% tax, after deductions, to fund Nevada's K-12 public and charter schools. Students and Nevada's economy will benefit greatly from payment of this modest 2% tax by the biggest corporations operating in Nevada, which have long avoided paying their fair share.

Business leaders like MGM Resorts Chairman Jim Murren, Republicans like Governor Brian Sandoval, and Democrats like U.S. Senator Harry Reid have stated that Nevada needs more money for K-12 education. The Education Initiative is the way to solve this problem. A better funded K-12 system will create opportunities for every Nevada student and prepare them for the better high-wage jobs of the future.

Please vote yes on Question 3 – the Education Initiative – to give our kids and our state a brighter future.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252.*

## REBUTTAL TO ARGUMENTS FOR PASSAGE

The claims made to promote Question 3 are deceptive. Even the sponsors' own lawyer admitted in testimony to the Nevada Supreme Court that the measure doesn't guarantee more education funding and said that, if it passes, "the legislature could decrease funding for education."

Question 3 is opposed by Nevada's leading employers, including MGM Resorts Chairman Jim Murren, by top Democrats, like Lieutenant Governor candidate Lucy Flores, and top Republicans, like Governor Sandoval. Sandoval has warned Question 3 "would be devastating for not only existing businesses but for bringing businesses to this state" and would "jeopardize Nevada's recovery."

Nevada already has an existing business tax: the Modified Business Tax. The proposed "Margin Tax" would impose the equivalent of a 15% business tax on employers, the fourth highest tax rate in the country – and it wouldn't just affect major employers. It would be imposed on thousands of small business owners. That's why it's opposed by the National Federation of Independent Business – Nevada, representing 2,000 small businesses statewide.

Because Question 3 would cause the loss of thousands of existing and future jobs and increase living costs for Nevadans, it's also opposed by the Nevada AFL-CIO, representing working people throughout the state.

Vote no.

*The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252.*

## ARGUMENTS AGAINST PASSAGE

Question 3 is a deeply flawed tax measure that would damage Nevada's economy, cause the loss of thousands of jobs, and force consumers to pay more for food, housing, utilities and healthcare – without guaranteeing more funds for education.

*No Accountability, No Guarantee of More Funds for Schools*

Promoters claim the tax is for education. But Nevada law lets the legislature divert education funds to other uses. Moreover, Question 3 contains no guidelines on how its "education" funds might be spent. Question 3 gives politicians and bureaucrats a blank check to spend money with no plan, no oversight, no accountability and no guarantee for more money in the classroom.

*It's Worse Than It Seems*

"This 2% 'Margin Tax' would be on gross revenues, not profits, so it's the equivalent of a nearly 15% business tax. That would make Nevada one of the five highest taxed states in the country for businesses." Carole Vilardo, President Nevada Taxpayers Association

*Flawed, Unfair*

Employers would have to pay the tax even if they have no profits and are losing money. And, the tax would be imposed on the businesses that provide most of the jobs in Nevada: major employers and thousands of small businesses with gross revenues above the threshold, including farms, restaurants, grocery stores and local retailers. The "businesses" exempted by the measure are mostly one-person operations with no employees.

*Lost Jobs*

Question 3 would increase the tax burden on Nevada employers by hundreds of millions of dollars annually. Economic studies show that it would cause the loss of thousands of existing jobs and make it extremely hard to attract new businesses and jobs to Nevada.

*Higher Consumer Costs*

Increased costs imposed on businesses providing goods and services in Nevada would ultimately be passed on to consumers. This would force Nevadans to pay higher prices for everything from food, clothing, gas, water and electricity to housing, insurance and healthcare – hurting those who can least afford it.

Everyone cares about education. But this costly, deeply flawed measure doesn't ensure a better education for our kids. What it would do is hurt Nevada employers and our economy, put thousands of Nevadans out of work, discourage businesses from growing, and increase consumer prices for food, shelter, utilities, healthcare, and other vital goods and services.

That's why a coalition representing tens of thousands of small and large employers, community leaders, educators, parents and consumers urges no on 3.

*The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252.*

## REBUTTAL TO ARGUMENTS AGAINST PASSAGE

The opponent's argument urges you to protect CEO's, corporations and their shareholders at the expense of schools, students, and families. Question 3 was put on the ballot by Nevadans to provide the resources necessary to help students succeed and be prepared for the jobs of the 21<sup>st</sup> century.

This proposal is on the ballot because Nevadans are concerned about their children's future and the health of our state's economy. It does not give anyone a "blank check" as opponents claim. It requires that the money from the tax go directly into the existing account for K-12 public education. Under existing guidelines, the money can provide for smaller class sizes and programs that help students graduate to produce a better economic future for Nevada.

The opponents know every dime collected from this tax will go directly to K-12 education. The funding of the opposition is primarily from big businesses that are not paying their fair share of taxes to invest in education. For decades, Nevada has supported these big businesses by providing them with infrastructure, employees and customers. Now is the time for big businesses to make a long-term commitment to Nevada's education system. Vote "yes" on Question 3.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252.*

## FISCAL NOTE

### FINANCIAL IMPACT – CANNOT BE DETERMINED

#### OVERVIEW

Question 3 proposes to amend Title 32 of the *Nevada Revised Statutes* to impose a new margin tax on the taxable margin of specified business entities in the state. The proceeds of the tax, less administrative costs incurred by the Department of Taxation, would be deposited in the State Distributive School Account. Question 3 requires that appropriations be made from the State General Fund to the Department of Taxation for the initial costs of administering the margin tax. Question 3 also proposes a temporary increase in the rate of the Modified Business Tax on Financial Institutions to generate revenue to support the appropriations made to the Department.

#### FINANCIAL IMPACT OF QUESTION 3

The provisions of Question 3 would require specified business entities in the state whose total revenue exceeds \$1 million to pay an annual tax at a rate of 2 percent of the taxable margin of the business entity (margin tax). The provisions of Question 3 require that the proceeds from the margin tax be deposited in the State Distributive School Account (DSA). An amount that is necessary to defray the cost of the administration of the margin tax may be withheld from these proceeds by the Department of Taxation, for deposit in the State General Fund.

The provisions of Question 3 also require a temporary increase in the rate of the current Modified Business Tax on Financial Institutions (MBT-FI), from the current rate of 2 percent to a rate of 2.29 percent in the last six months of Fiscal Year 2015 and 2.42 percent in Fiscal Year 2016. The revenue generated from this temporary increase in the MBT-FI is intended to raise the revenue necessary to support the appropriations made from the State General Fund to the Department of Taxation for the initial costs of administering the margin tax. If the revenue raised from the increase in the MBT-FI is not sufficient to support the full amount of the appropriation in either fiscal year, the appropriation for that fiscal year is reduced to the extent of the deficiency.

If approved by the voters, the provisions of Question 3 would become effective on January 1, 2015, but would not result in additional revenue for the DSA until the last three months of Fiscal Year 2016. However, the Fiscal Analysis Division cannot predict what regulations or other actions may be taken by the Department of Taxation to implement and administer the margin tax that may affect a taxpayer's taxable margin or tax liability, nor can it predict the timing by which revenue would be received due to the ability of taxpayers to file extensions. Thus, while additional revenue will be generated for the DSA in Fiscal Years 2016 and 2017 and in future fiscal years, the Fiscal Analysis Division has not prepared an estimate of the amount of revenue that would be generated for the DSA during these years due to the multitude of assumptions that would need to be made and the uncertainty regarding how the assumptions made would impact the revenue estimates.

Question 3 requires appropriations to be made from the State General Fund to the Department of Taxation in the amount of \$1.4 million for the last six months of Fiscal Year 2015 and \$4.2 million for Fiscal Year 2016, if Question 3 is approved by the voters.

Question 3 specifies that the proceeds from the temporary increase in the MBT-FI rate are intended to raise the revenue necessary to support the appropriations made from the State General Fund to the Department of Taxation for the initial costs of administering the margin tax. The Fiscal Analysis Division cannot state with certainty whether the rate increase for the MBT-FI would generate sufficient revenue to support the required appropriations. However, it is reasonable to conclude that the appropriation amounts required would be supported by the 0.29 percent and 0.42 percent increase in the MBT-FI rate, based on an analysis of the historical actual tax collections from FY 2005 to FY 2013.

The Fiscal Analysis Division has determined that imposition of the margin tax would increase state government expenditures, due to increased costs of administration and enforcement that would be borne by the Department of Taxation. The Department of Taxation, based on a request made by the Fiscal Analysis Division, has estimated that its initial costs of administration would be approximately \$1.4 million in Fiscal Year 2015 and \$3.9 million in Fiscal Year 2016, for a two-year total of approximately \$5.3 million. The Department estimated that future ongoing costs of enforcement and administration of the margin tax would be approximately \$12.1 million per biennium.

Based on the estimate of \$5.3 million for the initial costs of administration provided by the Department of Taxation, the \$5.6 million in appropriations from the State General Fund included in Question 3 would be sufficient to support the initial costs of administering the margin tax.

Question 3 may result in a negative impact on the State General Fund from the initial costs of administration of the margin tax if: 1) The actual proceeds generated from the temporary increase in the MBT-FI are not sufficient to fund the General Fund appropriations included in Question 3; 2) The actual costs for the initial administration of the margin tax are greater than the amount of the appropriations specified in Question 3; or 3) The actual costs for the initial administration of the margin tax are greater than the amount of revenue generated from the temporary increase in the MBT-FI.

Question 3 may result in a positive impact on the State General Fund if the amount of revenue generated from the temporary increase in the MBT-FI is greater than the actual costs for the initial administration of the margin tax incurred by the Department of Taxation.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 1, 2014

## FULL TEXT OF MEASURE

### THE EDUCATION INITIATIVE

Explanation: Language in **boldface italics** is to be added to Nevada Revised Statutes; language between brackets [deleted language] is to be deleted.

#### THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

**Section 1.** This act provides for the imposition of a margin tax on business entities engaged in business in this State, and requires that the proceeds of the tax be used to fund the operation of the public schools in this State for kindergarten through grade 12.

**Sec. 2.** Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 3 to 45, inclusive, of this act.

**Sec. 3. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 17, inclusive, of this act have the meanings ascribed to them in those sections.**

**Sec. 4. "Affiliated group" means a group of two or more business entities, each of which is controlled by one or more common owners or by one or more of the members of the group.**

**Sec. 5. "Business" means any activity engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.**

**Sec. 6. 1. Except as otherwise provided in this section, "business entity" means a corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust, professional association, joint stock company, holding company and any other person engaging in a business, and includes a combined group.**

**2. "Business entity" does not include:**

**(a) A natural person unless that person is engaging in a business and is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming, or its equivalent or successor form, for that business;**

**(b) A governmental entity;**

**(c) Any person or other entity that this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution; or**

**(d) Any credit union that is authorized to transact business in this State pursuant to the provisions of chapter 678 of NRS.**

**Sec. 7. "Combined group" means an affiliated group of business entities that is required to file a group return pursuant to section 27 of this act.**

**Sec. 8. "Commission" means the Nevada Tax Commission.**

**Sec. 9. "Controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a business entity, whether through the ownership of voting securities, by contract or otherwise.**

**Sec. 10. "Engaging in a business" means commencing, conducting or continuing a business, the exercise of**  
**ballot questions continued...**

corporate or franchise powers regarding a business, and the liquidation of a business which is or was engaging in a business when the liquidator holds itself out to the public as conducting that business.

Sec. 11. "Governmental entity" means:

1. The United States and any of its unincorporated agencies and instrumentalities.
2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.
3. The State of Nevada and any of its unincorporated agencies and instrumentalities.
4. Any county, city, district or other political subdivision of this State.

Sec. 12. "Lending institution" means an entity that makes loans and:

1. Is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision or any comparable regulatory body;
2. Is licensed by, registered with or otherwise regulated by the Commissioner of Financial Institutions;
3. Is a "broker" or "dealer" as defined in 15 U.S.C. § 78c; or
4. Provides financing to unrelated parties solely for agricultural production.

Sec. 13. "Pass-through revenue" means:

1. Revenue received by a business entity solely on behalf of another in a disclosed agency capacity, including, without limitation, revenue received as a broker, bailee, consignee or auctioneer, notwithstanding that the business entity may incur liability, primarily or secondarily, in a transaction in its capacity as an agent;
2. Taxes collected from a third party by a business entity and remitted by the business entity to a taxing authority; and
3. Reimbursement for advances made by a business entity on behalf of a customer or client, other than with respect to services rendered or with respect to purchases of goods by the business entity in carrying out the business in which it engages.

Sec. 14. "Taxable year" means the taxable year used by a business entity for the purposes of federal income taxation.

Sec. 15. "Total income" means the total amount received by a business entity from all sources, without subtracting any costs or expenses.

Sec. 16. "Total revenue" means the total revenue of a business entity as determined under section 24 of this act.

Sec. 17. "Unitary business" means a business characterized by unity of ownership, functional integration, centralization of management and economy of scale.

Sec. 18. 1. For the purposes of this chapter, an entity constitutes a "passive entity" only if:

- (a) The entity is a general partnership, limited partnership, limited-liability partnership or limited-liability limited partnership or a trust, other than a business trust; and
- (b) During the period on which margin is based, at least 90 percent of the entity's federal gross income consists of:
  - (1) Dividends or interest; and
  - (2) Royalties, bonuses or delay rental income from mineral properties and income from other nonoperating mineral interests.

2. The income described in paragraph (b) of subsection 1 does not include any:

- (a) Rent; or
- (b) Income received by a nonoperator from mineral properties under a joint operating agreement if the nonoperator is a member of an affiliated group and another member of that group is the operator under that joint operating agreement.

Sec. 19. The Department shall:

1. Administer and enforce the provisions of this chapter, and may adopt such regulations as it deems appropriate for those purposes.
2. Adopt such regulations as may be necessary or appropriate to interpret and carry out the provisions of sections 24 and 27 of this act.
3. Retain from the proceeds of the taxes, interest and penalties it receives pursuant to this chapter an amount sufficient to reimburse the Department for the actual cost of administering this chapter, to the extent that the Department incurs any cost it would not have incurred but for the enactment of this chapter, and deposit the amount so retained with the State Treasurer for credit to the State General Fund. The amount so retained must not exceed the amount authorized by statute for this purpose.
4. Except as otherwise provided in subsection 3, deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Distributive School Account in the State General Fund. The money so deposited must be apportioned among the several school districts and charter schools of this State at the times and in the manner provided by law for the money in the State Distributive School Account.

Sec. 20. 1. Each person responsible for maintaining the records of a business entity shall:

- (a) Keep such records as may be necessary to determine the amount of the liability of the business entity pursuant to the provisions of this chapter;
  - (b) Preserve those records for 4 years or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and
  - (c) Make the records available for inspection by the Department upon demand at reasonable times during regular business hours.
2. The Department may by regulation specify the types of records which must be kept to determine the amount of the liability of a business entity pursuant to the provisions of this chapter.
3. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

Sec. 21. 1. To verify the accuracy of any return filed or, if no return is filed by a business entity, to determine the amount required to be paid, the Department, or any person authorized in writing by the Department, may examine the books, papers and records of any person who may be liable for the tax imposed by this chapter.

2. Any person who may be liable for the tax imposed by this chapter and who keeps outside of this State any books, papers and records relating thereto shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he or she is absent from his or her regular place of employment to examine those documents.

Sec. 22. 1. Except as otherwise provided in this section, a margin tax is hereby imposed on each business entity that engages in a business in this State during any taxable year beginning on or after the effective date of this section, at the rate of 2 percent of the taxable margin of the business entity for the taxable year.

2. The margin tax extends to the limits of the Nevada Constitution, the Constitution of the United States and the federal law adopted under the United States Constitution.

3. A business entity is exempt from the margin tax imposed for each taxable year regarding which:

- (a) The amount of the total revenue of the business entity from its entire business is less than or equal to \$1,000,000, as determined under section 24 of this act;
  - (b) The business entity qualifies as a passive entity, as determined pursuant to section 18 of this act; or
  - (c) The business entity qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).
4. A business entity that pays any tax imposed on the business entity pursuant to NRS 363A.130 or 363B.110 for any of the last four calendar quarters ending on or before the last day of a taxable year for which the margin tax is imposed pursuant to this section is entitled to a credit against the amount of the margin tax due from that business entity for that taxable year in the amount of the taxes paid by the business entity pursuant to NRS 363A.130 and 363B.110 for those calendar quarters, but not more than the amount of the margin tax due from the business entity for that taxable year.

Sec. 23. 1. Subject to the provisions of section 27 of this act, the taxable margin of a business entity must be computed by:

- (a) Determining the business entity's margin, which is the lesser of 70 percent of the total revenue of the business entity from its entire business, as determined under section 24 of this act, or an amount computed by:
    - (1) Determining the total revenue of the business entity from its entire business under section 24 of this act; and
    - (2) Except as otherwise provided in subsection 2, subtracting from the amount determined under subparagraph (1), at the election of the business entity, either:
      - (I) The cost of goods sold, as determined under section 25 of this act; or
      - (II) The amount of compensation, as determined under section 26 of this act; and
  - (b) Apportioning the business entity's margin to this State as provided in section 28 of this act to determine the business entity's taxable margin.
2. An election under subparagraph (2) of paragraph (a) of subsection 1 must be made by a business entity on its annual return and is effective only for that annual return. A business entity shall notify the Department of its election not later than the date the annual return is due.
3. In making any computation under this section, an amount that is zero or less must be computed as zero.

Sec. 24. 1. Except as otherwise provided in this section and subject to the provisions of section 27 of this act, for the purpose of computing its taxable margin under section 23 of this act, the total revenue of a business entity is:

- (a) For a business entity treated for the purposes of federal income taxation as a corporation, an amount computed by:
    - (1) Adding:
      - (I) The amount reportable as income on line 1c of Internal Revenue Service Form 1120; and
      - (II) The amounts reportable as income on lines 4 to 10, inclusive, of Internal Revenue Service Form 1120; and
    - (2) Subtracting:
      - (I) The amount of any bad debts expensed for the purposes of federal income taxation that corresponds to items of income included in subparagraph (1) for the current reporting period or a past reporting period;
      - (II) To the extent included in subparagraph (1), any foreign royalties and foreign dividends;
      - (III) To the extent included in subparagraph (1), any net distributive income from a business entity treated as a partnership or as an S corporation for the purposes of federal income taxation;
      - (IV) Any allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent that the relating dividend income is included in total revenue;
      - (V) To the extent included in subparagraph (1), any items of income attributable to an entity that is a disregarded entity for the purposes of federal income taxation; and
      - (VI) To the extent included in subparagraph (1), any other amounts authorized by this section;
  - (b) For a business entity treated for the purposes of federal income taxation as a partnership, an amount computed by:
    - (1) Adding:
      - (I) The amount reportable as income on line 1c of Internal Revenue Service Form 1065;
      - (II) The amounts reportable as income on lines 4, 6 and 7 of Internal Revenue Service Form 1065;
      - (III) The amounts reportable as income on lines 3a and 5 to 11, inclusive, of Internal Revenue Service Form 1065, Schedule K;
      - (IV) The amount reportable as income on line 17 of Internal Revenue Service Form 8825; and
      - (V) The amount reportable as income on line 11, plus the amount reportable on line 2 or line 45, of Internal Revenue Service Form 1040, Schedule F; and
    - (2) Subtracting:
      - (I) The amount of any bad debts expensed for the purposes of federal income taxation that corresponds to items of income included in subparagraph (1) for the current reporting period or a past reporting period;
      - (II) To the extent included in subparagraph (1), any foreign royalties and foreign dividends;
      - (III) To the extent included in subparagraph (1), any net distributive income from a business entity treated as a partnership or as an S corporation for the purposes of federal income taxation;
      - (IV) To the extent included in subparagraph (1), any items of income attributable to an entity that is a disregarded entity for the purposes of federal income taxation; and
      - (V) To the extent included in subparagraph (1), any other amounts authorized by this section; or
  - (c) For any business entity other than a business entity treated for the purposes of federal income taxation as a corporation or partnership, an amount determined in a manner substantially equivalent to the amount determined under paragraph (a) or (b), as prescribed in regulations adopted by the Department.
2. Subject to the provisions of section 27 of this act, a business entity that is part of a federal consolidated group shall compute its total revenue under subsection 1 as if it had filed a separate return for the purposes of federal income taxation.
3. A business entity that owns an interest in a passive entity may exclude from the total revenue of the business entity the business entity's share of the net income of the passive entity, but only to the extent the net income of the passive entity was generated by the margin of any other business entity.
4. Except as otherwise provided in subsection 5, to the extent included under subparagraph (1) of paragraph (a) of subsection 1, subparagraph (1) of paragraph (b) of subsection 1 or paragraph (c) of subsection 1:
- (a) A business entity may exclude from its total revenue:
    - (1) The amount of any pass-through revenue of the business entity; and
    - (2) The amount of tax basis, as determined under the Internal Revenue Code and any regulations adopted pursuant thereto, of any securities and loans sold; and
  - (b) A business entity that is a lending institution may exclude from its total revenue the amount of any proceeds from the principal repayment of loans.
5. If a business entity is part of an affiliated group, the business entity may not exclude from its total revenue any of the amounts described in subsection 4 which are paid to entities that are members of the affiliated group.
6. To the extent included under subparagraph (1) of paragraph (a) of subsection 1, subparagraph (1) of paragraph (b) of subsection 1 or paragraph (c) of subsection 1:
- (a) A business entity may exclude from its total revenue the amount of any revenue attributable to dividends and interest upon any bonds or securities of the Federal Government, the State of Nevada or a political subdivision of this State.
  - (b) A business entity that is required to pay a license fee pursuant to NRS 463.370 may exclude from its total revenue the amount of its gross revenue used to determine the amount of that fee.
  - (c) Any amount excluded under this section from the total revenue of a business entity must not be included in the determination of the cost of goods sold under section 25 of this act or the determination of the amount of compensation under section 26 of this act.
8. For the purposes of this section, any reference to:
- (a) An Internal Revenue Service form includes any variant of the form and any subsequent form with a different number or designation that substantially provides the same information as the original form.

(b) An amount reportable as income on a line number of an Internal Revenue Service form means the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount entered on a variant of the form or subsequent form with a different line number to the extent the amount entered complies with federal income tax law.

Sec. 25. 1. Subject to the provisions of section 27 of this act, a business entity that elects to subtract the cost of goods sold for the purpose of computing its taxable margin under section 23 of this act must determine the amount of that cost as provided in this section.

2. Except as otherwise provided in this section, the cost of goods sold includes:

- (a) All direct costs of acquiring or producing the goods, including:
  - (1) Labor costs;
  - (2) The cost of materials that are an integral part of the specific property produced;
  - (3) The cost of materials that are consumed in the ordinary course of performing production activities;
  - (4) Handling costs, including costs attributable to processing, assembling, repackaging and transportation to the business entity;
  - (5) Storage costs, including the costs of carrying, storing or warehousing property;
  - (6) Depreciation, depletion and amortization, as reported on the federal income tax return on which the return under this chapter is based, to the extent associated with and necessary for the production of the goods;
  - (7) The cost of renting or leasing equipment, facilities or real property which is directly used for the production of the goods;
  - (8) The cost of repairing and maintaining equipment, facilities or real property which is directly used for the production of the goods;
  - (9) The costs attributable to any research, experimental, engineering or design activities directly related to the production of the goods;
  - (10) Taxes paid in relation to acquiring or producing any material, and taxes paid in relation to services that are a direct cost of production; and
- (b) The following costs in relation to the business entity's goods:
  - (1) Deterioration of the goods;
  - (2) Obsolescence of the goods;
  - (3) Spoilage and abandonment of the goods, including the costs of rework labor, reclamation and scrap;
  - (4) If the property is held for future production, the direct costs of preproduction allocable to the property;
  - (5) The direct costs of postproduction allocable to the property;
  - (6) The costs of insurance on any plant, facility, machinery, equipment or materials directly used in the production of the goods;
  - (7) The cost of insurance on the produced goods;
  - (8) The cost of utilities, including any electricity, gas and water, directly used in the production of the goods;
  - (9) The costs of quality control, including any replacement of defective components pursuant to standard warranty policies, inspection directly allocable to the production of the goods, and repairs and maintenance of the goods; and
  - (10) Licensing and franchise costs, including any fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe or other similar right directly associated with the goods produced.

3. The cost of goods sold does not include the following costs in relation to the business entity's goods:

- (a) The cost of renting or leasing any equipment, facilities or real property that is not used for the production of the goods;
- (b) Selling costs, including employee expenses relating to sales;
- (c) Distribution costs;
- (d) Advertising and marketing costs;
- (e) Expenses for idle facilities;
- (f) Rehandling costs;
- (g) Bidding costs incurred in the solicitation of contracts, whether or not the contracts are ultimately awarded to the business entity;
- (h) Interest, including interest on debt incurred or continued during the period of production of the goods to finance such production;
- (i) Any taxes assessed on the business entity based on income;
- (j) Strike or lockout expenses, except the wages of employees hired to replace striking personnel;
- (k) Compensation of directors, officers and consultants;
- (l) Dividends to shareholders or distributions to members or partners which are business entities;
- (m) Professional fees and costs of litigation;
- (n) Fines, damages or restitution paid pursuant to judgments, consent decrees or settlements of legal actions including arbitration; and
- (o) Any of the amounts described in subsection 2 which are paid to entities that are members of an affiliated group of which the business entity is a part.

4. For the purposes of this section and section 23 of this act, and subject to the provisions of section 27 of this act, a business entity:

- (a) May make a subtraction in relation to the cost of goods sold only if that entity owns those goods.
- (b) Must determine its cost of goods sold in accordance with the methods used on the federal income tax return on which is based the return under this chapter. This paragraph does not affect the type or category of cost of goods sold that may be subtracted in accordance with this section to compute the taxable margin of a business entity.

5. As used in this section:

- (a) "Goods" means real property or tangible personal property sold in the ordinary course of business of a business entity.
- (b) "Production" includes construction, installation, manufacture, development, extraction, improvement, creation, raising or growth.

Sec. 26. 1. Except as otherwise provided in this section and subject to the provisions of section 27 of this act, a business entity that elects to subtract the amount of compensation for the purpose of computing its taxable margin under section 23 of this act may subtract an amount equal to:

- (a) All wages, salaries and bonuses paid by the business entity to its officers, directors, owners, partners and employees who are natural persons; and
  - (b) The cost of all benefits, to the extent deductible for the purposes of federal income taxation, the business entity provides to its officers, directors, owners, partners and employees, including retirement, health care, employer contributions made to employees' health savings accounts and workers' compensation benefits.
2. Notwithstanding the actual amount of wages, salaries and bonuses paid by a business entity to its officers, directors, owners, partners and employees, a business entity may not include in the amount of wages, salaries and bonuses the business entity subtracts pursuant to paragraph (a) of subsection 1, in relation to each individual person, more than \$300,000 per taxable year on which margin is based. If a person is paid by more than one entity of a combined group, the combined group may not subtract pursuant to paragraph (a) of subsection 1, in relation to that person, a total of more than \$300,000 per taxable year on which margin is based.

3. As used in this section:

- (a) Except as otherwise provided in paragraph (b), "wages, salaries and bonuses" means the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information.
- (b) "Wages, salaries and bonuses" includes, to the extent not included in the amount described in paragraph (a), the amount of any:
  - (1) Net distributive income from a business entity treated as a partnership for the purposes of federal income taxation, but only if the person receiving the distribution is a natural person;
  - (2) Net distributive income from limited-liability companies and corporations treated as S corporations for the purposes of federal income taxation, but only if the person receiving the distribution is a natural person; and
  - (3) Net distributive income from a limited-liability company treated as a sole proprietorship for the purposes of federal income taxation, but only if the person receiving the distribution is a natural person.

Sec. 27. 1. Business entities that are part of an affiliated group engaged in a unitary business must file, in lieu of individual returns, a combined group return based on the combined group's business. The combined group:

- (a) Must not include a business entity that conducts business outside of the United States if, as determined in accordance with regulations adopted by the Department:
  - (1) Eighty percent or more of that business entity's property and payroll are allocable to locations outside of the United States; or
  - (2) That business entity has no property or payroll and 80 percent or more of the business entity's total income is allocable to locations outside of the United States.
- (b) Constitutes a single business entity for purposes of the application of the tax imposed by this chapter.

2. For the purposes of section 23 of this act, a combined group shall determine its total revenue by:

- (a) Determining the total revenue of each of its members as provided in section 24 of this act as if the member was an individual business entity;
- (b) Adding the total revenue of all its members determined under paragraph (a); and
- (c) Subtracting from the amount determined under paragraph (b), to the extent included under subparagraph (1) of paragraph (a) of subsection 1 of section 24 of this act, subparagraph (1) of paragraph (b) of subsection 1 of section 24 of this act or paragraph (c) of subsection 1 of section 24 of this act, any items of total revenue received from a member of the combined group.

3. For the purposes of section 23 of this act, a combined group shall make an election to subtract either the cost of goods sold or the amount of compensation that applies to all of its members. Regardless of the election, the taxable margin of the combined group may not exceed 70 percent of the combined group's total revenue from its entire business.

4. A member of a combined group may claim as the cost of goods sold those costs that qualify under section 25 of this act if the goods for which the costs are incurred are owned by another member of the combined group.

5. For the purposes of section 23 of this act, a combined group that elects to subtract:

- (a) The cost of goods sold must determine that amount by:
  - (1) Determining the cost of goods sold for each of its members as provided in section 25 of this act as if the member was an individual business entity;
  - (2) Adding all the amounts of the costs of goods sold determined under subparagraph (1); and
  - (3) Subtracting from the amount determined under subparagraph (2) any amount of the costs of goods sold paid from one member of the combined group to another member of the combined group, but only to the extent that the corresponding item of total revenue was subtracted under paragraph (c) of subsection 2.
- (b) The amount of compensation must determine that amount by:
  - (1) Determining the amount of compensation for each of its members as provided in section 26 of this act as if the member was an individual business entity, subject to the limitation set forth in subsection 2 of section 26 of this act;
  - (2) Adding all the amounts of compensations determined under subparagraph (1); and
  - (3) Subtracting from the amount determined under subparagraph (2) any amount of compensation paid from one member of the combined group to another member of the combined group, but only to the extent that the corresponding item of total revenue was subtracted under paragraph (c) of subsection 2.

6. Each business entity that is part of a combined group's return must, for the purposes of determining margin and apportionment, include its activities for the same period as that used by the combined group.

7. Each member of a combined group is jointly and severally liable for the tax of the combined group.

Sec. 28. 1. A business entity's margin must be apportioned to this State to determine the amount of tax imposed by section 22 of this act by multiplying the margin by a fraction, the numerator of which is the business entity's total income from business done in this State, as determined under section 29 of this act, and the denominator of which is the business entity's total income from its entire business, as determined under section 30 of this act.

2. For the purpose of apportioning margin:

- (a) Income excluded from total revenue by a business entity under section 24 of this act must not be included in either the total income of the business entity by its business done in this State as determined under section 29 of this act or the total income of the business entity from its entire business as determined under section 30 of this act.
- (b) Income derived from transactions between individual members of a combined group that are excluded under paragraph (c) of subsection 2 of section 27 of this act must not be included in:
  - (1) The total income of the business entity from its business done in this State as determined under section 29 of this act, except that income ultimately derived from the sale of tangible personal property between individual members of a combined group where one member party to the transaction does not have nexus in this State must be included in the total income of the business entity from its business done in this State as determined under section 29 of this act to the extent that the member of the combined group that does not have nexus in this State resells the tangible personal property without substantial modification to a purchaser in this State. For the purposes of this subsection, "income ultimately derived from the sale of tangible personal property" means the amount paid for the tangible personal property by the third-party purchaser.
  - (2) The total income of the business entity from its entire business as determined under section 30 of this act.
- (c) Notwithstanding any provision of paragraph (a) or (b) to the contrary, if a loan or security is treated as inventory of the seller for the purposes of federal income taxation, the gross proceeds of the sale of that loan or security are considered total income.

Sec. 29. 1. Subject to the provisions of section 28 of this act, in apportioning margin, the total income of a business entity from its business done in this State is the sum of the business entity's total income from:

- (a) Each sale of tangible personal property which is delivered or shipped to a buyer in this State, regardless of the specified terms and conditions of the sale;
- (b) Each service performed in this State;
- (c) Each rental of property situated in this State;
- (d) The use of a patent, copyright, trademark, franchise or license in this State;
- (e) Each sale of real property located in this State, including royalties from oil, gas or other mineral interests; and
- (f) Any other business done in this State.

2. For the purposes of paragraph (b) of subsection 1, the total income derived from servicing loans secured by real property shall be deemed to be performed in this State if the real property is located in this State.

3. A combined group shall include in its total income computed under subsection 1 the total income of each business entity that is a member of the combined group which has a nexus in this State for the purpose of taxation.

Sec. 30. 1. Subject to the provisions of section 28 of this act, in apportioning margin, the total income of a business entity from its entire business is the sum of the business entity's total income from:

- (a) Each sale of the business entity's tangible personal property;

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- (b) Each service, rental or royalty; and  
(c) Any other business.

2. If a business entity sells an investment or capital asset, the business entity's total income from its entire business for taxable margin includes only the net gain from the sale.

3. A combined group shall include in its total income computed under subsection 1 the total income of each business entity that is a member of the combined group, without regard to whether that entity has a nexus with this State for the purpose of taxation.

**Sec. 31. 1.** A business entity shall use the same accounting methods to apportion margin as used in computing margin.

2. A business entity may not change its accounting methods used to calculate its total income more often than once every 4 years without the express written consent of the Department. A change in accounting methods is not justified solely because the change results in a reduction of tax liability.

**Sec. 32. 1.** The tax imposed by this chapter for each taxable year is due on the last day of the calendar month following that taxable year.

2. Except as otherwise provided in this chapter, each business entity engaging in a business in this State during a taxable year that is not exempt from the tax imposed by this chapter for that taxable year shall file with the Department a return on a form prescribed by the Department, together with the remittance of any tax due pursuant to this chapter for that taxable year, not later than 30 days after the date the business entity is required to file its federal income tax return for that taxable year with the Internal Revenue Service. The return required by this subsection must be executed under penalty of perjury and include the taxpayer identification number or social security number of the business entity, as applicable, and such other information as is required by the Department.

**Sec. 33.** Upon written application made before the date on which a business entity is otherwise required to file a return and pay the tax imposed by this chapter, the Department may:

1. If the business entity is granted an extension of time by the Federal Government for the filing of its federal income tax return, extend the time for filing the return required by this chapter until not later than 30 days after the date the business entity is required to file its federal income tax return pursuant to the extension of time granted by the Federal Government. The Department may require, as a condition to the granting of any extension pursuant to this subsection, the payment of the tax estimated to be due pursuant to this chapter.

2. For good cause extend by 30 days the time within which the business entity is required to pay the tax. If the tax is paid during a period of extension granted pursuant to this subsection, no penalty or late charge may be imposed for failure to pay at the time required, but the business entity shall pay interest at the rate of 1 percent per month from the date on which the amount would have been due without the extension until the date of payment, unless otherwise provided in NRS 360.232 or 360.320.

**Sec. 34. 1.** If the taxable margin of a business entity changes as a result of:

(a) The filing by the business entity of an amended federal income tax return or other return, the business entity shall, within 30 days after that filing, file an amended return with the Department.

(b) An audit or other adjustment by the Internal Revenue Service or another competent authority, the business entity shall, within 30 days after the audit report or other adjustment becomes final, file an amended return with the Department.

2. If, based upon an amended return filed pursuant to this section, it appears that the tax imposed by this chapter has not been fully assessed, the Department shall assess the deficiency, with interest calculated at the rate and in the manner set forth in NRS 360.417. Any assessment required by this subsection must be made within 3 years after the Department receives the amended return.

**Sec. 35.** If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must, after being credited against any amount then due from the person in accordance with NRS 360.236, be refunded to the person or his or her successors in interest.

**Sec. 36. 1.** Except as otherwise provided in NRS 360.235 and 360.395:

(a) No refund may be allowed unless a claim for it is filed with the Department within 3 years after the last day of the month following the taxable year for which the overpayment was made.

(b) No credit may be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Department within that period.

2. Each claim must be in writing and must state the specific grounds upon which the claim is founded.

3. Failure to file a claim within the time prescribed in this chapter constitutes a waiver of any demand against the State on account of overpayment.

4. Within 30 days after rejecting any claim in whole or in part, the Department shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

**Sec. 37. 1.** No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of this State to prevent or enjoin the collection under this chapter of the tax imposed by this chapter or any amount of tax, penalty or interest required to be collected.

2. No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been erroneously determined or collected unless a claim for refund or credit has been filed.

**Sec. 38. 1.** Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Commission, the claimant may bring an action against the Department on the grounds set forth in the claim in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his or her principal place of business or a county in which any relevant proceedings were conducted by the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

2. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

**Sec. 39. 1.** If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Commission within 30 days after the last day of the 6-month period. If the claimant is aggrieved by the decision of the Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

2. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

3. The balance of the judgment must be refunded to the plaintiff.

**Sec. 40.** If the court finds that the Department acted arbitrarily or capriciously in denying the plaintiff's claim, interest on the amount refunded to the plaintiff may be allowed at the Federal Funds Target Rate, but no greater than 6 percent per annum, upon the amount refunded to the plaintiff from the date of payment of the amount to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.

**Sec. 41.** A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

**Sec. 42. 1.** The Department may recover a refund or any part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in Carson City or Clark County in the name of the State of Nevada.

2. The action must be tried in Carson City or Clark County unless the court, with the consent of the Attorney General, orders a change of place of trial.

3. The Attorney General shall prosecute the action, and the provisions of NRS, the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

**Sec. 43. 1.** If any amount in excess of \$25 has been illegally determined, either by the Department or by the person filing the return, the Department shall certify this fact to the State Board of Examiners, and the latter shall authorize the cancellation of the amount upon the records of the Department.

2. If an amount not exceeding \$25 has been illegally determined, either by the Department or by the person filing the return, the Department, without certifying this fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Department.

**Sec. 44. 1.** A person shall not:

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any return or declaration with intent to defraud the State or to evade payment of the tax or any part of the tax imposed by this chapter.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts with intent to defraud the State or to evade the payment of the tax or any part of the tax imposed by this chapter.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

**Sec. 45.** The remedies of the State provided for in this chapter are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

**Sec. 46.** NRS 360.2937 is hereby amended to read as follows:

360.2937 1. Except as otherwise provided in this section, NRS 360.320 or any other specific statute, and notwithstanding the provisions of NRS 360.2935, interest must be paid upon an overpayment of any tax provided for in chapter 362, 363A, 363B, 369, 370, 372, 374, 377 or 377A of NRS [ ] or sections 3 to 45, inclusive, of this act, any fee provided for in NRS 444A.090 or 482.313, or any assessment provided for in NRS 585.497, at the rate of 0.25 percent per month from the last day of the calendar month following the period for which the overpayment was made.

2. No refund or credit may be made of any interest imposed on the person making the overpayment with respect to the amount being refunded or credited.

3. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if the person has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or the amount against which the credit is applied.

**Sec. 47.** NRS 360.300 is hereby amended to read as follows:

360.300 1. If a person fails to file a return or the Department is not satisfied with the return or returns of any tax, contribution or premium or amount of tax, contribution or premium required to be paid to the State by any person, in accordance with the applicable provisions of this chapter, chapter 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, sections 3 to 45, inclusive, of this act, NRS 482.313, or chapter 585 or 680B of NRS as administered or audited by the Department, it may compute and determine the amount required to be paid upon the basis of:

(a) The facts contained in the return;

(b) Any information within its possession or that may come into its possession; or

(c) Reasonable estimates of the amount.

2. One or more deficiency determinations may be made with respect to the amount due for one or for more than one period.

3. In making its determination of the amount required to be paid, the Department shall impose interest on the amount of tax determined to be due, calculated at the rate and in the manner set forth in NRS 360.417, unless a different rate of interest is specifically provided by statute.

4. The Department shall impose a penalty of 10 percent in addition to the amount of a determination that is made in the case of the failure of a person to file a return with the Department.

5. When a business is discontinued, a determination may be made at any time thereafter within the time prescribed in NRS 360.355 as to liability arising out of that business, irrespective of whether the determination is issued before the due date of the liability.

**Sec. 48.** NRS 360.417 is hereby amended to read as follows:

360.417 Except as otherwise provided in NRS 360.232 and 360.320, and unless a different penalty or rate of interest is specifically provided by statute, any person who fails to pay any tax provided for in chapter 362, 363A, 363B, 369, 370, 372, 374, 377, 377A, 444A or 585 of NRS, or sections 3 to 45, inclusive, of this act, or any fee provided for in NRS 482.313, and any person or governmental entity that fails to pay any fee provided for in NRS 360.787, to the State or a county within the time required, shall pay a penalty of not more than 10 percent of the amount of the tax or fee which is owed, as determined by the Department, in addition to the tax or fee, plus interest at the rate of 0.75 percent per month, or fraction of a month, from the last day of the month following the period for which the amount or any portion of the amount should have been reported until the date of payment. The amount of any penalty imposed must be based on a graduated schedule adopted by the Nevada Tax Commission which takes into consideration the length of time the tax or fee remained unpaid.

**Sec. 49.** NRS 360.510 is hereby amended to read as follows:

360.510 1. If any person is delinquent in the payment of any tax or fee administered by the Department or if a determination has been made against the person which remains unpaid, the Department may:

(a) Not later than 3 years after the payment became delinquent or the determination became final; or

(b) Not later than 6 years after the last recording of an abstract of judgment or of a certificate constituting a lien for tax owed, give a notice of the delinquency and a demand to transmit personally or by registered or certified mail to any person, including, without limitation, any officer or department of this State or any political subdivision or agency of this State, who has in his or her possession or under his or her control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or that person. In the case of any state officer, department or agency, the notice must be given to the officer, department or agency before the Department presents the claim of the delinquent taxpayer to the State Controller.

2. A state officer, department or agency which receives such a notice may satisfy any debt owed to it by that person before it honors the notice of the Department.

3. After receiving the demand to transmit, the person notified by the demand may not transfer or otherwise dispose of the credits, other personal property, or debts in his or her possession or under his or her control at the time the person received the notice until the Department consents to a transfer or other disposition.

4. Every person notified by a demand to transmit shall, within 10 days after receipt of the demand to transmit, inform the Department of and transmit to the Department all such credits, other personal property or debts in his or her possession, under his or her control or owing by that person within the time and in the manner requested by the Department. Except as otherwise provided in subsection 5, no further notice is required to be served to that person.

5. If the property of the delinquent taxpayer consists of a series of payments owed to him or her, the person who owes or controls the payments shall transmit the payments to the Department until otherwise notified by the Department. If the debt of the delinquent taxpayer is not paid within 1 year after the Department issued the original demand to transmit, the Department shall issue another demand to transmit to the person responsible for making the payments informing him or her to continue to transmit payments to the Department or that his or her duty to transmit the payments to the Department has ceased.

6. If the notice of the delinquency seeks to prevent the transfer or other disposition of a deposit in a bank or credit union or other credits or personal property in the possession or under the control of a bank, credit union or other depository institution, the notice must be delivered or mailed to any branch or office of the bank, credit union or other depository institution at which the deposit is carried or at which the credits or personal property is held.

7. If any person notified by the notice of the delinquency makes any transfer or other disposition of the property or debts required to be withheld or transmitted, to the extent of the value of the property or the amount of the debts thus transferred or paid, that person is liable to the State for any indebtedness due pursuant to this chapter, or chapter 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, sections 3 to 45, inclusive, of this act, NRS 482.313, or chapter 585 or 680B of NRS from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

**Sec. 50.** NRS 363A.130 is hereby amended to read as follows:

363A.130 1. There is hereby imposed an excise tax on each employer at the rate of [2] **2.29** percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

**Sec. 51.** NRS 363A.130 is hereby amended to read as follows:

363A.130 1. There is hereby imposed an excise tax on each employer at the rate of [2:29] **2.42** percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

**Sec. 52.** NRS 363A.130 is hereby amended to read as follows:

363A.130 1. There is hereby imposed an excise tax on each employer at the rate of [2:42] **2** percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

**Sec. 53.** NRS 78.245 is hereby amended to read as follows:

78.245 [Ne]

**1. Except as otherwise provided in subsection 2, no** stocks, bonds or other securities issued by any corporation organized under this chapter, nor the income or profits therefrom, nor the transfer thereof by assignment, descent, testamentary disposition or otherwise, shall be taxed by this State when such stocks, bonds or other securities shall be owned by nonresidents of this State or by foreign corporations.

**2. The provisions of subsection 1 do not apply to the tax imposed pursuant to sections 3 to 45, inclusive, of this act.**

**Sec. 54.** NRS 90.420 is hereby amended to read as follows:

90.420 1. The Administrator by order may deny, suspend or revoke any license, fine any licensed person, limit the activities governed by this chapter that an applicant or licensed person may perform in this State, bar an applicant or licensed person from association with a licensed broker dealer or investment adviser or bar from employment with a licensed broker dealer or investment adviser a person who is a partner, officer, director, sales representative, investment adviser or representative of an investment adviser, or a person occupying a similar status or performing a similar function for an applicant or licensed person, if the Administrator finds that the order is in the public interest and that the applicant or licensed person or, in the case of a broker dealer or investment adviser, any partner, officer, director, sales representative, investment adviser, representative of an investment adviser, or person occupying a similar status or performing similar functions or any person directly or indirectly controlling the broker dealer or investment adviser, or any transfer agent or any person directly or indirectly controlling the transfer agent:

(a) Has filed an application for licensing with the Administrator which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(b) Has violated or failed to comply with a provision of this chapter as now or formerly in effect or a regulation or order adopted or issued under this chapter;

(c) Is the subject of an adjudication or determination after notice and opportunity for hearing, within the last 5 years by a securities agency or administrator of another state or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act or the securities law of any other state, but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts taken place in this State;

(d) Within the last 10 years has been convicted of a felony or misdemeanor which the Administrator finds:

(1) Involves the purchase or sale of a security, taking a false oath, making a false report, bribery, perjury, burglary, robbery or conspiracy to commit any of the foregoing offenses;

(2) Arises out of the conduct of business as a broker dealer, investment adviser, depository institution, insurance company or fiduciary; or

(3) Involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of money or securities or conspiracy to commit any of the foregoing offenses;

(e) Is or has been permanently or temporarily enjoined by any court of competent jurisdiction, unless the order has been vacated, from acting as an investment adviser, representative of an investment adviser, underwriter, broker dealer or as an affiliated person or employee of an investment company, depository institution or insurance company or from engaging in or continuing any conduct or practice in connection with any of the foregoing activities or in connection with the purchase or sale of a security;

(f) Is or has been the subject of an order of the Administrator, unless the order has been vacated, denying, suspending or revoking the person's license as a broker dealer, sales representative, investment adviser, representative of an investment adviser or transfer agent;

(g) Is or has been the subject of any of the following orders which were issued within the last 5 years, unless the order has been vacated:

(1) An order by the securities agency or administrator of another state, Canadian province or territory or by the Securities and Exchange Commission or a comparable regulatory agency of another country, entered after notice and opportunity for hearing, denying, suspending or revoking the person's license as a broker dealer, sales representative, investment adviser, representative of an investment adviser or transfer agent;

(2) A suspension or expulsion from membership in or association with a member of a self regulatory organization;

(3) An order of the United States Postal Service relating to fraud;

(4) An order to cease and desist entered after notice and opportunity for hearing by the Administrator, the securities agency or administrator of another state, Canadian province or territory, the Securities and Exchange Commission or a comparable regulatory agency of another country, or the Commodity Futures Trading Commission; or

(5) An order by the Commodity Futures Trading Commission denying, suspending or revoking registration under the Commodity Exchange Act;

(h) Has engaged in unethical or dishonest practices in the securities business;

(i) Is insolvent, either in the sense that liabilities exceed assets or in the sense that obligations cannot be met as they mature, but the Administrator may not enter an order against a broker dealer or investment adviser under this paragraph without a finding of insolvency as to the broker dealer or investment adviser;

(j) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] or sections 3 to 45, inclusive, of this act;

(k) Is determined by the Administrator in compliance with NRS 90.430 not to be qualified on the basis of lack of training, experience and knowledge of the securities business; or

(l) Has failed reasonably to supervise a sales representative, employee or representative of an investment adviser.

2. The Administrator may not institute a proceeding on the basis of a fact or transaction known to the director when the license became effective unless the proceeding is instituted within 90 days after issuance of the license.

3. If the Administrator finds that an applicant or licensed person is no longer in existence or has ceased to do business as a broker dealer, sales representative, investment adviser, representative of an investment adviser or transfer agent or is adjudicated mentally incompetent or subjected to the control of a committee, conservator or guardian or cannot be located after reasonable search, the Administrator may by order deny the application or revoke the license.

**Sec. 55.** NRS 90.730 is hereby amended to read as follows:

90.730 1. Except as otherwise provided in subsection 2, information and records filed with or obtained by the Administrator are public information and are available for public examination.

2. Except as otherwise provided in subsections 3 and 4 and NRS 239.0115, the following information and records do not constitute public information under subsection 1 and are confidential:

(a) Information or records obtained by the Administrator in connection with an investigation concerning possible violations of this chapter; and

(b) Information or records filed with the Administrator in connection with a registration statement filed under this chapter or a report under NRS 90.390 which constitute trade secrets or commercial or financial information of a person for which that person is entitled to and has asserted a claim of privilege or confidentiality authorized by law.

3. The Administrator may submit any information or evidence obtained in connection with an investigation to the:

(a) Attorney General or appropriate district attorney for the purpose of prosecuting a criminal action under this chapter; and

(b) Department of Taxation for its use in carrying out the provisions of chapter 363A of NRS [ ] and sections 3 to 45, inclusive, of this act.

4. The Administrator may disclose any information obtained in connection with an investigation pursuant to NRS 90.620 to the agencies and administrators specified in subsection 1 of NRS 90.740 but only if disclosure is provided for the purpose of a civil, administrative or criminal investigation or proceeding, and the receiving agency or administrator represents in writing that under applicable law protections exist to preserve the integrity, confidentiality and security of the information.

5. This chapter does not create any privilege or diminish any privilege existing at common law, by statute, regulation or otherwise.

**Sec. 56.** NRS 604A.820 is hereby amended to read as follows:

604A.820 1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, the Commissioner shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order either dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.

(b) Impose upon the licensee an administrative fine of not more than \$10,000 for each violation by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including investigative costs and attorney's fees of the Commissioner.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any lawful regulation adopted pursuant thereto;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] or sections 3 to 45, inclusive, of this act;

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or

(e) The licensee:

(1) Failed to open an office for the conduct of the business authorized by his or her license within 180 days after the date the license was issued; or

(2) Has failed to remain open for the conduct of the business for a period of 180 days without good cause therefor.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies

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otherwise or a stay is granted.

**Sec. 57.** NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section and NRS 239.0115, information obtained from any employing unit or person pursuant to the administration of this chapter and any determination as to the benefit rights of any person is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's or employing unit's identity.

2. Any claimant or a legal representative of a claimant is entitled to information from the records of the Division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding pursuant to this chapter. A claimant or an employing unit is not entitled to information from the records of the Division for any other purpose.

3. Subject to such restrictions as the Administrator may by regulation prescribe, the information obtained by the Division may be made available to:

(a) Any agency of this or any other state or any federal agency charged with the administration or enforcement of laws relating to unemployment compensation, public assistance, workers' compensation or labor and industrial relations, or the maintenance of a system of public employment offices;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The Department of Taxation; and

(e) The State Contractors' Board in the performance of its duties to enforce the provisions of chapter 624 of NRS.

Information obtained in connection with the administration of the Employment Service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or a public assistance program.

4. Upon written request made by a public officer of a local government, the Administrator shall furnish from the records of the Division the name, address and place of employment of any person listed in the records of the Division. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to that local government. The Administrator may charge a reasonable fee for the cost of providing the requested information.

5. The Administrator may publish or otherwise provide information on the names of employers, their addresses, their type or class of business or industry, and the approximate number of employees employed by each such employer, if the information released will assist unemployed persons to obtain employment or will be generally useful in developing and diversifying the economic interests of this State. Upon request by a state agency which is able to demonstrate that its intended use of the information will benefit the residents of this State, the Administrator may, in addition to the information listed in this subsection, disclose the number of employees employed by each employer and the total wages paid by each employer. The Administrator may charge a fee to cover the actual costs of any administrative expenses relating to the disclosure of this information to a state agency. The Administrator may require the state agency to certify in writing that the agency will take all actions necessary to maintain the confidentiality of the information and prevent its unauthorized disclosure.

6. Upon request therefor, the Administrator shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation and employment status of each recipient of benefits and the recipient's rights to further benefits pursuant to this chapter.

7. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this State may submit a written request to the Administrator that the Administrator furnish, from the records of the Division, the name, address and place of employment of any person listed in the records of employment of the Division. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of such a request, the Administrator shall furnish the information requested. The Administrator may charge a fee to cover the actual costs of any related administrative expenses.

8. In addition to the provisions of subsection 5, the Administrator shall provide lists containing the names and addresses of employers, and information regarding the wages paid by each employer to the Department of Taxation, upon request, for use in verifying returns for the taxes imposed pursuant to chapters 363A and 363B of NRS [ ] **and sections 3 to 45, inclusive, of this act.** The Administrator may charge a fee to cover the actual costs of any related administrative expenses.

9. A private carrier that provides industrial insurance in this State shall submit to the Administrator a list containing the name of each person who received benefits pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS during the preceding month and request that the Administrator compare the information so provided with the records of the Division regarding persons claiming benefits pursuant to chapter 612 of NRS for the same period. The information submitted by the private carrier must be in a form determined by the Administrator and must contain the social security number of each such person. Upon receipt of the request, the Administrator shall make such a comparison and, if it appears from the information submitted that a person is simultaneously claiming benefits under chapter 612 of NRS and under chapters 616A to 616D, inclusive, or chapter 617 of NRS, the Administrator shall notify the Attorney General or any other appropriate law enforcement agency. The Administrator shall charge a fee to cover the actual costs of any related administrative expenses.

10. The Administrator may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with the request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the Internal Revenue Code of 1954.

11. If any employee or member of the Board of Review, the Administrator or any employee of the Administrator, in violation of the provisions of this section, discloses information obtained from any employing unit or person in the administration of this chapter, or if any person who has obtained a list of applicants for work, or of claimants or recipients of benefits pursuant to this chapter uses or permits the use of the list for any political purpose, he or she is guilty of a gross misdemeanor.

12. All letters, reports or communications of any kind, oral or written, from the employer or employee to each other or to the Division or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of this chapter.

**Sec. 58.** NRS 616B.012 is hereby amended to read as follows:

616B.012 1. Except as otherwise provided in this section and NRS 239.0115, 616B.015, 616B.021 and 616C.205, information obtained from any insurer, employer or employee is confidential and may not be disclosed or be open to public inspection in any manner which would reveal the person's identity.

2. Any claimant or legal representative of the claimant is entitled to information from the records of the insurer, to the extent necessary for the proper presentation of a claim in any proceeding under chapters 616A to 616D, inclusive, or chapter 617 of NRS.

3. The Division and Administrator are entitled to information from the records of the insurer which is necessary for the performance of their duties. The Administrator may, by regulation, prescribe the manner in which otherwise confidential information may be made available to:

(a) Any agency of this or any other state charged with the administration or enforcement of laws relating to industrial insurance, unemployment compensation, public assistance or labor law and industrial relations;

(b) Any state or local agency for the enforcement of child support;

(c) The Internal Revenue Service of the Department of the Treasury;

(d) The Department of Taxation; and

(e) The State Contractors' Board in the performance of its duties to enforce the provisions of chapter 624 of NRS.

Information obtained in connection with the administration of a program of industrial insurance may be made available to persons or agencies for purposes appropriate to the operation of a program of industrial insurance.

4. Upon written request made by a public officer of a local government, an insurer shall furnish from its records the name, address and place of employment of any person listed in its records. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by proper authority of the local government certifying that the request is made to allow the proper authority to enforce a law to recover a debt or obligation owed to the local government. Except as otherwise provided in NRS 239.0115, the information obtained by the local government is confidential and may not be used or disclosed for any purpose other than the collection of a debt or obligation owed to the local government. The insurer may charge a reasonable fee for the cost of providing the requested information.

5. To further a current criminal investigation, the chief executive officer of any law enforcement agency of this State may submit to the Administrator a written request for the name, address and place of employment of any person listed in the records of an insurer. The request must set forth the social security number of the person about whom the request is made and contain a statement signed by the chief executive officer certifying that the request is made to further a criminal investigation currently being conducted by the agency. Upon receipt of a request, the Administrator shall instruct the insurer to furnish the information requested. Upon receipt of such an instruction, the insurer shall furnish the information requested. The insurer may charge a reasonable fee to cover any related administrative expenses.

6. Upon request by the Department of Taxation, the Administrator shall provide:

(a) Lists containing the names and addresses of employers; and

(b) Other information concerning employers collected and maintained by the Administrator or the Division to carry out the purposes of chapters 616A to 616D, inclusive, or chapter 617 of NRS. **to** the Department for its use in verifying returns for the taxes imposed pursuant to chapters 363A and 363B of NRS [ ] **and sections 3 to 45, inclusive, of this act.** The Administrator may charge a reasonable fee to cover any related administrative expenses.

7. Any person who, in violation of this section, discloses information obtained from files of claimants or policyholders or obtains a list of claimants or policyholders under chapters 616A to 616D, inclusive, or chapter 617 of NRS and uses or permits the use of the list for any political purposes, is guilty of a gross misdemeanor.

8. All letters, reports or communications of any kind, oral or written, from the insurer, or any of its agents, representatives or employees are privileged and must not be the subject matter or basis for any lawsuit if the letter, report or communication is written, sent, delivered or prepared pursuant to the requirements of chapters 616A to 616D, inclusive, or chapter 617 of NRS.

9. The provisions of this section do not prohibit the Administrator or the Division from disclosing any nonproprietary information relating to an uninsured employer or proof of industrial insurance.

**Sec. 59.** NRS 645B.060 is hereby amended to read as follows:

645B.060 1. Subject to the administrative control of the Director of the Department of Business and Industry, the Commissioner shall exercise general supervision and control over mortgage brokers and mortgage agents doing business in this State.

2. In addition to the other duties imposed upon him or her by law, the Commissioner shall:

(a) Adopt regulations:

(1) Setting forth the requirements for an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property. The regulations must include, without limitation, the minimum financial conditions that the investor must comply with before becoming an investor.

(2) Establishing reasonable limitations and guidelines on loans made by a mortgage broker to a director, officer, mortgage agent or employee of the mortgage broker.

(b) Adopt any other regulations that are necessary to carry out the provisions of this chapter, except as to loan brokerage fees.

(c) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner.

(d) Except as otherwise provided in subsection 4, conduct an annual examination of each mortgage broker doing business in this State. The annual examination must include, without limitation, a formal exit review with the mortgage broker. The Commissioner shall adopt regulations prescribing:

(1) Standards for determining the rating of each mortgage broker based upon the results of the annual examination; and

(2) Procedures for resolving any objections made by the mortgage broker to the results of the annual examination. The results of the annual examination may not be opened to public inspection pursuant to NRS 645B.090 until after a period of time set by the Commissioner to determine any objections made by the mortgage broker.

(e) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary for the efficient administration of the laws of this State regarding mortgage brokers and mortgage agents. The Commissioner shall adopt regulations specifying the general guidelines that will be followed when a periodic or special audit of a mortgage broker is conducted pursuant to this chapter.

(f) Classify as confidential certain records and information obtained by the Division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by:

(1) The Legislative Auditor; or

(2) The Department of Taxation if necessary to carry out the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

(g) Conduct such examinations and investigations as are necessary to ensure that mortgage brokers and mortgage agents meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination, a mortgage broker or mortgage agent shall pay a fee based on the rate established pursuant to NRS 645F.280.

4. The Commissioner may conduct examinations of a mortgage broker, as described in paragraph (d) of subsection 2, on a biennial instead of an annual basis if the mortgage broker:

(a) Received a rating in the last annual examination that meets a threshold determined by the Commissioner;

(b) Has not had any adverse change in financial condition since the last annual examination, as shown by financial statements of the mortgage broker;

(c) Has not had any complaints received by the Division that resulted in any administrative action by the Division; and

(d) Does not maintain any trust accounts pursuant to NRS 645B.170 or 645B.175 or arrange loans funded by private investors.

**Sec. 60.** NRS 645B.670 is hereby amended to read as follows:

645B.670 Except as otherwise provided in NRS 645B.690:

1. For each violation committed by an applicant for a license issued pursuant to this chapter, whether or not the applicant is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than \$25,000 if the applicant:

(a) Has knowingly made or caused to be made to the Commissioner any false representation of material fact;

(b) Has suppressed or withheld from the Commissioner any information which the applicant possesses and which, if submitted by the applicant, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner in completing and filing his or her application for a license or during the course of the investigation of his or her application for a license.

2. For each violation committed by a mortgage broker, the Commissioner may impose upon the mortgage broker an administrative fine of not more than \$25,000, may suspend, revoke or place conditions upon the mortgage broker's license, or may do both, if the mortgage broker, whether or not acting as such:

(a) Is insolvent;

(b) Is grossly negligent or incompetent in performing any act for which the mortgage broker is required to be licensed pursuant to the provisions of this chapter;

(c) Does not conduct his or her business in accordance with law or has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner;

(d) Is in such financial condition that the mortgage broker cannot continue in business with safety to his or her customers;

(e) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the mortgage broker knew or, by the exercise of reasonable diligence, should have known;

(g) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the mortgage broker possesses and which, if submitted by the mortgage broker, would have rendered the mortgage broker ineligible to be licensed pursuant to the provisions of this chapter;

(h) Has failed to account to persons interested for all money received for a trust account;

(i) Has refused to permit an examination by the Commissioner of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the Commissioner pursuant to the provisions of this chapter or a regulation adopted pursuant to this chapter;

(j) Has been convicted of, or entered or agreed to enter a plea of guilty or nolo contendere to, a felony in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering;

(k) Has refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses that the mortgage broker is required to pay pursuant to this chapter or a regulation adopted pursuant to this chapter;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his or her own or has converted the money or property of others to his or her own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;

(p) Has repeatedly violated the policies and procedures of the mortgage broker;

(q) Has failed to exercise reasonable supervision over the activities of a mortgage agent as required by NRS 645B.460;

(r) Has instructed a mortgage agent to commit an act that would be cause for the revocation of the license of the mortgage broker, whether or not the mortgage agent commits the act;

(s) Has employed a person as a mortgage agent or authorized a person to be associated with the mortgage broker as a mortgage agent at a time when the mortgage broker knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person:

(1) Had been convicted of, or entered or agreed to enter a plea of guilty or nolo contendere to, a felony in a domestic, foreign or military court within the 7 years immediately preceding the date of application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering; or

(2) Had a license or registration as a mortgage agent, mortgage banker, mortgage broker or residential mortgage loan originator revoked in this State or any other jurisdiction or had a financial services license or registration revoked within the immediately preceding 10 years;

(t) Has violated NRS 645C.557; or

(u) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

3. For each violation committed by a mortgage agent, the Commissioner may impose upon the mortgage agent an administrative fine of not more than \$25,000, may suspend, revoke or place conditions upon the mortgage agent's license, or may do both, if the mortgage agent, whether or not acting as such:

(a) Is grossly negligent or incompetent in performing any act for which the mortgage agent is required to be licensed pursuant to the provisions of this chapter;

(b) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(c) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the mortgage agent knew or, by the exercise of reasonable diligence, should have known;

(d) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the mortgage agent possesses and which, if submitted by the mortgage agent, would have rendered the mortgage agent ineligible to be licensed pursuant to the provisions of this chapter;

(e) Has been convicted of, or entered or agreed to enter a plea of guilty or nolo contendere to, a felony in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering;

(f) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(g) Has commingled the money or other property of a client with his or her own or has converted the money or property of others to his or her own use;

(h) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;

(i) Has violated NRS 645C.557;

(j) Has repeatedly violated the policies and procedures of the mortgage broker with whom the mortgage agent is associated or by whom he or she is employed; or

(k) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner or has assisted or offered to assist another person to commit such a violation.

**Sec. 61.** NRS 645E.300 is hereby amended to read as follows:

645E.300 1. Subject to the administrative control of the Director of the Department of Business and Industry, the Commissioner shall exercise general supervision and control over mortgage bankers doing business in this State.

2. In addition to the other duties imposed upon him or her by law, the Commissioner shall:

(a) Adopt regulations establishing reasonable limitations and guidelines on loans made by a mortgage banker to a director, officer or employee of the mortgage banker.

(b) Adopt any other regulations that are necessary to carry out the provisions of this chapter, except as to loan fees.

(c) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner.

(d) Except as otherwise provided in subsection 4, conduct an annual examination of each mortgage banker doing business in this State.

(e) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary for the efficient administration of the laws of this State regarding mortgage bankers.

(f) Classify as confidential certain records and information obtained by the Division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by:

(1) The Legislative Auditor; or

(2) The Department of Taxation if necessary to carry out the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

(g) Conduct such examinations and investigations as are necessary to ensure that mortgage bankers meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination, a mortgage banker shall pay a fee based on the rate established pursuant to NRS 645F.280.

4. The Commissioner may conduct biennial examinations of a mortgage banker instead of annual examinations, as described in paragraph (d) of subsection 2, if the mortgage banker:

(a) Received a rating in the last annual examination that meets a threshold determined by the Commissioner;

(b) Has not had any adverse change in financial condition since the last annual examination, as shown by financial statements of the mortgage banker; and

(c) Has not had any complaints received by the Division that resulted in any administrative action by the Division.

**Sec. 62.** NRS 645E.670 is hereby amended to read as follows:

645E.670 1. For each violation committed by an applicant, whether or not the applicant is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than \$25,000 if the applicant:

(a) Has knowingly made or caused to be made to the Commissioner any false representation of material fact;

(b) Has suppressed or withheld from the Commissioner any information which the applicant possesses and which, if submitted by the applicant, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter; or

(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner in completing and filing his or her application for a license or during the course of the investigation of his or her application for a license.

2. For each violation committed by a licensee, the Commissioner may impose upon the licensee an administrative fine of not more than \$25,000, may suspend, revoke or place conditions upon the license, or may do both, if the licensee, whether or not acting as such:

(a) Is insolvent;

(b) Is grossly negligent or incompetent in performing any act for which the licensee is required to be licensed pursuant to the provisions of this chapter;

(c) Does not conduct his or her business in accordance with law or has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner;

(d) Is in such financial condition that the licensee cannot continue in business with safety to his or her customers;

(e) Has made a material misrepresentation in connection with any transaction governed by this chapter;

(f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the licensee knew or, by the exercise of reasonable diligence, should have known;

(g) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the licensee possesses and which, if submitted by the licensee, would have rendered the licensee ineligible to be licensed pursuant to the provisions of this chapter;

(h) Has failed to account to persons interested for all money received for a trust account;

(i) Has refused to permit an examination by the Commissioner of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the Commissioner pursuant to the provisions of this chapter or a regulation adopted pursuant to this chapter;

(j) Has been convicted of, or entered or agreed to enter a plea of nolo contendere to, a felony in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering;

(k) Has refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses that the licensee is required to pay pursuant to this chapter or a regulation adopted pursuant to this chapter;

(l) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act;**

(m) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(n) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(o) Has violated NRS 645C.557;

(p) Has commingled the money or other property of a client with his or her own or has converted the money or property of others to his or her own use; or

(q) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

**Sec. 63.** NRS 658.151 is hereby amended to read as follows:

658.151 1. The Commissioner may forthwith take possession of the business and property of any depository institution to which this title or title 56 of NRS applies when it appears that the depository institution:

(a) Has violated its charter or any laws applicable thereto.

(b) Is conducting its business in an unauthorized or unsafe manner.

(c) Is in an unsafe or unsound condition to transact its business.

(d) Has an impairment of its stockholders' or members' equity.

(e) Has refused to pay its depositors in accordance with the terms on which such deposits were received, or has refused to pay its holders of certificates of indebtedness or investment in accordance with the terms upon which those certificates of indebtedness or investment were sold.

(f) Has become or is in imminent danger of becoming otherwise insolvent.

(g) Has neglected or refused to comply with the terms of a lawful order of the Commissioner.

(h) Has refused, upon proper demand, to submit its records, affairs and concerns for inspection and examination of an appointed or authorized examiner of the Commissioner.

(i) Has made a voluntary assignment of its assets to trustees.

(j) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

2. The Commissioner also may forthwith take possession of the business and property of any depository institution to which this title or title 56 of NRS applies when it appears that the officers of the depository institution have refused to be examined upon oath regarding their affairs.

**Sec. 64.** NRS 665.133 is hereby amended to read as follows:

665.133 1. The records and information described in NRS 665.130 may be disclosed to:

(a) An agency of the Federal Government or of another state which regulates the financial institution which is the subject of the records or information;

(b) The Director of the Department of Business and Industry for the Director's confidential use;

(c) The State Board of Finance for its confidential use, if the report or other information is necessary for the State Board of Finance to perform its duties under this title;

(d) The Department of Taxation for its use in carrying out the provisions of chapter 363A of NRS [ ] **and sections 3 to 45, inclusive, of this act;**

(e) An entity which insures or guarantees deposits;

(f) A public officer authorized to investigate criminal charges in connection with the affairs of the depository institution;

(g) A person preparing a proposal for merging with or acquiring an institution or holding company, but only after notice of the disclosure has been given to the institution or holding company;

(h) Any person to whom the subject of the report has authorized the disclosure;

(i) Any other person if the Commissioner determines, after notice and opportunity for hearing, that disclosure is in the public interest and outweighs any potential harm to the depository institution and its stockholders, members, depositors and creditors; and

(j) Any court in a proceeding initiated by the Commissioner concerning the financial institution.

*ballot questions continued...*

2. All the reports made available pursuant to this section remain the property of the Division of Financial Institutions and no person, agency or authority to whom the reports are made available, or any officer, director or employee thereof, may disclose any of the reports or any information contained therein, except in published statistical material that does not disclose the affairs of any natural person or corporation.

**Sec. 65.** NRS 669.275 is hereby amended to read as follows:

669.275 1. The Commissioner may require a licensee to provide an audited financial statement prepared by an independent certified public accountant licensed to do business in this State.

2. On the fourth Monday in January of each year, each licensee shall submit to the Commissioner a list of stockholders required to be maintained pursuant to paragraph (c) of subsection 1 of NRS 78.105 or the list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241, verified by the president or a manager, as appropriate.

3. The list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241 must include the percentage of each member's interest in the company, in addition to the requirements set forth in that section.

4. Except as otherwise provided in NRS 239.0115, any document submitted pursuant to this section is confidential. **This subsection does not limit the examination of any document by the Department of Taxation if necessary to carry out the provisions of sections 3 to 45, inclusive, of this act.**

**Sec. 66.** NRS 669.2825 is hereby amended to read as follows:

669.2825 1. The Commissioner may institute disciplinary action or forthwith initiate proceedings to take possession of the business and property of any retail trust company when it appears that the retail trust company:

(a) Has violated its charter or any state or federal laws applicable to the business of a trust company.

(b) Is conducting its business in an unauthorized or unsafe manner.

(c) Is in an unsafe or unsound condition to transact its business.

(d) Has an impairment of its stockholders' equity.

(e) Has refused to pay or transfer account assets to its account holders as required by the terms of the accounts' governing instruments.

(f) Has become insolvent.

(g) Has neglected or refused to comply with the terms of a lawful order of the Commissioner.

(h) Has refused, upon proper demand, to submit its records, affairs and concerns for inspection and examination of an appointed or authorized examiner of the Commissioner.

(i) Has made a voluntary assignment of its assets to receivers, conservators, trustees or creditors without complying with NRS 669.230.

(j) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

(k) Has materially and willfully breached its fiduciary duties to its customers.

(l) Has failed to properly disclose all fees, interest and other charges to its customers.

(m) Has willfully engaged in material conflicts of interest regarding a customer's account.

(n) Has made intentional material misrepresentations regarding any aspect of the services performed or proposed to be performed by the retail trust company.

2. The Commissioner also may forthwith initiate proceedings to take possession of the business and property of any trust company when it appears that the officers of the trust company have refused to be examined upon oath regarding its affairs.

**Sec. 67.** NRS 669.2847 is hereby amended to read as follows:

669.2847 1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, the Commissioner shall give at least 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.

(b) Impose upon the licensee an administrative fine of not more than \$10,000 for each violation by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his or her investigative costs and attorney's fees.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any regulation adopted pursuant thereto or any lawful order of the Division of Financial Institutions;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act;**

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or

(e) The licensee:

(1) Failed to open an office for the conduct of the business authorized by his or her license within 180 days after the date the license was issued; or

(2) Has failed to remain open for the conduct of the business for a period of 30 days without good cause therefor.

4. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

**Sec. 68.** NRS 669.285 is hereby amended to read as follows:

669.285 Except as otherwise provided in NRS 239.0115, any application and personal or financial records submitted by a person pursuant to the provisions of this chapter and any personal or financial records or other documents obtained by the Division of Financial Institutions pursuant to an examination or audit conducted by the Division are confidential and may be disclosed only to:

1. The Division, any authorized employee of the Division and any state or federal agency investigating the activities covered under the provisions of this chapter; **and**

2. **The Department of Taxation for its use in carrying out the provisions of sections 3 to 45, inclusive, of this act; and**

3. Any person when the Commissioner, in the Commissioner's discretion, determines that the interests of the public that would be protected by disclosure outweigh the interest of any person in the confidential information not being disclosed.

**Sec. 69.** NRS 669A.310 is hereby amended to read as follows:

669A.310 1. Except as otherwise provided in this section, any application and personal or financial records submitted by a person pursuant to the provisions of this chapter, any personal or financial records or other documents obtained by the Division of Financial Institutions pursuant to an examination or audit conducted by the Division pursuant to this chapter and any other private information relating to a family trust company are confidential and may be disclosed only to:

(a) The Division, any authorized employee of the Division and a state or federal agency investigating activities regulated pursuant to this chapter; **and**

(b) **The Department of Taxation for its use in carrying out the provisions of sections 3 to 45, inclusive, of this act; and**

(c) Any other person if the Commissioner, in the Commissioner's discretion, determines that the interests of the public in disclosing the information outweigh the interests of the person about whom the information pertains in not disclosing the information.

2. The Commissioner shall give to the family trust company to which the information relates 10-days' prior written notice of intent to disclose confidential information directly or indirectly to a person pursuant to paragraph (b) (c) of subsection 1. Any family trust company which receives such a notice may object to the disclosure of the confidential information and will be afforded the right to a hearing in accordance with the provisions of chapter 233B of NRS. If a family trust company requests a hearing, the Commissioner may not reveal confidential information prior to the conclusion of the hearing and a ruling. Prior to dissemination of any confidential information, the Commissioner shall require a written agreement not to reveal the confidential information by the party receiving the confidential information. In no event shall the Commissioner disclose confidential information to the general public, any competitor or any potential competitor of a family trust company.

3. Nothing in this chapter is intended to preclude a law enforcement officer from gaining access to otherwise confidential records by subpoena, court order, search warrant or other lawful means. Notwithstanding any other provision of this chapter, the Commissioner shall have the ability to share information with other out of state or federal regulators with whom the Department of Business and Industry has an agreement regarding the sharing of information. Nothing in this chapter is intended to preclude any agency of this State from gaining access to otherwise confidential records in accordance with any applicable law.

**Sec. 70.** NRS 673.484 is hereby amended to read as follows:

673.484 The Commissioner may after notice and hearing suspend or revoke the charter of any association for:

1. Repeated failure to abide by the provisions of this chapter or the regulations adopted thereunder.

2. Failure to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

**Sec. 71.** NRS 675.440 is hereby amended to read as follows:

675.440 1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he or she shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order either dismissing the charges, revoking the license, or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. A copy of the order must be sent by registered or certified mail to the licensee.

(b) Impose upon the licensee an administrative fine of not more than \$10,000 for each violation by the licensee of any provision of this chapter or any lawful regulation adopted under it.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his or her investigative costs and attorney's fees.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any lawful regulation adopted under it;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act;**

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license hereunder; or

(e) The applicant failed to open an office for the conduct of the business authorized under this chapter within 120 days after the date the license was issued, or has failed to remain open for the conduct of the business for a period of 120 days without good cause therefor.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

**Sec. 72.** NRS 677.510 is hereby amended to read as follows:

677.510 1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he or she shall give 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order either dismissing the charges, or revoking the license, or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. A copy of the order must be sent by registered or certified mail to the licensee.

(b) Impose upon the licensee an administrative fine of not more than \$10,000 for each violation by the licensee of any provision of this chapter or any lawful regulation adopted pursuant thereto.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his or her investigative costs and attorney's fees.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter, or any lawful regulation adopted pursuant thereto;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act;**

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license hereunder; or

(e) The applicant failed to open an office for the conduct of the business authorized under this chapter within 120 days after the date the license was issued, or has failed to remain open for the conduct of the business for a period of 120 days without good cause therefor.

4. Any revocation or suspension applies only to the license granted to a person for the particular office for which grounds for revocation or suspension exist.

5. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

**Sec. 73.** NRS 680B.037 is hereby amended to read as follows:

680B.037 [Payment]

1. **Except as otherwise provided in subsection 2, payment** by an insurer of the tax imposed by NRS 680B.027 is in lieu of all taxes imposed by the State or any city, town or county upon premiums or upon income of insurers and of franchise, privilege or other taxes measured by income of the insurer.

2. **The provisions of subsection 1 do not apply to the tax imposed pursuant to the provisions of sections 3 to 45, inclusive, of this act.**

**Sec. 74.** NRS 683A.451 is hereby amended to read as follows:

683A.451 The Commissioner may refuse to issue a license or certificate pursuant to this chapter or may place any person to whom a license or certificate is issued pursuant to this chapter on probation, suspend the person for not more than 12 months, or revoke or refuse to renew his or her license or certificate, or may impose an administrative fine or take any

combination of the foregoing actions, for one or more of the following causes:

1. Providing incorrect, misleading, incomplete or partially untrue information in his or her application for a license.

2. Violating a law regulating insurance, or violating a regulation, order or subpoena of the Commissioner or an equivalent officer of another state.

3. Obtaining or attempting to obtain a license through misrepresentation or fraud.

4. Misappropriating, converting or improperly withholding money or property received in the course of the business of insurance.

5. Intentionally misrepresenting the terms of an actual or proposed contract of or application for insurance.

6. Conviction of a felony.

7. Admitting or being found to have committed an unfair trade practice or fraud.

8. Using fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.

9. Denial, suspension or revocation of a license as a producer of insurance, or its equivalent, in any other state, territory or province.

10. Forging another's name to an application for insurance or any other document relating to the transaction of insurance.

11. Improperly using notes or other reference material to complete an examination for a license related to insurance.

12. Knowingly accepting business related to insurance from an unlicensed person.

13. Failing to comply with an administrative or judicial order imposing an obligation of child support.

14. Failing to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

**Sec. 75.** NRS 686C.360 is hereby amended to read as follows:

686C.360 The Association is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions, except taxes on property [ ] **and the tax imposed pursuant to sections 3 to 45, inclusive, of this act.**

**Sec. 76.** NRS 687A.130 is hereby amended to read as follows:

687A.130 The Association is exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes:

1. Levied on real or personal property; or

2. Imposed pursuant to the provisions of chapter 363A or 363B of NRS [ ] **or sections 3 to 45, inclusive, of this act.**

**Sec. 77.** NRS 688C.210 is hereby amended to read as follows:

688C.210 1. After notice, and after a hearing if requested, the Commissioner may suspend, revoke, refuse to issue or refuse to renew a license under this chapter if the Commissioner finds that:

(a) There was material misrepresentation in the application for the license;

(b) The licensee or an officer, partner, member or significant managerial employee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action for disqualification, or is otherwise shown to be untrustworthy or incompetent;

(c) A provider of viatical settlements has engaged in a pattern of unreasonable payments to viators;

(d) The applicant or licensee has been found guilty or guilty but mentally ill of, or pleaded guilty, guilty but mentally ill or nolo contendere to, a felony or a misdemeanor involving fraud, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any crime involving moral turpitude, whether or not a judgment of conviction has been entered by the court;

(e) A provider of viatical settlements has entered into a viatical settlement in a form not approved pursuant to NRS 688C.220;

(f) A provider of viatical settlements has failed to honor obligations of a viatical settlement or an agreement to purchase a viatical settlement;

(g) The licensee no longer meets a requirement for initial licensure;

(h) A provider of viatical settlements has assigned, transferred or pledged a viaticated policy to a person other than another provider licensed under this chapter, a purchaser of the viatical settlement or a special organization;

(i) The applicant or licensee has provided materially untrue information to an insurer that issued a policy that is the subject of a viatical settlement;

(j) The applicant or licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [ ] **or sections 3 to 45, inclusive, of this act;**

(k) The applicant or licensee has violated a provision of this chapter or other applicable provisions; or

(l) The applicant or licensee has acted in bad faith with regard to a viator.

2. A suspension imposed for grounds set forth in paragraph (k) or (l) of subsection 1 must not exceed a period of 12 months.

3. If the Commissioner takes action as described in subsection 1, the applicant or licensee may apply in writing for a hearing before the Commissioner to determine the reasonableness of the action taken by the Commissioner, pursuant to the provisions of NRS 679B.310 to 679B.370, inclusive.

**Sec. 78.** NRS 694C.450 is hereby amended to read as follows:

694C.450 1. Except as otherwise provided in this section, a captive insurer shall pay to the Division, not later than March 1 of each year, a tax at the rate of:

(a) Two fifths of 1 percent on the first \$20,000,000 of its net direct premiums;

(b) One fifth of 1 percent on the next \$20,000,000 of its net direct premiums; and

(c) Seventy five thousandths of 1 percent on each additional dollar of its net direct premiums.

2. Except as otherwise provided in this section, a captive insurer shall pay to the Division, not later than March 1 of each year, a tax at a rate of:

(a) Two hundred twenty five thousandths of 1 percent on the first \$20,000,000 of revenue from assumed reinsurance premiums;

(b) One hundred fifty thousandths of 1 percent on the next \$20,000,000 of revenue from assumed reinsurance premiums; and

(c) Twenty five thousandths of 1 percent on each additional dollar of revenue from assumed reinsurance premiums.

► The tax on reinsurance premiums pursuant to this subsection must not be levied on premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection 1. A captive insurer is not required to pay any reinsurance premium tax pursuant to this subsection on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain such business with the captive insurer.

3. If the sum of the taxes to be paid by a captive insurer calculated pursuant to subsections 1 and 2 is less than \$5,000 in any given year, the captive insurer shall pay a tax of \$5,000 for that year. The maximum aggregate tax for any year must not exceed \$175,000. The maximum aggregate tax to be paid by a sponsored captive insurer applies only to each protected cell and does not apply to the sponsored captive insurer as a whole.

4. Two or more captive insurers under common ownership and control must be taxed as if they were a single captive insurer.

5. Notwithstanding any specific statute to the contrary and except as otherwise provided in this subsection, the tax provided for by this section constitutes all the taxes collectible pursuant to the laws of this State from a captive insurer, and no occupation tax or other taxes may be levied or collected from a captive insurer by this State or by any county, city or municipality within this State, except for taxes imposed pursuant to chapter 363A or 363B of NRS **or sections 3 to 45, inclusive, of this act** and ad valorem taxes on real or personal property located in this State used in the production of income by the captive insurer.

6. Twenty five percent of the revenues collected from the tax imposed pursuant to this section must be deposited with the State Treasurer for credit to the Account for the Regulation and Supervision of Captive Insurers created pursuant to NRS 694C.460. The remaining 75 percent of the revenues collected must be deposited with the State Treasurer for credit to the State General Fund.

7. A captive insurer that is issued a license pursuant to this chapter after July 1, 2003, is entitled to receive a nonrefundable credit of \$5,000 applied against the aggregate taxes owed by the captive insurer for the first year in which the captive insurer incurs any liability for the payment of taxes pursuant to this section. A captive insurer is entitled to a nonrefundable credit pursuant to this section not more than once after the captive insurer is initially licensed pursuant to this chapter.

8. As used in this section, unless the context otherwise requires:

(a) "Common ownership and control" means:

(1) In the case of a stock insurer, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of two or more corporations by the same member or members.

(2) In the case of a mutual insurer, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of two or more corporations by the same member or members.

(b) "Net direct premiums" means the direct premiums collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year, less the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

**Sec. 79.** NRS 695A.550 is hereby amended to read as follows:

695A.550 Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and is exempt from every state, county, district, municipal and school tax other than **the tax imposed pursuant to sections 3 to 45, inclusive, of this act and** taxes on real property and office equipment.

**Sec. 80.** 1. Subject to the provisions of section 82 of this act, there is hereby appropriated from the State General Fund to the Department of Taxation for the initial costs of administering the provisions of sections 3 to 45, inclusive, of this act:

For fiscal year 2013-2014 .....\$2,900,000

For fiscal year 2014-2015 .....\$2,700,000

2. The sums appropriated by subsection 1 are available for either fiscal year. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2015, and reverts to the State General Fund as soon as all payments of money committed have been made.

**Sec. 81.** 1. Subject to the provisions of section 82 of this act, there is hereby appropriated from the State General Fund to the Department of Taxation for the initial costs of administering the provisions of sections 3 to 45, inclusive, of this act:

For fiscal year 2014-2015 .....\$1,400,000

For fiscal year 2015-2016 .....\$4,200,000

2. The sums appropriated by subsection 1 are available for either fiscal year. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2016, and reverts to the State General Fund as soon as all payments of money committed have been made.

**Sec. 82.** The amendatory provisions of sections 50 and 51 of this act, as applicable, are intended to raise the revenue necessary to support the appropriation made by section 80 or 81 of this act, whichever becomes effective, as required by Section 6 of Article 19 of the *Nevada Constitution*. If the revenue so raised is not sufficient to support the full amount of the appropriation in either fiscal year, the appropriation for that year is reduced to the extent of the deficiency.

**Sec. 83.** 1. If this act is enacted by the 77th Session of the Legislature and approved by the Governor as provided in subsection 3 of Section 2 of Article 19 of the *Nevada Constitution*:

(a) This section, sections 1 to 21, inclusive, sections 23 to 50, inclusive, sections 53 to 80, inclusive, and sections 82 and 84 of this act become effective on July 1, 2013.

(b) Section 22 of this act becomes effective on January 1, 2014.

(c) Section 50 of this act expires by limitation on June 30, 2015.

(d) Sections 51, 52 and 81 of this act shall not become effective.

2. If this act is not enacted and approved as provided in subsection 1, but is approved by the voters after the act has been referred or submitted to the voters pursuant to subsection 3 of Section 18 of Article 4 or subsection 3 of Section 2 of Article 19 of the *Nevada Constitution*:

(a) This section, sections 1 to 50, inclusive, sections 53 to 79, inclusive, and sections 81, 82 and 84 of this act become effective on January 1, 2015.

(b) Section 51 of this act becomes effective on July 1, 2015.

(c) Section 52 of this act becomes effective on July 1, 2016.

(d) Section 80 of this act shall not become effective.

3. For the purposes of subsection 1, this act shall be deemed to have been approved by the Governor if, in accordance with Section 35 of Article 4 of the *Nevada Constitution*:

(a) The Governor signs the act;

(b) The act is passed by both Houses of the Legislature during its 77th Session notwithstanding the objections of the Governor; or

(c) The Governor fails to return or file the act within the time provided by Section 35 of Article 4 of the *Nevada Constitution*.

**Sec. 84.** If any provision of this act or its application to any person or circumstance is held to be invalid or ineffective, that invalidity or ineffectiveness must be given the narrowest possible construction and shall not affect any other provision or application of this act.

## THE FOLLOWING QUESTIONS TO BE VOTED UPON BY ALL REGISTERED VOTERS IN THE CITY OF BOULDER CITY

### BALLOT QUESTION NO. 1

A Capital Improvement Fund Question to the People of Boulder City

As funds become available within the Capital Improvement Fund, shall the City spend up to \$500,000 annually for the next seven (7) years from the Capital Improvement Fund for City utility infrastructure needs?

Yes

No

ballot questions continued...

## EXPLANATION

Section 143 of the Boulder City Charter governs expenditures from Boulder City's Capital Improvement Fund. Pursuant to that Section, all expenditures from the Capital Improvement Fund must be approved by a simple majority of the votes cast by the registered voters of the city.

A "YES" vote would allow the City to expend not more than \$500,000 annually for the next seven (7) years from the Capital Improvement Fund for the purpose of replacing and/or improving parts of the City's utility infrastructure where needed to preserve the integrity of the City's utility services. Such expenditure would only be allowed if funds were available within the Capital Improvement Fund.

A "NO" vote would not allow the City to expend money from the Capital Improvement Fund for the City's utility infrastructure needs.

### DIGEST

(NRS 295.230.2(a)(1)(II))

#### A. Summary of Existing Laws Related to the Measure Proposed by the Question:

1. Boulder City Charter Article XV, Real Estate:
  - a. Section 140. Disposition of City-Owned Lands: General Regulations, Subsection A.
  - b. Section 142. Proceeds From Real Estate Transactions
  - c. Section 143. Expenditures From Capital Improvement Fund
2. Boulder City Code Title 2, Chapter 7, Section 2: Limitation on City Debt Obligation

#### B. Summary of how the measure proposed by the question:

1. Adds to Existing Laws – This ballot measure does not add to existing laws. It essentially is giving advance voter approval for the City to use Capital Improvement Funds, if funds are available, in the event improvements or repairs to the City's utility infrastructure are needed.
2. Changes Existing Laws – This ballot measure does not change existing laws.
3. Repeals Existing Laws – This ballot measure does not repeal any existing laws.

#### Effect of the Charter on Capital Improvement Fund disbursements.

It is clear in our Charter since the amendment in 1997, that a sale or other disposition of City-owned lands of more than one acre must be approved by the registered voters of the city at an election held in conjunction and accordance with the election required by Article XV, Section 143 of the Boulder City Charter. (See Boulder City Charter, Article XV, Section 140)

Boulder City Charter Article XV, Section 143, Subsection 1, addresses how expenditures from the Capital Improvement Fund are authorized. Section 143, Subsection 1 states that all expenditures from the Capital Improvement Fund must be approved by a simple majority of the votes cast by the registered voters of the city on a proposition placed before them in an election.

So, taken together, Article XV Sections 140 and 143 tell us that if City-owned land is being sold, it is being done to provide funds for specific expenditures from the Capital Improvement Fund. The sale of City-owned land must always be associated with an expenditure from the Capital Improvement Fund.

However, this does not mean that all expenditures from the Capital Improvement Fund must be connected in some way with a sale of City-owned property. There are other sources that generate revenue to the Capital Improvement Fund. Therefore, it is entirely possible that an expenditure from the Capital Improvement Fund could be approved by the voters that is not related to or connected with a sale of City-owned land.

Nevertheless, every expenditure from the Capital Improvement Fund must be voted on and approved by the registered voters of Boulder City. Passage of this new measure would allow the City Council to use money from the Capital Improvement Fund for City utility infrastructure needs without getting voter approval for each expenditure as long as funds are available and the expenditure is for a utility need.

#### Debt Issuance Policy.

The Boulder City Code contains what is known as the City's Debt Issuance Policy. (See Boulder City Code 1-9-12) Among other things, this policy limits long term borrowing or alternative financing techniques to land acquisitions, buildings and other capital facilities, accompanying furniture and fixtures or equipment, capitalized technology assets and movable pieces of equipment, such as fire engines whose costs exceed five hundred thousand dollars (\$500,000.00).

There is another provision in the Municipal Code that limits how much new debt the City can undertake. Boulder City Code Title 2, Chapter 7, Section 2: Limitation on City Debt Obligation:

The city and its agencies and enterprises shall not incur any new debt obligations of one million dollars (\$1,000,000.00) or more, as defined under Nevada Revised Statutes 350.0045 to Nevada Revised Statutes 350.0075, inclusive, without the approval of the electors of Boulder City in a general or special election (Ord.1423, 11-9-2010, eff. 11-9-2010)

This ordinance, enacted by voter initiative, seeks or appears to prevent the City from incurring any new debt, defined as various types of securities in Chapter 350 of the NRS, of a million dollars or more without voter approval.

Likewise, any expenditure from the Capital Improvement Fund requires voter approval.

The City Council is very concerned that this untested initiative ordinance could impede or restrict the Council from carrying out and undertaking important projects for the public benefit, particularly in the area of public utilities improvements and repairs. For example, much of the City's existing electrical utility infrastructure is currently being operated beyond its reasonable useful life. Under this new initiative ordinance, if one of the City's substations were to fail, repairs to the substation could cost well over one million dollars. Those citizens affected by the substation failure (those persons who would now be living without electricity) would arguably have to wait until an election could be held before their power could be restored. Rather than the days it might take to restore the electricity, the process could take months. With this in mind, the City Council has determined to seek other funding sources for such utility repairs and improvements.

One of these sources is the Capital Improvement Fund. Using the example above, by obtaining advance approval for these expenditures from the Capital Improvement Fund, the City will be able to respond to such emergencies more quickly and not require a vote of the people.

### ARGUMENT FOR PASSAGE

There is an urgent need for the City to improve our utility infrastructure, especially the electrical utility system. Voter approval of this ballot question will enable the City to take the required action to preserve the integrity of these utility services when there is sufficient money in the Capital Improvement Fund.

In recent months, expert electrical engineers performed an in-depth, high-level evaluation of Boulder City's electrical utility system. Their report, which was confirmed by the Boulder City Electric Utility Administrator, concluded that major components of our City's electrical substations, transformers and transmission system are either aged beyond their useful life, obsolete, unsafe or unreliable. It was also determined that Boulder City has been spending far less than other comparable communities in utility capital improvements.

Recommendations were made for the City to begin as soon as possible to set priorities and implement the needed improvements. The City Council has approved an Electric Utility Capital Improvement Plan, which prioritizes the urgent needs and calls for a phased approach to take the necessary measures as soon as possible, subject to the availability of funding.

If this plan is approved by the voters, together with the land sale measure, the benefits will include greatly enhanced system reliability, a reduction in power outages, significant cost savings and increased safety. If one or both of these two ballot questions fails, it is unlikely the City will be able to accomplish the necessary upgrades in a timely manner unless the City either imposes significant utility rate increases or incurs burdensome debt. Nevertheless, approval of this measure alone would at least allow the City to use money from the Capital Improvement Fund for utility infrastructure needs as funds become available. There will be no adverse financial impact or environmental impact if this measure passes.

Continuation of the excellent quality of life which we enjoy in our unique community can be in jeopardy if we fail to take reasonable and necessary measures to prevent our utility services from deteriorating in a major way. The City has a good plan to remedy the potential crisis which the voters can now approve without further delay.

Approval of Ballot Question No. 1 will help to light the way to our future.

*Submitted by Ballot Question Committee as provided for in NRS 295.217*

### REBUTTAL TO ARGUMENT FOR PASSAGE

The passage of this question does not mean the City's utility infrastructure will be repaired immediately. Although the need is urgent, there will not be any available funding from the Capital Improvement Fund until FY 2016. These urgent needs must be addressed now.

The City should not drain the Capital Improvement Fund to upgrade and maintain its utility infrastructure. The costs to upgrade and maintain the City's utilities should be a part of the annual budget rather than counting on voter approval to preserve the integrity and reliability of the City's utilities. Using Capital Improvement Fund money for this purpose simply perpetuates the ongoing problem of the Utility Fund not generating enough revenue to cover both its operational expenses and capital costs. Furthermore, it uses money that should be used for other projects in the General Fund which have limited funding options. The Utility Fund should cover all its costs, including capital. Vote NO on Question No. 1.

*Submitted by the City Clerk as provided for in NRS 295.217*

### ARGUMENTS AGAINST PASSAGE

There is no question improvements to the City's utility infrastructure are desperately needed; however, the Capital Improvement Fund should not be the funding source.

The Capital Improvement Fund will not have any funds available for use until FY 2016. When the funds become available, the amount will not be sufficient to cover the costs of the numerous improvements needed. Within the next five years, the estimated costs of replacements and upgrades in the electric utility alone are in excess of \$24 million. This does not include water or sewer. We cannot rely upon the Capital Improvement Fund to pay for these projects. The Capital Improvement Fund receives revenues from land sales and land leases. If these revenues were to decrease or be discontinued, what would be the plan to maintain, update, and improve the City's utility infrastructure?

The Utility Fund is an Enterprise Fund and rates must be designed to recover the utility's cost of service, both operational expenses and capital costs. The City hired a consultant in 2012 to perform a comprehensive electric rate study. The results showed the City was not collecting sufficient revenues to meet costs.

Rather than deplete the Capital Improvement Fund, the City should structure its utility rates to be fair, affordable, and stable. The Capital Improvement Fund should be used to fund General Fund capital such as a golf course improvements, renovations or improvements to City buildings, or to fund a new pool.

Vote "NO" on Question No. 1.

*Submitted by the City Clerk as provided for in NRS 295.217*

### REBUTTAL TO ARGUMENT AGAINST PASSAGE

It is undisputed that improvements to the City's utility infrastructure are desperately needed. The City Council has approved a good plan to make the essential improvements to the electrical utility system, which is the highest priority. By implementing a phased approach whereby the necessary measures are made year by year, the City can avert the potential crisis through Capital Improvement Fund expenditures if the voters also approve the proposed land sale to raise money for the fund.

As a community, we have three basic choices with regard to the urgent need to upgrade our utility services. First, we can simply live with the existing infrastructure, which is an invitation to disaster. Second, we can pay for the improvements through significantly-higher utility rates, which would create a real burden for many local residents and businesses. Third, we can approve both of these ballot questions to resolve this important issue in a reasonable and affordable manner. Inaction is not an option, and a big boost in power bills is unacceptable.

Please vote yes on Question No. 1.

*Submitted by Ballot Question Committee as provided for in NRS 295.217*

### FISCAL NOTE

This will impact the Capital Improvement Fund in the amount of not more than \$500,000 annually for the next seven (7) years and then only if funds are available within the Capital Improvement Fund. This question does not require any expense that will require the levy or imposition of a new tax or fee or the increase of an existing tax or fee.

## BALLOT QUESTION NO. 2

City of Boulder City

Shall the City of Boulder City be authorized to sell approximately 29 acres of City-owned land located on the southeast corner of Bristlecone Drive and Adams Boulevard for the purpose of making much needed repairs and improvements to the City's utility infrastructure?

Yes

No

## EXPLANATION

Section 140.1(A) of the Boulder City Charter provides that the sale of more than one acre of City-owned land must be approved by the registered voters of the City at an election held in conjunction and in accordance with the election as required by Article XV, Section 143 of the Boulder City Charter.

Section 143 of the Charter requires that "all expenditures from the Capital Improvement Fund must be approved by a simple majority of the votes cast by the registered voters of the City on a proposition placed before them in a special election or primary or general Municipal election or primary or general State election."

The City Council of Boulder City is asking, through this Ballot Question, if the voters would authorize the sale of approximately 29 acres of City-owned land located on the southeast corner of Bristlecone Drive and Adams Boulevard. Our Charter requires voter approval on all land sales of more than one acre and this approval must be given in conjunction with and in accordance with a related voter approval allowing the proceeds from the land sale to be used for the purpose of making much needed repairs and improvements to the City's utility infrastructure. The voters are being asked to do two things: 1) approve the sale of City-owned land for a specific purpose, and 2) allow the proceeds from the land sale to be expended from the Capital Improvement Fund for that purpose.

A "YES" vote would allow the City to sell approximately 29 acres of City-owned land located on the southeast corner of Bristlecone Drive and Adams Boulevard and expend the proceeds of the land sale from the CIP Capital Improvement Fund for the purpose of making much needed repairs and improvements to the City's utility infrastructure.

A "NO" vote would not allow the City to sell approximately 29 acres of City-owned land located on the southeast corner of Bristlecone Drive and Adams Boulevard and would not allow the expenditure of funds from the Capital Improvement Fund for the purpose of making much needed repairs and improvements to the City's utility fund.

### DIGEST

(NRS 295.230.2(a)(1)(II))

This measure will create or generate public revenue in the form of proceeds from the sale of City-owned land.

#### A. Summary of Existing Laws Related to the Measure Proposed by the Question:

Boulder City Charter Article XV, Real Estate:

- a. Section 140. Disposition of City-Owned Lands: General Regulations, Subsection A.
- b. Section 142. Proceeds From Real Estate Transactions
- c. Section 143. Expenditures From Capital Improvement Fund

#### B. Summary of how the measure proposed by the question:

1. Adds to Existing Laws – This ballot measure does not add to existing laws. It authorizes the sale of City-owned land for a specific purpose.
2. Changes Existing Laws – This ballot measure does not change existing laws.
3. Repeals Existing Laws – This ballot measure does not repeal any existing laws.

#### Effect of the Charter on Capital Improvement Fund disbursements.

It is clear in our Charter since the amendment in 1997, that a sale or other disposition of City-owned lands of more than one acre must be approved by the registered voters of the City at an election held in conjunction and accordance with the election required by Article XV, Section 143 of the Boulder City Charter. (See Boulder City Charter, Article XV, Section 140)

Boulder City Charter Article XV, Section 143, Subsection 1, addresses how expenditures from the Capital Improvement Fund are authorized. Section 143, Subsection 1 states that all expenditures from the Capital Improvement Fund must be approved by a simple majority of the votes cast by the registered voters of the City on a proposition placed before them in an election.

So, taken together, Article XV Sections 140 and 143 tell us that if City-owned land is being sold, it is being done to provide funds for specific expenditures from the Capital Improvement Fund. The sale of City-owned land must always be associated with an expenditure from the Capital Improvement Fund.

However, this does not mean that all expenditures from the Capital Improvement Fund must be connected in some way with a sale of City-owned property. There are other sources that generate revenue to the Capital Improvement Fund. Therefore it is entirely possible that an expenditure from the Capital Improvement Fund could be approved by the voters that is not related to or connected with a sale of City-owned land.

Nevertheless, every expenditure from the Capital Improvement Fund must be voted on and approved by the registered voters of Boulder City. Passage of this new measure would allow the City Council to use money from the Capital Improvement Fund for City utility infrastructure needs without getting voter approval for each expenditure as long as funds are available and the expenditure is for a utility need.

## ARGUMENT FOR PASSAGE

There is an urgent need for the City to acquire additional money for the Capital Improvement Fund in order to commence necessary improvements to our community's utility infrastructure. Voter approval of this ballot question and the companion ballot question to authorize expenditure from that fund will enable the City to take steps to preserve the integrity of these crucial utility services in a cost-effective and timely manner. This can be achieved only if both ballot measures are approved at this election.

The City's Capital Improvement Fund receives its funding from any proceeds of the sale of City land. The Fund also receives a percentage of payments received from leases of City land. Currently, \$1.8 million per year must be transferred from the Capital Improvement Fund to pay for the City's share of the cost for a new intake system at Lake Mead. Without the approval of this measure, there will be insufficient money in the Capital Improvement Fund to make the necessary improvements to our electrical utility network in a timely manner unless utility rates are significantly increased or substantial debt is incurred by the City.

The subject land would be sold at the appraised value. It is planned for the development of approximately 85-90 large residential lots over time. In all respects, any such development will be required to be environmentally sound and compatible with the surrounding neighborhood. It will be regulated by the City's controlled growth ordinance, which places strict limits on the number of building permits any developer can obtain in any year. It is therefore likely that the City would obtain full payment up front for the land sale, while the construction of houses will be phased in gradually over a number of years. The fiscal impact will be very beneficial for the City.

Our community's unique quality of life may be jeopardized if we fail to approve the necessary money to increase the Capital Improvement Fund through this modest land sale proposal. We cannot afford to wait to improve our antiquated power system, and we surely do not want either utility rate increases or additional municipal debt.

Approval of Ballot Question No. 2 will allow Boulder City to have a vastly-improved electric utility system without harmful delays.

*Submitted by Ballot Question Committee as provided for in NRS 295.217*

### REBUTTAL TO ARGUMENT FOR PASSAGE

One of the City's most valuable resources is its land. We should not sell this resource to pay for capital costs of the Utility Fund, an Enterprise Fund which should generate enough revenue to cover costs, including capital.

As the City's costs to provide utility services increase, it is important to make necessary adjustments to keep the Utility Fund financially self-sustaining by recovering these costs through user charges and fees. Although nobody likes rate increases, it is better to implement small, incremental increases rather than sell our valuable resources and use money from the Capital Improvement Fund to subsidize the Utility Fund.

The City's land is a limited resource. Proceeds from land sales should be used to pay for a project such as a swimming pool which would benefit the community for many years and which could not be funded by user charges and fees. If the City sells its land to pay for utility infrastructure, the City will face the same problem after the land is no longer available. The sale of land to pay for utility infrastructure is a temporary solution to an ongoing, permanent challenge.

Vote NO on Question No. 2.

*Submitted by the City Clerk as provided for in NRS 295.217*

### ARGUMENTS AGAINST PASSAGE

The City should not use one of its most valuable finite resources, its land, to pay for utility infrastructure. The Utility Fund is an Enterprise Fund; therefore, costs for services such as improvements to utility infrastructure should be paid for by the revenues collected for the services provided. A rate structure must be established in the Utility Fund which covers the costs for operations, as well as capital. According to a study conducted on the City's electric utility in 2012 by EES Consulting, failure to collect adequate revenues to fully operate the Utility Fund could lead to a system which is more expensive to operate in the long run, and more susceptible to periodic outages and failures. We have already begun to experience this. Currently, the improvements needed in the electric utility alone total more than \$24 million.

The Capital Improvement Fund receives its revenues from only two sources: Land sales and land leases. When land is sold, a specific project must be identified to use the funds, and the funds cannot be used for any other purpose other than the identified project. Using land sale money will NOT solve the problem of properly maintaining the City's utility infrastructure. A project identified today may not be an appropriate project years down the road when the land is sold and the proceeds are available in the Capital Improvement Fund. The City should not use its most valuable resource to subsidize the Utility Fund because once there is no land to sell, the City will be in the same situation without the option of a land sale.

A more appropriate use for Capital Improvement Fund money is General Fund projects or items. The General Fund covers the cost of its operations; however, major capital items such as fire trucks, major building improvements or repairs, or a new swimming pool would be difficult, if not impossible, to fund without incurring debt. Capital improvements in the General Fund total in excess of \$38 million over the next five years. The Capital Improvement Fund should be used for this purpose rather than fund projects for an Enterprise Fund which should have rate structures designed to recover costs, including capital.

Vote NO on Question No. 2.

*Submitted by the City Clerk as provided for in NRS 295.217*

### REBUTTAL TO ARGUMENT AGAINST PASSAGE

While agreeing that remedial measures are long overdue, the opposing argument suggests that the only way to pay for improvements to Boulder City's utility systems is through higher power and water rates, even if the necessary increases might be extremely onerous for our people. While it is true that our utility rates may need to be increased in moderate increments over future years, this is not the time to burden our residents and businesses with the kind of massive rate hikes required to pay for these urgently-needed utility upgrades. No one is complaining that utility rates are too low in these challenging economic times.

The City Council has been restrained and judicious in proposing the sale of any city-owned land. However, this is an appropriate occasion for a modest land sale to offset the cost of an essential capital improvement project. The sale of 29 acres hardly makes a dent in the vast inventory of city-owned land in Boulder City. Let's continue to keep strict controls on growth in our city while we also keep strict controls on our power and water bills.

Please vote yes on Question No. 2.

*Submitted by Ballot Question Committee as provided for in NRS 295.217*

### FISCAL NOTE

This will not require the levy or imposition of a new tax or fee or the increase of an existing tax or fee. This will generate proceeds to the Capital Improvement Fund for the purpose of making repairs and improvements to the City's electrical utility infrastructure.

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