

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Case No. 56030

VILLAGE LEAGUE TO SAVE INCLINE ASSETS,
INC., a Nevada non-profit corporation, on behalf
of its members and others similarly situated;
MARYANNE INGEMANSON, Trustee of the
Larry D. and Maryanne B. Ingemanson Trust;
DEAN R. INGEMANSON, individual and as
Trustee of the Dean R. Ingemanson Trust;
J. ROBERT ANDERSON; and LES BARTA; on
behalf of themselves and others similarly situated;

Appellants,

vs.

STATE OF NEVADA, *ex rel.* State Board of
Equalization; WASHOE COUNTY; and BILL
BERRUM, Washoe County Treasurer;

Respondents.

APPEAL
Case No. CV03-06922
of the Second Judicial District Court of the State of Nevada
before the Honorable Patrick Flanagan

APPELLANTS' OPENING BRIEF

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1 In June of 2004, the trial court dismissed the complaint on the grounds that
2 taxpayers had failed to exhaust their administrative remedies. **Apx, Vol. 1, p. 23.**
3 Taxpayers appealed. **Id., p. 24.** In March of 2009, in its Order Affirming in Part,
4 Reversing in Part and Remanding, this Supreme Court affirmed the dismissal of the
5 taxpayers' valuation claims but returned the equalization claim to the trial court on the
6 basis that there was no administrative process for equalization. **Id., pp. 28-37.**

7 On June 19, 2009, with leave of court, taxpayers filed an amended petition
8 for mandamus. **Apx, Vol. I, pp. 190-199.** Alleging that, under NRS 361.395, the State
9 Board of Equalization had a duty to equalize both within and between counties in the
10 State of Nevada, taxpayers sought equalization relief both within Washoe County and
11 between comparable Lake Tahoe properties in Douglas and Washoe Counties. **Id.** Both
12 the State Board of Equalization and the Washoe County parties filed motions to dismiss.
13 **Id., Vol. II, pp. 274-283 and pp. 284-315.**

14 In 2009 as well, the State Department of Taxation drafted equalization
15 regulations and initiated the administrative process for having those regulations adopted.
16 **Apx, Vol. II, p. 279.** On March 1, 2010, the proposed regulations were adopted by the
17 State Board of Equalization. **Id., Vol. III, pp. 429, 446-462.** On March 3, 2010,
18 Washoe County supplemented its briefing on its pending motion to dismiss with a
19 "Statement of New Authority" attaching the proposed regulations. **Id., pp. 427-527.**

20 In March of 2010 as well, when the briefing was completed, the motions
21 were argued and the Court took them under submission. **Apx, Vol. IV, p. 718.** As
22 noted by the trial court at the time of the argument, these regulations were "proposed"
23 and not final until such time as they were approved by the Legislative Commission's
24 Subcommittee to Review Regulations. **Id., pp. 677-678.¹**

25
26 ¹ The Court can take judicial notice that the Subcommittee approval came on April
27 19, 2010, as reflected in the Subcommittee's April 19, 2010 agenda and the Nevada
28 Register under 2009 Proposed and Approved Regulations. See Addendum, pp. 1-25.
The trial court made no mention in its April 20, 2010 Second Amended Order of the
approved status of the regulation. The timing was apparently coincidental.

1 The initial order granting both the County and State motions and
2 dismissing the amended petition was issued on April 13, 2010. **Apx, Vol. IV, pp. 727-**
3 **738.** Amended and Second Amended Orders were subsequently issued, respectively on
4 April 13 and April 20, 2010. **Id., pp. 739-761.** This appeal was taken on May 12, 2010.
5 **Id., pp. 776-778.**

6 **B. Statement of Facts**

7 The trial court dismissed the taxpayers' amended petition without requiring
8 either the State Board or the County respondents to answer. The facts as set forth in the
9 allegations of the pleading are as follows:

10 The Village League To Save Incline Assets, Inc. is a Nevada nonprofit
11 membership corporation whose members, including the individual petitioners Maryanne
12 Ingemanson, Dean Ingemanson, J. Robert Anderson, and Les Barta, in either their
13 individual or representative capacities, own and pay taxes on residential real property at
14 Crystal Bay and/or Incline Village, in Washoe County, Nevada, or did at times relevant
15 to this proceeding. **Apx, Vol. I, pp. 190-191.** The Village League and its individually
16 named taxpayer members (collectively "taxpayers") bring this action as a class action on
17 behalf of the similarly situated owners of approximately 9000 residential real property
18 parcels at Crystal Bay and Incline Village. **Id., p. 192.**

19 The respondent State Board of Equalization is an agency of the State of
20 Nevada vested with the affirmative statutory responsibility and mandate under NRS
21 361.395 annually to equalize residential real property valuations within and between the
22 counties of Nevada. **Apx, Vol. I, pp. 191-192.** It is the duty of respondents Washoe
23 County and of Bill Berrum, as Treasurer, to collect all real property taxes from residential
24 property owners within the County and to refund all excess taxes paid. **Id., p. 192.**

25 For the tax year 2003-2004 and subsequent years, the Washoe County
26 Assessor determined the taxable value of residential real property at Incline Village and
27 Crystal Bay using valuation methodologies in ways that were not approved or
28 promulgated by Tax Commission regulation and that were not used elsewhere in the State

1 of Nevada, including for similarly situated residential properties at Lake Tahoe in
2 Douglas County, Nevada. **Apx, Vol. I, p. 194.** In State ex rel. State Bd. of Equalization
3 v. Bakst (Bakst), 122 Nev. 1403, 148 P.3d 717 (2006), and State ex rel. State Bd. of
4 Equalization v. Barta (Barta), 124 Nev. 58, 188 P.3d 1092 (2008), this Court determined
5 that the Assessor's use of such valuation methodologies resulted in unconstitutional and
6 void valuations and assessments. This Court set aside the Assessor's valuations and
7 rolled back the land valuation to 2002-2003 levels. Taxpayers alleged that the similar
8 treatment of similarly situated taxpayers which is the State's standard of equalization
9 requires the State Board of Equalization, pursuant to its duty of statewide equalization
10 under NRS §361.395, to equalize the land valuation of all residential properties at Incline
11 Village and Crystal Bay for the 2003-2004 tax year to 2002-2003 values. **Id., p. 195.**

12 The unlawful valuation methodologies used by the Washoe County
13 Assessor's Office also resulted in a disparity in valuation for property tax purposes
14 between similarly situated residential properties at Lake Tahoe in Douglas and Washoe
15 Counties for the tax year 2003/2004 and subsequent tax years. Notwithstanding that
16 disparity, the State Board of Equalization failed to equalize assessments between Douglas
17 and Washoe County for any of those years as required by the Nevada Constitution and
18 statutes. **Apx, Vol. I, pp. 195-196.** As a result of the State Board's failure to perform
19 its duty of equalization, the respective residential properties owned by taxpayers were
20 over-valued and excess taxes were paid and collected. **Id., p. 196.** Taxpayers further
21 alleged their right to the refund of those excess taxes. **Id.**

22 23 SUMMARY OF ARGUMENT

24 The trial court stated three grounds for dismissing the taxpayers' amended petition,
25 writing as follows:

- 26 (1) Taxpayers "are seeking a judicial remedy that does not exist under
27 Nevada's present taxable-value system." **Apx, Vol. IV, p. 760, Ins. 15-**
28 **16.**

1 (2) Taxpayers ask the trial court "to direct the State Board of Equalization to
2 exercise its regulatory discretion to achieve a predetermined result which
3 is an impermissible exercise of this court's lawful authority." **Id., Ins.**
4 **16-18.**

5 (3) Taxpayers "have a plain, speedy and adequate remedy at law through the
6 newly promulgated procedures of the State Board of Equalization." **Id.,**
7 **Ins. 18-20.**

8 None of these grounds can be sustained. The dismissal of the taxpayers' petition was a
9 clear abuse of the trial court's discretion. See, e.g., Stockmeier v. Psychological Review
10 Panel, 122 Nev. 534, 538, 135 P.3d 807, 809 (2006).

11 Taxpayers are not seeking a remedy that "does not exist." Taxpayers are seeking a
12 remedy in mandamus to compel the State Board of Equalization to perform its
13 equalization duties. This Court has itself said that "Under NRS 361.395(1), the State
14 Board clearly has a duty to equalize property valuations throughout the state. " Barta,
15 supra, 188 P.3d at 1102. Where there is a duty, there is a reciprocal right. Taxpayers are
16 seeking only to enforce that right. Under the trial court's holding, the State Board could
17 never be held accountable for a failure to perform its equalization duties.

18 Taxpayers did not ask the trial court to override the discretionary authority of the
19 State Board of Equalization. Taxpayers stated unequivocally that they were "not asking
20 the court to control the Board's discretion." **Apx, Vol. II, p. 325, ln. 5.** Taxpayers noted
21 that, after six years of litigation and notwithstanding its clear duty of equalization under
22 the statute, the State Board of Equalization had not even answered
23 the petition. Taxpayers only asked the trial court to

24
25 **act to the extent permitted by law** to avoid the necessity of
26 another appeal, another decision by the Supreme Court
27 reversing an erroneous determination by the State Board, yet
28 another remand to the State Board to try again, and another
six years or more before the constitutional rights of taxpayers
are vindicated. **Id., Ins. 8-12 (Emphasis added.)**

1 Finally, it is truly "mind boggling" that the trial court would dismiss the taxpayers'
2 2003 action on the basis of the availability of an administrative remedy that, if available
3 at all, clearly did not exist in 2003. In 2009, this Court remanded the taxpayers'
4 equalization claim to the trial court on the basis that, in the absence of an administrative
5 process, the exhaustion doctrine did not bar the claim. The State Board cannot adopt an
6 administrative process seven years after the fact and then assert it as a bar to the earlier
7 claim. The trial court would apparently hold the taxpayers accountable for not
8 exhausting a process that did not exist but would not hold the State Board accountable for
9 failing its statutory duty.

10 At the very least, if it thought the new process afforded taxpayers a remedy, rather
11 than dismiss the taxpayers' claims, the trial court should have directed the State Board to
12 apply that new process in the performance of its long delayed equalization duties for the
13 2003-2004 and interim tax years. In any event, the trial court could not have examined
14 the State Board "newly promulgated procedures" with sufficient care. To quote the old
15 truism, "the devil is in the details." There is no way under those procedures for taxpayers
16 to seek or obtain equalization for the 2003-2004 tax year or any year prior to the
17 regulations October 1, 2010 effective date. In fact, taxpayers have no rights of any kind
18 under those procedures but that is an issue for another case. It is sufficient onto the
19 instant case that those procedure provide no remedy for any period of time prior to
20 October 1, 2010. As this Court already recognized in this very case, before a claim can
21 be dismissed on the basis of the availability of an administrative procedure, that
22 procedure must both exist and be available to the claimant.

23 ARGUMENT

24 **I. STANDARD OF REVIEW**

25 The trial court's denial of a writ petition is reviewed for abuse of discretion.
26 Stockmeier, supra. To the extent this appeal involves issues of law, those are reviewed
27 *de novo*. Nevada Serv. Employees Union v. Orr, 121 Nev. 675, 678, 119 P.3d 1259,
28 1261 (2005); Paige v. State, 116 Nev. 206, 208, 995 P.2d 1020, 1021 (2000); see also,

1 Awada v. Shuffle Master, Inc., 123 Nev. 613, 618, 173 P.3d 707, 711 (2007); Ex parte
2 Terry, 957 So.2d 455, 457 (Ala.2006); Alliance for a Better Downtown Millbrae v.
3 Wade, 133 Cal.Rptr.2d 249, 253 (Cal.App. 2003); In re MCI Telecommunications
4 Complaint, 596 N.W.2d 164, 175 (Mich. 1999).

5 **II. TAXPAYERS ARE ENTITLED TO A MANDATE COMPELLING**
6 **THE STATE BOARD TO PERFORM ITS DUTY OF EQUALIZATION.**

7 By statute, the extraordinary writ of mandamus is available "to compel the
8 performance of an act which the law especially enjoins as a duty resulting from an office,
9 trust or station" in the absence of "a plain, speedy and adequate remedy in the ordinary
10 course of law." NRS 34.160; NRS 34.170; Round Hill Gen. Imp. Dist. v. Newman, 97
11 Nev. 601, 637 P.2d 534 (1981). The State Board's affirmative statutory duty of
12 equalization is clear. Barta, supra, 188 P.3d at 1102. Even if the newly promulgated
13 regulations provided a remedy for taxpayers seeking equalization of their 2010-2011
14 property tax assessments (which taxpayers dispute), taxpayers indisputably had no
15 remedy under the law in 2003 when they initiated this action. Under the statutes, when
16 the duty is clear and no other remedy is available, taxpayers have a right to relief in
17 mandamus.

18 What the trial court means when it writes that taxpayers "are seeking a judicial
19 remedy that does not exist under Nevada's present value system" is unclear. Surely, it
20 cannot mean that the State Board of Equalization is beyond the reach of the law or that
21 the constitutional guaranty of uniform and equal taxation is illusory. Even if the trial
22 court is suggesting that Constitutionally mandated uniform and equal taxation is
23 impossible in Nevada's taxable value system, the conclusion must be that that system is
24 unconstitutional. Figuratively throwing up the judiciary's hands in futility and
25 acquiescing in unconstitutional property tax assessments is not the answer.

26 **III. THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING**
27 **THE PETITION ON THE GROUNDS THAT TAXPAYERS ASKED**
28 **THE COURT TO EXCEED ITS LAWFUL AUTHORITY IN THE**
OF UNCONTROVERTED EVIDENCE TO THE CONTRARY.

In their amended petition, filed some five and a half years after their initial

1 pleading, taxpayers attempted to incorporate both this Court's interim determinations in
2 Bakst, supra, and Barta, supra, and the concerns raised by effecting statewide
3 equalization for the 2003-2004 tax year at that late date. Accordingly, taxpayers sought
4 the limited relief of effecting equalization within the Incline Village/Crystal Bay area of
5 Washoe County. **Apx, Vol. I, p. 196.** Taxpayers also sought equalization between
6 Douglas and Washoe Counties and any other or different relief to which they might be
7 "adjudged entitled to" in the case. **Id.** The trial court dismissed the amended petition, in
8 part, on the basis that taxpayers were asking the court to interfere with the regulatory
9 discretion of the State Board of Equalization. **Apx, Vol. IV, p.760.** The record,
10 however, establishes that the trial court has mischaracterized the taxpayers' prayer for
11 relief in that regard.

12 Taxpayers did not ask the trial court to predetermine the exercise by the State
13 Board of any discretionary act. Both NRS 361.395 and this Court have made it clear that
14 the State Board's duty of equalization is not discretionary. The "discretion" that may be
15 exercised by the Board in the performance of that duty. is, furthermore, not unfettered
16 and cannot be exercised without reference to applicable law or established fact. In the
17 interest of avoiding additional delays in effecting constitutionally uniform and equal
18 assessment for the 2003-2004 tax year and the several subsequent years, taxpayers asked
19 the trial court to provide guidance to the Board "to the extent permitted by law." **Apx,**
20 **Vol. II, p. 325, ln. 8.** Taxpayers did not ask the trial court to do anything that would be
21 "an impermissible exercise of [the court's] lawful authority."

22 The duty of the State Board of Equalization applies within as well as between
23 counties. There is no legal barrier to the order requested by taxpayers for equalization
24 within the Incline Village/Crystal Bay area of Washoe County where the lack of
25 equalization is a documented fact. Even if equalization within the Incline Village/
26 Crystal Bay area were somehow "inappropriate," taxpayers did not limit their request for
27 relief in that regard. Taxpayers also sought equalization by the State Board pursuant to
28 NRS 361.395 between the Lake Tahoe properties in Douglas and Washoe Counties as

1 well as such other equalization relief as they might be adjudicated entitled to. **Apx, Vol.**
2 **I, p. 196.** In its Order Affirming In Part, Reversing In Part and Remanding, this Court
3 held that "insofar as Village League alleged that the State Board failed to perform an act
4 required by law and sought an order directing that act's performance, such was
5 appropriately raised in its district court complaint." **Id., p. 34, Ins. 4-7.** It was an abuse
6 of the trial court's discretion to dismiss the taxpayers' entire petition on the basis that the
7 court could not order a part of the relief sought.

8
9 **IV. THE 2010 EQUALIZATION REGULATIONS DO NOT CONSTITUTE**
10 **A PLAIN, SPEEDY AND ADEQUATE REMEDY AT LAW REQUIRING**
11 **THE DISMISSAL OF TAXPAYERS' 2003 ACTION**

12 The taxpayers' petition lies in mandamus. By statute, mandamus is unavailable
13 where the party has a "plain, speedy and adequate remedy in the ordinary course of law."
14 NRS 34.170. Under that standard, the trial court dismissed taxpayers' amended petition
15 on the basis that the future implementation of equalization regulations proposed by the
16 State Department of Taxation and approved by the State Board of Equalization in 2010
17 somehow constituted a "plain, speedy and adequate remedy at law" for the Board's failure
18 of equalization in 2003 and subsequent pre-2010 tax years. **Apx, Vol. IV, pp. 760, Ins.**
19 **18-20.** The trial court is plainly wrong under the law.

20 **A. The Trial Court Effectively Dismissed The Taxpayers' Amended**
21 **Petition For Failure To Exhaust An Administrative "Remedy"**
22 **That Not Only Did Not Exist When The Action Was Commenced**
23 **But Was Not Created For Several Years Afterwards.**

24 If the 2010 equalization regulations provided a process for equalization, the
25 trial court should have entered an order in mandamus requiring the State Board to utilize
26 those regulations to provide taxpayers with the long delayed equalization of their
27 property tax assessments for the 2003-2004 and subsequent tax years. Instead of ordering
28 the State Board to perform its 2003-2004 equalization duties utilizing its new regulations,
however, the trial court inexplicably dismissed the petition.

In March of 2009, in its Order Affirming in Part, Reversing in Part and

1 Remanding, this Supreme Court returned the equalization claim to the trial court on the
2 basis that there was no administrative process for equalization. **Apx, Vol. I, p. 34.** The
3 trial court has now effectively "reversed" this Court's remand order and dismissed the
4 equalization claim on the basis that taxpayers had an administrative remedy after all even
5 if they did not know about it because it did not actually exist at the time. The trial court
6 here punished the taxpayers as though they failed to "exhaust" an administrative
7 procedure that indisputably did not even exist when they brought their initial complaint.
8 The court's ruling is not supported by either legal precedent or common sense. That
9 ruling must be reversed.

10
11 **B. The 2010 Equalization Regulations Provide No Basis On Which**
12 **Taxpayers Could Seek Or Obtain Equalization Of Assessments**
13 **For The 2003-2004 Tax Year Or Any Other Year Prior To 2010.**

14 Assuming, for purposes of argument, that mandamus may be defeated by a
15 legal "remedy" that is created during the pendency of an action, that "remedy" must still
16 meet the requirements of both "adequacy" and actual "availability" under NRS 34.170.
17 By their express terms, however, the new equalization regulations meet neither
18 requirement. In fact, the taxpayers' ability to obtain or even to seek equalization of their
19 2003-2004 assessments under the State Board's new "equalization" regulations is every
20 bit as nonexistent now as it was in 2003.

21 To support the denial of relief in mandamus here on the basis of an
22 available and adequate remedy, an administrative process must provide not only for the
23 full participation by the taxpayer but also for the right of judicial review. Rather than
24 create an administrative process in which the taxpayer was a full participant and the
25 decisions made were subject to judicial review, however, the Department of Taxation has
26 drafted and the State Board has approved a closed administrative process involving the
27 County Assessors, the Department and the Board. **Apx, Vol. III, pp. 450-462.**

28 The **only** role permitted to the taxpayer under those regulations is to testify
as an "interested person" at an equalization hearing called by the State Board of
Equalization. **Apx, Vol. III, pp. 450, 460 (Sec. 19(2)(a)).** Even that limited role is

1 further limited to possible participation in a follow-up hearing **after and only IF** the
2 Board makes a preliminary finding at an initial hearing (from which the taxpayer is
3 effectively excluded) "that any class or group of properties . . . was not assessed
4 uniformly in accordance with the methods of appraisal and at the level of assessment
5 required by law." **Id., pp. 456-459 (Sec. 16 and 17.)**

6 At the initial hearing, the State Board **only** hears from the County and the
7 Department of Taxation. **Apx, Vol. III, pp. 451-456 (Sec. 11-15).** Furthermore, in the
8 absence of any other provision, notice of the initial hearing is apparently limited to the
9 three day public notice required by the Open Meeting Law. NRS 241.020. There is no
10 provision for taxpayers to offer testimony or even to ask questions at this initial hearing.
11 In addition, even in the unlikely event (under the circumstances) of a "preliminary
12 finding" of a lack of equalization, the subsequent second (and potential third) hearings
13 are not structured as "contested cases." **Id., pp. 456-459 (Sec. 16 and 17).** In the
14 absence of a contested case, the taxpayer cannot neither seek to intervene nor seek
15 judicial review of the State Board's ultimate decision. NRS 233B.130; NAC 361.692.

16 Although the new equalization regulations create an administrative process
17 of a sort, it is a far different process than the open, adversarial process described by this
18 Court in Marvin v. Fitch, 126 Nev. 18, 232 P.3d 425 (2010). Like the proverbial fox
19 guarding the hen house, the Department of Taxation has written and the State Board of
20 Equalization has approved a cozy procedure in which the Department, the County
21 Assessors, and the State Board can ratify each other's actions without interference from
22 the taxpayer. No "plain, speedy or adequate remedy" for the taxpayer can be found in
23 those regulations even for 2010 and future tax years, let alone a remedy for the 2003-
24 2004 and other pre-2010 tax years at issue in this proceeding.

25 The trial court acknowledged in oral argument that the taxpayer had no
26 right to seek or obtain equalization under the proposed regulations. **Apx, Vol. IV, pp.**
27 **677-678.** Under the circumstances, to dismiss the amended petition on the basis of the
28 "availability" of a remedy under the 2010 regulations is a mockery of the statutory


1 requirement. The trial court's decision cannot stand.

2 **CONCLUSION - THE RELIEF SOUGHT**

3 Taxpayers respectfully submit that this Court must reverse the decision below and
4 remand this matter to the trial court for further proceedings consistent with the applicable
5 law.

6 Dated this 1st day of October, 2010.

7 MORRIS PETERSON

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9 By 
10 Suellen Fulstone

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DATED this 1st day of October, 2010.

0. Quelle fiktive

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 1st day of October, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service list as follows:

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DATED this 1st day of October, 2010.

/s/ Elaine K. Bates
Employee of Morris Peterson

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Legislative Commission's Subcommittee to Review Regulations

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MEETING NOTICE AND AGENDA

Name of Organization: Legislative Commission's Subcommittee to Review Regulations
(NRS 233B.067 and NRS 233B.0675)

Date and Time of Meeting: Monday, April 19, 2010
2:00 p.m.

Place of Meeting: Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the Subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous videoconference conducted at the following location:

Legislative Building
Room 3137
401 South Carson Street
Carson City, Nevada

Great Basin College
Chilton Circle Modular Office Conference Room
1500 College parkway
Elko, Nevada

If you cannot attend the meeting, you can listen or view it live over the Internet. The address for the Nevada Legislature website is <http://www.leg.state.nv.us>. Click on the link "Live Meetings – Listen or View."

A G E N D A

[Items on this agenda may be taken in a different order than listed]

- I. Opening Remarks
Assemblyman Marcus Conklin, Chairman
- *II. Approval of the Minutes of the Meeting of the Legislative Commission's Subcommittee to Review Regulations held on November 24, 2009.
- *III. Review of Administrative Regulations Submitted Pursuant to NRS 233B.067 and NRS 233B.0675. A List of the Regulations to be Considered is Attached. (The text of these regulations is hyperlinked to the electronic version of this agenda posted on the Nevada Legislature website:
<http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm>.
Please contact the Legal Division of the Legislative Counsel Bureau at (775) 684-6830 for a hard copy of the text of the regulations.)
- IV. Public Comment
(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)
- V. Adjournment

*Denotes items on which the Subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Legal Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call (775) 684-6830 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street.

Notice of this meeting was faxed and/or e-mailed for posting to the following Las Vegas, Nevada, locations: Clark County Government Center, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

Notice of this meeting was faxed and/or e-mailed for posting to the following Elko, Nevada locations: Great Basin College, 1500 College Parkway

Notice of this meeting was posted on the Internet through the Nevada Legislature's website at www.leg.state.nv.us.

**STATE AGENCY REGULATIONS TO BE REVIEWED
BY THE LEGISLATIVE COMMISSION'S
SUBCOMMITTEE TO REVIEW REGULATIONS**

April 19, 2010

REGULATIONS SUBMITTED PURSUANT TO NRS 233B.067:		
LCB NO.	NAC	AGENCY/ SUBJECT
2008 REGULATIONS		

REDACTED

R153-09A	361	STATE BOARD OF EQUALIZATION A REGULATION relating to taxation; establishing procedures for the equalization of property valuations by the State Board of Equalization; and providing other matters properly relating thereto CONTACT: Terry Rubald 775.684.2095
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REDACTED

2009 PROPOSED AND ADOPTED ADMINISTRATIVE REGULATIONS

(Listed in keyword order)

(I=Initial Agency Draft; P=LCB Proposed Draft; N=Notice of Workshop and/or Hearing;
RP1=Revised Proposed LCB Draft; RP2=Second Revised Proposed LCB Draft;
A=Adopted; RA=Revised Adopted; W=Withdrawn)

(The date for filing permanent regulations is July 1, 2009, through June 30, 2010; some of these regulations were posted to the Internet early for the convenience of the public.
The date following the subject is the date the regulation was posted to the Internet.)

All of the information is provided in Adobe PDF format; you will need Acrobat Reader to view these files.

PROPOSED AND ADOPTED REGULATIONS

NO.	REGULATIONS PERTAINING TO:	SUBJECT	VOL./ PART
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REDACTED

REDACTED

R153-09A

Equalization (361)

Establishes procedures for the equalization of property 152-3
valuations by the State Board of Equalization (4/20/10)

REDACTED

**ADOPTED REGULATION OF THE
STATE BOARD OF EQUALIZATION**

LCB File No. R153-09

§§2, 8, 10 and 23 effective April 20, 2010
§§1, 3 to 7, inclusive, 9 and 11 to 22, inclusive, effective October 1, 2010

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

AUTHORITY: §§1-23, NRS 361.375 and 361.395.

A REGULATION relating to taxation; establishing procedures for the equalization of property valuations by the State Board of Equalization; and providing other matters properly relating thereto.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“County board” means a county board of equalization.*

Sec. 4. *“Equalize property valuations” means to ensure that the property in this State is assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.*

Sec. 5. *“Interested person” means an owner of any relevant property, as indicated in the records of the county assessor of the county in which the property is located or, if the Commission establishes the valuation of the property, as indicated in the records of the Department.*

Sec. 6. “Ratio study” means an evaluation of the quality and level of assessment of a class or group of properties in a county which compares the assessed valuation established by the county assessor for a sampling of those properties to:

1. An estimate of the taxable value of the property by the Department or an independent appraiser; or

2. The sales price of the property,

↪ as appropriate.

Sec. 7. “Secretary” means the Secretary of the State Board.

Sec. 8. “State Board” means the State Board of Equalization.

Sec. 9. The provisions of sections 2 to 21, inclusive, of this regulation govern the practice and procedure for proceedings before the State Board to carry out the provisions of NRS 361.395.

Sec. 10. 1. The State Board hereby adopts by reference the Standard on Ratio Studies, July 2007 edition, published by the International Association of Assessing Officers. The Standard on Ratio Studies may be obtained from the International Association of Assessing Officers, 314 West 10th Street, Kansas City, Missouri 64105-1616, or on the Internet at <http://www.iaao.org/store>, for the price of \$10.

2. If the publication adopted by reference in subsection 1 is revised, the State Board will review the revision to determine its suitability for this State. If the State Board determines that the revision is not suitable for this State, the State Board will hold a public hearing to review its determination and give notice of that hearing within 30 days after the date of the publication of the revision. If, after the hearing, the State Board does not revise its determination, the State Board will give notice that the revision is not suitable for this State

within 30 days after the hearing. If the State Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Sec. 11. 1. *During each annual session of the State Board, the State Board will hold one or more hearings to:*

- (a) Review the tax roll of each county, as corrected by the county board;*
- (b) Determine whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law;*
- (c) Determine whether the taxable values specified in the tax roll of any county must be increased or decreased to equalize property valuations in this State; and*
- (d) Take such additional actions as it deems necessary to carry out the provisions of NRS 361.395.*

2. *Subject to the time limitations specified in NRS 361.380, the State Board may adjourn its annual session from time to time until it has completed its duties pursuant to NRS 361.395 for the applicable fiscal year.*

Sec. 12. *In determining whether the property in this State has been assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will consider:*

- 1.** *The tax roll of each county, as corrected by the county board and filed with the Secretary pursuant to NRS 361.390;*
- 2.** *The central assessment roll prepared pursuant to NRS 361.3205;*
- 3.** *The results of any relevant ratio study conducted by the Department pursuant to NRS 361.333;*

4. The results of any relevant audit of the work practices of a county assessor performed by the Department pursuant to NRS 361.333 to determine whether a county has adequate procedures to ensure that all property subject to taxation is being assessed in a correct and timely manner;

5. Any relevant evidence submitted to a county board or the State Board pursuant to NRS 361.355;

6. Any information provided to the State Board pursuant to sections 13, 14 and 15 of this regulation; and

7. Any other information the State Board deems relevant.

Sec. 13. 1. In addition to the information contained in the tax roll filed with the Secretary pursuant to NRS 361.390, a county assessor shall, upon the request of the State Board, provide any information the State Board deems necessary to carry out the provisions of NRS 361.395, including, without limitation:

(a) The assessor's parcel number for any parcel of property.

(b) The taxable value and assessed value determined for any land, improvements or personal property before and after any adjustments to those values by the county board.

(c) The value per unit determined for any land or personal property before and after any adjustments to that value by the county board.

(d) Land use codes for the county.

(e) Market areas in the county.

(f) The year in which any improvements were built.

(g) The classification of quality for any improvements.

(h) The size of any improvements.

(i) The size of any lot.

(j) The zoning of any property.

(k) The date of the most recent sale of any property and the sales price of the property.

(l) Summary statistics concerning taxable values and assessed values for tax districts, market areas, neighborhoods and land use codes, including, without limitation, the applicable medians and modes.

2. If the State Board desires a county assessor to provide any information pursuant to this section, the State Board will require the Department to send to the county assessor by regular mail a notice of the request which describes the information requested and the format and type of media in which the information is requested. The county assessor shall submit the information to the State Board, in the format and type of media requested, within 10 business days after the date of the postmark on the notice of the request or such a longer period as the State Board, upon the request of the county assessor, may allow.

Sec. 14. 1. Upon the request of the State Board, the Department or county assessor shall perform and submit to the State Board any ratio study or other statistical analysis that the State Board deems appropriate to assist it in determining the quality and level of assessment of any class or group of properties in a county.

2. Each ratio study or other statistical analysis requested by the State Board pursuant to this section must:

(a) Be performed in accordance with the provisions of the Standard on Ratio Studies adopted by reference in section 10 of this regulation, except any specific provision of the Standard on Ratio Studies that conflicts or is inconsistent with the laws of this State or any regulations adopted by the State Board or the Commission;

(b) Identify the statistical population that is the subject of the ratio study or statistical analysis, which may be divided into two or more strata according to neighborhood, age, type of construction or any other appropriate criterion or set of criteria; and

(c) Include an adequate sampling of each stratum into which the statistical population that is the subject of the ratio study or statistical analysis is divided, and such statistical criteria as may be required, to indicate an accurate ratio of assessed value to taxable value and an accurate measure of equality in assessment.

3. The State Board will determine the appropriate time frame from which sales of property may be considered in any ratio study or statistical analysis requested pursuant to this section. If the State Board determines that the appropriate time frame is any period other than the 36 months immediately preceding July 1 of the year before the applicable lien date, the State Board will provide the reasons for that determination to the Department or county assessor.

4. The State Board will evaluate each ratio study and statistical analysis performed pursuant to this section to determine whether the ratio study or statistical analysis reliably indicates the quality and level of assessment for the applicable class or group of properties. In making that determination, the State Board will consider:

(a) Whether the Department or county assessor used a sufficient number of sales or appraisals in performing the ratio study or statistical analysis;

(b) Whether the samples of property selected by the Department or county assessor adequately represent the total makeup of the applicable class or group of properties;

(c) Whether the Department or county assessor correctly adjusted the samples of property for market conditions;

(d) Whether any variations among sales or appraisal ratios affect the reliability of the ratio study or statistical analysis; and

(e) Any other matters the State Board deems relevant.

Sec. 15. *Before making any determination concerning whether the property in a county has been assessed uniformly in accordance with the methods of appraisal required by law, the State Board will require the Department to:*

1. Conduct a systematic investigation and evaluation of the procedures and operations of the county assessor; and

2. Report to the State Board its findings concerning whether the county assessor has appraised the property in the county in accordance with the methods of valuation prescribed by statute and the regulations of the Commission.

Sec. 16. *1. If the State Board, after considering the information described in section 12 of this regulation, makes a preliminary finding that any class or group of properties in this State was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law, the State Board will:*

(a) Schedule a hearing concerning that preliminary finding on a date which is not less than 10 business days after the notice of the hearing is mailed pursuant to paragraph (b).

(b) Require the Department to send by registered or certified mail a notice of the hearing to the county clerk, county assessor, district attorney and chair of the county board of each county in which any of the property is located. A legal representative of the county may waive the receipt of such notice.

(c) Require the Secretary to provide a copy of the notice of the hearing to the Commission and to the board of county commissioners of each county in which any of the property is located.

2. The notice of the hearing must state:

(a) The date, time and location of the hearing;

(b) The information on which the State Board relied to make its preliminary finding that the class or group of properties was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law; and

(c) The proposed order of the State Board.

3. The Department shall include with each notice provided pursuant to paragraph (b) of subsection 1, and upon the request of any interested person, provide to that person, a copy of any analysis or other information considered by the State Board in making its preliminary finding that the class or group of properties was not assessed uniformly in accordance with the methods of appraisal and at the level of assessment required by law.

Sec. 17. 1. *Upon the completion of a hearing scheduled pursuant to section 16 of this regulation, the State Board will issue:*

(a) An order stating that the State Board will take no action on the matter and specifying the reasons that no action will be taken;

(b) An order referring the matter to the Commission for the Commission to take such action within its jurisdiction as the Commission deems to be appropriate;

(c) An order requiring the reappraisal by the county assessor of a class or group of properties in a county; or

(d) Except as otherwise provided in this paragraph, if a ratio study or other statistical analysis performed pursuant to NRS 361.333 or section 14 of this regulation indicates with a confidence level of at least 95 percent that the median assessment ratio for any class or group of properties is less than 32 percent or more than 36 percent, an order increasing or decreasing the assessed valuation of that class or group of properties by such a factor as the State Board deems to be appropriate to cause the median assessment ratio to be not less than 32 percent and not more than 36 percent. The State Board will not issue such an order if the application of the factor would cause the coefficient of dispersion calculated for the class or group of properties to fail to meet the recommendations set forth in the Standard on Ratio Studies adopted by reference in section 10 of this regulation.

2. If the State Board orders the reappraisal of a class or group of properties pursuant to this section, the State Board will:

(a) Schedule an additional hearing to determine whether to issue an order:

(1) Stating that the State Board will take no further action on the matter and specifying the reasons that no further action will be taken;

(2) Referring the matter to the Commission for the Commission to take such action within its jurisdiction as the Commission deems to be appropriate; or

(3) Increasing or decreasing the taxable valuation of the class or group of properties in accordance with the reappraisal or in such other manner as the State Board deems appropriate to equalize property valuations.

(b) Require the Department to send by registered or certified mail, not less than 10 business days before the date of the additional hearing, notice of the date, time and location of the hearing to the county clerk, county assessor, district attorney and chair of the county

board of the county in which the property is located. A legal representative of the county may waive the receipt of such notice.

(c) Require the Secretary to notify the Commission and the board of county commissioners of the county in which the property is located, of the date, time and location of the hearing.

3. Each order issued pursuant to this section must include a statement of any pertinent findings of fact made by the State Board. If the State Board issues an order pursuant to this section:

(a) Requiring the reappraisal of a class or group of properties, the order must specify:

(1) The class or group of properties affected;

(2) The purpose and objectives of the reappraisal; and

(3) The procedures required for the reappraisal, including the particular methods of appraisal prescribed by the regulations of the Commission.

(b) Increasing or decreasing the valuation of any class or group of properties, the order must specify:

(1) The class or group of properties affected; and

(2) The amount of or the formula to be used to calculate the amount of that increase or decrease.

4. Upon the issuance of any order pursuant to this section:

(a) The Department shall send a copy of the order:

(1) By certified mail to the county assessor of each affected county; and

(2) By regular mail to the county clerk and chair of the county board of each affected county; and

(b) The Secretary shall provide:

(1) A copy of the order to the Commission; and

(2) Any certification and notice required to carry out the provisions of NRS 361.405.

5. As used in this section, “assessment ratio” means the ratio of assessed value to taxable value.

Sec. 18. 1. The State Board will require the Department to place on the Internet website maintained by the Department, not less than 10 business days before the date of each hearing scheduled pursuant to section 16 or 17 of this regulation, a copy of the notice of the hearing and of the agenda for the meeting at which the State Board will conduct the hearing.

2. If the State Board proposes to issue an order increasing the valuation of any class or group of properties at any hearing scheduled pursuant to section 16 or 17 of this regulation, the State Board will require the Department to provide to each interested person the notice of the hearing required by subsection 2 of NRS 361.395. If the notice is not provided to an interested person by personal service and the mailing address of that person is not available, the Department must send the notice of the hearing by registered or certified mail to the address of the relevant property or, if the interested person has designated a resident agent pursuant to chapter 77 of NRS, the address of that resident agent as it appears in the records of the Secretary of State. For the purposes of subsection 2 of NRS 361.395, the State Board construes the term “interested person” to have the meaning ascribed to it in section 5 of this regulation.

Sec. 19. 1. The following persons shall appear at each hearing scheduled pursuant to section 16 or 17 of this regulation:

(a) The county assessor of each county in which any of the property that is the subject of the hearing is located or a representative of the county assessor.

(b) A representative of the county board of each county in which any of the property that is the subject of the hearing is located.

2. At each hearing scheduled pursuant to section 16 or 17 of this regulation:

(a) The State Board will receive testimony under oath from interested persons.

(b) The county assessor or his or her representative, the representative of the county board and a representative of the board of county commissioners of each county in which any of the property that is the subject of the hearing is located may:

(1) Provide additional information and analysis in support of or in opposition to any proposed order of the State Board; and

(2) Show cause why the State Board should not increase or decrease the valuation, or require a reappraisal, of the pertinent class or group of properties in the county.

3. A hearing scheduled pursuant to section 16 or 17 of this regulation may be held by means of a video teleconference between two or more locations if the video technology used at the hearing provides the persons present at each location with the ability to hear and communicate with the persons present at each other location.

4. The presiding member of the State Board may exclude any disruptive person from the hearing room.

Sec. 20. *If the State Board orders any increase or decrease in the valuation of any property in a county pursuant to section 17 of this regulation:*

1. The county assessor of the county shall, on or before June 30 immediately following the issuance of the order or such a later date as the State Board may require, file with the Department the assessment roll for the county, as adjusted to carry out that order; and

2. The Department shall, on or before August 1 immediately following the issuance of the order or such a later date as the State Board may require:

(a) Audit the records of the county assessor of the county to the extent necessary to determine whether that order has been carried out; and

(b) Report to the State Board its findings concerning whether the county assessor has carried out that order.

Sec. 21. *The State Board may reconsider any order issued pursuant to section 17 of this regulation in the manner provided in NAC 361.7475, except that:*

1. A petition for reconsideration must be filed with the Secretary within 5 business days after the date on which the order was mailed to the petitioner; and

2. If the State Board takes no action on the petition within 10 business days after the date the petition was filed with the Secretary, the petition shall be deemed to be denied.

Sec. 22. NAC 361.682 is hereby amended to read as follows:

361.682 1. The provisions of NAC 361.682 to 361.753, inclusive:

(a) Govern the practice and procedure in contested cases before the State Board.

(b) *Except where inconsistent with the provisions of sections 2 to 21, inclusive, of this regulation, apply to proceedings before the State Board to carry out the provisions of NRS 361.395.*

(c) Will be liberally construed to secure the just, speedy and economical determination of all issues presented to the State Board.

2. In special cases, where good cause appears, not contrary to statute, deviation from these rules, if stipulated to by all parties of record, will be permitted.

Sec. 23. 1. This section and sections 2, 8 and 10 of this regulation become effective on April 20, 2010.

2. Sections 1, 3 to 7, inclusive, 9 and 11 to 22, inclusive, of this regulation become effective on October 1, 2010.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

LCB FILE R153-09

**Establishing Procedures for the Equalization of Property Valuations by the State Board of
Equalization; and other matters properly relating thereto.**

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) Chapter 361 adopted by the State Board of Equalization (SBE), relating to the review of the tax roll of each county; and determination of whether the property in Nevada has been assessed uniformly in accordance with the methods of appraisal and at the assessment level required by law. The regulation provides the criteria to determine whether property has been assessed uniformly, including review of relevant ratio studies, performance audits, and other relevant evidence. The regulation provides for a hearing process to vet the preliminary findings of the State Board and allows the State Board to equalize by requiring reappraisal, or in the alternative, increase or decrease the taxable value of properties, and the procedures necessary to fulfill the equalization hearing process.

1. **A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Department of Taxation, as staff to SBE, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
January 9, 2009	Workshop	January 26, 2009	289	77
February 10, 2009	Workshop	February 26, 2009	419	147
April 23, 2009	Workshop	May 8, 2009	289	77
January 26, 2010	Workshop	February 11, 2010	370	96
January 28, 2010	Hearing	March 1, 2010	370	96

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Fifteen exhibits and/or letters were received at the workshops and adoption hearing (See below). A copy of the transcripts or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at sarains@tax.state.nv.us.

The Legislative Counsel Bureau completed its review and revisions on January 14, 2010.

2. The number of persons who:

(a) Attended and testified at each workshop:

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
January 26, 2009	17	5
February 26, 2009	12	5
May 8, 2009	17	10
February 11, 2010	23	5

(b) Attended and testified at each hearing:

<u>Date of Hearing</u>	<u>Committee/ Public Attended</u>	<u>Public Testified</u>
March 1, 2010	12	2

(c) Submitted to the agency written comments:

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
January 26, 2009 Workshop	2 letters from taxpayers 4 exhibits from Department
February 26, 2009 Workshop	1 letter from taxpayer
May 8, 2009 Workshop	3 exhibits from Department 1 letter from taxpayer
February 11, 2010 Workshop	2 letters from same taxpayer
March 1, 2010 Adoption hearing	1 exhibit from taxpayer 1 letter from taxpayer

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses, local governments, and persons, by notices posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct mail to assessors and the interested parties list maintained by the Department. Approximately XX% of the approximately 3XX direct mail or email notices were sent to individuals or associations representing business.

Members of the SBE, officials of the Nevada Department of Taxation, local government officials, and members of the general public commented on some or all

of the proposed language changes during the workshop process and during the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at sarains@tax.state.nv.us

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted with changes reflecting the verbal and written comments submitted to, or received by, the Department of Taxation primarily from representatives of the Village League Tax Revolt and county assessors. SBE adopted the permanent regulation as revised in workshops and at the adoption hearing; and believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

SBE found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada. The regulation provides a process by which property values may be equalized in the future.

The regulations present no reasonably foreseeable or anticipated immediate or long-term negative economic effects to businesses. The regulation provides the criteria for determining when and how property values should be equalized so that no taxpayer pays a disproportionate burden of taxes and to ensure that methods approved by the Tax Commission are applied in the valuation of property. The immediate and long-term effects of the regulation are to provide an equalization standard in order to determine when reappraisal or factors must be applied in order to achieve equalized values.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The Department anticipates some additional cost for local governments and the Department to administer the regulation if equalization is found to be necessary.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the

duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

- 8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

SBE is not aware of any provision in this regulation which is also governed by federal regulation.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

SBE is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.

- 10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restricted the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Director has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Director considered the fact that the proposed amendment only applies to activity by local and state government officials and imposes no direct requirements on any private businesses.