No. 81924

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LEGISLATURE OF THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF TAXATION; AND THE STATE OF NEVADA DEPARTMENT OF MOTOR VEHICLES,

Appellants/Cross-Respondents,

v.

THE HONORABLE JAMES A. SETTELMEYER; THE HONORABLE JOE HARDY; THE HONORABLE HEIDI SEEVERS GANSERT; THE HONORABLE SCOTT T. HAMMOND; THE HONORABLE PETE GOICOECHEA; THE HONORABLE BEN KIECKHEFER; THE HONORABLE IRA D. HANSEN; THE HONORABLE KEITH F. PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; GREAT BASIN ENGINEERING CONTRACTORS, LLC, a Nevada limited liability company; GOODFELLOW CORPORATION, a Utah corporation qualified to do business in the State of Nevada; KIMMIE CANDY COMPANY, a Nevada corporation; KEYSTONE CORP., a Nevada nonprofit corporation; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a California nonprofit corporation qualified to do business in the State of Nevada; NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, a Nevada nonprofit corporation; NEVADA TRUCKING ASSOCIATION, INC., a Nevada nonprofit corporation; and RETAIL ASSOCIATION OF NEVADA, a Nevada nonprofit corporation,

Respondents/Cross-Appellants

On Appeal from the First Judicial District Court of the State of Nevada, Carson City
No. 19 OC 00127 1B

JOINT APPENDIX
Volume II of VII
(JA000225-000473)

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DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE NOS.
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11/10/2020	Executive Defendants' and Defendant-Intervenor Nevada Legislature's Reply Supporting Joint Motion for Stay Pending Appeal	VII	1382-1390
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08/18/2020	Executive Defendants' Reply Supporting Motion to Dismiss and Opposition to Plaintiffs' Motion for Summary Judgment	II	457-473
09/04/2020	Exhibits 1-12 in support of Plaintiffs' Reply in Support of Motion for Summary Judgment; and Opposition to Legislative Defendants' and Legislature's Counter-Motion for Summary Judgment	IV-V	725-1056
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	to Legislative Defendants' and Legislature's Counter-Motion for Summary Judgment (Including Affidavit of Jennifer McMenomy and Affidavit of Senator James Settelmeyer		
09/08/2020	Plaintiffs' Supplement to Reply in Support of Motion for Summary Judgment; and Opposition to Legislative Defendants' and Legislature's Counter-Motion for Summary Judgment (Including Exhibit 13)	V	1057-1075
10/08/2020	Plaintiffs' Notice of Entry of Order After Hearing on September 21, 2020 and Final Judgment	VI	1192-1213
09/16/2019	State's Motion to Dismiss	I	101-224

RESPECTFULLY SUBMITTED this 11th day of March, 2021.

AARON D. FORD
Attorney General

By: /s/ *Craig Newby*
CRAIG A. NEWBY
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 11th day of March, 2021, I served a copy of the foregoing JOINT APPENDIX, by electronic service to:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; GREAT BASIN ENGINEERING CONTRACTORS, LLC, a Nevada limited liability company; GOODFELLOW CORPORATION, a Utah corporation qualified to do business in the State of Nevada; KIMMIE CANDY COMPANY, a Nevada corporation; KEYSTONE CORP., a Nevada nonprofit corporation; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a California nonprofit corporation qualified to do business in the State of Nevada; NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, a Nevada nonprofit corporation; NEVADA TRUCKING ASSOCIATION, INC., a Nevada nonprofit corporation; and RETAIL ASSOCIATION OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

Case No: **19 OC 00127 1B**

Dept. No: **I**

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STATE OF NEVADA *ex rel.* THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.
_____/

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by and through their attorneys, ALLISON MacKENZIE, LTD., file this Opposition to the Motion to Dismiss of Defendants, STATE OF NEVADA *ex rel.*, THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; and NEVADA DEPARTMENT OF MOTOR VEHICLES, ("Executive Defendants") pursuant to Rule 12 of the Nevada Rules of Civil Procedure ("NRCP"), and Plaintiffs additionally as an alternative, pursuant to First Judicial District Rule 19(4) file this Motion for Summary Judgment in favor of Plaintiffs pursuant to NRCP 56. This Opposition to Motion to Dismiss and this Motion for Summary Judgment are made and based upon the following Memorandum of Points and Authorities, the attached exhibits, and all other papers and pleadings on file in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Executive Defendants seek dismissal of Plaintiffs' First Amended Complaint based on an NRCP 12(b)(5) standard. Executive Defendants then proceed to argue the case should be dispensed of as if it were a summary judgment motion. Executive Defendants do not apply the proper legal standard for arguing that Plaintiffs' First Amended Complaint should be dismissed. Rather, Executive

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Defendants request that the Court "award summary judgment because the passage of Senate Bill 542 and Senate Bill 551 comply with Article IV, Section 18(2) of the Nevada Constitution." Rather than claiming that Plaintiffs have failed to state a viable claim or have somehow named improper parties, Executive Defendants have simply asserted a substantive legal argument on the underlying Constitutional claims being made by the Plaintiffs. Having failed to argue the proper legal standard for a Motion to Dismiss, Executive Defendants' Motion to Dismiss should be denied.

Executive Defendants argue that Plaintiffs are not entitled to relief because 1) the statutes comply with Nev. Const. Art 4, §18(2) of the Nevada Constitution; 2) the bills did not create, generate, or increase public revenue; and 3) the supermajority provision of the Nevada Constitution should be "interpreted narrowly to apply to 'new taxes.'"

Executive Defendants submitted documents outside of the pleadings and therefore, its Motion must be treated as a Motion for Summary Judgment under NRCP 56. NRCP 12(d); *see also Kopicko v. Young*, 114 Nev. 1333, 1335-36, 971 P.3d 789, 790 (1998). NRCP 12(d) provides, further, that, in such circumstances, "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Therefore, Plaintiffs oppose the Motion to Dismiss and, alternatively, make this cross-motion for summary judgment.

II.

LEGAL STANDARD

NRCP 12(b)(5) provides that a party may assert the defense that a party failed "to state a claim upon which relief can be granted" by motion. A motion made pursuant to NRCP 12(b)(5) tests the legal sufficiency of the claims set out against the moving party and a complaint "should be dismissed for failure to state a claim only if it appears beyond a doubt that plaintiff could prove no set of facts which, if true, would entitle plaintiff to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 229, 181 P.3d 670, 672 (2008). Moreover, the Court in considering a motion to dismiss "must draw every fair inference in favor of the non-moving party, as to a motion to dismiss for failure to state a claim." *Blackjack Bonding v. City of Las Vegas Municipal Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1279 (2000).

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A court may consider matters outside of the pleadings on a NRCP 12(b)(5) motion if they are matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, "if, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, [a motion to dismiss under NRCP 12(b)(5)] shall be treated as one for summary judgment and disposed of as provided in Rule 56." *Kopicko v. Young*, 114 Nev. 1333, 1335-36, 971 P.3d 789, 790 (1998) (internal quotations omitted); NRCP 12(d).

A motion for summary judgment can be made "if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). A dispute with regard to facts will be considered genuine when "the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Wood v. Safeway, Inc.* 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). When reviewing a motion for summary judgment, the Court must view "the evidence, and any reasonable inferences drawn from it... in a light most favorable to the nonmoving party." *Id.* at 729, 1029.

III.

BACKGROUND

A. History of Two-Thirds Majority Requirement.

The Nevada Constitution plainly states, in pertinent part,

> . . . an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4 §18(2)

The voters of Nevada approved this amendment via ballot initiative during the 1994 and 1996 general elections. In 1994, the ballot initiative was presented as Ballot Question No. 11. A copy of the 1994 ballot question is attached hereto as **Exhibit "1"** and incorporated by this reference as if fully set forth herein. In the 1994 arguments for passage, the initiative provides, "This [measure] could

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limit increases in taxes, fees, assessments and assessment rates." The ballot initiative passed by a large margin with 283,889 "yes" votes and 79,520 "no" votes. In 1996, the ballot initiative was again presented as Ballot Question No. 11. A copy of the 1996 ballot question is attached hereto as **Exhibit "2"** and incorporated by this reference as if fully set forth herein. The arguments for and against remained the same. Again, the measure passed by a large margin of 301,382 "yes" votes and 125, 969 "no" votes. While there was a previous initiative to put this measure on the ballot by Assemblyman Jim Gibbons, (later Governor), known as Assembly Joint Resolution (AJR) 21 of the 67th (1993) Legislative Session, and he did testify regarding this initiative, it ultimately failed to pass the Legislature and was put on the ballot by petition the following year. A copy of AJR 21 of the 67th (1993) Legislative Session is attached hereto as **Exhibit "3"** and incorporated by this reference as if fully set forth herein.

B. Relevant History of Pertinent Modified Business Tax Provisions.

A portion of Senate Bill (SB) 483 of the 78th (2015) Legislative Session amended NRS 360.203 to provide a mechanism by which the Department of Taxation computed the combined revenue from the taxes imposed by the Payroll Tax under NRS 363A and Modified Business Tax (MBT) under NRS 363B. Thereafter, NRS.360.203(2) provided,

> The Department shall determine the rate at which the taxes imposed pursuant to NRS 363A.130 and 363B.110, in combination with the revenue from the commerce tax imposed by chapter 363C of NRS, would have generated a combined revenue of 4 percent more than the amount anticipated. In making the determination required by this subsection, the Department shall reduce the rate of the taxes imposed pursuant to NRS 363A.130 and 363B.110 in the proportion that the actual amount collected from each tax for the preceding fiscal year bears to the total combined amount collected from both taxes for the preceding year.

[Emphasis added]. A copy of the enrolled version of Senate Bill 483 is attached hereto as **Exhibit "4"** and incorporated by this reference as if fully set forth herein. NRS 360.203(2) required the Department of Taxation to reduce the rate of certain taxes imposed pursuant to provisions of NRS 363A.130 and NRS 363B.110. Senate Bill 483 passed with the required two-thirds constitutional majority under Nev. Const. art. 4, §18(2). Senate Bill 551 of the 80th (2019) Legislative Session

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repealed NRS 360.203 in its entirety and thus, changed the computation base for the MBT as previously adopted by the two-thirds constitutional majority in 2015 by SB 483. The tax rates imposed under NRS 363A.130 and NRS 363B.110 that were required to be reduced by Senate Bill 483 in 2015 under NRS 360.203 will not be reduced as required by the 2015 law. This will increase public revenue from what it otherwise would have been and plainly "generates" public revenue.

In a June 2, 2019 Senate Finance Committee hearing on SB 551, Defendant Senate Majority Leader Nicole Cannizzaro submitted proposed amendment No. 6101 to the bill and stated, "This bill, although it is not reflected in Proposed Amendment No. 6101, will be stamped with a two-thirds majority requirement." Hearing on SB 551 Before the Nevada Senate Committee on Finance, 80th Session (2019) (Statement of Senate Majority Leader Nicole Cannizzaro). A copy of the relevant portion of the minutes are attached as **Exhibit "5"** and incorporated by this reference as if fully set forth herein.

Thereafter, SB 551 was first considered and brought to a vote in the Nevada Senate pursuant to the required two-thirds constitutional majority. However, when the measure failed to garner the required two-thirds constitutional majority on the Senate floor, the provision requiring the supermajority of votes was summarily removed from the bill. Senate Bill 551 was then reconsidered on the Senate floor and passed with a simple majority of votes, with 13 Senators voting for the measure and 8 Senators voting against the measure. Copies of the recorded first vote and final passage count from the Nevada State Legislature's website showing the bill did not pass by a constitutional two-thirds majority initially and final passage count indicating that the bill received a "constitutional majority" are attached hereto as **Exhibit "6"** and incorporated by this reference as if fully set forth herein. Exhibit "6" shows two identical votes (13 ayes and 8 nays) on the same day on the same bill, with the first vote not being sufficient to approve the bill, but the second vote being recognized as meeting the standard for passage.

C. History of DMV Technology Fee.

Senate Bill 502 of the 78th (2015) Legislative Session amended NRS 481.064 to provide that the "Department shall add a nonrefundable technology fee of $1 to the existing fee for any transaction performed by the Department for which the fee is charged." A copy of SB 502 is attached hereto as

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Exhibit "7" and incorporated by this reference as if fully set forth herein. The title of SB 502, provides that the fee imposed "expires by limitation on June 30, 2020." Senate Bill 502 was also passed in 2015 by a constitutionally required two-thirds majority.

Senate Bill 542 of the 80th (2019) Legislative Session extended the limitation originally provided for in SB 502 from June 30, 2020 to June 30, 2022. The two-thirds majority was not required for the passage of SB 542 and it passed with a simple majority, with 13 Senators voting for the measure and 8 Senators voting against the measure.

After the passage of SB 542 and SB 551 of the 80th (2019) Legislative Session, Defendant, Governor Steve Sisolak signed the bills into law on June 5, 2019 and June 12, 2019, respectively. Senate Bill 542 and the relevant portions of SB 551 became effective on passage and approval. Thereafter, Plaintiffs filed this action on July 19, 2019 and filed their First Amended Complaint on July 30, 2019.

IV.

ARGUMENT

A. MOTION TO DISMISS.

1. Executive Defendants Fail to Meet Their Burden To Show That There Is No Set Of Facts That Would Entitle Plaintiffs To Relief.

Plaintiffs' First Amended Complaint seeks declaratory relief. While styled as a motion to dismiss, Executive Defendants do not show that any of the requirements for declaratory relief required by NRS 30.040(1) are not present and that Plaintiffs have failed to state a claim upon which relief can be granted. The fact that Plaintiffs and Executive Defendants differ on their interpretation of the subject constitutional provision shows that declaratory relief is appropriate to obtain a declaration of rights, status or legal relations of the parties.

Executive Defendants point to *Cornella v. Justice Court*, 132 Nev. 587, 591, 377 P.3d 97, 100 (2016) to argue that Plaintiffs have not met their burden to demonstrate the unconstitutionality of SB 542 and 551. This is a substantive legal argument requiring this Court to interpret a provision of the Nevada Constitution and goes to the merits of this case. *Cornella* is not the appropriate standard to support a NRCP 12(b)(5) motion to dismiss. In ruling on a NRCP 12(b)(5) motion, this Court looks

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to see whether the Amended Complaint asserts any "set of facts which, if true, would entitle plaintiff to relief." *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

Plaintiffs have demonstrated that there is a set of facts under which relief can be granted to them. In their motion, Executive Defendants request that this Court interpret the meaning of Nev. Const. art. 4, §18(2). Plaintiffs claim that Senate Bills 542 and 551 required a two-thirds majority vote under the terms of the Nevada Constitution. In their Motion to Dismiss, the Executive Defendants argue that passage of the bill did not require a two-thirds majority vote. The only substantive issue before this Court is the interpretation and application of Nev. Const. art. 4, §18(2). In interpreting constitutional provisions, the Court "utilizes the same rules and procedures as statutory interpretation. The Court will apply the plain meaning of the provision unless it is ambiguous, meaning that it is susceptible to two or more reasonable but inconsistent interpretations." *Landreth v. Malik*, 127 Nev. 175, 180, 251 P.3d 163, 167 (2011). The plain language of Nev. Const. art. 4, §18(2) does not distinguish between *new* versus *existing* public revenue. Thus, there exists a dispute between Defendants and Plaintiffs with regard to the interpretation of Nev. Const. art. 4, §18(2). This legal question is the substantive matter before the Court on Plaintiffs' claim for declaratory relief. All facts relevant to that legal question are known and not in dispute. The history of the bills in question and the votes thereon are readily identified in the record and there can be no genuine dispute about those facts. This Court need only construe the applicable Constitutional provision in answering the legal question of whether the passage of the bills without a two-thirds majority vote was constitutional. Thus, the Executive Defendants' motion should be considered as a Motion for Summary Judgment.

The request that this Court construe Nev. Const. art. 4, §18(2) with respect to Senate Bills 542 and 551, as set forth in Plaintiffs' First Amended Complaint shows Plaintiffs have stated a valid claim for declaratory relief. *See* First Amended Complaint, ¶¶ 73-78. If this Court interprets Nev. Const. art. 4, §18(2) to mean that the constitutional two-thirds majority is required on changes creating, generating and increasing public revenues, "in any form," as provided in the Constitution, Plaintiffs are entitled to relief on their declaratory action claim. Thus, Executive Defendants have failed to meet their burden to prove that there is no set of facts which, if true, would entitle Plaintiffs to declaratory relief. Accordingly, the Executive Defendants' Motion to Dismiss must be denied.

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2. Plaintiffs' Have Standing and the Complaint is Ripe for Judicial Review.

In footnotes in their Motion, Executive Defendants argue that Plaintiffs do not have standing to bring their claims and suggest that the case should be dismissed because it is not ripe for judicial review. Although Executive Defendants' arguments are not supported by any authority, Plaintiffs will address the arguments. (Executive Defendants' Motion, p. 8, 10). In order for a party to have standing to challenge a statute, the party must "suffer injury that can fairly be traced to the allegedly unconstitutional statute." *Elley v. Stephens,* 104 Nev. 413, 416, 760 P.2d 768, 770. In this case, the State Senator Plaintiffs have suffered the very personal and individualized injury of having their votes, as elected representatives of the citizens of Nevada, nullified through the violation of an explicit provision of the Nevada Constitution. Equally as obvious, is the injury that will be suffered by the remaining Plaintiffs, who, as businesses and associations with members operating in this state will suffer actual financial harm by having to pay additional taxes and fees that would not have been imposed had SB 542 and SB 551 not been adopted.

If this Court concludes that the Plaintiffs have not suffered sufficient injury to have standing, the Nevada Supreme Court has recognized an exception to the injury requirement if the following requirements are met: 1) the case must involve an issue of significant public importance; 2) the case must involve a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution; and 3) the plaintiff must be an appropriate party, meaning that there is no one else in a better position who will likely bring an action and that the plaintiff is capable of fully advocating his or her position in court. *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 895-896 (2016). In this case, the Plaintiffs meet all of the requirements of the *Schwartz* exception. First, there is no doubt that upholding the Nevada Constitution is of significant public importance. Plaintiffs have so alleged. *See* First Amended Complaint ¶ 24. Second, the case involves a challenge to a legislative expenditure or appropriation on the basis it violates Nev. Const. art. 4, §18(2). *See* First Amended Complaint ¶¶ 23, 63-66, 74. Third, there are none in a better position to bring an action than the legislators who voted against this bill, as well as the additional Plaintiff Businesses and Associations that will be impacted financially. *See* First Amended Complaint ¶¶ 25-

26. For purposes of the Motion to Dismiss, each of the aforementioned allegations of the First Amended Complaint must be accepted as true.

The Nevada Supreme Court has found that, "although the question of ripeness closely resembles the question of standing, ripeness focuses on the timing of the action rather than on the party bringing the action." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1229 (2006). The Court stated that, "a primary focus in such cases has been the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, to yield a justiciable controversy." *Id.* The harm that Plaintiff Businesses and Associations will suffer if the tax is imposed is sufficiently concrete in this situation. Executive Defendants argue that Plaintiff Businesses and Associations, in the case of SB 551, may not have standing until the date upon which the Economic Forum's projections become due and, in the case of SB 542 until the sunset would have officially ended. This is inaccurate. The Plaintiff Businesses and Associations will be paying higher taxes than they otherwise would have as a result of the approval of SB 542 and SB 551.

The true harm was imposed when NRS 360.203 was repealed, because the harm was set in motion by the passage of SB 551. Once repealed, Plaintiffs have no recourse, other than court action, to enjoin the repeal of such provision. Similarly, once the sunset was extended in SB 542, the collection of the DMV fee was set in motion. The only recourse for Plaintiffs was to attempt to enjoin the action through this court proceeding. Moreover, the State Senator Plaintiffs have already experienced harm as a result of their votes, as duly elected representatives of their constituents, having been nullified by the simple majority of the Nevada Senate choosing to ignore the explicit requirements of Nev. Const. art. 4, §18(2). This nullification of the votes of the elected representatives of the citizens of Nevada is not conjectural and is sufficiently concrete to support the claims that have been made. Thus, the Plaintiffs have standing, and the allegations contained in Plaintiffs' Amended Complaint are ripe for judicial review.

B. MOTION FOR SUMMARY JUDGMENT.

As stated above, because the Executive Defendants' motion relies on evidence outside of the pleadings, their Motion to Dismiss must be treated as a Motion for Summary Judgment pursuant to NRCP 12(d). With no genuine dispute of any relevant facts, Plaintiffs agree this matter can be

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determined by cross motions for summary judgment. Plaintiffs oppose the Motion to Dismiss and their arguments opposing Executive Defendants' Motion to Dismiss and in support of Plaintiffs' Motion for Summary Judgment are the same and set forth in this Section.

A motion for summary judgment is appropriate if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). Based on Executive Defendants' argument, and as previously stated, there are no material facts in dispute. This is a dispute involving a question of law and, as set forth below, Plaintiffs are entitled to judgment as a matter of law.

Plaintiffs move this Court for Summary Judgment because: (1) the passage of SB 542 and SB 551 did not comply with Nev. Const. art. 4 §18(2); (2) the supermajority provision should not be interpreted to apply to only "new taxes"; and 3) Legislative Counsel should not receive deference in its erroneous interpretation of Nev. Const. art. 4, §18(2).

1. Passage of SB 551 and SB 542 By Simple Majority Did Not Comply with Nev. Const. Art. 4, §18(2), Because Each Bill Creates, Generates, Or Increases Public Revenue.

Executive Defendants cite *Guinn v. Legislature*[1] to support their argument that the Nevada Constitutional provision requiring a two-thirds majority vote only applies to new taxes. This argument is without merit. In interpreting the constitutional provision, the Nevada Supreme Court stated that, "a simple majority is necessary to approve the budget and determine the need for raising revenue. A two-thirds supermajority is needed to determine what specific changes would be made to the *existing tax structure to increase revenue.*" [Emphasis added.] *Guinn v. Legislature*, 119 Nev. 460, 472, 76 P.3d 22, 30 (2003). The Court went on to find that the constitutional two-thirds majority could be suspended in the event that the Legislature could not fulfill its obligations to fund education and balance the State budget. *Id.* at 476, 32.

[1] In *Guinn*, a dispute arose between the Executive Branch and the Legislative Branch as to the Governor's proposed state budget. A stalemate occurred with regard to the passage of the State's budget and the Legislature failed to pass a budget and did not appropriate funds for the public-school system of Nevada. A small but significant group of legislators believed that a two-thirds constitutional majority pursuant to Nev. Const. art 4 18(2) was required to make appropriations and subsequently withheld its vote on the education appropriations. Then Governor Kenny Guinn filed a petition for writ of mandamus seeking to compel the Legislature to fulfill its constitutional duties and fund K-12 education as well as pass a balanced budget. The Court determined that only a simple majority is required to approve the budget and determine the need for raising revenue. *Guinn v. Legislature*, 119 Nev. 460, 472, 76 P.3d 22, 30 (2003).

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As Executive Defendants state in their Motion, the circumstances presented here are "significantly different" than they were in *Guinn*. The legislation at issue here would fall into the category of what specific changes need to "be made to the existing tax structure to increase revenue," which, according to the Supreme Court, would require the two-thirds majority for approval. The purpose of SB 551 was to help fund certain educational initiatives put forth by the majority party. This is separate and distinct from funding all of K-12 education throughout Nevada. The purpose of SB 542 was to fund the Department of Motor Vehicles' technology modernization. Both bills would serve to make "specific changes to the existing tax structure by increasing revenue." Moreover, a previous version of SB 551 presented to the Nevada Senate provided for the required two-thirds majority vote. *See* Exhibit "5". It was only when this version failed to garner the support of two-thirds of the Senate that the Senate Majority called a recess and shortly thereafter returned to the Senate Floor with a bill that no longer included the two-thirds majority requirement stamped thereon.

a. Passage of Senate Bill 551 required a two-thirds majority under Nev. Const. art. 4, §18(2) because it created, increased, and generated public revenue and eliminate computation bases for future tax reductions.

Executive Defendants confuse the issue at hand in their Motion by arguing that Plaintiffs' constitutional claim, "relies on the Economic Forum's conservative underestimate of combined tax revenues from the last biennium." (Executive Defendants Motion, p. 10). In discussing the ramifications of the repeal of NRS 360.203, the following exchange took place at the May 29, 2019 Senate Committee on Finance hearing on SB 551 between Senator Ben Kieckhefer and Russell Guindon, Principal Deputy Fiscal Analyst employed by the Nevada State Legislature, Fiscal Division:

> Senator Kieckhefer: The Economic Forum considered existing law when projecting revenue. What would the provisions of S.B. 551 mean for State revenue?
>
> Russell Guindon: Based on the Economic Forum's May 1, 2019, forecast, the assumption of the lower rates occurring, we calculate that if we maintain current rates, the State will *generate* approximately $48.2 million in FY 2020 and approximately $50 million in FY 2021, a total of approximately $98.2 million over the biennium.
>
> Senator Kieckhefer: If we pass S.B. 551, will we have $98.2 million more in General Fund revenue that we would have if we did not pass S.B. 551?
>
> Russell Guindon: That is correct.

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[Emphasis Added]. May 29, 2019 Hearing on SB 551 before the Nevada Senate Finance Committee, 80th Legislative Session (2019) (Statements of Senator Ben Kieckhefer and Russell Guindon). In other words, the repeal of NRS 360.203 would maintain the current rates and would not allow the statutory mechanism or computation base for decreasing those rates to come into effect, thereby "generating" or "increasing" revenue. The maintenance of the current rates, as Mr. Guindon states, generates approximately $98.2 million over the biennium in revenue. Executive Defendants posit that "because this does not create, generate, or increase any public revenue in any form relative to the prior fiscal year, the Legislature's passing of Senate Bill 551 complies with the plain language of the Nevada Constitution." (Executive Defendants Motion, p. 10). However, Executive Defendants conveniently exclude that Nev. Const. art. 4, §18(2) specifically also requires a two-thirds vote where a proposed bill contains changes in computation bases. The inclusion of this language in the Constitution clearly contemplates application of the two-thirds vote requirement on changes to the computation base for existing taxes, contrary to the Executive Defendant's argument. The repeal of NRS 360.203 expressly makes a change to way the Department of Taxation is to compute the MBT, resulting specifically in a generation of new revenue. Tax rates under the MBT, prior to the repeal of NRS 360.203, were subject to a specific computation, which was eliminated by SB 551. That change in the computation base for the MBT clearly triggers the two-thirds supermajority requirement under the Nevada Constitution. The practical and real impact of SB 551 is that Plaintiff Businesses and Associations will be subject to an increased tax rate and burden that they otherwise would not have faced without the repeal of NRS 360.203 by SB 551.

There is no way around the fact that the computation base set forth in NRS 360.203 was eliminated and that the effect thereof for the immediately subsequent biennium is generation of $98.2 million in additional revenue to the State, an increase above revenues that the state would have otherwise collected. Thus, SB 551's repeal of NRS 360.203, generated, created, and increased public revenue and, thus, should have been subject to the two-thirds majority requirement under Nev. Const. art. 4, §18(2).

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b. Senate Bill 542 creates, generates, and increases public revenue and its passage required a two-thirds majority under Nev. Const. Art. 4, §18(2).

The entire function and purpose of SB 542 was to extend the expiration of the Department of Motor Vehicles' technology fee. The Executive Defendants do not provide a significant amount of support for their contention that the passage of SB 542 did not provide for the creation, generation, or increase of public revenue. By its very terms, the bill delays the expiration of the fee that was set, by law, to expire on June 30, 2020 to June 30, 2022 so as to generate additional revenue for the State. On May 22, 2019, Julie Butler, Director of the Department of Motor Vehicles testified before the Senate Committee on Finance with regard to the imposition of the technology fee:

> Senate Bill 542 would implement the Department of Motor Vehicles' System Technology Application Redesign by extending the $1 technology fee on DMV transactions through June 30, 2022 [...] The technology fee is needed to ensure a stable source of funding for the DMV's information technology modernization. It will also minimize the use of Highway Funds for this effort over the 2019-2021 biennium.

Hearing on SB 542 before the Nevada Senate Finance Committee, 80th Legislative Session (2019) (Statement of Julie Butler). Thus, the purpose of the technology fee is to create and generate public revenue through 2022, when the then-existing law provided that this fee was to no longer be collected as of June 30, 2020. The Executive Defendants argue that "because this does not create, generate, or increase any public revenue in any form relative to the prior fiscal year, the Legislature's passage of Senate Bill 542 complies with the plain language of the Nevada Constitution." (Executive Defendant's Motion, p. 10). This argument should be rejected. The purpose of SB 542 is to continue to impose the $1 technology fee in order to create a source of revenue for the DMV to implement their technology initiatives. There is simply no way of concluding anything other than SB 542 generates public revenue for the State of Nevada and results in increased public revenue above and beyond what the State would otherwise bring in had SB 542 not been adopted. Therefore, SB 542 is subject to Nev. Const. art. 4, §18(2).

Moreover, historically, the Nevada Legislature has required a two-thirds majority vote pursuant to Nev. Const. art. 4, §18(2) with regard to any bill that extended the imposition of a fee or tax from one date to another. *See generally*, e.g. Assembly Bill (AB) 561 of the 76th (2011) Legislative

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Session, (extended temporary taxes set to expire on June 30, 2011 to expire on June 30, 2013); SB 475 of the 77th (2013) Legislative Session (extended temporary taxes set to expire in 2013 and 2014 to expire in 2015 and 2016); SB 483 of the 78th (2015) Legislative Session (made temporary taxes enumerated in former bills permanent); SB 546 of the 79th (2017) Legislative Session (extended a property tax that would have expired). In each of the aforementioned instances, the Legislature required a two-thirds majority vote under Nev. Const. art. 4, §18(2) in order to extend any fee or tax. Thus, until the 2019 Session, the Legislature treated any extension of a tax or fee as creating, generating, or increasing public revenue and thus required a two-thirds majority for passage. The only apparent reason for not doing so in 2019 for SB 551 and 542 was because these bills lacked the two-thirds supermajority support and would not have passed.

2. The Supermajority Provision Should Not Be Interpreted to Apply Only To "New Taxes".

a. The Plain Meaning of the Provision is Clear and Does Not Apply Only to New Taxes.

Executive Defendants argue that the supermajority provision should only apply to "new taxes" and not to existing taxes. (Executive Defendant's Motion, p. 11). Executive Defendants support their position by pointing to specific testimony at a hearing on May 4, 1993 on the measure in the Assembly Committee on Taxation hearing on AJR 21. Specifically, they cite to certain instances when Assemblyman Gibbons stated the measure only related to "new" taxes. The title of the AJR itself provides that it "proposed to amend Nevada Constitution to require two-thirds majority of each house of the legislature to increase certain existing taxes or impose certain new taxes." *See* Exhibit "6". The legislative history of AJR 21 should not be considered in interpreting the intent of Nev. Const. art. 4, §18(2), primarily because it was by petition, rather than legislative action that provided for Question 11 on both the 1994 and 1996 ballot, thereby rendering any discussion with regard to AJR 21 irrelevant. AJR 21 was not passed and did not itself become law. Additionally, when determining the intent of the voters on an initiative, the Nevada Supreme Court has found that, in interpreting constitutional amendments, the Court will:

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> consider first and foremost the original public understanding of constitutional provisions, not some abstract purpose underlying them [...] To seek the intent of the provision's drafters or to attempt to aggregate the intentions of Nevada's voters into some abstract general purpose underlying the Amendment, contrary to the intent expressed by the provision's clear textual meaning, is not the proper way to perform constitutional interpretation.

Thomas v. Nevada Yellow Cab Corp., 130 Nev. 484, 490, 327 P.3d 518, 521 (2014).

Executive Defendants argue that "the clear purpose and public policy behind the supermajority provision was to prevent "new taxes." The Supreme Court has determined:

> To determine a constitutional provision's meaning, we turn first to the provision's language. In doing so, we give that language its plain effect, unless the language is ambiguous. If a constitutional provision's language is ambiguous, meaning that it is susceptible to "two or more reasonable interpretations" we may look to the provision's history, public policy, and reason to determine what the voters intended. Conversely, when a constitutional provision's language is clear on its face, we will not go beyond that language in determining the voters' intent or create an ambiguity when none exists. Whatever meaning is ultimately attributed to a constitutional provision may not violate the spirit of that provision.

Miller v. Burk, 124 Nev. 579, 590, 591 188 P.3d 1112, 1120 (2008). The plain language of Nev. Const. art. 4, §18(2) is that any action that "creates, generates, or increases" revenue should require a two-thirds majority vote. As set forth above, both SB 542 and SB 551 "generate" or "increase" revenue for the State. The imposition of a "new" tax, the increase or extension of an existing tax or a change in the computation base of a tax, each have the same impact on taxpayers, and it is this impact that caused to the voters of this state to adopt Nev. Const. art. 4, §18(2).

Despite the plain language of Nev. Const. art. 4, §18(2), Executive Defendants argue that the constitutional provision is only applicable to new taxes. This argument violates the language and spirit of the super majority provision and creates a slippery slope for the future of tax legislation. If this reasoning were to be applied to all future legislation, it would eliminate the two-thirds requirement for passage of any bills which have historically been subject to the supermajority requirement. This was clearly not the intent of the voters when they adopted this constitutional provision. If the Executive Defendants' interpretation that only new taxes require a supermajority vote for passage is accepted, the explicit, operative language of the Constitutional provision, "creates, generates, or increases", is rendered meaningless and inoperative. The explicit language of the voter approved Constitutional

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provision must be given deference and applied to any statute that "creates, generates or increases" public revenue. *Miller* at 590, P. 3d 1120.

Moreover, when SB 483 and SB 502 of the 78th (2015) Legislative Session were passed, those bills were new taxes and triggered the provision, however, the passage of those bills was the result of many hard-won concessions and compromises. *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (1997) (observing that "[l]egislation is... the art of compromise," and that "the limitations expressed in statutory terms [are] the price of passage."). If the former legislators who passed each bill knew that the sunset provisions could continue *ad infinitum* with only a simple majority vote, rather than a supermajority, it is likely that those concessions and compromises would not have been made. These bills that implemented the MBT and the DMV Technology Fee were adopted by a two-thirds supermajority in both houses of the Legislature. Those bills included provisions that provided for reduction or elimination of the tax/fee at a specific time. It seems certain that those bills would not have received that required two-thirds majority without those provisions that have now been terminated on the simple majority vote of the Nevada Senate.

b. The Language of Other States' Constitutions is Distinguishable from the Specific Language Contained in the Nevada Constitution.

The Executive Defendants cite to constitutional provisions of several other states in support of their argument that Nevada's constitutional provision applies only to "new taxes." Specifically, the Executive Defendants cite to *Apa v. Butler*, 638 N.W. 2d 57, 69-70 (S.D. 2001), which is wholly dissimilar to the facts at hand. In that case, the South Dakota Supreme Court concluded that the transfer of already existing funding from one source to another source did not require a two-thirds majority vote as provided for in Article XII, § 2 of the South Dakota Constitution, which provides that "all other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all members of each branch of the Legislature."

Similarly, the Executive Defendants point to Okla. Const. art. V, §33, which requires a three-fifths majority for approval of "all bills raising revenue." In *Fent v. Fallin*, 345 P.3d 1113 (Okla. 2014) another dissimilar situation is presented as analogous by the Executive Defendants. In *Fent*, a taxpayer was seeking to challenge a bill which decreased revenue, passed without the required

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constitutional majority. The Oklahoma Supreme Court in *Fent* determined that "the precise meaning behind the term 'raising revenue' as used in the Okla. Const. art. 5 § 33 was to levy a tax to collect revenue." *Id.* at 1116. In another Oklahoma Case, *Okla. Auto Dealers Ass'n*, 401 P.3d 1152, 1153 (Okla, 2017), the Oklahoma Supreme Court did conclude that the aforementioned Oklahoma constitutional provision regarding a three-fifths majority only applied to new revenues. However, a comparison of the language of Oklahoma's Constitution to Nevada's reveals important and undeniable distinctions. Whereas Oklahoma's constitutional supermajority requirement applies only to bills "raising revenue" the language of the Nevada Constitution is much broader, applying to any bill or joint resolution which "creates, generates, or increases any public revenue in any form" or "changes in the computation bases for taxes, fees, assessments and rates." The Oklahoma cases interpreting the much narrower supermajority requirement have no persuasive bearing on the questions presented here.

The Executive Defendants also cite *City of Seattle v. Department of Revenue*, 357 P.3d 979 (Or. 2015), which interprets and applies an Oregon constitutional provision providing that a bill must "raise revenue" in order to trigger a three-fifths supermajority requirement. In that case, the Oregon Supreme Court found that a bill eliminating a tax exemption failed to meet the two-prong requirement set forth earlier in *Bobo v. Kulongoski*, 107 P. 3d 18, 23 (Or. 2005). In *Bobo*, the Oregon Supreme Court, in determining whether a bill "raise[s] revenue," the bill must: 1) collect money or bring money into the treasury; and 2) possess the essential features of levying a tax. The Oregon Supreme Court found in *City of Seattle*, that the elimination of the exemption would, indeed, bring money into the treasury but did not possess the features of levying a tax. 357 P. 3d 987. In contrast to the Oregon Constitutional provision at issue in these cases, the Nevada Constitutional supermajority requirement is not limited to bills raising revenue, but also applies to bills that generate or increase revenue or change the computation bases for taxes, fees, assessments and rates. Therefore, the Oregon test for determining whether a bill raises revenue has no application here.

Many states have supermajority provisions in their Constitutions. While a State Court's interpretation of its own State Constitution may be instructive, it cannot be controlling in this Court's construction of the Nevada Constitution because the Nevada constitutional language is easily distinguished in every such circumstance. The language in the provision of the Nevada Constitution

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is clearly and certainly intended to be broader than the mere raising of revenue. Thus, the Executive Defendants' request that this Court adopt the reasoning from these other jurisdictions is simply not appropriate.

c. The Legislature's Current Interpretation is Different From its Historical Interpretation.

Finally, the Executive Defendants argue that the opinion provided by Legislative Counsel "is entitled to deference in its counseled selection of interpretation of statute." *Nevada Mining Ass'n v. Erodes*, 117 Nev. 531, 540, 26 P.3d 753, 755 (2001). In *Nevada Mining Ass'n*, the Legislative Counsel was given deference in her interpretation of the meaning of 120-day session, which had been passed by voters via constitutional amendment. The Court in *Nevada Mining Ass'n*, also made it clear that when reviewing constitutional provisions, a court "must give words their plain meaning unless doing so would violate the spirit of the provision." *Id.* at 537, 26 P.3d at 757. Additionally, the Nevada Supreme Court acknowledges that a court's "primary task" in this situation "is to ascertain the intent of those who enacted" the provision being reviewed. *Id.* As discussed in detail above, an application of the plain language of the Nev. Const. art. 4, §18(2) ("creates, generates, or increases"), to the subject legislation (SB 542 and SB 551) leads to the obvious conclusion that a two-thirds majority was necessary to approve the legislation.

Additionally, if this Court chooses to consider the intent of those (the voters) who enacted the Constitutional provision, there can be little doubt that the voters of Nevada by an overwhelming majority wished to restrain the Legislature' power to further burden the Nevada taxpayer and there can be no doubt about the actual effect to SB 542 and SB 551: each increases the financial burden on Nevada taxpayers. Unlike in this situation, in *Nevada Mining Ass'n,* the Legislative Counsel had not provided previous conflicting opinions with regard to the issue and did not have a history of inconsistent application of the constitutional provision.

In addition, the Legislative Counsel's interpretation of some of the language in Nev. Const. art. 4, §18(2) appears to be different in 2019 in two separate opinions. The Legislative Counsel's May 8th opinion is different from an opinion provided April 16, 2019, in a very similar situation to Senator

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Yvanna Cancela regarding the passage of SB 201 of the 80th (2019) Legislative Session. In the April 16, 2019 correspondence, the Legislative Counsel Bureau stated:

> Based on the normal and ordinary meanings of the terms, "creates, generates, or increases" and "public," it is clear that the terms all refer to the Legislature taking legislative action that directly bring into existence, produces or enlarges public revenue in the first instance, rather than contracting with a business to perform a quasi-governmental function for which fees are paid by licensees directly to the private entity that created, maintains or operates the required database.

A copy of the April 16, 2019 Legislative Counsel Bureau correspondence is attached as **Exhibit "8"** and incorporated by this reference as if fully set forth herein.

Additionally, it was standard practice of the Legislative Counsel, as described above, to apply the supermajority requirement to legislation containing sunset provisions and increasing revenue in a manner similar to which revenue is increased in SB 551 and SB 542. Therefore, it begs the question, if deference is to be given to the Legislative Counsel, which opinion and application of the constitutional provision of the Legislative Counsel is to be given deference? It is clear that the Legislative Counsel has, in the past and even contemporaneously, held a wholly different opinion with regard to the applicability of the two-thirds requirement. The Legislative Counsel has apparently changed its stance. The conflicting application of the two-thirds requirement indicates that deference cannot and should not be given to the Legislative Counsel on this matter. The Court must interpret the provision based upon the plain language of the Constitutional provision, the actual effect of the legislation and, if necessary, the intent of the voters of Nevada who adopted the Constitutional provision. In short, the "Constitution may not be construed according to a statute enacted pursuant thereto; rather, statutes must be construed consistent with the constitution and rejected if inconsistent therewith." *Strickland v. Waymire*, 126 Nev. 230, 241, 235 P.3d 605, 611 (2010) (internal quotations omitted). Thus, Nev. Const. art. 4, §18(2) should be interpreted by its plain meaning, which, requires an affirmative vote of two-thirds for any bill that "creates, generates, or increases any public revenue in any form." It is also plain that SB 542 and SB 551 are bills that create and generate public revenue for the State of Nevada and, thus, required the constitutional two-thirds majority in order to pass. This is just the sorts of legislation that Nevada voters, by an overwhelming majority, wished to make more difficult to pass, because by creating, generating and increasing public revenue, the legislation

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increases the burden on Nevada taxpayers. Neither bill received the requisite two-thirds majority vote in the Nevada Senate and, therefore, neither bill is valid.

V.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Executive Defendants' Motion to Dismiss be denied in its entirety. Alternately, based upon the foregoing, Plaintiffs respectfully request an order entering judgment as a matter of law in Plaintiffs' favor and that Senate Bills 542 and 551 of the 80th (2019) Session of the Nevada Legislature be declared invalid.

AFFIRMATION

The undersigned does hereby affirm that the preceding document DOES NOT contain the social security number of any person.

DATED this 30th day of September 2019.

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

__X__ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

_____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]

_____ Electronic Transmission

_____ Federal Express, UPS, or other overnight delivery

_____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

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DATED this 30th day of September, 2019.

Nancy Fontenot
NANCY FONTENOT

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4853-1167-9400, v. 1

EXHIBIT "1"

QUESTION NO. 11

An Initiative Relating to Tax Restraint

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to establish a requirement that at least a two-thirds vote of both houses of the legislature be necessary to pass a measure which generates or increases a tax, fee, assessment, rate or any other form of public revenue?

Yes..... ☑ 283,889

No..... ☐ 79,520

EXPLANATION

A two-thirds majority vote of both houses of the legislature would be required for the passage of any bill or joint resolution which would increase public revenue in any form. The legislature could, by a simple majority vote, refer any such proposal to a vote of the people at the next general election.

ARGUMENTS FOR PASSAGE

Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. It may require state government to prioritize its spending and economize rather than turning to new sources of revenue. The legislature, by simple majority vote, could ask for the people to vote on any increase.

ARGUMENTS AGAINST PASSAGE

Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

FISCAL NOTE

Fiscal Impact-No. The proposal to amend the Nevada Constitution to require two-thirds vote to pass a bill or joint resolution which creates, generates or increases any public revenue in any form. The proposal would have no adverse fiscal impact to the State.

FULL TEXT OF THE MEASURE

Initiative relating to Tax Restraint

The people ot the State of Nevada do enact as follows:

That section 18 or article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec. 18.* 1. Every bill, except a bill placed on a consent calendar adopted as provided in [this section, shall] *subsection 4, must* be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill [may be] *is* pending shall deem it expedient to dispense with this rule. [:but the] *The* reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on its final passage, shall in no case be dispensed with, and the vote on final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House. [: and] *Except as otherwise provided in subsection 2,* a majority of all the members elected in each house [.shall be] is necessary to pass every bill or joint resolution, and all bills or joint resolutions to passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of State and clerk of the Assembly.

2. Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each house is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

3. A majority of all of the members elected to each house may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election, and shall become effective and enforced only if it has been approved by a majority of the votes cast on the measure at such election.

4. Each House may provide by rule for the creation of a consent calendar and establish the procedure for the passage of uncontested bills.

EXHIBIT "2"

QUESTION NO. 11

An Initiative Relating to Tax Restraint

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to establish a requirement that at least a two-thirds vote of both houses of the legislature be necessary to pass a measure which generates or increases a tax, fee, assessment, rate or any other form of public revenue?

Yes 301,382. ☒

No 125,969. ☐

EXPLANATION

A two-thirds majority vote of both houses of the legislature would be required for the passage of any bill or joint resolution which would increase public revenue in any form. The legislature could, by a simple majority vote, refer any such proposal to a vote of the people at the next general election.

ARGUMENTS FOR PASSAGE

Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. It may require state government to prioritize its spending and economize rather than turning to new sources of revenue. The legislature, by simple majority vote, could ask for the people to vote on any increase.

ARGUMENTS AGAINST PASSAGE

Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

FISCAL NOTE

Fiscal Impact-No. The proposal to amend the Nevada Constitution to require two-thirds vote to pass a bill or joint resolution which creates, generates or increases any public revenue in any form. The proposal would have no adverse fiscal impact to the State.

FULL TEXT OF THE MEASURE

Initiative relating to Tax Restraint

The people ot the State of Nevada do enact as follows:
That section 18 or article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec. 18.* 1. Every bill, except a bill placed on a consent calendar adopted as provided in [this section, shall] *subsection 4, must* be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill [may be] *is* pending shall deem it expedient to dispense with this rule. [:but the] *The* reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on its final passage, shall in no case be dispensed with, and the vote on final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House. [: and] *Except as otherwise provided in subsection 2,* a majority of all the members elected in each house [.shall be] is necessary to pass every bill or joint resolution, and all bills or joint resolutions to passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of State and clerk of the Assembly.

2. Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each house is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

3. A majority of all of the members elected to each house may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election, and shall become effective and enforced only if it has been approved by a majority of the votes cast on the measure at such election.

4. Each House may provide by rule for the creation of a consent calendar and establish the procedure for the passage of uncontested bills.

EXHIBIT "3"

A.J.R. 21

ASSEMBLY JOINT RESOLUTION NO. 21—ASSEMBLYMEN GIBBONS, MARVEL, ERNAUT, SCHERER, GREGORY, HUMKE, HELLER, REGAN, HETTRICK, AUGUSTINE, CARPENTER, TIFFANY, LAMBERT, MCGAUGHEY, SCHNEIDER, BONAVENTURA, PETRAK, COLLINS, HALLER, SEGERBLOM AND WENDELL WILLIAMS

MARCH 5, 1993

Referred to Committee on Taxation

SUMMARY—Proposes to amend Nevada constitution to require two-thirds majority of each house of legislature to increase certain existing taxes or impose certain new taxes. (BDR C-166)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

ASSEMBLY JOINT RESOLUTION—Proposing to amend the constitution of the State of Nevada to require an affirmative vote of not fewer than two-thirds of the members of each house of the legislature to increase certain existing taxes or impose certain new taxes.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That section 18 of article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec.:] *Sec.* 18. *1.* Every bill, except a bill placed on a consent calendar adopted as provided in [this section, shall] *subsection 3, must* be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill [may be] *is* pending shall deem it expedient to dispense with this rule . [; but the] *The* reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House . [; and] *Except as otherwise provided in subsection 2,* a majority of all the members elected to each house [, shall be] *is* necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of the Senate and clerk of the Assembly.

2. Except as otherwise provided in this subsection, an affirmative vote of not fewer than two-thirds of the members elected to each house is necessary to pass a bill or joint resolution which increases or imposes any tax, in any form, based upon:

(a) The value of real property;

(b) The retail sale or use in this state of tangible personal property;

(c) The receipts, income, assets, capital stock or number of employees of a business, including a business engaged in gaming;

(d) The net proceeds of minerals extracted or any other net proceeds of mining;

(e) The volume, weight or alcoholic content of liquor imported, possessed, stored or sold in this state; or

(f) The number or weight of cigarettes or any other tobacco product purchased, possessed or sold in this state.

The requirement of this subsection does not apply to a fee which is imposed on the right to use or dispose of property, to pursue a business or occupation or to exercise a privilege if the primary purpose of the fee is to reimburse the state for the cost of regulating an activity and not to raise the public revenue.

3. Each House may provide by rule for the creation of a consent calendar and establish the procedure for the passage of uncontested bills.

EXHIBIT "4"

Senate Bill No. 483–Committee on Revenue and Economic Development

CHAPTER.....

AN ACT relating to governmental financial administration; providing for the imposition, administration and payment of a commerce tax on the Nevada gross revenue of certain business entities engaged in business in this State; revising provisions governing the rate and calculation of the payroll tax imposed on certain businesses in this State; revising provisions governing the rate and distribution of the excise tax on cigarettes; revising provisions governing the state business license fee; revising provisions governing the fee imposed on certain business entities for filing an initial or annual list; extending the prospective expiration of certain requirements regarding the advance payment and computation of the tax on the net proceeds from certain mining operations conducted in this State; removing the prospective expiration of certain requirements regarding the imposition of the local school support tax; revising provisions relating to the allocation of a certain portion of the proceeds of the basic governmental services tax; temporarily extending the expiration of the fee for the provision of specialty court programs following a conviction for a misdemeanor offense of driving a vehicle under the influence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 20 of this bill imposes an annual commerce tax on each business entity engaged in business in this State whose Nevada gross revenue in a fiscal year exceed $4,000,000 at a rate that is based on the industry in which the business entity is primarily engaged. In accordance with **section 9** of this bill, the Nevada gross revenue of a business entity is determined by taking the amount of its gross revenue, as defined in **section 8** of this bill, making various adjustments to that amount under **section 21** of this bill, and then situsing that adjusted amount to this State pursuant to **section 22** of this bill. **Sections 24-49** of this bill set forth the rate of the commerce tax for the industry in which a business entity is primarily engaged. **Sections 2-66** of this bill further provide for the administration, collection and enforcement of the commerce tax by the Department of Taxation in a manner similar to other state taxes. **Sections 77, 79, 83, 85, 86, 89, 90, 93-95, 97 and 100** of this bill authorize the imposition of various types of disciplinary action against certain business entities who fail to pay the tax by the agencies responsible for their supervision and licensing. **Sections 78, 80-82, 84, 87, 88, 91 and 92** of this bill authorize the Department to obtain certain records and information from certain agencies to assist the Department in its administration of the tax. **Sections 96, 98, 99, 101 and 102** of this bill amend various provisions of existing law, including, without limitation, various provisions of the Nevada Insurance Code to specifically

provide that entities regulated under that Code are required to comply with the provisions of the commerce tax.

Existing law imposes an excise tax on certain businesses other than financial institutions at the rate of 1.17 percent of the total wages paid by the business each calendar quarter that exceed $85,000. (NRS 363B.110) On July 1, 2015, this rate is scheduled to change to 0.63 percent of the total wages paid by the business each calendar quarter. (Chapter 476, Statutes of Nevada 2011, pp. 2891, 2898, as last amended by chapter 518, Statutes of Nevada 2013, p. 3427; chapter 518, Statutes of Nevada 2013, p. 3424) Existing law also imposes an excise tax on financial institutions at the rate of 2 percent of the total wages paid by the financial institution each calendar quarter. **Sections 62 and 67-70** of this bill: (1) require businesses that are subject to the tax on the net proceeds of mining to pay the payroll tax at the same rate as the rate paid by financial institutions under existing law; (2) impose the payroll tax on businesses other than a financial institution or a mining business at the rate of 1.475 of the total wages paid by the business each calendar quarter that exceed $50,000; (3) authorize a business to subtract 50 percent of the commerce tax paid by the business as a credit when determining the amount of the tax on the total wages paid the business which is due from the business; and (4) require a reduction in the rate of the tax on the total wages paid by all businesses if the combined revenue from the commerce tax and the tax on the total wages by a business exceed a certain amount.

Existing law imposes an excise tax on the purchase, possession or use of cigarettes at the rate of 80 cents per pack of 20 cigarettes. (NRS 370.165, 370.350) Under existing law, the Department of Taxation must remit 70 cents of the tax on each pack of 20 cigarettes, less the costs of collecting the tax, to the State Treasurer for deposit in the Account for the Tax on Cigarettes in the State General Fund, and the remaining amount of the tax must be deposited in the Local Government Tax Distribution Account for distribution to local governments. (NRS 370.260) **Sections 71-73** of this bill increase the excise tax on cigarettes to $1.80 per pack of 20 cigarettes and require the additional amount of tax to be deposited in the Account in the State General Fund. **Section 113** of this bill requires a wholesale dealer who purchases a revenue stamp evidencing payment of the tax before July 1, 2015, but who has not affixed that stamp to a pack of cigarettes before that date to pay the additional tax on the stamp.

Existing law imposes an annual fee of $200 for a state business license. (NRS 76.100, 76.130) On July 1, 2015, this fee is scheduled to change to $100. (Chapters 381 and 429, Statutes of Nevada 2009, as last amended by chapter 518, Statutes of Nevada 2013, p. 3426) **Sections 74 and 75** of this bill increase the annual state business license fee to $500 for all corporations organized pursuant to the laws of this State and all foreign corporations transacting business in this State. **Sections 74 and 75** further maintain the existing $200 state business license fee for all other businesses.

Existing law requires each business entity organizing under the laws of this State or transacting business in this State to: (1) file with the Secretary of State an initial list and an annual list of the directors and officers of the entity or the persons holding the equivalent office; and (2) pay a fee for that filing. (NRS 78.150, 80.110, 82.193, 82.523, 84.110, 86.263, 86.5461, 87.510, 87.541, 87A.290, 87A.560, 88.395, 88.591, 88A.600, 88A.732, 89.250) **Sections 75.5 and 76.1-76.8** of this bill increase by $25 the fee for filing an initial or annual list.

Existing law requires, until June 30, 2015, the advance payment of the tax on the net proceeds of minerals based upon the estimated net proceeds and royalties of a mining operation for the current calendar year. (Chapter 4, Statutes of Nevada 2008, 25th Special Session, p. 14, as last amended by chapter 518, Statutes of

Nevada 2013, p. 3425) **Section 103** of this bill delays the expiration of this requirement for advance payment until June 30, 2016, and **section 107** of this bill makes conforming changes to related transitory provisions governing the duties of the Department of Taxation in 2017 and the appropriation and apportionment of money to counties and other local governments during that year.

Existing law provides that effective January 1, 2016, in computing the net proceeds from certain mining operations conducted in this State, a person may deduct certain amounts expended for health care for employees actually engaged in mining operations in this State. (Chapter 449, Statutes of Nevada 2011, p. 2690, as amended by chapter 518, Statutes of Nevada 2013, p. 3426) **Section 106** of this bill extends to January 1, 2017, the effective date of this deduction. **Section 105** of this bill makes conforming changes to transitory provisions governing the computation of the proceeds from certain mining operations for calendar years 2016 and 2017 and all subsequent calendar years.

Existing law requires, until June 30, 2015, an increase in the rate of the Local School Support Tax of 0.35 percent. (Chapter 395, Statutes of Nevada 2009, pp. 2191-93, as last amended by chapter 518, Statutes of Nevada 2013, p. 3426) **Section 104** of this bill removes the expiration date of this rate thereby requiring the payment of this rate indefinitely.

The State of Nevada imposes a governmental services tax for the privilege of operating any vehicle upon the public highways of this State. (NRS 371.030) The annual amount of the basic governmental services tax is 4 cents on each $1 of valuation of the vehicle, as determined by the Department of Motor Vehicles. (NRS 371.040) Existing law sets forth depreciation schedules for determining the amount of the basic governmental services tax due each year for used vehicles and establishes a minimum tax. (NRS 371.060) In 2009, the amount of the basic governmental services tax due annually was increased for used vehicles by reducing the amount of depreciation allowed and increasing the minimum tax. The revenue from these increases in the basic governmental services tax were allocated to the State General Fund until June 30, 2015, and then were required to be deposited in the State Highway Fund thereafter. (Chapter 395, Statutes of Nevada 2009, p. 2188, as last amended by chapter 518, Statutes of Nevada 2013, p. 3426) **Sections 78.1-78.9** of this bill provide that: (1) the increases in the basic governmental services tax are allocated to the State General Fund in fiscal year 2015-2016; (2) in fiscal year 2016-2017, fifty percent of those increases will be deposited in the State General Fund and 50 percent of those increases will be deposited in the State Highway Fund; and (3) the entire amount of those increases will be deposited in the State Highway Fund commencing on July 1, 2017.

Existing law requires a court to impose a fee of $100, in addition to any other administrative assessment, penalty or fine imposed, if a person pleads guilty, guilty but mentally ill or nolo contendere to, or is found guilty of, a charge of driving under the influence of intoxicating liquor or a controlled substance that is punishable as a misdemeanor. The money collected for this fee is deposited with the State Controller for credit to a special account in the State General Fund administered by the Office of Court Administrator and money apportioned to a court from this fee must be used by the court for certain purposes related to specialty court programs. (NRS 484C.515) Under existing law, this fee expires by limitation on June 30, 2015. (Chapter 373, Statutes of Nevada 2013, p. 1992) **Section 109** of this bill extends the expiration date of this fee until June 30, 2017.

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

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 61, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 2 to 13, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"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. 4. *1. Except as otherwise provided in subsection 2, "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 engaged in a business.*

2. "Business entity" does not include:

(a) Any person or other entity which this State is prohibited from taxing pursuant to the Constitution or laws of the United States or the Nevada Constitution.

(b) 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.

(c) A governmental entity.

(d) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(e) A business entity organized pursuant to chapter 82 or 84 of NRS.

(f) A credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

(g) A grantor trust as defined by section 671 and 7701(a)(30)(E) of the Internal Revenue Code, 26 U.S.C. §§ 671 and 7701(a)(30)(E), all of the grantors and beneficiaries of which

are natural persons or charitable entities as described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), excluding a trust taxable as a business entity pursuant to 26 C.F.R. § 301.7701-4(b).

(h) An estate of a natural person as defined by section 7701(a)(30)(D) of the Internal Revenue Code, 26 U.S.C. § 7701(a)(30)(D), excluding an estate taxable as a business entity pursuant to 26 C.F.R. § 301.7701-4(b).

(i) A real estate investment trust, as defined by section 856 of the Internal Revenue Code, 26 U.S.C. § 856, and its qualified real estate investment trust subsidiaries, as defined by section 856(i)(2) of the Internal Revenue Code, 26 U.S.C. § 856(i)(2), except that:

(1) A real estate investment trust with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a business entity pursuant to this section; and

(2) A limited partnership or other entity that directly holds the real estate as described in subparagraph (1) is a business entity pursuant to this section, without regard to whether a real estate investment trust holds an interest in it.

(j) A real estate mortgage investment conduit, as defined by section 860D of the Internal Revenue Code, 26 U.S.C. § 860D.

(k) A trust qualified under section 401(a) of the Internal Revenue Code, 26 U.S.C. § 401(a).

(l) A passive entity.

(m) A person whose activities within this State are confined to the owning, maintenance and management of the person's intangible investments or of the intangible investments of persons or statutory trusts or business trusts registered as investment companies under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and the collection and distribution of the income from such investments or from tangible property physically located outside this State. For the purposes of this paragraph, "intangible investments" includes, without limitation, investments in stocks, bonds, notes and other debt obligations, including, without limitation, debt obligations of affiliated corporations, real estate investment trusts, patents, patent applications, trademarks, trade names and similar types of intangible assets or an entity that is registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq.

(n) A person who takes part in an exhibition held in this State for a purpose related to the conduct of a business and is not required to obtain a state business license specifically for that event pursuant to NRS 360.780.

Sec. 5. *"Commerce tax" means the tax required to be paid pursuant to this chapter.*

Sec. 5.5. *"Credit sales" means a sale of goods by a seller who accepts payments for the goods at a later time.*

Sec. 6. *"Engaging in a business" means commencing, conducting or continuing a business, the exercise of 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. 7. *"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. 8. *1. Except as otherwise provided in subsection 3, "gross revenue" means the total amount realized by a business entity from engaging in a business in this State, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income, including, without limitation, the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.*

2. Except as otherwise provided in subsection 3, the term includes, without limitation:

(a) Amounts realized from the sale, exchange or other disposition of a business entity's property;

(b) Amounts realized from the performance of services by a business entity;

(c) Amounts realized from another person's possession of the property or capital of a business entity; and

(d) Any combination of these amounts.

3. The term does not include:

(a) Amounts realized from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property;

(b) The value of cash discounts allowed by the business entity and taken by a customer;

(c) The value of goods or services provided to a customer on a complimentary basis;

(d) Amounts realized from a transaction subject to, described in, or equivalent to, section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031 or 1033 of the Internal Revenue Code, 26 U.S.C. § 118, 331, 332, 336, 338, 351, 355, 368, 721, 731, 1031 or 1033, regardless of the federal tax classification of the business entity under 26 C.F.R. § 301.7701-3;

(e) Amounts indirectly realized from a reduction of an expense or deduction;

(f) The value of property or services donated to a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), if the donation is tax deductible pursuant to the provisions of section 170(c) of the Internal Revenue Code, 26 U.S.C. § 170(c); and

(g) Amounts that are not considered revenue under generally accepted accounting principles.

Sec. 8.5. *"Loan" means any extension of credit or the purchase in whole or in part of an extension of credit from another person, including, without limitation, participations and syndications.*

Sec. 9. *"Nevada gross revenue" means the gross revenue of a business entity from engaging in a business in this State, as adjusted pursuant to section 21 of this act and situsedto this State pursuant to section 22 of this act.*

Sec. 10. *"North American Industry Classification System" or "NAICS" means the 2012 North American Industry Classification System published by the Bureau of the Census of the United States Department of Commerce.*

Sec. 10.5. *"Pass-through entity" means an entity that is disregarded as an entity for the purposes of federal income taxation or is treated as a partnership for the purposes of federal income taxation.*

Sec. 11. *1. "Pass-through revenue" means:*

(a) Revenue received by a business entity that is required by law or fiduciary duty to be distributed to another person or governmental entity;

(b) Taxes collected from a third party by a business entity and remitted by the business entity to a taxing authority;

(c) 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;

(d) Revenue received by a business entity that is mandated by contract or subcontract to be distributed to another person or entity if the revenue constitutes:

(1) Sales commissions that are paid to a person who is not an employee of the business entity, including, without limitation, a split-fee real estate commission;

(2) The tax basis of securities underwritten by the business entity, as determined for the purposes of federal income taxation; or

(3) Subcontracting payments under a contract or subcontract entered into by a business entity to provide services, labor or materials in connection with the actual or proposed design, construction, remodeling, remediation or repair of improvements on real property or the location of the boundaries of real property;

(e) Revenue received by a business entity that provides legal services if the revenue received by the business entity is:

(1) Mandated by law, fiduciary duty or contract to be distributed to a claimant by the claimant's attorney or to another person or entity on behalf of a claimant by the claimant's attorney, including, without limitation, revenue received:

(I) For damages due to a client represented by the business entity;

(II) That is subject to a lien or other contractual obligation arising out of the representation provided by the business entity, other than fees owed to the business entity for the provision of legal services;

(III) That is subject to a subrogation interest or other third-party contractual claim; and

(IV) That is required to be paid to another attorney who provided legal services in a matter and who is not a member, partner, shareholder or employee of the business entity; and

(2) Reimbursement of the expenses incurred by the business entity in providing legal services to a claimant that are specific to the claimant's matter and that are not general operating expenses of the business entity; or

(f) Revenue received by a business entity that is part of an affiliated group from another member of the affiliated group.

2. As used in this section:

(a) "Affiliated group" means a group of two or more business entities, including, without limitation, a business entity described in subsection 2 of section 4 of this act, each of which is controlled by one or more common owners or by one or more members of the group.

(b) "Controlled by" means the direct or indirect ownership, control or possession of 50 percent or more of a business entity.

(c) "Sales commission" means:

(1) Any form of compensation paid to a person for engaging in an act for which a license is required pursuant to chapter 645 of NRS; or

(2) Compensation paid to a sales representative by a principal in an amount that is based on the amount or level of orders for or sales on behalf of the principal and that the principal is required to report on Internal Revenue Service Form 1099-MISC, Miscellaneous Income.

Sec. 11.5. *"Securities" means United States Treasury securities, obligations of United States governmental agencies and corporations, obligations of a state or political subdivision, corporate stock, bonds, participations in securities backed by mortgages held by United States or state governmental agencies, loan-backed securities, money market instruments, federal funds, securities purchased and sold under agreements to resell or repurchase, commercial paper, banker's acceptances, purchased certificates of deposit, options, futures contracts, forward contracts, notional principal contracts, including, without limitation, swaps, and other similar securities and instruments.*

Sec. 12. *"Taxable year" means the 12-month period beginning on July 1 and ending on June 30 of the following year.*

Sec. 13. *"Wages" means any remuneration paid for personal services, including, without limitation, commissions and bonuses, and remuneration payable in any medium other than cash.*

Sec. 13.5. *For the purposes of this chapter, unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, and include future amendments to such sections and corresponding provisions of future federal internal revenue laws.*

Sec. 14. *1. For the purposes of this chapter, a business is a "passive entity" only if:*

(a) The business is a limited-liability company, general partnership, limited-liability partnership, limited partnership or limited-liability limited partnership, or a trust, other than a business trust;

(b) During the period for which the gross revenue of the business entity is reported pursuant to section 20 of this act, at least 90 percent of the business entity's federal gross income consists of the following income:

(1) Dividends, interest, foreign currency exchange gains, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlements or termination payments with respect to a financial instrument, and income from a limited-liability company;

(2) Capital gains from the sale of real property, gains from the sale of commodities traded on a commodities exchange and gains from the sale of securities; and

(3) Royalties, bonuses or delay rental income from mineral properties and income from other nonoperating mineral interests; and

(c) The business entity does not receive more than 10 percent of its federal gross income from conducting an active trade or business.

2. As used in paragraph (b) of subsection 1, the term "income" 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.

3. For the purposes of paragraph (c) of subsection 1:

(a) Except as otherwise provided in this subsection, a business entity is "conducting an active trade or business" if:

(1) The activities being carried on by the business entity include one or more active operations that form a part of the process of earning income or profit, and the business entity performs active management and operating functions; or

(2) Any assets, including, without limitation, royalties, patents, trademarks and other intangible assets, held by the business entity are used in the active trade or business of one or more related business entities.

(b) The ownership of a royalty interest or a nonoperating working interest in mineral rights does not constitute the conduct of an active trade or business.

(c) The payment of compensation to employees or independent contractors for financial or legal services reasonably necessary for the operation of a business does not constitute the conduct of an active trade or business.

(d) Holding a seat on the board of directors of a business entity does not by itself constitute the conduct of an active trade or business.

(e) Activities performed by a business entity include activities performed by persons outside the business entity, including independent contractors, to the extent that those persons perform services on behalf of the business entity and those services constitute all or any part of the business entity's trade or business.

Sec. 15. *For the purposes of this chapter, if a business entity engaging in a business in this State is engaged in business in more than one business category set forth in sections 24 to 49, inclusive, of this act, the business entity shall be deemed to be primarily engaged in the business category in which the highest percentage of its Nevada gross revenue is generated.*

Sec. 16. *The Department shall:*

1. Administer and enforce the provisions of this chapter, and may adopt such regulations as it deems appropriate for that purpose.

2. Deposit all fees, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

Sec. 17. *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. The regulations adopted by the Department pursuant to this subsection must specify the type of information that a business entity engaging in a business in this State must keep in the normal course of its financial recordkeeping for the purpose of

determining the amount of the commerce tax owed by the business entity.

Sec. 18. *1. To verify the accuracy of any return filed or, if no return is filed by a business entity, to determine the amount of the commerce tax required to be paid pursuant to this chapter, 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 commerce tax.*

2. Any person who may be liable for the commerce tax and who keeps outside of this State any books, papers or 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. 19. *The Executive Director may request from any other governmental agency or officer such information as the Executive Director deems necessary to carry out the provisions of this chapter. If the Executive Director obtains any confidential information pursuant to such a request, he or she shall maintain the confidentiality of that information in the same manner and to the same extent as provided by law for the agency or officer from whom the information was obtained.*

Sec. 20. *1. For the privilege of engaging in a business in this State, a commerce tax is hereby imposed upon each business entity whose Nevada gross revenue in a taxable year exceeds $4,000,000 in an amount determined pursuant to sections 23 to 49, inclusive, of this act. The commerce tax is due and payable as provided in this section.*

2. Each business entity engaging in a business in this State during a taxable year shall, on or before the 45th day immediately following the end of that taxable year, file with the Department a report on a form prescribed by the Department. The report required by this subsection must include such information as is required by the Department. A business entity shall remit with the return the amount of commerce tax due pursuant to subsection 1.

3. For the purposes of determining the amount of the commerce tax due pursuant to this chapter, the initial report filed by a business entity with the Department pursuant to subsection 2 must designate the business category in which the business entity is primarily engaged. A business entity may not change the

business category designated for that business entity unless the person applies to the Department to change such designation and the Department determines that the business is no longer primarily engaged in the designated business category.

4. Upon written application made before the date on which payment of the commerce tax due pursuant to this chapter must be made, the Department may for good cause extend by not more than 30 days the time within which a business entity is required to pay the commerce tax. If the commerce tax is paid during the period of extension, no penalty or late charge may be imposed for failure to pay the commerce tax at the time required, but the business entity shall pay interest at the rate of 0.75 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. 21. *1. In computing the commerce tax owed by a business entity pursuant to this chapter, the business entity is entitled to deduct from its gross revenue the following amounts, to the extent such amounts are included in gross revenue of the business entity:*

(a) Any gross revenue which this State is prohibited from taxing pursuant to the Constitution or laws of the United States or the Nevada Constitution.

(b) Any gross revenue of the business entity 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.

(c) If a business entity is required to pay a license fee pursuant to NRS 463.370, the amount of its gross receipts used to determine the amount of that fee.

(d) If the business entity is required to pay a tax on the net proceeds from mineral extraction and royalties subject to the excise tax pursuant to the provisions of NRS 362.100 to 362.240, inclusive, the amount of the gross proceeds used to determine the amount of that tax.

(e) If the business entity is required to pay the tax imposed by chapter 369 of NRS, an amount equal to the amount of the excise tax paid pursuant to that chapter by the business entity.

(f) If the business entity is required to pay the tax imposed pursuant to chapter 680B of NRS:

(1) The amount of the total income derived from direct premiums written and all other considerations for insurance, bail

or annuity contracts used to determine the amount of the tax imposed pursuant to chapter 680B of NRS;

(2) Any amounts excluded from total income derived from direct premiums pursuant to NRS 680B.025; and

(3) Gross premiums upon policies on risks located in this State received by a factory mutual and amounts deducted from such gross premiums to determine the amount of the tax imposed by NRS 680B.027 upon the factory mutual pursuant to NRS 680B.033.

(g) If the business entity is required to pay the tax imposed pursuant to NRS 694C.450, the amount of the net direct premiums, as defined in that section, used to determine the amount of that tax.

(h) If the business entity is required to pay the tax imposed pursuant to NRS 685A.180, the amount of the premiums, as defined in that section, used to determine the amount of that tax.

(i) Except as otherwise provided by paragraph (j), the total amount of payments received by a health care provider:

(1) From Medicaid, Medicare, the Children's Health Insurance Program, the Fund for Hospital Care to Indigent Persons created pursuant to NRS 428.175 or TRICARE;

(2) For professional services provided in relation to a workers' compensation claim; and

(3) For the actual cost to the health care provider for any uncompensated care provided by the health care provider, except that if the health care provider later receives payment for all or part of that care, the health care provider must include the amount of the payment in his or her gross receipts for the calendar quarter in which the payment is received.

(j) If the business entity is engaging in a business in this State as a health care provider that is a health care institution, an amount equal to 50 percent of the amounts described in paragraph (i) that are received by the health care institution.

(k) If the business entity is engaging in business in this State as an employee leasing company, the amount of any payments received from a client company for wages, payroll taxes on those wages, employee benefits and workers' compensation benefits for employees leased to the client company.

(l) The amount of any pass-through revenue of the business entity.

(m) The tax basis of securities and loans sold by the business entity, as determined for the purposes of federal income taxation.

(n) The amount of revenue received by the business entity that is directly derived from the operation of a facility that is:

(1) Located on property owned or leased by the Federal Government; and

(2) Managed or operated primarily to house members of the Armed Forces of the United States.

(o) Interest income other than interest on credit sales.

(p) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity.

(q) Receipts from the sale, exchange or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, 26 U.S.C. § 1221 or 1231, without regard to the length of time the business entity held the asset.

(r) Receipts from a hedging transaction, as defined in section 1221 of the Internal Revenue Code, 26 U.S.C. § 1221, or a transaction accorded hedge accounting treatment under Statement No. 133 of the Financial Accounting Standards Board, Accounting for Derivative Instruments and Hedging Activities, to the extent the transaction is entered into primarily to protect a financial position, including, without limitation, managing the risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity or investments in foreign operations, to interest rate fluctuations or to commodity price fluctuations. For the purposes of this paragraph, receipts from the actual transfer of title of real or tangible personal property to another business entity are not receipts from a hedging transaction or a transaction accorded hedge accounting treatment.

(s) Proceeds received by a business entity that are attributable to the repayment, maturity or redemption of the principal of a loan, bond, mutual fund, certificate of deposit or marketable instrument.

(t) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan.

(u) Proceeds received from the issuance of the business entity's own stock, options, warrants, puts or calls, from the sale of the business entity's treasury stock or as contributions to the capital of the business entity.

(v) Proceeds received on account of payments from insurance policies, except those proceeds received for the loss of business revenue.

(w) Damages received as a result of litigation in excess of amounts that, if received without litigation, would not have been included in the gross receipts of the business entity pursuant to this section.

(x) Bad debts expensed for the purposes of federal income taxation.

(y) Returns and refunds to customers.

(z) Amounts realized from the sale of an account receivable to the extent the receipts from the underlying transaction were included in the gross receipts of the business entity.

(aa) If the business entity owns an interest in a passive 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 gross revenue of another business entity.

2. As used in this section:

(a) "Children's Health Insurance Program" means the program established pursuant to 42 U.S.C. §§ 1397aa to 1397jj, inclusive, to provide health insurance for uninsured children from low-income families in this State.

(b) "Client company" has the meaning ascribed to it in NRS 616B.670.

(c) "Employee leasing company" has the meaning ascribed to it in NRS 616B.670.

(d) "Health care institution" means:

(1) A medical facility as defined in NRS 449.0151; and

(2) A pharmacy as defined in NRS 639.012.

(e) "Health care provider" means a business that receives any payments listed in paragraph (i) of subsection 1 as a provider of health care services, including, without limitation, mental health care services.

(f) "Medicaid" means the program established pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., to provide assistance for part or all of the cost of medical care rendered on behalf of indigent persons.

(g) "Medicare" means the program of health insurance for aged persons and persons with disabilities established pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq.

Sec. 22. *1. In computing the commerce tax owed by a business entity, the gross revenue of the business entity, as adjusted pursuant to section 21 of this act, must be situsedto this State in accordance with the following rules:*

(a) Gross rents and royalties from real property are situsedto this State if the real property is located in this State.

(b) Gross revenue from the sale of real property are situsedto this State if the real property is located in this State.

(c) Gross rents and royalties from tangible personal property is situsedto this State to the extent the tangible personal property is located or used in this State.

(d) Gross revenue from the sale of tangible personal property is situsedto this State if the property is delivered or shipped to a buyer in this State, regardless of the F.O.B. point or any other condition of sale.

(e) Gross revenue from the sale of transportation services is situsedto this State if both the origin and the destination point of the transportation are located in this State.

(f) Gross revenue from the sale of any services not otherwise described in this section is situsedto this State in the proportion that the purchaser's benefit in this State, with respect to what was purchased, bears to the purchaser's benefit everywhere with respect to what was purchased. For the purposes of this paragraph, the physical location at which the purchaser of a service ultimately uses or receives the benefit of the service that was purchased is paramount in determining the proportion of the benefit in this State to the benefit everywhere. If the records of a business entity do not allow the taxpayer to determine that location, the business entity may use an alternative method to situs gross revenue pursuant to this section if the alternative method is reasonable, is consistently and uniformly applied and is supported by the taxpayer's records as those records exist when the service is provided or within a reasonable period of time thereafter.

(g) Gross revenue not otherwise described in this section is situsedto this State if the gross receipts are from business conducted in this State. For the purposes of this paragraph, the physical location of the purchaser is paramount in determining if business is done in this State. If the records of a business entity do not allow the business entity to determine the location of the purchaser, the gross revenue must not be considered to be from business conducted in this State.

2. If the application of the provisions of subsection 1 does not fairly represent the extent of the business conducted in this State by a business entity, the Department may authorize the business entity to the use of an alternative method of situsing gross revenue to this State.

Sec. 23. *Except as otherwise provided in this section, the commerce tax required to be paid by a business entity engaging in a business in this State is equal to the amount obtained by*

subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by the rate set forth in sections 24 to 48, inclusive, of this act for the business category in which the business entity is primarily engaged. If the business entity cannot be categorized in a business category set forth in sections 24 to 48, inclusive, of this act, the commerce tax required to be paid by that business entity is equal to the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by the rate set forth in section 49 of this act.

Sec. 24. *1. The agriculture, forestry, fishing and hunting business category (NAICS 11) includes all business entities primarily engaged in agricultural production or agricultural support activities, or both, including, without limitation, growing crops, raising animals, harvesting timber and harvesting fish and other animals from a farm, ranch or their natural habitats.*

2. Examples of business entities in this category include, without limitation, farms, ranches, dairies, greenhouses, nurseries, orchards and hatcheries.

3. This category does not include business entities primarily engaged in agricultural research or administering programs for regulating and conserving land, minerals, wildlife or forest use.

4. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.063 percent.

Sec. 25. *1. The mining, quarrying and oil and gas extraction business category (NAICS 21) includes all business entities primarily engaged in mining operations and mining support activities, including, without limitation, extracting:*

(a) Naturally occurring mineral solids, such as coal and ores;

(b) Liquid minerals, such as crude petroleum; and

(c) Gases, such as natural gas.

2. Examples of business entities in this category include, without limitation:

(a) Business entities operating mines, quarries or oil and gas wells on their own account or for others on a contract or fee basis.

(b) Mining support activities, including business entities that perform exploration or other mining services, or both, on a contract or fee basis, except geophysical surveying, mine site preparation and the construction of oil and gas pipelines.

3. As used in subsections 1 and 2, the term "mining" includes quarrying, well operations and beneficiating, including, without limitation, crushing, screening, washing, flotation and other preparation customarily performed at a mine site or as a part of mining activity.

4. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.051 percent.

Sec. 26. *1. The utilities and telecommunications business category (NAICS 22 and 517, respectively) includes:*

(a) All business entities primarily engaged in providing utility services, including, without limitation, electric power, natural gas, steam supply, water supply and sewage removal; and

(b) All business entities primarily engaged in providing telecommunications and the services related to that activity, including, without limitation, telephony, cable and satellite distribution services, Internet access and telecommunications reselling services.

2. This category does not include business entities primarily engaged in waste management and remediation services that are described in section 42 of this act.

3. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.136 percent.

Sec. 27. *1. The construction business category (NAICS 23) includes all business entities primarily engaged in the construction of buildings or engineering projects, such as highways and utility systems. Business entities engaged in the preparation of sites for new construction and business entities primarily engaged in subdividing land for sale as building sites also are included in this category.*

2. Examples of business entities in this category include, without limitation, general contractors, design-builders, construction managers, turnkey contractors, joint-venture contractors, specialty trade contractors, for-sale builders, speculative builders and merchant builders.

3. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.083 percent.

Sec. 28. *1. The manufacturing business category (NAICS 31, 32 and 33) includes all business entities primarily engaged in the mechanical, physical or chemical transformation of materials, substances or components into new products.*

2. Examples of business entities in this category include, without limitation, milk bottling and pasteurizing, water bottling and processing, fresh fish packaging, apparel jobbing, contracting on materials owned by others, printing and related activities, ready-mixed concrete production, leather converting, grinding of lenses to prescription, wood preserving, electroplating, plating, metal heat, treating and polishing for the trade, lapidary work for the trade, fabricating signs and advertising displays, rebuilding or remanufacturing machinery, ship repair and renovation, machine shops and tire retreading.

3. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.091 percent.

Sec. 29. *1. The wholesale trade business category (NAICS 42) includes all business entities primarily engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.101 percent.

Sec. 30. *1. The retail trade business category (NAICS 44 and 45) includes all businesses primarily engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.111 percent.

Sec. 31. *1. The air transportation business category (NAICS 481) includes all business entities primarily engaged in providing air transportation of passengers or cargo, or both, using aircraft, such as an airplane and helicopter.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.058 percent.

Sec. 32. *1. The truck transportation business category (NAICS 484) includes all business entities primarily engaged in providing over-the-road transportation of cargo using motor vehicles, such as a truck and tractor trailer.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.202 percent.

Sec. 33. *1. The rail transportation business category (NAICS 482) includes all business entities primarily engaged in providing rail transportation of passengers or cargo, or both, using railroad rolling stock.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.331 percent.

Sec. 34. *1. The other transportation business category (NAICS 483, 485, 486, 487, 488, 491 and 492) includes all business entities primarily engaged in:*

(a) Water transportation, including, without limitation, the transportation of passengers and cargo using watercraft;

(b) Transit and ground passenger transportation, including, without limitation, charter buses, school buses, interurban bus transportation, taxis and limousine services, street railroads, commuter rail and rapid transit;

(c) Pipeline transportation, including, without limitation, using transmission pipelines to transport products, such as crude oil, natural gas, refined petroleum products and slurry;

(d) Scenic and sightseeing transportation, including, without limitation, on land or the water, or in the air;

(e) Support activities for transportation, including, without limitation, air traffic control services, marine cargo handling, motor vehicle towing, railroad switching and terminals, and ship repair and maintenance not done in a shipyard, such as floating drydock services in a harbor;

(f) Postal services, including, without limitation, the activities of the United States Postal Service and its subcontractors operating under a universal service obligation to provide mail services, deliver letters and small parcels, and rural post offices on contract to the United States Postal Service; and

(g) Courier and messenger services, including, without limitation, the provision of intercity, local or international delivery

of parcels and documents without operating under a universal service obligation.

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.129 percent.

Sec. 35. *1. The warehousing and storage business category (NAICS 493) includes all business entities primarily engaged in operating warehousing and storage facilities for general merchandise, refrigerated goods and other warehouse products.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.128 percent.

Sec. 36. *1. The publishing, software and data processing business category (NAICS 511, 512, 515 and 518) includes all business entities primarily engaged in:*

(a) Publishing, except on the Internet, including, without limitation, the publishing of newspapers, magazines, other periodicals and books, as well as directory and mailing list and software publishing;

(b) Motion picture and sound recording, including, without limitation, the production and distribution of motion pictures and sound recordings;

(c) Broadcasting, except on the Internet, including, without limitation, creating content or acquiring the right to distribute content and subsequently broadcast the content; and

(d) Data processing, hosting and related services, including, without limitation, the provision of infrastructure for hosting and data processing services.

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.253 percent.

Sec. 37. *1. The finance and insurance business category (NAICS 52) includes all business entities primarily engaged in financial transactions or in facilitating financial transactions.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.111 percent.

Sec. 38. *1. The real estate and rental and leasing business category (NAICS 53) includes all business entities primarily*

engaged in renting, leasing or otherwise allowing the use of tangible or intangible assets, providing related services, managing real estate for others, selling, renting or buying real estate for others, and appraising real estate.

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.25 percent.

Sec. 39. *1. The professional, scientific and technical services business category (NAICS 54) includes all business entities primarily engaged in performing professional, scientific and technical activities for others.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.181 percent.

Sec. 40. *1. The management of companies and enterprises business category (NAICS 55) includes all business entities primarily engaged in:*

(a) Holding the securities of, or other equity interests in, companies and enterprises for the purpose of owning a controlling interest or influencing management decisions; or

(b) Administering, overseeing and managing establishments of the company or enterprise and that normally undertake the strategic or organizational planning and decision-making role of the company or enterprise.

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.137 percent.

Sec. 41. *1. The administrative and support services business category (NAICS 561) includes all business entities primarily engaged in activities that support the day-to-day operations of other organizations.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.154 percent.

Sec. 42. *1. The waste management and remediation services business category (NAICS 562) includes all business entities primarily engaged in the collection, treatment and disposal of waste materials.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.261 percent.

Sec. 43. *1. The educational services business category (NAICS 61) includes all businesses primarily engaged in providing instruction and training in a wide variety of subjects.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.281 percent.

Sec. 44. *1. The health care and social assistance business category (NAICS 62) includes all business entities primarily engaged in providing health care and social assistance for natural persons.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.190 percent.

Sec. 45. *1. The arts, entertainment and recreation business category (NAICS 71) includes all business entities primarily engaged in operating facilities or providing services to meet varied cultural, entertainment and recreational interests of their patrons.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.24 percent.

Sec. 46. *1. The accommodation business category (NAICS 721) includes all business entities primarily engaged in providing lodging or short-term accommodations for travelers, vacationers and others.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.2 percent.

Sec. 47. *1. The food services and drinking places business category (NAICS 722) includes all business entities primarily engaged in preparing meals, snacks and beverages to customer order for immediate on-premises and off-premises consumption.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.194 percent.

Sec. 48. *1. The other services business category (NAICS 81) includes all business entities primarily engaged in providing services not included in any of the business categories described in sections 24 to 47, inclusive, of this act. Business entities in this category are primarily engaged in activities such as repairing equipment and machinery, promoting or administering religious activities, grantmaking, advocacy, and providing dry cleaning and laundry services, personal care services, death care services, pet care services, photofinishing services, temporary parking services and dating services.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.142 percent.

Sec. 49. *1. The unclassified business category includes any business entity not included in any of the business categories established by sections 24 to 48, inclusive, of this act.*

2. The amount of the commerce tax for a business entity included in this category is the amount obtained by subtracting $4,000,000 from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by 0.128 percent.

Sec. 50. *A business entity's method of accounting for gross revenue for a taxable year for the purposes of determining the amount of the commerce tax owed by the business entity must be the same as the business's method of accounting for federal income tax purposes for the business's federal taxable year which includes that calendar quarter. If a business entity's method of accounting for federal income tax purposes changes, its method of accounting for gross revenue pursuant to this chapter must be changed accordingly.*

Sec. 51. *If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally 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. 52. *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 last month of 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. 53. *1. Except as otherwise provided in this section and NRS 360.320 or any other specific statute, interest must be paid upon any overpayment of any amount of the commerce tax at the rate set forth in, and in accordance with the provisions of, NRS 360.2937.*

2. If the Department determines that any overpayment has been made intentionally or by reason of carelessness, the Department shall not allow any interest on the overpayment.

Sec. 54. *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 commerce tax 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 or illegally determined or collected unless a claim for refund or credit has been filed.

Sec. 55. *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. 56. *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 toward any tax due from the plaintiff.

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

Sec. 57. *In any judgment, interest must be allowed at the rate of 3 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or 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. 58. *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. 59. *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 the Nevada Revised Statutes, 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. 60. *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 that 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 that fact to the State Board of Examiners, shall authorize the cancellation of the amount upon the records of the Department.

Sec. 61. *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. 62. Chapter 360 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 4, on or before September 30 of each even-numbered year, the Department shall determine the combined revenue from the taxes imposed by chapters 363A and 363B of NRS and the commerce tax imposed by sections 2 to 61, inclusive, of this act for the preceding fiscal year.

2. Except as otherwise provided in subsection 4, if the combined revenue determined pursuant to subsection 1 exceeds by more than 4 percent the amount of the combined anticipated revenue from those taxes for that fiscal year, as projected by the Economic Forum for that fiscal year pursuant to paragraph (e) of subsection 1 of NRS 353.228 and as adjusted by any legislation enacted by the Legislature that affects state revenue for that fiscal year, the Department shall determine the rate at which the taxes imposed pursuant to NRS 363A.130 and 363B.110, in combination with the revenue from the commerce tax imposed by sections 2 to 61, inclusive, of this act, would have generated a combined revenue of 4 percent more than the amount anticipated. In making the determination required by this subsection, the Department shall reduce the rate of the taxes imposed pursuant to NRS 363A.130 and 363B.110 in the proportion that the actual amount collected from each tax for the preceding fiscal year bears to the total combined amount collected from both taxes for the preceding fiscal year.

3. Except as otherwise provided in subsection 4, effective on July 1 of the odd-numbered year immediately following the year in which the Department made the determination described in subsection 1, the rates of the taxes imposed pursuant to NRS 363A.130 and 363B.110 that are determined pursuant to subsection 2, rounded to the nearest one-thousandth of a percent, must thereafter be the rate of those taxes, unless further adjusted in a subsequent fiscal year.

4. If, pursuant to subsection 3, the rate of the tax imposed pursuant to NRS 363B.110 is 1.17 percent:

(a) The Department is no longer required to make the determinations required by subsections 1 and 2; and

(b) The rate of the taxes imposed pursuant to NRS 363A.130 and 363B.110 must not be further adjusted pursuant to subsection 3.

Sec. 63. NRS 360.2937 is hereby amended to read as follows:

360.2937 1. Except as otherwise provided in this section and 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, 377A or 377C of NRS, *or sections 2 to 61, 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. 64. 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, 377C or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS, *or sections 2 to 61, inclusive, of this act,* 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. 65. 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, 377C, 444A or 585 of NRS, *or sections 2 to 61, 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. 66. 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, chapter 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A, 377C or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS *or sections 2 to 61, inclusive, of this act* 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. 67. NRS 363A.030 is hereby amended to read as follows:

363A.030 [~~"Employer"~~]

1. Except as otherwise provided in this section, "employer" means any [financial] *:*

(a) Financial institution who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter with respect to any business activity of the financial institution . [~~, except~~]

(b) Person who is subject to the tax on the net proceeds of minerals imposed pursuant to the provisions of NRS 362.100 to 362.240, inclusive, whether or not the person is required to pay that tax in a particular calendar year, and who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter with respect to any business activity of the person.

2. The term does not include an Indian tribe, a nonprofit organization or a political subdivision.

3. For the purposes of this section:

[~~1.~~] *(a)* "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.

~~[2.]~~ *(b)* "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

~~[3.]~~ *(c)* "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

Sec. 68. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. ~~[There]~~ *Except as otherwise provided in section 62 of this act, there* is hereby imposed an excise tax on each employer at the rate of 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.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to sections 2 to 61, inclusive, of this act for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

Sec. 69. NRS 363B.030 is hereby amended to read as follows:

363B.030 ~~["Employer"]~~

1. Except as otherwise provided in this section, "employer" means any employer who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter with respect to any business activity of the employer . [, except a]

2. The term does not include:

(a) A financial institution [, an] ;

(b) Any person who is subject to the tax on the net proceeds of minerals imposed pursuant to the provisions of NRS 362.100 to 362.240, inclusive, whether or not the person is required to pay that tax in a particular calendar year, and who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter with respect to any business activity of the person;

(c) An Indian tribe [, a] ;

(d) A nonprofit organization [, a] ;

(e) A political subdivision ; or [any]

(f) Any person who does not supply a product or service, but who only consumes a service.

3. For the purposes of this section:

[1.] *(a)* "Financial institution" has the meaning ascribed to it in NRS 363A.050.

[2.] *(b)* "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.

[3.] *(c)* "Nonprofit organization" means a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

[4.] *(d)* "Political subdivision" means any entity described in subsection 9 of NRS 612.055.

Sec. 70. NRS 363B.110 is hereby amended to read as follows:

363B.110 1. [There] *Except as otherwise provided in section 62 of this act, there* is hereby imposed an excise tax on each employer at the rate of [0.63] *1.475* percent of the *amount by which the sum of all 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 [.] *exceeds $50,000.*

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 chapter for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to sections 2 to 61, inclusive, of this act for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

Sec. 71. NRS 370.165 is hereby amended to read as follows:

370.165 There is hereby levied a tax upon the purchase or possession of cigarettes by a consumer in the State of Nevada at the rate of ~~[40]~~ *90* mills per cigarette. The tax may be represented and precollected by the affixing of a revenue stamp or other approved evidence of payment to each package, packet or container in which cigarettes are sold. The tax must be precollected by the wholesale or retail dealer, and must be recovered from the consumer by adding the amount of the tax to the selling price. Each person who sells cigarettes at retail shall prominently display on the premises a notice that the tax is included in the selling price and is payable under the provisions of this chapter.

Sec. 72. NRS 370.260 is hereby amended to read as follows:

370.260 1. All taxes and license fees imposed by the provisions of NRS 370.001 to 370.430, inclusive, less any refunds granted as provided by law, must be paid to the Department in the form of remittances payable to the Department.

2. The Department shall:

(a) As compensation to the State for the costs of collecting the taxes and license fees, transmit each month the sum the Legislature specifies from the remittances made to it pursuant to subsection 1 during the preceding month to the State Treasurer for deposit to the

credit of the Department. The deposited money must be expended by the Department in accordance with its work program.

(b) From the remittances made to it pursuant to subsection 1 during the preceding month, less the amount transmitted pursuant to paragraph (a), transmit each month the portion of the tax which is equivalent to ~~[35]~~ ***85*** mills per cigarette to the State Treasurer for deposit to the credit of the Account for the Tax on Cigarettes in the State General Fund.

(c) Transmit the balance of the payments each month to the State Treasurer for deposit in the Local Government Tax Distribution Account created by NRS 360.660.

(d) Report to the State Controller monthly the amount of collections.

3. The money deposited pursuant to paragraph (c) of subsection 2 in the Local Government Tax Distribution Account is hereby appropriated to Carson City and to each of the counties in proportion to their respective populations and must be credited to the respective accounts of Carson City and each county.

Sec. 73. NRS 370.350 is hereby amended to read as follows:

370.350 1. Except as otherwise provided in subsection 3, a tax is hereby levied and imposed upon the use of cigarettes in this state.

2. The amount of the use tax is ~~[40]~~ ***90*** mills per cigarette.

3. The use tax does not apply where:

(a) Nevada cigarette revenue stamps have been affixed to cigarette packages as required by law.

(b) Tax exemption is provided for in this chapter.

Sec. 74. NRS 76.100 is hereby amended to read as follows:

76.100 1. A person shall not conduct a business in this State unless and until the person obtains a state business license issued by the Secretary of State. If the person is:

(a) An entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license at the time of filing the initial or annual list.

(b) Not an entity required to file an initial or annual list with the Secretary of State pursuant to this title, the person must obtain the state business license before conducting a business in this State.

2. An application for a state business license must:

(a) Be made upon a form prescribed by the Secretary of State:

(b) Set forth the name under which the applicant transacts or intends to transact business, or if the applicant is an entity organized pursuant to this title and on file with the Secretary of State, the exact name on file with the Secretary of State, the entity number as

assigned by the Secretary of State, if known, and the location in this State of the place or places of business;

(c) Be accompanied by a fee in the amount of [$100;] *$200, except that if the applicant is a corporation organized pursuant to chapter 78, 78A or 78B of NRS, or a foreign corporation required to file an initial or annual list with the Secretary of State pursuant to chapter 80 of NRS, the application must be accompanied by a fee of $500;* and

(d) Include any other information that the Secretary of State deems necessary.

➥ If the applicant is an entity organized pursuant to this title and on file with the Secretary of State and the applicant has no location in this State of its place of business, the address of its registered agent shall be deemed to be the location in this State of its place of business.

3. The application must be signed pursuant to NRS 239.330 by:

(a) The owner of a business that is owned by a natural person.

(b) A member or partner of an association or partnership.

(c) A general partner of a limited partnership.

(d) A managing partner of a limited-liability partnership.

(e) A manager or managing member of a limited-liability company.

(f) An officer of a corporation or some other person specifically authorized by the corporation to sign the application.

4. If the application for a state business license is defective in any respect or the fee required by this section is not paid, the Secretary of State may return the application for correction or payment.

5. The state business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.

6. For the purposes of this chapter, a person shall be deemed to conduct a business in this State if a business for which the person is responsible:

(a) Is organized pursuant to this title, other than a business organized pursuant to:

(1) Chapter 82 or 84 of NRS; or

(2) Chapter 81 of NRS if the business is a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(b) Has an office or other base of operations in this State;

(c) Has a registered agent in this State; or

(d) Pays wages or other remuneration to a natural person who performs in this State any of the duties for which he or she is paid.

7. As used in this section, "registered agent" has the meaning ascribed to it in NRS 77.230.

Sec. 75. NRS 76.130 is hereby amended to read as follows:

76.130 1. ~~[A]~~ *Except as otherwise provided in subsection 2, a* person who applies for renewal of a state business license shall submit a fee in the amount of ~~[$100]~~ *$200* to the Secretary of State:

(a) If the person is an entity required to file an annual list with the Secretary of State pursuant to this title, at the time the person submits the annual list to the Secretary of State, unless the person submits a certificate or other form evidencing the dissolution of the entity; or

(b) If the person is not an entity required to file an annual list with the Secretary of State pursuant to this title, on the last day of the month in which the anniversary date of issuance of the state business license occurs in each year, unless the person submits a written statement to the Secretary of State, at least 10 days before that date, indicating that the person will not be conducting a business in this State after that date.

2. *If the person applying for the renewal of a state business license pursuant to subsection 1 is a corporation organized pursuant to chapter 78, 78A or 78B of NRS, or a foreign corporation required to file an initial or annual list with the Secretary of State pursuant to chapter 80 of NRS, the fee for the renewal of a state business license is $500.*

3. The Secretary of State shall, 90 days before the last day for filing an application for renewal of the state business license of a person who holds a state business license, provide to the person a notice of the state business license fee due pursuant to this section and a reminder to file the application for renewal required pursuant to this section. Failure of any person to receive a notice does not excuse the person from the penalty imposed by law.

~~[3.]~~ *4.* If a person fails to submit the annual state business license fee required pursuant to this section in a timely manner and the person is:

(a) An entity required to file an annual list with the Secretary of State pursuant to this title, the person:

(1) Shall pay a penalty of $100 in addition to the annual state business license fee;

(2) Shall be deemed to have not complied with the requirement to file an annual list with the Secretary of State; and

(3) Is subject to all applicable provisions relating to the failure to file an annual list, including, without limitation, the provisions governing default and revocation of its charter or right to transact business in this State, except that the person is required to pay the penalty set forth in subparagraph (1).

(b) Not an entity required to file an annual list with the Secretary of State, the person shall pay a penalty in the amount of $100 in addition to the annual state business license fee. The Secretary of State shall provide to the person a written notice that:

(1) Must include a statement indicating the amount of the fees and penalties required pursuant to this section and the costs remaining unpaid.

(2) May be provided electronically, if the person has requested to receive communications by electronic transmission, by electronic mail or other electronic communication.

Sec. 75.5. NRS 78.150 is hereby amended to read as follows:

78.150 1. A corporation organized pursuant to the laws of this State shall, on or before the last day of the first month after the filing of its articles of incorporation with the Secretary of State or, if the corporation has selected an alternative due date pursuant to subsection 11, on or before that alternative due date, file with the Secretary of State a list, on a form furnished by the Secretary of State, containing:

(a) The name of the corporation;

(b) The file number of the corporation, if known;

(c) The names and titles of the president, secretary and treasurer, or the equivalent thereof, and of all the directors of the corporation;

(d) The address, either residence or business, of each officer and director listed, following the name of the officer or director; and

(e) The signature of an officer of the corporation, or some other person specifically authorized by the corporation to sign the list, certifying that the list is true, complete and accurate.

2. The corporation shall annually thereafter, on or before the last day of the month in which the anniversary date of incorporation occurs in each year or, if, pursuant to subsection 11, the corporation has selected an alternative due date for filing the list required by subsection 1, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State, on a form furnished by the Secretary of State, an annual list containing all of the information required in subsection 1.

3. Each list required by subsection 1 or 2 must be accompanied by:

(a) A declaration under penalty of perjury that:

(1) The corporation has complied with the provisions of chapter 76 of NRS;

(2) The corporation acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing with the Office of the Secretary of State; and

(3) None of the officers or directors identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct.

(b) A statement as to whether the corporation is a publicly traded company. If the corporation is a publicly traded company, the corporation must list its Central Index Key. The Secretary of State shall include on the Secretary of State's Internet website the Central Index Key of a corporation provided pursuant to this paragraph and instructions describing the manner in which a member of the public may obtain information concerning the corporation from the Securities and Exchange Commission.

4. Upon filing the list required by:

(a) Subsection 1, the corporation shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Subsection 2, the corporation shall pay to the Secretary of State, if the amount represented by the total number of shares provided for in the articles is:

$75,000 or less	~~[$125]~~ *$150*
Over $75,000 and not over $200,000	~~[175]~~ *200*
Over $200,000 and not over $500,000	~~[275]~~ *300*
Over $500,000 and not over $1,000,000	~~[375]~~ *400*
Over $1,000,000:	
For the first $1,000,000	~~[375]~~ *400*
For each additional $500,000 or fraction thereof	275

➥ The maximum fee which may be charged pursuant to paragraph (b) for filing the annual list is ~~[$11,100.]~~ *$11,125.*

5. If a director or officer of a corporation resigns and the resignation is not reflected on the annual or amended list of directors and officers, the corporation or the resigning director or officer shall pay to the Secretary of State a fee of $75 to file the resignation.

6. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 2, provide to each

corporation which is required to comply with the provisions of NRS 78.150 to 78.185, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 4 and a reminder to file the annual list required by subsection 2. Failure of any corporation to receive a notice does not excuse it from the penalty imposed by law.

7. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection 4 is not paid, the Secretary of State may return the list for correction or payment.

8. An annual list for a corporation not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and must be accompanied by the appropriate fee as provided in subsection 4 for filing. A payment submitted pursuant to this subsection does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.

9. A person who files with the Secretary of State a list required by subsection 1 or 2 which identifies an officer or director with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

10. For the purposes of this section, a stockholder is not deemed to exercise actual control of the daily operations of a corporation based solely on the fact that the stockholder has voting control of the corporation.

11. The Secretary of State may allow a corporation to select an alternative due date for filing the list required by subsection 1.

12. The Secretary of State may adopt regulations to administer the provisions of subsection 11.

Sec. 76. NRS 78.245 is hereby amended to read as follows:

78.245 ~~[No]~~

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 commerce tax imposed pursuant to sections 2 to 61, inclusive, of this act.

Sec. 76.1. NRS 80.110 is hereby amended to read as follows:

80.110 1. Each foreign corporation doing business in this State shall, on or before the last day of the first month after the information required by NRS 80.010 is filed with the Secretary of State or, if the foreign corporation has selected an alternative due date pursuant to subsection 9, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list, on a form furnished by the Secretary of State, that contains:

(a) The names and addresses, either residence or business, of its president, secretary and treasurer, or the equivalent thereof, and all of its directors; and

(b) The signature of an officer of the corporation or some other person specifically authorized by the corporation to sign the list.

2. Each list filed pursuant to subsection 1 must be accompanied by:

(a) A declaration under penalty of perjury that:

(1) The foreign corporation has complied with the provisions of chapter 76 of NRS;

(2) The foreign corporation acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing with the Office of the Secretary of State; and

(3) None of the officers or directors identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct.

(b) A statement as to whether the foreign corporation is a publicly traded company. If the corporation is a publicly traded company, the corporation must list its Central Index Key. The Secretary of State shall include on the Secretary of State's Internet website the Central Index Key of a corporation provided pursuant to this subsection and instructions describing the manner in which a member of the public may obtain information concerning the corporation from the Securities and Exchange Commission.

3. Upon filing:

(a) The initial list required by subsection 1, the corporation shall pay to the Secretary of State a fee of [~~$125.~~] ***$150.***

(b) Each annual list required by subsection 1, the corporation shall pay to the Secretary of State, if the amount represented by the total number of shares provided for in the articles is:

$75,000 or less	[$125] *$150*
Over $75,000 and not over $200,000	[175] *200*
Over $200,000 and not over $500,000	[275] *300*
Over $500,000 and not over $1,000,000	[375] *400*
Over $1,000,000:	
For the first $1,000,000	[375] *400*
For each additional $500,000 or fraction thereof	275

➥ The maximum fee which may be charged pursuant to paragraph (b) for filing the annual list is [$11,100.] *$11, 125.*

4. If a director or officer of a corporation resigns and the resignation is not reflected on the annual or amended list of directors and officers, the corporation or the resigning director or officer shall pay to the Secretary of State a fee of $75 to file the resignation.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each corporation which is required to comply with the provisions of NRS 80.110 to 80.175, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file the list pursuant to subsection 1. Failure of any corporation to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 80.110 to 80.175, inclusive.

6. An annual list for a corporation not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

7. A person who files with the Secretary of State a list required by subsection 1 which identifies an officer or director with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

8. For the purposes of this section, a stockholder is not deemed to exercise actual control of the daily operations of a corporation based solely on the fact that the stockholder has voting control of the corporation.

9. The Secretary of State may allow a foreign corporation to select an alternative due date for filing the initial list required by subsection 1.

10. The Secretary of State may adopt regulations to administer the provisions of subsection 9.

Sec. 76.15. NRS 82.193 is hereby amended to read as follows:

82.193 1. A corporation shall have a registered agent in the manner provided in NRS 78.090 and 78.097. The registered agent and the corporation shall comply with the provisions of those sections.

2. Upon notification from the Administrator of the Real Estate Division of the Department of Business and Industry that a corporation which is a unit-owners' association as defined in NRS 116.011 or 116B.030 has failed to register pursuant to NRS 116.31158 or 116B.625 or failed to pay the fees pursuant to NRS 116.31155 or 116B.620, the Secretary of State shall deem the corporation to be in default. If, after the corporation is deemed to be in default, the Administrator notifies the Secretary of State that the corporation has registered pursuant to NRS 116.31158 or 116B.625 and paid the fees pursuant to NRS 116.31155 or 116B.620, the Secretary of State shall reinstate the corporation if the corporation complies with the requirements for reinstatement as provided in this section and NRS 78.180 and 78.185.

3. A corporation is subject to the provisions of NRS 78.150 to 78.185, inclusive, except that:

(a) The fee for filing a list is ~~[$25;]~~ ***$50;***

(b) The penalty added for default is $50; and

(c) The fee for reinstatement is $100.

Sec. 76.2. NRS 82.523 is hereby amended to read as follows:

82.523 1. Each foreign nonprofit corporation doing business in this State shall, on or before the last day of the first month after the filing of its application for registration as a foreign nonprofit corporation with the Secretary of State or, if the foreign nonprofit corporation has selected an alternative due date pursuant to subsection 9, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list, on a form furnished by the Secretary of State, that contains:

(a) The name of the foreign nonprofit corporation;

(b) The file number of the foreign nonprofit corporation, if known;

(c) The names and titles of the president, the secretary and the treasurer, or the equivalent thereof, and all the directors of the foreign nonprofit corporation;

(d) The address, either residence or business, of the president, secretary and treasurer, or the equivalent thereof, and each director of the foreign nonprofit corporation; and

(e) The signature of an officer of the foreign nonprofit corporation, or some other person specifically authorized by the foreign nonprofit corporation to sign the list, certifying that the list is true, complete and accurate.

2. Each list filed pursuant to this section must be accompanied by a declaration under penalty of perjury that:

(a) The foreign nonprofit corporation has complied with the provisions of chapter 76 of NRS;

(b) The foreign nonprofit corporation acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing with the Office of the Secretary of State; and

(c) None of the officers or directors identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct.

3. Upon filing the initial list and each annual list pursuant to this section, the foreign nonprofit corporation must pay to the Secretary of State a fee of ~~[$25.]~~ ***$50.***

4. The Secretary of State shall, 60 days before the last day for filing each annual list, provide to each foreign nonprofit corporation which is required to comply with the provisions of NRS 82.523 to 82.5239, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file the list required pursuant to subsection 1. Failure of any foreign nonprofit corporation to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 82.523 to 82.5239, inclusive.

5. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 3 is not paid, the Secretary of State may return the list for correction or payment.

6. An annual list for a foreign nonprofit corporation not in default that is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

7. A person who files with the Secretary of State a list pursuant to this section which identifies an officer or director with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

8. For the purposes of this section, a member of a foreign nonprofit corporation is not deemed to exercise actual control of the daily operations of the foreign nonprofit corporation based solely on the fact that the member has voting control of the foreign nonprofit corporation.

9. The Secretary of State may allow a foreign nonprofit corporation to select an alternative due date for filing the initial list required by this section.

10. The Secretary of State may adopt regulations to administer the provisions of subsection 9.

Sec. 76.25. NRS 84.110 is hereby amended to read as follows:

84.110 1. Every corporation sole must have a registered agent in the manner provided in NRS 78.090 and 78.097. The registered agent shall comply with the provisions of those sections.

2. A corporation sole is subject to the provisions of NRS 78.150 to 78.185, inclusive, except that:

(a) The fee for filing a list is ~~[$25:]~~ ***$50;***

(b) The penalty added for default is $50; and

(c) The fee for reinstatement is $100.

Sec. 76.3. NRS 86.263 is hereby amended to read as follows:

86.263 1. A limited-liability company shall, on or before the last day of the first month after the filing of its articles of organization with the Secretary of State or, if the limited-liability company has selected an alternative due date pursuant to subsection 11, on or before that alternative due date, file with the Secretary of State, on a form furnished by the Secretary of State, a list that contains:

(a) The name of the limited-liability company;

(b) The file number of the limited-liability company, if known;

(c) The names and titles of all of its managers or, if there is no manager, all of its managing members;

(d) The address, either residence or business, of each manager or managing member listed, following the name of the manager or managing member; and

(e) The signature of a manager or managing member of the limited-liability company, or some other person specifically

authorized by the limited-liability company to sign the list, certifying that the list is true, complete and accurate.

2. The limited-liability company shall thereafter, on or before the last day of the month in which the anniversary date of its organization occurs or, if, pursuant to subsection 11, the limited-liability company has selected an alternative due date for filing the list required by subsection 1, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State, on a form furnished by the Secretary of State, an annual list containing all of the information required in subsection 1.

3. Each list required by subsections 1 and 2 must be accompanied by a declaration under penalty of perjury that:

(a) The limited-liability company has complied with the provisions of chapter 76 of NRS:

(b) The limited-liability company acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and

(c) None of the managers or managing members identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

4. Upon filing:

(a) The initial list required by subsection 1, the limited-liability company shall pay to the Secretary of State a fee of [$125.] *$150.*

(b) Each annual list required by subsection 2, the limited-liability company shall pay to the Secretary of State a fee of [$125.] *$150.*

5. If a manager or managing member of a limited-liability company resigns and the resignation is not reflected on the annual or amended list of managers and managing members, the limited-liability company or the resigning manager or managing member shall pay to the Secretary of State a fee of $75 to file the resignation.

6. The Secretary of State shall, 90 days before the last day for filing each list required by subsection 2, provide to each limited-liability company which is required to comply with the provisions of this section, and which has not become delinquent, a notice of the fee due under subsection 4 and a reminder to file the list required by subsection 2. Failure of any company to receive a notice does not excuse it from the penalty imposed by law.

7. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the fee required by subsection 4 is not paid, the Secretary of State may return the list for correction or payment.

8. An annual list for a limited-liability company not in default received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year.

9. A person who files with the Secretary of State a list required by subsection 1 or 2 which identifies a manager or managing member with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

10. For the purposes of this section, a member is not deemed to exercise actual control of the daily operations of a limited-liability company based solely on the fact that the member has voting control of the limited-liability company.

11. The Secretary of State may allow a limited-liability company to select an alternative due date for filing the list required by subsection 1.

12. The Secretary of State may adopt regulations to administer the provisions of subsection 11.

Sec. 76.35. NRS 86.5461 is hereby amended to read as follows:

86.5461 1. Each foreign limited-liability company doing business in this State shall, on or before the last day of the first month after the filing of its application for registration as a foreign limited-liability company with the Secretary of State or, if the foreign limited-liability company has selected an alternative due date pursuant to subsection 10, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list on a form furnished by the Secretary of State that contains:

(a) The name of the foreign limited-liability company;

(b) The file number of the foreign limited-liability company, if known;

(c) The names and titles of all its managers or, if there is no manager, all its managing members;

(d) The address, either residence or business, of each manager or managing member listed pursuant to paragraph (c): and

(e) The signature of a manager or managing member of the foreign limited-liability company, or some other person specifically authorized by the foreign limited-liability company to sign the list, certifying that the list is true, complete and accurate.

2. Each list filed pursuant to this section must be accompanied by a declaration under penalty of perjury that:

(a) The foreign limited-liability company has complied with the provisions of chapter 76 of NRS;

(b) The foreign limited-liability company acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing with the Office of the Secretary of State; and

(c) None of the managers or managing members identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

3. Upon filing:

(a) The initial list required by this section, the foreign limited-liability company shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by this section, the foreign limited-liability company shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

4. If a manager or managing member of a foreign limited-liability company resigns and the resignation is not reflected on the annual or amended list of managers and managing members, the foreign limited-liability company or the resigning manager or managing member shall pay to the Secretary of State a fee of $75 to file the resignation.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by this section, provide to each foreign limited-liability company which is required to comply with the provisions of NRS 86.5461 to 86.5468, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file the list required pursuant to subsection 1. Failure of any foreign limited-liability company to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 86.5461 to 86.5468, inclusive.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 3 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a foreign limited-liability company not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of this section for the year to which the due date is applicable.

8. A person who files with the Secretary of State a list required by this section which identifies a manager or managing member with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing members in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

9. For the purposes of this section, a member is not deemed to exercise actual control of the daily operations of a foreign limited-liability company based solely on the fact that the member has voting control of the foreign limited-liability company.

10. The Secretary of State may allow a foreign limited-liability company to select an alternative due date for filing the initial list required by this section.

11. The Secretary of State may adopt regulations to administer the provisions of subsection 10.

Sec. 76.4. NRS 87.510 is hereby amended to read as follows:

87.510 1. A registered limited-liability partnership shall, on or before the last day of the first month after the filing of its certificate of registration with the Secretary of State or, if the registered limited-liability partnership has selected an alternative due date pursuant to subsection 8, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of the filing of its certificate of registration with the Secretary of State occurs or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State, on a form furnished by the Secretary of State, a list that contains:

(a) The name of the registered limited-liability partnership;

(b) The file number of the registered limited-liability partnership, if known;

(c) The names of all of its managing partners;

(d) The address, either residence or business, of each managing partner; and

(e) The signature of a managing partner of the registered limited-liability partnership, or some other person specifically authorized by the registered limited-liability partnership to sign the list, certifying that the list is true, complete and accurate.

➥ Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the registered limited-liability partnership has complied with the provisions of chapter 76 of NRS, that the registered limited-liability partnership acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State and that none of the managing partners identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a managing partner in furtherance of any unlawful conduct.

2. Upon filing:

(a) The initial list required by subsection 1, the registered limited-liability partnership shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by subsection 1, the registered limited-liability partnership shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

3. If a managing partner of a registered limited-liability partnership resigns and the resignation is not reflected on the annual or amended list of managing partners, the registered limited-liability partnership or the resigning managing partner shall pay to the Secretary of State a fee of $75 to file the resignation.

4. The Secretary of State shall, at least 90 days before the last day for filing each annual list required by subsection 1, provide to the registered limited-liability partnership a notice of the fee due pursuant to subsection 2 and a reminder to file the annual list required by subsection 1. The failure of any registered limited-liability partnership to receive a notice does not excuse it from complying with the provisions of this section.

5. If the list to be filed pursuant to the provisions of subsection 1 is defective, or the fee required by subsection 2 is not paid, the Secretary of State may return the list for correction or payment.

6. An annual list that is filed by a registered limited-liability partnership which is not in default more than 90 days before it is due shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

7. A person who files with the Secretary of State an initial list or annual list required by subsection 1 which identifies a managing partner with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a managing

partner in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

8. The Secretary of State may allow a registered limited-liability partnership to select an alternative due date for filing the initial list required by subsection 1.

9. The Secretary of State may adopt regulations to administer the provisions of subsection 8.

Sec. 76.45. NRS 87.541 is hereby amended to read as follows:

87.541 1. Each foreign registered limited-liability partnership doing business in this State shall, on or before the last day of the first month after the filing of its application for registration as a foreign registered limited-liability partnership with the Secretary of State or, if the foreign registered limited-liability partnership has selected an alternative due date pursuant to subsection 9, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list, on a form furnished by the Secretary of State, that contains:

(a) The name of the foreign registered limited-liability partnership;

(b) The file number of the foreign registered limited-liability partnership, if known;

(c) The names of all its managing partners;

(d) The address, either residence or business, of each managing partner; and

(e) The signature of a managing partner of the foreign registered limited-liability partnership, or some other person specifically authorized by the foreign registered limited-liability partnership to sign the list, certifying that the list is true, complete and accurate.

2. Each list filed pursuant to this section must be accompanied by a declaration under penalty of perjury that:

(a) The foreign registered limited-liability partnership has complied with the provisions of chapter 76 of NRS;

(b) The foreign registered limited-liability partnership acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and

(c) None of the managing partners identified in the list has been identified in the list with the fraudulent intent of concealing the

identity of any person or persons exercising the power or authority of a managing partner in furtherance of any unlawful conduct.

3. Upon filing:

(a) The initial list required by this section, the foreign registered limited-liability partnership shall pay to the Secretary of State a fee of [~~$125.~~] *$150.*

(b) Each annual list required by this section, the foreign registered limited-liability partnership shall pay to the Secretary of State a fee of [~~$125.~~] *$150.*

4. If a managing partner of a foreign registered limited-liability partnership resigns and the resignation is not reflected on the annual or amended list of managing partners, the foreign registered limited-liability partnership or the managing partner shall pay to the Secretary of State a fee of $75 to file the resignation.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each foreign registered limited-liability partnership which is required to comply with the provisions of NRS 87.541 to 87.544, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file the list required pursuant to subsection 1. Failure of any foreign registered limited-liability partnership to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 87.541 to 87.544, inclusive.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 3 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a foreign registered limited-liability partnership not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8. A person who files with the Secretary of State an initial list or annual list required by subsection 1 which identifies a managing partner with the fraudulent intent of concealing the identity of any person or persons exercising the power and authority of a managing partner in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

9. The Secretary of State may allow a foreign registered limited-liability partnership to select an alternative due date for filing the initial list required by this section.

10. The Secretary of State may adopt regulations to administer the provisions of subsection 9.

Sec. 76.5. NRS 87A.290 is hereby amended to read as follows:

87A.290 1. A limited partnership shall, on or before the last day of the first month after the filing of its certificate of limited partnership with the Secretary of State or, if the limited partnership has selected an alternative due date pursuant to subsection 10, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of the filing of its certificate of limited partnership occurs or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State, on a form furnished by the Secretary of State, a list that contains:

(a) The name of the limited partnership;

(b) The file number of the limited partnership, if known;

(c) The names of all of its general partners;

(d) The address, either residence or business, of each general partner; and

(e) The signature of a general partner of the limited partnership, or some other person specifically authorized by the limited partnership to sign the list, certifying that the list is true, complete and accurate.

➥ Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the limited partnership has complied with the provisions of chapter 76 of NRS, that the limited partnership acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State, and that none of the general partners identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct.

2. Except as otherwise provided in subsection 3, a limited partnership shall, upon filing:

(a) The initial list required by subsection 1, pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by subsection 1, pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

3. A registered limited-liability limited partnership shall, upon filing:

(a) The initial list required by subsection 1, pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by subsection 1, pay to the Secretary of State a fee of ~~[$125.]~~ ***$150.***

4. If a general partner of a limited partnership resigns and the resignation is not reflected on the annual or amended list of general partners, the limited partnership or the resigning general partner shall pay to the Secretary of State a fee of $75 to file the resignation.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each limited partnership which is required to comply with the provisions of this section, and which has not become delinquent, a notice of the fee due pursuant to the provisions of subsection 2 or 3, as appropriate, and a reminder to file the annual list required pursuant to subsection 1. Failure of any limited partnership to receive a notice does not excuse it from the penalty imposed by NRS 87A.300.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 2 or 3 is not paid. the Secretary of State may return the list for correction or payment.

7. An annual list for a limited partnership not in default that is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8. A filing made pursuant to this section does not satisfy the provisions of NRS 87A.240 and may not be substituted for filings submitted pursuant to NRS 87A.240.

9. A person who files with the Secretary of State a list required by subsection 1 which identifies a general partner with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

10. The Secretary of State may allow a limited partnership to select an alternative due date for filing the initial list required by subsection 1.

11. The Secretary of State may adopt regulations to administer the provisions of subsection 10.

Sec. 76.55. NRS 87A.560 is hereby amended to read as follows:

87A.560 1. Each foreign limited partnership doing business in this State shall, on or before the last day of the first month after the filing of its application for registration as a foreign limited partnership with the Secretary of State or, if the foreign limited partnership has selected an alternative due date pursuant to

subsection 9, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list, on a form furnished by the Secretary of State, that contains:

(a) The name of the foreign limited partnership;

(b) The file number of the foreign limited partnership, if known;

(c) The names of all its general partners;

(d) The address, either residence or business, of each general partner; and

(e) The signature of a general partner of the foreign limited partnership, or some other person specifically authorized by the foreign limited partnership to sign the list, certifying that the list is true, complete and accurate.

2. Each list filed pursuant to this section must be accompanied by a declaration under penalty of perjury that:

(a) The foreign limited partnership has complied with the provisions of chapter 76 of NRS;

(b) The foreign limited partnership acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and

(c) None of the general partners identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct.

3. Upon filing:

(a) The initial list required by this section, the foreign limited partnership shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by this section, the foreign limited partnership shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

4. If a general partner of a foreign limited partnership resigns and the resignation is not reflected on the annual or amended list of general partners, the foreign limited partnership or the resigning general partner shall pay to the Secretary of State a fee of $75 to file the resignation of the general partner.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each foreign limited partnership, which is required to comply with the provisions of NRS 87A.560 to 87A.600, inclusive, and which has not become delinquent, a notice of the fee due pursuant to

subsection 3 and a reminder to file the list required pursuant to subsection 1. Failure of any foreign limited partnership to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 87A.560 to 87A.600, inclusive.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 3 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a foreign limited partnership not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8. A person who files with the Secretary of State a list required by this section which identifies a general partner with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

9. The Secretary of State may allow a foreign limited partnership to select an alternative due date for filing the initial list required by this section.

10. The Secretary of State may adopt regulations to administer the provisions of subsection 9.

Sec. 76.6. NRS 88.395 is hereby amended to read as follows:

88.395 1. A limited partnership shall, on or before the last day of the first month after the filing of its certificate of limited partnership with the Secretary of State or, if the limited partnership has selected an alternative due date pursuant to subsection 10, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of the filing of its certificate of limited partnership occurs or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State, on a form furnished by the Secretary of State, a list that contains:

(a) The name of the limited partnership;

(b) The file number of the limited partnership, if known;

(c) The names of all of its general partners;

(d) The address, either residence or business, of each general partner; and

(e) The signature of a general partner of the limited partnership, or some other person specifically authorized by the limited partnership to sign the list, certifying that the list is true, complete and accurate.

➥ Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the limited partnership has complied with the provisions of chapter 76 of NRS, that the limited partnership acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State, and that none of the general partners identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct.

2. Except as otherwise provided in subsection 3, a limited partnership shall, upon filing:

(a) The initial list required by subsection 1, pay to the Secretary of State a fee of [~~$125.~~] *$150.*

(b) Each annual list required by subsection 1, pay to the Secretary of State a fee of [~~$125.~~] *$150.*

3. A registered limited-liability limited partnership shall, upon filing:

(a) The initial list required by subsection 1, pay to the Secretary of State a fee of [~~$125.~~] *$150.*

(b) Each annual list required by subsection 1, pay to the Secretary of State a fee of [~~$175.~~] *$200.*

4. If a general partner of a limited partnership resigns and the resignation is not reflected on the annual or amended list of general partners, the limited partnership or the resigning general partner shall pay to the Secretary of State a fee of $75 to file the resignation.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each limited partnership which is required to comply with the provisions of this section, and which has not become delinquent, a notice of the fee due pursuant to the provisions of subsection 2 or 3, as appropriate, and a reminder to file the annual list required pursuant to subsection 1. Failure of any limited partnership to receive a notice does not excuse it from the penalty imposed by NRS 88.400.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 2 or 3 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a limited partnership not in default that is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8. A filing made pursuant to this section does not satisfy the provisions of NRS 88.355 and may not be substituted for filings submitted pursuant to NRS 88.355.

9. A person who files with the Secretary of State a list required by subsection 1 which identifies a general partner with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

10. The Secretary of State may allow a limited partnership to select an alternative due date for filing the initial list required by subsection 1.

11. The Secretary of State may adopt regulations to administer the provisions of subsection 10.

Sec. 76.65. NRS 88.591 is hereby amended to read as follows:

88.591 1. Each foreign limited partnership doing business in this State shall, on or before the last day of the first month after the filing of its application for registration as a foreign limited partnership with the Secretary of State or, if the foreign limited partnership has selected an alternative due date pursuant to subsection 9, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list, on a form furnished by the Secretary of State, that contains:

(a) The name of the foreign limited partnership;

(b) The file number of the foreign limited partnership, if known;

(c) The names of all its general partners;

(d) The address, either residence or business, of each general partner; and

(e) The signature of a general partner of the foreign limited partnership, or some other person specifically authorized by the foreign limited partnership to sign the list, certifying that the list is true, complete and accurate.

2. Each list filed pursuant to this section must be accompanied by a declaration under penalty of perjury that:

(a) The foreign limited partnership has complied with the provisions of chapter 76 of NRS;

(b) The foreign limited partnership acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any

false or forged instrument for filing in the Office of the Secretary of State; and

(c) None of the general partners identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct.

3. Upon filing:

(a) The initial list required by this section, the foreign limited partnership shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by this section, the foreign limited partnership shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

4. If a general partner of a foreign limited partnership resigns and the resignation is not reflected on the annual or amended list of general partners, the foreign limited partnership or the resigning general partner shall pay to the Secretary of State a fee of $75 to file the resignation of the general partner.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each foreign limited partnership, which is required to comply with the provisions of NRS 88.591 to 88.5945, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file the list required pursuant to subsection 1. Failure of any foreign limited partnership to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 88.591 to 88.5945, inclusive.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 3 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a foreign limited partnership not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8. A person who files with the Secretary of State a list required by this section which identifies a general partner with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a general partner in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

9. The Secretary of State may allow a foreign limited partnership to select an alternative due date for filing the initial list required by this section.

10. The Secretary of State may adopt regulations to administer the provisions of subsection 9.

Sec. 76.7. NRS 88A.600 is hereby amended to read as follows:

88A.600 1. A business trust formed pursuant to this chapter shall, on or before the last day of the first month after the filing of its certificate of trust with the Secretary of State or, if the business trust has selected an alternative due date pursuant to subsection 8, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of the filing of its certificate of trust with the Secretary of State occurs, file with the Secretary of State or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, on a form furnished by the Secretary of State, a list signed by at least one trustee, or by some other person specifically authorized by the business trust to sign the list, that contains the name and street address of at least one trustee. Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that:

(a) The business trust has complied with the provisions of chapter 76 of NRS;

(b) The business trust acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and

(c) None of the trustees identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a trustee in furtherance of any unlawful conduct.

2. Upon filing:

(a) The initial list required by subsection 1, the business trust shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by subsection 1, the business trust shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

3. If a trustee of a business trust resigns and the resignation is not reflected on the annual or amended list of trustees, the business trust or the resigning trustee shall pay to the Secretary of State a fee of $75 to file the resignation.

4. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each business trust which is required to comply with the provisions of NRS 88A.600 to 88A.660, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 2 and a reminder to file the list required pursuant to subsection 1. Failure of

a business trust to receive a notice does not excuse it from the penalty imposed by law.

5. An annual list for a business trust not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year.

6. A person who files with the Secretary of State an initial list or annual list required by subsection 1 which identifies a trustee with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a trustee in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

7. For the purposes of this section, a person who is a beneficial owner is not deemed to exercise actual control of the daily operations of a business trust based solely on the fact that the person is a beneficial owner.

8. The Secretary of State may allow a business trust to select an alternative due date for filing the initial list required by subsection 1.

9. The Secretary of State may adopt regulations to administer the provisions of subsection 8.

Sec. 76.75. NRS 88A.732 is hereby amended to read as follows:

88A.732 1. Each foreign business trust doing business in this State shall, on or before the last day of the first month after the filing of its application for registration as a foreign business trust with the Secretary of State or, if the foreign business trust has selected an alternative due date pursuant to subsection 10, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this State occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list, on a form furnished by the Secretary of State, that contains:

(a) The name of the foreign business trust;

(b) The file number of the foreign business trust, if known;

(c) The name of at least one of its trustees;

(d) The address, either residence or business, of the trustee listed pursuant to paragraph (c); and

(e) The signature of a trustee of the foreign business trust, or some other person specifically authorized by the foreign business trust to sign the list, certifying that the list is true, complete and accurate.

2. Each list required to be filed pursuant to this section must be accompanied by a declaration under penalty of perjury that:

(a) The foreign business trust has complied with the provisions of chapter 76 of NRS;

(b) The foreign business trust acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and

(c) None of the trustees identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a trustee in furtherance of any unlawful conduct.

3. Upon filing:

(a) The initial list required by this section, the foreign business trust shall pay to the Secretary of State a fee of [$125.] *$150.*

(b) Each annual list required by this section, the foreign business trust shall pay to the Secretary of State a fee of [$125.] *$150.*

4. If a trustee of a foreign business trust resigns and the resignation is not reflected on the annual or amended list of trustees, the foreign business trust or the resigning trustee shall pay to the Secretary of State a fee of $75 to file the resignation.

5. The Secretary of State shall, 90 days before the last day for filing each annual list required by subsection 1, provide to each foreign business trust which is required to comply with the provisions of NRS 88A.732 to 88A.738, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file the list required pursuant to subsection 1. Failure of any foreign business trust to receive a notice does not excuse it from the penalty imposed by the provisions of NRS 88A.732 to 88A.738, inclusive.

6. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 3 is not paid, the Secretary of State may return the list for correction or payment.

7. An annual list for a foreign business trust not in default which is received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8. A person who files with the Secretary of State a list required by this section which identifies a trustee with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a trustee in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

9. For the purposes of this section, a person who is a beneficial owner is not deemed to exercise actual control of the daily operations of a foreign business trust based solely on the fact that the person is a beneficial owner.

10. The Secretary of State may allow a foreign business trust to select an alternative due date for filing the initial list required by this section.

11. The Secretary of State may adopt regulations to administer the provisions of subsection 10.

Sec. 76.8. NRS 89.250 is hereby amended to read as follows:

89.250 1. Except as otherwise provided in subsection 2, a professional association shall, on or before the last day of the first month after the filing of its articles of association with the Secretary of State or, if the professional association has selected an alternative due date pursuant to subsection 7, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its organization occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list showing the names and addresses, either residence or business, of all members and employees in the professional association and certifying that all members and employees are licensed to render professional service in this State.

2. A professional association organized and practicing pursuant to the provisions of this chapter and NRS 623.349 shall, on or before the last day of the first month after the filing of its articles of association with the Secretary of State or, if the professional association has selected an alternative due date pursuant to subsection 7, on or before that alternative due date, and annually thereafter on or before the last day of the month in which the anniversary date of its organization occurs in each year or, if applicable, on or before the last day of the month in which the anniversary date of the alternative due date occurs in each year, file with the Secretary of State a list:

(a) Showing the names and addresses, either residence or business, of all members and employees of the professional association who are licensed or otherwise authorized by law to render professional service in this State;

(b) Certifying that all members and employees who render professional service are licensed or otherwise authorized by law to render professional service in this State; and

(c) Certifying that all members who are not licensed to render professional service in this State do not render professional service

on behalf of the professional association except as authorized by law.

3. Each list filed pursuant to this section must be:

(a) Made on a form furnished by the Secretary of State and must not contain any fiscal or other information except that expressly called for by this section.

(b) Signed by the chief executive officer of the professional association or by some other person specifically authorized by the chief executive officer to sign the list.

(c) Accompanied by a declaration under penalty of perjury that:

(1) The professional association has complied with the provisions of chapter 76 of NRS;

(2) The professional association acknowledges that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State; and

(3) None of the members or employees identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a member or employee in furtherance of any unlawful conduct.

4. Upon filing:

(a) The initial list required by this section, the professional association shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

(b) Each annual list required by this section, the professional association shall pay to the Secretary of State a fee of ~~[$125.]~~ *$150.*

5. A person who files with the Secretary of State an initial list or annual list required by this section which identifies a member or an employee of a professional association with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a member or employee in furtherance of any unlawful conduct is subject to the penalty set forth in NRS 225.084.

6. For the purposes of this section, a person is not deemed to exercise actual control of the daily operations of a professional association based solely on the fact that the person holds an ownership interest in the professional association.

7. The Secretary of State may allow a professional association to select an alternative due date for filing the initial list required by this section.

8. The Secretary of State may adopt regulations to administer the provisions of subsection 7.

Sec. 77. 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) Has been convicted of a felony or, within the previous 10 years has been convicted of a 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;

(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; or

(4) Involves moral turpitude;

(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, jurisdiction, Canadian province or territory, the Commodity Futures Trading Commission, 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 by a self-regulatory organization that prohibits the person from serving, indefinitely or for a specified period, as a principal or in a supervisory capacity within a business or organization which is a member of a self-regulatory organization;

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

(5) An order to cease and desist entered after notice and opportunity for hearing by the Administrator, the securities agency or administrator of another state, jurisdiction, Canadian province or

territory, the Securities and Exchange Commission or a comparable regulatory agency of another country, or the Commodity Futures Trading Commission; or

(6) 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 2 to 61, 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. 78. 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 the chapter consisting of sections 2 to 61, 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. 78.1. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection 5, after deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180, and the amount transferred to the State ~~[Highway]~~ *General* Fund pursuant to NRS 482.182, the Department shall certify monthly to the State Board of Examiners the amount of the basic and supplemental governmental services taxes collected for each county by the Department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental governmental services tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.043, 371.045 and 371.047.

3. The distribution of the basic governmental services tax received or collected for each county must be made to the county

school district within each county before any distribution is made to a local government, special district or enterprise district. For the purpose of calculating the amount of the basic governmental services tax to be distributed to the county school district, the taxes levied by each local government, special district and enterprise district are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. After making the distributions set forth in subsection 3, the remaining money received or collected for each county must be deposited in the Local Government Tax Distribution Account created by NRS 360.660 for distribution to local governments, special districts and enterprise districts within each county pursuant to the provisions of NRS 360.680 and 360.690.

5. An amount equal to any basic governmental services tax distributed to a redevelopment agency in the Fiscal Year 1987-1988 must continue to be distributed to that agency as long as it exists but must not be increased.

6. The Department shall make distributions of the basic governmental services tax directly to county school districts.

7. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in NRS 360.620.

(b) "Local government" has the meaning ascribed to it in NRS 360.640.

(c) "Received or collected for each county" means:

(1) For the basic governmental services tax collected on vehicles subject to the provisions of chapter 706 of NRS, the amount determined for each county based on the following percentages:

Carson City	1.07 percent	Lincoln	3.12 percent
Churchill	5.21 percent	Lyon	2.90 percent
Clark	22.54 percent	Mineral	2.40 percent
Douglas	2.52 percent	Nye	4.09 percent
Elko	13.31 percent	Pershing	7.00 percent

Esmeralda ..... 2.52 percent	Storey ..... 0.19 percent
Eureka ..... 3.10 percent	Washoe ..... 12.24 percent
Humboldt ..... 8.25 percent	White Pine ..... 5.66 percent
Lander ..... 3.88 percent	

(2) For all other basic and supplemental governmental services tax received or collected by the Department, the amount attributable to each county based on the county of registration of the vehicle for which the tax was paid.

(d) "Special district" has the meaning ascribed to it in NRS 360.650.

Sec. 78.3. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection 5, after deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180, and the amount transferred to the State General Fund *and the State Highway Fund* pursuant to NRS 482.182, the Department shall certify monthly to the State Board of Examiners the amount of the basic and supplemental governmental services taxes collected for each county by the Department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental governmental services tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.043, 371.045 and 371.047.

3. The distribution of the basic governmental services tax received or collected for each county must be made to the county school district within each county before any distribution is made to a local government, special district or enterprise district. For the purpose of calculating the amount of the basic governmental services tax to be distributed to the county school district, the taxes levied by each local government, special district and enterprise district are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. After making the distributions set forth in subsection 3, the remaining money received or collected for each county must be deposited in the Local Government Tax Distribution Account created by NRS 360.660 for distribution to local governments, special districts and enterprise districts within each county pursuant to the provisions of NRS 360.680 and 360.690.

5. An amount equal to any basic governmental services tax distributed to a redevelopment agency in the Fiscal Year 1987-1988 must continue to be distributed to that agency as long as it exists but must not be increased.

6. The Department shall make distributions of the basic governmental services tax directly to county school districts.

7. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in NRS 360.620.

(b) "Local government" has the meaning ascribed to it in NRS 360.640.

(c) "Received or collected for each county" means:

(1) For the basic governmental services tax collected on vehicles subject to the provisions of chapter 706 of NRS, the amount determined for each county based on the following percentages:

Carson City	1.07 percent	Lincoln	3.12 percent
Churchill	5.21 percent	Lyon	2.90 percent
Clark	22.54 percent	Mineral	2.40 percent
Douglas	2.52 percent	Nye	4.09 percent
Elko	13.31 percent	Pershing	7.00 percent
Esmeralda	2.52 percent	Storey	0.19 percent
Eureka	3.10 percent	Washoe	12.24 percent
Humboldt	8.25 percent	White Pine	5.66 percent
Lander	3.88 percent		

(2) For all other basic and supplemental governmental services tax received or collected by the Department, the amount attributable to each county based on the county of registration of the vehicle for which the tax was paid.

(d) "Special district" has the meaning ascribed to it in NRS 360.650.

Sec. 78.5. NRS 482.181 is hereby amended to read as follows:

482.181 1. Except as otherwise provided in subsection 5, after deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of

NRS 482.180, and the amount transferred to ~~[the State General Fund and the]~~ State Highway Fund pursuant to NRS 482.182, the Department shall certify monthly to the State Board of Examiners the amount of the basic and supplemental governmental services taxes collected for each county by the Department and its agents during the preceding month, and that money must be distributed monthly as provided in this section.

2. Any supplemental governmental services tax collected for a county must be distributed only to the county, to be used as provided in NRS 371.043, 371.045 and 371.047.

3. The distribution of the basic governmental services tax received or collected for each county must be made to the county school district within each county before any distribution is made to a local government, special district or enterprise district. For the purpose of calculating the amount of the basic governmental services tax to be distributed to the county school district, the taxes levied by each local government, special district and enterprise district are the product of its certified valuation, determined pursuant to subsection 2 of NRS 361.405, and its tax rate, established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1980, except that the tax rate for school districts, including the rate attributable to a district's debt service, is the rate established pursuant to NRS 361.455 for the fiscal year beginning on July 1, 1978, but if the rate attributable to a district's debt service in any fiscal year is greater than its rate for the fiscal year beginning on July 1, 1978, the higher rate must be used to determine the amount attributable to debt service.

4. After making the distributions set forth in subsection 3, the remaining money received or collected for each county must be deposited in the Local Government Tax Distribution Account created by NRS 360.660 for distribution to local governments, special districts and enterprise districts within each county pursuant to the provisions of NRS 360.680 and 360.690.

5. An amount equal to any basic governmental services tax distributed to a redevelopment agency in the Fiscal Year 1987-1988 must continue to be distributed to that agency as long as it exists but must not be increased.

6. The Department shall make distributions of the basic governmental services tax directly to county school districts.

7. As used in this section:

(a) "Enterprise district" has the meaning ascribed to it in NRS 360.620.

(b) "Local government" has the meaning ascribed to it in NRS 360.640.

(c) "Received or collected for each county" means:

(1) For the basic governmental services tax collected on vehicles subject to the provisions of chapter 706 of NRS, the amount determined for each county based on the following percentages:

Carson City	1.07 percent	Lincoln	3.12 percent
Churchill	5.21 percent	Lyon	2.90 percent
Clark	22.54 percent	Mineral	2.40 percent
Douglas	2.52 percent	Nye	4.09 percent
Elko	13.31 percent	Pershing	7.00 percent
Esmeralda	2.52 percent	Storey	0.19 percent
Eureka	3.10 percent	Washoe	12.24 percent
Humboldt	8.25 percent	White Pine	5.66 percent
Lander	3.88 percent		

(2) For all other basic and supplemental governmental services tax received or collected by the Department, the amount attributable to each county based on the county of registration of the vehicle for which the tax was paid.

(d) "Special district" has the meaning ascribed to it in NRS 360.650.

Sec. 78.7. NRS 482.182 is hereby amended to read as follows:

482.182 1. After deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180 and before carrying out the provisions of NRS 482.181 each month, the Department shall direct the State Controller to transfer to the State ~~[Highway]~~ ***General*** Fund from the proceeds of the basic governmental services tax collected by the Department and its agents during the preceding month the amounts indicated pursuant to this section.

2. Except as otherwise provided in subsection 3, the amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles depreciated in accordance with:

(a) Subsection 1 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 11 percent of those proceeds;

(2) Two years, is a sum equal to 12 percent of those proceeds;

(3) Three years, is a sum equal to 13 percent of those proceeds;

(4) Four years, is a sum equal to 15 percent of those proceeds;

(5) Five years, is a sum equal to 18 percent of those proceeds;

(6) Six years, is a sum equal to 22 percent of those proceeds;

(7) Seven years, is a sum equal to 29 percent of those proceeds;

(8) Eight years, is a sum equal to 40 percent of those proceeds; and

(9) Nine years or more, is a sum equal to 67 percent of those proceeds; and

(b) Subsection 2 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 12 percent of those proceeds;

(2) Two years, is a sum equal to 14 percent of those proceeds;

(3) Three years, is a sum equal to 18 percent of those proceeds;

(4) Four years, is a sum equal to 21 percent of those proceeds;

(5) Five years, is a sum equal to 26 percent of those proceeds;

(6) Six years, is a sum equal to 30 percent of those proceeds;

(7) Seven years, is a sum equal to 33 percent of those proceeds;

(8) Eight years, is a sum equal to 37 percent of those proceeds;

(9) Nine years, is a sum equal to 40 percent of those proceeds; and

(10) Ten years or more, is a sum equal to 43 percent of those proceeds.

3. The amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles to which the minimum amount of that tax applies pursuant to paragraph (b) of subsection 3 of NRS 371.060 is a sum equal to 63 percent of those proceeds.

Sec. 78.8. NRS 482.182 is hereby amended to read as follows:

482.182 1. After deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180 and before carrying out the provisions of NRS 482.181 each month, the Department shall direct the State Controller to transfer to the *:*

(a) State General Fund from the proceeds of the basic governmental services tax collected by the Department and its

agents during the preceding month *50 percent of* the amounts indicated pursuant to this section.

(b) State Highway Fund from the proceeds of the basic governmental services tax collected by the Department and its agents during the preceding month 50 percent of the amounts indicated pursuant to this section.

2. Except as otherwise provided in subsection 3, the amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles depreciated in accordance with:

(a) Subsection 1 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 11 percent of those proceeds;

(2) Two years, is a sum equal to 12 percent of those proceeds;

(3) Three years, is a sum equal to 13 percent of those proceeds;

(4) Four years, is a sum equal to 15 percent of those proceeds;

(5) Five years, is a sum equal to 18 percent of those proceeds;

(6) Six years, is a sum equal to 22 percent of those proceeds;

(7) Seven years, is a sum equal to 29 percent of those proceeds;

(8) Eight years, is a sum equal to 40 percent of those proceeds; and

(9) Nine years or more, is a sum equal to 67 percent of those proceeds; and

(b) Subsection 2 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 12 percent of those proceeds;

(2) Two years, is a sum equal to 14 percent of those proceeds;

(3) Three years, is a sum equal to 18 percent of those proceeds;

(4) Four years, is a sum equal to 21 percent of those proceeds;

(5) Five years, is a sum equal to 26 percent of those proceeds;

(6) Six years, is a sum equal to 30 percent of those proceeds;

(7) Seven years, is a sum equal to 33 percent of those proceeds;

(8) Eight years, is a sum equal to 37 percent of those proceeds;

(9) Nine years, is a sum equal to 40 percent of those proceeds; and

(10) Ten years or more, is a sum equal to 43 percent of those proceeds.

3. The amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles to which the minimum amount of that tax applies pursuant to paragraph (b) of subsection 3 of NRS 371.060 is a sum equal to 63 percent of those proceeds.

Sec. 78.9. NRS 482.182 is hereby amended to read as follows:

482.182 1. After deducting the amount withheld by the Department and the amount credited to the Department pursuant to subsection 6 of NRS 482.180 and before carrying out the provisions of NRS 482.181 each month, the Department shall direct the State Controller to transfer to the [:

~~(a) State General Fund from the proceeds of the basic governmental services tax collected by the Department and its agents during the preceding month 50 percent of the amounts indicated pursuant to this section.~~

~~(b)~~] State Highway Fund from the proceeds of the basic governmental services tax collected by the Department and its agents during the preceding month ~~[50 percent of]~~ the amounts indicated pursuant to this section.

2. Except as otherwise provided in subsection 3, the amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles depreciated in accordance with:

(a) Subsection 1 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 11 percent of those proceeds;

(2) Two years, is a sum equal to 12 percent of those proceeds;

(3) Three years, is a sum equal to 13 percent of those proceeds;

(4) Four years, is a sum equal to 15 percent of those proceeds;

(5) Five years, is a sum equal to 18 percent of those proceeds;

(6) Six years, is a sum equal to 22 percent of those proceeds;

(7) Seven years, is a sum equal to 29 percent of those proceeds;

(8) Eight years, is a sum equal to 40 percent of those proceeds; and

(9) Nine years or more, is a sum equal to 67 percent of those proceeds; and

(b) Subsection 2 of NRS 371.060 based upon an age of:

(1) One year, is a sum equal to 12 percent of those proceeds;

(2) Two years, is a sum equal to 14 percent of those proceeds;

(3) Three years, is a sum equal to 18 percent of those proceeds;

(4) Four years, is a sum equal to 21 percent of those proceeds;

(5) Five years, is a sum equal to 26 percent of those proceeds;

(6) Six years, is a sum equal to 30 percent of those proceeds;

(7) Seven years, is a sum equal to 33 percent of those proceeds;

(8) Eight years, is a sum equal to 37 percent of those proceeds;

(9) Nine years, is a sum equal to 40 percent of those proceeds; and

(10) Ten years or more, is a sum equal to 43 percent of those proceeds.

3. The amount required to be transferred pursuant to subsection 1 from the proceeds of the basic governmental services tax imposed on vehicles to which the minimum amount of that tax applies pursuant to paragraph (b) of subsection 3 of NRS 371.060 is a sum equal to 63 percent of those proceeds.

Sec. 79. 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 2 to 61, 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 otherwise or a stay is granted.

Sec. 80. NRS 612.265 is hereby amended to read as follows:

612.265 1. Except as otherwise provided in this section and NRS 239.0115 and 612.642, 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 Division 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 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 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 the chapter consisting of sections 2 to 61, 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 this chapter 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 this chapter 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. 81. 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 the chapter consisting of sections 2 to 61, 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. 82. 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 [.] *and sections 2 to 61, 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. 83. NRS 645B.670 is hereby amended to read as follows:

645B.670 1. Except as otherwise provided in NRS 645B.690:

(a) 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:

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

(2) 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

(3) 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.

(b) 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:

(1) Is insolvent;

(2) 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;

(3) 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;

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

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

(6) 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;

(7) 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;

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

(9) 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;

(10) 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;

(11) 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;

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

(13) 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;

(14) 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;

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

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

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

(18) 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;

(19) 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:

(I) 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

(II) 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;

(20) Has violated NRS 645C.557;

(21) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS [:] *or sections 2 to 61, inclusive, of this act;* or

(22) Has, directly or indirectly, paid any commission, fees, points or any other compensation as remuneration for the services of a mortgage agent to a person other than a mortgage agent who:

(I) Is an employee of or associated with the mortgage broker; or

(II) If the mortgage agent is required to register with the Registry, is an employee of and whose sponsorship has been entered with the Registry by the mortgage broker as required by subsection 2 of NRS 645B.450.

(c) 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:

(1) 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;

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

(3) 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;

(4) 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;

(5) 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;

(6) 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;

(7) 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;

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

(9) Has violated NRS 645C.557;

(10) 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;

(11) Has, directly or indirectly, received any commission, fees, points or any other compensation as remuneration for his or her services as a mortgage agent:

(I) From a person other than the mortgage broker with whom the mortgage agent is associated or by whom he or she is employed; or

(II) If the mortgage agent is required to be registered with the Registry, from a person other than the mortgage broker by whom the mortgage agent is employed and on whose behalf

sponsorship was entered as required by subsection 2 of NRS 645B.450; or

(12) 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.

2. This section does not prohibit the co-brokering of a commercial loan through the cooperation of two or more mortgage brokers so long as such a transaction is not inconsistent with any other provision of this chapter.

Sec. 84. 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 [.] *and sections 2 to 61, 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. 85. 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 2 to 61, 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. 86. 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 2 to 61, 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 its affairs.

Sec. 87. 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 the chapter consisting of sections 2 to 61, 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.

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. 88. 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 2 to 61, inclusive, of this act.*

Sec. 89. 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 2 to 61, 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. 90. 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 2 to 61, 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. 91. 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 2 to 61, 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. 92. 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 2 to 61, 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. 93. 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 2 to 61, inclusive, of this act.*

Sec. 94. 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 2 to 61, 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. 95. 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 2 to 61, 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. 96. 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 commerce tax imposed pursuant to the provisions of sections 2 to 61, inclusive, of this act.

Sec. 97. 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 2 to 61, inclusive, of this act.*

Sec. 98. 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 commerce tax imposed pursuant to sections 2 to 61, inclusive, of this act.*

Sec. 99. 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 2 to 61, inclusive, of this act.*

Sec. 100. 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 2 to 61, 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. 101. 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 2 to 61, 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. 102. 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 commerce tax imposed pursuant to sections 2 to 61, inclusive, of this act and* taxes on real property and office equipment.

Sec. 103. Section 16 of chapter 4, Statutes of Nevada 2008, 25th Special Session, as last amended by chapter 518, Statutes of Nevada 2013, at page 3425, is hereby amended to read as follows:

Sec. 16. 1. This section and sections 2, 4, 14 and 15 of this act become effective upon passage and approval.

2. Sections 6 to 12, inclusive, of this act become effective on January 1, 2009.

3. Sections 4 and 6 to 12, inclusive, of this act expire by limitation on June 30, 2009.

4. Sections 1, 3, 5 and 13 of this act become effective on July 1, 2009.

5. Sections 1, 2, 3 and 5 of this act expire by limitation on June 30, ~~[2015.]~~ *2016.*

Sec. 104. Section 20 of chapter 395, Statutes of Nevada 2009, as last amended by chapter 518, Statutes of Nevada 2013, at p. 3426, is hereby amended to read as follows:

Sec. 20. 1. This section and section 19 of this act become effective upon passage and approval.

2. Sections 1 and 2 of this act become effective on July 1, 2009.

3. Section 3 of this act becomes effective on July 1, 2009, and expires by limitation on June 30, 2011.

4. Sections 6 to 12, inclusive, of this act become effective on July 1, 2009 . ~~[, and expire by limitation on June 30, 2015.]~~

5. Sections 4, 5, 13, 14, 15, 16, 17 and 18 of this act become effective:

(a) Upon passage and approval for the purpose of performing any preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On September 1, 2009, for all other purposes.

6. Sections 15.5 and 18.5 of this act become effective on July 1, 2015.

7. Section 18 of this act expires by limitation on June 30, ~~[2015.]~~ *2017.*

Sec. 105. Section 17.5 of chapter 449, Statutes of Nevada 2011, as amended by chapter 518, Statutes of Nevada 2013, at page 3426, is hereby amended to read as follows:

Sec. 17.5. The amendatory provisions of section 12.7 of this act:

1. Do not apply to or affect any determination of gross yield or net proceeds required pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year ~~[2015.]~~ *2016.*

2. Apply for the purposes of estimating and determining gross yield and net proceeds pursuant to NRS 362.100 to 362.240, inclusive, for the calendar year ~~[2016]~~ *2017* and each calendar year thereafter.

Sec. 106. Section 19 of chapter 449, Statutes of Nevada 2011, as amended by chapter 518, Statutes of Nevada 2013, at p. 3426, is hereby amended to read as follows:

Sec. 19. 1. This section and sections 1 to 12, inclusive, and 13 to 18, inclusive, of this act become effective upon passage and approval.

2. Section 12.5 of this act becomes effective on January 1, 2012.

3. Section 12.7 of this act becomes effective on January 1, ~~[2016.]~~ *2017.*

Sec. 107. Section 15 of chapter 476, Statutes of Nevada 2011, as amended by chapter 518, Statutes of Nevada 2013, at page 3427, is hereby amended to read as follows:

Sec. 15. 1. When preparing its certificate of the tax due from a taxpayer pursuant to NRS 362.130 during the calendar year ~~[2016.]~~ *2017,* the Department of Taxation shall reduce the amount of the tax due from the taxpayer by the amount of:

(a) Any estimated payments of the tax made by or on behalf of the taxpayer during the calendar year ~~[2015]~~ *2016* pursuant to NRS 362.115, as that section read on January 1, ~~[2015:]~~ *2016;* and

(b) Any unused credit to which the taxpayer may be entitled as a result of any previous overpayment of the tax.

2. Notwithstanding any provision of NRS 362.170 to the contrary:

(a) The amount appropriated to each county pursuant to that section for distribution to the county during the calendar year ~~[2016]~~ *2017* must be reduced by the amount

appropriated to the county pursuant to that section for distribution to the county during the calendar year [~~2015.~~] *2016*, excluding any portion of the amount appropriated to the county pursuant to that section for distribution to the county during the calendar year [2015] *2016* which is attributable to a pro rata share of any penalties and interest collected by the Department of Taxation for the late payment of taxes distributed to the county.

(b) In calculating the amount required to be apportioned to each local government or other local entity pursuant to subsection 2 of that section for the calendar year [~~2016.~~] *2017*, the county treasurer shall reduce the amount required to be determined pursuant to paragraph (a) of that subsection for that calendar year by the amount determined pursuant to that paragraph for the calendar year [~~2015.~~] *2016*.

Sec. 108. Section 17 of chapter 476, Statutes of Nevada 2011, as amended by chapter 518, Statutes of Nevada 2013, at page 3427, is hereby amended to read as follows:

Sec. 17. 1. This section and sections 1 and 7 to 16, inclusive, of this act become effective upon passage and approval.

2. Sections 4.5 , [~~and~~] 6 *and 6.5* of this act become effective on July 1, 2011.

3. [~~Sections~~] *Section* 4 [~~and 6.5~~] of this act [~~become~~] *becomes* effective on July 1, 2011, and [~~expire~~] *expires* by limitation on June 30, 2015.

4. Section 5 of this act becomes effective on the date that the balance of the separate account required by subsection 8 of NRS 408.235 is reduced to zero.

Sec. 109. Section 4 of chapter 373, Statutes of Nevada 2013, at page 1992, is hereby amended to read as follows:

Sec. 4. This act becomes effective on July 1, 2013, and expires by limitation on June 30, [~~2015.~~] *2017*.

Sec. 110. Notwithstanding the provisions of sections 2 to 61, inclusive, of this act, the Department shall waive payment of any penalty or interest for a person's failure to timely file a report or pay the commerce tax pursuant to sections 2 to 61, inclusive, of this act for any failure to comply with the provisions of those sections, which occurs before February 15, 2017, regardless of when the Department makes the determination that the person failed to file a report or pay the commerce tax, if the failure:

1. Occurred despite the person's exercise of ordinary care; and
2. Was not intentional or the result of willful neglect.

Sec. 111. Any rate of the tax imposed by NRS 363A.130 or 363B.110 determined pursuant to section 62 of this act does not apply to any taxes due for any period ending on or before June 30 of the year in which the rate becomes effective.

Sec. 112. The amendatory provisions of sections 67 to 70, inclusive, of this act do not apply to taxes due for any period ending on or before June 30, 2015.

Sec. 113. 1. The amendatory provisions of sections 71 and 73 of this act apply to cigarettes to which a stamp is affixed on or after July 1, 2015, regardless of the date on which a wholesale dealer purchased the stamp from the Department of Taxation.

2. As used in this section:

(a) "Stamp" has the meaning ascribed to it in NRS 370.048.

(b) "Wholesale dealer" has the meaning ascribed to it in NRS 370.055.

Sec. 114. 1. This section and sections 103 to 112, inclusive, of this act become effective upon passage and approval.

2. Sections 1 to 78, inclusive, and 79 to 102, inclusive, of this act become effective:

(a) Upon passage and approval for the or the purpose of performing any preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2015, for all other purposes.

3. Sections 78.1 and 78.7 of this act become effective on July 1, 2015.

4. Sections 78.3 and 78.8 of this act become effective on July 1, 2016.

5. Sections 78.5 and 78.9 of this act become effective on July 1, 2017.

EXHIBIT "5"

SENATOR KIECKHEFER:
Is the recommendation to keep sections 2, 3 and 4 and delete everything that follows?

SENATOR SETTELMEYER:
I do not have the bill in front of me. I would need to verify that. Mr. Krmpotic might know the correct sections.

MR. KRMPOTIC:
The conceptual amendment for Senate Bill 446 deletes sections 4 and 5, which removes all provisions containing the Medicaid eligibility for incarcerated persons. The amendment would remove the fiscal note from the Department of Health and Human Services, Division of Welfare and Supportive Services.

CHAIR WOODHOUSE:
We will close the hearing on S.B. 446 and will place it on work session.

SENATOR BROOKS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 446.

SENATOR CANCELA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR WOODHOUSE:
We are considering S.B. 551. Proposed Amendment No. 6101 (Exhibit E) was provided to the Committee members.

SENATE BILL 551 (1st Reprint): Revises provisions relating to state financial administration. (BDR 32-1286)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):
I will walk the Committee through the salient points of Proposed Amendment No. 6101, Exhibit E, for S.B. 551. The first part of the amendment deletes the portions related to the "more cops tax" or the sunset of the sales and use tax for Clark County which has funded law enforcement officers. That part has been removed from the bill.

The remainder of S.B. 551 still includes the provisions that this Body discussed regarding the buydown of the Modified Business Tax (MBT) and removing the sunset for that tax.

However, after reviewing the changes and in looking at where money would go for schools within this bill, the bill has some changes to the amounts and the designated place for the overall money which would be generated from the buydown of the MBT.

The first portion of the money would still go to school safety. However, the amount for the School Safety Account would go to facility improvements in the amount of approximately $16.7 million. This is on top of the other money which has already gone to school safety. The $16.7 million would be designated for facility enhancements which this Committee is familiar with.

The remainder of what would exist for the MBT buydown would fund the students who are currently in school through the Nevada Opportunity Scholarship Program. The total amount over the biennium is $9.5 million. This provision will not include any additional enrollees for the Opportunity Scholarship Program. The provision will not include growth over any long period of time. Proposed Amendment No. 6101, Exhibit E, just includes those students who are currently on the Nevada Educational Choice Scholarship Program—also known as the Opportunity Scholarship program—to be grandfathered in; as the students matriculate out, the Program would decrease over time.

The additional money left in the MBT balance of approximately $72 million will go to each of the school districts as designated on pages 32 and 33 of the Proposed Amendment No. 6101, Exhibit E. These funds would be on a per pupil basis through the Account for Programs for Innovation and the Prevention of Remediation for each of the school districts. The amounts in that section are for those districts affected as a result of the provisions of S.B. 551.

This bill, although it is not reflected in Proposed Amendment No. 6101, will be stamped with a two-thirds majority requirement.

SENATOR KIECKHEFER:
I appreciate the spending priorities. For the Opportunity Scholarship program, Proposed Amendment No. 6101 subs out the language included in the one-time $20 million appropriation from last Session, puts in $4.75 million in

EXHIBIT "6"

SB551

Notice of Reconsideration

Assembly

No Vote Recorded

Senate

Passed: No (2/3 of Elected Members)
Date: Monday, June 3, 2019
Votes:

- All: 21
- Yea: 13
- Nay: 8
- Excused: 0
- Not Voting: 0
- Absent: 0

Final Passage

Assembly

Passed: Yes (Constitutional Majority)
Date: Monday, June 3, 2019
Votes:

- All: 42
- Yea: 28
- Nay: 13
- Excused: 0
- Not Voting: 0
- Absent: 0
- Vacant: 1

Senate

Passed: Yes (Constitutional Majority)
Date: Monday, June 3, 2019
Votes:

- All: 21
- Yea: 13
- Nay: 8
- Excused: 0
- Not Voting: 0
- Absent: 0

EXHIBIT "7"

Senate Bill No. 502–Committee on Finance

CHAPTER.....

AN ACT relating to the Department of Motor Vehicles; temporarily authorizing the Department to collect a technology fee; temporarily increasing the limitation on the percentage of the proceeds of certain fees and charges collected by the Department that are authorized for the Department's costs of administration associated with the collection of those fees and charges; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill authorizes the Department of Motor Vehicles to assess a $1 technology fee on paid transactions, to be used by the Department to pay the expenses associated with implementing, upgrading and maintaining the platform of information technology used by the Department. **Section 7** of this bill authorizes the collection of the technology fee until June 30, 2020.

Under existing law, all the proceeds from the imposition of any license or registration fee and other charges regarding the operation of a motor vehicle on any public highway, road or street in Nevada, except costs of administering the collection thereof, is required to be used exclusively for the construction, maintenance and repair of the State's public highways. (Nev. Const. Art. 9, § 5; NRS 408.235) Existing law limits the amount of such proceeds that are authorized to be used for costs of administration to 22 percent of the proceeds collected. (NRS 408.235) **Section 5** of this bill temporarily increases this limitation for costs of administration to 27 percent during the period in which the Department is collecting the technology fee.

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

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 481 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *The Department shall add a nonrefundable technology fee of $1 to the existing fee for any transaction performed by the Department for which a fee is charged. The technology fee must be used to pay the expenses associated with implementing, upgrading and maintaining the platform of information technology used by the Department.*

Sec. 4. NRS 481.079 is hereby amended to read as follows:

481.079 1. Except as otherwise provided by *section 3 of this act or any other* specific statute, all taxes, license fees and money

collected by the Department must be deposited with the State Treasurer to the credit of the Motor Vehicle Fund.

2. If a check or any other method of payment accepted by the Department in payment of such fees is returned to the Department or otherwise dishonored upon presentation for payment:

(a) The drawer or any other person responsible for payment of the fee is subject to a fee in the amount established by the State Controller pursuant to NRS 353C.115 in addition to any other penalties provided by law; and

(b) The Department may require that future payments from the person be made by cashier's check, money order, traveler's check or cash.

3. The Department may adjust the amount of a deposit made with the State Treasurer to the credit of the Motor Vehicle Fund for any cash shortage or overage resulting from the collection of fees.

Sec. 5. NRS 408.235 is hereby amended to read as follows:

408.235 1. There is hereby created the State Highway Fund.

2. Except as otherwise provided by a specific statute, the proceeds from the imposition of any:

(a) License or registration fee and other charges with respect to the operation of any motor vehicle upon any public highway, city, town or county road, street, alley or highway in this State; and

(b) Excise tax on gasoline or other motor vehicle fuel,

➥ must be deposited in the State Highway Fund and must, except for costs of administering the collection thereof, be used exclusively for the administration, construction, reconstruction, improvement and maintenance of highways as provided for in this chapter.

3. The interest and income earned on the money in the State Highway Fund, after deducting any applicable charges, must be credited to the Fund.

4. Costs of administration for the collection of the proceeds for any license or registration fees and other charges with respect to the operation of any motor vehicle must be limited to a sum not to exceed ~~[22]~~ *27* percent of the total proceeds so collected.

5. Costs of administration for the collection of any excise tax on gasoline or other motor vehicle fuel must be limited to a sum not to exceed 1 percent of the total proceeds so collected.

6. All bills and charges against the State Highway Fund for administration, construction, reconstruction, improvement and maintenance of highways under the provisions of this chapter must be certified by the Director and must be presented to and examined by the State Board of Examiners. When allowed by the State Board of Examiners and upon being audited by the State Controller, the

State Controller shall draw his or her warrant therefor upon the State Treasurer.

7. The money deposited in the State Highway Fund pursuant to NRS 244A.637 and 354.59815 must be maintained in a separate account for the county from which the money was received. The interest and income on the money in the account, after deducting any applicable charges, must be credited to the account. Any money remaining in the account at the end of each fiscal year does not revert to the State Highway Fund but must be carried over into the next fiscal year. The money in the account:

(a) Must be used exclusively for the construction, reconstruction, improvement and maintenance of highways in that county as provided for in this chapter;

(b) Must not be used to reduce or supplant the amount or percentage of any money which would otherwise be made available from the State Highway Fund for projects in that county; and

(c) Must not be used for any costs of administration or to purchase any equipment.

8. The money deposited in the State Highway Fund pursuant to NRS 482.313 must be maintained in a separate account. The interest and income on the money in the account, after deducting any applicable charges, must be credited to the account. Any money remaining in the account at the end of each fiscal year does not revert to the State Highway Fund but must be carried over into the next fiscal year. The money in the account:

(a) Must be used exclusively for the construction, reconstruction, improvement and maintenance of highways as provided for in this chapter; and

(b) Must not be used for any costs of administration or to purchase any equipment.

Secs. 6 and 6.5. (Deleted by amendment.)

Sec. 7. This act becomes effective on July 1, 2015, and expires by limitation on June 30, 2020.

EXHIBIT "8"

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April 16, 2019

Senator Yvanna D. Cancela
Senate Chambers

Dear Senator Cancela:

You have asked whether the First Reprint of Senate Bill No. 201 requires a two-thirds majority vote for final passage. Section 18(2) of Article 4 of the Nevada Constitution provides that "an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form." Specifically, you have asked whether the Legislature is required to pass SB 201 by a two-thirds majority vote in each House given that Section 8 of SB 201 requires the Commissioner of Financial Institutions to establish a new fee which must be charged by and collected from all licensees who make deferred deposit loans, title loans and high-interest loans in this State.

Section 8 of SB 201 requires the Commissioner of Financial Institutions to enter into a contract with a vendor or service provider or other entity to develop, implement and maintain a database of all deferred deposit loans, title loans and high-interest loans in this State for the purposes of ensuring compliance with the laws governing the businesses that make these types of loans. Section 8 also requires the licensees who make these types of loans to report and update certain information concerning each deferred deposit loan, title loan and high-interest loan made by the licensee and further requires the Commissioner to establish a fee which must be charged and collected by the vendor or service provider from a licensee who is required to report the information using the database. The fee is required to be used to pay for the administration and operation of the database.

Under the traditional parliamentary rule, a simple majority of a quorum is sufficient for the final passage of a bill in each house of a bicameral legislature unless a constitutional provision establishes a different requirement. See Mason's Manual of Legislative Procedure § 510 (2010). This traditional parliamentary rule is followed by

each House of Congress which may pass a bill by a simple majority of a quorum. United States v. Ballin, 144 U.S. 1, 6 (1892) ("at the time this bill passed the house there was present a majority, a quorum, and the house was authorized to transact any and all business. It was in a condition to act on the bill if it desired."); 1 Thomas M. Cooley, Constitutional Limitations 291 (8th ed. 1927).

When the Nevada Constitution was framed in 1864, the Framers rejected the traditional parliamentary rule by providing in Article 4, Section 18 that "*a majority of all the members elected to each House* is necessary to pass every bill or joint resolution." Nev. Const. art. 4, § 18 (1864) (emphasis added). The purpose of the Framers in adopting this constitutional majority requirement was to ensure that the Senate and Assembly could not pass a bill by a simple majority of a quorum. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866); Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada 208 (1972).

The constitutional majority requirement for final passage of bills is now codified in Article 4, Section 18(1), and it provides that "a majority of all the members elected to each House is necessary to pass every bill," unless the bill is subject to the two-thirds majority requirement in Section 18(2) of Article 4. Under the constitutional majority requirement in Section 18(1) of Article 4, the Senate and Assembly may pass a bill only if a majority of the entire membership authorized by law to be elected to each House votes in favor of the bill. See Marionneaux v. Hines, 902 So. 2d 373, 377-79 (La. 2005) (holding that in constitutional provisions requiring a majority or super-majority of members elected to each house to pass a legislative measure or constitute a quorum, the terms "members elected" and "elected members" mean the entire membership authorized by law to be elected to each house); State ex rel. Garland v. Guillory, 166 So. 94, 101-02 (La. 1935); In re Majority of Legislature, 8 Haw. 595, 595-98 (1892).

Thus, under the current membership authorized by law to be elected to the Senate and Assembly, if a bill requires a constitutional majority for final passage under Section 18(1) of Article 4, the Senate may pass the bill only with an affirmative vote of at least 11 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 22 of its 42 members. See Nev. Const. art. 4, § 5, art. 15, § 6 & art. 17, § 6 (directing the Legislature to establish by law the number of members of the Senate and Assembly); NRS Chapter 218B (establishing by law 21 members of the Senate and 42 members of the Assembly).

In 1994 and 1996, Nevada's voters approved constitutional amendments to Section 18 of Article 4 that were proposed by an initiative pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that:

> Except as otherwise provided in subsection 3, an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or joint resolution which *creates, generates, or increases any public revenue in any form*, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception in subsection 3 which provides that "*[a] majority of all of the members elected to each House* may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Under the two-thirds majority requirement, if a bill "creates, generates, or increases any public revenue in any form," the Senate may pass the bill only with an affirmative vote of at least 14 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 28 of its 42 members. However, if the two-thirds majority requirement does not apply to the bill, the Senate and Assembly may pass the bill by a constitutional majority in each House.

To answer your question, it is necessary to examine whether SB 201 is a bill which "creates, generates, or increases any public revenue in any form" within the meaning of Section 18(2) of Article 4. To date, there are no reported decisions from the Nevada Supreme Court or the Nevada Court of Appeals that have interpreted Section 18(2) of Article 4 and applied it to determine whether a bill "creates, generates, or increases any public revenue in any form" within the meaning of that provision. In the absence of any controlling decision from Nevada's appellate courts, the rules of constitutional construction are controlling, and the historical evidence, case law from other jurisdictions and other legal sources must be considered for guidance in this area of the law.

The Nevada Supreme Court has long held that the rules of statutory construction govern the interpretation of constitutional provisions, including provisions approved by the voters through an initiative. See Lorton v. Jones, 130 Nev. Adv. Op. 8, 322 P.3d 1051, 1054-58 (2014) (applying the rules of statutory construction to the term-limit provisions approved by the voters through an initiative). Under those rules of construction, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001).

To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional

language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

However, if the constitutional language is capable of "two or more reasonable but inconsistent interpretations," making it susceptible to ambiguity, uncertainty or doubt, the court will interpret the constitutional provision according to what history, reason and public policy would indicate the drafters and the voters intended. Miller, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)). Under such circumstances, the court will look "beyond the language to adopt a construction that best reflects the intent behind the provision." Sparks Nugget, Inc. v. State, Dep't of Tax'n, 124 Nev. 159, 163 (2008). Thus, if there is any ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, "[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law." State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883).

Finally, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). As a result, the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it." Id. Therefore, even when a constitutional provision imposes restrictions and limitations upon the Legislature's power, those "[r]estrictions and limitations are not extended to include matters not covered." City of Los Angeles v. Post War Pub. Works Rev. Bd., 156 P.2d 746, 754 (Cal. 1945).

With these fundamental rules of construction in mind, it is important to begin by examining the plain language of the two-thirds majority requirement in Section 18(2) of Article 4. Based on its plain language, the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form." The two-thirds majority requirement, however, does not provide any definitions to assist the reader in applying the terms "creates, generates, or increases." Therefore, in the absence of any constitutional definitions, we must give those terms their ordinary and commonly understood meanings.

As explained by the Nevada Supreme Court, "[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated." Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term "appearing in the constitution must be taken in its general or usual sense."). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Strickland v. Waymire, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds majority requirement, the normal and ordinary meanings commonly ascribed to the terms "creates, generates, or increases" in Section 18(2) of Article 4 must be determined. The common dictionary meaning of "create" is to "bring into existence." Webster's New Collegiate Dictionary 304 (9th ed. 1991) The common dictionary meaning of "generate" is also to "bring into existence" or "produce." Id. at 510. The common dictionary meaning of "increase" is to "make greater" or "enlarge." Id. at 611. The ordinary meaning of "public" is "of or relating to a government." Id at 952.

Based on the normal and ordinary meanings of the terms "creates, generates, or increases" and "public," it is clear that the terms all refer to the Legislature taking legislative action that directly brings into existence, produces or enlarges public revenue in the first instance, rather than contracting with a business to perform a quasi-governmental function for which fees are paid by licensees directly to the private entity that created, maintains and operates the required database. Rather than imposing a fee which will increase or otherwise generate revenue for the state or any other public entity, the provisions of the First Reprint of SB 201 have the effect of requiring the Commissioner of Financial Institutions to, by contract, delegate both the functions of creating, maintaining and operating the
database for use by licensees and the entitlement to receive the fees meant to cover the cost of the database.

In conclusion, the First Reprint of SB 201 provides for the State to relinquish control over the database that will be created and used by licensees to carry out their statutory duty. By requiring the Commissioner of Financial Institutions to contract with a vendor or other entity to create and manage the database, the bill shifts this function and the right to receive the fees meant to cover the cost of performing the function to a private entity. There is no indication in the text of the First Reprint of SB 201 or other

evidence in the current legislative history that suggests any portion of the fee or other revenue will be transferred to the State or any other public entity. Therefore, it is the opinion of this office that a two-thirds majority vote is not required to pass the First Reprint of SB 201 out of the Senate.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

Brenda J. Erdoes
Legislative Counsel

BJE:dtm
Encl.
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; et al.,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.

Case No. 19 OC 00127 1B
Dept. No. I

NEVADA LEGISLATURE'S
MOTION TO INTERVENE AS DEFENDANT

MOTION TO INTERVENE AS DEFENDANT

The Legislature of the State of Nevada ("Legislature"), by and through its counsel the Legal Division of the Legislative Counsel Bureau ("LCB Legal") under NRS 218F.720, hereby moves the Court for an order granting the Legislature's Motion to Intervene as Defendant pursuant to NRCP 24 and NRS 218F.720. This Motion is made under FJDCR 15 and is based upon the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow. Pursuant to NRCP 24(c), this Motion is accompanied by the Legislature's proposed Answer to the First Amended Complaint, which is attached as Exhibit 1.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction and Summary of the Argument.

In this action for declaratory and injunctive relief, Plaintiffs are challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the Legislature. Plaintiffs allege that SB 542 and SB 551 violated the two-thirds requirement in Article 4, Section 18(2) of the Nevada Constitution, which provides in relevant part that:

> [A]n affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2).

Plaintiffs allege that SB 542 and SB 551 were each subject to the two-thirds requirement in Article 4, Section 18(2) and that, as a result, each bill is unconstitutional because the Senate passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of each bill.

Plaintiffs filed their original Complaint on July 19, 2019, and Plaintiffs filed their First Amended Complaint on July 30, 2019. In their First Amended Complaint, Plaintiffs named the Nevada Department of Taxation as a Defendant. The Nevada Department of Taxation is empowered by state law with statewide administrative functions under the challenged statutes in SB 551. Plaintiffs also named the Nevada Department of Motor Vehicles as a Defendant. The Nevada Department of Motor Vehicles is empowered by state law with statewide administrative functions under the challenged statutes in SB 542.

Plaintiffs also named the following state officers of the executive branch as Defendants: (1) the Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of the Senate; and (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada. However, because neither Defendant Governor Sisolak nor Defendant Lieutenant Governor Marshall is empowered by state law with any statewide administrative functions under the challenged statutes in SB 542 and SB 551, they are not necessary parties to this litigation, and Plaintiffs were not required to name them as Defendants in order to litigate their claims.[1]

Finally, Plaintiffs named the following state officers of the legislative branch as Defendants: (1) the Honorable Nicole Cannizzaro, in her official capacity as Senate Majority Leader ("Senator Cannizzaro"); and (2) Claire J. Clift, in her official capacity as Secretary of the Senate ("Secretary Clift"). However, because neither Defendant Senator Cannizzaro nor Defendant Secretary Clift is empowered by state law with any statewide administrative functions under the challenged statutes in SB 542 and SB 551, they are not necessary parties to this litigation, and Plaintiffs were not required to name them as Defendants in order to litigate their claims.

[1] The state agencies and officers of the executive branch named as Defendants in this case will be referred to collectively as "Executive Defendants."

On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First Amended Complaint, and Defendants Senator Cannizzaro and Secretary Clift filed an Answer to Plaintiffs' First Amended Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment. On October 10, 2019, the Court approved a Stipulation and Order Regarding Briefing Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural Matters ("October 10th Stipulation and Order"). In the October 10th Stipulation and Order, specific dates were set for the completion of briefing relating to the parties' dispositive motions, and a hearing before the Court for oral argument on the parties' dispositive motions was set for December 16, 2019, at 1:30 p.m.

On October 24, 2019, Plaintiff Senators James Settelmeyer, Joe Hardy, Heidi Gansert, Scott Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard (collectively "Plaintiff Senators") filed a Motion to Disqualify LCB Legal as counsel for Defendants Senator Cannizzaro and Secretary Clift. On October 29, 2019, the Court approved a Stipulation and Order Regarding Stay of Proceedings Pending Resolution of Plaintiff Senators' Motion to Disqualify Counsel for Defendants Senator Cannizzaro and Secretary Clift. ("October 29th Stipulation and Order"). In the October 29th Stipulation and Order: (1) all briefing for the parties' dispositive motions was stayed pending entry of a written order by the Court resolving the Motion to Disqualify; (2) the December 16, 2019, hearing before the Court for oral argument on the parties' dispositive motions was vacated; (3) specific dates were set for the completion of briefing relating to the Motion to Disqualify; and (4) a hearing before the Court for oral argument on the Motion to Disqualify was set for November 19, 2019, at 3:30 p.m. Additionally, the October 29th Stipulation and Order provides that:

> 7. As soon as practicable after the Court enters a written order resolving the Motion to Disqualify, the parties shall confer, in good faith, to develop and submit for consideration by the Court an appropriate stipulation and order regarding briefing and hearing for oral argument of the parties' dispositive motions and any other related procedural matters in the case.

Thus, even though certain parties have filed dispositive motions, those proceedings are now stayed under the October 29th Stipulation and Order. As a result, the parties did not complete briefing on the dispositive motions, and any further proceedings relating to the dispositive motions will not resume until: (1) the Court enters a written order resolving the pending Motion to Disqualify; and (2) the parties thereafter develop and submit for consideration by the Court an appropriate stipulation and order relating to the dispositive motions. Therefore, the Legislature is timely filing its Motion to Intervene while the proceedings relating to the parties' dispositive motions are stayed.

Because Plaintiffs are challenging the constitutional authority of the Legislature to enact SB 542 and SB 551, the Legislature qualifies for intervention as of right under NRCP 24(a)(1) and NRS 218F.720.[2] The statute confers an unconditional right to intervene when a party in any action or proceeding alleges that the Legislature has violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional. When a party makes such a constitutional challenge, the statute provides that:

> the Legislature has an *unconditional right and standing to intervene* in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party.

NRS 218F.720(3) (emphasis added). Therefore, under NRCP 24(a)(1) and NRS 218F.720, the Legislature has an unconditional right and standing to intervene in this action.

In addition, the Legislature qualifies for intervention as of right under NRCP 24(a)(2) because the Legislature has substantial interests in the subject matter of this case which may be impaired if the Legislature is not permitted to intervene and which may not be adequately represented by existing parties. The Legislature also qualifies for permissive intervention under NRCP 24(b) because Plaintiffs'

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[2] NRCP 24 was recently amended by the Nevada Supreme Court, effective March 1, 2019. NRCP 24, as amended, and NRS 218F.720 are reproduced in the Addendum following the Memorandum of Points and Authorities.

claims are based on a state constitutional provision that governs legislative procedure and the administration of the Legislature's core constitutional function of enacting laws.

Finally, the Legislature has acted with appropriate haste and diligence to intervene in order to protect its official interests, and the Legislature's participation will not delay the proceedings or complicate the management of the case and will not cause any prejudice to existing parties. If permitted to intervene, the Legislature would be in a position to protect its official interests by providing a more comprehensive and thorough presentation of the controlling law and a better understanding of the issues, and the Court would be ensuring that the views of the Legislature are fairly and adequately represented. Therefore, because the Legislature has acted with appropriate haste and diligence to intervene in this case in order to protect its official interests, the Legislature's Motion to Intervene as Defendant should be granted.

II. Argument.

A. Intervention as of right.

Under NRCP 24(a), a movant qualifies for intervention as of right under two circumstances. Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1235, 147 P.3d 1120, 1124-25 (2006). First, under subsection (a)(1), on timely motion, the court must permit a movant to intervene who "is given an unconditional right to intervene by a state or federal statute." NRCP 24(a)(1). Second, under subsection (a)(2), on timely motion, the court must permit a movant to intervene who:

> claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

NRCP 24(a)(2). In this case, the Legislature qualifies for intervention as of right under both subsections of NRCP 24(a).

(1) The Legislature qualifies for intervention as of right under NRCP 24(a)(1).

To qualify for intervention as of right under NRCP 24(a)(1), the movant must prove that: (1) a statute confers an unconditional right to intervene; and (2) the motion to intervene is timely. See EEOC v. GMRI, Inc., 221 F.R.D. 562, 563 (D. Kan. 2004); EEOC v. Taylor Elec. Co., 155 F.R.D. 180, 182 (N.D. Ill. 1994).[3]

In determining whether a statute confers an unconditional right to intervene for purposes of NRCP 24(a)(1), the issue before the court is one of statutory construction, and the court must limit its inquiry to the terms of the statute and must not consider any of the factors listed in NRCP 24(a)(2). See Bhd. of R.R. Trainmen v. Balt. & Ohio R.R., 331 U.S. 519, 525-31 (1947); Ruiz v. Estelle, 161 F.3d 814, 828 (5th Cir. 1998). Consequently, the movant is not required to prove that existing parties may be inadequately representing its interests or that its interests may be impaired if it is not allowed to intervene. Ruiz, 161 F.3d at 828. Instead, the movant is required to prove only that it qualifies for intervention under the terms of the statute. Bhd. of R.R. Trainmen, 331 U.S. at 531. Upon meeting the statutory requirements for intervention, "there is no room for the operation of a court's discretion" and "the right to intervene is absolute and unconditional." Id.; see also United States v. Presidio Invs., Ltd., 4 F.3d 805, 808 n.1 (9th Cir. 1993).

Under NRS 218F.720, the Legislature may elect to intervene in any action or proceeding when a party alleges that the Legislature, by its actions or failure to act, has violated the Nevada Constitution or when a party contests or raises as an issue that any law is invalid, unenforceable or unconstitutional. To intervene in the action or proceeding, the Legislature must file "a motion or request to intervene in the

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[3] When interpreting the provisions of NRCP 24 regarding intervention, the Nevada Supreme Court looks to federal cases interpreting the analogous provisions of the Federal Rules of Civil Procedure. Am. Home Assurance, 122 Nev. at 1238-39, 147 P.3d at 1126-27; Lawler v. Ginochio, 94 Nev. 623, 626, 584 P.2d 667, 668-69 (1978). Thus, in determining whether intervention is appropriate under NRCP 24, such federal cases "are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

form required by the rules, laws or regulations applicable to the action or proceeding." NRS 218F.720(2). If the Legislature files such a motion or request to intervene:

> the Legislature has an *unconditional right and standing to intervene* in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party.

NRS 218F.720(3) (emphasis added).

In this case, Plaintiffs allege that the Legislature violated the Nevada Constitution by enacting SB 542 and SB 551 without complying with the two-thirds requirement in Article 4, Section 18(2), and Plaintiffs are asking for an order declaring that SB 542 and SB 551 are invalid, unenforceable and unconstitutional. Thus, Plaintiffs are clearly alleging that the Legislature violated the Nevada Constitution when it enacted SB 542 and SB 551, and Plaintiffs are clearly alleging that the legislation is invalid, unenforceable and unconstitutional. Given these allegations, the Legislature has an unconditional right to intervene under NRS 218F.720. See People's Legislature v. Miller, No. 2:12-cv-00272-MMD-VCF, 2012 WL 3536767, at *5 (D. Nev. Aug. 15, 2012) (holding that because the plaintiff in the case was challenging the constitutionality of several statutes enacted by the Legislature, "NRS 218F.720 therefore grants the Legislature an unconditional right to intervene in this proceeding.").

Accordingly, because NRS 218F.720 confers an unconditional right to intervene, the Legislature's Motion to Intervene must be granted so long as the motion is timely. The timeliness of a motion to intervene is a determination that lies within the discretion of the district court. Lawler, 94 Nev. at 626, 584 P.2d at 668; Cleland v. Dist. Ct., 92 Nev. 454, 456, 552 P.2d 488 (1976). In determining whether a motion to intervene is timely, the court must consider the age of the lawsuit, the length of the movant's delay in seeking intervention after learning of the need to intervene, and the extent of any prejudice to the rights of existing parties resulting from the delay. Am. Home Assurance, 122 Nev. at 1244, 147 P.3d at 1130; Dangberg Holdings Nev. v. Douglas County, 115 Nev. 129, 141, 978 P.2d 311, 318

(1999). If the movant's intervention would cause prejudice to the rights of existing parties, the court must weigh that prejudice against any prejudice resulting to the movant if the motion to intervene is denied. Am. Home Assurance, 122 Nev. at 1244, 147 P.3d at 1130.

In this case, Plaintiffs filed their First Amended Complaint on July 30, 2019. Thereafter, on September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First Amended Complaint, and Defendants Senator Cannizzaro and Secretary Clift filed an Answer to Plaintiffs' First Amended Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

Even though certain parties have filed dispositive motions, those proceedings are now stayed under the October 29th Stipulation and Order. As a result, the parties did not complete briefing on the dispositive motions, and any further proceedings relating to the dispositive motions will not resume until: (1) the Court enters a written order resolving the pending Motion to Disqualify; and (2) the parties thereafter develop and submit for consideration by the Court an appropriate stipulation and order relating to the dispositive motions. Therefore, the Legislature is timely filing its Motion to Intervene while the proceedings relating to the parties' dispositive motions are stayed. Because those proceedings are stayed, the Legislature has acted with appropriate haste and diligence to intervene, and the Legislature's intervention will not delay the proceedings, complicate management of the case or cause any prejudice to existing parties. Consequently, the Legislature's Motion to Intervene is timely. See EEOC v. Taylor Elec. Co., 155 F.R.D. 180, 182 (N.D. Ill. 1994) (finding that a motion to intervene filed four months after the plaintiff commenced the action was timely where no discovery had been conducted in the case).

In sum, because the Legislature has an unconditional right to intervene under NRS 218F.720 and because the Legislature's Motion to Intervene is timely, the Legislature meets the standards for intervention as of right under NRCP 24(a)(1). Therefore, the Legislature's Motion to Intervene should

be granted.

(2) The Legislature qualifies for intervention as of right under NRCP 24(a)(2).

As a general rule, courts give NRCP 24(a)(2) a broad and liberal construction in favor of intervention as of right. State Indus. Ins. Sys. v. Dist. Ct., 111 Nev. 28, 32, 888 P.2d 911, 913 (1995) ("Intervention of right should be broadly construed because it protects precious judicial resources."), *overruled in part on other grounds by* Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 147 P.3d 1120 (2006); Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003) ("Rule 24 traditionally receives liberal construction in favor of applicants for intervention."); Scotts Valley Band of Pomo Indians v. United States, 921 F.2d 924, 926 (9th Cir. 1990) ("Rule 24(a) is construed broadly, in favor of the applicants for intervention.").

To qualify for intervention as of right under NRCP 24(a)(2), the movant must establish that: (1) the movant has sufficient interests in the subject matter of the litigation; (2) the movant's ability to protect those interests could be impaired if the movant is not permitted to intervene; (3) the movant's interests may not be adequately represented by the existing parties; and (4) the motion to intervene is timely. Am. Home Assurance, 122 Nev. at 1238, 147 P.3d at 1126. The determination of whether the movant has met the four requirements is within the discretion of the district court. Id.

As discussed previously, the Legislature's Motion to Intervene is timely. Because the Legislature also meets the remaining requirements for intervention as of right under NRCP 24(a)(2), the Legislature's Motion to Intervene should be granted.

(a) The Legislature has significantly protectable interests in the subject matter of this action which will be impaired if Plaintiffs succeed on their claims.

For purposes of intervention as of right under NRCP 24(a)(2), the movant must have significantly protectable interests in the subject matter of the action, and the movant must be situated such that the disposition of the action may impair or impede the movant's ability to protect those interests. PEST

Comm. v. Miller, 648 F. Supp. 2d 1202, 1211-12 (D. Nev. 2009). The movant satisfies these requirements if: (1) the movant asserts any interests that are protected under federal or state law; and (2) there is a relationship between the movant's protected interests and the plaintiffs' claims such that the movant will suffer a practical impairment of its interests if the plaintiffs succeed on their claims. Id. at 1212. When the plaintiffs seek declaratory relief that statutes are unconstitutional, the movant is entitled to intervene to defend the validity of the statutes if the movant's protected interests would be impaired, as a practical matter, by a declaration that the statutes are unconstitutional. Cal. ex rel. Lockyer v. United States, 450 F.3d 436, 441-45 (9th Cir. 2006).

In the context of defending the validity of state statutes, courts have recognized that a state legislature may have an independent "legal interest in defending the constitutionality of [its] laws" that is separate and distinct from the interests of state officials who are charged with administering those laws. Ne. Ohio Coal. for Homeless v. Blackwell, 467 F.3d 999, 1007 (6th Cir. 2006). For example, in a case challenging the constitutionality of Ohio's election laws where Ohio's Secretary of State was named as the defendant, the Sixth Circuit allowed the State of Ohio and its General Assembly to intervene in the case because "the Secretary's primary interest is in ensuring the smooth administration of the election, while the State and General Assembly have an independent interest in defending the validity of Ohio laws and ensuring that those laws are enforced." Id. at 1008.

In this case, the Legislature has an independent legal interest in defending the constitutionality of SB 542 and SB 551 that is separate and distinct from the interests of the Executive Defendants who are charged with administering the legislation, and the Legislature's interests will be impaired if Plaintiffs succeed on their claims. Plaintiffs are challenging the process followed by the Legislature in enacting legislation in conformity with the two-thirds requirement in Article 4, Section 18(2). As a consequence, this case strikes at the heart of the most vital component of the legislative function—the constitutional process of enacting laws. Because the Legislature has a right to defend that process, the Legislature has

substantial interests in the subject matter of this action which will be impaired if the Legislature is not permitted to intervene.

Moreover, the provisions of the Nevada Constitution governing legislative procedure must be interpreted with respect for the construction placed on those provisions by the Legislature. State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05, 64 P. 466, 468-69 (1901); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84, 32 P. 190, 190-92 (1893); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46, 1 P. 186, 187-92 (1883). This is particularly true when a constitutional provision involves the passage of legislation. Id. Thus, when construing such a constitutional provision, "although the action of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of a constitutional provision involving legislative procedure is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 539-40, 26 P.3d 753, 758-59 (2001). Under such circumstances, the Legislature may rely on an opinion of the Legislative Counsel which interprets the constitutional provision, and "the Legislature is entitled to deference in its counseled selection of this interpretation." 117 Nev. at 540, 26 P.3d at 758.

In this case, the Legislature relied on an opinion of the Legislative Counsel which interpreted the two-thirds requirement in Article 4, Section 18(2) and which concluded that the two-thirds requirement does not apply to a bill—like SB 542 or SB 551—that extends until a later date, or revises or eliminates, a future decrease in or future expiration of existing state taxes or fees when that future decrease or expiration is not legally operative and binding yet. Because the Legislature has a right to defend its construction of the two-thirds requirement in Article 4, Section 18(2), including its reliance on the

opinion of the Legislative Counsel interpreting that constitutional provision, the Legislature has significantly protectable interests in the subject matter of this action which will be impaired if Plaintiffs succeed on their claims.

(b) The Legislature's interests are not adequately represented by existing parties.

When the movant has sufficient interests to support intervention as of right under NRCP 24(a)(2), the movant must be permitted to intervene unless the movant's interests are adequately represented by existing parties. Am. Home Assurance, 122 Nev. at 1241, 147 P.3d at 1128; Lundberg v. Koontz, 82 Nev. 360, 362-63, 418 P.2d 808, 809 (1966). The movant must satisfy only a minimal burden to demonstrate that existing parties do not adequately represent its interests. Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 823 (9th Cir. 2001). The movant need only show that representation by existing parties may be inadequate, not that it will be inadequate. Id. Courts typically consider three factors when determining whether existing parties adequately represent the interests of the movant: (1) whether the interests of existing parties are such that they will undoubtedly make all of the movant's arguments; (2) whether existing parties are capable and willing to make such arguments; and (3) whether the movant would offer any necessary elements to the proceeding that existing parties would neglect. PEST Comm., 648 F. Supp. 2d at 1212.

As a general rule, there is a presumption that a state official adequately represents the interests of **private parties** in defending the constitutionality of state statutes because the state official is acting in a representative capacity on behalf of the citizens of the state and because the state official and the private parties share the same ultimate objective, which is to uphold the statutes against constitutional attack. PEST Comm., 648 F. Supp. 2d at 1212-13; Hairr v. Dist. Ct., 132 Nev. 180, 184-86, 368 P.3d 1198, 1201-02 (2016). This presumption, however, does not apply here because the Legislature is a governmental entity, not a private party, and the Legislature has an independent legal interest in defending the constitutionality of SB 542 and SB 551 that is separate and distinct from the interests of

the Executive Defendants who are charged with administering the legislation. See Ne. Ohio Coal., 467 F.3d at 1008. In particular, because this case strikes at the heart of the most vital component of the legislative function—the constitutional process of enacting laws—the Executive Defendants who are charged with administering SB 542 and SB 551 are not in a position to adequately represent the official interests of the Legislature and defend the exercise of its core constitutional function of enacting laws. Under such circumstances, the Legislature's interests are not adequately represented by existing parties, and the Legislature is entitled to intervention as of right under NRCP 24(a)(2).[4]

B. Permissive intervention.

As recently amended by the Nevada Supreme Court, effective March 1, 2019, the provisions of NRCP 24(b) were revised to conform to the federal rule. NRCP 24 Advisory Committee Note—2019 Amendment. The provisions of NRCP 24(b) provide that permissive intervention may be granted under the following circumstances:

> (b) **Permissive Intervention.**
> (1) **In General.** On timely motion, the court may permit anyone to intervene who:
> (A) is given a conditional right to intervene by a state or federal statute; or
> (B) has a claim or defense that shares with the main action a common question of law or fact.
> (2) **By a Government Officer or Agency.** On timely motion, the court may permit a state or federal governmental officer or agency to intervene if a party's claim or defense is based on:
> (A) a statute or executive order administered by the officer or agency; or
> (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

[4] Although Senator Cannizzaro and Secretary Clift are named as Defendants, they are not necessary or proper parties to this litigation. First, they are not necessary parties because they are not empowered by state law with any statewide administrative functions under the challenged statutes in SB 542 and SB 551. Second, they are not proper parties because, as legislative branch defendants sued in their official capacity, they are entitled to legislative immunity from declaratory and injunctive relief for "any actions, in any form, taken or performed within the sphere of legitimate legislative activity." NRS 41.071; Supreme Ct. of Va. v. Consumers Union, 446 U.S. 719, 731-34 (1980); Chappell v. Robbins, 73 F.3d 918, 920-22 (9th Cir. 1996); Scott v. Taylor, 405 F.3d 1251, 1253-56 (11th Cir. 2005).

Permissive intervention lies within the discretion of the district court. Hairr, 132 Nev. at 187, 368 P.3d at 1202; 7C Wright & Miller, Federal Practice & Procedure-Civil § 1913 (3d ed. & Westlaw 2019) ("If there is no right to intervene under Rule 24(a), it is wholly discretionary with the court whether to allow intervention under Rule 24(b)."). However, "[a] finding by the court that the presence of the intervenor will not prejudice the original parties serves to encourage the court to exercise its discretion to allow intervention." Federal Practice & Procedure-Civil, supra, § 1913.

Furthermore, when the intervenor is a governmental agency, permissive intervention ordinarily should be granted to the agency where the legal issues in the case may have a substantial impact on "the maintenance of its statutory authority and the performance of its public duties." SEC v. U.S. Realty & Impr. Co., 310 U.S. 434, 460 (1940). Thus, where the governmental agency's interest in the case "is a public one" and it intends to raise claims or defenses concerning questions of law involved in the case, permissive intervention should be granted, especially when the agency's intervention "might be helpful in [a] difficult and delicate area." United States v. Local 638, Enter. Ass'n of Pipefitters, 347 F. Supp. 164, 166 (S.D.N.Y. 1972) (quoting SEC v. U.S. Realty & Impr. Co., 310 U.S. 434, 460 (1940)).

In this case, even assuming the Legislature does not qualify for intervention as of right under NRCP 24(a)(1) and NRCP 24(a)(2), the Court should exercise its discretion and grant the Legislature permissive intervention under NRCP 24(b). This case involves extremely important questions of constitutional law and legislative power whose resolution will have a substantial impact on legislative procedure and the administration of the Legislature's core constitutional function of enacting laws under the two-thirds requirement in Article 4, Section 18(2). By permitting the Legislature to intervene, the Court would be facilitating a more comprehensive and thorough presentation of the controlling law and a better understanding of the issues, and the Court would be ensuring that the views of the Legislature are fairly and adequately represented and are not prejudiced by this case. Moreover, because the proceedings relating to the parties' dispositive motions are stayed, the Legislature has acted with

appropriate haste and diligence to intervene, and the Legislature's intervention will not delay the proceedings, complicate management of the case or cause any prejudice to existing parties. Therefore, even assuming the Legislature does not qualify for intervention as of right under NRCP 24(a)(1) and NRCP 24(a)(2), the Court should exercise its discretion and grant the Legislature permissive intervention under NRCP 24(b).

CONCLUSION

Based upon the foregoing, the Legislature respectfully requests that the Court enter an order which grants the Legislature's Motion to Intervene as Defendant. Pursuant to FJDCR 15(7), a proposed order is attached as Exhibit 2.

DATED: This 6th day of November, 2019.

Respectfully submitted,

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ADDENDUM

NRCP 24. Intervention

(a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a state or federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) **Permissive Intervention.**

(1) **In General.** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a state or federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Government Officer or Agency.** On timely motion, the court may permit a state or federal governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) **Notice and Pleading Required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

[Amended; effective March 1, 2019.]

NRS 218F.720 Authority to provide legal representation in actions and proceedings; exemption from fees, costs and expenses; standards and procedures for exercising unconditional right and standing to intervene; payment of costs and expenses of representation.

1. When deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding, the Legislative Commission, or the Chair of the Legislative Commission in cases where action is required before a meeting of the Legislative Commission is scheduled to be held, may direct the Legislative Counsel and the Legal Division to appear in, commence, prosecute, defend or intervene in any action or proceeding before any court, agency or officer of the United States, this State or any other jurisdiction, or any political subdivision thereof. In any such action or proceeding, the Legislature may not be assessed or held liable for:

(a) Any filing or other court or agency fees; or

(b) The attorney's fees or any other fees, costs or expenses of any other parties.

2. If a party to any action or proceeding before any court, agency or officer:

(a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or

(b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid,

unenforceable or unconstitutional,

↪ the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading, brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.

3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to intervene in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

4. The provisions of this section do not make the Legislature a necessary or indispensable party to any action or proceeding unless the Legislature intervenes in the action or proceeding, and no party to any action or proceeding may name the Legislature as a party or move to join the Legislature as a party based on the provisions of this section.

5. The Legislative Commission may authorize payment of the expenses and costs incurred pursuant to this section from the Legislative Fund.

6. As used in this section:

(a) "Action or proceeding" means any action, suit, matter, cause, hearing, appeal or proceeding.

(b) "Agency" means any agency, office, department, division, bureau, unit, board, commission, authority, institution, committee, subcommittee or other similar body or entity, including, without limitation, any body or entity created by an interstate, cooperative, joint or interlocal agreement or compact.

(c) "Legislature" means:

(1) The Legislature or either House; or

(2) Any current or former agency, member, officer or employee of the Legislature, the Legislative Counsel Bureau or the Legislative Department.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 6th day of November, 2019, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic mail, I served a true and correct copy of the Nevada Legislature's Motion to Intervene as Defendant, by electronic mail, directed to the following:

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An Employee of the Legislative Counsel Bureau

INDEX OF EXHIBITS

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Exhibit 1

Exhibit 1

BRENDA J. ERDOES, Legislative Counsel
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; et al.,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.

Case No. 19 OC 00127 1B
Dept. No. I

NEVADA LEGISLATURE'S PROPOSED ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

PROPOSED ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Proposed Intervenor-Defendant Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby submits pursuant to NRCP 24(c) the Legislature's Proposed Answer to Plaintiffs' First Amended Complaint, which was filed on July 30, 2019.

ADMISSIONS AND DENIALS OF THE ALLEGATIONS

PARTIES, JURISDICTION AND VENUE

¶ 1. The Legislature admits that Plaintiffs, Senators James Settelmeyer, Joe Hardy, Heidi Gansert, Scott Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard, are duly elected members of the Legislature and were members of the Senate during the 80th (2019) Session of the Legislature. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 1 of the First Amended Complaint and denies them.

¶ 2. The Legislature admits the allegations in paragraph 2 of the First Amended Complaint.

¶ 3. The Legislature admits that each of the Plaintiff Senators is a member of the Nevada Senate Republican Caucus. The Legislature denies all other allegations in paragraph 3 of the First Amended Complaint.

¶ 4. The Legislature denies the allegations in paragraph 4 of the First Amended Complaint.

¶ 5. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 of the First Amended Complaint and denies them.

¶ 6. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the First Amended Complaint and denies them.

¶ 7. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the First Amended Complaint and denies them.

¶ 8. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 of the First Amended Complaint and denies them.

¶ 9. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the First Amended Complaint and denies them.

¶ 10. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10 of the First Amended Complaint and denies them.

¶ 11. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11 of the First Amended Complaint and denies them.

¶ 12. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12 of the First Amended Complaint and denies them.

¶ 13. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the First Amended Complaint and denies them.

¶ 14. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the First Amended Complaint and denies them.

¶ 15. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15 of the First Amended Complaint and denies them.

¶ 16. The Legislature admits that Defendant Nicole Cannizzaro is named in her official capacity, is a duly elected member of the Legislature, was a member of the Senate during the 80th (2019) Session of the Legislature, served as the Senate Majority Leader during the 80th (2019) Session of the Legislature and was the sponsor of SB 551. The Legislature denies all other allegations in paragraph 16 of the First Amended Complaint.

¶ 17. The Legislature admits that Defendant Kate Marshall is named in her official capacity, is the duly elected Lieutenant Governor of the State of Nevada and served as President of the Senate during the 80th (2019) Session of the Legislature; and that her official duties include signing bills passed

by the Legislature. The Legislature denies all other allegations in paragraph 17 of the First Amended Complaint.

¶ 18. The Legislature admits that Defendant Claire Clift is named in her official capacity and served as the Secretary of the Senate during the 80th (2019) Session of the Legislature; and that her official duties include transmitting bills passed by the Legislature to the Legislative Counsel for enrollment. The Legislature denies all other allegations in paragraph 18 of the First Amended Complaint.

¶ 19. The Legislature admits that Defendant Steve Sisolak is named in his official capacity and is the duly elected Governor of the State of Nevada; and that his official duties include approving and signing bills passed by the Legislature and seeing that the laws of the State of Nevada are faithfully executed. The Legislature denies all other allegations in paragraph 19 of the First Amended Complaint.

¶ 20. The Legislature admits the allegations in paragraph 20 of the First Amended Complaint.

¶ 21. The Legislature admits the allegations in paragraph 21 of the First Amended Complaint.

¶ 22. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the First Amended Complaint and denies them.

¶ 23. The Legislature denies the allegations in paragraph 23 of the First Amended Complaint.

¶ 24. The Legislature admits that at the general elections in 1994 and 1996, Nevada's voters approved constitutional amendments that added the two-thirds requirement to Article 4, Section 18 of the Nevada Constitution; and that the constitutional amendments were proposed by a ballot initiative. The Legislature denies all other allegations in paragraph 24 of the First Amended Complaint.

¶ 25. The Legislature denies the allegations in paragraph 25 of the First Amended Complaint.

¶ 26. The Legislature denies the allegations in paragraph 26 of the First Amended Complaint.

¶ 27. The Legislature denies the allegations in paragraph 27 of the First Amended Complaint.

¶ 28. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift are residents of the State of the Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 28 of the First Amended Complaint and denies them.

¶ 29. The Legislature admits that SB 542 and SB 551 were introduced, debated, voted on, signed and enrolled in Carson City, Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 29 of the First Amended Complaint and denies them.

¶ 30. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift have offices in Carson City, Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 30 of the First Amended Complaint and denies them.

¶ 31. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift are public officers that keep offices in Carson City, Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 31 of the First Amended Complaint and denies them.

GENERAL ALLEGATIONS

¶ 32. The Legislature admits and denies the allegations incorporated by reference in paragraph 32 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 31, inclusive, of this Answer.

¶ 33. The Legislature admits the allegations in paragraph 33 of the First Amended Complaint only to the extent the allegations accurately state the text of Article 4, Section 18(2) of the Nevada Constitution. The Legislature denies all other allegations in paragraph 33 of the First Amended Complaint.

¶ 34. The Legislature admits the allegations in paragraph 34 of the First Amended Complaint.

¶ 35. The Legislature admits that during the 80th (2019) Session of the Legislature, if a bill required an affirmative vote of not fewer than two-thirds of all the members elected to the Senate in order to be passed by the Senate, the vote of at least fourteen Senators was required to pass the bill. The Legislature denies all other allegations in paragraph 35 of the First Amended Complaint.

¶ 36. The Legislature admits the allegations in paragraph 36 of the First Amended Complaint.

¶ 37. The Legislature admits the allegations in paragraph 37 of the First Amended Complaint.

¶ 38. The Legislature admits the allegations in paragraph 38 of the First Amended Complaint.

¶ 39. The Legislature admits that a constitutional majority of all the members elected to the Senate voted to pass SB 542. The Legislature denies all other allegations in paragraph 39 of the First Amended Complaint.

¶ 40. The Legislature admits the allegations in paragraph 40 of the First Amended Complaint.

¶ 41. The Legislature admits the allegations in paragraph 41 of the First Amended Complaint only to the extent the allegations accurately state the text of NRS 481.064. The Legislature denies all other allegations in paragraph 41 of the First Amended Complaint.

¶ 42. The Legislature denies the allegations in paragraph 42 of the First Amended Complaint.

¶ 43. The Legislature admits that sections 2, 3, 37 and 39 of SB 551: (1) eliminated a rate adjustment procedure used by the Department of Taxation to determine whether the rates of certain payroll taxes should be reduced in future fiscal years under certain circumstances; and (2) did not change the existing legally operative rates of those payroll taxes but maintained and continued the existing legally operative rates of those payroll taxes in future fiscal years. The Legislature denies all other allegations in paragraph 43 of the First Amended Complaint.

¶ 44. The Legislature admits the allegations in paragraph 44 of the First Amended Complaint.

¶ 45. The Legislature admits the allegations in paragraph 45 of the First Amended Complaint.

¶ 46. The Legislature admits that a constitutional majority of all the members elected to the Senate voted to pass SB 551. The Legislature denies all other allegations in paragraph 46 of the First Amended Complaint.

¶ 47. The Legislature admits that sections 2 and 3 of SB 551 eliminated certain provisions of NRS 363A.130 and 363B.110; and that section 39 of SB 551 repealed the provisions of NRS 360.203. The Legislature denies all other allegations in paragraph 47 of the First Amended Complaint.

¶ 48. The Legislature admits that, before the provisions of NRS 360.203 were repealed by section 39 of SB 551, NRS 360.203 included a rate adjustment procedure used by the Department of Taxation to determine whether the rates of certain payroll taxes should be reduced in future fiscal years under certain circumstances. The Legislature denies all other allegations in paragraph 48 of the First Amended Complaint.

¶ 49. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 49 of the First Amended Complaint and denies them.

¶ 50. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 50 of the First Amended Complaint and denies them.

¶ 51. The Legislature admits that section 39 of SB 551 repealed the provisions of NRS 360.203. The Legislature denies all other allegations in paragraph 51 of the First Amended Complaint.

¶ 52. The Legislature admits the allegations in paragraph 52 of the First Amended Complaint.

¶ 53. The Legislature denies the allegations in paragraph 53 of the First Amended Complaint.

¶ 54. The Legislature denies the allegations in paragraph 54 of the First Amended Complaint.

¶ 55. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 55 of the First Amended Complaint and denies them.

¶ 56. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56 of the First Amended Complaint and denies them.

¶ 57. The Legislature admits the allegations in paragraph 57 of the First Amended Complaint.

¶ 58. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 58 of the First Amended Complaint and denies them.

¶ 59. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 59 of the First Amended Complaint and denies them.

¶ 60. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 60 of the First Amended Complaint and denies them.

¶ 61. The Legislature denies the allegations in paragraph 61 of the First Amended Complaint.

FIRST CLAIM FOR RELIEF

¶ 62. The Legislature admits and denies the allegations incorporated by reference in paragraph 62 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 61, inclusive, of this Answer.

¶ 63. The Legislature admits the allegations in paragraph 63 of the First Amended Complaint only to the extent the allegations accurately state the text of Article 4, Section 18(2) of the Nevada Constitution. The Legislature denies all other allegations in paragraph 63 of the First Amended Complaint.

¶ 64. The Legislature denies the allegations in paragraph 64 of the First Amended Complaint.

¶ 65. The Legislature denies the allegations in paragraph 65 of the First Amended Complaint.

¶ 66. The Legislature denies the allegations in paragraph 66 of the First Amended Complaint.

¶ 67. The Legislature denies the allegations in paragraph 67 of the First Amended Complaint.

SECOND CLAIM FOR RELIEF

¶ 68. The Legislature admits and denies the allegations incorporated by reference in paragraph 68 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 67, inclusive, of this Answer.

¶ 69. The Legislature denies the allegations in paragraph 69 of the First Amended Complaint.

¶ 70. The Legislature denies the allegations in paragraph 70 of the First Amended Complaint.

¶ 71. The Legislature denies the allegations in paragraph 71 of the First Amended Complaint.

THIRD CLAIM FOR RELIEF

¶ 72. The Legislature admits and denies the allegations incorporated by reference in paragraph 72 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 71, inclusive, of this Answer.

¶ 73. The Legislature denies the allegations in paragraph 73 of the First Amended Complaint.

¶ 74. The Legislature denies the allegations in paragraph 74 of the First Amended Complaint.

¶ 75. The Legislature denies the allegations in paragraph 75 of the First Amended Complaint.

¶ 76. The Legislature denies the allegations in paragraph 76 of the First Amended Complaint.

¶ 77. The Legislature denies the allegations in paragraph 77 of the First Amended Complaint.

¶ 78. The Legislature denies the allegations in paragraph 78 of the First Amended Complaint.

¶ 79. The Legislature denies the allegations in paragraph 79 of the First Amended Complaint.

FOURTH CLAIM FOR RELIEF

¶ 80. The Legislature admits and denies the allegations incorporated by reference in paragraph 80 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 79, inclusive, of this Answer.

¶ 81. The Legislature denies the allegations in paragraph 81 of the First Amended Complaint.

¶ 82. The Legislature denies the allegations in paragraph 82 of the First Amended Complaint.

¶ 83. The Legislature denies the allegations in paragraph 83 of the First Amended Complaint.

¶ 84. The Legislature denies the allegations in paragraph 84 of the First Amended Complaint.

¶ 85. The Legislature denies the allegations in paragraph 85 of the First Amended Complaint.

¶ 86. The Legislature denies the allegations in paragraph 86 of the First Amended Complaint.

¶ 87. The Legislature denies the allegations in paragraph 87 of the First Amended Complaint.

AFFIRMATIVE DEFENSES

1. The Legislature pleads as an affirmative defense that the First Amended Complaint fails to state a claim upon which relief can be granted.

2. The Legislature pleads as affirmative defenses that Plaintiffs lack capacity to sue and standing; that Plaintiffs have failed to exhaust administrative remedies; that Plaintiffs' claims do not present a justiciable case or controversy; that Plaintiffs' claims are not ripe for adjudication; and that the Court lacks jurisdiction of the subject matter.

3. The Legislature pleads as an affirmative defense that Plaintiffs' claims are barred by the doctrine of immunity, including, without limitation, sovereign immunity, official immunity, legislative immunity, discretionary-function immunity, absolute immunity and qualified immunity.

4. The Legislature pleads as affirmative defenses that Plaintiffs' claims are barred by laches, estoppel and waiver.

5. The Legislature pleads as an affirmative defense that, pursuant to NRS 218F.720, the Legislature may not be assessed or held liable for any filing or other court fees or the attorney's fees or other fees, costs or expenses of any other parties.

6. The Legislature reserves its right to plead, raise or assert any additional affirmative defenses which are not presently known to the Legislature, following its reasonable inquiry under the circumstances, but which may become known to the Legislature as a result of discovery, further pleadings or the acquisition of information from any other source during the course of this litigation.

PRAYER FOR RELIEF

The Legislature prays for the following relief:

1. That the Court enter judgment in favor of Defendants and against Plaintiffs on all claims and prayers for relief directly or indirectly pled in the First Amended Complaint;

2. That the Court enter judgment in favor of Defendants and against Plaintiffs for Defendants' costs and attorney's fees as determined by law; and

3. That the Court grant such other relief in favor of Defendants and against Plaintiffs as the Court may deem just and proper.

AFFIRMATION

The undersigned hereby affirm that this document does not contain "personal information about any person" as defined in NRS 239B.030 and 603A.040.

DATED: This 6th day of November, 2019.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: _____
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Exhibit 2

Exhibit 2

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Attorneys for the Legislature of the State of Nevada

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; et al.,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.

Case No. 19 OC 00127 1B
Dept. No. I

ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT

ORDER

This matter is before the Court on the Nevada Legislature's Motion to Intervene as Defendant, which was filed on November 6, 2019. The Court, having read the papers and pleadings on file herein, finds and orders as follows:

1. Plaintiffs filed their original Complaint on July 19, 2019, and Plaintiffs filed their First Amended Complaint on July 30, 2019. In their First Amended Complaint, Plaintiffs are challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the Nevada Legislature. Plaintiffs allege that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that, as a result, each bill is unconstitutional because the Senate passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of each bill.

2. On November 6, 2019, the Nevada Legislature filed a Motion to Intervene as Defendant to defend the constitutionality of SB 542 and SB 551. Among other grounds, the Legislature asserts that it qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720 because the statute confers an unconditional right to intervene when a party alleges that the Legislature has violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional.

3. NRCP 24(a)(1) provides for intervention of right and states that:

> (a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
> (1) is given an unconditional right to intervene by a state or federal statute; or
> * * *

4. NRS 218F.720 provides that when a party alleges that the Legislature has violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional, "the Legislature may

elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding." NRS 218F.720(2). The statute further provides that:

> 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to [NRS 218F.720(2)], the Legislature has *an unconditional right and standing to intervene* in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

NRS 218F.720(3) (emphasis added).

5. The Court concludes that: (1) the Legislature qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720; (2) the Legislature's Motion to Intervene is timely; and (3) the Legislature's intervention will not delay the proceedings, complicate management of the case or cause any prejudice to existing parties.

IT IS HEREBY ORDERED THAT the Legislature's Motion to Intervene as Defendant is **GRANTED**.

DATED: This _____ day of _____, 2019.

_____
DISTRICT COURT JUDGE

Submitted by:

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Chief Litigation Counsel
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; GREAT BASIN ENGINEERING CONTRACTORS, LLC, a Nevada limited liability company; GOODFELLOW CORPORATION, a Utah corporation qualified to do business in the State of Nevada; KIMMIE CANDY COMPANY, a Nevada corporation; KEYSTONE CORP., a Nevada nonprofit corporation; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a California nonprofit corporation qualified to do business in the State of Nevada; NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, a Nevada nonprofit corporation; NEVADA TRUCKING ASSOCIATION, INC., a Nevada nonprofit corporation; and RETAIL ASSOCIATION OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

///

///

Case No: **19 OC 00127 1B**

Dept. No: **I**

AFFIDAVIT OF SENATOR JAMES SETTELMEYER

STATE OF NEVADA *ex rel.* THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.

/

AFFIDAVIT OF SENATOR JAMES SETTELMEYER

STATE OF NEVADA)
: ss.
CARSON CITY)

JAMES SETTELMEYER, under penalty of perjury, does solemnly swear and affirm that the following assertions are true:

1. I am a member of the Nevada Senate representing Senate District 17. I am the current Minority Leader of the Senate. I have been a member of the Legislature since 2006 first as an Assemblyman and now a Senator. I am one of the named Plaintiffs in the above entitled action.

2. I make this affidavit in support of the Motion to Disqualify filed in this action by the Plaintiff Senators on October 24, 2019. I have personal knowledge of all matters set forth herein and I am competent to testify to the same.

3. Since 2006 when I became a member of the Legislature, LCB Legal has acted as legal counsel to all members of the Legislature. LCB Legal is consulted by members and asks that members consult it regarding legislative bills, legal opinions, member conflicts, research for constituent issues and general legal questions that arise as the member serves in the Legislature. That legal relationship continues with me as a member of the Senate and all members of the Legislature during the interim session including now in 2019 and 2020.

4. Since 2006 when I became a member of the Legislature, all extensions of taxes that were going to sunset or were to be extended required a two thirds majority of each house to pass.

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5. In January 2019, I became aware of public statements by Defendant Governor Sisolak in the media that cancellation of a proposed reduction in the payroll tax rate worth $48 million a year was not a tax increase and he was not convinced it would take a two-thirds majority to pass. *See, Nevada Independent*, January 23, 2019 and video on *Nevada Independent* website of interview with Defendant Governor Sisolak, https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion.

6. Early in the 2019 Legislative Session, then Senate Majority Leader Atkinson made the same type of statements to me as made by Governor Sisolak – a two thirds majority may not be required to cancel the proposed reduction in the payroll tax rate. Later when she became Majority Leader, Defendant Majority Leader Cannizzaro made the same type of statements to me, that is, a two thirds vote was not necessarily required to cancel the proposed reduction in the payroll tax.

7. Because of these statements by the Governor and Senate Majority Leaders, early in the 2019 Legislative Session, I asked LCB Legal to issue an opinion on the issue of whether cancellation of a proposed reduction in the payroll tax or extension of a tax rate would require a two thirds majority to pass under the Nevada Constitution. Minority Floor Leader Wheeler requested that LCB Legal issue a written opinion on the two thirds majority issue. I am informed and believe the Majority Legislative Leadership made the same request to LCB Legal.

8. On May 8, 2019 LCB Legal finally issued its Opinion addressed to Legislative Leadership. I received a copy and Minority Floor Leader Wheeler received a copy of the LCB Opinion on May 8, 2019. I am informed and believe Majority Leader Cannizzaro and Speaker Frierson also received a copy of the LCB Opinion on May 8, 2019.

9. After the LCB Opinion was issued, I had several conversations with LCB Legal about the LCB Opinion issued May 8, 2019.

10. The next day after LCB Legal issued its Opinion, I started making statements in the media that the Nevada Senate Republican Caucus would sue because LCB Legal's Opinion was contrary to the Nevada Constitution.

11. Between October 8, 2019 and October 24, 2019, several of the Plaintiff Senators had been unavailable to discuss the motion to disqualify because they were out of the country. On

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October 24, 2019 I authorized Ms. Peterson on behalf of the Plaintiff Senators to file the motion to disqualify LCB Legal as counsel for the Legislative Defendants.

12. The Legislature has the financial resources available to engage outside counsel to represent Defendants Cannizzaro and Clift in this action because of LCB Legal's conflict.

DATED this 12th day of November, 2019.

JAMES SETTELMEYER

STATE OF NEVADA)
: ss.
CARSON CITY)

On November 12, 2019, personally appeared before me, a Notary Public, JAMES SETTELMEYER, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document, and who acknowledged to me that he executed the foregoing document.

NOTARY PUBLIC

LORI I. TONNE
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 07-4074-3
MY APPT. EXPIRES JULY 24, 2023

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

_____ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

_____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]

__X__ Electronic Transmission

_____ Federal Express, UPS, or other overnight delivery

_____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

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kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 12th day of November, 2019.

Nancy Fontenot
NANCY FONTENOT

4850-4955-5116, v. 1

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Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; GREAT BASIN ENGINEERING CONTRACTORS, LLC, a Nevada limited liability company; GOODFELLOW CORPORATION, a Utah corporation qualified to do business in the State of Nevada; KIMMIE CANDY COMPANY, a Nevada corporation; KEYSTONE CORP., a Nevada nonprofit corporation; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a California nonprofit corporation qualified to do business in the State of Nevada; NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, a Nevada nonprofit corporation; NEVADA TRUCKING ASSOCIATION, INC., a Nevada nonprofit corporation; and RETAIL ASSOCIATION OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

///

///

Case No: **19 OC 00127 1B**

Dept. No: **I**

PLAINTIFFS' QUALIFIED OPPOSITION TO MOTION TO INTERVENE AND PLAINTIFF SENATORS MOTION TO DISQUALIFY

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STATE OF NEVADA *ex rel.* THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.

/

PLAINTIFFS' QUALIFIED OPPOSITION TO MOTION TO INTERVENE AND PLAINTIFF SENATORS' MOTION TO DISQUALIFY

Plaintiffs, by and through their attorneys, ALLISON MacKENZIE, LTD., file their Qualified Opposition to the Nevada Legislative's Motion to Intervene as Defendant and Plaintiff Senators file their Motion to Disqualify. This Qualified Opposition and Motion to Disqualify are made and based upon the following Memorandum of Points and Authorities and all other papers and pleadings on file in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs acknowledge the Nevada Legislature is permitted to intervene as of right under NRS 218F.720(3) when the Nevada Legislature elects to intervene in an action by filing a motion to intervene as provided in NRS 218F.720(2).[1] There are two issues which need to be addressed with regard to the proposed intervention and these two issues are the basis for this Qualified Opposition and Motion to Disqualify.

First, Plaintiffs object to the Nevada Legislature being named in the caption as a "Defendant" instead of a "Defendant/Intervenor". Plaintiffs do not want any implication in this action that they named the Nevada Legislature as a Defendant in this action. Accordingly, if the Court grants the

[1] Because NRS 218F.720 grants the Nevada Legislature the right to intervene, there is no need for Plaintiffs to otherwise address intervention pursuant to NRCP 24.

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Nevada Legislature's Motion to Intervene, Plaintiffs respectfully request the Court order the Nevada Legislature be styled as a "Defendant/Intervenor" in the caption.

Second, Plaintiff Senators refer to and incorporate by reference as if set forth in full herein their Motion to Disqualify filed October 24, 2019 and all arguments and points and authorities contained in their Motion to Disqualify, their Reply in Support of Motion to Disqualify filed November 12, 2019 and the Affidavits of Senator James Settelmeyer and Karen Peterson filed November 12, 2019. As set forth in their Motion to Disqualify filed October 24, 2019, it is a violation of an attorney's ethical duty to represent a client if a conflict of interest exists. The attorneys of record for the proposed Intervenor, Nevada Legislature, and Defendants Cannizzaro and Clift appearing in this action are the Legal Division of the Legislative Counsel Bureau ("LCB Legal"). If the Nevada Legislature desires to intervene in this action, it should be required to be represented by counsel other than LCB Legal because of its conflict of interest in this case. As addressed in Plaintiff Senators' Motion to Disqualify and Reply in Support of the Motion to Disqualify, there is an inherent conflict of interest when LCB Legal represents certain members of the legislative body over other members, and the same conflict still exists and is not eliminated by LCB Legal also endeavoring to represent the Nevada Legislature in this action.

RPC 1.13(a) states a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. RPC 1.13(g) provides in relevant part: "A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7." LCB Legal's representation of proposed Intervenor Nevada Legislature as a Defendant is directly adverse to the Plaintiff Senators in this action, with whom LCB Legal has an ongoing attorney-client relationship in violation of RPC 1.7. The Plaintiff Senators have not given their consent to waive this conflict of interest as required by RPC 1.7(b) for LCB Legal to remain as counsel of record for either the Nevada Legislature or Defendants Cannizzaro and Clift in this matter. The language of RPC 1.7 is mandatory: ". . . a lawyer ***shall not*** represent a client if the representation involves a concurrent conflict of interest." LCB Legal cannot further ignore its conflict and its duty of loyalty owed to Plaintiff Senators by now also appearing for Intervenor Nevada Legislature as a Defendant in this action.

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Thus, as LCB Legal has a conflict of interest, the Nevada Legislature, if allowed to intervene as a Defendant/Intervenor, should also be represented by separate independent counsel. The Legislature has the financial resources available to engage outside counsel for LCB Legal's conflict. *See* Affidavit of Senator James Settelmeyer at ¶ 12 filed November 12, 2019. Moreover, so that all of LCB Legal's clients are treated equally, the Legislature should also be paying the attorney's fees of the Plaintiff Senators since they are suing in their official capacity to effectuate their votes on Senate Bill ("SB") 542 and 551 notwithstanding the provisions of NRS 218F.720(1)(b).

Based on the foregoing, Plaintiffs respectfully request that if allowed to intervene, Intervenor Nevada Legislature be styled as a "Defendant/Intervenor" in the caption of this action so there is no suggestion Plaintiffs named the Nevada Legislature as a Defendant in this action.

Further, Plaintiff Senators respectfully request their Motion to Disqualify be granted as LCB Legal has a concurrent conflict of interest which has not been waived by the Plaintiff Senators.

Pursuant to First Judicial District Court Rule 15(7), a proposed Order Granting Plaintiff Senators Motion to Disqualify is attached hereto as **Exhibit "1"**.

AFFIRMATION

The undersigned does hereby affirm that the preceding document DOES NOT contain the social security number of any person.

DATED this 18th day of November 2019.

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By: _____
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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

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fully addressed as follows:

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Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 18th day of November, 2019.

Nancy Fontenot
NANCY FONTENOT

ALLISON MacKENZIE, LTD.
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INDEX OF EXHIBITS

Exhibit No.	Description	Number of Pages
"1"	Proposed Order Granting Plaintiff Senators Motion to Disqualify	04

4852-0183-4925, v. 1

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EXHIBIT "1"

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JUSTIN TOWNSEND, ESQ.
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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; GREAT BASIN ENGINEERING CONTRACTORS, LLC, a Nevada limited liability company; GOODFELLOW CORPORATION, a Utah corporation qualified to do business in the State of Nevada; KIMMIE CANDY COMPANY, a Nevada corporation; KEYSTONE CORP., a Nevada nonprofit corporation; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, a California nonprofit corporation qualified to do business in the State of Nevada; NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, a Nevada nonprofit corporation; NEVADA TRUCKING ASSOCIATION, INC., a Nevada nonprofit corporation; and RETAIL ASSOCIATION OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

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///

Case No: **19 OC 00127 1B**

Dept. No: **I**

ORDER GRANTING PLAINTIFF SENATORS MOTION TO DISQUALIFY

STATE OF NEVADA *ex rel.* THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants.

_____/

ORDER GRANTING PLAINTIFF SENATORS MOTION TO DISQUALIFY

This matter is before the Court on Plaintiff Senators Motion to Disqualify, filed on November 18, 2019. The Court, having read the papers and pleadings on file herein, and good cause appearing therefore, finds and orders as follows:

IT IS HEREBY ORDERED THAT Plaintiff Senators Motion to Disqualify is GRANTED in its entirety as it appears that LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION has a concurrent conflict of interest pursuant to Nevada Rules of Professional Conduct 1.7 in representing Defendant/Intervenor the Nevada Legislature.

IT IS SO ORDERED.

DATED this _____day of _____, 2019.

_____
DISTRICT COURT JUDGE

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Attorneys for Plaintiffs

4834-0113-3481, v. 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; GREAT BASIN ENGINEERING CONTRACTORS, LLC, a Nevada limited liability company; GOODFELLOW CORPORATION, a Utah corporation qualified to do business in the State of Nevada; KIMMIE CANDY COMPANY, a Nevada corporation; KEYSTONE CORP., a Nevada nonprofit corporation; NATIONAL *FEDERATION OF INDEPENDENT* BUSINESS, a California nonprofit corporation qualified to do business in the State of Nevada; NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, a Nevada nonprofit corporation; NEVADA TRUCKING ASSOCIATION, INC., a Nevada nonprofit corporation; and RETAIL ASSOCIATION OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her

Case No. 19 OC 00127 1B
Dept. No. I

ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT-INTERVENOR AND DENYING *PLAINTIFF SENATORS' MOTION* TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE

official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,

Defendants,

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Defendant-Intervenor.

ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT-INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO *DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE*

This matter is before the Court on: (1) the Nevada Legislature's Motion to Intervene as a Defendant-Intervenor, which was filed on November 6, 2019; and (2) the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor, which was filed on November 18, 2019. The Court, having read the papers and pleadings on file herein, having heard oral argument on November 19, 2019, and good cause appearing therefore, finds and orders as follows:

Relevant Procedural History

Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official capacity and individually, and various business interests, filed a First Amended Complaint herein on July 30, 2019, challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the Nevada Legislature. Plaintiffs allege, among other things, that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that each bill is unconstitutional because the Senate passed each bill by a

majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of each bill.

Plaintiffs named state officers and agencies of the executive branch and legislative branch as defendants in the First Amended Complaint. The executive branch defendants are: (1) the Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada; (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles (collectively the "Executive Defendants"). The Executive Defendants are represented by the Office of the Attorney General.

The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official capacity as Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the Senate (collectively the "Legislative Defendants"). The Legislative Defendants were initially represented by the Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. As will be discussed in greater detail below, in a separate Order entered in this case, the Court granted the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants and thereby determined that the Legislative Defendants must obtain separate outside counsel to represent them in this matter.

This Order concerns the Nevada Legislature's Motion to Intervene as a Defendant-Intervenor and the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Nevada Legislature ("Legislature") as a Defendant-Intervenor. To fully understand the Court's decision on these two motions, it is necessary to review the relevant procedural history leading up to the hearing on November 19, 2019, where the Court heard oral argument on these two motions in conjunction with the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants.

On July 30, 2019, counsel for Plaintiffs called the LCB to discuss service of the Summons and Complaint on the Legislative Defendants. The call was directed to LCB Legal which indicated it would accept service on behalf of the Legislative Defendants. On July 31, 2019, counsel for Plaintiffs delivered to LCB Legal the Summons, Complaint, Order Denying Temporary Restraining Order Without Prejudice, Peremptory Challenge of Judge, Notice of Assignment by Clerk, First Amended Summons and the First Amended Complaint and an Acceptance and Acknowledgement of Service on behalf of each Legislative Defendant in their official capacity. On that same date, Brenda J. Erdoes, Legislative Counsel and Chief of LCB Legal, signed the Acceptance and Acknowledgement of Service on behalf of each Legislative Defendant in their official capacity and mailed each to counsel for Plaintiffs. On August 5, 2019, counsel for Plaintiffs filed each Acceptance and Acknowledgement of Service with the Clerk of Court.

The Legislative Defendants first appeared in this matter under NRCP 12 when LCB Legal filed an Answer on behalf of the Legislative Defendants on September 16, 2019. On that same date, the Executive Defendants filed a Motion to Dismiss the First Amended Complaint under NRCP 12. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

On October 7, 2019, counsel for Plaintiffs met in person with LCB Legal. During the meeting, LCB Legal requested an extension of time until October 28, 2019, for the Legislative Defendants to file their Opposition to Plaintiffs' Motion for Summary Judgment and to file their own Counter-Motion for Summary Judgment. Also during the meeting, counsel for Plaintiffs informed LCB Legal that the Plaintiff Senators and counsel believed that LCB Legal had a conflict of interest and could not represent the Legislative Defendants against the Plaintiff Senators. LCB Legal indicated that a court order would be necessary to remove LCB Legal as counsel for the Legislative Defendants in this case.

On October 8, 2019, counsel for Plaintiffs telephoned LCB Legal and indicated that the Plaintiffs

would agree to the Legislative Defendants' requested extension of time. Counsel for Plaintiffs also told LCB Legal that the Plaintiff Senators were still discussing a Motion to Disqualify LCB Legal as counsel for the Legislative Defendants.

On October 10, 2019, the Court approved a Stipulation and entered its Order Regarding Briefing Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural Matters, which established specific dates for the completion of briefing relating to the parties' dispositive motions and which set a hearing before the Court for oral argument on the parties' dispositive motions.

On October 24, 2019, the Plaintiff Senators filed a Motion to Disqualify LCB Legal from representing the Legislative Defendants because of a conflict of interest under Nevada Rules of Professional Conduct ("RPC") 1.7. On October 29, 2019, the Court approved a Stipulation and entered its Order Regarding Stay of Proceedings Pending Resolution of the Motion to Disqualify Counsel for Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift, which stayed all briefing for the parties' dispositive motions pending entry of a written order by the Court resolving the Motion to Disqualify and which vacated the hearing before the Court for oral argument on the parties' dispositive motions. On November 4, 2019, the Legislative Defendants filed their Opposition to the Motion to Disqualify, and on November 12, 2019, the Plaintiff Senators filed their Reply in Support of the Motion to Disqualify, the Affidavit of Senator James Settelmeyer and the Affidavit of Karen Peterson.

On November 6, 2019, the Legislature, also represented by LCB Legal, filed a Motion to Intervene as a Defendant-Intervenor under NRCP 24 and NRS 218F.720 to protect the official interests of the Legislature and defend the constitutionality of SB 542 and SB 551. On November 18, 2019, Plaintiffs collectively filed a Qualified Opposition to the Legislature's Motion to Intervene, and the Plaintiff Senators additionally filed a Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

On November 19, 2019, the Court heard oral argument on: (1) the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants; (2) the Legislature's Motion to Intervene as a Defendant-Intervenor; and (3) the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

Findings of Fact and Conclusions of Law

1. The Legislature's Motion to Intervene as a Defendant-Intervenor.

In its Motion to Intervene, the Legislature asserts, among other grounds, that it qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720 because the statute confers an unconditional right to intervene when a party alleges that the Legislature has violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional. In their Qualified Opposition to the Motion to Intervene, Plaintiffs acknowledge that the Legislature is permitted to intervene as of right under NRS 218F.720(3) when the Legislature elects to intervene in an action by filing a motion to intervene as provided in NRS 218F.720(2). However, Plaintiffs object to the Legislature being named in the caption of this action as a "Defendant" instead of a "Defendant-Intervenor" because Plaintiffs do not want any suggestion or implication in the caption that Plaintiffs named the Legislature as a Defendant in this action. Therefore, Plaintiffs request that if allowed to intervene, the Legislature be named in the caption of this action as a "Defendant-Intervenor" instead of a "Defendant."

NRCP 24 governs intervention and provides for both intervention of right and permissive intervention. *Am. Home Assurance Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 1229, 1235, 147 P.3d 1120, 1124 (2006). The Court concludes that the Legislature qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720.[1]

[1] The Legislature argues that it also qualifies for intervention of right under NRCP 24(a)(2) and permissive intervention under NRCP 24(b). Because the Court concludes that the Legislature qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720, the Court does not need to address the Legislature's additional arguments regarding intervention.

Relevant here, NRCP 24(a)(1) states that "[o]n timely motion, the court must permit anyone to intervene who...is given an unconditional right to intervene by a state or federal statute." The Court finds that NRS 218F.720 gives the Legislature such an unconditional right to intervene. Under NRS 218F.720(2), when a party alleges that the Legislature violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional, "the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding." The statute further provides that:

> 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to [NRS 218F.720(2)], the Legislature has *an unconditional right and standing to intervene* in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

NRS 218F.720(3) (emphasis added).

In the First Amended Complaint, Plaintiffs allege that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that each bill is unconstitutional because the Senate passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of each bill. Because Plaintiffs challenge each bill as invalid, unenforceable and unconstitutional, the Court concludes that the Legislature has an unconditional right to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS 218F.720, and the Court grants the Legislature's Motion to Intervene as a Defendant-Intervenor. In granting the motion, the Court orders that the caption of this action must be styled so the Legislature is named in the caption as a "Defendant-Intervenor" instead of a "Defendant."

///

2. The Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for the Legislature as a Defendant-Intervenor.

In their Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor, the Plaintiff Senators refer to and incorporate by reference their Motion to Disqualify filed on October 24, 2019, and all arguments and points and authorities contained in their Motion to Disqualify, their Reply in Support of Motion to Disqualify filed on November 12, 2019, and the Affidavit of Senator James Settelmeyer and the Affidavit of Karen Peterson filed on November 12, 2019. Plaintiff Senators argue that if the Legislature intervenes in this action, it should be required to be represented by separate outside counsel, instead of LCB Legal, because LCB Legal's representation of the Legislature as a Defendant-Intervenor is directly adverse to the Plaintiff Senators, with whom LCB Legal has an ongoing attorney-client relationship, and thereby creates a concurrent conflict of interest in violation of RPC 1.7. The Plaintiff Senators also argue: (1) the Legislature has the financial resources available to engage separate outside counsel as a result of LCB Legal's disqualifying conflict of interest; and (2) so that all of LCB Legal's clients are treated equally, the Legislature should also be paying the attorney's fees of the Plaintiff Senators since they are suing in their official capacity to effectuate their votes on SB 542 and SB 551, notwithstanding the provisions of NRS 218F.720(1)(b) that prohibit the Legislature from being "assessed or held liable for...[t]he attorney's fees or any other fees, costs or expenses of any other parties."

In deciding this Motion to Disqualify, the Court finds that the Nevada Rules of Professional Conduct contain several relevant provisions governing conflicts of interest for government lawyers serving as public officers or employees. The first relevant provisions are set forth in RPC 1.11(d), which provides, in pertinent part, "[e]xcept as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee...[i]s subject to Rules 1.7 and 1.9." Thus, RPC 1.11(d) applies the conflict-of-interest provisions of RPC 1.7 to government lawyers "[e]xcept as law may otherwise

expressly permit."

Second, as relevant here, the conflict-of-interest provisions of RPC 1.7(a) provide, in pertinent part, "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest" and "a concurrent conflict of interest exists if...[t]he representation of one client will be directly adverse to another client."

Finally, the provisions of RPC 1.13, which govern a lawyer's representation of an organizational client, including a governmental entity, are also relevant here. RPC 1.13(a) states "[a] lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents." Because a lawyer employed or retained by an organization represents the organization, "the lawyer's client is the organization rather than the constituent." RPC 1.13(f). Under certain circumstances, the lawyer for an organization may also represent any of its directors, officers, employees or members who are duly authorized constituents of the organization, but RPC 1.13(g) provides that such representation is subject to the conflict-of-interest provisions of RPC 1.7.

The Plaintiff Senators argue that LCB Legal's representation of the Legislature as a Defendant-Intervenor is directly adverse to the Plaintiff Senators, with whom LCB Legal has an ongoing attorney-client relationship, and thereby creates a concurrent conflict of interest in violation of RPC 1.7. The Plaintiff Senators further argue that there is an inherent conflict of interest when LCB Legal represents certain members of the legislative body over other members, and the same conflict of interest still exists and is not eliminated by LCB Legal also endeavoring to represent the Legislature as a Defendant-Intervenor in this action.

The Court disagrees. As discussed previously, the Court finds that the Legislature as an organization has an unconditional right to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS 218F.720. The Court further finds that LCB Legal has the absolute right to defend the interests of the Legislature as an organization in this action and to defend the written opinion

it issued prior to the Legislature's vote on SB 542 and SB 551. *See* NRS 218F.720(1)-(3).

In the Court's Order granting the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants, the Court found that there is a need for LCB Legal to maintain its neutrality in this litigation as to the representation of all members and officers of the Legislature. However, the Court also found that this does not mean LCB Legal cannot take a position to support or defend an interpretation it has given, but the mechanism to do so is through intervention on behalf of the Legislature or the submission of an amicus brief. Thus, having granted the Legislature's Motion to Intervene, the Court concludes that LCB Legal is able to maintain its neutrality in this litigation and that its nature as a nonpartisan agency is not jeopardized because the Legislature as an organization has elected to exercise its unconditional right to intervene in this action under NRCP 24(a)(1) and NRS 218F.720.

The Court concludes that LCB Legal may represent the Legislature as an organization that has an unconditional right to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS 218F.720. Accordingly, the Court denies the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

IT IS HEREBY ORDERED THAT the Legislature's Motion to Intervene as a Defendant-Intervenor is GRANTED.

IT IS HEREBY FURTHER ORDERED THAT the caption of this action must be styled so the Legislature is named in the caption as a "Defendant-Intervenor" instead of a "Defendant."

IT IS HEREBY FURTHER ORDERED THAT the Legislature shall file its Answer to the First Amended Complaint not later than 7 days after service of written notice of entry of this Order.

IT IS HEREBY FURTHER ORDERED THAT the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor is DENIED.

///

IT IS SO ORDERED.

DATED: This 19th day of December, 2019.

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 19 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER, THE HONORABLE JOE HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE HONORABLE IRA HANSEN, and THE HONORABLE KEITH PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually; et al.,
Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader; THE HONORABLE KATE MARSHALL, in her official capacity as President of the Senate; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate; THE HONORABLE STEVE SISOLAK, in his official capacity as Governor of the State of Nevada; NEVADA DEPARTMENT OF TAXATION; NEVADA DEPARTMENT OF MOTOR VEHICLES; and DOES I-X, inclusive,
Defendants,

and

THE LEGISLATURE OF THE STATE OF NEVADA,
Defendant-Intervenor.

Case No. 19 OC 00127 1B
Dept. No. I

NEVADA LEGISLATURE'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

NEVADA LEGISLATURE'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendant-Intervenor Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby submits the Legislature's Answer to Plaintiffs' First Amended Complaint, which was filed on July 30, 2019.

ADMISSIONS AND DENIALS OF THE ALLEGATIONS

PARTIES, JURISDICTION AND VENUE

¶ 1. The Legislature admits that Plaintiffs, Senators James Settelmeyer, Joe Hardy, Heidi Gansert, Scott Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard, are duly elected members of the Legislature and were members of the Senate during the 80th (2019) Session of the Legislature. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 1 of the First Amended Complaint and denies them.

¶ 2. The Legislature admits the allegations in paragraph 2 of the First Amended Complaint.

¶ 3. The Legislature admits that each of the Plaintiff Senators is a member of the Nevada Senate Republican Caucus. The Legislature denies all other allegations in paragraph 3 of the First Amended Complaint.

¶ 4. The Legislature denies the allegations in paragraph 4 of the First Amended Complaint.

¶ 5. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 of the First Amended Complaint and denies them.

¶ 6. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the First Amended Complaint and denies them.

¶ 7. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the First Amended Complaint and denies them.

¶ 8. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 of the First Amended Complaint and denies them.

¶ 9. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the First Amended Complaint and denies them.

¶ 10. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10 of the First Amended Complaint and denies them.

¶ 11. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11 of the First Amended Complaint and denies them.

¶ 12. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12 of the First Amended Complaint and denies them.

¶ 13. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the First Amended Complaint and denies them.

¶ 14. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the First Amended Complaint and denies them.

¶ 15. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15 of the First Amended Complaint and denies them.

¶ 16. The Legislature admits that Defendant Nicole Cannizzaro is named in her official capacity, is a duly elected member of the Legislature, was a member of the Senate during the 80th (2019) Session of the Legislature, served as the Senate Majority Leader during the 80th (2019) Session of the Legislature and was the sponsor of SB 551. The Legislature denies all other allegations in paragraph 16 of the First Amended Complaint.

¶ 17. The Legislature admits that Defendant Kate Marshall is named in her official capacity, is the duly elected Lieutenant Governor of the State of Nevada and served as President of the Senate during the 80th (2019) Session of the Legislature; and that her official duties include signing bills passed

by the Legislature. The Legislature denies all other allegations in paragraph 17 of the First Amended Complaint.

¶ 18. The Legislature admits that Defendant Claire Clift is named in her official capacity and served as the Secretary of the Senate during the 80th (2019) Session of the Legislature; and that her official duties include transmitting bills passed by the Legislature to the Legislative Counsel for enrollment. The Legislature denies all other allegations in paragraph 18 of the First Amended Complaint.

¶ 19. The Legislature admits that Defendant Steve Sisolak is named in his official capacity and is the duly elected Governor of the State of Nevada; and that his official duties include approving and signing bills passed by the Legislature and seeing that the laws of the State of Nevada are faithfully executed. The Legislature denies all other allegations in paragraph 19 of the First Amended Complaint.

¶ 20. The Legislature admits the allegations in paragraph 20 of the First Amended Complaint.

¶ 21. The Legislature admits the allegations in paragraph 21 of the First Amended Complaint.

¶ 22. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the First Amended Complaint and denies them.

¶ 23. The Legislature denies the allegations in paragraph 23 of the First Amended Complaint.

¶ 24. The Legislature admits that at the general elections in 1994 and 1996, Nevada's voters approved constitutional amendments that added the two-thirds requirement to Article 4, Section 18 of the Nevada Constitution; and that the constitutional amendments were proposed by a ballot initiative. The Legislature denies all other allegations in paragraph 24 of the First Amended Complaint.

¶ 25. The Legislature denies the allegations in paragraph 25 of the First Amended Complaint.

¶ 26. The Legislature denies the allegations in paragraph 26 of the First Amended Complaint.

¶ 27. The Legislature denies the allegations in paragraph 27 of the First Amended Complaint.

¶ 28. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift are residents of the State of the Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 28 of the First Amended Complaint and denies them.

¶ 29. The Legislature admits that SB 542 and SB 551 were introduced, debated, voted on, signed and enrolled in Carson City, Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 29 of the First Amended Complaint and denies them.

¶ 30. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift have offices in Carson City, Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 30 of the First Amended Complaint and denies them.

¶ 31. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift are public officers that keep offices in Carson City, Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 31 of the First Amended Complaint and denies them.

GENERAL ALLEGATIONS

¶ 32. The Legislature admits and denies the allegations incorporated by reference in paragraph 32 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 31, inclusive, of this Answer.

¶ 33. The Legislature admits the allegations in paragraph 33 of the First Amended Complaint only to the extent the allegations accurately state the text of Article 4, Section 18(2) of the Nevada Constitution. The Legislature denies all other allegations in paragraph 33 of the First Amended Complaint.

¶ 34. The Legislature admits the allegations in paragraph 34 of the First Amended Complaint.

¶ 35. The Legislature admits that during the 80th (2019) Session of the Legislature, if a bill required an affirmative vote of not fewer than two-thirds of all the members elected to the Senate in order to be passed by the Senate, the vote of at least fourteen Senators was required to pass the bill. The Legislature denies all other allegations in paragraph 35 of the First Amended Complaint.

¶ 36. The Legislature admits the allegations in paragraph 36 of the First Amended Complaint.

¶ 37. The Legislature admits the allegations in paragraph 37 of the First Amended Complaint.

¶ 38. The Legislature admits the allegations in paragraph 38 of the First Amended Complaint.

¶ 39. The Legislature admits that a constitutional majority of all the members elected to the Senate voted to pass SB 542. The Legislature denies all other allegations in paragraph 39 of the First Amended Complaint.

¶ 40. The Legislature admits the allegations in paragraph 40 of the First Amended Complaint.

¶ 41. The Legislature admits the allegations in paragraph 41 of the First Amended Complaint only to the extent the allegations accurately state the text of NRS 481.064. The Legislature denies all other allegations in paragraph 41 of the First Amended Complaint.

¶ 42. The Legislature denies the allegations in paragraph 42 of the First Amended Complaint.

¶ 43. The Legislature admits that sections 2, 3, 37 and 39 of SB 551: (1) eliminated a rate adjustment procedure used by the Department of Taxation to determine whether the rates of certain payroll taxes should be reduced in future fiscal years under certain circumstances; and (2) did not change the existing legally operative rates of those payroll taxes but maintained and continued the existing legally operative rates of those payroll taxes in future fiscal years. The Legislature denies all other allegations in paragraph 43 of the First Amended Complaint.

¶ 44. The Legislature admits the allegations in paragraph 44 of the First Amended Complaint.

¶ 45. The Legislature admits the allegations in paragraph 45 of the First Amended Complaint.

¶ 46. The Legislature admits that a constitutional majority of all the members elected to the Senate voted to pass SB 551. The Legislature denies all other allegations in paragraph 46 of the First Amended Complaint.

¶ 47. The Legislature admits that sections 2 and 3 of SB 551 eliminated certain provisions of NRS 363A.130 and 363B.110; and that section 39 of SB 551 repealed the provisions of NRS 360.203. The Legislature denies all other allegations in paragraph 47 of the First Amended Complaint.

¶ 48. The Legislature admits that, before the provisions of NRS 360.203 were repealed by section 39 of SB 551, NRS 360.203 included a rate adjustment procedure used by the Department of Taxation to determine whether the rates of certain payroll taxes should be reduced in future fiscal years under certain circumstances. The Legislature denies all other allegations in paragraph 48 of the First Amended Complaint.

¶ 49. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 49 of the First Amended Complaint and denies them.

¶ 50. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 50 of the First Amended Complaint and denies them.

¶ 51. The Legislature admits that section 39 of SB 551 repealed the provisions of NRS 360.203. The Legislature denies all other allegations in paragraph 51 of the First Amended Complaint.

¶ 52. The Legislature admits the allegations in paragraph 52 of the First Amended Complaint.

¶ 53. The Legislature denies the allegations in paragraph 53 of the First Amended Complaint.

¶ 54. The Legislature denies the allegations in paragraph 54 of the First Amended Complaint.

¶ 55. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 55 of the First Amended Complaint and denies them.

¶ 56. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56 of the First Amended Complaint and denies them.

¶ 57. The Legislature admits the allegations in paragraph 57 of the First Amended Complaint.

¶ 58. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 58 of the First Amended Complaint and denies them.

¶ 59. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 59 of the First Amended Complaint and denies them.

¶ 60. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 60 of the First Amended Complaint and denies them.

¶ 61. The Legislature denies the allegations in paragraph 61 of the First Amended Complaint.

FIRST CLAIM FOR RELIEF

¶ 62. The Legislature admits and denies the allegations incorporated by reference in paragraph 62 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 61, inclusive, of this Answer.

¶ 63. The Legislature admits the allegations in paragraph 63 of the First Amended Complaint only to the extent the allegations accurately state the text of Article 4, Section 18(2) of the Nevada Constitution. The Legislature denies all other allegations in paragraph 63 of the First Amended Complaint.

¶ 64. The Legislature denies the allegations in paragraph 64 of the First Amended Complaint.

¶ 65. The Legislature denies the allegations in paragraph 65 of the First Amended Complaint.

¶ 66. The Legislature denies the allegations in paragraph 66 of the First Amended Complaint.

¶ 67. The Legislature denies the allegations in paragraph 67 of the First Amended Complaint.

SECOND CLAIM FOR RELIEF

¶ 68. The Legislature admits and denies the allegations incorporated by reference in paragraph 68 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 67, inclusive, of this Answer.

¶ 69. The Legislature denies the allegations in paragraph 69 of the First Amended Complaint.

¶ 70. The Legislature denies the allegations in paragraph 70 of the First Amended Complaint.

¶ 71. The Legislature denies the allegations in paragraph 71 of the First Amended Complaint.

THIRD CLAIM FOR RELIEF

¶ 72. The Legislature admits and denies the allegations incorporated by reference in paragraph 72 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 71, inclusive, of this Answer.

¶ 73. The Legislature denies the allegations in paragraph 73 of the First Amended Complaint.

¶ 74. The Legislature denies the allegations in paragraph 74 of the First Amended Complaint.

¶ 75. The Legislature denies the allegations in paragraph 75 of the First Amended Complaint.

¶ 76. The Legislature denies the allegations in paragraph 76 of the First Amended Complaint.

¶ 77. The Legislature denies the allegations in paragraph 77 of the First Amended Complaint.

¶ 78. The Legislature denies the allegations in paragraph 78 of the First Amended Complaint.

¶ 79. The Legislature denies the allegations in paragraph 79 of the First Amended Complaint.

FOURTH CLAIM FOR RELIEF

¶ 80. The Legislature admits and denies the allegations incorporated by reference in paragraph 80 of the First Amended Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 79, inclusive, of this Answer.

¶ 81. The Legislature denies the allegations in paragraph 81 of the First Amended Complaint.

¶ 82. The Legislature denies the allegations in paragraph 82 of the First Amended Complaint.

¶ 83. The Legislature denies the allegations in paragraph 83 of the First Amended Complaint.

¶ 84. The Legislature denies the allegations in paragraph 84 of the First Amended Complaint.

¶ 85. The Legislature denies the allegations in paragraph 85 of the First Amended Complaint.

¶ 86. The Legislature denies the allegations in paragraph 86 of the First Amended Complaint.

¶ 87. The Legislature denies the allegations in paragraph 87 of the First Amended Complaint.

AFFIRMATIVE DEFENSES

1. The Legislature pleads as an affirmative defense that the First Amended Complaint fails to state a claim upon which relief can be granted.

2. The Legislature pleads as affirmative defenses that Plaintiffs lack capacity to sue and standing; that Plaintiffs have failed to exhaust administrative remedies; that Plaintiffs' claims do not present a justiciable case or controversy; that Plaintiffs' claims are not ripe for adjudication; and that the Court lacks jurisdiction of the subject matter.

3. The Legislature pleads as an affirmative defense that Plaintiffs' claims are barred by the doctrine of immunity, including, without limitation, sovereign immunity, official immunity, legislative immunity, discretionary-function immunity, absolute immunity and qualified immunity.

4. The Legislature pleads as affirmative defenses that Plaintiffs' claims are barred by laches, estoppel and waiver.

5. The Legislature pleads as an affirmative defense that, pursuant to NRS 218F.720, the Legislature may not be assessed or held liable for any filing or other court fees or the attorney's fees or other fees, costs or expenses of any other parties.

6. The Legislature reserves its right to plead, raise or assert any additional affirmative defenses which are not presently known to the Legislature, following its reasonable inquiry under the circumstances, but which may become known to the Legislature as a result of discovery, further pleadings or the acquisition of information from any other source during the course of this litigation.

PRAYER FOR RELIEF

The Legislature prays for the following relief:

1. That the Court enter judgment in favor of Defendants and Defendant-Intervenor and against Plaintiffs on all claims and prayers for relief directly or indirectly pled in the First Amended Complaint;

2. That the Court enter judgment in favor of Defendants and Defendant-Intervenor and against Plaintiffs for Defendants' and Defendant-Intervenor's costs and attorney's fees as determined by law; and

3. That the Court grant such other relief in favor of Defendants and Defendant-Intervenor and against Plaintiffs as the Court may deem just and proper.

DATED: This **26th** day of December, 2019.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **26th** day of December, 2019, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic mail, I served a true and correct copy of the Nevada Legislature's Answer to Plaintiffs' First Amended Complaint, by electronic mail, directed to the following:

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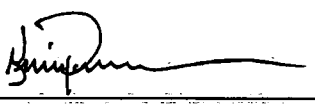

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FIRST JUDICIAL DISTRICT COURT OF NEVADA

CARSON CITY

THE HONORABLE JAMES SETTLEMEYER, *et al.*, Plaintiffs, vs. STATE OF NEVADA, *ex rel.*, THE HONORABLE NICOLE CANNIZZARO, *et al.*, Defendants.	Case No. 19 OC 00127-1B Dept. No. I Hearing Date: September 21, 2020 Hearing Time: 1:30 p.m.

REPLY SUPPORTING EXECUTIVE DEFENDANTS' MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Constitutional Provisions

Legislative Materials

Pursuant to Rule 12 and Rule 56, the Executive Defendants hereby reply in support of their motion seeking dismissal of Plaintiffs' lawsuit and oppose Plaintiffs' motion for summary judgment.

This Reply and Opposition is made and based upon the following Memorandum of Points and Authorities, all the papers and pleadings on file herein, and any such argument that the Court chooses to entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court has the obligation to determine whether Senate Bill 551 or Senate Bill 542 comply with Article IV, Section 18(2) of the Nevada Constitution.

The Executive Defendants submit that each bill complies with the plain language of Nevada's supermajority provision because neither bill "creates, generates, or increases" "taxes, fees, assessments and rates." To the extent there is any ambiguity requiring interpretation, the supermajority provision should be interpreted narrowly, consistent with the intent that it apply only to new or increased taxes, not to the continuation of existing taxes at existing rates from one year to the next. The Legislature's interpretation under these circumstances, upon the advice of its counsel, is reasonable and entitled to deference from this Court as the most responsive branch to the People.

While the parties disagree with their respective positions on many issues, everyone agrees that this pure legal issue is ripe for decision at or after the September 21 hearing, following briefing by the parties.

To aid the Court before addressing Plaintiffs' specific arguments, the Executive Defendants submit the following framework for the Court making its legal determination on Senate Bill 551 and Senate Bill 542.

- Plaintiffs, as the party contending unconstitutionality, bear the burden of persuasion. *Cornella v. Justice Court,* 132 Nev. ——, 377 P.3d 97, 100 (2016).
- When reviewing the supermajority provision, a court is to first look to its plain language. *Landreth v. Malik,* 127 Nev. 175, 180, 251 P.3d 163, 166 (2011).

- Should the supermajority provision be capable of multiple reasonable interpretations, a court is to consider the intent of the provision by evaluating the history, public policy, and reason for it. *Id.*
- The Legislature is entitled to deference if its interpretation is reasonable, as the elected branch closest to the People, particularly where it acts upon the opinion of its Legislative Counsel. *In re Platz*, 60 Nev. 296, 308 (1940); *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540 (2001).

Plaintiffs, while raising specific arguments on why they are correct on the law in this case, did not dispute this framework for resolving the constitutionality of Senate Bill 551 and Senate Bill 542. To facilitate this Court's review of the six briefs, the Executive Defendants will organize its response to Plaintiffs by these four categories.

II. ARGUMENT

A. Plaintiffs Bear the Burden of Persuasion in This Case.

Plaintiffs state (and the Executive Defendants agree) that the "only substantive issue before this Court is the interpretation and application of [the supermajority provision]" to Senate Bill 551 and Senate Bill 542. Opp. at 8:7–9. This is a pure legal question. "All facts relevant to that legal question are known and not in dispute." *Id.* at 8:15-16. Whether by a motion to dismiss standard or a motion for summary judgment standard, the pure legal question in this case is ripe for resolution by the court at or after the September 21 hearing.[1]

In Nevada, the constitutionality of a statute is a question of law. *Cornella v. Justice Court*, 132 Nev. ——, 377 P.3d 97, 100 (2016) (internal quotation marks omitted). "Statutes are presumed to be valid, and the burden is on the challenging party to demonstrate that a statute is unconstitutional." *Id.* (internal quotation marks omitted).

[1] Plaintiffs contend that the Executive Defendants challenged Plaintiffs' standing. Opp. at 9:1-10:24. The Executive Defendants have not challenged Plaintiffs' standing in this case. Even though Senate Bill 542's effective date for extending the existing DMV fee is not until July 1, 2020, the Executive Defendants have not sought dismissal on that basis. Instead, recognizing the purely legal question of this case, the Executive Defendants filed its motion to expedite resolution on the merits.

Here, Plaintiffs bear the burden of persuading this court that Senate Bill 551 and Senate Bill 542 are unconstitutional because of the supermajority provision.

B. The Statutes Comply with the Plain Language of the Nevada Constitution.

Plaintiffs contend that Senate Bill 551 and Senate Bill 542 did not comply with the supermajority provision because each bill "creates, generates, or increases" public revenue. Opp. at 11:13-15:10. Before considering Plaintiffs' specific arguments against each Senate bill, it makes sense to consider the plain and ordinary meaning of "creates, generates, or increases."

"*Create*" means to "bring into existence" or to "produce." *Merriam Webster's Collegiate Dictionary*, 272 (10th ed. 1995) (emphasis added). Similarly, "*generate*" also means to "bring into existence. *Id.* at 485 (emphasis added). Here, the bills at issue continue existing taxes and fees at existing rates into future fiscal years. Neither bill "brings into existence" the challenged taxes or fees; they *already existed* in prior fiscal years. Instead, the terms "create" and "generate" apply to new taxes brought into existence by legislative action.

The Executive Defendants assume that any argument Plaintiffs have on the plain language of the supermajority provision necessarily relies on the term "*increase*," which means "to become progressively greater" or to "make greater." *Id.* at 589 (emphasis added). Nothing within the supermajority provision defines how to measure an "increase" in "public revenue." Simple revenue increases do not require supermajority votes, as demonstrated by prior Economic Forum projections. *See* **Exhibit E & F** to the Motion. For instance, the 2017 Economic Forum forecast shows a 7.6% increase in the total MBT before tax credits between FY 2016 and FY 2017. *See* **Exhibit E** to the Motion. Continuing existing taxes and fees at existing rates from one fiscal year to the next does not "make greater" "public revenue." At worst for the Executive Defendants, the supermajority provision is ambiguous for failure to identify the appropriate baseline from which to measure an "increase."

With consideration of what the supermajority provision's terms mean, Plaintiffs' argument that there is no distinction between new versus existing public revenue within

the supermajority provision is simply wrong. Opp. at 8:12–13. Below are responses to specific arguments Plaintiffs made against the two Senate Bills.

1. Senate Bill 551 Complies with the Plain Language of the Nevada Constitution.

Plaintiffs presumably agree, as they must, that the supermajority provision "was intended to make it more difficult for the Legislature to pass *new taxes*" or to turn "to *new* sources of revenue." *Guinn v. Legislature*, 119 Nev. 460, 471 (2003) (emphasis added). Yet they muddle this simple proposition by placing pointless emphasis upon the Nevada Supreme Court's observation that the supermajority provision applies to "specific changes [that] would be made to the *existing* tax structure to increase revenue." Opp. at 11:17–21 (emphasis added). As quoted above, the Supreme Court's two statements from the *Guinn* decision are consistent, despite Plaintiffs' suggestion that there is a certain magic to the latter. More specifically, both statements are consistent with the Executive Defendants' interpretation of the supermajority provision in this case, which involves continuing existing taxes at existing rates, rather than creating new taxes or new sources of revenue. Plaintiffs' interpretation instead presumes an "existing tax structure" of reduced tax rates that had not ever yet existed. As a practical matter, Plaintiffs argue that the "existing tax structure" should be deemed to include non-existent taxes.

Specifically, Plaintiffs contend that NRS 360.203(2) "required the Department of Taxation to reduce the rate of certain taxes." Opp. at 5:25-26. However, as noted previously, repealed NRS 360.203(2)'s potential tax rate reduction would not have been in effect until July 1, 2019 at the earliest. NRS 360.203(3). Because this provision was never in effect as a matter of law to create the potential tax rate reduction, as set forth by the Legislature's counsel in its May 8, 2019 memorandum, Senate Bill 551 maintains the existing tax rate and revenue structure without any change to the Department of Taxation's statutory mandate to collect taxes at the rate in effect on the date of Senate Bill 551's enactment. **Exhibit C** to the Motion at 13.

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Plaintiffs' quotation of a fiscal analyst (see Opp. at 12:21–8) does not change the fact that the computational basis for the MBT tax remains the same as the prior fiscal years. Indeed, "maintain[ing] current rates" instead of eliminating a potential, future tax reduction has identical taxpayers paying the identical amount of MBT tax between fiscal years. Because this does not create, generate, or increase any public revenue in any form relative to the prior fiscal year, the Legislature's passage of Senate Bill 551 complies with the plain language of the Nevada Constitution. The Court should enter judgment against Plaintiffs and in favor of Defendants.

2. Senate Bill 542 Complies with the Plain Language of the Nevada Constitution.

Senate Bill 542 continues the existing technology fee from June 30, 2020 until June 30, 2022. It does not bring the existing technology fee "into existence;" it already existed. It does not "make greater" the existing technology fee from one fiscal year to the next. By the plain language of the supermajority provision, Senate Bill 542 does not "create, generate, or increase" public revenue from one fiscal year to the next.

Businesses such as the Business Defendants who have the same number of DMV transactions will owe the same amount of DMV technology fee as the last biennium, as well as the first year of this biennium (unaffected by this statute). At most, Senate Bill 542 eliminates a proposed, future end to the DMV technology fee almost one year from today. The DMV fee does not create, generate, or increase revenue from one fiscal year to the next. Instead, it maintains the existing rate into Fiscal Year 2020-2021. The Court should enter judgment against Plaintiffs and in favor of Defendants.

C. The Legislature's Interpretation is Reasonable and Entitled to Deference.

Plaintiffs dispute the reasonableness of the Legislature's interpretation. Opp. 15-21. Not surprisingly, the Executive Defendants disagree, for the reasons set forth below.

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1. The History, Public Policy and Reason Behind the Supermajority Provision Supports Defendants' Narrow Interpretation.

Plaintiffs do not dispute that the intent of Nevada's supermajority provision should be determined by evaluating the history, public policy, and reason for the provision. Other than referencing what they contend is the treatment of prior sunset provisions by prior Legislatures (see Opp. at 14:26-15:10; 20:9-11), Plaintiffs do not provide any public records supporting their broad interpretation of the supermajority provision. Simply stating that Nevada passed the supermajority provision (see Opp. at 19:18–22) does not explain or argue why the intent is what Plaintiffs say it is.

Instead, Plaintiffs first attempt to argue that Assemblyman Gibbons' testimony regarding AJR 21 is irrelevant to considering the interpretation of the supermajority provision. Opp. at 15:21–24. The Nevada Supreme Court disagreed in the sole dispute adjudicated regarding the supermajority provision. *Guinn v. Legislature,* 119 Nev. 460, 465–467 (2003). The Supreme Court disagreed with Plaintiffs for good reason, given the central role Assemblyman Gibbons played by pursuing both supermajority provisions, this one immediately after failing with the 1993 Legislature.

Without citation to public records, specifically the initiative materials cited and quoted in Defendants' motion, Plaintiffs argue that limiting the supermajority provision to "new taxes" "violates the language and spirit of the supermajority provision and creates a slippery slope for the future of tax legislation." Opp. at 16:21–22. Defendants have already addressed the plain language of the supermajority provision. However, Plaintiffs have not explained from the available public records how narrowly interpreting the supermajority provision to pertain to "new" taxes violates the provision's "spirit." The provision was concerned with new taxes, based on the broken promises of President George H.W. Bush and the meaning of the provision's terms, rather than existing taxes continued at existing rates. Neither the provision nor its ballot material consider potential, future, not-yet effective tax reductions being eliminated by future Legislatures, as is at issue here.

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Further, there is no "slippery slope" and the narrow interpretation does not render the provision "meaningless and inoperative." Opp. at 16. Instead, it narrowly interprets the Constitution as a limitation upon any legislative enactment that "creates, generates, or increases" tax rates or revenue from the baseline of one fiscal year to the next. If the supermajority provision had been intended to apply to enactments that maintain tax rates or revenue through the repeal of yet-inoperative provisions of law, it would have included a limitation upon the Legislature's ability to repeal *prospective* and still inoperative changes to tax rates, deductions, or exemptions. But no such language appears anywhere in the text of the Nevada Constitution.

The supermajority provision, as intended, applies to existing rates and revenue streams, not projected rates and revenue streams. It would, for example, require supermajority support for creating a new tax that did not previously exist, such as an income tax or a wealth tax. The supermajority provision, as intended, would require supermajority support for increasing rates on existing taxes, such as the MBT tax or the Commerce Tax. However, Defendants' interpretation, as intended by the initiative, would not apply to continuing existing taxes at existing rates from one fiscal year to the next. This interpretation is reasonable, based on the information before this court.

Finally, without contemporaneous public record support, Plaintiffs opine about the "concessions and compromises" associated with the 2015 Legislative Session. As noted in the Motion, nothing from 2015 Senate Bill 483's legislative history evidences the potential future recalculation provision being a necessary condition for anything else the 2015 Legislature did. Plaintiffs provide no contrary evidence, even though many were in their present positions at the 2015 Legislature. As much as Plaintiffs (particularly individual Plaintiff Senators) may now wish to opine after-the-fact on what they really meant in 2015, Nevada courts are not allowed to consider such statements for ascertaining legislative intent. *See A-NLV Cab Co. v. State Taxicab Auth.*, 108 Nev. 92-95-96 (1992).

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On this basis, Defendants' interpretation of the supermajority provision is most consistent with the history, public policy, and reason behind it, warranting judgment in their favor.

2. Other States' Interpretation of Similar Provisions Supports Defendants' Narrow Interpretation.

Nevada is not alone in having a supermajority provision. The founding father for the provision recognized that Nevada borrowed it from what other states did, addressing the same concern over "no new taxes" arising from the presidency of George H. W. Bush. Other states have consistently interpreted these provisions narrowly as a limited exception to majoritarian rule. Plaintiffs have not identified any state interpreting a supermajority provision in a contrary fashion for continuing existing taxes at existing rates into future fiscal years.

Instead, Plaintiffs argue against considering how other states have treated similar supermajority provisions, contending Nevada's provision is unique. Opp. at 17:15–19:3. Brief review of Plaintiffs' overall argument highlights the absurdity of contending that "raising revenue" is different from "increasing" public revenue.

As addressed above, "increase" is Plaintiffs' sole possible plain language argument for their reading of the supermajority provision. In this context, there is no "important and undeniable distinction" between "raising revenue" and "increase public revenue." Opp. at 18:5–7. Seeing how other states interpret "raising revenue" "may be instructive" for a court when attempting to analyze Nevada's similar supermajority provision. Neither Oklahoma nor Oregon limit the term "raising," similar to how Nevada does not limit the term "increase."[2] There is no conflict amongst these supermajority provisions, adopted at similar times.

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[2] Plaintiffs' reference to "changes in the computational bases" (*see* Opp. at 18:8–10) as broadening Nevada's supermajority provision is incorrect as a matter of English grammar. The "computational bases" phrase is an introduced example to how something "creates, generates, or increases any public revenue in any form." It does not broaden the definition of "creates, generates, or increases" as addressed earlier; it is one specific example as to how to do so. This is consistent with the history of these provisions, where President Bush broke his "no new taxes" promise by changing (increasing) the computational bases for federal income taxes.

Under such circumstances, Oregon's conclusion that eliminating a tax exemption for out-of-state electric utility facilities was not subject to its constitutional supermajority provision is persuasive authority supporting narrow interpretation of Nevada's supermajority provision. *City of Seattle v. Or. Dep't. of Revenue*, 357 P.3d 979, 980 (Or. 2015). While Plaintiffs might argue otherwise, Oregon's supermajority provision simply states that "Three-fifths of all members elected to each House shall be necessary to pass bills for raising revenue." OR. CONST. ART. IV, § 25(2). For purposes of raising revenue, there is no textual difference between Nevada and Oregon's supermajority provision; both require supermajorities.

Similarly, Oklahoma's analysis that deleting the "expiration date of [a] specified tax rate levy" was not subject to its supermajority provision is also persuasive authority for a court to consider when interpreting Nevada's supermajority provision. *Fent v. Fallin*, 345 P.3d 1113, 1114-17 n.6 (Okla. 2014). While Plaintiffs might argue otherwise, Oklahoma's supermajority provision states that "[a]ny revenue bill ... may become law ... if such bill receives [supermajority] approval." OKLA. CONST. ART. 5, § 33. For purposes of raising revenue, there is no textual difference between Nevada and Oklahoma's supermajority provision. There is no textual reason why Nevada should not recognize the same distinctions for purposes of its supermajority provision.

Plaintiffs' failure to find contrary persuasive authority supporting its interpretation of the supermajority provision highlights the reasonableness of the Legislature's interpretation. This further warrants judgment in favor of Defendants.

3. The Legislature, Relying on Consistent, Reasonable Opinions, is Entitled to Deference.

Plaintiffs do not dispute the Legislature's entitlement to deference in its interpretation, so long as "the Legislative Counsel had not provided previous conflicting opinions." Opp. at 19:22–24. Because the Legislature's interpretation is reasonable and consistent, it is entitled to deference. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540 (2001).

Plaintiffs first argue that an April 16, 2019 opinion, attached to their Opposition as Exhibit 8, is inconsistent with the Legislative Counsel's May 2019 memorandum.

In relevant part, quoted in the Opposition, the LCB opined that the supermajority provision is applicable for "legislative action that directly brings into existence, produces or enlarges public revenue in the *first instance*." Opp. at 20:3–6 (emphasis added).

Plaintiffs do not identify and Defendants do not understand how the two LCB memoranda are inconsistent. Even if there was an inconsistency, Plaintiffs do not specifically identify how Senate Bill 551 or Senate Bill 542 "brings into existence, produces, or enlarges public revenue in the first instance," such that the inconsistency matters for interpreting the supermajority provision. In fact, neither bill does so in *any instance*. Rather, both bills continue existing taxes at existing rates for future budget years.

Instead, the April memorandum opines on the constitutionality of Senate Bill 201, which authorized hiring of a vendor to collect fees to pay for the vendor's implementation of a title loan database. Plaintiffs do not challenge the constitutionality of Senate Bill 201. In fact, while arguing that Senate Bill 201 is "inappropriate," Plaintiff Senator Kieckhefer conceded that it was a "creative work-around" and "that it is *legal*." Senate Daily Journal (4/18/2019) at 277, true and correct copies of which are attached hereto as **Exhibit H**. (emphasis added). This distinction between "appropriateness" and "legality" explains why deference is due to the Legislature's reasonable interpretation. Ultimately, the Senate is accountable to the People to sort out the "appropriateness" of legislative action, so long as it is otherwise "legal."

Similarly, the Senate's efforts to avoid this case when considering Senate Bill 551 is not evidence of a contrary or contradictory opinion. For instance, Plaintiffs attempt to distort colloquy with the Legislative Counsel Bureau at committee by emphasizing the word "generate," ignoring "the assumption of the lower rates occurring" and the "*maintain*[ing of] current rates" preceding it. Opp. at 12 (emphasis added); *see also* Senate Finance Committee Minutes (5/29/2019), attached hereto as **Exhibit I**, at 70. Because the "lower rates" were never effective as a matter of law, no new taxes were "brought into existence."

Further consideration of Senate Bill 551's committee and floor testimony highlight the failed efforts to avoid litigation. Specifically, at committee, Plaintiff Nevada Trucking Association, Inc.'s lobbyist stated that "Just because you can do something does not mean that you should do something." *See* **Exhibit I** at 70. In this context, Senator Cannizzaro said that "[c]onstitutional questions do not exist if they are moot." *Id.* at 72. In response, Plaintiff Senator Kieckhefer expressed concern over passing Senate Bill 551 without a two-thirds stamp by a two–thirds majority, such that it sets "the precedent, going forward, that the Legislature acknowledges that a two-thirds was not necessary." *Id.* at 73. In response to Senator Kieckhefer's position, Senator Cannizzaro testified to her belief that it was "an illusory Constitutional question...[that] is merely speculative." *Id.* at 73.

It is in this context, recognizing Senator Kieckhefer's concern, that Senator Cannizzaro proposed amendments to meet this concern "halfway" by adding a two-thirds stamp on Senate Bill 551, even where the Legislative Counsel Bureau had advised it was not required. *See* Exhibit 5 to Plaintiffs' Opposition at 80; Senate Daily Journal (6/3/2019) at 42–43, true and correct copies of which are attached hereto as **Exhibit J**.[3] When Plaintiffs rejected this "halfway" compromise, the Senate passed Senate Bill 551 by majority vote, consistent with the supermajority provision as interpreted by Legislative Counsel.

Under these circumstances, this Court should defer to the Legislature's reasonable interpretation of the supermajority provision, allowing the People to sort out their view on this Senate conflict through the electoral process.

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[3] The parties to this case disagreed on the Senate Floor as to the wisdom of passing Senate Bill 551. However, the "appropriateness" of the Senate's decision as a matter of policy is separate and distinct from interpreting the supermajority provision as adopted in 1996.

III. CONCLUSION

This Court should determine as a matter of law that the passage of Senate Bill 542 and Senate Bill 551 complies with Article IV, Section 18(2) of the Nevada Constitution. On that basis, it should grant the Executive Defendant's motion and deny Plaintiffs' countermotion.

DATED this 18th day of August, 2020.

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AFFIRMATION

Pursuant to NRS 239B.030(4), the undersigned does hereby affirm that the preceding document and attached exhibits do not contain the Social Security number of any person.

DATED this 18th day of August, 2020.

AARON D. FORD
Attorney General

By: _____
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Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that I mailed by United States, First Class, the foregoing **REPLY SUPPORTING EXECUTIVE DEFENDANTS' MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** on the 18th day of August, 2020, including service upon the following counsel of record:

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