Minutes of the

# LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

## October 26, 2009

The fourth meeting in 2009 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Monday, October 26, 2009, commencing at 9:23 a.m., in Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada with a simultaneous video conference to Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Assemblyman John Oceguera, Chair (in Las Vegas)
Assemblyman Marcus L. Conklin, Vice Chair (in Las Vegas)
Senator Maggie Carlton (in Las Vegas)
Senator Barbara K. Cegavske (in Las Vegas)
Senator Steven A. Horsford (in Las Vegas)
Senator Randolph J. Townsend (in Las Vegas)
Senator Maurice E. Washington (in Carson City)
Senator Joyce L. Woodhouse (in Las Vegas)
Assemblyman John C. Carpenter (in Carson City)
Assemblywoman Marilyn Kirkpatrick (in Las Vegas)
Assemblyman James A. Settelmeyer (in Carson City)
Assemblywoman Debbie Smith (in Carson City)

LCB STAFF PRESENT:

Lorne J. Malkiewich, Director (in Las Vegas)
Brenda J. Erdoes, Legislative Counsel (in Carson City)
Mark Krmpotic, Senate Fiscal Analyst (in Carson City)
Tracy Raxter, Assembly Fiscal Analyst (in Carson City)
Paul V. Townsend, Legislative Auditor (in Carson City)
Donald O. Williams, Research Director (in Carson City)
Risa B. Lang, Chief Deputy Legislative Counsel (in Carson City)
Marilyn K. White, Assistant to Director (in Carson City)

The meeting was called to order by Chair Oceguera. The agenda is attached as Exhibit A. Attendance records are attached as Exhibit B. Certain items may have been taken out of order but have been placed in agenda order in these minutes for purposes of continuity.

**Item I – Approval of Minutes of Meeting Held August 24, 2009** – Assemblyman John Oceguera, Chair.

SENATOR TOWNSEND MOVED APPROVAL OF THE MINUTES OF THE AUGUST 24, 2009, MEETING. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED.

**Item II – Progress Reports and Appointments**:

**A. Appointment of Members to Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860)** – Lorne J. Malkiewich, Director.

Mr. Malkiewich called attention to a handout which included resumes from Stefanie T. Sharp, Esq. and William A. Ferrall (copy attached as Exhibit C), as well as material in the meeting packet for this item. The handout of the resumes of two nominees arrived too late to place in the meeting packet. The packet material includes the statute, members of the Advisory Council and resumes of two other individuals, Michele Johnson and Janis Grady, who are seeking membership. The Advisory Council consists of five members, four of the five members are seeking reappointment: Clay Duncan, David Goldwater, Stephen Brockman and Cindy Stephens. He said if the commission is willing to reappoint them, then it only has to select one person from the four resumes for the fifth member to replace Tom Powell. He noted that Joseph Waltuch is present and may be able to provide additional information.

Ms. Smith inquired if geographical location is a concern with regard to the appointment, noting that Mr. Powell is from northern Nevada. Mr. Malkiewich said that he did not see that as a concern and indicated that he included the statute for just that reason. He read from the statute noting that he did not see anything relating to geographic balance but that does not mean that the commission does not want to provide that balance.

Senator Horsford said that he would support Michele Johnson as he knows, based on the work of the agency with which she is involved, that it is very involved in providing information to the public about foreclosure, down payment assistance, loan modification and the pitfalls and benefits of each. He thought particularly with the state of the residential market that she would be a good voice and perspective on the Advisory Council.

SENATOR HORSFORD MOVED TO APPOINT MICHELE JOHNSON AND REAPPOINT CLAY DUNCAN, DAVID GOLDWATER, STEPHEN BROCKMAN AND CINDY STEPHENS TO THE ADVISORY COUNCIL. MOTION SECONDED BY SENATOR CARLTON AND CARRIED.

Chair Oceguera thanked the members reappointed for their hard work.

**B. Appointment of Members to Powers Delegated to Local Governments, Interim Technical Advisory Committee for Intergovernmental Relations (S.B. 264, sec. 9)** – Lorne J. Malkiewich, Director.

Mr. Malkiewich recalled that at the previous meeting members were appointed to the committee to study Powers Delegated to Local Governments, but the Interim Technical Advisory Committee was not appointed. He called attention to material in the meeting packet for this item which included section 9 of Senate Bill 264 and names of nominees that were received including letters from the Nevada Association of Counties and the Nevada League of Cities and Municipalities. He said the statute requires the appointment of six representatives of local government and three representatives of state agencies. Three nominees were received from NACO including two former legislators: Chris Giunchigliani, Nancy Boland and David Humke. The League of Cities nominated Debra March, Geno Martini and Susan Holecheck. Additionally, in speaking with Lynn Hettrick in the Governor's Office they recommended Dino DiCianno, Scott Rawlins and Mike Willden. If the commission is comfortable with the nominees, that would meet the requirement of six and three.

SENATOR CEGAVSKE MOVED TO APPOINT THE NOMINEES AS RECOMMENDED. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED.

**C. Approval of Appointment of Senate and Assembly Fiscal Analysts (NRS 218.620)** – Lorne J. Malkiewich, Director.

Mr. Malkiewich stated that he thought everyone was aware that Mark Stevens and Gary Ghiggeri after a combined total of 74 years of service to the state have moved on. Mr. Stevens has moved to the Nevada System of Higher Education and Mr. Ghiggeri has retired. He called attention to the statute included in the meeting packet for this item which indicates the manner of selection of the staff of the Legislative Counsel Bureau. The director is appointed by the Legislative Commission and the division chiefs including the fiscal analysts are appointed by the director with the approval of the Legislative Commission. He said today he is seeking the approval of Tracy Raxter as the Assembly Fiscal Analyst and Mark Krmpotic as the Senate Fiscal Analyst. He said both individuals have extensive experience both with the state and the Fiscal Analysis Division which is experience he thought would be particularly important in the upcoming session. He urged approval by the Legislative Commission.

ASSEMBLYWOMAN SMITH MOVED APPROVAL OF THE APPOINTMENTS OF THE SENATE AND ASSEMBLY FISCAL ANALYSTS. MOTION SECONDED SENATOR HORSFORD.

Under discussion of the motion, Ms. Smith indicated that legislators are lucky to have such experience with them and will be well served to "have them on board."

Senator Horsford said that he supports both appointments and noted that there was a reception to recognize Mr. Stevens and Mr. Ghiggeri for their 74 years of service to the state. He said, "I really want to commend the two of them and also congratulate these two gentlemen. I think that while we have tremendous challenges in Nevada, we have tremendous opportunities and for those who choose to serve in the capacity whether as fiscal division analysts or in the fiscal division generally or for the LCB, we have some of the best people in the State of Nevada who are working on behalf of the people of this state and so I'm very supportive and also appreciate their willingness to serve. So, I'd like to congratulate them."

Chair Oceguera said that he would echo Senator Horsford's comments and didn't know whether it is congratulations or condolences in these times but he thought that there are definitely some opportunities during these tough times and looked forward to working with Mr. Raxter and Mr. Krmpotic in the future.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED UNANIMOUSLY.

**Item III – Legislative Commission Policy**:

**A. Review of administrative regulations** – Brenda J. Erdoes, Legislative Counsel.

Ms. Erdoes said that the first part of the regulations were sent to members early last week and staff was only able to provide the remainder the previous Thursday. She explained that there are 53 regulations and while staff got them to members as soon as they could, it is less time than members are usually allowed to review them. She said she wished to remind members that many of the regulations are meant to continue the temporary regulations which expire on November 1st and that is why staff tries to get them to members quickly. However, she reminded members that if they do not have enough time to look at them or have concerns about them that there are several options available today. The regulations can be deferred and an attempt can be made to organize a meeting of the Legislative Commission's Subcommittee to Review Regulations either before November 1st or shortly thereafter in order to continue to meet that deadline. She apologized for the lateness of which the members received most of the regulations and reiterated that there are a lot of them and most of them have a corresponding temporary regulation that will expire on November 1st. Of the regulations, there are 51 that are submitted pursuant to NRS 233B.067 and there are two from agencies that have requested early review which is a process members used during the last commission meeting.

Further, Ms. Erdoes said that there are three regulations about which her office has concerns and she would like to explain those concerns about the authority. She asked that during the process of determining which regulations would be held for further discussion that Regulations R026-09, R092-09 and R111-09 so she can provide an explanation of the authority and the commission may choose to make a finding if they do decide to approve those regulations.

[An updated nine page list of regulations was provided at the meeting and available to those in attendance to replace the seven page list included in the meeting packet. A copy of the updated list is attached as Exhibit D.]

1. Regulations submitted pursuant to NRS 233B.067.
2. Regulations submitted pursuant to NRS 233B.0681.

Chair Oceguera indicated as is the customary procedure, he will go down the list of regulations and if members would like a regulation held for more thorough review that they let him know and then a motion would be made to approve the remaining regulations.

Mr. Carpenter requested R194-08 be held for further discussion. Mr. Settelmeyer requested R206-08 and R003-09 be held. Ms. Kirkpatrick requested R006-09 be held. Mr. Carpenter requested R010-09 be held. Ms. Smith requested R012-09 be held. Senator Cegavske requested R017-09 and R018-09 be held. Ms. Smith requested R022-09 and R024-09 be held. Regulation R026-09 was held at the request of Ms. Erdoes. Mr. Carpenter requested R030-09 be held. Senator Carlton requested R034-09 be held. Ms. Smith requested R037-09 and R040-09 be held. Senator Cegavske requested R047-09 be held. Senator Carlton requested R060-09, R061-09, R062-09, R063-09, R064-09, R065-09 and R066-09 be held. Ms. Kirkpatrick requested R069-09 be held. Senator Horsford requested R070-09 and R071-09 be held. Ms. Kirkpatrick requested R080-09 be held. Mr. Carpenter requested that R083-09 be held. Mr. Conklin requested R084-09 be held. Mr. Conklin requested that R088-09 be held. Regulation R092-09 was held at the request of Ms. Erdoes. Mr. Conklin and Ms. Kirkpatrick requested R093-09 be held. The chair noted that Regulation R111-09 was being held for discussion at the request of the Legal Division.

Mr. Conklin referred to agenda Item IV. F. which references a regulation from the Division of Mortgage Lending approved at the previous meeting. He recalled that he and Senator Carlton expressed interest in that with regard to loan modification specialists and he wanted to make sure that is not approved without first having an opportunity to talk with the Commissioner because it has been changed.

Mr. Malkiewich said that he would defer to the Legislative Counsel on this matter but he believed with the early approval, as with the two items at the end of this agenda item, they are only allowed to adopt it with that prior approval if it is in the exact same form. If it was changed at all, it needs to return to the Legislative Commission for approval.

Ms. Erdoes said that she thought there might be some misunderstanding because her office was notified in writing that the regulation that they adopted was exactly the same regulation and her office filed it on their representation that it was the exact regulation. The regulation filed was the same one the Legislative Commission approved. She noted that the material is under information items on the agenda on which the commission could not take action. It was placed under the informational items because of

Ms. Kirkpatrick's request that they bring back to the commission their information statement which explained what happened at the hearing. She said if the regulation is different, the commission may want to take some different action. The chair said that they will not necessarily take action but a discussion will be held on that item and the Commissioner could appear and questions could be asked based on whether members think there has been a change or not.

> SENATOR TOWNSEND MOVED APPROVAL OF THE REMAINING REGULATIONS IDENTIFIED HEREIN AS R103-07, R218-08, R011-09, R013-09, R015-09, R016-09, R019-09, R020-09, R025-09, R027-09, R029-09, R032-09, R041-09, R049-09, R053-09, R054-09, R055-09, R059-09, R081-09 AND R031-09. MOTION SECONDED BY SENATOR CARLTON AND CARRIED UNANIMOUSLY.

On Regulation R206-08 from the Board of Wildlife Commissioners, Mr. Settelmeyer said that he was concerned and spoke with representatives a little bit ahead of time and helping them today to make sure that it is clear this is something that the landowner does not mandatorily have to agree to and it is just if they want to enter into the program. Another area of concern is on page 4 of the adopted regulation – they took out the word reasonable access and have changed it to allow access. He said that he would like to put back the word reasonable because his experience has been that he has had governmental agencies come in and their opinion of the best way to get to a particular area is a straight line and that can be very problematic to an agricultural operation. He thought the landowner does have the right to state a reasonable way to get to a particular location.

Rob Buonamici, Chief Game Warden, Department of Wildlife, appeared before members in Carson City and noted that their Supervising Game Biologist Steven Kimble should be present in Las Vegas and is also prepared to address the matter. Mr. Buonamici said with regard to participation in the program, it is totally voluntary. If a landowner does not want one elk on his private land, the landowner does have that option and can then participate in the depredation program. So, there is another provision for landowners that do not wish to participate in the program and do not wish to have elk on their property or a minimal number of elk on their property.

Mr. Settelmeyer said he appreciated the clarification but noted that he still would like to see the word reasonable reinserted into the term access so that there is no worry about landowners' rights in determining which way to get to a particular location.

Chair Oceguera explained that the Legislative Commission does not have the option of changing the wording of the regulation and can only approve or return the regulation to the agency. Mr. Buonamici noted that the way the regulation reads is that if the private land of the landowner applicant blocks reasonable access to – that is the old language – and all they are doing is removing the blocking of reasonable access so they can still provide reasonable access, they just cannot block reasonable access. For all practical

purposes, it still is reasonable access. Mr. Settelmeyer said he appreciates the clarification and is still a little bit hesitant overall but is okay with the regulation moving forward.

Mr Carpenter asked for some clarification from the representative in Las Vegas. He said he wanted to make sure that the landowners are still going to be able to participate in the discussion of the plans when they are brought up and that the regulation will not have any effect on them participating in the elk plans.

Mr. Kimble responded that all the plans were developed with multi-disciplinary participation including the public, landowners and sportsmen and any modification of those plans will be developed under the same guidelines.

Further, Mr. Carpenter inquired if the regulation provides for the inclusion of range land when the department is figuring how many elk a participant in the program can receive. Mr. Kimble replied that the department uses the amount of land that is owned by the landowner and/or managed. Mr. Carpenter asked if that included range land also and not just crop land. Mr. Kimble replied, "Yes, it does."

Additionally, Mr. Carpenter asked how successful the program has been in Mr. Kimble's estimation. Mr. Kimble responded, "Well, I'm not sure what you mean by successful. We have tried to administer it as efficiently as we can. I think it works in most cases and we have been able to achieve some tolerance for elk in areas that might not otherwise be accepted." Mr. Carpenter asked Mr. Kimble to get back to him about the number of elk tags that are being issued under the program. Mr. Kimble replied that he did not have that data with him at the moment but it is available and he would provide that information to Mr. Carpenter.

> SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R206-08. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

Chair Oceguera clarified that Regulations R194-08 and R088-09 would be held for further discussion.

On Regulation R194-08 from the State Environmental Commission, representatives appeared before members in Carson City. Mr. Carpenter asked if there are grants available to help small water systems comply with the regulations.

Leo Drozdoff, Administrator of the Division of Environmental Protection introduced himself and Andrea Seifert, an Engineer in the Safe Drinking Water Program.
Mr. Drozdoff said, "The short answer to your question, Assemblyman Carpenter, is yes, there are grants and loan programs available."

Mr. Carpenter said that he would like to ask some specific questions about the small water systems in Elko County like Midas, Jarbidge and Tuscarora. He asked if the agency foresees any great problem with them complying with the new regulations. Ms. Seifert responded, "No, those three systems would not be impacted as far as their monitoring has indicated thus far by the new regulations."

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R194-08. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R003-09 from the Nevada Athletic Commission, Mr. Carpenter said that recently in Elko there have been exhibitions and asked if representatives have gone to Elko or have talked to individuals who are putting on the events.

Keith Kizer, Executive Director, Nevada Athletic Commission appeared before members in Las Vegas and responded that there have recently been fights in Fallon and Reno but he did not know of any going on in Elko. He said sometimes they have been held just across the border in sister states and make it seem like they are in Nevada and he could look into that. He stated that if there is anything going on in Elko and it is a contest or exhibition of unarmed combat, it should go through the Nevada Athletic Commission.

Further, Mr. Carpenter asked when there are situations where people are "put in a cage and they slug it out" does that come under the jurisdiction of the Nevada Athletic Commission. Mr. Kizer replied in the affirmative and said it would fall under the mixed martial arts and the most well known is the Ultimate Fighting Championship. There is such an event scheduled for November 21 at the Mandalay Bay in Las Vegas. Those events follow the same exact medical guidelines as the sport of boxing. Mr. Carpenter stated, "You probably need to get to Elko then because they are certainly doing that up there."

Ms. Kirkpatrick read from the regulation where it said "including but not limited to a cerebral hemorrhage" and asked what other instances would some type of head trauma allow them to participate. Mr. Kizer replied that it would not necessarily be limited to head trauma although that is the most common situation where the Nevada Athletic Commission and its medical advisors would do a special meeting or special agenda item to review it. He said several years ago it might have been something like a detached retina although the medicine has caught up to that issue and it is very rarely a big issue anymore, or something like a rotator cup injury. He believed that cerebral hemorrhage would be the main issue that would be looked at or any type of serious head trauma. With the change in the language, everything and anything could be suitable for a special agenda item or special meeting by the commission and its medical advisors.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R003-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R006-09 from the Public Utilities Commission of Nevada, Ms. Kirkpatrick said that she had a couple of different questions on this regulation. She knew that on Assembly Bills 518 and 526 of the 2007 Legislative Session there was a lot of hard work and, in fact, involved most of the members on the commission. She said she wanted to understand why there is a change in the definition from a small provider to a small scale, which is under 10,000, because she understood that when discussions were held concerning providers of last resort that there was only one smaller rural entity that did not want to participate. She said it seems the language would include everybody.

Nancy Wenzel, Hearing Officer with the Public Utilities Commission of Nevada (PUCN), appeared before members in Carson City. She explained that the statute changed and basically divided everybody into two categories. One is either a competitive supplier or a small scale provider of last resort. The competitive suppliers are Embarq and AT&T and small scale providers are those who are not regulated yet as a competitive supplier. She indicated Verizon and other small providers in rural service territories are included in the second group.

Further, Ms. Kirkpatrick asked if within this regulation it now says that everybody can apply for the fund to recover the costs to be competitive and if that is something new. Ms. Wenzel responded, "No, it is not anything new. The commission has always allowed providers of last resort, whether they are small or large, to come in and to apply for funds from the fund to maintain the availability of telephone service to serve those high cost areas. For example, Humboldt Telephone is a small provider of last resort and they are the only provider who has ever come in for high cost support and they have received such support for many years from the state fund."

Ms. Kirkpatrick referred to page 24, section 26, subsection 3 where it says "any shortage or shortfall or coverage in the fund of universal service" which she understood to be a pretty clear-cut definition when the legislation was discussed is now being changed to "any shortfall or overage to fund and maintain the availability of the telephone service." She said that's no different so that is changed throughout the regulation but it is a huge difference when one is talking about changing the definition of provider of last resort which is a lot more broad than the fund legislators worked to establish. She asked why the change throughout the entire regulation. She said "fund for universal service" is a very common, nationally-used term and is being changed to say "fund to maintain the availability of telephone service." She thought they were trying to be consistent throughout the nation and she was trying to understand why it is being changed. Ms. Wenzel responded, "Yes, you are correct. We did change the name of the fund based on A.B. 518. That fund was changed to this title – fund to maintain the availability of telephone service. It was changed from the fund for universal service. That was done by statute in A.B. 518 so the regulation just tracks that change."

Ms. Kirkpatrick said that legislation was passed almost two years ago and in 2011 the ability to come back and raise the rates for telephone services expires. She asked why

is it just now being changed if this is the fifth piece of the regulation process. Ms. Wenzel replied, "This is the fifth piece of the regulation process from A.B. 518 and it required regulations be adopted by January 1, 2009, and the regulations were adopted – temporary regulations were adopted on December 17, 2008, and these are just the exact same regulations coming before you to be made permanent because they expire by limitation November 1st."

Further, Ms. Kirkpatrick asked if portions of that bill and the ability to raise the rates sunsets in 2011, how is this going to change again. Ms. Wenzel responded that the basic rates of AT&T and Embarq that are capped in 2011 are allowed to go up by one dollar and in 2012 that provision of the statute is sunseted. Those rates can go up unless legislators change the law to whatever they want to charge. That will not affect what is being done today – this is the high cost fund and the fund to maintain the availability of telephone service remains. Any carrier who needs high cost support can come in and apply to the PUCN. The other piece of this is lifeline and any subscriber who qualifies for lifeline can still get that lifeline discount – that will not change in 2011.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R006-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R010-09 from the State Board of Agriculture, Mr. Carpenter said that he did not think he requested the regulation to be held but if he did he made a mistake.

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF REGULATION R010-09. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulation R012-09 from the State Board of Education, Ms. Smith asked why the pass rate from 95 percent to 80 percent for teachers. Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City. Dr. Rheault said although it looks like the standard for pass rate for teacher education programs, when the regulation is reviewed, the State Board of Education accredits teacher education programs in the state for a seven-year period, both private and public, what the change did was just change the trigger at which point the state board may request a separate review of the program in between the seven year approval period. It was found that when it went up to 95 percent in the secondary programs in particular where they have a small number of students, one student not passing the exam would cause the program to submit a report to the board to consider whether to review it separate from the seven-year program. Since 2003, they have been required to keep track of the pass rates by each endorsement area and when the regulations were set in 2003, they did not really know what the standard was and because of the numbers of reports each program had to file by one student failing, they went back and looked and the national average that is used in the other states for Title 2 Higher Ed reporting is 80 percent which they reviewed. It does not mean that is what they are accepting, it just means that is what could trigger a separate review of the program in between the seven-year normal approval period.

ASSEMBLYWOMAN SMITH MOVED APPROVAL OF REGULATION R012-09. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulations R017-09, R018-09 and R047-09 from the Commission on Professional Standards in Education, Senator Cegavske said that the commission has been unable to obtain a quorum and asked that those regulations be deferred. Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City and thought there might be some confusion and clarified that R017-09, R018-09 and R047-09 have to do with teacher licensing and that commission met the previous Friday in Carson City and passed all three of the regulations. Senator Cegavske apologized and said she did have it confused with another committee.

SENATOR CEGAVSKE MOVED APPROVAL OF REGULATIONS R017-09, R018-09 AND R047-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R030-09 from the Certified Court Reporters Board of Nevada, Mr. Carpenter said that there is no provision for an emergency situation if a person does not show up when the class starts and the regulation says that if the person is unable to take the test, the board would keep the money and the person would have to reapply. He wondered why there was no provision for an emergency situation.

Mary Cameron, Chairman of the Nevada Certified Court Reporters Board, appeared before members in Carson City. She said that question did not come up during consideration and in the years that she has been in Nevada since 1978, they have not had an applicant say that was the reason they did not attend. Mr. Carpenter asked what would happen if someone got up in the morning and was very sick and could not make it to class – would the board keep their money? Ms. Cameron responded that based on the current language they would keep their money. Mr. Carpenter said that it appeared to him that the regulation does not consider what happens in the "real world" and he thought there should be some provisions made for that situation. He said there must be people not coming otherwise they would not have the regulations written the way they are. He said he understood they need to get the people there but things happen. Ms. Cameron said that she agreed with Mr. Carpenter but it has not been a situation that has come up. She said that most applicants arrive the day before and the test is given twice a year – once in Las Vegas and once in the north. There are usually between 20 and 30 applicants in the north and between 30 and 35 in the south – it is a small number of applicants.

Mr. Conklin noted that while it is not encompassed in this regulation but somewhere else in regulations for the board is there an appeals process so that in the chance that the scenario posed by Mr. Carpenter does arise that the person at least has the opportunity to appear before the board and explain themselves. Ms. Cameron said that there is an appeals process based mostly for those that are already licensed and there is a review process for applicants to look at their test – both the written knowledge test and the

shorthand machine skills portion test. In the past, they have had applicants challenge some of the questions and their answers to them and the testing committee has been reversed and the applicants were granted their license based on that review by the board. There is no appeal process in place because the situation has never come up where they have had an emergency and therefore appealed to the board. She said she did not believe their regulations addressed that situation.

Chair Oceguera asked what is the fee? Ms. Cameron responded that it is $100 or $150. She noted that her daughter is currently an applicant and she has totally and completely recused herself from anything having to do with the testing process so she is not as familiar with that as she would like to be and apologized for that.

Mr. Carpenter reiterated that he thought it was unfair that an applicant could not call in and give a legitimate excuse. He thought that $150 means something to some of those people and then they would not be able to take the test for another year. He thought it was a little too harsh.

Senator Carlton said that she agreed with Mr. Carpenter and she knows that there are other boards that do have components within their regulations that deal with refunds or allowing that amount of money or a portion thereof, because part of that money goes to pay for the actual test itself so it needs to be spent whether they show up or not, but a portion of it could be credited towards the applicant. She asked if Mr. Carpenter would be comfortable with this regulation moving forward and the commission request that the board to go back and set up a workshop on this and return with another regulation that would deal with that in the future so that they can go ahead and use the things encompassed in this regulation now. Mr. Carpenter said he thought that would be acceptable as long as the commission gets the board on record that they are going to go back and study the situation and hold another workshop. He thought that there are people who think that government is too heavy handed now and even though it has not come up in 27 years but if it comes up and someone is going to pay the price, he thought that is not the way government should operate. He said if the board would put something on the record that they will discuss this situation and return and see what they could do, that would be fine with him.

Senator Carlton asked the representative of the board if she saw this as an opportunity to put this matter out for discussion and bring it back at another date. Ms. Cameron replied, "Yes, I absolutely do. We have two other regulations that we are currently getting ready to workshop and I will make certain and commit to you that this will be an issue on there. I really appreciate the suggestion of perhaps a partial reimbursement, particularly, but we will definitely workshop this issue and I appreciate it being brought to our attention."

SENATOR CARLTON MOVED APPROVAL OF REGULATION R030-09. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulation R022-09 from the State Board of Education, Ms. Smith asked about the discussion of adding the semesters because it seems like it is going backward and that there was a desire to require credits be established before one could reach a certain grade level and by adding semesters it seemed to her that they are taking a step back. She asked if Dr. Rheault could help her with the logic.

Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education, appeared before members in Carson City. Dr. Rheault said that was the main discussion on this regulation. He said that primarily the reason they modified it was for testing purposes. As an example, in Grade 12 if a student going into their fourth year had 16 credits what happened was that because the regulation said they had to have completed 17 credits they were prohibited from taking the test if they had failed it the fall semester as a senior because they had not completed 17 units. Even though they might have been close, they were not allowed to take it and therefore they lost the opportunity to take a test because they were not considered a senior. What this regulation is doing, and it is hoped that it would get further clarified in school district policy, is they would still keep the units in place but the districts would have the option to consider a student as a senior with six full semesters under their belt as far as attending school. The intent was to allow those students to take the test even though they might have been a half credit or a credit short of being classified as that grade level. It would be the same thing as a ninth grader that did not have the five units if they were taking tenth grade classes but were a credit short, they would miss the whole tenth grade opportunity to test and would have lost a testing piece. The intent was also to provide some flexibility for the high school proficiency exam testing, not that they were trying to go back. The reason it was put in place was to try to make sure that if someone was going to be a tenth grader, at least they would have completed five credits. It is hoped that the districts would still honor the units but use the semesters as flexibility to allow for testing purposes only. Ms. Smith said she was just a little worried about the lower grade and that students would end up taking the test when they are not close or ready to take the test. She said she would accept the regulation but would ask that after it goes into effect that there is report back about how it works in the various districts and some tracking to make sure the students are not abusing it because it seems like it creates a lot of staff time if students who are nowhere near the credit level end up taking the test.

Ms. Kirkpatrick said if anyone has been the parent of a senior who has not passed the proficiency math test, it is very stressful and giving them all the additional opportunities is understandable but what is being done to ensure they do not have to have all the opportunities. She said, "I'll use my own daughter as an example. The more times she took the test, the worse she got so are we looking at that as well. I understand giving them more choices but from a parent's standpoint they start with a 303 and by the time they've taken it eight times they are at a 288. I don't know that it is helping the process."

Dr. Rheault responded, "We do have a separate regulation that requires school districts to provide remediation if they fail the test their junior year and beyond. So, I think that would be my response is that districts are required to provide some type of remedial course work, after school work, to help address the passage of the test depending on the subject."

Further, Ms. Kirkpatrick asked if by changing the units to when it qualifies them to be a junior is that going to give them the ability sooner to get the remedial help. Dr. Rheault replied that the requirement for remedial study still begins with the failure of the test at the eleventh grade so that is what would trigger it, not the tenth grade if they fail it when they take it one time as a tenth grader, and that part has not changed with regard to the regulations. He said they did have a separate regulation that moved one of the tests that was provided to twelfth graders back to the eleventh grade. With the new regulation, the eleventh graders that did not pass it as tenth graders will be able to take it once in the fall and once in the spring. It was thought that spread out the remediation more to where it would be more beneficial and then they took away one opportunity as a senior which still gives them two more chances as a senior but allows more time for remediation.

ASSEMBLYWOMAN SMITH MOVED APPROVAL OF REGULATION R022-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R024-09 from the State Board of Education, Ms. Smith said that her question on this regulation is that it seems really broad. She has spoken to at least one district person and she thinks she understands the intent but it seems that someone could just challenge a course and she could not figure out how that affects other issues such as attendance or the scores needed to pass a course.

Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City and said he would attempt to answer the question. He referred to page 1, section 1, the regulation that allowed districts to grant credit for specific courses has been on the books since the early 1980's – it just did not spell it out. With the passage of legislation in 2007 which required specific regulations that spelled out the exact courses that could be taken without attending the course and the passing rate for that course, when it was reviewed and discussed with school districts and charter school representatives on how specific they should be, the initial regulations that were adopted did not even include any of the specific courses that are now identified in subsection 3. The reason was that the board wanted to allow the districts, because there is a great variety of courses between a rural district and a Clark County or Washoe County School District who offer a lot more courses, and what they ended up settling on were all the core academic courses that would be needed for graduation that would allow the districts the option to offer that course for credit without sitting in the course. It was not done for elective courses because an elective is one students want to attend anyway and usually do not test out of an elective. He said

that was the thinking behind the specific listing of the courses. It says the boards of trustees shall prescribe the courses in which a pupil may be granted, so it allows the districts the opportunity but he is not sure all districts will offer the opportunity to get all of the courses by credit. Ms. Smith inquired if Dr. Rheault knew how much this is utilized. Dr. Rheault said he does not have any specific numbers on it but he does know that the old regulation was used more between the eighth grade and the ninth grade when students completed algebra one in eighth grade and if they passed the test at a certain grade they were given credit at the high school if it was taught by a licensed secondary math person. He knows they have issued a half credit in health for eighth grade by the student taking a course but it still was considered not taking the course in high school so that is where he thought it fell under these regulations. He did not think it was utilized very much, or has not been in the past, to where a student would challenge the credit for that course by taking the final examination.

Ms. Smith noted that in the previous regulation it said secondary and adult programs and now that is eliminated. Dr. Rheault said that he thought that was eliminated only because the statues that were adopted in the bill had pretty specific delineation as to who was eligible to take the credits without sitting in on the course. Ms. Smith said she does have some concerns about it but she thought that she might need to take it up as a bill for the next legislative session. Dr. Rheault said he would work with Ms. Smith.

Senator Carlton referenced page 2 under c. at the bottom of the page where it reads "prescribe a minimum score of not less than 70." She said that 70 is not that great. If the whole idea behind the premise is that the student has a true working knowledge of the class and does not need to sit through the class, she asked if all they are going to get is a 70 shouldn't they be taking the class. Dr. Rheault said that portion did have a lot of discussion and it ranged from 65 to 80 on the test. What was set was the minimum score and many districts could opt to set it higher if they wished but it was the minimum and it was required by the statutes that the state board set a pass score and so it put it at 70 after all the public hearing discussion. Senator Carlton commented that makes her feel a little bit better especially when they are talking about courses like algebra one and algebra two. She said that two builds upon one and if someone only got 70 on one, she could not see how someone could be a success at two. Dr. Rheault noted that to get the algebra one credit from eighth grade, most of the districts are requiring at least a B grade or better which is above what is set. The districts have the option to set the passing score based on their own district policy but that is the bare minimum that they cannot go below. Senator Carlton asked, "A B in eighth grade gets you the credit at high school so you can go right into algebra two?" Dr. Rheault responded, "Most of them would probably go into geometry but they could then take the next higher level course, correct." The senator thanked Dr. Rheault and said that answers a lot of her questions.

SENATOR HORSFORD MOVED APPROVAL OF REGULATION R024-09. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulation R034-09 from the State Board of Pharmacy, Senator Carlton said in reading the description regarding being able to have a pharmacist or intern pharmacist consider and determine the therapeutic appropriateness of drugs before dispensing a drug, her antenna went up. She said she wanted to understand what problem is trying to be solved with the regulation.

Carolyn J. Cramer, General Counsel for the State Board of Pharmacy appeared before members in Carson City. She explained that what the board intended to do with the regulation is that they had a list of items that pharmacists had to mandatorily counsel on and it allows the list to be more permissive in what is appropriate for that individual. It also changes the drug utilization list as well and it also includes warnings in the drug utilization list so that pharmacists will consider those items at the time they counsel patients but there is still mandatory counseling. She gave the following example: If you have a male patient before you and there is a warning for a female for being pregnant, you don't want to have to counsel the male on that. It goes more to what is appropriate for the individual.

Senator Carlton said that there have been some concerns in the past with pharmacists not necessarily within the counseling but in refusing to administer a duly presented prescription. She said she wanted to make sure that anything within the regulation does not open up further the opportunity for a pharmacist to refuse to fill a legal prescription. Ms. Cramer responded, "No, this does not have anything to do with those."
Senator Carlton said, "When we get into therapeutic appropriateness that's vague enough to some of us who have dealt with this issue over many, many legislative cycles that I'm just concerned that the pharmacists will get a little more proactive in what is appropriate for the patient when that discussion really should happen between the practitioner – the medical professional – and the patient, not the pharmacists. So, if you can give me a level of comfort that we're not going down that path or trying to circumvent the path, then if I'm making myself clear as long as you understand where I'm going." Ms. Cramer replied, "No, I understand what you're saying and that isn't what the intent of this regulation was. This regulation was – what they were trying to do was get into more appropriate – I think there was legislation that you sponsored on the black box warnings – that was information that was helpful to the board and we wanted to make sure that we incorporated that where it was appropriate and to put that into the [word unintelligible] component that could actually be utilized by the pharmacist in counseling patients." Senator Carlton said that was Senator Care's bill and she just ended up being the "stepmother" of that bill. She said that she appreciated Ms. Cramer addressing those issues and she thought they were very important. The senator said that her concerns have been addressed.

SENATOR CARLTON MOVED APPROVAL OF REGULATION R034-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R037-09 from the State Board of Education, Ms. Smith said that she thought she had her question answered as she was corresponding with the Legal

Division about that this morning but perhaps Dr. Rheault could put on the record for her that they do have the ability to have alternative criteria for those two subjects only and only after three times of failing the test. Keith W. Rheault, Ph.D., Superintendent of Public Instruction, State Board of Education appeared in Carson City and explained that the statute was modified slightly during the past legislative session and it went from failing it three times before their senior year to two. After failing the test twice and if they have a 2.75 grade point average, then they are eligible to try the alternative science test. Ms. Smith asked, "And then this will outline the criteria for that but isn't writing in there too?" Dr. Rheault replied that writing is also allowed the alternative. He said the statutes do specifically say that it cannot be the reading or the mathematic portions of the test. Ms. Smith said that solves her questions.

ASSEMBLYWOMAN SMITH MOVED APPROVAL OF REGULATION R037-09. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulation R040-09 from the Board of Wildlife Commissioners, Ms. Smith said this regulation is the one that requires the posting of the results of the "tag draw" within 48 hours and she just wanted to get on the record that there is a provision and a public posting in case they cannot pay for the tag. She said she attended one of the tag drawings a couple of years ago and that issue came up in the idea of posting earlier, that if their credit card does not clear they will not get the tag. She just wanted to make sure that is allowed for and posted on the site.

Rob Buonamici, Chief Game Warden, Department of Wildlife appeared before members in Carson City. He confirmed that Ms. Smith's statement is correct – if their credit card does not clear and they do show up on that original list, it is posted that if their credit card does not clear they will not be provided a tag and that it goes to an alternate. Ms. Smith said that she just wanted to get that on the record.

ASSEMBLYWOMAN SMITH MOVED APPROVAL OF REGULATION R040-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R060-09 from the Personnel Commission, Senator Carlton noted that she was not able to access the regulations over the weekend to review them and she just wanted to ensure she had a "handle" on what was trying to be accomplished and what problem the agency is trying to solve. She indicated that this regulation deals with the Family and Medical Leave Act and how employees access it. She said from what she understands now employees are using the Family and Medical Leave Act and using some of their accrued time whether it is "comp," sick leave or vacation and this will allow them to be separated so in essence they do not get "double dinged." She said she hopes she is correct on that and if she is not, she asked the agency to please correct her. Also, she said that she has some concerns on the order in which the time is used. It seems to be going beyond what the leave act was meant to address for employees

and she thought it was putting them in an awkward position. She asked if the agency could explain what it is trying to fix and what the changes are, it would be very helpful.

Shelley Blotter, Division Administrator for the Employee Management Services for the Department of Personnel, appeared before members in Carson City. She said what they are trying to fix is the federal Family and Medical Leave Act (FMLA) regulations changed within the last year and provided some new protections. The first issue had to do with additional benefits for covered service members in that employees would have up to 26 weeks of time if that person was their next of kin. The agency is adding that in so an employee could use their accrued sick leave if they were taking care of a next of kin covered service member. The other aspect of this is that previously the FMLA did not allow for the use of "comp" time. Public employers can grant overtime in compensatory time and so that just adds "comp" time to the list of types of leave that may be used under the FMLA.

Ms. Blotter said to address the senator's concern about the order of usage, this regulation does not prescribe a particular order of usage – it is whatever the employee is eligible for so if they are perhaps bonding with their child and the mother is not seriously ill or a father that is staying home to bond with their child and it is not a sick leave event, they could use their annual leave. It just indicates that whatever the nature of the need for the leave that they would need to meet that criteria for leave usage. She said as far as the "double ding," she thought that it is just a matter of, yes, they have that type of leave and then they would use it prior to any leave without pay so that they are drawing down those balances that the state generously provides as an employer.

Senator Carlton said that is the concern she has on page two at the bottom of the page where is reads "an employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until the employee has exhausted all the accrued sick leave, accrued annual leave, accrued compensatory time and catastrophic leave." She said that before they can access their FMLA which is their right to use, the agency is setting up a barrier for them to get to that and making them use all the other leave up before they can get to that – in essence they do not have a choice to take leave without pay – the agency is saying 'you will use all your sick leave up first before you can use this.' Ms. Blotter responded, "No, that's not what the intent is. What the regulation reads is that the Family and Medical Leave Act time that they are taking if they have accrued leave and they qualify to use that leave they would take it concurrently with the FMLA so it's not that they could take off four weeks of leave without pay and then choose to use their FMLA and have an additional 12 weeks of time off. They would qualify for FMLA, we're asking that they would use their paid leave time that they have accrued and available to them and then if at some point they run out of those other leave types, then they could use FMLA leave without pay. But we're not setting up a barrier, it is that they are using their leave time that they have accrued concurrently with FMLA."

Further, Senator Carlton stated, "So, they have sick leave and they have Family and Medical Leave Act. I'm an employee and I'm coming to you. I have 80 hours of sick leave, I have 80 hours of vacation time, I come and request Family and Medical Leave Act to leave town to take care of a sick mother but I'm not requesting the sick leave and I'm not requesting the vacation time. Would you allow me to leave under Family and Medical Leave Act without accessing those?" Ms. Blotter responded, "No, we would not. The federal law doesn't allow for an employer to run any of their paid leave time concurrently with the FMLA, otherwise they get a greater benefit than other employment situations. So, since we do have paid leave, we do run it concurrent with FMLA and that's perfectly okay under federal law." Senator Carlton commented, "But we can do better than they so what I see as the down side of this the Family and Medical Leave Act is there when nothing else – I want to phrase this correctly – the Family and Medical Leave Act was designed to protect employees so that they would not lose their jobs if they had a sick family member and it seems to have evolved into dealing with pay issues when it's original intent was to deal with employees not being paid. My concern is that they are using Family and Medical Leave time which you only get so much in a year at the same time that they are using their sick leave. You said they are running concurrently so as I'm using my sick leave I'm also using my Family and Medical Leave whereas if the illness goes further out and I would need that time, I'm actually losing it because you are using two portions of my time on the same day. It's hard to explain this. I hope I'm making it clear. I just don't see that as being fair to the employee who has a benefit of unpaid leave which is a hardship but it is unpaid leave and they are losing that time at the same time that they are losing their sick leave time. So, I have concerns about that."

Ms. Blotter said, "If I could just address that again, Shelley Blotter for the record, right now the regulation reads that they would be exhausting their accrued sick leave at the same time that they're on FMLA so that's not changing and again that is consistent with federal law, an employer is allowed to do that. What is added here is that compensatory time and catastrophic leave time could be exhausted at the same time as their FMLA. So, maybe let's just talk about an employer, it's a private employer, and they have enough employees that they fall under the Family and Medical Leave but they don't give sick leave to their employees. So in that situation, the FMLA is really the only thing that is protecting their job. In state government we do have sick leave and it's paid sick leave so, again, what the federal law allows is that if you are an employer and you do grant sick leave and you are paying for that time off that you can run it at the same time as the FMLA."

Senator Carlton said, "And my concern, Mr. Chairman and to the other members of the committee is, I've always had a bit of discomfort with using sick leave at the same time as FMLA because I saw it as a 'double ding' to the employee but now here we're adding annual leave and comp time so we're adding all these times in so it is a 'double ding' again so literally that 26 weeks that's in here is being eroded in a way because you're using it at the same time as your other leaves rather than having that additional time to take care of that sick family member. So a benefit that's being given to our state

employees which they earn because remember we earn sick leave, comp time, all that by the hours that you work. It's not just that you're there for a year, you earn it by working every day, by allowing the use applying this towards the Family and Medical Leave Act it erodes the amount of time that's left at the end of the run time for FMLA so that's my concern with this regulation."

Ms. Blotter said, "If I could just add, again Shelley Blotter for the record, you know I'm a long term employee and I'll give you an example – you have something like 300 hours of sick leave on the books. So, what is being suggested is that I would be able to exhaust all of those 300 hours plus any annual leave I have and any other leave type that I'm eligible for and then at the very end after being gone for possibly six months or better, then I would then have the entitlement of the FMLA on leave without pay. So, I think what it does is it extends that period of time significantly and what the federal government was trying to do was not make FMLA overly burdensome and allowed for the concurrent usage. Thank you."

Senator Carlton reiterated that she did not get to go through the regulations in depth the way she would normally like to because of not being able to access them on the computer over the weekend. She has a couple of quick items on a few other regulations but on this particular regulation she has a hard time supporting it for where she thought the agency was trying to go. She said that she sees the benefits that state employees earn in one arena and then she sees FMLA as a totally separate thing and does not think that one should count against the other so she has true concerns with that.

Senator Carlton said, "A wise bird is whispering in my ear that I should probably make a motion to defer this regulation to the subcommittee on regulations and if you would like me to include all the different Personnel Commission regulations in that I would be happy to do that and then we can have a discussion about all these regulations at that subcommittee.

Chair Oceguera noted that there would be a need to have a subcommittee meeting in the next month and asked Ms. Blotter what would be the impact of delaying those in order to give members more time to digest some of the information and would it negatively impact the agency. Ms. Blotter said that she believed it would and noted that the furlough regulation has nothing to do with the FMLA and it is an emergency regulation that expired yesterday so they are hoping it would be adopted today. She also noted that there are other regulations that were adopted that had nothing to do with FMLA and have to do with the hearing process as well as administrative leave for pandemic which they are expecting to receive quite a number of leave requests. She hoped that the regulations would be looked at individually. The chair said that they would be looked at individually. She indicated that there would not be a problem if Regulation R063-09 was also deferred.

SENATOR CARLTON MOVED TO DEFER REGULATIONS R060-09 AND R063-09. MOTION SECONDED BY SENATOR HORSFORD AND CARRIED WITH SENATORS CEGAVSKE AND TOWNSEND AND ASSEMBLYMAN SETTELMEYER VOTING NAY.

On Regulation R061-09 from the Personnel Commission, Senator Carlton asked about the change from eight hours of administrative leave for each hearing to all hearings and if someone could give her an average on some hearings with regard to amounts of time.

Mark Evans representing the Department of Personnel appeared before members in Carson City. Mr. Evans said the regulation was changed to clarify for employees and agencies how much time people did get for hearings. He said with a disciplinary action there can be two hearings – one is an internal administrative hearing done by someone within the agency where the employee gets to hear their side and usually a hearing of that type takes about an hour. The other hearing could take as long as all day. This regulation looks at preparation time for the hearings and in looking back at the intent of the regulation, the intent was always to give the employees up to eight hours to split between the two hearings. Responding to Senator Carlton, Mr. Evans confirmed that the time includes the appeal process also. He said it would go to the Department of Personnel Hearings Officer and would include that hearing and the informal hearing at the agency. Typically, the informal hearing at the agency is not time consuming. The one with the Hearing Officer is the one where they would better spend their "prep" time. That would give them a full day of paid time to prepare for those two hearings.

Further, Senator Carlton asked if that same amount of time would be appropriate for the state side to be prepared and is that about equal – would it take about eight hours of the department's time for the person on the other side of the table to be prepared for the hearing. Mr. Evans responded that he thought it would be an equivalent amount of time keeping in mind if they have been working on the discipline process that has been going on for a while, working on things like the investigation, making sure it is a fair discipline and writing it so in that case they've got more time invested because they are making the decision to do the discipline and it will take more research. Whereas the employee would be preparing specifically for the hearing and not doing all the investigation up front. He noted they do have access to the files that are going to be used by the other side.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R061-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R062-09 from the Personnel Commission, Senator Carlton said that she would like an example of how the regulation would be applied.

Shelley Blotter, Division Administrator for Employee Management Services for the Department of Personnel appeared before members in Carson City. Ms. Blotter explained that what is changing in subsection 2 is that if someone had requested time

off and their supervisor had responded that they were not authorizing it, maybe there were staffing issues, but the employee called in that morning and said they were not coming in even though they were not authorized to take the time off – they would have actually reported it but it was still unauthorized. She said that situation actually occurred and the Hearings Officer said that discipline could not be taken because of the way the regulation was written. Just the fact that the person reported that they were still not coming in, it was still unauthorized leave. Senator Carlton said that is the reason why she is in opposition to the regulation.

Mr. Conklin said that there is an additional reference in sub 3 to an additional disciplinary action – 284.464 and he asked what that was. Ms. Blotter responded that it is immediate dismissal. The other one is for progressive discipline. Mr. Conklin said, "So we've taken this, we've expanded it to unauthorized and then where there was disciplinary action that did not include immediate dismissal now they could be dismissed for any of them – anything in this section – is that right?" Ms. Blotter responded, "They could be. Immediate dismissal includes a number of items like if you are off for three days in a row and it wasn't authorized then you could be immediately dismissed. So if that was unauthorized and you took it anyway, you could be immediately dismissed for that."

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R062-09. MOTION SECONDED BY SENATOR CEGAVSKE AND CARRIED WITH SENATORS CARLTON, HORSFORD AND WOODHOUSE VOTING NAY.

On Regulation R064-09 from the Personnel Commission, Senator Carlton said she did get her question answered on this regulation and is "fine" with it.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R064-09. MOTION SECONDED BY SENATOR CARLTON AND CARRIED UNANIMOUSLY.

On Regulation R065-09 from the Personnel Commission, Senator Carlton requested that an example be provided on this regulation on what is trying to be fixed.

Shelley Blotter, Division Administrator for Employee Management Services for the Department of Personnel appeared before members in Carson City. Ms. Blotter explained what was happening was that employees that were being considered for a promotion – maybe they worked in one agency and applied for a promotion in another agency – and a service jacket review would be done such as looking at employee evaluations, see if they had received any discipline and that type of thing but they would also ask for their leave balances and use it as an indicator of leave abuse. What they are trying to do is safeguard employee rights to make sure that leave taken under the Family and Medical Leave Act or as an accommodation under the Americans with Disabilities Act was not used against them because those are legitimate leave usages in consideration for further opportunities. They are trying to protect those records. The second part of the regulation is the access to those records which would be to their

immediate supervisor and up through their chain of command so that when they are making decisions related to what they are qualified for that they would have access to that – that is regular business usage.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R065-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R066-09 from the Personnel Commission, Senator Carlton said this regulation deals with drug and alcohol counseling and screening. She asked if the representative could review what is trying to be accomplished. She said it appeared that the products list of what is going to be used is changing and that the employee will have to pay for it.

Shelley Blotter, Division Administrator for Employee Management Services for the Department of Personnel appeared before members in Carson City. Ms. Blotter explained this is in a situation where an employee has tested positive for drugs and alcohol and the program goes through the Employee Assistance Program so that they are referred to appropriate counseling or program for treatment. It is not an immediate dismissal type of situation in most cases. The employee goes through a treatment program and before they can return to work there was a desire by the agencies to show that the person was actually clean and sober for health and safety reasons. They are dealing with the public and they want to make sure that they have received the treatment and actually took it to heart. The regulation just ensures that they have a clean, positive test and that whatever counselor or program they attended says they are ready to return to work. The other part in section 3 – the conforming list – right now if someone is suspected of being under the influence of alcohol at work, the typical way to deal with that is to call the Highway Patrol into the workplace and hopefully it is a situation where it is a conference room and away from other staff members. The Highway Patrol is called and performs an initial assessment and then they take that person to the local law enforcement agency and do an actual breath test on them. She said sometimes that is more easily done so that the employees confidentiality can be protected and they are not being overly embarrassed in the process. The regulation would allow for a lab that provides breath testing to do that test there as well as any urine testing for drugs – so it is like a one-stop shop. If the employee was suspected to be not only under the influence of alcohol but also drugs, they would have to go to have the breath test done and then take them to a separate site to have the urine test done. She reiterated this would allow for a one-stop and if the agencies chose to they could not involve the Highway Patrol in it. She said the department is contracted with the labs and they have the devices.

Further, Senator Carlton inquired what the cost to the employee would be noting that it is just on a suspicion and there is not yet any proof. Someone could say they smelled something or they think they notice erratic behavior so because this person has a previous record of this type of behavior you could apply this to them. Ms. Blotter responded that the cost is $37.50 and the cost when the screening test is done for the

initial determination is paid by the state agency. The only portion that is paid by the employee is in section 1 when they are trying to return to work. They have already tested positive once and now they are wanting to return to work. They do charge them for the test and she imagined it would be at the contract rate paid by the state agency.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R066-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

Senator Carlton noted that since the members went through a whole litany of Personnel Commission regulations she said that she should disclose that her husband is a state employee and is subject to a number of the regulations as a state employee. That has not changed for the last 12 years she has served in the Legislature but she just wanted to put it on the record again.

On Regulation R069-09 from the State Board of Finance, Ms. Kirkpatrick said that after re-reading the regulation she now understands it so the chair could move forward.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF REGULATION R069-09. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulation R070-09 from the Commissioner of Insurance, Senator Horsford requested an explanation from a representative of the agency on Regulations R070-09 and R071-09. He said there was legislation dealing with the subject during the last session and he would like to understand the intent.

Mike Lynch, Deputy Commissioner with the Division of Insurance appeared before members in Carson City. He said that he was not aware of the legislative changes mentioned by the senator but both of the regulations are pretty straight forward and thoroughly vetted through the workshop and hearing process. There were no comments from the industry so he can only safely assume that this is coming more into line with what is in statute. He said he could provide some anecdotal examples of why the regulations are good and would be happy to answer any specific questions members may have.

Senator Horsford asked Mr. Lynch to explain how the regulations would be applied. Mr. Lynch said Regulation R070-09 is just the disclosure and noted that there are a lot of insurance providers in the captive insurance industry that maybe work with multiple companies. The agency wants to make sure their boards and decision makers understand that. Setting a threshold that they must obtain the consent of the board of directors prior to receiving their compensation so that there is full disclosure as to what their responsibilities are and what they are to be paid. He said it could vary from actuaries to captive program managers to attorneys and accountants – the spectrum of service providers.

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R070-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R071-09 from the Commissioner of Insurance, Senator Horsford asked for an explanation of how the regulation will be applied.

Mike Lynch, Deputy Commissioner with the Division of Insurance appeared before members in Carson City. Mr. Lynch said that the regulation essentially is just setting a contract amount that the industry thought was appropriate. For board members that are also providing a service to the company receiving compensation greater than $15,000, they have to provide specific disclosures to the board. It also details what those service providers are and who would be covered under this regulation. The material relationship and the crux of it is simply that those within a 12 month period receive compensation in excess of $15,000.

Senator Horsford asked if this regulation has anything to do with the life insurance policies and the manner in which they are being sold or represented to consumers. Mr. Lynch responded, "No. These are captive insurance programs which are basically companies that are insuring their own risk or you could have groups of affiliated companies, like associations. This does not cover life and health." Senator Horsford inquired if it covered medical malpractice. Mr. Lynch responded, "Yes, this does cover medical malpractice – the med mal policy for the doctors themselves – we do have right now, I believe, six medical malpractice captives domiciled in the state."

SENATOR TOWNSEND MOVED APPROVAL OF REGULATION R071-09. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

On Regulation R080-09 from the Personnel Commission, Ms. Kirkpatrick said that she has a question for the Legislative Counsel. She recalled that she was in a committee hearing the day there was testimony on this matter and she thought there was a lot more flexibility allowed. It was discussed at great length regarding taking furlough within a certain time frame and the possibility that there might be two furlough dates within a pay period. She requested clarification commenting that the regulation was more strict than what she thought was trying to be done to "help the employees who are helping us." Also, she noted that it does not clarify if it is classified or unclassified.

Ms. Erdoes said she thought the regulation was set up and is intended where it does not specify one or the other that it is applying only to classified or unclassified that it is meant to apply to both. As to the question about the bill, Senate Bill 433, section 3 says it actually exempts classified employees out of where it is talking about having to take one day of unpaid furlough leave each month so they are exempt from the absolute requirement and then in subsection 3 it says "to the extent practicable full time classified employees should take eight hours of unpaid furlough leave per month." That is the actual law as it stands on the books and this regulation is more restrictive than that as to classified employees. However, she felt that it was within their authority to

do that because it has specific authority to adopt regulations on this. One of the reasons it is coming to the Legislative Commission is to make sure that the regulation carries out legislative intent.

Ms. Kirkpatrick said, "That was a tough decision for all of us to make as well as for the employees to swallow and I just think that we need to be a little more flexible because the last thing we want to do is put more folks out of work and more houses on the market through the foreclosure process. Mr. Chairman, I'd like to hold this because I want to go back and make sure that we are not changing the rules that 63 legislators, or 42 or however many actually voted for it, decided to do. So, I just think we need to give the flexibility and I think if it's more restrictive we might not be keeping the intent."

Shelley Blotter, Division Administrator for Employee Management Services for the Department of Personnel appeared before members in Carson City. Ms. Blotter explained what the regulation says is that employees would use eight hours per month and if they are not using eight hours per month, there is a procedure set so they can submit a request to the Department of Personnel and the Department of Administration or if it is in the Nevada System of Higher Education the chief fiscal officer for that institution. She said, "They submit a plan to say, I'm not going to be using eight hours per month, possibly because of business necessity. If you're in an agency that has a peak period in September, then you may want to have your employees furlough maybe a couple of times in the following month rather than in the month that you have peak business. So, it is not saying you can't have more than eight hours in one month, it's just saying that if you're not going to be using it in that way that we understand what your planned usage is going to be. So, it's just to ensure that everybody's using it on a regular basis and that we don't get to the end of the fiscal year and everybody needs to take off their time. We also did restrict one thing that wasn't addressed in the statute and that was to take no more than eight hours in one pay week. The reason why we did that is because we met with the Department of Employment, Training and Rehabilitation and they advised that if employees were taking more than eight hours in a pay week that they may very well be eligible for unemployment. So, that was contradictory to saving money and they could take with the planned approval more than eight hours a month but you just can't have more than eight hours in a pay week."

Ms. Kirkpatrick referred to page two of the regulation, subsection 2, and the wording "the policy defines the minimum increment of furloughs required to take" and asked where is the flexibility, where is the plan and who approves it. She noted what may work for one department may not necessarily work for another. Ms. Blotter responded, "I agree with you. We couldn't just set an arbitrary 'this is going to work for everyone.' So, for instance, in the Department of Personnel our department director said 'we're not going to track furlough in any increment less than two hours' because otherwise we could have been tracking it on a minute-by-minute basis based on our payroll system and that just gets really onerous from a management standpoint. But let's say that you had a position – and I'm just going to pull one out of the sky – a pilot and they wanted a furlough for two hours but they happened to be up in the air for their shift period. So, it

wouldn't make sense to have that person furlough in any shorter period of time than a shift. I haven't consulted with the Department of Transportation to see if they did it that way. But, what we tried to do is to say each department director is going to look at their business operation, see what makes sense for them on how they're going to implement it and then they would write a policy. The reason we included that policy statement in our regulation is so that all employees would know what the rules of the game are and that it had to be communicated to them. That way we were hoping to cut down on grievances because everybody knew how it was going to be handled within that particular agency."

Ms. Kirkpatrick commented that the state is already into the process by three months and furloughs have already been done. She noted that she had tried calling a state agency and they were on a day off. She asked where are the policies already in place. She asked if the regulation could be held so that she could review further with Ms. Blotter. Ms. Blotter explained that there was an emergency regulation that was put into effect July 1 and all of the departments developed their policies either prior to July 1 or soon afterward. That emergency regulation expired the previous day. This is an attempt to make a permanent regulation so that those things set out in the emergency regulation continued on and it is up to the members whether or not they need further clarification and want to hold it. She said they had already been put into place.

Chair Oceguera said his concern is that they are five months into the program and there should be some clarity as to what the folks should expect and if it is put off, they are going another month. If the commission is not going to approve the regulation, the Personnel Commission should be given clear direction in what it is looking for so that it is right the next time so it should be discussed further. Ms. Kirkpatrick indicated that she understood the situation with unemployment and does not want that to happen but also did not want the rules changed after the legislators made that tough decision.

Ms. Kirkpatrick asked Ms. Erdoes to explain classified versus unclassified and how that is different than the actual bill. Ms. Erdoes said the bill provides that for other than classified employees, they are required to take eight hours in one "chunk" and one eight hour "chunk" per month. The bill actually exempts classified employees from that particular requirement and has more of a suggestion which says "to the extent practicable, full time classified employees should take eight hours of unpaid furlough leave per month." That does not address that it can be taken in smaller "chunks." She thought what was envisioned, at least when it was described to her, was that furlough leave would be put on the time sheet program in the same manner that annual or other leave was put on there. It could indicate an hour or two at a time. The other way the regulation is more stringent is in subsection 1 of section 1 part a, where it limits the only reason that one could come up with a plan as a classified employee to use more than or do it differently than eight hours per month is because of workload demands. She said that is a pretty restrictive provision as to how much latitude the classified employees would be given. She noted that subsection 7 prohibits, because it says may not, any

employee from taking more than eight hours furlough leave in a work week and that would then make it so someone could not take their five furlough days in a week. She said her office was unable to find anything in the law that suggested that someone could apply for unemployment under these circumstances but she would be happy to look more at that issue if that is something that would be of benefit to members.

Further, Ms. Kirkpatrick inquired about the terminology "a full time classified employee" and the use of it in the regulation. Ms. Erdoes said that she understood the question and the confusion or difficulty for her is that the bill does not specifically state that a classified employee may take this in as many hour increments that he or she wishes and I think that would be what is needed to qualify for the "except as otherwise provided" provision. She noted that it does say "except as otherwise provided" in the bill and the bill says that "full time classified employees should take eight hours of unpaid leave" so that leaves one wondering exactly what that exception does mean in that case.

Ms. Kirkpatrick asked Ms. Blotter if anyone brought up that point in the discussion during the regulation process because she saw that 49 people attended and six spoke but it does not say whether that was a discussion and why is it not clarified if it is classified-unclassified. Ms. Blotter said, "I believe this exception that's written into subsection 1 here is referring to the employees of the Department of Cultural Affairs where their hours were reduced and so they were not furloughed and I believe that's what that is referring to. When we submitted our emergency regulation to the Legislative Counsel Bureau, it did include both classified and unclassified. When it came back, this regulation only includes classified and I didn't have a conversation to talk about that but I think that possibly the logic behind that is that in statute what an unclassified or nonclassified has to do as far as the furlough is very clear. They have to take off eight hours per month and it has to be in eight hour increments. There is no other way to do that. But for classified employees there is flexibility and that's what this regulation talks to is trying to say what are the parameters for that."

Ms. Kirkpatrick said, "It appears, which I think is even worse, that we don't have a lot of options here if we don't approve it and I think that's unfair to the Legislative Commission and not just on this regulation but some of the others and I think it's unfair to people that are already within this process but I guess that I just want to make sure that on the record it's very clear because I can see that we're going to have to come back and address this probably through another temporary regulation or to clarify the statute so I just think it's unfortunate that this is effective October 27th and that's tomorrow." Ms. Blotter said, "I did remember the other portion of your question which was that the people that testified at the hearing and the workshop and what were their concerns and it really wasn't about that particular exception. What they were concerned about is that they would have to submit some documentation to the Department of Personnel and the Department of Administration if they had certain events happening in the same pay period as the furlough such as overtime or standby or call back. And, what we were trying to do is make sure that management and employees weren't gaming the system and trying to get other pay types to make up for

their furlough time and so that's what the testimony was about is to say 'hey, if you're anticipating you're going to have overtime we just want to make sure that we're advised of it ahead of time and that it is for an approved purpose and that it will be looked at carefully.'"

Further, Ms. Kirkpatrick said, "My constituents are continually beating me up because there are certain departments that don't feel that they have to use their eight hours will they now be required under this regulation, no matter what." Ms. Blotter replied, "They are already required by statute to furlough so whether they are classified or unclassified, the emergency regulation is already in place and for all employees they are required to, again, start diminishing those furlough requirements. For unclassified in statute it says you have to do it eight hours per month. For classified employees, in the emergency regulation as well, there was this flexibility built in to so if you are doing something other than eight hours per month then you have to advise us ahead of time what that usage would be. Again, that's just so we don't get to the end of the fiscal year and we have 80 percent of our employees needing to furlough and there is nobody to run the DMV or whatever agency it is."

Chair Oceguera asked Ms. Erdoes what are the options, noting that the temporary regulation expires and if the commission delayed the regulation there would be nothing in place which, in his opinion, would be worse. Ms. Erdoes responded, "You are reading it correctly. I believe Ms. Blotter indicated that they actually did an emergency regulation as opposed to a temporary so they only got 120 days for that emergency regulation. It apparently expired yesterday so already today you are in a position where there is no regulation in effect. If you approve this, we'll file it tomorrow and you'll have just one day that wasn't in effect. I guess what I can add to this discussion is that you can consider the fact that the basic information about furloughs is contained in S.B. 433 so the basic structure is there. The parts that wouldn't be in there for whatever period it takes to talk some more about this regulation, the furloughs would still be required, it's just these details that you're attempting to work out here that wouldn't be in effect. I guess the other thing that we can add is that we're happy to work with the Department of Personnel and the members of this commission to come up with something quickly and then, if you want to, have a committee to review regulations sooner rather than later – we can certainly do that as well if we can get a quorum." Chair Oceguera noted that it was easier to get a quorum on the subcommittee than on the Legislative Commission.

Senator Horsford said that he wanted to return to the point made by Ms. Kirkpatrick, noting that she is his Assemblywoman and he is her Senator so they have the same constituents and he knows that the people who are e-mailing her are e-mailing him. He said, "The point, I think, is even despite the emergency regulation in place, we are hearing from state employees that the process is not working the way your regulation intends. And so regardless of this regulation even being adopted today, which I'm fine with, and closing the details sooner, we need to ensure there is some standard implementation of how these rules, these policies, are being followed and I don't like the

fact that certain directors in certain agencies are doing it their own way because we had a bill that specifically outlined the way this had to work and now through regulation you all are trying to improve that. But, what I'm hearing and I think it's the same that Assemblywoman Kirkpatrick is explaining is it's not working the way we're intending and that's not fair to the employees who are doing it right, who are sacrificing their time and who are following the rules. This was supposed to be a shared sacrifice and the only way that it can be shared is if the process is fair, it's equal and it's being applied consistently and there is some assurance. I like this stuff in here about agencies reporting to you if only for the fact that then we know who to hold accountable if something is wrong or if an agency is not following it. I just wanted to get a few of those comments on the record. It does look like there are some missing elements in here though that need to be addressed whether it be in the committee to review regs or some other appropriate place and I would ask that our staff work with you on that since it was the legislative intent from S.B. 433 that really spelled out how this was supposed to work and we need to ensure our legislative intent is being carried out. Thank you, Mr. Chair."

Andrew Clinger, Director, Department of Administration, appeared before members in Carson City. Mr. Clinger said, "Just to clarify the process a little bit, I guess, there is a process in place in that if any employees or any department requests exceptions to the furlough such as those that need that exception for public safety, health or welfare. There is a process in place and those do have to go to the Board of Examiners for approval, so no employee can be excepted from this process unless the Board of Examiners approves that request. Secondly, we do have provisions in place that Ms. Blotter spoke about when it comes to when the furlough leave is taken, when they can use overtime in the same pay period as a furlough and the rules on that are not such that each director within the Executive Branch determines that on their own. If, again, an employee needs to present an alternative schedule for whatever reason that they're not going to take eight hours every month, those approvals are by the Department of Personnel and by myself. So, it's not the individual directors within each department that are approving that, we have forms in place, we have 'frequently asked questions' on Department of Personnel's website and so those forms, before there's an exception, have to be approved by both the Department of Personnel and the Department of Administration."

Ms. Kirkpatrick said that she understands what Mr. Clinger is saying and the greatest piece of policy is having all the paperwork and everything in order but if it is not being used, and her constituents believe that it is not being used fairly and not consistent, she thought that needed to be addressed at another time. She said, "I feel like I'm beating a dead horse but I'm not done with this because I represent 127 state employees and over half of them feel that the process is not being addressed consistently. I have no problem moving forward with this if I can understand from our Legal Division that we can quickly work to bring them before the regulations subcommittee. Is that correct, Ms. Erdoes?" Ms. Erdoes responded, "Yes, we're happy to work with the Department

of Personnel to make the changes that you need and that will work for them and we can then convene a committee to review regulations, I believe, pretty quickly once that's done."

Mr. Conklin said, "Brenda, I just want to make sure we're all on the same page. If we defer this then it comes back to us in its exact form. If we reject it, it goes back, they hold another hearing, get some of these people we're talking about involved and engaged and bring us a revamped set of regulations that maybe addresses some of these concerns, correct?" Ms. Erdoes responded, "That's a difficult question to answer because the defer piece of that is not set out in the statute. Clearly, if you object to it then the process is that they have a chance to go back and change it and bring it back to the commission. In fact, they wouldn't be able to bring it back unless they did change it. With the defer, I think that's usually used when you are going to just bring something back after you've thought about it some more, it does not necessarily require changes. But, I believe that if the Personnel Commission decided that they wanted to make changes after it had been deferred, then we would bring you the changed copy at the next meeting." Mr. Conklin asked, "And just to follow up, that would mean we could approve the changed copy." Ms. Erdoes said, "Yes, the committee to review regulations would be acting solely upon the document that is submitted to them at the time of the meeting." Further, Mr. Conklin asked, "In addition to that, could we approve this and request changes to it to be adopted at the committee to review regulations?" Ms. Erdoes replied, "You can request them but once you've approved this regulation, then it's out of your hands." Mr. Conklin said they are just trying to weigh all their options.

Upon return from a five-minute break, Ms. Kirkpatrick said she thought there were two options for her – one, that they reject the regulation altogether and hope that the bill is adhered to or two, that Ms. Blotter commits to return because she understands that she does not necessarily have to once the regulation is approved. She said, "I always try to be the better person and give you the ability to come back and work with us and I know that I've seen you a lot in Government Affairs so I think your word is pretty good. So, I would hope that you would commit to come back in a very short time frame to address the issues that are at hand and I'd also like to see the current policies that are in place so that we know what people should be held accountable to. Is that something that you could commit to?" Ms. Blotter stated, "I can commit to that although at this point I'm a little uncertain of the problem I'm trying to solve so when I come back is that the discussion we're having or is it that I need to be presenting a brand new or a revised regulation so if you can kind of give me a little bit of direction on that then that would be helpful."

Ms. Kirkpatrick said, "Ms. Blotter, and believe me the peanut gallery is pretty loud up here so I'll try and address everybody's issues. One is to work with our staff to make sure that it's clear, especially within section 1 subsection 1 on if it's classified, unclassified – I think that was my first question and that's kind of what stopped me. Two is so that we could see the policies that are currently in place because I will tell you

when my constituents call me and I try to call and then I get someone who's not there because they are off on a furlough day, I want to know myself what the policy is so I think that's beneficial for the entire committee. I get the part on the eight hours but I just want to make sure that we're clear on what we're trying to do. Is there anything from anybody else that wants to clarify anything?"

Chair Oceguera said, "I think we can just have Ms. Blotter work with Ms. Kirkpatrick and with Brenda and we can vet out those issues pretty quickly so basically what we're doing here then, what I'm hearing is a motion to approve this regulation with a commitment from the Personnel Commission to come back, work with our staff, work with Assemblywoman Kirkpatrick who will talk on our behalf to come back to the Subcommittee to Review Regulations at the earliest time we can since we have to have one of those meetings anyway, so basically I think in a nutshell that's what we're talking about."

Mr. Malkiewich said he just wants to make sure the commission understands this, if you approve this any amendments to it would have to go through the regulation process. We're talking about if you go to the Subcommittee to Review Regulations to approve a revised version in a couple of weeks they could do that but if you adopt this it would be starting the regulation process over to make the further changes. Chair Oceguera questioned if the expedited process of that could be less than a month? Ms. Blotter said she would have to give notice of the workshop – 15 days – and then she's assuming that she would have to submit it to the LCB's Legal Division for approval of the language and then they would need to hold a Personnel Commission meeting which she has to give 30 days notice of the intended regulation, they adopt it and then she would bring it back to the Legislative Commission for final approval. Chair Oceguera commented, "Okay, not 30 days but as soon as we can, as soon as practicable."

Senator Horsford inquired why members, or their staff, just received the regulation late last week when the emergency regulation is set to expire on Sunday. He said, "We didn't even get time to properly review this reg. It came to us late, and an emergency reg expired on Sunday and I'd like to understand why this was not submitted to us earlier." Ms. Erdoes responded, "I believe that we did receive the regulation. We've been working on this regulation with the Department of Personnel since sometime after the emergency regulation was filed. It just didn't come all the way through the process at that point." Ms. Blotter said, "We had the emergency regulation adopted and it went into effect July 1st. We then held a workshop to take public comment on it and then it went to the Personnel Commission meeting for approval and it was again submitted back to the Legislative Counsel Bureau's Legal Division for review and final approval for your consideration. So, this isn't a brand new regulation we just developed within the last few days. It was an emergency, now we're just proposing it for permanent and we've gone through all the appropriate steps."

ASSEMBLYWOMAN KIRKPATRICK SAID SHE REGRETTABLY MOVED APPROVAL OF REGULATION R080-09 WITH THE COMMITMENT THAT THE AGENCY WILL RETURN AND WORK WITH LCB STAFF TO ADDRESS THE CONCERNS THAT WERE SET FORTH. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED UNANIMOUSLY.

Senator Carlton asked Mr. Clinger if the state was under a hiring freeze in any of its departments. Mr. Clinger said they were not currently under a hiring freeze. The senator said that she just wanted it on the record that the state is still hiring folks even though employees were being asked to take unpaid days off. Mr. Clinger said that they are hiring to fill vacant positions and they are mandated to take the furlough. He said he was unsure what the options would be as they cannot take the savings from a position to cover the furlough costs. Senator Carlton said she was surprised that hiring would continue when people are being asked to take time off without pay.

On Regulation 083-09 from the Board of Wildlife Commissioners, Mr. Carpenter said that his only question is that there are some changes in regard to Crittenden Reservoir and as he understands it the public is not allowed to fish there. He wondered why the regulations are being changed or is he mixed up and the public can fish there.

Patrick Sollberger, Staff Wildlife Biologist with the Nevada Department of Wildlife appeared before members in Carson City. He said that the reservoir is privately owned and he believed that now people have to pay to fish there. The department no longer has management responsibilities there so they are cleaning up the regulation and trying to remove that portion and allow the landowner to be able to set the regulation how he wants. He noted that in the past the regulation required the use of artificial lures only and they are basically eliminating Crittenden Reservoir from any type of management through the Department of Wildlife. Mr. Carpenter commented that he did not read it that way but as long as it was on the record he would accept it.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R083-09. MOTION SECONDED BY SENATOR HORSFORD AND CARRIED UNANIMOUSLY.

On Regulation R084-09 from the Commissioner of Insurance, Mr. Conklin said he was curious what the justification is for weakening the provision about who has the ability to issue the cards.

Elena Ahrens, Assistant Chief of the Property and Casualty Section, representing the Commissioner of Insurance appeared before members in Carson City. She said the provision does not really weaken but what it does do is eliminate confusing language and confirms that the duly appointed agent can issue a permanent I. D. card on behalf of the insurer. The duly appointed agent is an extension of the insurer so it is basically one of the same.

Mr. Conklin said that he wanted to make sure he understood that correctly and noted that in section 1 sub 1 the end of the first paragraph on the third line before subparagraph a, it says "except that an insurer may permit its duly appointed agent in Nevada to issue a permanent card." But the old language said "if that agent has the authority to issue such policy." He asked if there is a circumstance in which an agent does not have the authority to issue a policy but can now issue a card and is that good control. He said he wanted to make sure all the bases were covered.

Marie Holt, Chief, Division of Insurance, appeared before members in Carson City. She explained that it was the intent of the Property and Casualty Section to clarify the previous regulation because an appointed agent is only authorized to write those lines of coverage for which they are appointed. It was determined that was a redundancy in the wording as it was previously written. Mr. Conklin said, "I think that's what I want to know – there's no circumstance in which a duly appointed agent is someone different than the person authorized to issue the policy." Ms. Holt responded, "That would be correct."

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF REGULATION R084-09. MOTION SECONDED BY SENATOR HORSFORD AND CARRIED.

On Regulation R088-09 from the State Environmental Commission, Mr. Conklin referred to section 1 sub 2 and said that the language says Title 40 CFR section 51.165 is hereby adopted by reference on July 1, 2002, and he thought that might be a typographical error and that it should read 2009. Also, he said by reference if one looks at section 1 sub 1 it is 2009, section 1 sub 3 it is 2009, section 1 sub 4 it is 2009 and so forth. He noted the one reference is left as 2002 and he wanted to clarify if it was a typo and thought it might be.

Mike Elges, Chief of the Bureau of Air Pollution Control for the Division of Environmental Protection appeared before members in Carson City. Mr. Elges said he would double check but he thought the 2002 date was correct. He said Part 51.165 has not been updated to the best of his knowledge for quite some time but he would be happy to double check to make sure there are not newer provisions.

Chair Oceguera asked Ms. Erdoes if that was an error on either one of their parts would it be something that she could change without any process from the members.
Ms. Erdoes responded that if it was an error between what the agency asked for and what her office got into the regulation, they could certainly fix that.

Mr. Conklin asked if it is not an error and there have been changes since 2002, then he would have an issue with it because if they are passing it now they want it to be current and not retroactive to some standard that is weaker or stronger than what people expect at this moment. He said if he could get the agency on the record that it is their intent that it is the newest standard and would provide the Legal Division with the coverage they need.

Mr. Elges said that he could not commit to that primarily because if there were changes made between the 2002 date, which he believed was correct, and any newer revisions they would have to analyze what those changes are and what effect that would have on their program. He reiterated that he thought the 2002 date was correct and they were not looking to update that portion of their regulation at this point in time.

Mr. Conklin asked since there will be a meeting of the Subcommittee to Review Regulations if there was an urgency to have the regulation passed this day or if it is something that could wait two weeks just so there was a chance to follow up and make him comfortable. Mr. Elges said there would be no problem. They could look into it right away and if there is a need to make a change they could get back to the commission.

> ASSEMBLYMAN CONKLIN MOVED TO DEFER REGULATION R088-09. MOTION SECONDED BY SENATOR CARLTON AND CARRIED.

On Regulation R093-09 from the Commissioner of Mortgage Lending, Mr. Conklin said he needed to look at the regulation further and deferred to Ms. Kirkpatrick for questions. Ms. Kirkpatrick said that they were in the same boat as with other regulations where there is not time to "digest" what the regulation is saying and noted that the hearing was October 23rd. She said she wanted to clarify where things were because she felt rushed with the regulation. She noted that Mr. Waltuch did such a good job getting her the information that she is thankful.

Joseph Waltuch, Commissioner of Mortgage Lending, appeared before members in Las Vegas. He said that the regulation rose out of Assembly Bill (A.B.) 375 of the 2007 Legislative Session. Inasmuch as the original version got caught up in the last session, they had to adopt a temporary regulation on education for the mortgage brokers and mortgage agents. This regulation before members is identical to the one that has been the temporary regulation for the past four or six months. It has made three slight changes to the temporary regulation. Those changes are (1) it permits them to certify courses as approved that are being given by or approved by the Conference of State Bank Supervisors (CSBS) pursuant to the federal Safe Act, (2) there was a non-substantive typographical error that was corrected in one of the sections and (3) to permit certain courses to be given online rather than in-person attendance. The last had to do with certain out-of-state licensees. He reiterated that other than those changes, the regulation has been in effect as a temporary regulation for the past four to six months with no other changes.

Ms. Kirkpatrick said that if she remembered correctly, A.B. 523 from the 2009 Legislative Session was done in order to comply with federal guidelines and certain sections were addressed. She said there has been some concern that the federal situation has not yet been resolved and asked if Mr. Waltuch could explain how the two sections of the bill work within the regulation. Mr. Waltuch responded that he did not have the two sections in front of him but would try to explain from memory. He said his

regulations are not the same as they will be once they implement the provisions of A.B. 523. These regulations go back to A.B. 375 of the 2007 Session. When the workshops are commenced for A.B. 523 of the 2009 Session, they will be updating this regulation to include those requirements they deem necessary from A.B. 523 and through the Safe Act. He said that In speaking with representatives of the CSBS, they do not quite have their "game plan" down yet. He said it would be premature to amend the regulation before members to try to encompass what the Safe Act is doing when they do not quite know how they are doing it.

Ms. Kirkpatrick said that she did not disagree but knew that the bill started out as a 10-page bill with 20 sections and when it was finished it had almost 90 sections. She said any time she sees a referral and it looks like A.B. 523 is being used for the purposes of the section to describe registry and she thought it was ridiculous that she has to look up every part of the statute and regulation in order to figure out what line 12 on page 13 says.

Mr. Conklin noted that it may be that A.B. 523 is the most updated statute that grants the Commissioner the authority to promulgate the regulations but the basis for all of this is strictly educational based on A.B. 375 of the 2007 Session and asked if that was correct. Mr. Waltuch responded that was correct. Mr. Conklin then asked if there is any overlap with what is in the regulation with what Mr. Waltuch expects to have to do related to the Safe Act. Mr. Waltuch replied, "Yes, there is overlap. For example, we have certain hour requirements for federal things like Truth in Lending Act or the Real Estate Settlement Procedures Act which are also topics that are covered by the CSBS under the Safe Act. So, yes, there will be some overlap. The CSBS requirements, or the Safe Act requirements, are 20 hours of education. The state's, under A.B. 375, are 30 hours of pre-licensing education so at least 10 hours of those will be different and that will be the difference between 20 and 30 and will cover Nevada law in particular in those 10 hours."

Further, Mr. Conklin noted that he has been in and out of the room and may have missed it but asked Mr. Waltuch if he explicitly enumerated where these were different than the emergency regulations currently in place. Mr. Waltuch said to correct the record, there are no emergency regulations in place – there are temporary regulations in place. As far as the hours of courses and differentiation, there is no difference between the temporary and this regulation.

When asked by the chair about comfort level, Ms. Kirkpatrick expressed her frustration in getting the regulations at the last minute and her concerns about the process but indicated that she was "okay" with it.

> ASSEMBLYMAN CONKLIN MOVED APPROVAL OF REGULATION R093-09. MOTION SECONDED BY SENATOR CARLTON AND CARRIED.

Chair Oceguera directed attention to Regulations R026-09, R092-09 and R111-09, noting that a handout was provided (copy attached as Exhibit E) and asked Ms. Erdoes to review it.

On Regulation R026-09, Ms. Erdoes explained that it was adopted by the State Board of Education and it requires charter schools to comply with some of the requirements in the Local Government Budget Act. She stated, "The issue here is simply that the statute exempts charter schools from the Local Government Budget Act but it does give the State Board of Education the authority to have requirements. So, we were not sure and we were afraid that maybe you needed to, if you were going to approve this regulation, that you would need to state that it was legislative intent that even though the charter schools are exempt from the Local Government Budget Act, it would still be within the intent for the State Board of Education to require them to comply with some or all parts of that Act."

Senator Washington asked if Ms. Erdoes could explain what the intent of the original legislation was in regard complying or not complying with or being exempt. Ms. Erdoes responded that the bill as she understood it was to, and a section was put into NRS 386.550, exempt the charter schools from the formal requirements of the Local Government Budget Act but then instead to direct the State Board of Education to require such details from the charter schools as they determined necessary to ensure that their oversight of the charter schools is complete. Senator Washington noted that in the current statute dealing with the formation of any charter school, they have to comply with a certain amount of criteria such as financial stability and financial audits and how they are going to comply with certified auditing procedures. Also with regard to their continuation or renewal they have to comply with requirements within the statutes to maintain their eligibility. Ms. Erdoes confirmed that there are currently some requirements in the Nevada Administrative Code (NAC) and the requirement to comply with the Local Government Budget Act has been in and out of the statutes. The requirement that charter schools had to comply with the Local Government Budget Act was placed in the statutes in 1997, then it was taken out in 1999 and subsequently the State Board of Education was given the duty of requiring such information from the charter schools as they determine necessary.

Senator Washington noted that a representative from the State Board of Education was at the witness table and he asked by requiring the charter schools to comply with 354, what additional burdens does that place on charter schools to comply with the regulation before members now.

Jim Wells, Deputy Superintendent, Department of Education appeared before members in Carson City. Mr. Wells explained that what they tried to do was look at NRS 354 and only take out the sections they believed were relevant. Part of how this came about is that there is very little guidance in the NAC as it relates to budget and finance for charter schools. There is a requirement that they do a budget with no instructions on what is to be included and how the process is to work. It just says "you will submit a

budget." The only other provision in there said that they would have their annual financial statements audited by an auditing firm. What they tried to do was to not add that much additional burden and tried to outline and give guidance to some of the charter schools because they realize the schools have a lack of financial expertise at their disposal. Because NRS 354 could not be directly referenced, they tried to pull out the sections they thought were relevant that would provide guidance to them and give that to them. One area where it is adding additional burden to the charter schools relates to providing certain inventories of leased assets and certain criteria if they are going to engage in capital construction. One of the reasons they feel they need that is that some of the way their biennial budget is built is based on leased space or occupied space. It is how they build their inflation for utilities and they do not currently collect that information for the charter schools and this provides the charter schools with a requirement that they would provide that information just as the school districts do so that they could have a better "handle" on the building footprint of all schools in Nevada.

Senator Washington said that current statutes do not provide capabilities or capacities for any charter school so any facilities that they are going to obtain are either their own construction dollars or lease dollars that they have to obtain for those footprints. He wondered what role the state would play in assuring or not assuring that the charter schools obtain a footprint or building or lease space. Mr. Wells responded that they do have knowledge that at least one charter school is undergoing the preliminary work to obtain financing to actually build a building. It is a state board sponsored school and it came to their attention as a result of discussions with that school. The school is not doing it through bonding but doing it through outside financing. Senator Washington commented but those are non-tax dollars and they are acquiring financing outside of taxpayer funds. Mr. Wells confirmed the financing would come from an outside entity and the payments on the financing would be made with the Distributive School Account dollars that they obtain from the department. Senator Washington stated, "That's kind of a double-edged sword don't you think? You're asking them to build the building, finance it and then withdraw or give an account of taxpayer dollars when we don't give them the bonding – we don't allow any bonding capabilities to build buildings or lease space." Mr. Wells clarified, "We do give money for them to lease space. Most of their leases are paid through Distributive School Account dollars – those are taxpayer dollars." Senator Washington said, "In other words, this regulation then would actually set up a mechanism or guidelines for financial auditing or financial procedures so at least the State Board could take a look at their overall financial picture." Mr. Wells responded, "That's correct. All we tried to do in this is to set up a mechanism to provide them guidance and for them to provide us with the information we believe is necessary to make sure they're in sound financial position."

Chair Oceguera said that if the members wish to approve the regulation, he thought the statements should be entered into the record and asked if any member was willing to make a motion including the statement on the record that the Legislative Commission is approving the regulation and that it carries out the intent of NRS 386.550.

SENATOR CARLTON MOVED APPROVAL OF REGULATION R026-09 WITH THE STATEMENT ARTICULATED BY THE CHAIR AND STATED IN THE RECORD THAT IT CARRIES OUT THE INTENT OF NRS 386.550. MOTION SECONDED BY SENATOR WOODHOUSE AND CARRIED.

On Regulation R092-09 from the Secretary of State, Ms. Erdoes explained that this regulation was adopted by the Secretary of State and section 42 of R092-09 requires each document of an initiative petition to bear the name of a specific petition district. Because of the language in S.B. 212 which is in section 13 of that act it is quoted in the document handed out to members. Before the person was required to determine what district they were in in order to sign a petition and the 2009 Legislature changed the language so that it said that the actual signer of a petition may indicate which district they reside in and if they do not, that the circulator of the petition shall indicate which district the signer resides in unless they do not have that knowledge. She said her concern was that on its face it appears that section 42 conflicts with section 13 of S.B. 212 because it would require, section 42 of the regulation, that the signer be able to sign either the one for CD 1, 2 or 3 so they would have to know which district in which they reside before they could sign an initiative petition.

Larry Lomax, Registrar of Voters in Clark County appeared before members in Las Vegas. He said the portion being discussed only applies to Clark County because it is the only county that has all three congressional districts. He stated that S.B. 212 did more than just change and insert the language "if known" into the circulation of statewide petitions, it also changed the manner in which statewide petitions are going to be counted in that it created petition districts which had not been used before and for the next two years congressional districts will be used to equate to the three petition districts. A circulator of a statewide petition must now get a certain number of signatures in each of the three congressional districts. He said this creates some issues that he did not think were addressed when the bill was actually passed. The language "if known" was inserted which does put a burden on the signer or the circulator to determine the person's district but no changes were made to the laws that address how they are required to process petitions. When petitions are turned in to registrars, the NRS requires registrars initially, and it gives them four days to conduct a raw count where they simply go through a petition and count the signatures and no verification is done. If a petition needed 20,000 signatures, registrars would go through and count and if they received 22,000 signatures it means that it is theoretically possible to have enough valid signatures. Then they would go to the next step which is where they randomly select five percent of the signatures, check those and get a validity level – say 50 percent of the signatures were valid – and multiply that times the total number of signatures and that is how they determine the total amount during the random sampling. Registrars are given nine days to do that. The reason there is a bit of an issue is to do a raw count they have to know what signatures to count – what district the person is in to make the count. If the person does not put down the district or sign the right petition, that creates a problem for registrars. He thought in reality it was a very simple problem to resolve. It is in the petition circulators interest to know that he or she is

getting enough signatures in each district, just like it makes it possible for registrars to validate a petition. When people circulate petitions in Clark County and in the State of Nevada, in Clark County alone to get a petition to pass there would need to be around 100,000 to 110,000 signatures collected in order to get around 70,000 required in Clark County proportionally in those three petition districts. It is a significant effort and is several hundred thousand dollars if a petition circulating company is hired to do it and so they are interested in making it work too.

Continuing, Mr. Lomax said that he had prepared sample maps to show members and said it is very easy to provide petition circulators with a map. The map could be color coded for each of the three petition districts and when the circulator is out circulating the petition, the signer could recognize where he or she lives on the map and they could determine which petition district they live in. He did not think it would be a real issue and should be very simple for the signer to determine the petition district they are in. If they live right on the boundary, that would be about the only instance in which he could foresee a problem. Mr. Lomax said, "I think, personally, I mean our goal is to do the best we can to comply with the intent of the law and since they didn't identify the manner in which we're supposed to go about processing a petition, I think this makes the most sense. We'll happily provide anybody maps that's out there circulating petitions. It makes it better for us, makes it better for them."

Matt Griffin, Deputy Secretary for Elections, Office of the Secretary of State, appeared before members in Carson City. He said that he understands the LCB's legal argument and they have worked with them on that and explored a couple of ideas on how to resolve the problem. He said there is a provision in the regulation that says at the raw count stage if someone has signed the wrong petition district, the signature will still be counted towards the verification record – it just won't be counted at the raw count stage to determine how many signatures there are per petition district. One alternative would be requiring four petition clipboards to be circulated in Clark County – three for each congressional district and a fourth for the people who do not know their congressional district. Unfortunately, that would leave them in the same problem they are currently in because the fourth petition could potentially be loaded up with signatures and Mr. Lomax would be unable to comply with the provisions of NRS 293.1276 and get the raw count done in time. Another alternative reviewed was to just do a raw count on the statewide basis. So instead of raw counting by petition district however many signatures you get in the state if you got over 97,002 you pass for the raw count purposes. In S.B. 212, NRS 293.1276 was also amended and so now the raw count provision, although previously it did not, now it is required to raw count by petition district. Therefore, they cannot do the one petition for raw count purposes. Mr. Griffin said, "With respect to the legality, I guess what we're trying to do and we've worked with LCB and Mr. Lomax and with the Attorney General's Office is we are trying to find a way for the statute to work. The way it's written to comply with one part of the statute, we are going to have violate another part of the statute, meaning that if we can't circulate three separate petitions we're not going to be able to raw count petitions and therefore we'll have to go back to the drawing table at the Attorney General's

Office and Mr. Lomax and everybody else and see if there are any options available to us. I only mention that because there is plenty of case law that says when you're going to interpret the intent of the Legislature, you look first at the plain meaning of the language but if that plain meaning of the language produces a result that is unreasonable the Supreme Court has said that they are more likely to err on the side of a reasonable interpretation as opposed to an unreasonable interpretation under strict compliance understanding. To that end, that's why at least our office's position is that we don't feel that we are in blatant violation of section 13 or the law and we submit this to the committee. I don't know should this regulation not be part of our package submitted here today, like I said, we'll have to go back with the A.G.'s Office and Mr. Lomax and determine if there is anything that we can do and try to regroup. I would also note as most of you are aware, we already have a petition out circulating right now and whatever the results of this hearing are, of course, I'm going to visit this afternoon to make sure that those petitioners get the information on whatever is decided today."

Chair Oceguera thanked Mr. Griffin and noted that members usually follow their legal counsel's advice so if approved he is sure that is what they will do today.

Senator Horsford said, "Out of respect for our legal counsel, obviously this is an issue we did deal with a lot during the legislative session. There were both hearings and working groups and I believe that the intent is here within the regulation – it's an issue of how you carry it out and so with the respect to the concerns raised by our legal counsel, I would move to approve the regulation with the statement on the record that by approving the record that we find that the regulation carries out the intent in NRS 295.055 because I do believe that, at least from my perspective, is what we would like to see happen in the process."

SENATOR HORSFORD MOVED APPROVAL OF REGULATION R092-09 AS IT CARRIES OUT THE INTENT OF NRS 295.055 AS NOTED IN HIS PREVIOUS STATEMENT. MOTION SECONDED BY SENATOR CARLTON AND CARRIED.

On Regulation R111-09 from the Director of the Department of Motor Vehicles, Ms. Erdoes said that this regulation was submitted to the commission for early review by the Department of Motor Vehicles. She referred to the previously submitted handout identified as Exhibit E. The regulation is basically the provision of regulations meant to carry out the Real Id Act. She also referred to a packet of materials provided to members by the Department of Motor Vehicles (copy attached as Exhibit F). She explained that the two concerns she has with the regulation are that the effective date has become somewhat circular. The effective date in the bill says that the statutes which authorize the regulations become effective upon the expiration of any period of exemption that is granted by the federal regulators. Now, it turns out that this regulation is needed in order to prove substantial compliance to get the next exemption for it. She said it is something she needed to let members know to see if it is a problem for them. The second issue with the regulation that concerned her office is that the provisions in Chapter 483 are very specific as to the types of licenses that have been

authorized to be issued in the past. Without change to that, the statute basically says that there is a driver's license and an identification card. What the regulation proposes is to have two sets of those because the federal law on Real Id requires that an agency verify that the status to remain in the United States is verified for any license that they issue that is going to be used to board an aircraft and some of the other federal purposes. The regulation leaves mostly intact the existing driver's license and identification card provisions with the requirements that they have and then add an additional one which is called an advanced secured driver's license and identification card for which one would have the additional federal requirements that apply to the state. Those licenses could be used for identification cards which could be used to board an aircraft. She said that if the members approve the regulation she suggested putting something in the approval motion which acknowledges that it was within their intent.

Ms. Kirkpatrick said that she has her own personal concerns which she related to the members and asked if there is a reason the regulation needs to be adopted this day as she thought it was a bit premature. Ms. Erdoes said that it is her understanding that they have until January 1 and if the regulation is not adopted before that date they would not be in substantial compliance and would then lose the right to use drivers' licenses to board aircraft but suggested that members may wish to have the representative from the Department of Motor Vehicles verify that information.

Edgar Roberts, Director of the Department of Motor Vehicles appeared before members in Carson City. Mr. Roberts confirmed that Ms. Erdoes was correct. Ms. Erdoes said that if members objected to the regulation today, she would need to make sure that that her office works with the agency and got the regulation adopted before January 1 to make the compliance date and it would have to be brought to the Legislative Commission's Subcommittee to Review Regulations between this day and January 1.

Ms. Kirkpatrick commented that if members defer the regulation this day then they would have the ability to review it further and consider it again before January 1. Ms. Erdoes stated that would be correct. It could be deferred and it would come back to the next meeting of either the Legislative Commission or the Subcommittee to Review Regulations and that would need to be done before January 1.

Senator Washington asked Mr. Roberts, "This regulation then basically puts us in compliance with the federal statute to make sure that our drivers' licenses comply with the federal requirements if I understand that correctly." Mr. Roberts responded, "Yes, you are correct. It also gives us an option as Brenda said to continue to give our existing driver's license as well as an advanced secure driver's license or Id card."

Further, Senator Washington asked, "If we don't adopt this regulation, does this also jeopardize some federal funds as far as highway funds?" Debbie Wilson, Management Analyst with the Department of Motor Vehicles appeared before members in Carson City. Ms. Wilson said she believed H.R. 140 was the federal legislation that

could have prevented federal funds from coming to the states but to date that bill has not moved forward so at this point there is no federal legislation that would reduce highway funding to the state. Senator Washington said, "But you never know."

ASSEMBLYWOMAN KIRKPATRICK MOVED TO DEFER REGULATION R111-09 TO THE SUBCOMMITTEE TO REVIEW REGULATIONS TO ALLOW MEMBERS MORE TIME TO PERUSE THE MATERIALS ON THE REGULATION. MOTION SECONDED BY SENATOR CARLTON.

Under discussion, Senator Washington asked that the commission not support the motion due to the lengthy discussion today and review during the previous legislative session. He thought the necessity speaks for itself and the DMV has "gone out of their way to ensure that those who had any concerns that their concerns were addressed." He indicated this regulation does not comport to the Real Id issue and is something that most states have adopted and the longer it is delayed the more the state is put in jeopardy and for individuals who travel domestically and internationally he thought it was important to approve the regulation expeditiously. He reiterated his request for the commission not to approve the motion and then have a second motion to approve the regulation so they can move forward.

Ms. Kirkpatrick said that she just received the information on Thursday and in reviewing the material she thought there were some questions. She said there was a "huge" discussion on a bill last session and she thought there was no danger and they have until January. She stated, "We've approved other stuff today that we didn't have options on and this is one that we actually have an option on and I stand by my motion."

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED WITH SENATOR WASHINGTON AND ASSEMBLYMAN SETTELMEYER VOTING NAY.

Chair Oceguera said the regulation would be addressed at a meeting of the Legislative Commission's Subcommittee to Review Regulations very shortly.

**B. Approval of Contributions and Expenses Report Form from the Secretary of State** – Matt Griffin, Deputy Secretary for Elections.

The chair referred to a handout of a 13-page document on legal size paper (copy attached as Exhibit G). Mr. Griffin explained that there are two changes on the report. They removed two lines that were formerly in the report namely the disposition of unspent funds and the reporting of any contributions raised under $100. Those two requirements are not authorized by law and pursuant to NRS 294A.373 and only that which is required by law can be included in the forms so they are submitted to the Legislative Commission for revision in compliance with state law.

Chair Oceguera asked Ms. Erdoes if she had the opportunity to review the report form and concurred with what Mr. Griffin said. Ms. Erdoes responded, "Yes, Mr. Chairman,

my office has reviewed this form, we've looked at it and we agree that those two things needed to be taken away and there were no other changes that were required by law to be made."

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF THE CONTRIBUTIONS AND EXPENSES REPORT FORM. MOTION SECONDED BY ASSEMBLYMAN CONKLIN AND CARRIED.

**C. Approval of Proposal to Install Photovoltaic System on Roof of Legislative Building** – Lorne J. Malkiewich, Director.

Mr. Malkiewich noted that some of the members may have served on the Interim Finance Committee (IFC) or the Stimulus Subcommittee when James M. Brandmueller discussed this project. He said it caught staff by surprise because it moved so quickly after they had submitted a list of buildings which would be appropriate for energy savings or an alternative energy project. He found out at an IFC meeting that it had been approved. He thought that it should be brought before the Legislative Commission. Staff has attended some meetings and obtained additional information. He called attention to material in the meeting packet for this agenda item in addition to a handout of a letter dated October 19, 2009, from Mr. Brandmueller of the Nevada State Office of Energy (copy attached as Exhibit H). The letter indicates that there is $300,000 for a solar array. Staff has a lot of questions concerning the requirements, therefore, what he is asking for is authority to move forward and work with the Office of Energy, the State Public Works Board and NV Energy, if necessary, and then return to the commission for approval of the project before staff begins putting something on the roof.

Ms. Kirkpatrick asked why it takes two years for a job from start to finish.
Mr. Malkiewich said that he did not know that it would but believed that is the time frame within which they have to complete the project. There is a deadline for committing money and a deadline for completing spending it but he hoped that it would not take that long. He said that at this point it would probably be appropriate to indicate that the person to whom the letter is addressed – David Whatley – retired on Friday so staff would be stretched a little bit thin in that area. He reiterated that he did not think the project would take that long and thought it was just the period specified.

Further, Ms. Kirkpatrick said if she remembered correctly, this is one of the seven programs that the Office of Energy proposed to perform retrofits or do some energy efficiency within the state and local governments. She said that when Ms. Erdoes said that the LCB saved "huge" on the State Printing Office, she recommended that the state do something as well because it is always good to save on power bills.

Mr. Malkiewich clarified that staff is fully in favor of the project but just want to make sure it is not committing the Legislature to something they cannot do. Once the details are worked out, it will be brought back to the Legislative Commission. Staff has been supportive of the project for the State Printing Office and of this project as well.

Senator Horsford asked why there was a determination of placing it on the roof versus the parking structure, has staff evaluated that to see which is better or will it be part of the due diligence. Mr. Malkiewich said he thought that was one of the things that caught staff off guard. He said, "All we did was submit a list of here's a couple, you know what are the three buildings you have for which this might happen and the next thing we knew we were being told that this is the project that was being selected. We can take a look and see if there are other alternatives that would make more sense but, again, that's why I wanted to kind of slow this down a little bit."

Ms. Kirkpatrick said she probably has the information on the list of projects that was submitted to the Energy Office during the legislative session which is actually when it came about. She thought the energy savings was about 47 percent on the pilot program that was done last time and she thinks Mr. Malkiewich is right. She reiterated that she probably has the information that would help educate everyone on the process.

SENATOR HORSFORD MOVED APPROVAL OF THE PROPOSAL. MOTION SECONDED BY SENATOR WOODHOUSE AND CARRIED.

Senator Horsford also asked if the air ducts could be cleaned.

**D. Approval of Proposal to Discontinue Transmittal of Reports of Occupational Licensing Boards** – Lorne J. Malkiewich, Director.

Mr. Malkiewich called attention to material in the meeting packet and also a handout entitled Occupational Licensing Quarter 3 of 2009 (copy attached as Exhibit I). The material in the meeting packet is the statute that gives authority for this. He indicated that there are about 30 or 40 different boards that report quarterly to the Legislative Commission and that information has been put in the meeting packets for each meeting and is generating a lot of paper for very little benefit. Members who have been on the commission for a while know that one of the things staff has been working on is upgrading the program. He referred to the area on the legislative website where it contains the various reports including a lot of additional information. He is asking for authority to rather than putting 40 reports into each packet to instead provide a report which shows at a glance which agencies have not been reporting and how many and then if someone is interested in more detail they can go to the website and see a great deal more detail without producing 80 pages of paper. Since the statute says "with the approval of the commission" and unless the commission otherwise directs staff is to submit the paper reports, he is just asking if staff can cease providing paper reports of all the occupational licensing boards.

Chair Oceguera indicated that it seems like a pretty common sense deal as "we pay shipping and copying and kill a forest to do this."

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE REQUEST. MOTION SECONDED BY SENATOR WOODHOUSE.

Under discussion, Senator Carlton said she wanted to make sure folks get the information on this so if there is a way to do an email prompt or sending something out because members forget they should be checking the reports and finding out what is going on. She said that when she gets material she begins to review some of the things that have been going on with some of the boards. She wants to make sure that members still get reminded that they need to be watching because "out of sight, out of mind" and they are all too busy. Her only concern would be that something would slide under the radar because they are not having something presented to them.

Mr. Malkiewich explained that staff would still be putting in one of the summary reports and they will look at a couple of different ways to format it. One of the things he wants added to the end of the report would be links so it would be very simple for someone to follow up. He noted that more information could be included and the document provided is just an example of the report. He emphasized that what he would like to do is have a 3 or 4 page report rather than 33 or 34 page reports and save paper and yet provide information that he thinks would be more useful to members.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED.

**E. Approval of Use of Reserve in Legislative Fund to Offset Costs of Session (NRS 218.085)** – Lorne J. Malkiewich, Director.

Mr. Malkiewich explained, "We have authority under NRS 218.085 to take money out of the Legislative Fund to pay the various costs of the Legislature. We also, at the beginning of session, provide an appropriation to pay the cost of session. This past session, we dipped farther into the Legislative Fund than usual to try to limit the costs of session. This is not a change in policy, however, when our auditors looked at this and saw how much we were spending compared to what was appropriated they said 'you should probably go to your governing body and have them approve this expenditure.' So, this is just seeking approval of something that we have done for as long as I have been working for the Legislature which is to say the cost of session is the amount appropriated for session plus the amount that we spend out of the unreserved balance of the Legislative Fund. I'll be glad to answer any questions."

Mr. Settelmeyer inquired what does that bring the total cost for the last legislative session to be. Mr. Malkiewich replied that the total cost of the last session was about $20 million which is almost exactly the amount that was estimated at the beginning of the session.

ASSEMBLYMAN CONKLIN MOVED APPROVAL OF THE REQUEST FROM THE DIRECTOR. MOTION SECONDED BY SENATOR WOODHOUSE AND CARRIED.

**Item IV – Informational Items - Miscellaneous Reports from State Agencies and Others:**

Chair Oceguera commented that the next items are informational items unless someone has a question. He recalled that there was some discussion on Item F. earlier in the meeting and asked Mr. Conklin to provide any information he has found since that discussion.

**A. Annual NRS 287.043(3) Report from the Public Employees' Benefits Program.**

**B. A.B. 518 Report on Competition from the Public Utilities Commission of Nevada.**

**C. Resolution 2009-04 from the Colorado River Commission of Nevada.**

**D. Annual Report for Fiscal Year 2009 from Office of the State Treasurer.**

**E. Industrial Insurance Miscellaneous Changes from Division of Insurance, Department of Business and Industry.**

**F. Documentation regarding emergency regulations from Commissioner Waltuch, Division of Mortgage Lending, Department of Business and Industry.**

Mr. Conklin invited Mr. Waltuch to provide some information as he thought it was prudent to have it on the record. Mr. Conklin said that in looking over the two sets of regulations, they are the same and he was actually looking at the first draft and not the approved emergency regulation. He stated what is before members had been filed by the Legal Division and is exactly the same as members approved during the last Legislative Commission meeting. He said there have been some questions since that time and he knows there have been inquiries of the commissioner as well. He would like to take the opportunity to ask one question on the record and that is to Commissioner Waltuch. Mr. Conklin said, "When I reviewed these regs, particularly I think in sections 73 and 80, I want to say 85, these are the sections that talk about the security trust fund and how money is saved and secured on behalf of the consumer for services provided particularly for loan modifications, in a sentence or two can you give this committee a level of comfort that you feel that the consumer is duly protected by these provisions that a person can't just willy-nilly remove that money for services not rendered – that we've actually done a good job here."

Mr. Waltuch responded, "The trust account provisions stem from the requirements of A.B. 152 of this past session and basically what we have done by regulation is to require when a homeowner gives money to what let's just generically call a loan modification company, that money has to be placed into a special trust account at a federally insured depository institution. We have requirements that the loan modification company will have to notify us of what bank it's in, for example, how it's vested, et cetera. The money then can only be taken out upon completion of each stage of

services that are set forth in the contract between the homeowner and the loan modification company. That money that is not used for that particular stage cannot be taken out. I will add that we have provided by regulation that consumers have the right to rescind the contract within three business days after they sign it and at any time on five days, basically, notice at any other stage after the recision period has expired and all unexpended monies have to be refunded back to the homeowner. We have also CPA audit requirements, annual financial statements and a semi-annual unaudited financial statement requirement and examination authority so I believe the consumers are duly protected."

Mr. Conklin said, "Thank you, Mr. Waltuch, and also this is critical as far as I'm concerned, do you feel that and realize of course the state can't draw contracts for these people but that you have enough authority if a contract really does nothing for a consumer, that you have the ability to go in and help a consumer work through something that maybe is fully being taken advantage of and just maybe just doesn't know any better?"

Mr. Waltuch replied, "Yes. Although the division in this regulation does not specify every item that has to be in a contract, I don't think anybody can do that, we do have the authority if we determine through an investigation of a compliant, for example, or through an examination that the services that are being provided are not reflective of the amount of money being charged for example per stage or per phase, we do have the ability to order restitution. We can suspend, revoke, place conditions upon a license, we can fine, we have numerous things we can do that will in effect enforce the contract or refund the funds to the homeowner."

**Item V – Public Comment:**

Senator Carlton commented that the commission is well aware of news articles and issues that came out that the "feds" have issued their OSHA Report and a lot of the things discussed last session and she and the chair of the Assembly Committee on Commerce and Labor had tried to address a number of issues that were brought up in the report and now there is a "wonderful template" for what needs to be done during this interim to address those issues. She said that it was a very comprehensive report and she reviewed the executive summary and there is another 80 pages behind it. There is an excellent working document to proceed from and she requested the chair to either form a subcommittee or a working group, whichever is felt to be more appropriate, and she would like to see it hold three hearings, take comment and work with Mr. Jane with whom she has spoken on the telephone. She wants to start working on the matter right away. She understood that because it is not agendized they are in an awkward position but if she could request it at this time and perhaps put it on the next agenda of the Legislative Commission to get it fulfilled she would greatly appreciate it as it is an important issue for the state to address.

Chair Oceguera said that he agreed with the senator and has had conversations with Senator Horsford and the chair of the Assembly Committee on Commerce and Labor Mr. Conklin and he suggested the appointment of a subcommittee consisting of Senator Carlton, Mr. Conklin and Senator Washington and limit the number of members to three. Senator Washington agreed to serve on the subcommittee. Chair Oceguera appointed a subcommittee consisting of those suggested – Senators Carlton and Washington and Mr. Conklin – to examine the report of the federal OSHA and look for changes to be made in the next legislative session.

Ms. Kirkpatrick directed her comment to staff and said they did a great job with all 53 regulations that were put into place and she thought that sometimes legislators forget to acknowledge that they were codifying everything else and trying to do the regulations. While she is frustrated when it takes her a while to read them, she does not forget to thank those that worked even more hours to put them together.

There were no comments from the public either in Las Vegas or Carson City.

There being no further comments, the meeting was adjourned.

Respectfully submitted,

Marilyn K. White
Assistant to Director

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Assemblyman John Oceguera, Chair
Nevada Legislative Commission