

MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)
December 16, 2010

The fourth meeting in 2010 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, was held on Thursday, December 16, 2010. The meeting began at 9:15 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada. A simultaneous videoconference was broadcast to Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair (in Las Vegas)
Assemblywoman April Mastroluca (in Las Vegas)
 alternate for Assemblyman Marcus L. Conklin, Vice Chair
Senator Barbara K. Cegavske (in Las Vegas)
Senator David R. Parks (in Las Vegas)
 alternate for Steven A. Horsford
Senator Mike Schneider (in Las Vegas)
Senator John J. Lee (in Las Vegas)
Senator Mike McGinness (in Carson City)
Senator James A. Settelmeyer (in Carson City)
 alternate for Senator Dean A. Rhoads
Assemblywoman Marilyn Kirkpatrick (in Las Vegas)
Assemblyman Richard McArthur (in Las Vegas)
Assemblywoman Debbie Smith (in Carson City)
Assemblyman Lynn D. Stewart (in Las Vegas)

OTHER LEGISLATORS IN ATTENDANCE:

Senator Michael Roberson

LEGISLATIVE COUNSEL BUREAU STAFF:

Lorne J. Malkiewich, Director (in Las Vegas)
Brenda J. Erdoes, Legislative Counsel (in Carson City)
Risa B. Lang, Chief Deputy Legislative Counsel (in Carson City)
Mark Krmpotic, Senate Fiscal Analyst (in Carson City)
Rick Combs, Assembly Fiscal Analyst (in Carson City)
Paul V. Townsend, Legislative Auditor (in Carson City)
Donald O. Williams, Research Director (in Carson City)
Connie Davis, Legislative Commission Secretary (in Carson City)
Fran Sullivan, Committee Assistant (in Carson City)

Chair Ocegüera called the meeting to order. Exhibit A is the agenda. Exhibit B is the guest list. Certain items may have been taken out of order but were placed in agenda order in the minutes for purposes of continuity.

- *I. APPROVAL OF MINUTES OF THE AUGUST 13, 2010, MEETING –
Assemblyman John Ocegüera, Chair

SENATOR CEGAVSKE MOVED APPROVAL OF THE
AUGUST 13, 2010, MEETING MINUTES.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Schneider was not present
for the vote.)

II. LEGISLATIVE AUDITOR:

- *A. Summary of Audit Reports Presented to Legislative Commission's
Audit Subcommittee, *Nevada Revised Statutes* (NRS) 218G.240 –
Paul V. Townsend, Legislative Auditor

Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau, identified himself for the record. Mr. Townsend referenced a December 9, 2010, letter (Exhibit C) from Senator Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee. The letter advised that six reports were presented to the Audit Subcommittee on December 8, 2010. Additionally, Mr. Townsend referenced a September 30, 2010, letter (Exhibit D) from then Assemblywoman Sheila Leslie. The letter advised that five reports were presented to the Audit Subcommittee on September 29, 2010. Both letters advised that the Audit Subcommittee recommended that the Legislative Commission accept the reports.

Mr. Townsend provided summaries of the following audits:

- o Secretary of State
The audit found that improvements were needed to reduce delays in depositing checks and to ensure adequate safeguarding of checks and customer information. On average, deposits were made six working days late.

During the audit, the Office of the Secretary of State took corrective actions to make more timely deposits, and some customer information was shredded and remaining records were better secured. It was determined, however, that the Office could take steps to improve the reliability and effectiveness

of its performance measures, and policies and procedures could be strengthened.

The audit report contained 12 recommendations, which the Office of the Secretary of State accepted.

- o Contracts with Consultants (A.B. 463)
The Contracts with Consultants Audit, required by Assembly Bill (A.B.) 463 of the 75th Legislative Session (2009), found that better oversight was needed for contracts with current and former state employees. The audit also found a lack of adequate controls to prevent current employees from performing contractor activities during their state work hours. Additionally, state agencies did not always enter into a required contract with current and former employees. The legislation required that information regarding contracts with current and former employees be provided to the Interim Finance Committee (IFC). The IFC, however, received "very little" information regarding consultant contracts entered into by state departments, divisions, and other agencies. Shortly after the enactment of A.B. 463, the Department of Administration narrowly defined the word "consultant" to exclude individuals who provided "any type of work product." Thus, only under rare circumstances would a contractor be deemed a consultant and that information reported to the IFC.

Because controls were not in place to prevent abuse and timesheet discrepancies, some employees were paid twice for the same time. Examples included one employee who was paid for 25 hours in one day and another employee who was paid for 2.5 hours of contract services at a rate of \$250 an hour the same day 8 hours of family sick leave was reported.

As previously indicated, the audit found that Executive Branch agencies did not always enter into a contract for services provided. Specifically, 28 of 111 individuals were paid for services without a contract. In other cases, the contract hourly rate was not always comparable to the employee hourly rate when current and former employees contracted to perform similar duties. One example was that an agency contracted with a former employee at a rate of \$350 per hour versus \$65 per hour previously paid. Another individual was paid at a contract rate of \$150 per hour compared with a rate of \$71 per hour for a state employee.

The audit also found that 18 former employees hired through a temporary employment service were paid at excessive rates while others were paid reasonable rates. An example was that one individual was paid \$121 per hour compared with a rate of \$60 per hour for a state employee while a

former employee provided contract services at \$30 per hour compared with \$69 per hour for a state employee.

The audit report contained seven recommendations that the Department of Administration accepted. Moving quickly to address the problems, the Director of the Department of Administration announced that a task force that included several department directors, a representative of the Office of the Attorney General, and the Executive Branch internal auditor had been formed. The initial meeting of the task force was scheduled to take place on December 15, 2010. Additionally, the members of the Audit Subcommittee directed the Auditor to refer information to the Office of the Attorney General to determine any indication of criminal activity.

Chair Ocegüera asked Assemblywoman Smith to comment on the results of the audit.

Assemblywoman Smith expressed her appreciation to the Legislative Auditor for the Audit Division's efforts in completing the audit and indicated that she did not believe an "epidemic of abuse" concerning contracts for consultants existed in state offices.

Assemblywoman Smith recalled that the goal of A.B. 463 was to better provide consultant services and that information regarding the use of consultants and temporary employment services was to be included in and explained in the budget process. Assemblywoman Smith said while it was unfortunate the process for contracting with consultants needed additional modification, the audit had outlined the problems and the modifications that were needed.

Assemblywoman Smith pointed out that, in the current economy, it was important for the public and active state employees to know that higher salaries or privileges were not being provided to some contract employees while state workers were being affected by salary reductions and furloughs.

Additionally, Assemblywoman Smith indicated that she had submitted a bill draft request for the 2011 Legislative Session that would provide clarification for the previous legislation, and she looked forward to working with the task force and reviewing its recommendations. Assemblywoman Smith pointed out that A.B. 463 would demonstrate to the public that the state "could and would" do a better job in the use of state consultants.

In closing, Assemblywoman Smith indicated that there were many instances when the use of consultants was acceptable and beneficial to the state and recalled one contract with a firefighter who provided training at a much reduced rate. Additionally, Assemblywoman Smith noted that accounting and record-keeping

problems discovered by the audit demonstrated a need for processes to ensure perfect accountability for the expenditure of state tax dollars.

Senator Cegavske asked whether ties had been severed with consultants who submitted false payroll statements.

Mr. Townsend advised that the task force was currently reviewing payroll statements. Additionally, he said the problem was discussed with state agency representatives and referred to the Office of the Attorney General, but he was not up-to-date on any consequences that had occurred.

Senator Cegavske indicated she wanted to ensure consultants were aware that submitting false claims would not be tolerated and that the state should sever ties with any consultants who had submitted false information.

Continuing his presentation, Mr. Townsend provided the following audit summaries:

- o Board of Parole Commissioners

The audit for the Board of Parole Commissioners found that the Board conducted parole hearings in fiscal year (FY) 2010 in accordance with state laws, regulations, policies, and procedures; however, a problem with parole eligibility dates was noted. The problem occurred because information concerning parole eligibility dates, provided by the Nevada Department of Corrections (NDOC), was incorrect for some inmates. The incorrect information led to delays in parole hearings that affected some inmates who could have been paroled sooner, which would have reduced costs to the state.

The audit report recommended that the Board of Parole Commissioners work with the Department of Corrections to develop a process to ensure future statutory changes affecting parole eligibility were properly implemented. The Board accepted the recommendation.

- o Department of Business and Industry, Information Technology Security

The audit for the Department of Business and Industry, Information Technology Security found that weaknesses existed in controls designed to protect confidentiality, integrity, and availability of the Department's sensitive information. The weaknesses included computer storage of unencrypted sensitive personal identification information, such as social security numbers. Additionally, computers did not have adequate virus protection and, in some cases, lacked critical software updates.

The audit report contained 11 recommendations that the Department accepted, and a number of those recommendations were implemented prior to the conclusion of the audit.

- o Department of Taxation, Insurance Premium Tax

The audit for the Department of Taxation focused on the Insurance Premium Tax and found that current processes and controls used by the Department for the administration of Insurance Premium Tax did not always ensure that the taxes were collected accurately, equitably, and in accordance with all laws and applicable guidance. As a consequence of an insufficient review of returns and because certain errors and inaccuracies were not identified, more than \$5 million in taxes went uncollected in tax years 2007 through 2009. Additionally, omissions were found for insurers who elected to pay tax when amounts on annuities were deferred. The audit found deferred taxes on annuities of \$7.5 million for the 2009 reporting year alone that warranted further examination by the Department. Since the Insurance Premium Tax was the third largest tax that the Department collected, proper administration of the tax and enhanced cooperation by the Division of Insurance was essential to collecting all premium taxes due.

The audit report contained 11 recommendations that the Department of Taxation accepted.

- o Review of Governmental and Private Facilities for Children

Reviews, pursuant to *Nevada Revised Statutes*, were conducted to ensure the wellbeing of children when in the custody of the state. The report included the results of reviews of six children's facilities, unannounced site visits to six children's facilities, and surveys of 57 children's facilities throughout the state.

One common element was that all six of the facilities reviewed could improve their medication management. The review noted, for example, at least one type of medication management error at each facility. Errors included not following physicians' orders, missing or incomplete medication documentation and youths not receiving medication timely. Although employees received training on the administration of medication, the delivery of instruction required strengthening.

The review discovered that while staff received training on the administration of medication to youths and how to identify the symptoms of illness, the facilities should consider training that surrounded both medication management and handling medication errors. For example, facilities should document medication missed and the reason why and any medication errors that occurred, such as incorrect dosage.

The report contained specific recommendations for each of the six facilities reviewed as well as one recommendation to all Nevada facilities to strengthen medication management training by training key medication management staff through an agency independent of the facility. The training should include the administration of medication, documentation of administration and medical orders, and minimizing and handling medication errors.

The Audit Subcommittee of the Legislative Commission directed the Legislative Auditor to send a copy of the recommendation to each of the 57 facilities in the state.

Mr. Townsend advised that the following reports were presented to the Audit Subcommittee on September 29, 2010:

- o Public Utilities Commission

The audit found the Public Utilities Commission (PUC) substantially complied with state laws, regulations, policies, and procedures significant to its financial, administrative, and information-technology activities. However, a need existed for better monitoring and updating of internal controls as well as for information technology password controls and training designed to protect PUC data.

The report contained seven recommendations that the PUC accepted.

- o Department of Agriculture

The audit for the State Department of Agriculture was requested by the legislative money committees during the 2009 Legislative Session and subsequently authorized by the Legislative Commission.

The audit found that the Department of Agriculture did not always align its payroll and other operating costs with proper program and funding sources. Although several adjustments were made during the 2009 Legislative Session to help align the Department's personnel costs and funding sources, additional adjustments were needed. Findings in the audit estimated that about \$552,000 in personnel costs were not always aligned with the appropriate funding source. One example was that although the Nursery program was intended to be self-sufficient, the program manager's position was funded by General Fund dollars in one budget account while all Nursery program revenue and expenditures were recorded to a budget account not supported by the General Fund. Because of that misalignment, the General Fund subsidized the Nursery program by \$77,740.

The report contained four recommendations to improve the Department of Agriculture's ability to track and monitor program costs and activity, which the Department accepted.

- o Motor Pool Division

The audit found that the Motor Pool Division could improve the economic utilization of its vehicle fleet. The Division did not adequately monitor its fleet for potential elimination or reassignment of unneeded vehicles. A principal finding identified that 162 of the 736 vehicles assigned to state agencies were driven less than 6,000 miles during 2009. It was estimated that the Motor Pool could save \$1.6 million in future vehicle replacements by reducing its fleet by 73 low-use vehicles. Savings would occur if low-use vehicles were eliminated or reassigned, and the Motor Pool delayed the purchase of replacement vehicles.

Additionally, the audit found that vehicles were not always maintained according to the Division's preventative maintenance schedule and that monthly fuel-card billings were not adequately monitored for appropriate use.

The audit report contained 11 recommendations, which the Motor Pool Division accepted.

Senator Settlemeyer questioned whether improper use of fuel cards had been investigated by the Office of the Attorney General.

Mr. Townsend responded that in one case during the audit, the Office of the Attorney General conducted an investigation concerning unusual fuel purchases. In the remaining cases, the Motor Pool Division Administrator, who was made aware of the problem, was in communication with the Office of the Attorney General. Mr. Townsend more fully explained that some of the problems centered on "extremely low mileage" with a few vehicles only attaining five miles per gallon of gasoline, which was a "red-flag" indicator of improper use. Additionally, Mr. Townsend mentioned that the Division had a tracking system that, if periodically reviewed, should identify unusual fuel purchases.

Continuing his presentation, Mr. Townsend reported on the following audit reports:

- o Programs for Innovation and the Prevention of Remediation (2010)

The audit for the Account for Programs for Innovation and the Prevention of Remediation, required by *Nevada Revised Statutes*, reviewed the Commission on Educational Excellence. The Commission members were responsible for activities related to increasing student achievement including: establishing grant requirements, reviewing and approving grant fund requests, and allocating money from the Account to various schools and

consortiums of schools, for which the Department of Education provided support.

Although administration of the Account for Programs for Innovation and the Prevention of Remediation had improved since the first audit, the current audit found that additional efforts could be made to provide greater assurance that funding was allocated and controlled as the Legislature intended.

The report contained five recommendations, which the Department of Education accepted. Because the Account was not funded in the 2009 Legislative Session, the current audit would be the last one conducted.

- o Department of Transportation

The purpose of the audit was to determine whether the Department of Transportation: (1) awarded design-build projects in accordance with laws and prudent contracting practices, (2) reported performance-measure results and benefit-cost analyses that were reliable and timely to oversight bodies, and (3) used specifications for light and heavy equipment that did not unnecessarily limit competition in those purchases.

The audit focused on two design-build contracts and found that in the second project the Department did not score cost proposals consistent with statutory provisions. Specifically, proposal costs were given a weight of 10 percent, which was less than the 30 percent minimum required by statute. The Department believed its scoring method was appropriate at the time. The amount awarded for the project was \$246.5 million and although the scoring problem did not affect the outcome of the award, the problem, if not addressed, could affect future projects. The Department accepted a recommendation to change the methodology for scoring cost proposals.

The audit also discovered that performance measure results and benefit-cost analyses were not always reliable or consistently provided to the Department's Board and to the Legislature's Interim Finance Committee. Assembly Bill (A.B.) 595 of the 74th Session of the Legislature (2007), required the Department to provide specific performance measurements and benefit-cost information to various oversight bodies.

Additionally, the audit found that the Department did not always follow best practices in preparing specifications for equipment purchases. The Department used specifications for light and heavy equipment that unnecessarily limited competition. For the approximately \$5.6 million in equipment purchases tested, the audit found equipment specifications included overly restrictive requirements that, in many cases, targeted specific

manufacturers' models or specified brand names. Overly restrictive specifications limited competition, wasted bidders' and state employees' time, and often increased the cost of equipment purchases.

The audit report contained six recommendations, which the Department of Transportation accepted.

Concluding his presentation, Mr. Townsend reiterated that the Audit Subcommittee recommended that the Legislative Commission accept the audits as presented.

Chair Ocegüera expressed his thanks to Mr. Townsend and to the auditors of the Legislative Audit Division for their work.

Senator Schneider questioned the audit for the Motor Pool Division and whether it would be in the best interests of the state to privatize the fleet.

Mr. Townsend responded that privatization of the fleet was not a specific objective of the audit. He explained that 736 of the 849 Motor Pool vehicles were assigned to agencies, and only 113 were used as daily rentals. Mr. Townsend pointed out that much of the Motor Pool's activity centered on maintaining vehicles assigned to state agencies, which would have to be taken into account if privatization was to be considered.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO ACCEPT THE
AUDIT REPORTS AS PRESENTED.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

- *B. Summary of Six-month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Audit Subcommittee, *Nevada Revised Statutes* (NRS) 218G.270 – Paul V. Townsend, Legislative Auditor

Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau, identified himself for the record. Mr. Townsend referenced a December 9, 2010, letter (Exhibit E) from Senator Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee. The letter advised that when the six-month reports indicated an agency had not fully implemented recommendations, the Audit Subcommittee continued to monitor the agency's progress until full implementation had been achieved. At its meeting on December 8, the Audit Subcommittee reviewed and accepted follow-up reports on the three agencies listed below whose six-month reports had been presented at previous meetings:

- Office of the State Public Defender
An agency update indicated that all but two recommendations had been fully implemented, and the agency was close to achieving full implementation of the remaining recommendations.
- Department of Corrections, Inmate Programs, Grievances, and Access to Health Care
The audit conducted in 2008 contained 31 recommendations. A December 8, 2010, update from the Department of Corrections indicated that two recommendations remained to be fully implemented. A more recent update from the Department to the Auditor's office was currently being reviewed.
- Department of Business and Industry, Real Estate Division
A December 8, 2010, agency update indicated that all recommendations had been fully implemented.

Mr. Townsend referenced a letter dated September 30, 2010, (Exhibit F) from then Assemblywoman Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee. The letter advised that the Audit Subcommittee reviewed five six-month reports on September 29, 2010, that included the following agencies and an additional schedule provided the status of recommendations as of September 29, 2010:

- Programs for Innovation and the Prevention of Remediation (2009)
All 16 recommendations were fully implemented.
- Office of the State Public Defender
Three recommendations were fully implemented and five were partially implemented.
- Department of Health and Human Services, Health Division – Inspection Programs
All 20 recommendations were fully implemented.
- Department of Business and Industry, Division of Financial Institutions
All 12 recommendations were fully implemented.
- Department of Business and Industry, Real Estate Division
Eight recommendations were fully implemented and four were partially implemented.

Mr. Townsend advised that the Audit Subcommittee recommended that the Legislative Commission accept the five six-month status reports.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO ACCEPT THE THREE FOLLOW-UP REPORTS AND THE FIVE SIX-MONTH STATUS REPORTS.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

III. PROGRESS REPORTS AND APPOINTMENTS:

*A. Litigation Currently in Progress – Brenda J. Erdoes, Legislative Counsel

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau reported on the following litigation currently in progress:

Clean Water Coalition Case

The Clean Water Coalition Case challenged the constitutionality of Section 18 of Assembly Bill (A.B.) 6 of the 26th Special Session (2010), which provided for the transfer of money from the Clean Water Coalition to the State General Fund. Ms. Erdoes reported that on December 9, 2010, a district court judge in Las Vegas granted a summary judgment in favor of the Nevada Legislature. The judge requested an order from the Legislative Counsel by December 16, 2010, and a decision would be rendered by December 23, 2010.

American Cancer Society v. the Las Vegas Convention and Visitors Authority

The American Cancer Society Case challenged the constitutionality of Assembly Bill (A.B.) 309 of the 75th Session of the Legislature (2009). Ms. Erdoes reported that on September 10, 2010, the First Judicial Court upheld the constitutionality of A.B. 309. The plaintiffs appealed, and their brief was due February 10, 2011, and the Legislative Counsel's brief would be due 30 days later.

Gypsum Resources, LLC v. Catherine Mastro, et al

The Gypsum Resources, LLC v. Catherine Mastro, et al (Red Rock Canyon) Case challenged Senate Bill (S.B.) 358 of the 72nd Legislative Session (2003), an act related to land use planning, limiting certain powers of planning and zoning that could be exercised by local governments within certain enumerated lands adjacent to the Red Rock Canyon National Conservation Area.

Ms. Erdoes reported that the case was currently before the United States Court of Appeals for the Ninth Circuit. She advised that briefs were filed in July 2010, and a decision from the Ninth Circuit was pending.

- *B. Reports on 4th Quarter Fiscal Year 2010 and 1st Quarter Fiscal Year 2011 Taxes and Fees Pursuant to Assembly Bill (A.B.) 193 of the 75th Legislative Session (2009) and Responses to Questions Raised by Legislative Commission Members at the Meeting Held on August 13, 2010:

Chair Ocegüera announced that the presentation sequence for the Reports on 4th Quarter Fiscal Year 2010 and 1st Quarter Fiscal Year 2011 Taxes and Fees would be taken out of order and that the State Controller would begin with her presentation.

Office of the State Controller

Kim Wallin, CMA, CFM, CPA, State Controller, Office of the State Controller, identified herself for the record. Ms. Wallin reported that the Office of the State Controller collected miscellaneous taxes and fees from various Nevada municipalities, and in the 4th quarter of 2010, a total of \$112,422,746 was collected.

In response to a request to speak about processes used to collect debt that state agencies turned over to the Office of the State Controller, Ms. Wallin indicated she would discuss a request for tools that she had included in the Controller's budget request for the upcoming biennium as well as a recent survey concerning government debt collection.

Ms. Wallin distributed a survey entitled, *Government Debt Collection* conducted by CGI, Inc. (Exhibit G). The survey, to which 21 states responded, focused on collecting debt at the state level nationwide and included information that 17 percent of respondents used a centralized collection approach while 83 percent of respondents managed receivables in a decentralized manner. Ms. Wallin pointed out that Nevada was in a category that included a combination of models using a centralized as well as individual agencies' approach to debt collection.

Ms. Wallin reported that more than half of respondents to the survey believed their processes were just adequate and less than 10 percent believed that their programs were effective. Ms. Wallin indicated that Nevada's debt collection approach placed in the middle, although progress was being made with changes that had been implemented.

Ms. Wallin explained that most states attributed the reasons that they did not adequately collect debt was because debt collection was not the primary function of their agencies, and they lacked the dedicated resources to perform a debt-collection service. One of the key outcomes of the survey was that a centralized debt-collection program would be the most efficient approach for the

collection of government debt and having a focused debt-collection program could increase collection of delinquent receivables by 10 to 35 percent. Additionally, the survey indicated that centralization provided a dedicated resource to collect debt, share information between agencies, and use various tools, such as debt offset, financial data matching, and withholding professional license renewals. Ms. Wallin indicated that centralization would provide the opportunity to write policies for collection and enforcement efforts, writing off debt, when to file liens and when to make offers and compromises.

Ms. Wallin advised that the State of Kansas used a centralized debt-collection approach in their debt offset area and collected debts for local municipalities and the court system. Additionally, Kansas implemented the Accounts Receivable Setoff Program in 1981 with 12,300 accounts and collections of \$196,000 and at the end of fiscal year 2009, the number of accounts had increased to 420,000 with collections of \$25 million.

Ms. Wallin reported that Nevada's Office of the State Controller currently employed four individuals responsible for debt collection and previously employed two additional employees whose positions had been eliminated during the budget reduction process. State agencies currently submitted their delinquent accounts receivable information to the Office of the State Controller, and staff identified whether the debt was owed by a vendor. If identified as a vendor, "debt offset," or payments owed to a vendor from a state agency, would be withheld. A debtor, not identified as a vendor, would be sent a letter that advised of 30 days to either pay in full, set up an installment plan, or have the debt sent to collection for which a collection fee would be charged.

Ms. Wallin reported that the Controller's Office staff was currently in the process of identifying and contacting state agencies that had not assigned their debt to the State Controller for collection within 60 days after the debt became past due. The agencies were being contacted to determine why they were not in compliance with Assembly Bill (A.B.) 87 of the 75th Legislative Session (2009), which revised the provisions governing the collection of certain debts owed to state agencies. Ms. Wallin explained that agencies could be exempt from turning over their debt to the Controller if agencies could show they were using all of their enforcement tools and actively pursuing the collection of the debt. Ms. Wallin used the Department of Public Safety as an example of an agency that was not required to assign its debt to the Controller until it was 90 days past due because of the Brady Bill fees the Department collected. Ms. Wallin advised that if businesses engaging in the sale of firearms did not pay their fees within 60 days, they were sent a letter by the Department and told they would be closed down. Ms. Wallin pointed out those businesses, after receipt of the letter, "usually" paid the fees they owed within that 60-to-90-day period.

Ms. Wallin advised that other reasons for exemptions might include laws that determined the validity of debt, such as the process used by the Department of Taxation to prove debt, which included audits and an appeal process. Additionally, she advised that there were also federal laws that prohibited an agency, such as the Department of Employment, Training and Rehabilitation (DETR), from assigning debt to the Controller until the federal government had written it off, which was a three-year period of time. Ms. Wallin indicated, however, that DETR and the Department of Taxation should nevertheless assign their uncollectible debt to the Controller at 60 days past due so that the Controller's Office could determine vendor status and work to offset the debt.

Ms. Wallin reported that prior to the enactment of A.B. 87, the Controller's Office averaged only about \$10 million in debt collection at any one time, usually collecting about 11 percent of the debt. She advised that the amount of the debt assigned to the State Controller had increased from \$30 million in March 2010 to a current total of \$80 million. Ms. Wallin identified some of the debt as "very old," which she indicated would be sent to the Board of Examiners to be written off. She said that moving forward, the average age of the debt turned over to the Controller was expected to decrease, and collections were expected to increase. Thus far, collections had increased to about 28 percent, and a goal was established to increase collections to 70 to 80 percent.

Addressing the issue of writing off bad debt, Ms. Wallin advised that some of the recommendations to write off uncollectible receivables included the following criteria:

- All reasonable collection efforts had been exhausted.
- The cost of further collection exceeded the amount that could be recovered.
- The debt was legally without merit or could not be substantiated by evidence.
- The debtor could not be located.
- If available assets or income current or anticipated was insufficient.
- The debt was discharged in bankruptcy.
- The applicable statute of limitations for collection had expired.
- It was not in the public interest to pursue the collection of the debt.
- A settlement was offered and accepted for less than what was owed.

- o Litigation against a debtor was unsuccessful.

Ms. Wallin reported that centralizing debt had provided the Controller's Office the ability to "standardize the question of the debt" and the authority to make settlement offers. She advised that the Office had recently reached a \$68,000 settlement on a \$90,000 debt and pointed out that had the compromise not been offered, the individual would have filed bankruptcy, and the state would not have received any funds.

As previously indicated, Ms. Wallin advised that the Controller's budget for the upcoming biennium would include a request for additional tools to improve collection and enforcement efforts. One of the tools requested was a financial data matching program similar to the one used for child support enforcement and another was a program to prevent the renewal of professional licenses for individuals who owed money to the state. Ms. Wallin advised that the State of Wisconsin implemented financial data matching and in one year improved its collections by an additional \$52 million.

Senator McGinness asked whether state agencies had to validate decisions on whether or not, after 60 days, to turn over uncollectible debt to the Office of the State Controller.

Ms. Wallin advised that the larger agencies, such as the Department of Taxation and the Department of Employment, Training, and Rehabilitation, were required to turn over their debt after 60 days, and she reiterated that receiving every agency's uncollectible debt after 60 days provided the Controller the ability to offset vendor debt.

Office of the Secretary of State

Pamela Dover, Administrative Services Officer, Office of the Secretary of State, identified herself for the record. Ms. Dover reported that during the 4th quarter of fiscal year 2010, the Office of the Secretary of State collected \$37,944,341 in Corporate Filing Fees, Uniform Commercial Code, Notary Fees, Election Fees, and Security Fees.

There were no questions from the members of the Commission.

Department of Taxation

Dino DiCianno, Director, Department of Taxation, identified himself for the record and began his presentation by responding to questions raised by Legislative Commission members during the August 13, 2010, meeting. Mr. DiCianno reported that the Department's staff included 48 revenue officer

positions who were each responsible for approximately 3,000 delinquent accounts that were prioritized by the highest dollar amounts first.

Based upon a review of current accounts receivable outstanding, Mr. DiCianno reported that although \$48,477,678.02 of the total amount outstanding was identified as uncollectible, it would not simply be written off. Mr. DiCianno advised that after exhausting all efforts to collect the debt, Department of Taxation representatives would transmit the accounts to the Office of the Controller.

Mr. DiCianno commented on the earlier discussion concerning debt being turned over to the Controller within a 60-day period and said that the Department of Taxation was a collection agency and should be exempt from the 60-day requirement. Mr. DiCianno advised that he had assured the Controller that the Department of Taxation would turn debt over to the Controller's Office once the Department had exhausted every collection effort. He explained that 60 days did not provide the Department sufficient time to establish liens or other garnishments. Additionally, he explained that once the Department advised a taxpayer the debt was owed to the state, the taxpayer had 45 days to appeal, which could mean the case would not be adjudicated for months.

Mr. DiCianno also discussed the distinction between writing off debt and debt identified as uncollectible. He explained that debt identified as uncollectible was still owed to the state as opposed to being completely written off the state ledgers. He advised that once the Department's revenue officers had exhausted every possibility of collecting the debt and it was ultimately identified as uncollectible, it should be completely removed as accounts receivable for the state of Nevada.

Assemblywoman Kirkpatrick expressed her thanks to Mr. DiCianno for his work in providing the Commission members with a good perspective on debt collection. Additionally, she wanted to review and perhaps modify the forms involved in the process to provide state agencies with a better understanding of what was required. Assemblywoman Kirkpatrick said that the Assembly Committee on Taxation looked forward to working with Mr. DiCianno during the 2011 Legislative Session.

Mr. DiCianno indicated he and members of his staff also looked forward to working with the Assembly Committee on Taxation and with Senator Sheila Leslie, Chair of the Senate Revenue Committee. In closing, Mr. DiCianno expressed his appreciation to members of the Legislature for their assistance in the Department of Taxation's tax amnesty program, which successfully collected over \$71 million.

State Gaming Control Board

Frank Streshley, Chief, Tax and License Division, State Gaming Control Board, identified himself for the record. He reported that the Gaming Control Board collected over 99.9 percent of the taxes and fees paid to the Board and to the Nevada Gaming Commission. Additionally, he reported that with approximately \$4.7 billion in collections over the past five years, the Gaming Control Board had \$196,000 in delinquent accounts, of which approximately \$100,000 was pending a bankruptcy-court decision. Mr. Streshley attributed the 99.9 percent collection rate to gaming licensees being in jeopardy of losing their gaming license for non-payment.

Continuing, Mr. Streshley reported that the Gaming Control Board employed three fulltime revenue collection employees who spent 5 to 10 percent of their time on delinquent accounts. Mr. Streshley advised that after exhausting all internal collection efforts, the Board used the Office of the Attorney General and the Office of the Controller to assist with further collection efforts.

There were no questions of Mr. Streshley from the members of the Commission.

Department of Motor Vehicles

Farrokh Hormazdi, Deputy Director, Department of Motor Vehicles (DMV), identified himself for the record and introduced Rhonda Bavaro, Administrator, Motor Carrier Division, DMV, and Deborah Cook, Chief, Administrative Services Division, DMV.

Ms. Cook provided a brief overview of the DMV's collection activities and processes, which included the following information:

- Debtors would be sent an initial collection letter, and, if necessary, a certified collection letter.
- Delinquent DMV customers, in the system and in other resource systems, such as the International Registration Plan (IRP) and International Fuel Tax Agreement (IFTA), Motor Carrier Division, would be flagged and no longer permitted to do business with the Department or other jurisdictions until the debt was collected and cleared.
- DMV would place "title stops" in the DMV system, calls would be made to customers, liens would be filed, when cost effective, and Motor Carrier credentials would be revoked and law enforcement notified.
- DMV would send delinquent accounts to a contracted collection agency through the Controller's Office.

Ms. Cook reported that the DMV currently employed nine staff members within collection areas and advised that the employees had specific program area knowledge that enabled them to assist customers in understanding their debt and account status. Additionally, she said the employees provided assistance in other program areas, such as revenue collections and Motor Carrier tax collections.

Ms. Cook also advised that a revenue manager, hired about a year ago, was assigned to the Department's debt collection program, which needed to be improved. Since that time, the Department's collection program was analyzed, problem areas were identified, and solutions were initiated. Additionally, policies and procedures, specifically those concerning writing off debt, were updated. Ms. Cook further advised that since the previous Commission meeting in August, the DMV had submitted approximately \$1 million in uncollectible debt to be written off, and in January another \$600,000 that met write-off criteria would be submitted as well. She also reported that several reports were created to assist with statistics and ongoing analysis of the program. Additionally, Ms. Cook reported that the program's four debt collection databases were being analyzed with a goal for consolidation, and the DMV was working closely with the Controller's Office and a contracted collection agency to improve the efficiency of the process.

There were no questions from the members of the Commission.

Department of Employment, Training and Rehabilitation

Renee Olson, Chief Financial Officer, Department of Employment, Training and Rehabilitation (DETR), identified herself for the record. Ms. Olson pointed out that the 4th Quarter Report for 2010 reflected that all taxes and fees legally due to be paid totaled \$95,031,415.09, and the total of all taxes and fees actually collected totaled \$98,174,268.68. She explained that the DETR collected more than was legally due during the 4th quarter because the total included the collection of past-due taxes and fees. Additionally, Ms. Olson mentioned that the largest share of collections was provided from Unemployment Insurance, Penalties and Interest, and the Career Enhancement Program collected from employers.

Ms. Olson pointed out that the 1st Quarter Report for 2011 included benefit overpayment funds that the Department was asked to include during the Commission's August 13, 2010, meeting. Ms. Olson indicated that the report did not include the benefit overpayment funds in the total of all taxes and fees legally due to be paid or in the total of all taxes and fees actually collected. Ms. Olson advised that staff members were working on a methodology to report those figures and when finalized, they would amend the 1st Quarter Report and continue from then on to report benefit overpayments.

In response to Chair Ocegüera, who asked about the collection agency used by the DETR, Jeff Frischmann, Employment Security Division Manager, DETR, advised that the Department currently used seven collectors.

There were no questions from the members of the Commission.

Department of Business and Industry

Todd Rich, Deputy Director, Department of Business and Industry, identified himself for the record. The Department's 4th Quarter Statement of Taxes and Fees for Fiscal Year 2010 reflected a total of \$32,813,183.33 in all taxes and fees that were legally due to be paid and a total of \$31,908,805.33 in taxes and fees actually collected.

The Department's 1st Quarter Report for 2011 reflected a total of \$16,116,753.22 in all taxes and fees that were legally due to be paid and a total of \$12,132,279.56 in all taxes and fees that were actually collected. Mr. Rich advised that representatives from the largest of the Department's 14 divisions were available to respond to questions.

There were no questions from the members of the Commission.

Commission on Economic Development

Lindsay Anderson, Director, Business Development, Commission on Economic Development, identified herself for the record. Ms. Anderson advised the Legislative Commission members that the Commission on Economic Development did not collect taxes but rather administered the Economic Development Abatement Program authorized under the provisions of Nevada Revised Statutes (NRS) 360.750.

Ms. Anderson reported that in the fourth quarter of fiscal year 2010, the Commission on Economic Development approved abatements for seven companies. Additionally, Ms. Anderson reported that in the first quarter of fiscal year 2011, representatives of two companies appeared before the Commission for approval of economic development incentives.

There were no questions from Commission members.

- *C. Interim Studies in Accordance with Rules and Policies of the Legislative Counsel Bureau, Rule No. 6, "Progress reports of studies; completion of studies and distribution of reports; approval required to carry over studies," – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that members of the Commission had been provided a separate handout (Exhibit H) that included the remainder of the summary reports from the statutory committees and interim-study committees that met in 2009 and 2010. The summary reports were not submitted to the Commission at the previous meeting in August.

Mr. Malkiewich explained that the committees submitted their reports to the Legislative Commission for acceptance but that acceptance did not constitute agreement with the recommendations contained within the reports. Additionally, Mr. Malkiewich advised that the staff was available to address any questions concerning individual reports.

There were no questions from the members of the Commission.

SENATOR SCHNEIDER MOVED APPROVAL TO ACCEPT THE SUMMARY REPORTS.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

- *D. Report of the Committee to Consult with the Director (NRS 218E.225) - Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, referenced a memorandum dated December 9, 2010 (Exhibit I) from Assemblyman Ocegueda, Chair of the Committee to Consult with the Director. The memorandum was contained in Volume I of the packets sent to the Commission members.

Mr. Malkiewich advised that the Committee to Consult with the Director met on December 6, 2010, and made several recommendations to the Legislative Commission and the 2011 Session of the Legislature.

- o The first recommendation was to ask the Legislative Commission to request a bill draft to create a joint interim committee structure to replace the current system of statutory committees and interim studies. Mr. Malkiewich indicated that while the Committee had also provided recommendations on the structure and composition of the joint interim committees, the bill draft,

if approved, would be given further consideration during the Legislative Session and that approval of the legislation would ultimately be determined by the Legislature.

- o The second recommendation was to ask the Legislative Commission to request a bill draft to establish secondary deadlines for bill draft requests. The secondary deadlines would be dates by which all details on a request were submitted to the drafters. One example provided was that measures requested by September 1 preceding the Legislative Session would have a secondary deadline within a few months to ensure a "steady stream of requests for the bill drafters and avoid a flurry of last-minute introductions." The Committee also recommended that the bill draft request include language that bill draft requests from a former legislator picked up by a current legislator would count against the current legislator's quota of bill draft request submissions. Mr. Malkiewich pointed out, however, that the Legislative Counsel would not draft bill requests from former legislators unless they were picked up by a current legislator.

Mr. Malkiewich further advised that the Committee to Consult with the Director had also considered preparations for the 2011 Legislative Session to ensure that all was in order and ready for the February 7, 2011, start date.

Mr. Malkiewich advised that a motion to accept the report would also be a motion to approve the two bill draft requests on behalf of the Legislative Commission.

Senator Cegavske noted that the December 9, 2010, memo indicated that members of the interim committees would be appointed by leadership and asked for clarification on whether leadership included both the majority and minority leadership.

Mr. Malkiewich indicated that the intent was that the majority leader and the speaker would appoint the committee members, but the bill draft could specify, for example, that if there were three members of the Senate, at least one member must be from the minority party. Mr. Malkiewich advised, however, that there would be an opportunity to work out the details to be included in the bill draft.

Chair Ocegüera also provided clarification that the intent of the proposal was to create a greater efficiency by aligning the joint interim committees to parallel the jurisdictions of the Session standing committees. Chair Ocegüera agreed that once the request for the bill draft was approved, additional time to discuss the details would be provided.

Chair Ocegüera indicated he would entertain a motion for approval of the report and the BDR requests.

ASSEMBLYWOMAN MASTROLUCA MOVED APPROVAL TO ACCEPT THE REPORT OF THE COMMITTEE TO CONSULT WITH THE DIRECTOR AND TO REQUEST, ON BEHALF OF THE COMMISSION, THE TWO BILL DRAFT REQUESTS OUTLINED IN THE MEMO

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

- *E. Appointment of Member and Designation of Chair of Legislative Committee on Child Welfare and Juvenile Justice (NRS 218E.705) – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, discussed the appointment of a member and designation of a Chair to the Legislative Committee on Child Welfare and Juvenile Justice.

Mr. Malkiewich indicated that the Legislative Commission, at its August 13, 2010, meeting, authorized the Legislative Committee on Child Welfare and Juvenile Justice to schedule an additional meeting shortly after the start of the Legislative Session. Mr. Malkiewich explained that during the last revision of the interim committee process, the Legislature required that the business of the statutory committees was to be concluded in November to allow enough time to prepare for the Legislative Session. An exception, however, provided the Legislative Commission the authority to allow additional meetings. Mr. Malkiewich advised that one additional meeting was necessary for the Committee on Child Welfare because of an ongoing issue between the Clark County Department of Family Services and the Clark County District Attorney's Office concerning representation of Child Welfare agencies. The Committee on Child Welfare and Juvenile Justice asked for a report from Clark County to be provided during the first week of the 2011 Session.

Additionally, Mr. Malkiewich explained that members of committees who were not reelected could only serve until the next session convened, and since the Chair of the Committee on Child Welfare and Juvenile Justice was elected to the Senate, she could no longer serve as Chair. Mr. Malkiewich pointed out that since the Committee would meet early in the session, the appointment of a new Chair was necessary, and because the Chairmanship would not rotate until the end of the Session, the Commission members might wish to designate one of the three Assembly members on the Committee to serve as Chair.

Chair Ocegüera indicated he would entertain a motion to approve the appointment of Assemblywoman Mastroluca as the Chair of the Committee on Child Welfare and Juvenile Justice and newly-elected Assemblyman Jason Frierson as a member.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL TO APPOINT ASSEMBLYWOMAN MASTROLUCA AS THE CHAIR OF THE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE AND TO APPOINT ASSEMBLYMAN JASON FRIERSON AS A MEMBER OF THE COMMITTEE.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*F. Appointment of Members to Various Committees and Similar Entities:

1. Gaming Policy Committee (NRS 463.021)

Lorne Malkiewich, Director, Legislative Counsel Bureau, referenced Item III.F in Volume I of the members' packets concerning information on the appointment of members to various committees and similar entities.

Beginning with the Gaming Policy Committee, Mr. Malkiewich advised that the Legislative Commission appointed one member of the Senate and one member of the Assembly to terms that continued until the next regular session of the Legislature had convened. Mr. Malkiewich explained that although not required under statute, historically, the Chairs of the Senate and Assembly Judiciary Committees were appointed as members of the Gaming Policy Committee, which was the reason why former Senator Care and former Assemblyman Anderson were the members who were last appointed.

Chair Ocegüera indicated he would entertain a motion to stay with tradition and appoint Assemblyman William Horne, Chair of the Assembly Committee on Judiciary, and Senator Valerie Wiener, Chair of the Senate Committee on Judiciary, to the Gaming Policy Committee.

SENATOR SCHNEIDER MOVED APPROVAL TO APPOINT ASSEMBLYMAN WILLIAM HORNE, CHAIR OF THE ASSEMBLY COMMITTEE ON JUDICIARY, AND SENATOR VALERIE WIENER, CHAIR OF THE SENATE COMMITTEE ON JUDICIARY, TO THE GAMING POLICY COMMITTEE.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

2. Advisory Board on Maternal and Child Health (NRS 442.133)

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that the terms for the members of the Advisory Board on Maternal and Child Health ended shortly before the beginning of the Legislative Session. Additionally, he advised that the Legislative Commission appointed one member of the Senate and one member of the Assembly to terms that began on the third Monday in January of odd-numbered years. The two current members of the Advisory Board on Maternal and Child Health were Assemblywoman Carlton, who formerly served as a Senator, and Assemblywoman Peggy Pierce.

Chair Ocegüera indicated he would entertain a motion to appoint Senator Copening and to reappoint Assemblywoman Pierce to the Advisory Board on Maternal and Child Health.

SENATOR SCHNEIDER MOVED APPROVAL TO APPOINT SENATOR COPENING TO THE ADVISORY BOARD ON MATERNAL AND CHILD HEALTH AND TO REAPPOINT ASSEMBLYWOMAN PIERCE TO THE BOARD.

SENATOR CEGAVSKE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

3. Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860)

Lorne Malkiewich, Director, Legislative Counsel Bureau, reported that Stephen Brockman and David Goldwater, members of the Advisory Council on Mortgage Investments and Mortgage Lending, had resigned. Mr. Malkiewich advised that, under the provisions of *Nevada Revised Statutes* (NRS) 645B.860, the Legislative Commission must appoint two members to fill the remainder of the unexpired terms for Mr. Brockman and Mr. Goldwater through October 2011. The three remaining members of the Advisory Council were Clay Duncan, Michele Johnson, and Cindy Stephens.

Mr. Malkiewich said that after having made prior appointments to the Council, the members of the Legislative Commission asked the Commissioner for the Division of Mortgage Lending to include biographical data for the list of applicants submitted for nomination to the Council. Eight applications were submitted and the biographical data included in the Commission members' packets.

Senator Lee nominated and attested to the competence of Charles Mohler.

Senator Cegavske asked for clarification on whether an appointment had to be made from the applicants whose names were submitted by the Commissioner or whether she could submit another name.

Chair Ocegvera advised that the nominations had to be chosen from the names submitted by the Commissioner.

Mr. Malkiewich agreed and advised that NRS 645B.860 provided that the Advisory Council consisted of five members appointed by the Legislative Commission from a list of persons submitted by the Commissioner. Mr. Malkiewich further advised that interested parties for future vacancies might wish to obtain an application from the Commissioner.

Assemblywoman Kirkpatrick nominated Janis Grady.

There was no further discussion from the members of the Commission.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO APPROVE THE
NOMINATION OF CHARLES A. MOHLER AND JANIS GRADY
TO THE ADVISORY COUNCIL ON MORTGAGE INVESTMENTS
AND MORTGAGE LENDING.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

4. Legislative Commission's Subcommittee to Review Regulations (NRS 233B.067)

Lorne Malkiewich, Director, Legislative Counsel Bureau, reported that the Legislative Commission's Subcommittee to Review Regulations lost four of its eight members as well as two of the four alternate members after the November 2010 election. Mr. Malkiewich pointed out that *Nevada Revised Statutes* (NRS) 233B.067 required only that the Legislative Commission appoint a Subcommittee to Review Regulations consisting of at least three members of the Legislative Commission. Additionally, Mr. Malkiewich advised that the Commission was not required, under the provisions of the statute, to restore the Subcommittee to eight members nor were alternates required for each of the four remaining members.

Mr. Malkiewich was of the opinion, however, that some Commission members should be appointed to fill at least a few of the vacancies because it was

anticipated the Subcommittee would meet once in January prior to the start of the 2011 Legislative Session. Mr. Malkiewich pointed out, however, that under the provisions of the statute, the members of the Subcommittee and the alternates were required to be members of the Commission. Information in Volume I of the members' packet listed the following legislators as eligible for appointment to the Subcommittee:

Assemblyman Atkinson	Senator Breedon
Assemblyman Bobzien	Senator Lee
Assemblyman Horne	Senator Parks
Assemblywoman Mastroluca	Senator Schneider
Assemblyman Ocegüera	Senator Wiener
Assemblyman Ohrenschall	Senator Cegavske
Assemblywoman Pierce	Senator Raggio
Assemblywoman Segerblom	Senator Rhoads
Assemblywoman Stewart	

Chair Ocegüera noted that Assemblyman Stewart was the only Republican legislator eligible for appointment on the Assembly side, and Senator Copening could be moved from an alternate to a regular member. Additionally, he noted that Senator Lee, Senator Cegavske, or Senator Rhoads could be appointed to serve as alternates.

Mr. Malkiewich indicated that there was a question concerning whether Assemblyman McArthur, who was appointed to the Legislative Commission by the Chair because of the unavailability of a designated alternate, could also be appointed to serve as an alternate to the Subcommittee to Review Regulations. Mr. Malkiewich asked the Legislative Counsel for her opinion on whether Assemblyman McArthur was eligible to serve as an alternate.

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, suggested that it was up to the Legislative body to determine eligibility, but that if an alternate designated by the Chairman qualified for the provision, that person could be appointed.

Chair Ocegüera indicated that since it was likely there would only be one meeting of the Subcommittee prior to the 2011 Legislative Session, he would appoint a member of the Commission to the Subcommittee for one meeting, and the problem could be resolved in a bill during the 2011 Legislative Session.

Chair Ocegüera indicated he would entertain a motion to appoint Assemblyman Stewart and Senator Copening to the Subcommittee and appoint Senator Lee and Senator Cegavske to serve as alternates.

SENATOR LEE MOVED APPROVAL TO APPOINT ASSEMBLYMAN STEWART AND SENATOR COPENING TO THE SUBCOMMITTEE TO REVIEW REGULATIONS AND TO APPOINT SENATOR LEE AND SENATOR CEGAVSKE TO SERVE AS ALTERNATES.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

5. National Conference of Commissioners on Uniform State Laws
(NRS 219.020)

Lorne Malkiewich, Director, Legislative Counsel Bureau, reported that the National Conference of Commissioners on Uniform State Laws required the appointment of four attorneys licensed to practice in the State of Nevada. *Nevada Revised Statutes* (NRS) 219.020 provided that the Legislative Commission appoint members of the Legislature who were attorneys to fill the appointive positions.

Mr. Malkiewich advised that Senator Care and Senator Amodei, two of the four legislators who were appointed as Commissioners, were no longer members of the Legislature. Assemblyman Horne and Assemblyman Segerblom were the two remaining members. Mr. Malkiewich advised that the Legislative Commission might wish to replace former Senators Amodei and Care with attorneys who were members of the Legislature since NRS 219.025 allowed former Commissioners to continue to serve if they so desired.

Chair Ocegüera suggested the appointment of Assemblyman Ohrensfall.

Senator Cegavske recommended the appointment of Senator Roberson.

Chair Ocegüera recognized Senator Roberson as a member of the audience and indicated he would entertain a motion to appoint Assemblyman Ohrensfall and Senator Roberson as Commissioners.

SENATOR CEGAVSKE MOVED APPROVAL TO APPOINT ASSEMBLYMAN OHRENSFALL AND SENATOR ROBERSON TO THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

6. Nevada Silver Haired Legislative Forum (NRS 427A.320)

Lorne Malkiewich, Director, Legislative Counsel Bureau, referred to a memorandum dated December 14, 2010, (Exhibit J) from Mary Shope, Coordinator, Silver Haired Forum. Mr. Malkiewich advised that the Forum members were technically appointed by the Legislative Commission but as a practical matter, the members were appointed by individual legislators.

The memorandum reflected information that Senator Lee, Senator Breeden, Senator Halseth, Senator McGinness, and Senator Rhoads had submitted their appointments and that the remaining vacancies could be filled at a future meeting of the Legislative Commission.

There were no questions from the members of the Commission.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF THE APPOINTMENTS OF THE SILVER HAISED FORUM MEMBERS REFLECTED IN THE DECEMBER 14, 2010, MEMORANDUM.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

IV. LEGISLATIVE COMMISSION POLICY:

- *A. Review of Administrative Regulations Submitted Pursuant to NRS 233B.067 and NRS 233B.0675 –
Brenda J. Erdoes, Legislative Counsel
See list of attached regulations to be considered or access list at <http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm>

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, announced that R148-10 had been updated, and a new copy (Exhibit K) that replaced the version contained within Regulation Binder 2 was distributed to the members of the Commission.

Chair Ocegüera indicated that he would read through the list of regulations (Exhibit L), and members of the Commission could request any regulation to be held for further discussion. Additionally, the Chair advised that R134-10 was withdrawn.

The following regulations were held for further discussion:

R014-10 held by Senator Lee
R144-10 held by Assemblywoman Smith
R148-10 held by Senator Schneider
R155-10 held by Senator Cegavske
R134-10 was withdrawn

Chair Ocegüera indicated he would entertain a motion to approve the remainder of the regulations.

ASSEMBLYMAN STEWART MOVED TO APPROVE THE REMAINING REGULATIONS IDENTIFIED HEREIN AS R165-09, R025-10, R028-10, R036-10, R063-10, R072-10, R073-10, R076-10, R077-10, R079-10, R083-10, R084-10, R086-10, R087-10, R088-10, R097-10, R098-10, R103-10, R105-10, R111-10, R112-10, R113-10, R-124-10, R126-10, R127-10, R128-10, R130-10, R132-10, R133-10, R135-10, R149-10, R153-10, AND R085-10.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

R014-10

A REGULATION relating to chiropractic; revising provisions relating to continued work by a chiropractors' assistant trainee under certain circumstances; requiring a supervising licensee to notify the Chiropractic Physicians' Board of Nevada within 5 business days after an applicant for a license to practice chiropractic leaves the employ of the supervising licensee; providing for the approval, endorsement and award of credit for certain continuing education of licensees; requiring certain documentation in, and availability of health care records; revising provisions relating to advertisement of fees; revising provisions relating to forms and content of pleadings; and providing other matters properly relating thereto.

Senator Lee noted that the regulation proposed to revise provisions related to continued work by a chiropractor's assistant trainee. He questioned the revision in Section 1 that prohibited a chiropractor assistant trainee, who failed the examination to become a chiropractor's assistant on two occasions from working as a trainee and taking the examination again for one year after the date of the most recently failed examination. Specifically, Senator Lee asked why the

assistant trainee could not continue to work under the chiropractor's supervision rather than being prohibited from working for a year.

Senator Lee also questioned the continuing education provision that indicated the Board would approve and endorse attendance by licensees, in person or online, of educational seminars if the seminars had been granted recognition status by the Providers of Approved Continuing Education of the Federation of Chiropractic Licensing Boards. Senator Lee noted, however, that Section 7 provided that the Board would not award credit for continuing education to a licensee for an educational class or seminar that was of a nonclinical nature. Additionally, Senator Lee noted that Section 10 indicated the Board would award credit up to a maximum of four hours per renewal period to a licensee who attended a meeting of the Board, unless the appearance was because of a disciplinary action. Senator Lee questioned the provision that licensees could receive four hours of credit for attending a meeting of the Board but not receive credit for classes of a nonclinical nature.

David Rovetti, President of the Chiropractic Physicians' Board of Nevada, responded to Senator Lee's first concern regarding chiropractic assistant trainees not working for one year after failing an examination. Mr. Rovetti advised that the information contained in the digest was somewhat misleading and explained that a trainee had to fail an examination four times before being required to take a year off. Mr. Rovetti reported that chiropractic assistants currently could continue to work as assistants after "failing test after test after test," which he said provided no real incentive for the supervising physician to provide "exceptional" training. He explained that the members of the Board determined that after a trainee failed the examination twice, the supervising chiropractor would be required to establish an assistant trainee training plan for approval by the Board. He said the Board also decided that after a trainee failed to pass an examination, it was in the best interest of the public for the trainee to take a year off to study.

Mr. Rovetti responded to the concern regarding continuing education credit gained by licensees attending a Board meeting. He advised that licensees gained knowledge from Board discussions regarding the law concerning the profession and protection of the public as well as the consequences of disciplinary action. Mr. Rovetti pointed out that awarding licensees a maximum of four hours of continuing education hours was in the best interests of the public.

Senator Lee indicated that it was not in anyone's best interest to be put out of work and asked whether approval of the regulation could be postponed for further discussion during the 2011 Legislative Session.

Chair Ocegüera asked Mr. Rovetti whether there would be any unintended consequences if the regulation was not approved.

Mr. Rovetti indicated that approval during the current Commission hearing was not "extremely urgent."

Chair Ocegüera suggested that Mr. Rovetti and Senator Lee meet to discuss the regulation and return to the January meeting of the Legislative Commission's Subcommittee to Review Regulations with revisions if needed.

Senator Lee and Mr. Rovetti agreed to meet, and Senator Lee expressed his appreciation to the Chair for the suggestion

R144-10

A REGULATION relating to the Department of Motor Vehicles; providing procedures for the application for and issuance of a duplicate instruction permit, driver's license or identification card by mail and, if available, through the Internet or at a kiosk; providing a process for obtaining an additional duplicate instruction permit, driver's license or identification card if the first duplicate is not received; providing for the expiration date of a duplicate instruction permit, driver's license or identification card; and providing other matters properly relating thereto.

Assemblywoman Smith asked for additional information concerning the regulation and the security risks involved in obtaining a duplicate instruction permit, driver's license, or identification card by mail, the Internet or a kiosk.

Mark Froese, Administrator, Management Services and Programs Division, Department of Motor Vehicles (DMV), advised that the regulation was written in an effort to reduce the wait time for customers who visited the DMV offices. With respect to the security issue, Mr. Froese advised that the regulation outlined the conditions by which a person could apply for a duplicate identification card or driver's license through the mail, Internet, or kiosk, and the regulation included information regarding the necessity of obtaining a digital image of the applicant and a signature. Mr. Froese explained that once the DMV received an application for a duplicate driver's license or identification card, the signature on the application would be compared to the signature in the DMV database.

Assemblywoman Smith also questioned the section of the regulation that would allow a person to apply each calendar year for not more than two duplicate instruction permits, drivers' licenses, or identification cards.

Mr. Froese reiterated that the focus was on reducing the wait time at the DMV offices. He explained that the applicant would provide the same type of information that would be required to complete the form in a DMV office including a signature. The DMV technicians would compare the information on the

application to the data in the DMV database, and, because the request was for a duplicate driver's license or identification card, the card would be issued with the same name, address and with the most recent photograph.

Assemblywoman Smith raised concerns regarding what she said appeared to increase the opportunities for identity theft by using the Internet or a kiosk to obtain a duplicate license or identification card. Additionally, Assemblywoman Smith asked whether the current DMV kiosks would be used for the issuance of duplicate identification cards or drivers' licenses.

Mr. Froese responded that although the DMV kiosks could not currently be accessed to provide the duplicate renewal transactions, the regulation was written to provide the Department the opportunity to do so in the future.

Debbie Wilson, Management Analyst, Management Services and Programs Division, DMV, discussed the concerns regarding identity theft and fraud and advised that because the DMV had moved to an "essential issuance process," the photo on an issued license or identity card would be of no benefit to an identity thief unless that person looked exactly like the photo on the card. Ms. Wilson also emphasized that the regulation was written to help reduce the wait times in DMV offices by the use of current technologies.

Senator Settelmeyer commented that he had spoken to DMV representatives several days ago concerning the regulation and recalled that he was told a photo could not be more than a year old.

In response, Ms. Wilson said that the DMV recently implemented the use of a prior photograph so an applicant who visited a DMV office could choose to use a prior photograph if it was taken within the last two years using the facial recognition process.

In response to Assemblywoman Kirkpatrick, who asked whether the regulation could be held for additional discussion during the 2011 Legislative Session, Mr. Froese indicated that the DMV was attempting to be proactive, but approving the recommendation was not urgent.

Assemblywoman Kirkpatrick pointed out that a seminar on identity theft was scheduled to take place in Las Vegas during the month of January, and Nevada was one of the top five states experiencing crimes related to identity theft. Assemblywoman Kirkpatrick asked for additional time to review the regulation and said that Nevadans should not be placed at higher risk for identity theft in order to reduce wait times.

Mr. Froese agreed that the Department would comply with the Commission's direction.

Chair Ocegüera asked the Department representatives to meet with the members of the Commission who had expressed concerns in the next several weeks before the meeting of the Commission's Subcommittee to Review Regulations.

R148-10

A REGULATION relating to energy efficiency; prescribing the standards for evaluating the energy consumption of residential property; prescribing the contents of the form for evaluating the energy consumption of residential property; and providing other matters properly relating thereto.

Senator Schneider raised concerns regarding approval of the regulation and indicated that Senator Horsford, the Senate Majority Leader, who was unable to attend the Commission meeting, had also expressed concerns and asked that the regulation be held for additional discussion during the 2011 Legislative Session. Additionally, he said the Majority Leader had pointed out that a new Director, Stacey Crowley, had been appointed to the Office of Energy, and prior to approving the regulation, a meeting with her should be scheduled.

Senator Schneider said there seemed to be no urgency for approval by January 1, 2011, since the Commissioner for Nevada Renewable Energy and Energy Efficiency Authority had taken four years to adopt a regulation. Senator Schneider reiterated the suggestion to hold the regulation for review and committed that he and the Majority Leader would work to provide an improved regulation that would tell the story about home energy efficiency and not the "people living in the house."

Assemblywoman Kirkpatrick said that although there were many uncertainties, approval of the regulation to establish a program for evaluating the energy consumption of residential property was required by January 1, 2011, and the regulation, as presented, would, "at least" provide a starting point. Assemblywoman Kirkpatrick noted that a letter (Exhibit M) from the Nevada Building Performance Professionals indicated that Nevada would be the only state in the nation with a soon-to-be-adopted evaluation of energy consumption at the point of a residential sale. Assemblywoman Kirkpatrick pointed out that approval of the regulation would give those persons attempting to buy and sell homes some direction for evaluating energy consumption.

Assemblywoman Kirkpatrick also expressed her commitment to work to improve the regulation during the first month of the 2011 Legislative Session and to determine whether the form for evaluating energy consumption needed modification. Assemblywoman Kirkpatrick reiterated that Nevadans who were

buying and selling homes would be better served to have the regulation approved and that if the Chair permitted, she would move for approval.

Chair Ocegüera indicated that before taking a motion, he would hear from other members of the Commission.

Senator Cegavske expressed agreement with Assemblywoman Kirkpatrick to approve the regulation.

Senator Settelmeyer also agreed that approving the regulation and working to improve it during the 2011 Legislative Session would benefit the "currently challenging real estate market."

Senator McGinness expressed agreement to approve the regulation since the January 1, 2011, requirement to establish a program for evaluating energy was fast approaching.

Senator Schneider indicated that there appeared to be no point in approving the regulation only to have it changed almost immediately after the beginning of the Legislative Session.

Hatice Gecol, Ph.D., Nevada Energy Commissioner, Nevada Renewable Energy and Energy Efficiency Authority, identified herself for the record, and introduced Luke Andrew Busby, Attorney and Counselor at Law. Dr. Gecol advised that the Nevada Energy Commissioner adopted R148-10 pursuant to *Nevada Revised Statutes* (NRS) 701.250, which established a program for energy consumption for residential property at the point of sale.

Dr. Gecol expressed her thanks to Senator Schneider for his comments, in a public forum, and giving her the opportunity to provide some clarification for the record.

Dr. Gecol testified that the law requiring a program for evaluating energy residential property consumption went into effect under her direction at the time she was the Director of the State Office of Energy. At that time she indicated there were many uncertainties that required research. She recalled meeting with representatives of RESNET (Residential Energy Savings Network) and BPI (Building Performance Institute) to discuss improving the energy performance of existing homes through "uniform, comprehensive home energy audits for existing residential buildings."

Dr. Gecol advised that in October 2010, she was appointed to the position of Nevada Energy Commissioner of the Renewable Energy and Energy Efficiency Authority. At that time she was assigned an additional renewable energy and transmission tax abatement duty, which she saw as having a larger impact on Nevada's economic development and job creation. Because of the current

economy, she made implementation of the Renewable Energy Tax Abatement Program a priority. Dr. Gecol indicated, however, she had engaged the stakeholders for the energy efficiency regulation prior to February 2010.

Dr. Gecol also commented that because the law lacked specific information other than requiring a regulation to establish a program for evaluating energy consumption and a form that would be used at the point of sale, she had reviewed *Nevada Revised Statutes*, (NRS) Chapter 645D, as a starting point to determine how the inspection of structures related to the energy audits conducted by RESNET and BPI local representatives. Dr. Gecol reported that under provisions of the statute, an application for a certificate was required for inspectors of structures. The application was to be accompanied by the fee for the certificate, the fee for a background check of the applicant, and submittal of proof of liability insurance and that child support payments were current. Dr. Gecol indicated that it appeared a conflict of interest existed for RESNET, BPI or Energy Star auditors, who were auditing and retrofitting homes they determined as energy inefficient.

After reviewing the controls contained within NRS 645D, Dr. Gecol indicated that, under the current law, it appeared the Nevada Energy Commissioner lacked authority to provide oversight over audits conducted by BPI and RESNET energy auditors. Dr. Gecol advised that over the years, representatives of the Nevada Building Performance Professionals marketed their program to include information that Nevada law required the provision of energy consumption ratings to purchasers of residential properties. Dr. Gecol said, however, that while the language concerning the provision of energy consumption ratings was originally included in Senate Bill (S.B.) 437, 74th Legislative Session (2007), the rating language was eliminated prior to the bill's enrollment.

Dr. Gecol reported conducting workshops on October 12, 2010, and on November 16, 2010, concerning the proposed regulation, which attracted 1,500 attendees.

Dr. Gecol also reported that the form for evaluating the energy consumption of residential property would ask the seller to disclose total consumption and cost of electricity, natural gas, heating oil, propane, and kerosene for the 12-month period immediately preceding the sale of the residential property during which the dwelling unit was occupied and service was provided. Dr. Gecol advised that the information required on the form included energy consumption related to the estimated age of each appliance in the dwelling and whether any of the appliances, roofing material, windows, skylights, and doors had received the Energy Star label. Additionally, if the information was available, a statement that indicated the type of foundation in the dwelling and whether the dwelling included a controllable thermostat was also required.

Concluding her testimony, Dr. Gecol advised that her office had conducted research and gathered a great deal of energy-related information, and, as the Nevada Energy Commissioner, she would be happy to work on the regulation with Senator Horsford, Senator Schneider, and Assemblywoman Kirkpatrick.

Assemblyman McArthur indicated that he also believed it would be beneficial to approve the regulation as presented, which he pointed out appeared to satisfy the requirements of the law.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF THE REGULATION AS PRESENTED.

ASSEMBLYMAN MCARTHUR SECONDED THE MOTION.

THE MOTION CARRIED. (Senator Schneider and Senator Parks voted nay.)

R155-10

A REGULATION relating to public health; providing that the Health Division of the Department of Health and Human Services may charge and collect fees relating to the costs of investigating certain complaints against licensees; revising provisions relating to the resurvey of residential facilities, and providing other matters properly relating thereto.

Senator Cegavske pointed out that the language on Page 1, Section 1, which read, "The Health Division may charge and collect a fee from any licensee" appeared to be vague. Additionally, Senator Cegavske asked for clarification concerning the language that read, "The fee will be based upon the hourly rate established for each surveyor of health facilities" and in Section 2, the name change from the National Research Council to the Institute of Medicine of the National Academy of Sciences.

Marla McDade-Williams, Deputy Administrator, Department of Health and Human Services, Health Division, identified herself for the record and advised that the regulation was adopted by the State Board of Health in August 2010.

In response to Senator Cegavske's questions, Ms. McDade-Williams explained that the intent of the language was to bill every facility that registered substantiated complaints for investigations of those complaints by Health Division representatives. Ms. McDade-Williams advised that in the past, the Health Division crafted its fees based on industry type, such as group homes, and on the cost for the total number of hours spent on investigations for complaints from unlicensed facilities and unsubstantiated as well as substantiated complaints.

Ms. McDade-Williams advised that the proposed fees took into account that the Health Division would bill each facility for its own complaint investigations, which would result in reducing the overall renewal fee for each respective facility. Ms. McDade-Williams pointed out that in the past all hospitals, for example, carried the cost for one hospital that might have experienced numerous substantiated complaints. If the Commission approved the regulation, the hospital with the greatest number of substantiated complaints would pay more than other hospitals, the incentive being for individual facilities to resolve problems without requiring an investigation by Health Division representatives. Ms. McDade-Williams reported that the \$82-per-hour rate, which included total administrative staff time, was based on the Health Division's budget.

Ms. McDade-Williams next addressed the question regarding the name change from the National Research Council to the Institute of Medicine and advised that although the Health Division did not request the change, she presumed it was the same agency with a different name.

Senator Cegavske asked for assurance that the \$82-an-hour fee for licensees was based on the number of beds in a facility, whether it was a 15-bed facility or a 1,500-bed facility, and that the complaints were substantiated before a facility was charged.

Ms. McDade-Williams advised that the new provision required that all complaints had to be substantiated. Additionally, she said that historically about one-third of all complaints were substantiated, but currently the cost of the two-thirds of unsubstantiated complaints was charged back to the respective industry. Ms. McDade-Williams said that the provisions of the regulation were specific only to complaint investigations and would be based on the amount of time involved to conduct an investigation. She said, for example, if an investigation for a 5-bed facility took 10 hours, the facility would be charged for 10 hours, and if the investigation for a 100-bed facility took 10 hours, the facility would be charged for 10 hours.

Senator Cegavske expressed her thanks to Richard Whitley, Administrator of the State Health Division, and Ms. McDade-Williams for their assistance to her while working on the regulation.

Senator Settlemeyer questioned whether the cost of frivolous claims investigations could be charged to the claimant.

Ms. McDade-Williams said that while she did not disagree with charging claimants for the cost of frivolous claims investigations, that particular language was not included in the regulation.

Mike Willden, Director, Department of Health and Human Services, identified himself for the record and advised that his appearance before the Commission was to make it clear that R155-10 was only one portion of the entire package of regulations submitted by the Bureau of Health Care Quality Compliance.

Mr. Willden advised that after the close of the 2009 Legislative Session, the Bureau of Health Care Quality Compliance hired new staff members to ensure patient safety in residential facilities and to promote infection control. Mr. Willden advised that the 2009 budget was closed to fund the Bureau's new staff through increased fees and during 2010, regulations were worked on to create a revenue stream through increased fees that would fund the Bureau's entire "inspection/complaint and re-inspection effort." As previously mentioned, Mr. Willden said the regulation before the Commission only addressed the investigative and re-inspection process, not the entire package of regulations.

Mr. Willden reported that the Department of Health and Human Services and the Bureau of Health Care Quality Compliance were at a "crossroads" because of the lack of sufficient revenue to fill 11 vacant positions and faced the possibility of laying off 11 current staff members. Mr. Willden pointed out that even with the Commission's passage of the proposed regulation, the Bureau's budget would not support 11 full-time equivalent positions. Mr. Willden advised that the inspection/complaint and re-inspection effort was not part of a General Fund program, and while he had reviewed transferring other funds into the budget, he did not believe the transfer of funds was a viable option.

Senator Cegavske indicated that the additional regulations could be addressed in a subsequent meeting in January.

SENATOR CEGAVSKE MOVED TO APPROVE REGULATION
R155-10.

ASSEMBLYMAN MCARTHUR SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*B. Approval of Session Hires for the 2011 Legislative Session –
Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that Mark Krmpotic, Senate Fiscal Analyst and Rick Combs, Assembly Fiscal Analyst, of the Legislative Counsel Bureau's Fiscal Analysis Division, in a letter dated October 26, 2010, requested one full-time support staff for the 2011 Session.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF THE FISCAL ANALYSIS DIVISION'S REQUEST TO HIRE ONE FULL-TIME SESSION SUPPORT STAFF.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*C. Revision of Form for Reports Required to be Submitted by District Attorneys and Public Defenders (NRS 218E.305) – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, reported that a regulation in effect since 1979 required district attorneys and public defenders to submit certain statistical information to the Legislative Commission on a calendar-year basis.

Mr. Malkiewich advised that a problem arose during the course of an audit in the State Public Defender's Office concerning submitting the reports on a calendar-year basis rather than a fiscal-year basis. The State Public Defender's Office, which operated on a fiscal-year basis, requested a change to submit reports on that basis.

Mr. Malkiewich advised that the proposed amendment to the regulation would allow a district attorney or a public defender to submit reports by either calendar year or fiscal year. Mr. Malkiewich advised, however, that "if a reporting entity switched from one method of reporting to the other, the first report must overlap the prior report by six months." Mr. Malkiewich also reported that he had spoken to the State Public Defender about the possibility of further amending the regulation to obtain additional clarification.

ASSEMBLYWOMAN MASTROLUCA MOVED APPROVAL TO ALLOW DISTRICT ATTORNEYS AND PUBLIC DEFENDERS TO SUBMIT REPORTS ON EITHER A CALENDAR-YEAR OR FISCAL-YEAR BASIS.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*D. Approval to Transmit Budget to Department of Administration – Lorne J. Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB), reported that while the Legislature and the Judicial Branches were exempt from most provisions of the Budget Act, both branches of government were required to submit budgets for

inclusion in The Executive Budget. Mr. Malkiewich advised that he was not seeking the Commission's approval of the budget or any of its components but rather approval to transmit the LCB and Interim Nevada Legislature budgets to the Department of Administration's Budget Division. Mr. Malkiewich also advised that when the budget was submitted to the Legislature during the session, the proposals would be reviewed by the Assembly Committee on Ways and Means and the Senate Committee on Finance, and the Legislature, as a whole, would determine the appropriate funding level for the LCB budget.

Mr. Malkiewich provided the Commission with statistics for a comparison with prior budget levels and advised that the current budget was approximately 4.6 percent lower than the total appropriation for the current biennium and 16.9 percent lower than the total appropriation for the 2007-09 biennium. He pointed out that the appropriation for 2007 was 3.85 percent above the proposed appropriation for fiscal year 2012-13, most of which could be attributed to inflation, which he said was illustrated by the fact that the LCB and Interim Legislature staffing levels currently compared to the 2005 funding levels rather than 2007.

Mr. Malkiewich advised that the LCB personnel budgets were built with the assumption that the policy of furlough days, no step increases, and no longevity pay would be continued. Mr. Malkiewich said that although that policy might not be recommended by the Governor or approved by the Legislature, building the budget in that manner allowed a comparison of the budget for the current biennium with the proposed budget for the next biennium. One deviation, Mr. Malkiewich advised, was that he assumed that LCB staff and session staff would not take furlough days during the 2013 Legislative Session, and he had, therefore, budgeted for only eight days of furlough in fiscal year 2013.

Mr. Malkiewich also advised that he had requested two "one-shot" appropriation bills for other expenditures. The first was for dues to national organizations for the current fiscal year and each of the next two fiscal years. Mr. Malkiewich explained that a problem with funding the expenditure for dues competed last session with dollars for staff funding. He said that by placing the expenditure in a separate bill, the Legislature could independently determine "to reduce the amount paid or not process the legislation but that the issue would be considered on its own merits rather than in competition with the LCB budget."

Mr. Malkiewich reported that the second one-shot appropriation request proposed \$734,000 in expenditures for information technology purchases that included switches and hardware for the LCB's Information Technology Services unit. Mr. Malkiewich explained that the core switch and all network switches would need to be replaced because they would reach the "end of life" in the coming budget cycle. The proposal also included funding for a new accounting system and a small appropriation for a pilot program to test the Granicus hardware and

software that would potentially replace the current FTR (For the Record) recording system the Legislature used.

Chair Ocegüera indicated he would entertain a motion to approve transmittal of the LCB budget and the two one-shot appropriation requests to the Department of Administration's Budget Division.

SENATOR PARKS MOVED APPROVAL TO TRANSMIT THE LCB BUDGET AND TWO APPROPRIATION REQUESTS TO THE BUDGET DIVISION.

ASSEMBLYWOMAN MASTROLUCA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

V. INFORMATIONAL ITEMS

There were no requests from the members of the Legislative Commission to hear discussion on the following informational items:

- A. Legislative Committee Reports
- B. Miscellaneous Reports from State Agencies and Others:
 - 1. Summary Report from the Office of the Attorney General Concerning the Advisory Committee to Study State and Federal Laws on Sex Offender Registration – Assembly Bill (A.B.) 85 of the 75th Legislative Session (2009) – Complete Report on File in the Director's Office of the Legislative Counsel Bureau.
 - 2. Report from the Public Utilities Commission - *An Assessment of Market Conditions and the State of Competition for Telecommunications Service in Nevada* Pursuant to *Nevada Revised Statutes* (NRS) 704.68867(2)(a) – Individual Reports from AT&T Nevada and CenturyLink Concerning Competition in the Local Serving Area are on File in the Director's of the Legislative Counsel Bureau
 - 3. Report From the Public Utilities Commission – General Consumer Sessions – (NRS 704.069)(2)
 - 4. Reports from the Board of Veterinary Medical Examiners Pursuant to *Nevada Revised Statutes* (NRS) 622.110 Concerning Licensing, Summary of Budget, Summary of Individual Disciplinary Action

5. Report from the Board of Dispensing Opticians – Statistical Information on Nevada Licensed Opticians for the Fiscal Years of July 1, 2008 Through June 2010
 6. Report from Nevada State Board of Athletic Trainers on Activities for July 2008 through June 2010
- C. Summary of Quarterly Reports on Disciplinary Action from the Licensing Boards and State Agencies
 - D. Periodic Reports of Revenue and Expenditures Pursuant to the Clark County Sales and Use Tax Act of 2005

VI. PUBLIC COMMENT

(Because of time considerations, the period for public comment by each speaker may be limited, and speakers are urged to avoid repetition of comments made by previous speakers.)

Knight Allen, a private citizen, provided several comments and a question for the Commission beginning with a concern regarding the regulation related to energy efficiency for residential properties. Mr. Allen asked whether home owners would be required to upgrade to Energy Star appliances before selling their homes.

There was consensus among the members that indicated the regulation contained no provision for such a requirement.

Mr. Allen also commented on the Nevada Plan that guaranteed basic support by the state for K-12 education. Mr. Allen advised that a recent article he had read indicated that the Nevada Plan, which had been in effect since the 1950s, had outlived its usefulness. Mr. Allen encouraged the members of the Commission to avoid, during the 2011 Legislative Session, either modifying or eliminating the Plan, which he said had guaranteed support for Nevada education for many decades.

Mr. Allen also provided a commentary on a book by Adam Smith entitled, *The Wealth of Nations* (first published in 1776), which defined labor as "the real measure of the exchangeable value of all commodities." Mr. Allen reported that Adam Smith was as determined to protect the interests of labor and the mass of people as he was capitalism, which determined the wealth of a nation or the wealth of a state.

Mr. Allen advised that a balance between capital and labor was necessary and encouraged legislators to find common ground during the 2011 Legislative Session for the wellbeing of the state.

Chair Ocegüera thanked Mr. Allen for his comments.

Mary Venable, an energy auditor and an architect, identified herself for the record and appeared before the Commission to express opposition to the energy efficiency regulation as approved by the Commission. Ms. Venable said that she was pleased the Legislature would reconsider R-148-10 at the first opportunity during the 2011 Legislative Session and asked that during the reconsideration process, the regulation be revised to reflect a "true energy evaluation."

Ms. Venable pointed out that the regulation, in its current form, would provide consumers with only raw energy data on the homes they intended to purchase, which she indicated would "damage the energy-evaluation industry and efforts" in Nevada. She said the regulation, in its current form, would not reduce energy use, would give responsibility to individuals who were not trained in energy evaluation, and would exclude trained energy-evaluation professionals from gaining access to a house for a "first walk through." Ms. Venable indicated that while an energy-analysis industry did not exist in Nevada prior to 2007, since that time an industry had been established and many individuals had been trained to provide energy evaluations. Ms. Venable added that members of the industry, in addition to putting construction workers back to work retrofitting homes, also reduced home-energy consumption.

Ms. Venable, a board member of Nevada Building Performance Professionals, offered to work with the members of the Legislature on the regulation during the 2011 Legislative Session. Additionally, Ms. Venable advised that the Nevada Building Performance Professionals had proposed that the state adopt RESNET (Residential Energy Savings Network) regulations to administer the energy efficiency program. Ms. Venable said that RESNET, with its industry-paid framework of training, certification, continuing education, quality assurance, and a consumer-complaint process, would impose the least possible financial burden on the state and reiterated her recommendation that the Legislature consider adopting RESNET regulations. Ms. Venable also commented that professional members of the industry had no objection to background investigations or being fingerprinted before being permitted to conduct an audit.

In closing, Ms. Venable expressed her appreciation for reconsideration of the regulation and for the Commission's interest in energy efficiency.

Alison Haugh, representing Nevada Building Performance Professionals, identified herself for the record and testified that Nevada Building Performance Professionals were committed to promoting energy efficiency and high moral and technical standards. Ms. Haugh also advised that the Nevada Building Performance Professionals would offer its services to assist the members of the Legislature to better understand that energy efficiency should be based on building science facts,

experience, and transparency so that educated decisions could be made in the reconsideration of R148-10.

Tracy Foglesong, incoming President of Nevada Building Performance Professionals and founder of the Energy Conservation Group, LLC, a RESNET Rater Provider and BPI (Building Performance Institute) Affiliate, identified herself for the record. Ms. Foglesong indicated that previous remarks by the Energy Commissioner concerning a conflict of interest by energy auditors because they inspected homes and conducted home retrofits were in error. Ms. Foglesong reported that there were forty programs throughout the nation following an accepted model for energy auditors to enter a home, evaluate its energy efficiency, suggest recommendations and complete the retrofit. Ms. Foglesong advised that Nevada had an approved Energy Star Program called Home Free that included an oversight component of quality assurance, quality compliance, and third-party "test outs" to verify that the recommendations were motivated by building performance standards rather than self-interest. Additionally, Ms. Foglesong reported that Nevada's Energy Star Program, Home Free, was to receive a large sum of money through the National Retrofit Initiative and would be promoting home performance energy audits and retrofits.

Ms. Foglesong stated that the R148-10, in its current form, did not develop a program for evaluating energy consumption, and the provision of a home's utility costs was more a reflection of the home's occupants rather than the energy efficiency of the home. Ms. Foglesong pointed out that utility bills from a home with two occupants would not be meaningful to the potential buyer of a home that had been occupied by a family of four.

As previously indicated by other speakers, Ms. Foglesong offered the services of the Nevada Building Performance Professionals, who she indicated would work with legislators during the 2011 Legislative Session to readdress the regulation and provide information on building performance, energy audits, and benefits gained by the public from comprehensive regulations under a national standard, such as RESNET or BPI.

Monica Brett identified herself as the Nevada Program Associate with the Southwest Energy Efficiency Project (SWEET), a Colorado-based public interest organization funded by the Department of Energy, the Environmental Protection Agency, and foundations, such as the Energy Foundation. Ms. Brett testified that SWEET had no financial interest in R148-10.

Additionally, Ms. Brett testified, on behalf of the Department of Energy, that the regulation, in its present form, lacked context and would mean little to the consumer. She explained, for example, that without a statement attesting to the fact that individual behavior affected utility costs rather than a home's energy

performance, the real estate market could be damaged. Ms. Brett advised that a home's energy efficiency information, which could be very technical, was important for a consumer to understand and that understanding could be assisted by a trained professional.

Ms. Brett also offered her assistance to legislators during the reconsideration process to develop a more meaningful regulation to help consumers reduce their energy bills.

Kelly Thomas, Government Affairs Chairman, Nevada Building Performance Professionals, identified himself for the record. Mr. Thomas acknowledged Senator Schneider, Senator Horsford, and Senator Parks for recognizing that R148-10, as approved, assessed occupant behavior rather than energy efficiency for residential property. Mr. Thomas provided information that the Department of Energy, together with the National Renewable Energy Laboratory, performed research on 115 homes in Las Vegas, and the study concluded that occupant behavior affected home energy use by as much as a factor of 5.

Mr. Thomas said that Nevada Building Performance Professionals would have preferred to go forward without a regulation rather than creating confusion in the market place that consumers believed they would receive a home energy audit when they would not really receive a full assessment.

Mr. Thomas indicated that the Nevada Building Performance Professionals looked forward to assisting the members of the Legislature in revising the regulation to include not just raw data but data compiled information to enable the consumer to make better decisions concerning energy consumption. Mr. Thomas reiterated that the Nevada Building Performance Professionals were pleased to offer their assistance to the Legislature and to the real estate industry in crafting a regulation that would place Nevada at the forefront of energy-efficiency measures.

Les Lasereck, a representative of Home Energy Connection, identified himself for the record, and testified that he was the original program manager who implemented and launched the Energy Star Program, Home Free Nevada.

Mr. Lasereck indicated that during the regulation revision process, discussion should address the confusion that might arise from the language concerning the role of home inspectors and terms such as energy auditor, energy evaluator versus the nationally certified individuals under programs such as RESNET.

Additionally, Mr. Lasereck indicated that the Department of Energy (DOE), in April or May would launch standards that would define the training that constituted an energy auditor, crew chief, or construction crew.

Concluding his remarks, Mr. Lasereck reported that the DOE standards would define best practices and work to be performed on a national level through the home performance industry tied into a performance-based standard aligned with new energy codes. Mr. Lasereck commented that any organization interested in receiving future funding for energy work would be required to adopt energy codes that were taking on a performance-based approach.

Hearing no further comment from the public, Chair Ocegüera adjourned the meeting at 12:15 p.m.

Respectfully submitted,

Connie Davis, Secretary
Legislative Commission

Assemblyman John Ocegüera, Chair
Nevada Legislative Commission

EXHIBITS		
Nevada Legislative Commission		
Exhibit	Witness/Agency	Description
A		Agenda
B		Guest List
C	Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	December 9, 2010 Letter to Members of the Legislative Commission from Senator Sheila Leslie, Chair Audit Subcommittee of the Legislative Commission
D	Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	September 30, 2010 Letter to Members of the Legislative Commission from Assemblywoman Sheila Leslie, Chair Audit Subcommittee of the Legislative Commission
E	Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	December 9, 2010 Letter to Members of the Legislative Commission from Senator Sheila Leslie, Chair Audit Subcommittee of the Legislative Commission
F	Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau	September 30, 2010 Letter to Members of the Legislative Commission from Assemblywoman Sheila Leslie, Chair Audit Subcommittee of the Legislative Commission
G	Kim Wallin, CMA, CFM, CPA, State Controller	<i>Government Debt Collection</i> - CGI Group Inc.
H	Lorne Malkiewich, Director, Legislative Counsel Bureau	Rules and Policies of the Legislative Counsel Bureau, Rule No. 6. "Progress reports of studies; completion of studies and distribution of reports; approval required to carry over studies."
I	Assemblyman Ocegüera	December 9, 2010, Memorandum Report of the Committee to Consult with the Director
J	Mary Shope, Coordinator, Nevada Silver Haired Forum	December 14, 2010 Memorandum concerning appointments.
K	Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau	Updated R-148-10
L	Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau	December 16, 2010 State Agency Regulations
M	Nevada Building Performance Professionals	Letter Dated August 2, 2010 to Dr. Hatice Gecol