

**MINUTES OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE
TO REVIEW REGULATIONS**

JUNE 30, 2010

The meeting of the Legislative Commission's Subcommittee to Review Regulations was called to order by Chair Marcus L. Conklin at 9:07 a.m. on June, 30, 2010, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and at the Great Basin College, Room 137, High Tech Center, 1500 College Parkway, Elko, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Assemblyman Marcus L. Conklin, Chair, Assembly District No. 37
Senator Maggie Carlton, Clark County Senate District No. 2
Senator Steven A. Horsford, Clark County Senate District No. 4
Senator Joyce L. Woodhouse, Clark County Senate District No. 5

COMMISSION MEMBERS PRESENT (CARSON CITY):

Senator Mike McGinness, Central Nevada Senatorial District
Senator Maurice E. Washington, Washoe County Senate District No. 2

COMMISSION MEMBERS PRESENT (ELKO):

Assemblyman John C. Carpenter, Assembly District No. 33

COMMISSION MEMBERS ABSENT:

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Risa B. Lang, Chief Deputy Legislative Counsel
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Michael Tanchek, Labor Commissioner, Office of Labor Commissioner
Robert C. Nellis, Energy Program Manager, Office of Energy
Teresa Thienhaus, Director, Nevada Department of Personnel
Keith Rheault, Superintendent of Public Instruction, Department of Education
Barry W. Lovgren
Layne Wilhelm, Health Program Specialist II, Substance Abuse Prevention
and Treatment Agency (SAPTA)
Lynn Carrigan, Nevada Public Health Foundation
Elena Ahrens, Assistant Chief, Property and Casualty, Division of Insurance
Martha Barnes, Administrator, Division of Compliance and Records,
Department of Motor Vehicles
Sam Sorich, Property Casualty Insurers, PCI
Robert B. Feldman, President, Nevada General Insurance Company
Ramona Morrison, State Board of Agriculture, Department of Agriculture
Richard Wilson, Senior Vice President, National Environmental Strategies
Alan M Schlottman, Executive Director, Theodore Roosevelt Institute
Peter Kruger, Nevada Retail Markets
John Cabaniss, Director, Association of International Automobile
Manufacturers
John P. Sande, III, Jones Vargas
Wayne Frediani, Executive Director, Nevada Franchise Automobile Dealers
Association
Alfredo Alonzo, Alliance of Automobile Manufacturers
Nick Economides, Manager, State Fuels Regulations Products Technology,
Chevron Corporation
Ichiro Sakai, Assistant Vice President, American Honda Motor
Randy Tackett, Service Director, Champion Chevrolet
Randolph Townsend
Kyle Davis, Policy Director, Nevada Conservation League
John Walsh, Worldwide Marketing Director, Afton Chemical

Chair Conklin called the meeting of the Legislative Commission's Subcommittee to Review Regulations to order at 9:07 a.m. He asked Ms. Clark to call the roll of members present.

Ms. Angela Clark called the roll. A quorum of members was present.

Chair Conklin requested a motion to approve the minutes from the meeting held on April 19, 2010.

SENATOR HORSFORD MOVED TO APPROVE THE MINUTES OF THE APRIL 19, 2010, MEETING OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW REGULATIONS.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMIOUSLY.

* * * * *

Chair Conklin listed the regulations submitted for consideration by the Subcommittee, ([Exhibit C](#)). The regulations included R042-09, R043-09, R058-09, R108-09, R116-09, R117-09, R125-09, R150-09, R175-09, R192-09, R208-09, R006-10, R011-10, R012-10, R019-10, R020-10, R021-10, R030-10, R041-10, R043-10, R047-10, R053-10, and R055-10.

Chair Conklin requested a motion to adopt by consent all the regulations not pulled or held by the Subcommittee.

Chair Conklin said R124-08 was held from consent. Senator Horsford requested R161-09 and R033-10 be held for further discussion.

Mr. Carpenter requested R008-10 and R075-10 be held for discussion. Senator McGinness requested R029-10 be held for further discussion. Chair Conklin held R213-09 for discussion and Senator Carlton requested R187-09 and R032-10 be held for discussion.

SENATOR WOODHOUSE MOVED TO ACCEPT BY CONSENT ALL THE REGULATIONS NOT HELD BY THE SUBCOMMITTEE.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Conklin said the regulations would be discussed in the order as they appeared on the Agenda. He opened the discussion on R124-08. He asked for a representative from the Labor Commission.

Senator Carlton had questions about the hourly employees. She understood some of the overtime issues, but had concerns about Section 4 concerning the amount of time a time clock can be adjusted. She was concerned that one tenth of an hour, six minutes, multiplied over a two-week time period added up to a significant amount in a paycheck. She said some places require showing up early for a pre-shift, but they do not clock in for work at that time. She said sometimes it takes a while for everyone to clock in or they are late clocking out. She wanted to be assured people were paid for the actual time they were working. She needed an explanation of the purpose of allowing an employer to adjust someone's time.

Michael Tanchek, Labor Commissioner, Office of the Labor Commissioner, said at a required pre-shift meeting, employees should be clocking in before the meeting started. The section held a variety of small problems. He said as soon as an employee came under the control of the employer, and it was a required pre-shift meeting, the employee should be clocking in before the meeting started.

Senator Carlton said the industry said the pre-shift was not mandatory and they had skirted the issue. Her concern was, the regulation allowed an employer to adjust a time clock.

Mr. Tanchek said the regulation went to the function of the time clock itself. The time clock used to round in both directions. He said the problem they encountered was time clocks that only rounded in favor of the employer. He said the employer did not get to deduct time from the time clock.

Senator Carlton said the regulation stated an employer who used a time clock to track employee work hours may adjust the time reported to conform to the employee's scheduled start and end times. Her concern was, at the end of the shift, the employer could round the time back six minutes from when the employee clocked out.

Mr. Tanchek said if the employee clocked out at 3:15, the time clock would show that time as 3:15.

Senator Carlton asked where that was stated. She understood the purpose and could not find where the regulation said it rounded both ways.

Mr. Tanchek said Subsection 3 handled clocking in early and Subsection 4 handled clocking out late.

Senator Carlton said she did not want someone taking advantage of the time clock. She did not want people to lose time on their paychecks.

Mr. Tanchek said time clocks were an issue the Labor Commission consistently dealt with. He said they were trying to narrow the opportunity for problems with the regulation.

Senator Carlton said she still had serious concerns about Subsection 4. She requested Ms. Erdoes clarify the issue.

Brenda Erdoes, Legislative Counsel, said Senator Carlton was correct in her reading and the regulation would allow the time clock to be set back to the time the shift was scheduled to end.

Senator Carlton requested the regulation be returned to the Labor Commission and have the intent actually stated in the regulation.

Chair Conklin asked Senator Carlton if that was a motion. He asked Ms. Erdoes if the process had to be started over.

Ms. Erdoes said the Labor Commission could make changes to the regulation and resubmit the regulation with the changes.

Mr. Tanchek asked if the regulation was so the employer did not receive a windfall, nor did the employee.

Chair Conklin asked Mr. Tanchek to work with staff for clarification. He also suggested he contact Senator Carlton before the wording was finalized.

SENATOR CARLTON MOVED TO RETURN THE REGULATION TO THE
LABOR COMMISSION FOR INCLUSION OF THE INTENT CONCERNING
THE TIME CLOCK ADJUSTMENTS FORWARD AND BACK.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

Chair Conklin opened discussion on R161-09, the Office of Energy.

Senator Horsford said his question pertained to the requirements of the applicant as listed on page 3, Section 17, Sub. 2, through pages 4 and 5 of the regulation. He said there were a number of requirements submitted in the application for consideration regarding funding out of the revolving loan fund. He asked what occurred if one of the criteria required in the application was not met by the applicant.

Robert C. Nellis, Energy Program Manager, Nevada State Office of Energy, said: "...There were five criteria where they ranked the applications and those criteria can be weighted and so if an applicant is weak in any one particular area, it would not necessarily disqualify their application."

Senator Horsford said: "...O.K, what are the five criteria then? I am looking at items A through S as far as items that must be submitted by the applicant. What are the five criteria that ultimately the Office will evaluate the applications on?"

Mr. Nellis replied: "...Senator Horsford, yes, an application can be rejected, just for clarification, can be rejected for being incomplete. But the criteria I am referring to, I thought I had my finger on it right here, actually it is Section 19, A, B, C, D, and E.

Senator Horsford said: "... All right, so for example then, one of the concerns I had was what was 'jobs'. So the applicant has to submit an estimate of the number of jobs that will be created or retained as a result of the project. That is in Item E of the application. And then the Director, or the Office, will evaluate and rank based on job creation as a result. So, just to follow on, that's in the application. What is it, what tool does the Energy Office have to ensure that the applicant actually achieves the jobs that they indicate in their application?"

Mr. Nellis: "...The applicant would have to submit reports to the Energy Office to follow up on their progress. They submit estimates with their application, but as the project unfolds, they would submit actuals of jobs created, fossil fuel reductions and the other criteria."

Senator Horsford: "...So what happens if they don't meet what they said in their application and ultimately lead to the Energy Office approving the revolving loan for the project? If they say they are going have 500 jobs and they only produce 300, what remedy is there for the Energy Office? "

Mr. Nellis replied: "...Senator Horsford, there is really no recourse as far as if they did not meet their obligations. Everything is based upon their forecasts and projections, but there is no way to withdraw funds after they have been expended or have them return the money to the Energy Office."

Senator Horsford said: "...I have some concerns with that, but I do recognize that is the way the statute reads. I would like to ask the Energy Office to be prepared to report out on proposed versus actual, because ultimately we need to have a provision that allows whether it's call back or some type of recourse. If that is something we need to address next legislative session so that we can keep this tool in place, I think that is important. I think the front-end projections are one thing, but if projects or applicants don't ultimately do what they say they are going to and they receive benefit or resources from that, I think ultimately the Energy Office and the energy authority should have some ability to, you know, change their award going forward. So, I would like to ask, if you could, as this program unfolds, to please track what was proposed in the application and, as the reports come in, what actually occurred. In the event the projections aren't met, some type of a response or explanation from the application as to why. Is that possible?"

Mr. Nellis replied: "...Senator Horsford, we are already on all of the American Recovery and Reinvestment Projects are tracking right now, projected jobs as well as started a table for actual jobs, so yes, to answer your question, we will track those for the Legislature and those reports will be on our web site as well. So we will do that with this program as it goes forward."

Senator Horsford said: "...by project?"

Mr. Nellis replied: "...Yes sir, by project."

Chair Conklin asked Senator Horsford his pleasure on the regulation.

Senator Carlton asked if there was a way to track whether they were Nevada residents or people brought in from outside the State to do the job.

Mr. Nellis replied they asked each applicant to keep records of employment. There will be paper records kept of who was employed and whether they were Nevadans or not. He said they requested Nevadans be employed on each of the jobs and not go outside the State.

Chair Conklin asked for a motion on R161-09.

SENATOR HORSFORD MOVED TO APPROVE R161-09.

SENATOR WOODHOUSE SECONDED THE MOTION.

Senator Horsford requested the request he made of the Energy Office be made part of the record.

Chair Conklin said the request by Senator Horsford and the agreement of the Office of Energy to provide the information would be part of the record.

THE MOTION CARRIED.

* * * * *

Chair Conklin opened discussion on R187-09, the Personnel Commission.

Senator Carlton said she wanted to be sure she understood the requirement set forth in Subsection 1, which had language that could be difficult. She requested assurance the unclassified person who was required to take a furlough day did not give themselves the exemption. She said it read the appointing authority filed a plan with the director, then it went to the Department of Administration, then the system of Higher Education was given another pathway. She had a problem with exemptions.

Teresa Thienhaus, Director, Nevada Department of Personnel, did not understand Senator Carlton's question.

Senator Carlton asked Ms. Thienhaus to give her an example of how an exemption would work. She asked how she could exempt an unclassified employee and who would make the ultimate decision for the exemption.

Ms. Thienhaus said a form needed to be filled out by the appointing authority. The form first went to the Department of Personnel, then it went to the Department of Administration for signature. She said that was for classified employees and the same process would occur for unclassified employees. She said with the exception of the Department of Personnel and the Department of Administration, there was oversight in her department.

Senator Carlton asked if the Department of Administration wanted to exempt their Deputy or one of their assistants, would they give the exemption?

Ms. Thienhaus replied that was correct.

Senator Carlton asked if there were any examples of exemptions of unclassified employees.

Ms. Thienhaus replied the intent was to apply the regulation only to the classified employees. She said there were no exemptions she was aware of for any unclassified employees.

Chair Conklin asked if there were further questions on the regulation. There were none. He asked for a motion to adopt the regulation.

SENATOR CARLTON MOVED TO ADOPT R187-09.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Conklin opened the discussion on R008-10, the Board of Education.

Mr. Carpenter asked why it was necessary to change the regulations.

Keith Rheault, Superintendent of Public Instruction, Department of Education, said the NRS statutes required the Academic Standards Council to periodically review and revise the standards in the State. He said technology education was one of the eight areas requiring review and revision. It was last reviewed in 2002. He said there was approximately a seven-year cycle to review all the standards and this was an area needing revision due to the changes in technology.

Mr. Carpenter asked if most students were able to meet the qualifications.

Dr. Rheault said a team worked on the revisions. They thought in most cases the students would exceed the standards. He said it was up to a school district to determine where they incorporated the standards.

MR. CARPENTER MOVED TO APPROVE R008-10.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Conklin opened discussion on R029-10, Division of Mental Health and Developmental Services.

Senator McGinness said a member of the public wanted to offer testimony on the regulation.

Barry W. Lovgren said he sent each member a letter concerning R029-10 and asking that the regulation be returned because it cannot carry out Legislative intent. He provided a copy of the letter and his testimony for the record, [Exhibit C](#). He said statute required the regulations have provisions for certification and continuing education of detoxification technicians. Programs certified by the Substance Abuse Prevention and Treatment Agency (SAPTA) were ineligible for State or Federal funding administered by SAPTA. The funding can only go to programs certified by criteria of the Division. The other correction was that the Center for Application of Substance Abuse Technologies (CASAT) was not contracted with SAPTA to perform the inspections. He said the issues he brought before the Subcommittee involved legislative intent.

Chair Conklin asked if there were any questions.

Senator Carlton said Mr. Lovgren worked with her shortly after she was elected to the Senate, and if he had concerns, she respected his opinion. She asked what the real problem was with the regulation.

Mr. Lovgren said admissions of substance-abusing pregnant women through the SAPTA-funded programs had decreased by 43 percent in the last five years. One of the issues involved was problems with SAPTA's sliding fee schedule which created barriers to treatment for people without money or insurance. He said SAPTA had a policy saying they would address the sliding fee schedule in the regulations, but they did not do so. He said the regulations did not meet the requirement to certify detox technicians and that created serious health and safety issues which he addressed in the letter

in [Exhibit C](#). He said a contested case was impossible to appeal because the health division process was not authorized to do contested cases.

Senator Carlton said the sliding fee scale had always been an issue. She asked why it was not in the regulations.

Mr. Lovgren said at the public hearing it was considered important to get the regulations approved immediately because of the transfer from the Health Division to the Division of Mental Health and Disability Services. He said after the transfer the commission could look at the other issues.

Chair Conklin asked if there was someone from the Division of Health and Mental Health and Disability Services present to testify.

Senator Carlton said she wanted a response from them, adding that the sliding fee schedule was a huge issue. She wanted confirmation everyone had access. She was also concerned about the appeals process.

Layne Wilhelm, Health Program Specialist II, Substance Abuse Prevention and Treatment Agency (SAPTA) said: "... the initial intent of the rewrite was to do some language clean-up. In '07 the Bureau moved into the Division of Mental Health, Female Services out of the Health Division, so most of the changes reflect that. Secondary to deciding the fee scale, we are currently reworking it over the course of the year. We have been instructed to look at a fee for service structure, with the onset of parity and the National Health Care plan there's also some new things being developed to make the Agency compliant with not only the State needs, but the Federal needs as we are funded through the Federal bloc grant. The sliding fee scale is currently being retooled and will be addressed next Wednesday at the Advisory Committee to talk about the issues that Mr. Lovgren has brought up. There is a statute currently in the regulation, or a regulation currently in there, that talks about making services available to low income and individuals with no ability to pay, that's still the intent. Most of the policies are in the sub-grant assurances with the programs. This gives us the ability to develop a workable policy and oversight going forward, again with the national movement and the fee for service approach. The question on the appeal process, it always has been the ability for individuals to appeal through the Division, it wasn't the Health Division. I believe it just changes over to the Mental Health Division. Uhm...again, many of the other issues will be addressed as it gets developed through the Legislature, through the needs of the State to funding and through the National Health Care plan, was the

intent. But the initial of these regulations were to move the Bureau BETA into NHDS as SAPTA."

Senator Carlton said: "... Your answer on the sliding fee scale was very good and I understand that is an on-going process and it is on a future agenda, so we will be able to follow that. I am a little concerned about the fee for service area, but that is a public policy debate that will have to be had and gone out to workshop. This is not the appropriate place to debate that. I still have a concern about the appeal process, uhm, I want to make sure that if someone wants to do this, they can and I used to know a lot of this stuff way back at the beginning and a lot of it has faded away over time. If you can give me a guarantee, and we can put it on the record, that if someone does feel the need to file an appeal that there is an avenue for them to file it and it is not a dead-end and they will be able to actually be able to have a hearing of some sort through this, then I will take your word for that now and as we work through this process, we can make sure the appropriate changes are out there. I don't want to slow this down because I do realize how important it is. But, I would like some guarantees on the record if I could have those, please."

Mr. Wilhelm replied: "... Under the disciplinary proceedings page 458361 it talks about filing a complaint into the Bureau, the process it goes through, the investigations, uhm the disclosure."

Senator Carlton asked: "... Is that a section within this regulation, or are you quoting a?"

Mr. Wilhelm replied: "... It's in the regulation."

Senator Carlton asked: "... It's in this regulation?"

Mr. Wilhelm replied: "... Yes, it just changes the appeal process from the Health Division to the Mental Health Division.

Chair Conklin said he was going to ask legal counsel to look at the regulation and give them some clarification. He said his interpretation was the regulation did the reverse and that there was no authority in statute for the alternative to take place. He said he would hold the regulation for a brief time and open discussion on the next regulation.

Chair Conklin opened the discussion on R033-10.

Senator Horsford said his question pertained to the various stakeholders. He asked if they were mutually agreeable to the proposed payment allocations.

Lynn Carrigan, ASO, Division of Health Care Financing and Policy, said they had numerous meetings with the stakeholders throughout the process. They reached a consensus regarding the distribution methodology. Not everyone was 100 percent enthusiastic, but given the limitations of the funding and the federal regulations, they obtained an agreement from everybody.

Chair Conklin asked if there were further questions or a motion.

SENATOR HORSFORD MOVED TO APPROVE R033-10.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

Chair Conklin opened discussion on R075-10, Certified Court Reporters' Board.

Mr. Carpenter said he wished to thank the Court Reporters' Board for bringing the regulation forward. He said an earlier regulation did not take care of a situation, but this regulation took care of the problem.

Chair Conklin asked if there were other questions about the regulation.

MR. CARPENTER MOVED TO ADOPT R075-10.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * *

Chair Conklin reopened discussion on R029-10. He asked Ms. Erdoes to comment on the regulation.

Ms. Erdoes said the question asked was whether there was an appeals process for this certification process that the regulation was putting into

place. She said there was not an appeals process in the regulation. Currently in the appeal process there was a requirement in statute that there "be" an appeal process, but there was not one in statute that works for this or was added by this regulation. She said the testimony stated it was something the Board of Health would be adding to the regulation later. The question was whether they wanted to approve the certification requirements at this point without an appeals process, or if they wanted the appeals process added before they approved the regulation.

Senator Carlton said Ms. Erdoes answered a multitude of questions. She wanted an appeal process incorporated into the regulation.

SENATOR CARLTON MOVED TO REJECT R029-10.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

Chair Conklin opened discussion on R213-09, Commission of Insurance. He asked the Insurance Commissioner and the DMV representatives to come forward and testify on the regulation. He said he had questions regarding the issuance of a liability card with the registrant's name on it. They discussed policy holders who put their assets in trusts, policyholders in the parent's name while the car was registered in the child's name and various other ways of registering. The concern was people would be rejected or it would cause an administrative nightmare because the names did not match. He said a similar regulation from the DMV was proposed several months ago, and he had asked whether or not an insurer would be able to provide insurance and make sure a car was covered without using names. He said testimony from the DMV at that time was "absolutely, it was exclusively within the right of the insurer to approve or deny for the DMV as to whether or a car was insured." Chair Conklin said while that was the case, the DMV still required that the name on the insurance card match with the registration on the car. He said he had received numerous calls stating the regulation was a nightmare. He asked the Division of Insurance why the requirement was necessary.

Elena Ahrens, Assistant Chief, Property and Casualty Section, Division of Insurance, said there were a couple of reasons why it was necessary. She said the law required the owner to continuously provide liability insurance. The way the DMV ensured the owner was providing liability insurance was checking it against the insurance card when they register the car. The Division of Insurance was requiring the registered owner's name be included on the evidence of insurance card to fulfill the law requirement. Another reason was that the Division of Insurance believed it provided consumer protection. There was a liability issue involved. The owner should be covered on an insurance liability policy. The Insurance Division required the owner's name be included on the evidence of insurance card. Beginning in February of this year, evidence of insurance when a car was registered at the DMV was required. The DMV required the owner show evidence of that insurance.

Chair Conklin asked a representative from the DMV to come forward and testify. He said the testimony he heard said the owner must have insurance, the car must be insured, but the law does not specifically state the owner had to be the policy holder. He said they were trying to be sure there was not an administrative nightmare for people.

Martha Barnes, Administrator, Division of Compliance and Records, Department of Motor Vehicles, said they were trying to make sure the technicians could look at the title work and verify there was insurance on the vehicle. The first time they looked at the paperwork, they needed to see that it all matched. She said there was an instance where a son added his father to the title paperwork in order to be covered by the father's insurance. The father did not know about what his son had done. The law stated the owner was responsible for carrying continuous insurance. She said the owner brought the vehicle to the DMV, had the title paperwork and the title paperwork said he was the owner of the vehicle. She said they did not want bad paperwork.

Chair Conklin said he believed he had received disingenuous testimony when the the DMV regulation was brought forward. He said he specifically asked who was responsible for determining if the car was insured for purposes of getting a registration, and the answer that was given to him was the insurer approved or denied it and they could use one of five criteria. He specifically stated his concern about insurance being held by one person while the car was held by another. He asked what was more important, whether the vehicle was insured or that a specific individual was insured. He said the earlier answer he received was that it was wholly within the purview of the

insurer to decide whether or not it met the criteria and the DMV would accept that. He said he was confused.

Ms. Barnes said she had testified on the DMV regulations. She said she may have misunderstood which part of the process Chair Conklin was referring to in the regulation. Her answer was once the insurance information was in the data-base, then the DMV sent criteria to the insurance company and they responded on the criteria they wanted to answer. The DMV sent up to five pieces of information and the insurers had the ability to only match to the VIN number if they wished. She said Chair Conklin was discussing when they initially came in to the DMV to register the vehicle for the first time.

Chair Conklin said it did not provide a solution to the problem. He asked what would occur if the regulation was rejected.

Ms. Ahrens asked to be allowed to go back and amend the regulation to remove the one piece that was objectionable to the Subcommittee. She said the rest of regulation needed to be passed. Ms. Ahrens said they believed the regulation provided consumer protection as it was written.

Mr. Carpenter said on page 4 of the regulation it stated they had to have a complete identification number. He said that was a problem in earlier sessions. He thought that problem had been corrected and they could still register their vehicles. There were so many numbers now on the identifications that it was very easy to miss a number. He said the regulation should go back to the Division and try to get it corrected.

Ms. Ahrens said that portion of the regulation said that it had to be in bold and a certain point type so the technician or the insurer could see it, the same language was in statute. She said the complete VIN number was in the statute. She said they were requiring it be in bold and not less than 8 point type so the DMV technician could easily read the VIN number. She did not believe a partial match was a problem.

Chair Conklin said there were some industry people present to speak on the regulation. He said he saw a possibility of two options, removing a portion of the regulation or meeting with the DMV and have them bring a regulation in to fix the problem.

Sam Sorich, Property, Casualty Insurers, Association of America, (PCI), said his companies wrote about 40 percent of the automobile insurance policies

in Nevada. He said they opposed the adoption of the regulation because the regulation failed to follow the Legislature's direction to the Insurance Commissioner as to what should be on the evidence of insurance card. The NRS expressly said the Commissioner was to adopt a regulation on the evidence of insurance cards. The statute further said the evidence of insurance card must include the name of the policy holder. He said they objected to the regulation because the proposed regulation ignored the statute and does not include the name of the policy holder. The Division of Insurance said what the Legislature intended to say was the name of the owner rather than the name of the policy holder. The Division did not have the authority to ignore what the statute said. He reiterated that the statute said the evidence of insurance card must include the name of the policy holder. They wanted the Division of Insurance to adopt a regulation, but it must comply with the Legislature's expressed language.

Chair Conklin agreed with Mr. Sorich. He said Ms. Ahrens was trying to comply with the DMV as well, but the problem still needed fixing.

Senator Carlton said it was all about who had the ultimate responsibility for the vehicle. She said if there was an accident or something happened, the insurance card was where the consumer received all of their information. She said it was one of the documents the police used when filling out the reports. Nevada insured the cars, not necessarily the people and the next step was who was the owner of the car and ultimately responsible. She said if the regulation being considered protected people, she was in favor of it. However, if the next step was needed to make sure people were protected, she wanted assurance the consumer had all the information needed when they were involved in something.

Mr. Sorich said he was confident there was enough information on the evidence of insurance card to assure the vehicle had insurance coverage. He said the Legislature determined that when the regulation was adopted, it must state the evidence of insurance card had the name of the policy holder. The Division of Insurance had to follow what the Legislature told it to do.

Robert B. Feldman, President, Nevada General Insurance Company and Auto Insurance of America, was involved in mandatory insurance for many years. He said there were some problems with the insurance verification program. One of the problems that made the program inefficient was that the DMV matched the names of people to the registrations. He said Nevada was the only state that attempted to do that. He said Mr. Carpenter remembered in

1996 and 1997 there were enormous problems due to name matching and VIN number matching. The DMV suspended hundreds and thousands of registrations. They enacted a statute that said the primary method of insurance verification shall be the vehicle identification, not name matching. He said the DMV sent 2,000 to 3,000 letters to people who supposedly were uninsured when actually many of them were insured. The DMV had 12 full-time employees who dealt with the uninsured motorist problems. There was no need to match names to registrations. He said insurance companies known as "A" companies are allowed to pick their own criteria. He said his insurance company eliminated name matching as criteria and used the make, model, and year of the vehicle, as well as the policy number. He said insurance companies do not have to match names. The discussion was about the initial insurance card when the registered owner appeared at the DMV. He said that was a huge expense. He recommended a BDR to clarify the problem. The DMV had programmed the smog inspections electronically and a number of dealers reported sales electronically. He suggested in the future legislation be passed that said all of the initial insurance cards would be issued off of the DMV's website. It eliminated fraud. He said the DMV staff said it was possible to do it. Anybody who issued an insurance card would be immediately recognized and have the proof of insurance online at the DMV. He said a permanent fix was needed.

Chair Conklin asked if there was further discussion.

MR. CARPENTER MOVED TO REJECT R213-09.

SENATOR HORSFORD SECONDED THE MOTION.

Chair Conklin said he knew the regulation was necessary. He said the Legislative Commission was meeting in approximately 6 weeks. Ms. Erdoes was willing to meet with Ms. Ahrens, the insurance industry and the DMV to assure the regulation was right.

THE MOTION CARRIED.

* * * * *

Chair Conklin opened discussion on R032-10, the State Board of Agriculture.

Senator Carlton said she did not see any policy mandate as to why the additive should be allowed to come into the State. She did not see the

argument of cheaper gas because there was no guarantee that a price savings would be passed on at the pump. She looked at numerous manuals and the manuals clearly stated no MMT. She said health concerns were also a problem and she would not be supporting the regulation.

Chair Conklin asked the Board of Agriculture to respond to the concerns.

Ramona Morrison, State Board of Agriculture, Department of Agriculture, reviewed some of the issues involved in lifting the ban on MMT or manganese additives in the fuels for Nevada. She said the Department of Agriculture received a request from industry to remove the prohibition on MMT. In 1995 the federal EPA authorized the use of MMT in conventional gasoline. She said the EPA had the authority and obligation to regulate fuels and fuel additives. The EPA had taken no action to rescind their initial approval of the waiver or impose advisories or restrictions. She said 48 states allowed the use of MMT in their fuel. The Board of Agriculture conducted a review of the testimony in favor of and against lifting the ban on manganese. She said the Board required testimony from several people. The preponderance of governmental studies from the EPA and Canada outweighed the concerns of MMT on catalytic converters. She said many of studies they heard were supported by industry funding. With respect to air quality concerns, Clark and Washoe Counties did not object to the regulatory change. Ms. Morrison offered a list of governmental studies of the effects of manganese for the Subcommittee, [Exhibit D](#). She said the studies supported the use of MMT or did not have any objections to the use of it. The Board of Agriculture said the evidence weighed in favor of lifting the ban on manganese. She said adopting the regulation would increase competitiveness in the fuel industry. It would allow for a more competitive market in the rural markets on the eastern side of Nevada.

Chair Conklin said there was someone on the telephone who also wished to testify about MMT.

Senator Carlton said she had one more concern: "... As a consumer, there was nothing in the regulation that will be posted on the pump that says that I am purchasing a MMT product. I would like to understand the reasoning why you are not giving the consumer adequate information. If I fill my car up in northeastern Nevada on my way back from Wyoming, I should have the choice whether I want to make the decision to do harm to myself, the environment, or to something that is probably one of the most expensive

things that I have every bought, my automobile. So what was the argument against posting this at the pump."

Ms. Morrison said there was no objection from the Board. It was not an issue before the Board in terms of the regulation. It was discussed but not included in the regulation.

Senator Carlton said: "... But you didn't incorporate it into this regulation and therefore it won't happen."

Ms. Morrison replied not at this time.

Richard Wilson, Senior Vice President, National Environmental Strategies, testified via telephone. He said he worked for over 30 years for the EPA. He said the MMT issue was one the EPA had dealt with many times. The issue of MMT in gasoline causing health concerns was researched seriously by Canada and the United States. Both countries still said MMT was legal for use. Health Canada recently reviewed the health issues regarding air-borne manganese and adopted a new safe level at the same level that the EPA had in place for many years. The review looked at the air quality in cities where MMT was used and the actual exposures were under the new safe level. Health Canada also did a risk assessment of MMT use and concluded its use did not pose a health risk. He said the U.S. had real air quality data available from Canada that showed the levels were below the safe levels when MMT was used in gasoline.

Mr. Wilson said the second issue was in regard to the impact of MMT on automobiles and their warranties. The federal EPA and Environment Canada had the authority and the obligation to regulate the use of fuel and fuel additives if they believed their use had an adverse effect on the emission control systems of cars. He said neither country found the studies convincing that MMT was a problem and MMT remained approved for use in both countries. MMT was widely used in Canada in nearly all the gasoline for a number of years, and a number of studies showed no differences between Canada and areas in the U.S. where MMT was not used. He said the auto industry was required by the Clean Air Act and the EPA regulations to design and build vehicles that run on legal fuels. Since MMT was approved for use, it was a legal fuel. He said automobile companies must honor warranties even if the vehicle uses MMT.

Senator Carlton said: "... I had the impression that MMT was not disapproved, but was never officially approved. There is a distinct line between those two statements."

Mr. Wilson said the necessary waiver in the U.S. was granted by the EPA and remained in effect.

Senator Carlton said: "... A waiver was granted, but was it given approval?"

Mr. Wilson said that was the only basis for approval. He said the EPA did not endorse a particular gasoline or additives. There was a process where fuels and fuel additives had to get a waiver from the EPA in order to be used.

Senator Carlton said it was technically not approved; it had just been given a waiver.

Mr. Wilson said the waiver was the basis for EPA's approval of its use.

Senator Carlton asked Mr. Wilson if it was actually used in other states.

Mr. Wilson said he believed it was used in other states, but he was not an expert on where it was being used. He suggested she ask someone from the Afton Corporation. He reiterated it was legal to use it in all the states except for Nevada.

Senator Carlton asked Mr. Wilson if he was familiar with any of the posting concerns she talked about earlier. She asked if she needed to follow-up with someone else on that question.

Mr. Wilson said if they posted for MMT, they may want to post for other alternative ways of getting octane, whether it was ethanol, benzene, or aromatics. There were other risky chemicals used to raise octane in gasoline, so a total labeling program might be considered.

Chair Conklin asked if there were further questions for Mr. Wilson. He said someone from the Theodore Roosevelt Institute was present to testify.

Senator Horsford asked Ms. Morrison when the Board of Agriculture had started the process of developing the regulations.

Ms. Morrison said it was approximately one year ago. She said they had hearings and workshops in October and November. They had the official Board meeting in December where they heard the majority of the testimony. She said it was moved forward to the March meeting where it was approved after specific questions had been answered.

Senator Horsford said some information he obtained said the process really started based on the adoption of California code or standards and this was one of the outstanding issues. He asked Ms. Morrison when the State of Nevada first adopted the California code.

Ms. Morrison said she did not have that answer. She said there were people in the audience who could answer it.

Mr. Wilson said the Legislature adopted the requirement that Nevada fuel standards be the same as California standards in 1991. The Agriculture Board adopted a rule in 1992 following the legislation. He said in 2003 the Legislature dropped the requirement that fuel standards in Nevada be the same as California, but the Agriculture Board did not deal with the MMT ban until recently.

Senator Horsford said the Subcommittee was being asked, during the interim, to address an issue that dated back to 1991. He said the most recent action by the full legislature was in 2003. The Board had plenty of time to come to the Legislature to address the issue since 2003. He had trouble with the time line. He wanted that information on the record.

Alan M. Schlottman, Executive Director, Theodore Roosevelt Institute, and the College of Business at UNLV, said he was asked to look at one specific issue. The issue was if there were a three to five cent production cost savings in the refinery process with respect to this product, would the reduction be passed on to Nevada consumers in the form of lower prices. He said based on evidence from previous studies it was clear those production cost decreases should be reflected in lower prices at the pump. Studies suggested consumers were unresponsive to changes in the price of gasoline. He said Senator Carlton's comment that cost reductions would not be passed on as price reductions would require anti-competitive behavior. He said if the Legislature believed there was a definite pattern of anti-competitive behavior in Nevada by a particular retail segment, then they would go after them. He was comfortable saying the cost reductions would be passed along as price reductions. He said the convenience store was the

dominant form of retailing for gasoline, but it might conceptually result in a lower form of cost for gasoline. He said approximately \$5 to \$7 million could be saved by the consumers.

Chair Conklin said the Federal Trade Commission (FTC) studies were of actual behavior and not theoretical studies. He said the evidence said if the cost of production for fuel was reduced, the price of fuel went down.

Dr. Schlottman said the FTC study *Gasoline Price Changes the Dynamics of Supply and Demand in Competition*, Washington, June, 2005, said the dominant form of retailing in the convenience store was the price of gasoline. He said if people did not buy the gasoline, they did not enter the store and buy other products and items and that suggested the cost reduction would be passed on to the consumer.

Senator Carlton asked for an example where the additive was used and gasoline was actually cheaper because of the use of MMT. She said if it was not posted on the pump she could not comparison shop to determine if it was cheaper than gasoline without MMT added. She had still not seen where gas was cheaper in Utah or wherever they were selling it with MMT added.

Dr. Schlottman said most publicly available data said a gallon of gas was a gallon of gas. Most of it was reported by the barrel. He said the information was held by private companies and was not available to him.

Peter Kruger, Nevada Petroleum Marketers and Convenience Stores Association, said his members directed him to support the regulation change. He said MMT was an octane enhancer. Everyone had to show the octane level at the pump. He said a blender of fuels who supplied unbranded retailers at the local level needed the opportunity to find the least expensive source of supply and provide it to their customer. The new pipeline project was less than 18 months away. It provided Nevada with another source of fuel. He said MMT could be shipped via the pipeline and his members were asking for the flexibility to use MMT. Mr. Kruger said the Department of Agriculture had never tested for MMT. He added that MMT was in thousands of after-market products sold in Nevada.

Chair Conklin asked when MMT was added in the process. He asked if it was during refining or post-refining, or before shipping and questioned whether adding MMT would lower the price of other additives in Nevada and create more price competition.

Mr. Kruger replied in surrounding states there was flexibility when buying a load of fuel and competition was there from his supplier. He could pick a lesser price additive if it was available.

Chair Conklin said Senator Carlton had asked where MMT was being used in the United States today. He said if MMT was used in another state, the price effect could be that the price of ethanol was reduced in order to compete.

Mr. Kruger said it had occurred in Idaho, but it was unknown if it would occur in Nevada. He said other industries responded by lowering prices in a competitive situation. The additive was provided in a pipeline, but it would not come from California. The major oil companies providing fuel did not use MMT. He said the product was introduced at a pipeline as an additive, or blended at the terminal for a specific load of fuel.

John Cabaniss, Director, Association of International Automobile Manufacturers, said another association, the Alliance of Automobile Manufacturers, said all the members opposed the use of MMT. He said auto makers recommended against the use of manganese and other metallic additives, [Exhibit E](#). The owners' manuals recommended against the use of MMT because it degraded the catalytic converters over time with prolonged use. He said [Exhibit E](#) contained photos of the damage done by the additives on the catalytic converter. There were also health concerns related to inhalation of the fine particles emitted from the car. He said the EPA approval was in 1995, and very little MMT had been used in gasoline in the U.S. MMT had been used in Canada for many years, but was voluntarily removed several years ago due to the controversy associated with its use.

Chair Conklin asked if MMT was allowed in 48 states and Canada, but it was not used due to market forces, what was the fear if Nevada allowed its use? He said there was a significant likelihood nobody would use it.

Mr. Cabaniss said it was allowed only for conventional gasoline. California banned metals in its fuel, including manganese. He said federal reformulated gasoline was the fuel required in many areas of the country with the highest polluted cities. This fuel was used in most of the major cities because they had air quality problems. He said reformulated gasoline was not allowed to have metal, including manganese, and approximately 40% of the country used reformulated gasoline. He said MMT used in additives on an occasional use did not create so many problems for the consumer.

John P. Sande, III, Jones Vargas, said he was representing the Nevada Franchise Auto Dealers Association. They were concerned about allowing MMT into Nevada. He said erring on the side of conservatism was positive. His organization was concerned about MMT's impact on engines and employee health. He said the Advocate General in England on May 6, 2010, introduced strict limits for MMT and also labeling requirements due to the fear it was a danger to human health and damaged ignition control systems in vehicles. He said other developed nations were looking at MMT and deciding it was a problem. He requested the rejection of allowing MMT in Nevada.

Wayne Frediani, Executive Director, Nevada Franchise Auto Dealers Association, had issues with MMT being used in the warranty area. He said in low emission vehicles a study showed some damage to catalytic converters. A lot of the inventory ordered in Nevada came with California emissions and the warranty problem with manganese was a concern. He said they were opposed to allowing MMT in Nevada.

Chair Conklin asked Mr. Frediani if because parts and vehicles were coming from California, Nevada consumers were paying a higher price for the vehicles because they met California standards.

Mr. Frediani replied yes. He said it was not a large cost, but it was higher than the other state's cars.

Alfredo Alonzo, Alliance of Automobile Manufacturers, said there were multiple studies on both sides of the discussion. All of the domestic manufacturers, BMW and Jaguar, etc., [Exhibit F](#), were opposed to the addition of MMT. He said there were three issues involved. The first was the additive had already been rejected by every manufacturer in the world. The second problem was the labeling and testing issue. He said consumers needed to know what was going into their gas tanks. Ethanol was indicated it was added by labels at the pumps. He said many major oil dealers did not use MMT in their fuel. After-market additives were the choice of the consumer. Mr. Alonzo said Washoe County and Clark County would not have MMT because there was an ethanol mandate in those counties. The only areas that might receive MMT were the rural areas of Nevada. He said MMT was being removed from every developed country including Canada, Canada was 95% MMT free at this time.

Nick Economides, Manager, State Fuels Regulations Products Technology, Chevron Corporation, said warnings concerning MMT were not heeded. He said MMT was not good for cars, the environment, or the consumer. The discussion was not about better fuels on the market, it was one of economics. He said he did not anticipate any savings in the production costs being passed on to the consumer. MMT was being used in two areas, the Four Corners area and the Mountain Region Utah refining center. It had appeal in those areas where small refineries existed and may not have made huge investments to make cleaner fuels. He said MMT should be labeled at the fuel pump.

Ichiro Sakai, Assistant Vice President, America Honda Motor, and a technical representative for American Honda said Honda strongly urged the continued ban of MMT in Nevada. Mr. Sakai submitted his written testimony for the Subcommittee, [Exhibit G](#).

Randy Tackett, Service Director, Champion Chevrolet, was opposed to the addition of MMT to the fuel. He said a health concern for his technicians breathing MMT was worrisome. The damage and effects to the emissions control devices on the car added extra costs to the consumer after it had been damaged by MMT and was also a concern.

Randolph Townsend said he dealt with the issue of MMT when he was serving as a senator. He said the professor from UNLV required a response. Allowing the regulation to be approved would not drop the price of gasoline in Nevada; other things influenced the price of gasoline, such as demand in China, India, and Southeast Asia. He said the loss of supply also had a greater impact on the price to the consumer than anything the State was going to do other than reduce the taxes currently on gasoline. He said there was not going to be a drop in consumer prices due to the regulation being considered.

Chair Conklin asked if there was further testimony from Carson City.

Kyle Davis, Policy Director, Nevada Conservation League, said he had given the Subcommittee a letter from the Natural Resources Defense Council which outlined the environmental arguments, [Exhibit H](#). His concern was that the addition of MMT would cause the failure of emission control systems. He said the health impacts were explained in [Exhibit H](#) and the most appropriate action was to leave the ban on MMT in effect.

John Walsh, Worldwide Marketing Director, Afton Chemical, presented his testimony to the Subcommittee, [Exhibit I](#). He said the auto industry, the large refiners, the small refiners and Afton Chemical all had interests in the issue. Auto makers do not get to decide what fuel regulations were through what they wrote in handbooks. He said the regulators made the decisions through an assessment of competing arguments and science. The issues had been studied in great depth. The Agricultural Board of Nevada did look at all the issues involved in the debate. He said gasoline had many toxic components in it. The EPA approval did not mean it recommended a component, but whether a component was legal. He said the correct terminology was the waiver process. MMT was granted a waiver which meant it was allowed for use, but it was not recommended as the EPA did not recommend anything. He said the pipeline from Utah opened up more options for fuel supplies. Afton Chemical was asking Nevada to join the other states which approved MMT. He said more options tended to lead to lower costs. MMT did not necessarily harm catalytic converters. Mr. Walsh said manganese was not a heavy metal, but a transitional metal and it was also an essential nutrient. He said in the case of manganese, it was the amount of manganese consumed that became unhealthy, [Exhibit I](#). He said there was a 10-year study that evaluated the health issue. The work showed MMT did not change the amount of manganese in the air to affect how much was breathed and was not a health issue. He summarized by saying MMT did not cause harm. He requested support of the regulation.

Senator McGinness asked about the free market issues in the regulation. He said the Board of Agriculture had spent a year and heard hours of testimony and he would support their decision.

SENATOR MCGINNESS MOVED TO APPROVE R032-10.

SENATOR CARPENTER SECONDED THE MOTION.

Senator Woodhouse said if the regulation passed, she wanted the information posted on the pumps for the protection of the consumers.

Chair Conklin requested Senator Woodhouse's recommendation become part of the record. He said he would introduce a BDR on MMT. The Subcommittee was required to follow the law, but the issue needed reexamination by the Legislature.

Senator Carlton said numerous things had been determined to be dangerous to a person's health, and she was still in opposition because she could not be sure that no harm would be done.

Senator Horsford said he also opposed the regulation. He said his issue was about process. He said a policy approved by the Legislature some years ago was just now coming to the Subcommittee. They did not have all of the information a prior Legislature had when they made the decision. He asked how long an agency had after the Legislature approved something to bring a regulation forward. He asked legal counsel if there was any standard for an agency such as the Board of Agriculture to bring a regulation upon enactment of a policy approved by the Legislature.

Ms. Erdoes said there was no legal statutory time in which an agency had to bring a regulation forward. She said legal counsel had suggested setting a date, but it had not occurred.

Senator Horsford said he would look into the problem in the future. He said action taken by the Legislature needed timely follow-up by regulation.

THE MOTION CARRIED. (SENATOR CARLTON, SENATOR HORSFORD, AND SENATOR WASHINGTON VOTED NO.)

* * * * *

Legislative Commission's Subcommittee to Review Regulations

Date: June 30, 2010

Page: 29

Chair Conklin said the vote was four to three in favor of adoption of the regulation. He said there would be a bill before the Legislature at the next session. He asked if there was further business. As there was none, he adjourned the meeting at 12:21 p.m.

Submitted by:

Olivia Lodato, Interim Secretary

APPROVED:

Marcus L. Conklin, Chair

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Legislative Commission's Subcommittee to Review Regulations</u>			
Date: <u>June 30, 2010</u>		Time of Meeting: <u>9:00 a.m.</u>	
	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Barry Lovgren	Testimony Concerning Certification (SAPTA)
	D	Ramona Morrison	Letter Concerning MMT
	E	John Cabaniss	Testimony Against Approval of MMT
	F	Alfredo Alonzo	Testimony Against Approval of MMT
	G	Ichiro Sakai	Testimony Against Approval of MMT
	H	Kyle Davis	Testimony Against Approval of MMT
	I	John Walsh	Afton Corp. Testimony In Favor of Approval of MMT