

MINUTES OF THE  
LEGISLATIVE COMMISSION  
NEVADA LEGISLATIVE COUNSEL BUREAU (LCB)  
October 26, 2011

The third meeting in 2011 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218E.150, was held on Wednesday, October 26, 2011. The meeting began at 9:40 a.m. in Room 4401 of the Grant Sawyer Office Building, 555 E. Washington Avenue, Las Vegas, Nevada. A simultaneous videoconference was broadcast to Nevada Room 4100 of the Legislative Counsel Bureau Building, 401 South Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Steven A. Horsford, Chair  
Senator Sheila Leslie, Vice Chair  
Senator Mo Denis  
Senator Elizabeth Halseth  
Senator Michael Roberson  
Senator James A. Settelmeyer  
Assemblyman Ira Hansen  
Assemblyman William Horne (alternate for  
Assemblyman Marcus Conklin)  
Assemblywoman Marilyn Kirkpatrick  
Assemblyman Richard McArthur  
Assemblywoman Debbie Smith  
Assemblyman Lynn D. Stewart

OTHER LEGISLATORS IN ATTENDANCE:

Senator Don Gustavson

LEGISLATIVE COUNSEL BUREAU STAFF:

Lorne J. Malkiewich, Director  
Brenda J. Erdoes, Legislative Counsel  
Risa B. Lang, Chief Deputy Legislative Counsel  
Rick Combs, Assembly Fiscal Analyst  
Mark Krmpotic, Senate Fiscal Analyst  
Paul V. Townsend, Legislative Auditor  
Donald O. Williams, Research Director  
Connie Davis, Legislative Commission Secretary  
Tarron Collins, Committee Assistant

Vice Chair Leslie called the meeting to order in Carson City at 9:40 a.m. 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.

Vice Chair Leslie announced that Chair Horsford and Assemblywoman Kirkpatrick had been delayed but with a quorum present, the meeting would proceed beginning and ending with public comment. Additionally, Vice Chair Leslie indicated she was aware that there were attendees who wanted to speak to specific regulations. Those persons, she said, would be provided the option of testifying under the first public comment item or waiting until the specific regulation was addressed.

Vice Chair Leslie also announced that Chair Horsford had requested that Informational Item V.C, Discussion of Changes in the Service Provision Model for Early Intervention Services, be addressed following the first public comment item. Additionally, she advised that Item IV.C, Adoption of Regulation Governing Certain Vehicular and Pedestrian Traffic on Legislative Property, had been removed from the agenda and would be considered at a future Legislative Commission meeting.

#### I. 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.)

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada (ACLU), advised that she had sent an email to the members of the Legislative Commission concerning the policy for Charges for Public Records Requests, passed by the Commission at its August 24, 2011, meeting. Ms. Gasca reported that she had attached a letter to the email a letter (Exhibit C) from Allen Lichtenstein, General Counsel, ACLU of Nevada, to Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB), and Mr. Malkiewich's response to Mr. Lichtenstein.

Ms. Gasca testified that it was the ACLU's position that the LCB misapplied the Nevada Supreme Court's ruling in *Donrey of Nevada v. Bradshaw*, concerning the balancing test. It was the ACLU's perspective that the Donrey case recognized a common law balancing test that explicitly limited it to documents involving criminal investigations, while the LCB's policy, passed at its August 24, 2011, meeting, broadly expanded upon the Supreme Court ruling to specifically state that requestors needed to include the reason for their requests so that the LCB could balance those interests. Ms. Gasca acknowledged that Director Malkiewich had advised that LCB would not reject a request for failure to include the reason, but that information, she said, needed to be included in the policy. Ms. Gasca also advised that Mr. Malkiewich said that LCB decided not to be more specific in the event a future court decision narrowed that scope, which the ACLU found problematic.

Ms. Gasca testified that LCB and the Legislative Commission should not create policies with the idea that in the future the Nevada Supreme Court might change its mind because she said it was not a prudent way to move forward with an act as important as the policy on accessing public records. Ms. Gasca advised that she brought copies of the ACLU letter (Exhibit C), from which, for the benefit of the public, she read the following excerpt into the record:

"LCB, however, has inexplicably taken the position that it will "deny any request for information if, on the balance, public interest in non-disclosure outweighs public interest in disclosure. It will also require that any request for information shall state the reason so the Legislative Counsel Bureau can weigh the public interest in disclosure. Moreover it places the burden on the requester to show his or her need is stronger than the public policy interest in non-disclosure. The burden-shifting, presumption of confidentiality, grounds for non-disclosure beyond personal privacy and law enforcement interests, and requirement for a requester to justify the request are all innovations that run counter to the plain language of the applicable statutes and also the explicit rulings of the Nevada Supreme Court in both the *Donrey and Reno Newspapers*. The new policy, therefore, violates the law, and needs to be rescinded."

In her closing remarks, Ms. Gasca said she was looking for intent that the Legislative Commission would revisit the policy prior to the next Commission meeting with an objective that the public record policy adequately met constitutional standards and did not expand upon the plain language of *Nevada Revised Statutes* and the rulings of the Nevada Supreme Court.

Christine Schwamberger, Attorney at Law, advised that a number of NoBearHuntNV.org representatives were present to address the provisions of the regulation related to the hunting of black bears while others would speak to the rationale behind the regulation.

Ms. Schwamberger asked for clarification on how the Vice Chair wanted the speakers to time their testimony.

Vice Chair Leslie reiterated that those testifying had the option to speak under the first Public Comment item or wait for discussion on the regulation.

Ms. Schwamberger advised that some No Bear Hunt Nevada representatives would speak under the first Public Comment item while others would wait until the regulation was addressed.

Jim Thulin, a resident of Stateline, Nevada, between Heavenly Valley north and Lake Tahoe, spoke on how the bear hunt affected him personally. His 100-acre property, he said, was in the middle of the forest with a private driveway that included an easement positioned across the forest bordered by the Edgewood Creek, which was surrounded by the Tahoe Rim Trail.

Mr. Thulin recounted running into a hunter while on the Rim Trail having what he described as an "energized" conversation with three hikers. Mr. Thulin heard the hunter tell the hikers to leave because it was bear hunting season, he had the right of way, and that if he encountered a bear, he would shoot it.

Mr. Thulin spoke of the danger to hikers using the trails inside the Basin as well as to homeowners whose properties were within the forestland because he reasoned that bear hunters could miss their target and hit one of the homes instead. Mr. Thulin defined the bear hunt inside the Basin as a recipe for disaster and indicated he was told by a game warden after he reported the hiker incident that hunters had been asked to stay off the trails but were not required to do so.

Vice Chair Leslie thanked Mr. Thulin for taking the time to appear before the Commission.

Lloyd Peake, a south Reno resident, who spent time hiking in the Carson Range of the Sierra Nevada, spoke about a sign posted at the beginning of the trailhead at the Mount Rose Summit on Highway 431. Mr. Peake said the sign entitled, Attention Hunters was in bold print, and read in part:

"Bear season begins August 20, 2011. Be aware of all state, county, and federal regulations. Tahoe Meadows is a heavily visited recreation area and is an occupied area under 36 CFR 261.10d. This applies to Tahoe Meadows Trailhead Interpretative Trail and any other occupied area including trails and trailheads."

Mr. Peake said the sign included the following prohibitions applicable to occupancy and use:

- "(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property as follows:
- (1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or
  - (2) Across or on a National Forest System road or a body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge."

Mr. Peake advised that while there was no attribution of authorship, the sign cited the Code of Federal Regulations (CFR), and he assumed it was prepared and posted by the U.S. Forest Service. The Forest Service, he said, was in charge of the Mount Rose Management Unit and its general areas within one of the units authorized by the Nevada Department of Wildlife (NDOW) for hunting bears.

Mr. Peake discussed the dangers of mixing nonhunters with those actively engaged in a bear hunt, particularly in heavily-used recreational areas. Mr. Peake said it was irresponsible and reckless not to post signs at every trailhead and all bear hunting units in Nevada advising hunters as the Forest Service sign did. Additionally, he pointed out that signs could make recreational users aware that a bear hunt would occur on certain dates, and hikers, for example, might hear the sound of rifle fire, or otherwise be exposed to hunting activities.

Mr. Peake said that a simple act, such as one or two sentences on an 8-1/2 x 11 laminated sheet of paper, like the Forest Service sign, would, at least, inform nonhunters and tourists of a bear hunt. Nonhunters, he said, would then have the opportunity to make an informed decision concerning whether they should engage in such an environment or wait until the hunting season was over.

The failure to adopt such a simple notice requirement, Mr. Peake said, would be an "egregious omission" and one he would not wish to explain in the event a recreational user was injured or killed. Mr. Peake indicated that several such events had occurred with bear hunts on October 22, 2011, in Oregon, and recently two more incidents in Washington state.

Mr. Peake concluded his remarks by asking the Commission to amend the NDOW regulation to require signage that a bear hunt was in progress.

Vice Chair Leslie thanked Mr. Peake for his testimony and asked speakers to submit their written remarks to the secretary.

Margaret Martini, an Incline Village, Nevada resident, appeared on her own behalf to speak in opposition to the regulation to hunt black bears. Ms. Martini asked the Legislative Commission members to be aware that adoption of R002-11 would displace many individuals who used the mountain recreation areas for the pleasure of the few hunters who wanted to hunt bears.

Ms. Martini addressed the following accountability topics:

- Accountability of the Governor to monitor the NDOW Commissioners and to listen to the views of constituents.

- Accountability of the Legislative Commission to listen to the electorate who could choose, depending on their actions, against re-election.
- Accountability to the many organizations who had joined together to support no bear hunting in Nevada.

Ms. Martini indicated that she found it "extremely disconcerting" that NDOW had "repeatedly" ignored public sentiment regarding the hunting of bears, a previously protected species in Nevada. It was Ms. Martini's opinion that NDOW continued with its own agenda and the wishes of a small number of hunters against the wishes of a greater number of Nevada citizens.

Ms. Martini said that because the regulation to hunt bear had been in the public eye since inception and had received a lot of negative press, there had been attempts by those in favor of the hunt to make it a Second Amendment issue, which she said was not the case. Ms. Martini pointed out that many hunters had signed petitions and expressed displeasure concerning the regulation to hunt bears.

Concluding her remarks, Ms. Martini thanked the members of the Commission for the opportunity to appear before them and asked that they listen to the public who stood in opposition to approval of Regulation R002-11.

Vice Chair Leslie thanked Ms. Martini for her testimony.

Kathryn Bricker, a resident of Zephyr Cove, Nevada, representing NoBearHuntNV.org, spoke in opposition to approving the bear hunt into permanent regulation. Approving the regulation, Ms. Bricker said, was in direct violation of the Board of Wildlife Commissioners' statutory duty to protect and preserve the state's wildlife under the provisions of *Nevada Revised Statutes* (NRS) 501.105. Ms. Bricker said that the claim by NDOW that the bear population could sustain a hunt was unsupported by the process of independent scientific review. Three groups of nationally acclaimed wildlife biologists, she said, independently and unanimously agreed that the analysis of the data by NDOW was flawed and that hunting Nevada's black bears threatened extinction of the population. Ms. Bricker read into the record the following excerpt by Rick Hopkins, Ph.D., an internationally recognized wildlife ecologist:

"In summary, NDOW has provided absolutely no information that would lead one to believe that bear populations have increased in the core area of Nevada in the last decade. It is my professional opinion that the Nevada Department of Wildlife fails to provide the detailed information about the unpublished population estimate as noted in the *Black Bear Population Assessment Methodology and Data Analysis in Nevada*: Nevada Department of Wildlife - 2011, and what information it does provide, it greatly exceeds the inference space of the available data, and the analysis fails to incorporate the spatial and

social complexity that truly represents the majority of the black bear population in Nevada . . .Hunting small populations is inherently risky. The uncertainty around these factors has not been suitably integrated and does not follow the precautionary rule that should govern management decisions related to small populations."

Ms. Bricker stated that Dr. Hopkins' conclusions were independently corroborated by the National Sierra Club's Committee for Wildlife and Endangered Species and other wildlife experts from all parts of the country. Those experts, she said, unanimously opposed the hunt, calling it "unsustainable" and in violation of the following sections of *Nevada Revised Statutes* (NRS), Chapter 501: NRS 501.100; NRS 501.105; NRS 501.181 and NRS 501.297.

Additionally, Ms. Bricker advised that after reviewing the data, the Big Wildlife organization and biologists from the Center for Biodiversity filed a petition with the Department of the Interior to have Nevada's "sky island black bear" population classified as a distinct population segment under the Endangered Species Act. The petition stated that Nevada's "sky island black bears" were in imminent danger of "extirpation or extinction."

Concluding her remarks, Ms. Bricker asked the members of the Legislative Commission to deny the NDOW's request to pass bear hunting into permanent regulation. Hunting bears in Nevada, she said, was contrary to an 82-year tradition of protecting bears from hunting, public sentiment, and scientific opinion.

Vice Chair Leslie thanked Ms. Bricker for her testimony.

Madonna Dunbar, Resource Conservationist for the Incline Village General Improvement (GID) District and a resident of the community, spoke in opposition to adoption of the bear hunt regulation. Ms. Dunbar discussed her work, as a Resource Conservationist, providing bear awareness education and services, such as teaching residents how to properly store trash and how to react when bears were in the community.

Ms. Dunbar advised that the Incline Village GID passed a resolution opposing the bear hunt in the Tahoe Basin and read Resolution Number 1796 into the record:

**"A RESOLUTION PROCLAIMING OPPOSITION TO BLACK BEAR HUNTING WITHIN  
THE BOUNDARIES OF INCLINE VILLAGE/CRYSTAL BAY, NEVADA**

**WHEREAS**, Nevada Revised Statute 318.143 empowers the District to acquire, construct, improve, and better lands for recreational purposes;

**WHEREAS**, under the above referenced Statute, the District has acquired, constructed, improved, and bettered lands for recreational purposes;

**WHEREAS**, many of the District's recreational venues are geographically dispersed and far removed from urban centers;

**WHEREAS**, many such lands are comprised of pristine or near pristine forests, and are unmarked or sparsely marked;

**WHEREAS**, hunting on or near such lands is inconsistent with their current use and would place the District's residents and guests who are using such lands for their intended purposes in unnecessary danger;

**WHEREAS**, hunting on lands near the Districts boundaries would increase the danger of wounded and non-urbanized bears entering the District's venues and neighborhoods;

**NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF TRUSTEES OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT** does hereby proclaim its opposition to any bear hunts within the Tahoe Basin."

Ms. Dunbar advised that when members of the community approached the Board of Trustees of the GID because of their concerns regarding the bear hunt, the Board was moved to issue a formal resolution.

Ms. Dunbar explained that although hunting currently existed for game other than bears in the Tahoe Basin, those animals were rarely seen. The bears, however, she pointed out were present as were people, which made for a potentially dangerous situation and the reason for the public focus.

Additionally, Ms. Dunbar discussed the Lake Tahoe Basin Prosperity Plan, which was being developed to reinvigorate the Tahoe economy. She advised that one of the economic clusters of the Plan included services for ecotourism [responsible travel to natural areas that conserved the environment and improved the well-being of local people] and geotourism, [tourism that sustained or enhanced the geographical character of a place—its environment, heritage, aesthetics, culture, and the well-being of its residents]. Ms. Dunbar asked the Commission members to take into consideration the millions of dollars at stake for nonhunt recreation in the Lake Tahoe economy and asked them not to adopt the bear hunt regulation.

Vice Chair Leslie thanked Ms. Dunbar for her testimony.



Eric Schwamberger, a resident of Zephyr Cove representing NoBearHuntNV.org, spoke in opposition to the adoption of the bear hunt regulation. Mr. Schwamberger discussed the importance of understanding that the bear population was a local population within the Lake Tahoe Basin. He pointed out that because the hunt was a local hunt within the Lake Tahoe Basin, any negative effects of the hunt on tourism, housing prices, and safety would affect the residents and businesses of the local community.

Mr. Schwamberger discussed the number of opinion polls taken by local newspapers within the Lake Tahoe Basin regarding the hunt and advised that a summary (Exhibit D) of those polls had been submitted for the record.

Mr. Schwamberger provided the following information concerning the newspaper polls:

In response to the *Nevada Appeal's* poll concerning whether Nevada should have a bear hunt, 62.72 percent voted no.

In response to the *Tahoe Daily Tribune's* poll concerning whether the Nevada Department of Wildlife should have approved a bear hunt, a total of 60 percent voted no; 9.16 percent of whom voted no because hunting bears could leave orphaned cubs.

In response to the *North Lake Tahoe Bonanza's* poll concerning whether bear hunting should be legalized in Nevada, 57.69 percent voted no.

In response to the *Reno Gazette Journal's* poll concerning whether a bear hunt should take place in Nevada, 87 percent voted no.

Mr. Schwamberger noted that during the original public comment period for the temporary regulation, about 3,000 emails were submitted concerning the bear hunt, 97 percent of which expressed opposition. It was clear, he said, that the population within the area overwhelmingly opposed the bear hunt because of the potential negative affect to the residents and businesses within the Lake Tahoe Basin.

Closing his remarks, Mr. Schwamberger indicated he believed there was neither good science nor good policy behind the regulation because public opinion regarding the economy and tourism was not addressed. Mr. Schwamberger asked the Commission to reconsider the areas of concern brought forward by the public and deny approval of a permanent bear hunt regulation.

Vice Chair Leslie thanked Mr. Schwamberger for this testimony.

Barry Lovgren, a private citizen, appeared before the Commission to address his concerns about the Commission on Mental Health and Developmental Services' (MHDS Commission) adoption of a revision to *Nevada Administrative Code* (NAC) 458 [abuse of alcohol and drugs]. Additionally, Mr. Lovgren advised that he had sent each Legislative Commission member a copy of a September 29, 2011, letter (Exhibit E) that addressed his concerns and which he asked be made a part of the record.

Although the revision to NAC 458 did not appear on the Commission's agenda, Mr. Lovgren said he had new information that he wished to provide. He explained that his "overriding concern" was the treatment of substance abusing pregnant women. During the 2011 Legislative Session, he said he testified concerning how treatment had dropped to half of what it had been during 2004 and currently was only a third of that.

Mr. Lovgren defined the problem concerning the revision of NAC 458 as multifaceted although his primary concern was that its provisions for detoxification technicians did not protect client health and safety. He indicated that no woman would attend detoxification treatment if it was known the detoxification technician was not certified and had not attended continuing education classes.

Mr. Lovgren said his letter spoke of how *Nevada Revised Statutes* (NRS) 433 had not been aligned with the Substance Abuse Prevention and Treatment Agency's (SAPTA) move from the Health Division to the Division of Mental Health and Developmental Services under Assembly Bill (A.B.) No. 2 of the 22nd Special Session, (2005). Thus, he said the Mental Health and Developmental Services Commission had no authority to adopt a revision of NAC 458. Mr. Lovgren said, however, there were problems that went beyond approval of the revised NAC 458.

Mr. Lovgren said, for example, NRS 484C.300, related to the evaluation of certain offenders before sentencing; had not been aligned with SAPTA's move to MHDS from the Health Division. He said, for example, NRS 484C.320, NRS 484C.330, and NRS 484C.340 allowed a defendant charged with driving under the influence (DUI) to go to treatment rather than jail or prison, while NRS 484C.350 required certain defendants to go to an evaluation center to determine if they needed treatment and NRS 484C.310 required that the State Board of Health, not the MHDS Commission adopt by regulation the standards to be used for approving the operation of a facility as an evaluation center and those regulations, he said, were in NAC 458.

Mr. Lovgren asked the Commission not to approve the regulations adopted by the MHDS Commission because it had no statutory authority to do so. The larger problem he said was that, as previously addressed, NRS 484C allowed a defendant charged with a DUI to go to a treatment program certified by the Health Division. He said, however, that the centers certified by MHDS were the only treatment options available since the programs and evaluation centers certified by the Health Division no longer existed. Nevada, he said, had not had an option for a defendant to elect treatment for years, which was not what the Legislature had in mind when it passed A.B. 2. Mr. Lovgren pointed out, however, that NRS 484C stood as written. While there was nothing ambiguous about the terms, Board of Health or Health Division, Mr. Lovgren pointed out that those persons who had requested treatment were being treated in programs certified by MHDS.

Mr. Lovgren acknowledged that the *Nevada Revised Statutes* could not be revised until the 2013 Legislative Session. He said that if a way out of the problem could not be found, DUI defendants, who could have been going into treatment, would instead be going into jail or prison, which would cost the counties and the state a fortune. Mr. Lovgren advised that he had asked Richard Whitley, who currently served as the Administrator of the Health Division and acting Administrator of MHDS, to consider emergency regulations for certification of evaluation centers under NRS 484C.310. He said, however, it appeared as though an option for treatment rather than jail would have to wait until the 2013 Session. The Health Division, he said, lost its authority to certify treatment programs when A.B. 2 revised NRS 458 to transfer that authority to MHDS. Mr. Lovgren indicated he believed that SAPTA should develop a belated legislative agenda for the 2013 Session. Additionally, he pointed out that there could have been other statutes affected by moving SAPTA to MHDS.

In his closing remarks, Mr. Lovgren thanked the Commission members for the opportunity to appear and asked that NAC 458 be returned to the Legislative Commission's Subcommittee to Review Regulations for further consideration.

Hearing no response to her request for additional public comment, Vice Chair Leslie advised that another opportunity would be provided for public comment following specific regulations the Commission would address and again at the end of the meeting.

## 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, referred to an October 18, 2011 letter (Exhibit G) addressed to the members of the Legislative Commission from Senator Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee. The letter advised that on October 17, 2011, the Audit Subcommittee met and heard audit reports for the following agencies:

- Office of Veterans' Services
- Department of Health and Human Services, Aging and Disability Services Division
- Department of Health and Human Services, Oversight of Child Care Facilities
- Department of Health and Human Services, Division of Child and Family Services
- Department of Conservation and Natural Resources, Division of Environmental Protection
- Review of Governmental and Private Facilities for Children, October 2011

Mr. Townsend provided the following summaries of reports for each of the audited agencies:

#### Office of Veterans' Services

The audit for the Office of Veterans' Services found that the Nevada State Veterans' Home did not have adequate controls to ensure revenues were billed timely or accurately and that outstanding balances were collected. The Veterans' Home did not bill for more than \$600,000 in services timely. Although the delay should not affect the amount of Medicaid and Medicare reimbursements eventually received, it was likely that some losses would occur from private-pay residents, who were not billed for several months. An example was one resident, who was not billed for ten consecutive months. The bill, when finally sent had an accumulated balance of nearly \$53,000.

It was also found that the Veterans' Home lacked adequate controls to ensure resident trust funds were properly safeguarded. Monthly bank reconciliations of the trust account were not completed for extended periods of time, and duties were not adequately segregated to help protect the \$181,000 average monthly balance in the resident trust fund.

The Audit Division made eight recommendations to the Office of Veterans' Services, which were accepted. Mr. Townsend advised that the Office of Veterans' Services had provided the Audit Division with information that they were taking quick action to resolve the problems.

#### Aging and Disability Services Division, Department of Health and Human Services

The audit for the Aging and Disability Services Division focused on performance measures and found that some measures did not accurately describe the performance of the programs. Descriptions for two performance measures for personal assistance services for adults with disabilities and persons with traumatic brain injuries did not accurately describe the information presented.

The Division reported the two programs saved the state \$8.8 million and \$1.8 million in fiscal year 2010 by diverting adults with disabilities and persons with traumatic brain injuries from institutional care. Mr. Townsend pointed out, however, that analysis revealed that the programs had saved the state only \$3.8 million and \$123,000 during fiscal year 2010. Additionally, the audit found that the Division used information to calculate performance measures that was not always accurate, and reports from providers used to calculate performance measures also contained inaccurate information.

Mr. Townsend advised that the audit report contained three recommendations to improve controls over performance measures, which the Division accepted.

#### Division of Child and Family Services, Department of Health and Human Services

The audit for the Division of Child and Family Services found that key performance measures reported by the Division were often not reliable. The reported results for 8 of the 20 performance measures tested were found to be unreliable because they were either not supported by competent underlying records or because an inappropriate methodology was used.

The audit also reviewed the Division's process for monitoring service contracts and found overall the Division had an effective process for monitoring the contracts. Mr. Townsend said, however, that the Division could improve its monitoring process to verify all insurance requirements were continuously met over the life of the contracts. The audit also found that for 1 of 30 contracts tested, the contractor's invoices did not include adequate detail, and the Division had limited assurance that the amounts billed were valid, accurate, and in accordance with the terms of the contract.

The audit made four recommendations accepted by the Division.

#### Oversight of Child Care Facilities, Department of Health and Human Services

The Bureau of Services for Child Care (Bureau) licensed, inspected, and investigated complaints of child care facilities in Nevada. During the audit, the Bureau was within the Division of Child and Family Services, but legislation, passed by the 2011 Legislature, moved the Bureau to the Health Division on July 1, 2011.

The audit for the Oversight of Child Care Facilities found that the Bureau did not always perform timely inspections of child care facilities or take timely action to help ensure fire and health inspections were performed by state and local fire and health authorities.

The audit found 7 of 50 child care facilities had untimely inspections. The untimely inspections ranged from 2 to 8 months late, with an average of 3.5 months late.

The audit also found that most child care facilities tested had timely fire and health inspections conducted by state and local fire and health authorities. However, 3 of 50 facilities did not have timely fire inspections, and 4 of 50 did not have timely health inspections.

Additionally, the Bureau's inspection process did not always ensure employees at child care facilities had child abuse and neglect checks required by state law. The audit found that 3 of 50 inspections had no evidence that the Bureau performed a child abuse and neglect check for any of the 18 employees at those facilities. Other problems during the inspection included instances where new employees were not being tested timely for tuberculosis.

The audit contained six recommendations, which were accepted by the Health Division.

#### Division of Environmental Protection, Department of Conservation and Natural Resources

The audit found that developing controls to consistently turn debt over to the State Controller's Office could assist the Division with collections and ensure the removal of delinquent debt.

Most bureaus, within the Division, did not submit debt that was over 60 days delinquent to the State Controller during fiscal year 2010 or 2011, as required by legislation passed during the 2009 Legislative Session. Since that time, the Division had forwarded only about \$84,000 of its approximately \$2 million in delinquent debt to the State Controller.

The audit found that although the Division had a strategic plan, its performance measures could be improved by focusing more on outcome-based measures, maintaining supporting documentation, and developing policies and procedures.

The audit also found there were some delays in renewing permits and that prompt issuance of permanent renewals would help ensure fees were collected and that permittee' operations were properly regulated.

The audit report contained nine recommendations, which were accepted by the Division of Environmental Protection.

#### Review of Governmental and Private Facilities for Children

*Nevada Revised Statutes* (NRS) 218G.570 through 218G.585 "authorized the Legislative Auditor to conduct reviews, audits, and unannounced site visits of governmental and private facilities for children."

The report included the results of the reviews of six children's facilities, unannounced site visits to 10 children's facilities, and surveys of 52 children's facilities.

The review found that, except as otherwise noted, policies, procedures, and processes at five of the six facilities reviewed provided reasonable assurance for the adequate protection of the health, safety, and welfare of youth at the facilities and that the civil and other rights of the youth were respected by employees. Additionally, during the 10 unannounced site visits, nothing was found that caused the auditors to question the health, safety, welfare, or protection of rights of the children in those facilities.

One facility, Eagle Quest of Nevada, however, did not provide reasonable assurance that they adequately protected the health and safety of youth in its care. Eagle Quest of Nevada was a foster care agency that recruited foster parents and placed youth in foster-parent homes or in homes that the agency provided.

During the year that ended June 30, 2010, the agency had an average of 38 homes of which the auditors visited five. After observing significant problems at one of the higher-level-of-care homes, Clark County's Department of Family Services was contacted and an investigation was initiated. The six foster children in the home were moved to other homes the evening of the visit. Additionally, one youth's medication file contained three different medication logs for the same medication for the same month. Consequently, the auditors were unable to determine whether the youth was overmedicated, undermedicated, or if the medication logs were erroneously completed. Since the review, Eagle Quest had indicated significant changes had been made to its operations.

Overall, all six of the facilities reviewed needed to develop and update policies, procedures, and medication administration processes. Youth medical files did not always contain clear and complete documentation of dispensed prescribed medication although "recent actions should help improve medication administration." The report for the Review of Governmental and Private Facilities for Children, issued by the Audit Division in December 2010, contained a recommendation for the improvement of training at the facilities. Information received from a number of the facilities indicated training had been strengthened. In addition, the 2011 Legislature passed Senate Bill (S.B.) No. 246, which required children's facilities to adopt a policy concerning the administration and management of medications. The bill also required facilities to ensure that employees who administered medication received a copy of the policy and understood it.

The review also found that five of the six facilities needed to improve their background check policies and procedures. In one instance, the review discovered an employee with a felony conviction for possession and trafficking of a controlled substance continued employment for over two years. Additionally, the review discovered that an employee had not been fingerprinted until 16 months after being hired. Assembly Bill (A.B.) No. 536 of the 76th Session (2011), strengthened background check requirements for employees of facilities that provided residential services to youth.

Having concluded his presentation, Mr. Townsend advised that Senator Leslie, in her capacity as Chair of the Audit Subcommittee, had recommended that the Legislative Commission accept the reports.

Vice Chair Leslie recognized Senator Settelmeyer, who asked Mr. Townsend whether state agencies' failure to turn delinquent debt over to the Office of Controller after 60 days, as required by legislation passed in 2009, had become a recurring theme.

Mr. Townsend explained that, in some cases, agencies were not familiar with or did not understand the requirement to turn the debt over after 60 days. He explained that agencies could request a waiver from the State Controller to extend the 60-day period to 90 days if the agency needed additional time to attempt to collect the debt. In another instance, it was revealed that receivables records were inaccurate and had to be corrected before being sent to the Controller. Mr. Townsend acknowledged that failure to turn delinquent debt over to the Controller appeared to be a recurring theme among agencies being audited. He said, however, agencies were being encouraged to work with the State Controller to either collect or write off the debt.

Vice Chair Leslie recognized Assemblyman Stewart who expressed his appreciation for the work accomplished by the Audit Division and asked for information on the implementation of the audit recommendations.



Mr. Townsend advised that the implementation of the audit recommendations would be addressed in the next agenda item.

Vice Chair Leslie recognized Assemblywoman Smith, who asked whether the audits could determine that the reduction in staff had affected agency performance.

Mr. Townsend indicated that understaffing had not been cited in the audits before the Commission or in the audits on which the Audit Division was currently working. He spoke, however, of how the loss of staff through turnover could negatively affect the performance of agencies that lacked adequate policies and procedures. Mr. Townsend said, for example, that after the loss of staff, the Veterans' Home billing process was negatively affected because of a lack of appropriate policies and procedures. He advised that reduced staffing would be taken into consideration as the auditors continued their work.

Vice Chair Leslie thanked Mr. Townsend for his presentation and indicated a discussion on how reduced staffing affected the performance of state agencies had been discussed in the recent Audit Subcommittee meeting.

Vice Chair Leslie indicated she would entertain a motion to accept the six reports.

SENATOR SETTELMAYER MOVED TO ACCEPT THE SIX AUDIT  
REPORTS PRESENTED BY THE LEGISLATIVE AUDITOR.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION WAS UNANIMOUSLY APPROVED.

- 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, referred to an October 18, 2011, letter addressed to the members of the Legislative Commission from Senator Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee. The letter included a summary (Exhibit H) of the implementation status of the audit recommendations as reported in the six-month reports reviewed by the Audit Subcommittee on October 17, 2011. Mr. Townsend mentioned that regulations were adopted by the Legislative Commission, and procedures were followed by the Audit Subcommittee to provide for the process.

Mr. Townsend explained that the Audit Subcommittee last met in December 2010, and since that time, 16 six-month reports had been received. The summary, he said, reflected that 88 recommendations were fully implemented, 33 were partially implemented and four had received no action.

Mr. Townsend next referred to a schedule (Exhibit I) entitled, "Legislative Auditor Analysis of Six-Month Reports Presented to the Audit Subcommittee," updated on October 17, 2011. Page 2 of the schedule listed 114 recommendations as fully implemented and 11 as partially implemented. Mr. Townsend reported that the partially implemented recommendations were discussed at the recent Audit Subcommittee meeting and would continue to be monitored by the Audit staff.

Having concluded his presentation, Mr. Townsend advised that the Audit Subcommittee recommended that the Legislative Commission accept the 16 six-month status reports.

Vice Chair Leslie recognized Assemblyman Stewart, who asked for information concerning the delay on the recommendations for which no action had been taken.

Mr. Townsend reported that three of the recommendations on which there was no action were for the Department of Education Programs for the Innovation and Prevention of Remediation. The Audit Division, he explained, was statutorily required to perform audits for funding received through grants, and the last time grant funds were awarded for the Programs for the Innovation and Prevention of Remediation was in fiscal year 2009. Thus, after the Department of Education's review, it was determined that some recommendations could not be considered fully implemented because of program inactivity. After working with Department of Education staff, Audit staff determined that processes had been established to ensure that if future grant funds were received, the Department would be in good position to move forward with the recommendations.

The other recommendation, on which there was no action, referred to Contracts with Consultants that had been pending approval of State Administrative Manual policies by the Board of Examiners. The Board met in October and approved the policies concerning Contracts with Consultants. Thus, Mr. Townsend indicated the four recommendations reported as having no action would be considered fully implemented.

Vice Chair Leslie indicated she would entertain a motion to accept the Audit Subcommittee's recommendation to approve the summary of the six-month status reports.

SENATOR SETTELMAYER MOVED TO APPROVE THE SUMMARY OF THE SIX-MONTH STATUS REPORTS PRESENTED BY THE LEGISLATIVE AUDITOR.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Vice Chair Leslie announced Chair Horsford had arrived in Las Vegas and that she would turn the duties of the Chair over to him. Before doing so, however, Vice Chair Leslie, on behalf of the Commission members, commended Mr. Townsend and his staff for their work.

Chair Horsford indicated the meeting would continue with Item II. C.

C. Approval to Issue Request for Proposal to Conduct Performance Audit of State Board of Medical Examiners by Federation of State Medical Boards of the United States, Inc. – Paul V. Townsend, Legislative Auditor

Paul Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau, referred to a letter (Exhibit J) dated October 13, 2011, concerning the Nevada State Board of Medical Examiners (Board). Attached to the letter was a copy of *Nevada Revised Statutes* (NRS) 630.127, (Exhibit K), which provided that a performance audit of the State Board of Medical Examiners be conducted by the Federation of State Medical Boards of the United States, Inc. (FSNB) at least once every 8 years. The initial audit was conducted in 2003. The statute also provided that if the Legislative Commission determined that the FSNB did not have the ability to conduct fair and impartial performance audits of the Board, the Legislative Commission would direct the Audit Division of the Legislative Counsel Bureau to conduct the audits.

Mr. Townsend reported that it had been 8 years since the last performance audit was conducted and asked for the Commission's approval to issue a request for proposal on behalf of the Legislative Commission to the Federation of State Medical Boards of the United States, Inc. to conduct a performance audit of the Nevada State Board of Medical Examiners. Mr. Townsend advised that once the proposal was received, it would be available for review during the next meeting of the Legislative Commission.

Chair Horsford indicated he would entertain a motion to issue a request for proposal.

ASSEMBLYMAN STEWART MOVED APPROVAL TO ISSUE A REQUEST FOR PROPOSAL TO CONDUCT A PERFORMANCE AUDIT OF THE STATE BOARD OF MEDICAL EXAMINERS BY THE FEDERATION OF STATE MEDICAL BOARDS OF THE UNITED STATES, INC.

SENATOR DENIS 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, provided the following information on six cases currently in progress:

- 1) In the case challenging the legality of Nevada's voting districts under the United States Constitution and the Voting Rights Act, Assemblyman John Ocegüera, Assemblywoman Debbie Smith, and Senator Michael Schneider were named as defendants.

The Legal Division filed a motion to dismiss on behalf of the named legislators claiming that the wrong parties were sued, and the plaintiffs had failed to state a claim upon which the court might grant relief of Nevada's sovereign immunity and federal common-law doctrine of legislative immunity. The defendants' reply was expected in mid-November.

- 2) In the case challenging the constitutionality of the mining claim fee imposed during the 26th Special Session (2010) – *Nevada Revised Statutes* (NRS) 517.187, the First Judicial District Court in Carson City, on May 31, 2011, held that the statute imposed an unconstitutional tax on mining claims. The Court decided that only a tax on net proceeds of extracted minerals was constitutional.

During the 2011 Legislative Session, the Legislature passed Senate Bill (S.B.) 493, which repealed the fee imposed on certain filings regarding mining claims and provided for credit, or, in some cases, a refund of that tax money. A motion to dismiss the case was filed by the mining companies because of the enactment of S.B. 493. They claimed that there were no issues remaining. The state asked that the merits of the case be determined despite the enactment of the statute so that the issue could be resolved.

On October 24, 2011, the parties filed a stipulation asking the court not to determine the briefing schedule but instead to resolve the issue of the motion to dismiss first, which was still pending with the court.

- 3) The federal and state Red Rock Canyon cases were still pending with nothing new to report since the Legislative Commission's meeting on August 24, 2011.
- 4) The Commission on Ethics v. Carrigan case challenged the constitutionality of *Nevada Revised Statutes* (NRS) 281.501. In 2010, the Nevada Supreme Court held that voting by an elected public officer on public issues was protected speech under the First Amendment. In June 2011, the United States Supreme Court reversed that decision, and the Legislature filed a request for amicus brief to defend the constitutionality of NRS 281.50, which was currently being reconsidered.
- 5) The Deutsche Bank National Trust Company for the American Home Mortgage Company case challenged the constitutionality of the Nevada Foreclosure Mediation Program under the administration of the Nevada Supreme Court. The Legal Division filed an amicus brief on behalf of the Legislature defending the constitutionality of the program. On August 23, 2011, the District Court entered a decision in the case and held that the Foreclosure Medication Program was constitutional.
- 6) On October 7, 2011, the Arena Initiative Committee sued the Nevada Legislature and the Secretary of State asserting that Senate Bill (S.B.) No. 495 of the 76th Session (2011) was unconstitutional. Senate Bill 495 proposed that a competing measure to the statutory initiative sponsored by the Arena Initiative Committee be placed on the 2012 General Election ballot.

The complaint alleged that S.B. 495 did not address the same subject matter as the Arena petition and, therefore, violated the constitutional provision, which authorized the Legislature to propose a competing measure. The complaint further alleged that S.B. 495 violated the single subject rule for initiative petitions. Based on those allegations, the complaint sought to enjoin the Secretary of State from including the measure on the ballot. The Legal Division would, on November 21, 2011, file an answering brief on behalf of the Legislature defending the constitutionality of S.B. 495.

There being no questions from the members of the Commission on Item III. A, Chair Horsford moved to Item III. B.

B. Appointment of Members to Interim Task Force on Out-of-School-Time Programs (Assembly Bill No. 362 of the 76th Session (2011)) –

Lorne Malkiewich, Director, Legislative Counsel Bureau (LCB), referred to a revised list of names (Exhibit L) for appointment to the Interim Task Force on Out-of-School-Time Programs. The revised list was distributed to the Commission members prior to the meeting.

Mr. Malkiewich recalled that the appointment of members to the Interim Task Force had also appeared on the August 24, 2011, agenda but had been held to allow additional time for the submission of names. As a general informational note, Mr. Malkiewich advised that the LCB Informational Technology Services Unit, at his request, developed a link on the Legislative website to provide members of the public access to apply to serve on legislatively-appointed committees. Mr. Malkiewich explained that numerous bills, passed during the 2011 Legislative Session, required appointments of persons who were not legislators. Because it had appeared members of the public were not aware of the appointments, the link was developed to generate volunteers to serve on those committees.

Continuing, Mr. Malkiewich advised that the Interim Task Force on Out-of-School-Time Programs was required to generate a report by the end of June 2012, and the Legislative Commission, under the provisions of Assembly Bill (A.B.) No. 362 of the 76th Session (2011), was required to appoint 7 of the 12 members. Mr. Malkiewich asked whether the Chair wanted to review each of the names on the list.

Chair Horsford deferred to Assemblywoman Smith for a list of recommended names, which he said he would take as a motion.

Assemblywoman Smith, a bill sponsor, said that after speaking to persons interested in serving on the Task Force, she would move to appoint those on the list who would address the point of the Task Force and provide a geographical balance.

ASSEMBLYWOMAN SMITH MOVED APPROVAL FOR THE APPOINTMENT OF BETH KOLACKI, JULIE WILLIS-LEON, DANIELLE BOWEN, MATT SCHRADE, JAMIE BURNETT, REVEREND ROBERT FOWLER, RENEE CAUDILL, AND KELLI SEALS TO THE INTERIM TASK FORCE ON OUT-OF-SCHOOL-TIME PROGRAMS.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Horsford expressed his thanks to those who had submitted their names and were willing to serve on such an "important initiative." The Chair indicated that he looked forward to the recommendations of the Task Force.

C. Appointment of Members to Nevada Silver Haired Legislative Forum,  
*Nevada Revised Statutes* (NRS) 427A.320 – Lorne Malkiewich, Director

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that a memorandum (Exhibit M), from Mary Shope, regarding the appointments to the Nevada Silver Haired Legislative Forum was distributed to the members of the Commission prior to the meeting.

Continuing, Mr. Malkiewich explained that the Legislative Commission was required to appoint to the Nevada Silver Haired Legislative Forum the number of members equal to the number of state Senators. Appointments, he said, were required to be made before December 31 of the second year of a member's term. The terms were staggered with about half being appointed each year.

Mr. Malkiewich advised that there would be additional appointments during the next meeting. He said, however, the two nominees for appointment during the current meeting were Mr. Rick Kuhlmeier by Senator Denis and Mr. Clare Tobler by Senator Hardy.

Chair Horsford indicated he would entertain a motion for approval of the nominees.

SENATOR DENIS MOVED APPROVAL FOR THE APPOINTMENT  
OF MR. RICK KUHLMEY AND MR. CLARE TOBLER TO THE  
NEVADA SILVER HAired LEGISLATIVE FORUM.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

IV. LEGISLATIVE COMMISSION POLICY:

- A. Review of Administrative Regulations –  
Brenda J. Erdoes, Legislative Counsel  
Please see attached list of regulations to be considered or access list electronically at  
<http://www.leg.state.nv.us/register/Indexes/RegsReviewed.htm>

Chair Horsford asked the members to identify the regulations that had been determined to require additional discussion.

The following regulations were held:

R003-11, R013-11, R044-11, and R048-11 held by Assemblyman Stewart  
R012-11 and R020-11 held by Assemblywoman Smith  
R035-11 held by Assemblywoman Kirkpatrick  
R002-11 and R045-11 held by Senator Leslie  
R010-11 held by Senator Settlemeyer  
R-017-11 and R018-11 held by Senator Denis

Lorne Malkiewich, Director, Legislative Counsel Bureau, noted, for the record, that none of the 2010 regulations were requested to be held and that the regulations for 2011 requested to be held for discussion were: R002-11, R003-11, R010-11, R012-11, R013-11, R017-11, R018-11, R020-11, R035-11, R044-11, R045-11, and R048-11.

Hearing no response to his request for public testimony, Chair Horsford entertained a motion to approve the regulations not held for additional discussion.

ASSEMBLYWOMAN KIRKPATRICK MOVED FOR THE  
APPROVAL OF R056-10, R134-10, R146-10, R006-11,  
R007-11, R009-11, R011-11, R014-11, R015-11, R016-11,  
R021-11, R022-11, R023-11, R028-11, R030-11, R031-11,  
R037-11, AND R039-11.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 002-11

A REGULATION relating to wildlife; establishing provisions relating to the hunting of black bears; prohibiting a person from baiting a big game mammal or knowingly hunting a big game mammal that was baited by another person; prohibiting a person from selling, purchasing, bartering, or trading the gall bladder of a bear; and providing other matters properly relating thereto.

Chair Horsford asked Department of Wildlife (NDOW) representatives to respond to concerns previously expressed by members of the public.

Richard Haskins, Deputy Director, Department of Wildlife (NDOW) identified himself for the record and expressed uncertainty on how to proceed.



Vice Chair Leslie recalled public safety as being one of the largest concerns expressed in public testimony and asked Mr. Haskins to begin with how public safety was addressed within the regulation.

While public safety was a concern, Mr. Haskins explained that the regulation was generally administrative and outlined NDOW stipulations concerning bear hunting. Noting that the concern appeared to be primarily in the Tahoe Basin, Mr. Haskins said that although the current bear hunt was the first in Nevada, hunting for mule deer, mountain lions, and blue grouse had been ongoing. Additionally, he explained that bears as well as other species had been hunted on the California side of the Lake Tahoe Basin for decades. Additionally, Mr. Haskins explained a mandatory indoctrination had taken place for all bear hunters prior to receiving their tags during which safety concerns were addressed. Mr. Haskins also noted that to date all of the bears harvested had been in mountain ranges other than the Tahoe Basin.

Senator Leslie asked whether the Tahoe Basin's density and year round outdoor recreation activity were considered when the Wildlife Commission was in the process of developing the regulation.

Mr. Haskins advised that the local counties within the Tahoe Basin had various ordinances restricting the discharge of firearms that effectively precluded areas adjacent to the populated areas from being affected. The Commission's evaluation, he said, was that county ordinances would adequately address the interface area with the public.

In response to Senator Leslie, who asked whether the Tahoe Rim Trail was included in the area described, Mr. Haskins indicated it was his understanding that portions of the Tahoe Rim Trail were not included.

Senator Leslie said that the safety of the public using the Tahoe Rim Trail was of great concern to her as it was for the citizens who had testified earlier in the morning.

In response to Senator Leslie, who asked about signage at the trailheads, Mr. Haskins advised that NDOW "traditionally" posted area boundary signs across the state to inform hunters about leaving one area and entering another. Although uncertain whether the U.S. Forest Service had posted the sign discussed earlier in the meeting, Mr. Haskins indicated that NDOW could look into posting signs at the trailheads in the future.

Senator Leslie asked whether NDOW would be opposed to posting signs for individuals using the Tahoe Rim Trail.

Mr. Haskins said NDOW would work with land management agencies if a determination was made to post signs. He said, however, hunting activity had occurred in that area for decades and to date had not been a matter of concern.

Senator Leslie said that signage would be a good idea since there were so many individuals using the Tahoe Rim Trail.

Senator Leslie asked for information concerning the prohibition against selling the gall bladder of a bear.

Mr. Haskins advised that the prohibition was placed in the regulation to prevent the illegal marketing of bear gall bladders, which were highly sought after across the world. Black bears, he said, allegedly were poached in areas of the country solely for the purpose of obtaining their gall bladders.

Senator Leslie asked whether NDOW had enough game wardens to monitor poaching bears for their gall bladders.

Mr. Haskins advised that NDOW had dedicated the resources necessary for the initial part of the hunt. He said, however, that Nevada covered a large area and with the many seasons occurring at the same time, NDOW could use more game wardens.

Senator Leslie expressed concern that NDOW did not have enough game wardens to monitor the provisions of the regulation related to the hunting of black bears. Additionally, Senator Leslie asked Mr. Haskins to discuss the provision of the regulation related to female black bears and their bear cubs.

Mr. Haskins referred to section 1, subsection 5 of the regulation that read "*It is unlawful for any person to: (a) Kill a female black bear that is accompanied by a black bear cub; or (b) Kill or possess a black bear cub. As used in this subsection, "black bear cub" means any black bear which is less than 1 year of age or less than 50 pounds.*"

In response to Senator Leslie, who asked how a hunter knew if the target was a female or a male, Mr. Haskins advised that most black bears were hunted with dogs and were treed. He said it was incumbent upon the hunter to observe the animals they were harvesting, and a liability was placed on the hunter to ensure they did not harvest a female with cubs.

Senator Leslie asked how NDOW would know if a hunter harvested a female bear by mistake.

Mr. Haskins explained that female bears could be harvested as a part of the quota system that was established to limit the number of females to be harvested at 6 after which the season would be closed. It was illegal, however, to harvest a female bear with cubs.

Senator Leslie reiterated her concern that the Tahoe Basin was an outdoor recreation area widely used by the public and an inappropriate area for bear hunting.

Senator Denis noted that California had long allowed bear hunting and asked whether any problems had been encountered on the California side of the Tahoe Basin.

Mr. Haskins advised NDOW had corresponded with California game wardens who indicated they could not recall any problems in recent years.

In response to Senator Denis, who asked whether Nevada had encountered any safety problems with other hunts, Mr. Haskins advised that he was unaware of the occurrence of any firearm-related incidents.

Assemblyman Hansen commented that he had received correspondence from NDOW Chief Game Warden, Rob Buonamici, who indicated there had not been a single case of documented black bear poaching in Nevada. Assemblyman Hansen asked Mr. Haskins to comment on the accuracy of Mr. Buonamici's statement.

Mr. Haskins confirmed that, to the best of his knowledge, Mr. Buonamici's statement was accurate.

Senator Leslie asked how many game wardens were specifically looking for poaching of black bears.

Mr. Haskins said that during the initial part of the season NDOW, in coordination with local law enforcement agencies, increased the level of staff activity. Initially, he said, one warden was assigned to cover an area. He said, however, that, depending on activity levels, staff was rotated around the state.

In response to Senator Leslie, who asked for the number of square miles included in the areas to which wardens were assigned, Mr. Haskins indicated that he could only guess but confirmed the areas were large.

Chair Horsford asked for public comment and asked that those wishing to speak limit their remarks to three minutes.

Elaine Carrick, a representative of NoBearHuntNV.org, Reno, Nevada, spoke in opposition to the bear hunt regulation. Ms. Carrick's remarks were specific to the language in the following two provisions of the regulation, which she defined as "significantly flawed:"

Section 1, 3 (b) stated that "Within 72 hours after harvesting the black bear," a hunter would "personally present the skull and hide to a representative of the Department for inspection."

In reference to the first provision, Ms. Carrick pointed out that while the skull and the hide were trophies hunters wanted, the bear gall bladder, used in traditional Chinese medicine, could sell for \$5,000 to \$10,000. The regulation, Ms. Carrick noted, only prohibited a person from selling the gall bladder, which she said was not sufficient. Ms. Carrick maintained that if a hunter was required to present the skull and hide to the Department of Wildlife (NDOW), the hunter should also be required to present the gall bladder. In addition to gall bladders, Ms. Carrick advised that bear paws were sold to make bear paw soup and other dishes considered a delicacy in Asian cooking. The front paws, she said, could be sold for \$250 each, and although selling of such parts was illegal, the practice did occur.

Ms. Carrick pointed out that the language in the regulation did not adequately prevent the illegal selling of bear gall bladders and bear paws, and because bear gall bladders and paws could be sold for high prices, poaching had become a big business. In California, she said, poaching of wildlife, including bears, had become a significant problem with violations more than doubling in recent years. Ms. Carrick warned that with so few game wardens monitoring hunting in Nevada, bear poaching could become a problem.

Section 1, 5 (a), stated that "It is unlawful for any person to: Kill a female black bear that is accompanied by a black bear cub. "

In reference to the second provision, Ms. Carrick pointed out that a hunter could not know if a bear, running through the woods, was a lactating female with cubs or a pregnant female. She said that it was well known that female bears sensing danger sent their cubs into the trees making it difficult for a hunter to see. Additionally, Ms. Carrick said female bears could forage for food up to two miles away from their cubs.

Bear families, Ms. Carrick explained, emerged from their dens in March and April when the cubs were about 6 months old. The cubs, she pointed out, would not survive without their mother because they were nursed through the summer and sometimes again the following spring with the family staying together until the cubs were between 16 and 18 months old. During that time, the cubs were taught how to forage and stay alive. Ms. Carrick noted that the regulation lacked provisions to rescue cubs that, without their mother, would die of starvation in the wild or be attacked and killed by predators.

Additionally, Ms. Carrick provided a copy of a Humane Society of the United States (HSUS) report (Exhibit N) that opposed the bear hunt regulation. The HSUS report provided scientific evidence that related to why the bear hunt could harm the bear population in Nevada.

Concluding her remarks, Ms. Carrick asked the Commission not to approve the bear hunt regulation.

Sherine Kuckhoff spoke in opposition to the bear hunt and reported that as of October 25, 2011, the "dead bear count" remained at 10 with 4 adult females, defined as sows, and 6 adult males, defined as boars. Ms. Kuckhoff told the Commission there had been no reason to kill the 10 wild bears that had not been tagged or tattooed as nuisance bears.

Ms. Kuckhoff noted that Carl Lackey, a biologist for NDOW, endorsed the policy of managing bears by harvesting or more definitively, she said, by killing them to help avoid the potential danger the bears posed to people. Ms. Kuckhoff, however, discounted the idea that wild bears posed a threat to people. While there was no proof that black bears attacked humans, she allowed that an exception might be a mother bear protecting her young. Ms. Kuckhoff also said that bears could be driven to react and made to become aggressive as an excuse to kill them. She said, however, that Nevada's black bears were not predatory by nature and predominantly ate berries, fruit, and grubs.

Continuing, Ms. Kuckhoff said there was no way of determining the gender of a bear until the bear was dead. The 4 sows that were shot, she said, had either given birth to cubs in February or were pregnant as of June or July. The cubs, born in February, would only be 6 to 8 months old as of October 26, 2011. Ms. Kuckhoff pointed out, however, that as previously discussed, the cubs could not exist without their mothers who would still be nursing them, providing them protection and shelter, preparing them for the approaching winter, and seeking a den for their hibernation. The reality, she said was not 4 dead sows, but rather 8 dead bears and perhaps more depending on the number of cubs that would die without their mothers.

Ms. Kuckhoff indicated it was her understanding that hunters had to call NDOW prior to hunting to determine the number of sows killed to date because the Wildlife Commission set a limit of 20 bears that could be killed and no more than 6 females could be killed before the hunt was automatically stopped. Ms. Kuckhoff told the members of the Commission, however, there was no way of knowing when the hunt was truly over because hunters would be determined to try for a trophy kill, and poachers would be determined to kill bears for the purpose of harvesting the parts they could sell.

Ms. Kuckhoff asked the Commission members to consider how best to really manage black bears. It was her understanding that there were perhaps 34 game wardens in the entire state and only 4 or 5 involved in policing the hunting of black bears in all the areas of the state where the hunt was permitted. Noting that NDOW was understaffed, she advocated correcting the department's budget and asked the members of the Commission to consider the wishes of the voters who were opposed to approval of the bear hunt regulation.

Christine Schwamberger, an attorney, and a member of NoBearHuntNV.org spoke in opposition to the adoption of the bear hunt regulation. Ms. Schwamberger's remarks were specifically directed to the black bear population and public safety.

In response to earlier statements concerning the black bear populations in California and Nevada, Ms. Schwamberger said that very little bear hunting occurred on the California side of the Lake Tahoe Basin. She explained that California hunters had vast unpopulated wilderness areas to the north of the state in which to hunt the state's large bear population, but bear hunters in Nevada could only hunt in the Tahoe Basin and in a few other outlying areas.

Ms. Schwamberger discussed NDOW's assertion that Nevada's black bear population was increasing by 16 percent annually despite statements and academic research for which she provided excerpts (Exhibit O) that the population was stable. Ms. Schwamberger advised that academic research and NDOW publications reported that the black bear population had stayed at approximately 150 to 300 bears since 1990 despite challenges to their habitat.

Ms. Schwamberger reported that in 2002 UNR doctoral candidate Jon P. Beckman submitted a dissertation entitled, "Changing Dynamics of a Population of Black Bears (*Ursus americanus*) Causes and Consequences." Dr. Beckman concluded that the bear population at Lake Tahoe, because of habitat degradation, was shifting rather than increasing. The bear habitat, she said, had been seriously degraded since 1987 because of residential construction, drought, and fire, which forced bears into urban areas to forage for food. Ms. Schwamberger said that prior to 1987, there were no nuisance bears. Once bears moved into urban areas to find food, however, they stayed and effectively depopulated their wilderness habitat.

Ms. Schwamberger said that the hunt was a serious threat to a bear population already suffering from serious habitat degradation and was in violation of the provisions of *Nevada Revised Statutes* (NRS) 501.105 that required the Wildlife Commission to preserve, protect, and manage bears. Additionally, she said the bears did not need managing, but the Wildlife Commission needed to be encouraged to restore the wild bear habitat in the Lake Tahoe Basin.

Addressing the public safety aspect of the bear hunt, Ms. Schwamberger provided copies of an article (Exhibit P) from the *Reno Gazette Journal* about a hiker in Oregon killed by a 12-year old bear hunter. She also reported that in 2008, also in Oregon, a woman hiker was killed by a teenage bear hunter.

Concluding her remarks, Ms. Schwamberger asked the Commission members not to adopt the bear hunt regulation.

Eric Schwamberger, a member of NoBearHuntNV.org, spoke in opposition to the bear hunt regulation. Testimony, he said, had been provided relative to public opposition to the bear hunt and concerns regarding safety, the effect of the hunt on small business, economics, and tourism. Additionally, he said concerns were expressed regarding the "fundamental basis for the regulation and the science behind it."

Mr. Schwamberger said previously published peer-reviewed literature stated that the bear population was stable and remained small. Only recently, he said, had there been assertions that the population might be statistically larger than previously estimated. Those estimates, however, and the data on which they were based had not been fully peer-reviewed. In the absence of peer review, Mr. Schwamberger questioned the interpretation of the model results for population increase and asked why adoption of the regulation could not have waited for an adequate peer review of the most recent bear population data.

Mr. Schwamberger advised that one of the statements made by the Wildlife Commissioners during passage of the original temporary regulation was that the results of the current bear hunt would be considered in determining whether the bear hunt should be made permanent. He pointed out, however, that the permanent regulation was passed only three weeks after the initiation of the hunt without consideration of the cost of the current hunt, safety, or opposition by the public. Mr. Schwamberger asked again why adoption of the regulation could not be postponed until the data obtained from the current hunt could be studied.

As previously indicated, Mr. Schwamberger said that data collection had focused on nuisance bears largely from urban areas around Lake Tahoe, and he pointed out that the Department of Wildlife (NDOW) did not distinguish between the population size of urban bears and wild bears. Mr. Schwamberger indicated that members of NoBearHuntNV.org had questions concerning whether the wild bear segment of the population was being adversely affected by the hunt.

Mr. Schwamberger said that the Wildlife Commission had also stated that a year-by-year determination could be made concerning the number of tags and the number of bears to be hunted. While he said such a determination might be easily made for fish or mule deer, which were statewide and well characterized, it would be difficult for bears because there was no ongoing data collection mechanism within NDOW for such a determination. With a small bear population at risk because of habitat degradation, Mr. Schwamberger asked again why the adoption of the bear hunt regulation could not be postponed.

Concluding his remarks, Mr. Schwamberger asked the Commission members not to adopt the bear hunt regulation because of public safety and economic concerns as well as public opposition.

Billy Howard, a Reno, Nevada resident and a member of NoBearHuntNV.org, advised that contrary to previous testimony that black bears had not been poached in Nevada, a bear was poached and left on Peavine Mountain about two months ago. Mr. Howard reported that a bear's gall bladder, skin, hide, head, teeth, and claws were worth about \$20,000, which made evidence of poaching difficult to find. Studies, he said, showed that states that allowed bear hunts attracted poachers while those states that did not allow bear hunts did not.

Mr. Howard reported that under the provisions of *Nevada Revised Statutes* (NRS) 233B.061, an agency would fully consider all written and oral submissions submitted for a proposed regulation. In January 2011, Mr. Howard said NoBearHuntNV.org received a disc from NDOW that contained 4,875 pages of communications sent to NDOW regarding the bear hunt before the December 2010 vote on the regulation. Members of NoBearHuntNV.org, he said, "painstakingly" went through the document to obtain a count of the public's position. Mr. Howard explained that all duplicate emails were removed, and email sent by the same person more than once even if different text was written on different days was not counted. The final tally found that:

- 6 individuals could not support the bear hunt regulation as written but could support it if the regulation was reworked with stipulations
- 56 individuals supported the bear hunt regulation
- 3,028 individual emails were against the bear hunt

Mr. Howard recalled that when the temporary bear hunt regulation was voted on during the December 2010 meeting of the Board of Wildlife Commissioners, Chair Scott Raine, stated, on the record, that the number of emails for and against the bear hunt was 50:50. At that meeting, Mr. Howard said 42 members of the public spoke against adoption of the bear hunt regulation and 19 spoke in favor. At the February 2011 meeting of the Board of Wildlife Commission, representatives of NoBearHuntNV.org entered their findings into the record and asked that the regulation be tabled in consideration of the growing public consternation, and no action was taken.

Mr. Howard testified that since February 2011, NoBearHuntNV.org had continued to collect public comments on the hunt and currently had 7,203 online signatures. During the summer, he said, NoBearHuntNV.org representatives began a "hard copy person-to-person on the street petition drive" and had thus far gathered a total of 7,775 signatures.



Additionally, Mr. Howard said NoBearHuntNV.org had collected 78 articles and letters to the editor, dozens of which were against the hunt although a few were for it, and 15 letters from hunters who were against the bear hunt because it had no benefit to the species itself. Mr. Howard indicated that the bear hunt was solely a trophy hunt and that no one sustained their family on bear meat. Many hunters, he said, believed hunting culled a species in need and that the harvested meat was to be shared with family, friends, and sometimes nonprofit organizations. Mr. Howard said that many hunters also believed that hunting 20 bears out of a small population of 150 to 200 bears was not sustainable.

Concluding his remarks, Mr. Howard reported that NoBearHuntNV.org had collected a total of 18,919 communications against the bear hunt, which he provided on a flash drive (Exhibit Q) for the record.

Donald A. Molde, M.D., a Reno, Nevada resident, spoke in opposition to the adoption of the bear hunt regulation and more specifically to the provision in the regulation that allowed for the use of dogs to pursue bears in an unrestricted manner.

Dr. Molde discussed concerns he defined as obvious, such as harassment of bears and other wildlife by dogs, the risk to cubs if present, the lack of fair chase considerations, possible encroachment on private property by unsupervised dogs, the dislike by the general public of the practice, and the possible cover dogs could provide to poachers. Additionally, Dr. Molde presented another perspective in which he described the hunt as a "boutique" bear hunt in which a small number of bears were to be killed by a small number of humans in an upscale urban/suburban environment on an annual "let's see how it goes" basis where the public's notion of recreation tended toward hiking, skiing, sightseeing, boating, and camping but not destroying an iconic animal for sport.

Dr. Molde said that if there had to be a bear hunt, hunters should hunt on foot without dogs and provide a decent fair chase element. He said, however, that if dogs had to accompany hunters, the dogs should be supervised and on leashes, which was done in some states.

Concluding his remarks, Dr. Molde indicated he believed the Board of Wildlife Commissioners made a mistake when it approved the bear hunt regulation. He explained that the Board of Wildlife Commissioners had failed to adequately consider questions that regulations did not address, such as whether adopting the bear hunt was the right decision to make.

Chair Horsford thanked the members of the public who had come forward to provide their perspectives on the adoption of the regulation to the Legislative Commission.

Assemblyman Horne asked whether the regulation could be adjusted to address public safety concerns in Nevada's Tahoe Basin.

Assemblyman Hansen recalled a statement made earlier in the meeting that county ordinances addressed public safety concerns in bear hunting areas.

Chair Horsford asked the NDOW representative to respond to Assemblyman Horne's question.

Mr. Haskins, in response to Assemblyman Horne, advised that public safety concerns would, most likely, be discussed in the spring when the annual season quota for the bear hunt would be established.

Chair Horsford indicated that he believed members of the Commission would adopt the regulation if assurance could be provided that the Board of Wildlife Commissioners would address the safety concerns before the Legislative Commission's next meeting.

Mr. Haskins advised that the Board of Wildlife Commissioners was scheduled to meet in December. He said that the regulation process required public hearings, which meant the Board of Wildlife Commissioners could not address a modified regulation before its February meeting. Mr. Haskins advised that new members had been appointed to the Board of Wildlife Commissioners, who he indicated would address public safety concerns.

In response to questions Assemblyman Hansen asked concerning the discharge of firearms in certain areas, Mr. Haskins confirmed that firearm regulations were established by county ordinance and that much of the area surrounding the populated area of the Tahoe Basin was excluded. Additionally, Mr. Haskins said that portions of the Tahoe Rim Trail were outside of the no shooting area.

In response to Assemblyman Hansen, who asked if the Tahoe Rim Trail covered the entire crest of the Sierra Nevada Mountain Range, Mr. Haskins advised that the Tahoe Rim Trail navigated the California and Nevada sides of the Tahoe Basin.

Additionally, Mr. Haskins confirmed Assemblyman Hansen's statement that California bear hunting had been legalized for decades on the California portion of the Tahoe Rim Trail.

Senator Leslie noted that the temporary regulation expired on November 1 and that if the Commission did not approve the regulation, the bear hunt for 2011 would be halted.

Mr. Haskins advised that while the regulation was primarily administrative, it did include some bear-protection elements.

Senator Settlemeyer noted that it appeared the regulation currently made the bear hunt safer.

Chair Horsford indicated he would entertain a motion on R002-11.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF  
R002-11.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

Assemblywoman Kirkpatrick advised that she would attend the next meeting of the Board of Wildlife Commissioners and address some of the concerns that had been expressed during the current Legislative Commission meeting.

Assemblywoman Smith commented that it was, at times, difficult in the legislative environment to avoid a policy debate. She said, however, it was the Legislative Commission's job to pass regulations based on the agency's authority to adopt the regulation and whether the regulation met the intent of the law. Assemblywoman Smith expressed her support for the regulation and confidence in the NDOW and in the Legislative Commission's staff in bringing the regulation forward.

Senator Leslie also expressed respect for the Commission's staff and NDOW representatives but stated that because her concerns over public safety had not been met, she could not support the regulation.

Assemblyman Hansen noted that the regulation had been unanimously passed by the Board of Wildlife Commissioners whose members included David McNinch, newly appointed to the Board as the conservation and animal rights representative. The regulation, he said, had been through a thorough exposure process and because it followed the intent of the law, he would support it.

THE MOTION CARRIED. (Senator Leslie voted no.)

#### Regulation 003-11

A REGULATION relating to distribution of dairy products; revising provisions relating to the appearance of an applicant for a distributor's license or the amendment of a distributor's license at a public meeting of the State Dairy Commission; and providing other matters properly relating thereto

Assemblyman Stewart indicated his concern with the amended regulation was removal of the section concerning a public meeting held within the marketing area in which the applicant for a distributor's license wished to distribute dairy products.

Former Assemblyman Lynn Hettrick and current Executive Director of the Dairy Commission, Department of Business and Industry, advised that currently the Dairy Commission's public meetings were simultaneously broadcast via videoconference between the Commission's Reno and Las Vegas offices. Broadcasting via videoconference, he said, provided the Commission the ability to consider applications for the issuance of distributor's licenses at each meeting and did not impose additional travel or time constraints on applicants.

Mr. Hettrick explained that prior to broadcasting via the videoconference method, meetings were alternated between the Reno and Las Vegas offices, which meant that applicants, many of whom were from out-of-state, could wait up to 60 days to have their applications considered.

Mr. Hettrick pointed out that the amended regulation was business friendly and did not incur travel costs.

ASSEMBLYWOMAN KIRKPATRICK MOVED APPROVAL OF  
R003-11.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 010-11

A REGULATION relating to state personnel; revising provisions governing screening tests for the use of alcohol and drugs by state employees; and providing other matters properly relating thereto

Senator Settlemeyer questioned the deletion of the provision that a state employee could be tested for drugs or alcohol by operating a motor vehicle in any manner that caused bodily harm.

Shelly Blotter, Division Administrator, Division of Human Resource Management, Department of Administration, explained that the provision for testing an employee involved in a motor vehicle accident was eliminated in Section 1 but was reinserted in another section of the regulation.

Ms. Blotter explained that the revised regulation would conform to the provisions of *Nevada Revised Statutes* (NRS) 284.4065 that allowed the appointing authority to conduct drug testing of an employee involved in an accident that caused bodily harm minus the requirement to complete a form prior to testing.

Senator Settlemeyer asked where the language was placed in the regulation.

Mark Evans, Personnel Analyst, Human Resource Management, Department of Administration, explained that before the regulation was revised, the supervisor of an employee involved in a motor vehicle accident was required to prove reasonable suspicion and complete a personnel form before testing could occur. The language eliminated in Section 1, he said, was reinserted in subsections 2 and 3. Subsection 3 stated that the provisions of subsection 2 were not applicable if an appointing authority requested an employee to submit to a screening test pursuant to NRS 284.4065, subsection 2 (b). Subsection 2 provided that "substantial damage to property" included, but was not limited to:

- "(a) The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or
- (b) The operation of a motor vehicle in such a manner as to cause two property accidents with a 1-year period."

Mr. Evans reiterated that the revised regulation would continue to allow state agencies to test employees involved in motor vehicle accidents minus the reasonable suspicion paperwork previously required.

SENATOR SETTELMAYER MOVED APPROVAL OF R010-11.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman McArthur voted no.)

#### Regulation 012-11

A REGULATION relating to state personnel; revising the compensation of employees on standby status; revising the compensation of employees who work on a holiday; and providing other matters properly relating thereto

Assemblywoman Smith could not recall discussions related to the regulation during the 2011 Legislative Session and asked for information on why the compensation of employees on standby status and/or holiday pay was being revised.

Shelly Blotter, Division Administrator, Division of Human Resource Management, Department of Administration, explained that the revised regulation resulted from a Public Employees Retirement System (PERS) audit. Ms. Blotter said that it was learned after the audit that compensatory time in certain circumstances was not being recorded in keeping with PERS' rules.

Adam Drost, Central Payroll Manager, Division of Human Resource Management, Department of Administration, identified himself for the record. Mr. Drost advised that as indicated by Ms. Blotter, subsequent to the PERS audit, Human Resource Management staff were verbally told that improper compensation reporting to PERS could be a problem for employees. He explained that holiday premium pay and overtime hours had been recorded as compensatory time and that although overtime hours were not reported to PERS for retirement benefits, it should have been reported. Thus, Mr. Drost said the regulation proposed to revise compensation for employees who worked on a holiday to provide them payment rather than compensatory time.

Chair Horsford indicated that he believed the PERS' audit findings should have been more thoroughly reviewed and that possibly a bill draft request should be prepared to be considered by the Legislature during the 2013 Legislative Session.

Assemblywoman Smith indicated her preference would be to hold the proposed regulation for further exploration of the audit findings to determine whether a policy change was required or until additional justification could be provided to the Legislative Commission.

Chair Horsford agreed and indicated he would entertain a motion to reject adoption of Regulation R012-11.

ASSEMBLYWOMAN SMITH MOVED TO REJECT ADOPTION OF R012-11 UNTIL ADDITIONAL REVIEW OF THE PERS AUDIT FINDINGS COULD DETERMINE WHETHER THE REVISION SHOULD BE SUBMITTED TO THE LEGISLATURE THROUGH A BILL DRAFT REQUEST (BDR) OR THE PROVISION OF ADDITIONAL JUSTIFICATION TO THE LEGISLATIVE COMMISSION ON WHY THE REGULATION SHOULD BE ADOPTED.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 013-11

A REGULATION relating to the possession or use of certain weapons; revising provisions relating to the possession or use of a firearm in a state park; and providing other matters properly relating thereto

Senator Settlemeyer asked for clarification concerning the provisions in the regulation that allowed firearms in state parks but did not allow for their discharge. More specifically, he asked whether an exemption was provided that allowed an individual to discharge a firearm to save their own life or the life of another.

Steve Silva, Senior Law Enforcement Specialist, Division of State Parks, Department of Conservation and Natural Resources, reported that in crafting the regulation, the Division held public workshops in January and a public hearing in October. Mr. Silva advised that the public comments received either in person or via email were specific to:

- Supporting the Division's effort to establish the same standard for the possession of a firearm within a state park as existed in public places elsewhere in Nevada.
- Inclusion of an affirmative acknowledgement of the right to self-defense.

Mr. Silva advised, however, that when the regulation was returned from the Legislative Counsel Bureau, prior to the Division's public hearing, that language was removed. Mr. Silva advised that additional comments were received at the public hearing in support of removal of the language. He reported, however, that testimony from Nevada concealed weapons instructors indicated that not including language that acknowledged the right to self-defense within a state park would cause confusion in teaching their students. When the regulation was returned to the Legislative Counsel Bureau, Parks staff asked that the self-defense language be included. [Subsection 5 provided that "***Nothing in this section is intended to abrogate any right guaranteed by Section 11 of Article 1 of the Nevada Constitution.***"]

During the 32 years he had been employed by the Division of Parks, Mr. Silva said there had been no prosecutions for the utilization of a firearm in self-defense. While prosecution had occurred for possession of a firearm combined with an offensive conduct, such as brandishing a weapon, being under the influence of drugs or alcohol, shooting signs, or domestic battery, he said that no one had been prosecuted for the mere possession of a firearm.

SENATOR SETTELMAYER MOVED APPROVAL FOR THE  
ADOPTION OF R013-11.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 017-11

A REGULATION relating to educational personnel; prescribing the qualifications to serve as a substitute teacher in kindergarten through grade 12; revising provisions governing the requirements for an endorsement as a substitute teacher in kindergarten through grade 12; and providing other matters properly relating thereto

Senator Denis asked for clarification concerning the provisions of the regulation that prescribed the qualifications for a substitute teacher.

Jerry Barbee, Director of Teacher Licensing, Department of Education, advised that the regulation had been brought forward to provide clarification. He explained that currently in the kindergarten through grade 12 system (K-12), school districts required substitute teachers to be licensed as a substitute teacher even if already in possession of a K-12 license. Thus, he said the purpose of R017-11 was to provide clarification that a substitute teacher in possession of a current K-12 license did not also require a substitute teacher license.

SENATOR DENIS MOVED APPROVAL FOR THE ADOPTION OF R017-11.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 018-11

A REGULATION relating to educational personnel; revising provisions governing the qualifications for a secondary license; revising provisions governing comprehensive majors or minors and single subject majors and minors; revising provisions governing the semester hours of credit required for certain majors and minors; repealing certain majors or minors; and providing other matters properly relating thereto

Senator Denis asked for information concerning the need for R018-11.

Jerry Barbee, Director of Teacher Licensing, Department of Education, identified himself for the record. Mr. Barbee advised that a review of *Nevada Revised Statutes* (NRS) 391.019, relative to regulations prescribing qualifications for licensure for teachers and other educational personnel, had been undertaken to:

- Ensure the regulations were current with recent technology changes
- Identify the requirements for a comprehensive major or minor endorsement
- Ensure that the language in exiting regulations was clear and updated

Mr. Barbee advised, for example, that a comprehensive major for the traditional teacher-preparation process required 36 credits while a minor required 24 credits, and a comprehensive major in mathematics, for example, also required 36 units of semester credit and 24 for a minor.

Senator Denis asked whether the language for career and technical education was also updated.



Mr. Barbee confirmed that specific areas in career and technical education were identified and reviewed to be updated. Additionally, Mr. Barbee pointed out that the regulation had been revised in the field of computer technology to provide an opportunity for those who had completed course work through an alternate process to secure an endorsement.

In response to Senator Denis, who asked whether already licensed teachers or educational personnel would be affected by the language changes, Mr. Barbee advised that the regulation would not affect the licensure of individuals currently licensed or those who held a license prior to the enactment of the regulation.

Assemblyman Stewart indicated that he and Assemblyman McArthur were concerned about removing business education as a major.

Mr. Barbee advised that the field of business education was considered a more prominent field for the endorsement for teaching while the field of business and business education was considered, to some degree, a duplication.

In response to Assemblyman McArthur, who asked for additional information on the exclusion of a major in business, Mr. Barbee explained that a major in business was not excluded. Business majors, he said, qualified under the business education component, which was included in the teacher preparation program. Mr. Barbee explained that because the major requirements for content area were similar, business education more readily fit the need for endorsement to teach business in the K-12 system because of the additional course work required for pedagogy [the correct use of instructive strategies].

SENATOR DENIS MOVED APPROVAL FOR THE ADOPTION OF  
R018-11.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

Senator Denis noted that in his review of the regulation, it appeared that the semester hours of credit for a major in business education had been improved.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 020-11

A REGULATION relating to educational personnel; repealing the special license or endorsement to teach pupils from birth through kindergarten; and providing other matters properly relating thereto

Assemblywoman Smith advised that there had been concern expressed by the Chair and Vice Chair of the Education Policy Committee concerning the regulation, which she said appeared to eliminate an overlap in the qualifications to teach pupils between birth through kindergarten and from birth to second grade.

Unless the Department indicated otherwise, Assemblywoman Smith asked to have the regulation deferred to allow for further discussion between staff and legislators who worked on education legislation during the 2011 Legislative Session. Assemblywoman Smith noted that it appeared that the standards could be realigned rather than the repeal of the qualifications for teaching pupils from birth through kindergarten.

Jerry Barbee, Director of Teacher Licensing, Department of Education, advised that the intent had been to consolidate the qualifications to teach pupils between birth through kindergarten and from birth to second grade. Mr. Barbee said, however, he had no objection to deferring the regulation to a future meeting and would be happy to work with legislators.

ASSEMBLYWOMAN SMITH MOVED TO DEFER R020-11 TO A  
FUTURE MEETING.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Horsford turned the gavel over to Vice Chair Leslie who resumed the duties of the Chair.

Regulation 035-11 –

A REGULATION relating to public utilities; revising requirements for termination of utility service of certain customers; placing certain limitations on the ability of an electric utility to terminate service under certain circumstances; revising time in which a utility which has been terminated service to a customer must resume service upon certain payments; and providing other matters properly relating thereto

Assemblywoman Kirkpatrick asked for information regarding how the regulation affected smart-meter customers versus those customers with traditional meters. [Smart meters recorded consumption of electrical energy and communicated that information to the utility for monitoring and billing purposes].

Additionally, Assemblywoman Kirkpatrick also asked for information related to:

- The time period in which an electric utility could terminate service to a smart meter customer for nonpayment of services.
- The change in the outstanding dollar amount owed by a customer for utility services.

Nancy Wenzel, Utilities Hearings Officer, Public Utilities Commission (PUC), responded that the regulation did not affect the Public Utilities Commission's Consumer Bill of Rights as it pertained to traditional utility meters. Rather, she said, the regulation increased consumer protection for smart-meter customers.

Ms. Wenzel advised that Section 6 of the regulation authorized an electric utility to terminate service to a smart-meter customer only between the hours of 7:30 a.m. and 12:30 p.m. except under certain circumstances. That provision, she pointed out, enhanced the current Consumer Bill of Rights because it enabled same day reconnection if the customer posted payment by 2:00 p.m.

With respect to the outstanding dollar amount owed by a customer, Ms. Wenzel pointed out that the level of arrearage owed by a customer had increased from \$50 to \$100 before the customer's service could be remotely disconnected. Ms. Wenzel explained that the level of arrearage was increased because it cost the utility more than \$50 to send a truck and employee to manually disconnect service. Ms. Wenzel pointed out that the regulation formally established the utility's current practice and noted that just because service could be remotely disconnected, the practice was not made easier to accomplish.

Assemblywoman Kirkpatrick noted that in contrast to what was anticipated, it appeared many members of the public were dissatisfied with smart-meter service.

Assemblywoman Kirkpatrick questioned the references in the regulation to specific utility company names and whether future name changes would require the regulation to be revised.

Ms. Wenzel advised of the necessity to specify the northern and southern utility companies being referred to because temperature thresholds were different for the northern and southern territories. Ms. Wenzel pointed out that the regulation prohibited a remote disconnection in the event of a forecasted extreme weather event. Mr. Wenzel further advised that should the utility change its name in the future, the "doing business as" (dba) name remained the same. For example, she said NV Energy continued doing business as Sierra Pacific Power in the north and Nevada Power in the south. Ms. Wenzel said, however, a future name change might require a revised regulation.

Senator Denis commented on the concerns regarding smart readers raised at recent Public Utility Commission hearings and asked for information on how those concerns would be addressed.

Ms. Wenzel reported that on October 25, 2011, the PUC opened Docket 11-1007 to conduct an investigation regarding NV Energy's smart-meter implementation. Ms. Wenzel advised that the PUC had approved the smart-meter project and integrated resource plan in July 2010 but confirmed that since the rollout, some customers had expressed dissatisfaction. The investigation, she said, was being undertaken to ensure the PUC gained a better understanding of customer service concerns and to determine whether additional consumer protection regulations needed to be implemented.

ASSEMBLYWOMAN KIRKPATRICK MOVED FOR THE  
ADOPTION OF R035-11.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Regulation 044-11

A REGULATION relating to professional engineers and land surveyors; providing for the issuance and renewal of certificates of eligibility to receive certain preferences when competing for public works; establishing fees for the issuance and renewal of certificates of eligibility to receive certain preferences when competing for public works; and providing other matters properly relating thereto

Although held in error, Vice Chair Leslie asked whether the members of the Commission had any questions concerning Regulation 044-11.

There were no questions from the members, and Vice Chair Leslie indicated she would accept a motion for approval.

ASSEMBLYWOMAN SMITH MOVED APPROVAL FOR THE ADOPTION OF R044-11.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY. [The action was reconsidered later in the meeting, and the regulation was deferred.]

#### Regulation 045-11

A REGULATION relating to architects; providing for the issuance and renewal of certificates of eligibility to receive certain preferences when competing for public works; establishing fees for the issuance and renewal of certificates of eligibility to receive certain preferences when competing for public works; and providing other matters properly relating thereto

Assemblyman Stewart referenced a letter (Exhibit R) from Gina Spaulding, Executive Director, State Board of Architecture, Interior Design and Residential Design, who raised concerns regarding language contained within Senate Bill (S.B.) No. 268 of the 76th Session (2011). Assemblyman Stewart asked that Ms. Spaulding be permitted to present the concerns addressed in the letter to the members of the Commission.

Vice Chair Leslie agreed and asked Ms. Spaulding to begin her presentation.

Gina Spaulding, Executive Director, State Board of Architecture, Interior Design and Residential Design, reported that the Board adopted Regulation 045-11 as required pursuant to Senate Bill (S.B.) No. 268 of the 76th Session (2011) [an act that revised provisions related to preferences when competing for public works projects.]

Ms. Spaulding advised, however, that architects, who testified during the workshop and public hearing portion of the regulation process, objected that the \$1,500 modified business tax requirement contained within S.B. 268 would eliminate many registrants from being able to qualify for a certificate of eligibility.

Ms. Spaulding indicated that although it was understood that the intent of S.B. 268 was to give Nevada businesses a preference for professional design work, the unintended consequences of the bill required firms to pay individual architects \$378,205 in annual taxable wages to meet the \$1,500 modified business tax requirement. Additionally, Ms. Spaulding noted that the salaries of sole proprietors, general partnerships, and members of limited liability companies were exempted from paying the modified business tax.

Ms. Spaulding advised that she was directed by the Board to send the letter to the Commission after hearing testimony during the workshop and the public hearing. Ms. Spaulding further advised that although a statistical survey had not been conducted, it appeared that the legislation would not assist the majority of the firms it was intended to help because applicants for certificates of eligibility would be required to submit affidavits testifying that they had paid a minimum threshold of at least \$1,500 for the past 36 months. The majority of firms, she said, and certainly sole practitioners in small businesses and medium-sized businesses could not meet the \$1,500 threshold.

Ms. Spaulding advised that the two concerns outlined in the Board's October 12, 2011, letter were:

- The \$1,500 modified business tax to qualify for the certificate of eligibility was too high.
- The language in S.B. 268 that required an architect to pay the \$1,500 modified business tax on his or her own behalf. Ms. Spaulding advised that after working with the Legislative Counsel Bureau since the regulation was adopted, the language was adjusted.

Assemblywoman Kirkpatrick advised that S.B. 268 had been heard in Assembly Government Affairs and recalled that although opposition had been expressed, the bill was intended to help Nevada businesses rather than large out-of-state architectural firms. She also recalled that the language in S.B. 268 concerning the preferences to Nevada businesses had not changed.

Assemblywoman Kirkpatrick pointed out that at the end of the 2011 Legislative Session, the modified business tax was adjusted so that 0 percent was paid on the first \$62,500 of taxable wages per quarter or over \$250,008 annually. Thus, she said small businesses paid no modified business tax.

Assemblywoman Kirkpatrick asked for Legislative Counsel's opinion on whether adopting the regulation would prohibit architectural firms or architects from working on projects without paying the \$1,500 modified business tax.

Vice Chair Leslie agreed that Legislative Counsel should provide her opinion for the record.

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, advised that the regulation provided for qualifying for the preference only and would not disqualify entities or individual architects from working on a project or successfully being awarded a bid.

In response to Vice Chair Leslie, who asked if there were additional questions, Senator Settlemeyer asked Ms. Spaulding whether the citizens of Nevada and those attempting to secure jobs in engineering fields were in a better position with or without the regulation in its current form.

Ms. Spaulding responded that registrants were only concerned with the dollar amount that had to be met to pay the \$1,500 threshold, which was in excess of \$378,000 in taxable wages per year. Ms. Spaulding said that lowering the \$1,500 would benefit many Nevada architectural firms.

Ms. Spaulding acknowledged that the registrants were advised that they were not precluded from applying for public works jobs. She advised that Board members intended to meet with representatives of public entities whose representatives had already advised that although they had tended to give preference to local architectural firms, they could no longer do so in view of the regulation.

Senator Settlemeyer advised that he had not supported S.B. 268 during the 2011 Legislative Session because of concern that the legislation punished small businesses and rewarded large businesses, which he said was of continuing concern.

In response to Assemblywoman Kirkpatrick who discussed holding the regulation until the next Legislative Commission meeting, Vice Chair Leslie indicated she would entertain a motion to defer R045-11.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO DEFER R045-11  
UNTIL THE NEXT LEGISLATIVE COMMISSION MEETING.

SENATOR SETTELMAYER SECONDED THE MOTION.

In response to Vice Chair Leslie who asked for discussion on the motion, Michael B. Holloway, P.E., P.Eng., Ph.D., Chair, State Board of Professional Engineers and Land Surveyors, expressed the same concerns as had the Executive Director for the Nevada State Board of Architecture, Interior Design and Residential Design. Dr. Holloway asked that the motion to adopt Regulation 044-11 be reconsidered and deferred until the concerns raised by the previous speaker could be addressed.

Vice Chair Leslie advised that reconsideration of Regulation 044-11 would be addressed after concluding the motion on R045-11.

THE MOTION TO DEFER R045-11 CARRIED UNANIMOUSLY.

Regulation 044-11

A REGULATION relating to professional engineers and land surveyors; providing for the issuance and renewal of certificates of eligibility to receive certain preferences when competing for public works; establishing fees for the issuance and renewal of certificates of eligibility to receive certain preferences when competing for public works; and providing other matters properly relating thereto

Vice Chair Leslie indicated that Michael B. Holloway, P.E., P.Eng., Ph.D., Chair, State Board of Professional Engineers and Land Surveyors had raised a good point concerning Regulation 044-11 and agreed to entertain a motion to reconsider the motion for adoption.

ASSEMBLYMAN STEWART MOVED TO RECONSIDER THE  
MOTION TO ADOPT R044-11.

ASSEMBLYWOMAN SMITH SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Vice Chair Leslie indicated she would entertain a motion to defer action on R044-11.



SENATOR ROBERSON MOVED TO DEFER THE ADOPTION OF R044-11.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Regulation 048-11

A REGULATION relating to educational personnel; revising provisions governing the requirements for a comprehensive major or minor in social studies; and providing other matters properly relating thereto

Assemblyman Stewart asked for additional information concerning the requirement for 36 semester hours in the various disciplines for a comprehensive major in social studies rather than the prior requirement of 24 hours semester hours.

Jerry Barbee, Director of Teacher Licensing, Department of Education, advised that the Licensure Task Force to the Commission on Professional Standards in Education wanted to ensure that each of the fields of study for a comprehensive major in social studies had equal participation. Mr. Barbee pointed out that in Section 1 (a) 21 semester hours of credit including at least 3 semester hours in each field of study was required to provide consistency because of the eligibility to teach in any of the disciplines. An additional 15 semester hours of credit could be taken in any of the required fields, which totaled the 36 semester hours to complete the requirement for a comprehensive major.

Mr. Barbee explained that the requirements for a comprehensive minor were the same but with a reduced number of hours.

ASSEMBLYWOMAN SMITH MOVED APPROVAL TO ADOPT R048-11.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Stewart voted no.)

- B. Resolution Expressing Gratitude to George M. Keele for Service on the Nevada Commission on Ethics – Lorne Malkiewich, Director

Chair Horsford asked for a motion to approve a resolution expressing gratitude to George M. Keele for his service on the Nevada Commission on Ethics.

SENATOR DENIS MOVED TO APPROVE THE RESOLUTION EXPRESSING GRATITUDE TO GEORGE M. KEELE FOR HIS SERVICE ON THE NEVADA COMMISSION ON ETHICS.

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

Assemblyman Stewart commended Mr. Keele's service on the Nevada Commission on Ethics and expressed his support for the resolution.

Chair Horsford also expressed appreciation for Mr. Keele's service.

THE MOTION CARRIED UNANIMOUSLY.

- C. Adoption of Regulation Governing Certain Vehicular and Pedestrian Traffic on Legislative Property – Lorne Malkiewich, Director

Vice Chair Leslie announced earlier in the meeting that the Regulation Governing Certain Vehicular and Pedestrian Traffic on Legislative Property was removed from the agenda for consideration at a future Legislative Commission meeting.

V. INFORMATIONAL ITEMS:

- A. Summary of Quarterly Reports on Disciplinary Action from the Licensing Boards and State Agencies

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that concern was raised at the Commission's August meeting that the Nevada State Funeral Board had not filed its quarterly reports. Mr. Malkiewich reported that a technical problem that had prevented the reports from being filed had been resolved. The Board's reports, he said, were currently up-to-date and could be seen online at the following link: <http://www.leg.state.nv.us/App/OL/A/default.aspx>

Mr. Malkiewich advised that with respect to the remaining informational items, there had been no requests from members of the Commission for additional discussion.

Vice Chair Leslie asked whether members of the public or the Commission had any questions or comments concerning the informational items. There were no additional questions or comments.

- B. Miscellaneous Reports or Correspondence from State Agencies and Others:

- 1. Nevada Commission on Ethics Annual Report 2010-2011 as required by Nevada Administrative Code 281A.180 (2)

Caren Jenkins, Executive Director, Nevada Commission on Ethics, acknowledged that Nevada Administrative Code 281A.180 (2) required the Executive Director to make an annual report to the Commission on Ethics at its first meeting of the fiscal year followed by submission of the report to the Legislative Commission.

Ms. Jenkins advised that the Nevada Commission on Ethics had five fulltime staff members and from 2010 to 2011, the Commission's caseload increased over 200 percent. Ms. Jenkins advised that the Commission had received 43 requests for opinion in the first quarter, which when projected for the entire year equaled 172 requests for opinion or a 297 percent increase in caseload.

Ms. Jenkins advised that the Commission had met, held panel hearings, and full hearings and had either rendered or advised on a first-party basis or made findings of fact and conclusions of law on a third-party complaint basis in 50 instances where there was no resulting written opinion. Ms. Jenkins asked the Legislative Commission not to assume that the backlog reflected on the efficiency of staff. Rather, she asked that the Legislative Commission acknowledge that addressing a 300 percent increase in caseload without additional staff could not be accomplished.

In closing, Ms. Jenkins advised that the annual report also addressed the increase in caseload and backlog of opinions and that if there were questions from members of the Legislative Commission, she would be happy to respond.

There was no response to Vice Chair Leslie's request for questions from the members of the Commission or comment from members of the public.

1. Public Utilities Commission of Nevada 2011 Report on Competition Nevada Revised Statutes (NRS) 704.68867(2)(a) – Reports Received from AT&T Nevada and CenturyLink are on File and Available for Review in their Entirety in the Director's Office of the Legislative Counsel.

There was no response to Vice Chair Leslie's request for questions from the members of the Commission or comment from members of the public concerning the Public Utilities Commission 2011 Report on Competition.

Returning to an item discussed at the beginning of the meeting under public comment, Assemblyman Hansen recalled that a representative of the American Civil Liberties Union of Nevada (ACLU) commented on the policy concerning charges for public records requests that was passed by the Commission at its August 24, 2011, meeting.

Assemblyman Hansen indicated that the policy concerning charges for public records requests should be reconsidered because it included language that was too vague and open ended. Assemblyman Hansen agreed to Vice Chair Leslie's suggestion that his request for reconsideration of the policy be placed on the agenda for the following meeting of the Commission.

Vice Chair Leslie indicated she would pass Assemblyman Hansen's request on to Chair Horsford.

Senator Settelmeyer discussed an inquiry he received from a State Board of Pharmacy member concerning regulations the Board had adopted but that had not yet been codified. Some of the regulations, he said, were adopted three years in the past. Senator Settelmeyer indicated that one pharmacist had complained about the difficulty experienced in trying to follow the law and find the regulations that had been adopted but not yet codified. Senator Settelmeyer indicated that he would submit the list of regulations from the State Board of Pharmacy to Legislative Counsel, Brenda Erdoes, for her review.

Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau, acknowledged the codification backlog but reported that the Legislative Counsel Bureau's Legal Division staff had made significant progress on the codification of the Nevada Administrative Code since the Legislative Session had ended in June.

Ms. Erdoes also advised that, although it was a little-known fact, adopted regulations were indexed and could be accessed at <http://www.leg.state.nv.us/Register/>. Additionally, Ms. Erdoes advised that if an adopted regulation could not be located online, members of the Legal Division staff were always available to provide assistance either by email or a phone call.

There was no response to Vice Chair Leslie's request for questions or comments.

#### C. Discussion of Changes in the Service Provision Model for Early Intervention Services in the Department of Health and Human Services

Melissa West, southern Nevada Parent Representative and Cochair of the Interagency Coordinating Council (ICC), identified herself for the record. Ms. West advised that the ICC was the Advisory Board for the Department of Health and Human Services for the delivery of early intervention services for children from birth to three years.

Ms. West thanked the Commission for the opportunity to present the Council's concerns about the recent budget reductions and how those reductions affected Nevada's children and the ability to remain compliant with federal law. Ms. West explained that early intervention services were based on Part C of the Individuals with Disabilities Education Act (IDEA) and addressed the needs of infants and toddlers with disabilities and their families. Part C, she said, included several basic requirements to remain compliant with federal laws, and the ICC concerns were based on those requirements under the following three categories:

Individual Family Service Plan (IFSP)  
Procedural Safeguards  
Departmental Decision Making

Ms. West advised that the IFSP was the written agreement between the family and the provider regarding the services that would be provided. Federal law, she said, stipulated that the IFSP be written based on a child's needs, and services were to be provided in a natural environment, meaning those settings in which infants and toddlers without disabilities could be found.

Ms. West reported the following ICC concerns in the IFSP category:

- Children were not receiving the services in their IFSP.
- Individual Family Service Plans might be written based on the programs' ability to provide services rather than child needs.
- Children were receiving services in a clinical setting rather than a natural environment.

Ms. West advised that under the Procedural Safeguards category, Part C of IDEA provided that parents had the right to be informed of the services their children received. The ICC's concerns were that parents had been informed verbally that services were being reduced or moved to settings outside of the natural environment rather than in writing as required by federal law.

Ms. West addressed the following ICC concerns in the Departmental Decision Making category:

- The ICC had not been involved or informed of the decision-making process, which violated "the spirit" of Part C of IDEA considering the primary mission of the ICC was to advise and assist in the development and implementation of a statewide system of early intervention services. The current system included services by state agencies, such as Nevada Early Intervention Services South, Northwest, and Northeast, and community partners, such as Easter Seals Nevada, Integrated Support Solutions, Therapy Management Group, Positively Kids, The Continuum, and Advanced Pediatric Therapies.
- Community partners were budget allocated to serve a specific number of children, which allowed them to comply with federal law. In contrast, Nevada Early Intervention Services became the "catchall" for all referred children who exceeded the budget allocation.
- Community partners' caseloads were capped and adequately funded, but the state program was not, which resulted in noncompliance with federal law. Children were either not receiving the services in their plan or were being wait listed for services.
- The Nevada Early Intervention Services' contract services budget was cut by 50 percent that resulted in the Health Division mandating internal efficiencies of clinic-based services, which was noncompliant with federal law.

Ms. West advised that while ICC members recognized the realities of the difficult economy, they were also cognizant that the needs of Nevada's youngest citizens had to be met. Ms. West closed her remarks by expressing her appreciation for the opportunity to bring ICC's concerns to the Legislative Commission.

Lorne Malkiewich, Director, Legislative Counsel Bureau, advised that a letter (Exhibit F) dated October 21, 2011, from Melissa West and Ann Bingham, Cochairs of the ICC had been distributed to each member of the Commission.

Robin Kincaid, Training Director, Nevada Parents Encouraging Parents (PEP), identified herself for the record. Ms. Kincaid, testifying from Las Vegas, advised that Nevada PEP was a nonprofit organization that provided information, services, and training for families of children with disabilities.

Ms. Kincaid told the Commission she was testifying in support of Ms. West, who served as a parent representative of the Interagency Coordinating Council (ICC) as well as Cochair. Ms. Kincaid, also a member of the ICC, expressed concerns regarding how the changes by the Health Division for early intervention services were affecting children with disabilities.

Ms. Kincaid spoke about the many calls that PEP received from parents who did not understand why services for their children had been reduced. The parents, she said, rather than being invited to meetings concerning the budget reductions were simply told that, effective immediately, they were to bring their children to a clinic for services no matter the difficulty. As previously pointed out, Ms. Kincaid said the Individual Family Service Plan required that services were to be provided in the home.

Also aware of the difficult economy, Ms. Kincaid encouraged the Commission to review other methods of generating income that could assist the economic situation and improve service efficiencies. She mentioned that since only small amounts of Medicaid and insurance funds were collected, perhaps increasing the collection of those funds was a possibility worth investigating. Additionally, Ms. Kincaid commented on the critical nature of early intervention services and that as the parent of a child with disabilities, she knew what an enormous difference those services made for her child.

In closing, Ms. Kincaid thanked the Commission for the opportunity to provide her comments and asked for their consideration of how changes for early intervention services had affected recipients.

Mary Liveratti, Deputy Director, Department of Health and Human Services, on behalf of the Department, expressed her deep appreciation to the parent members of the Interagency Coordinating Council, who had taken time to provide their remarks on early intervention services to the Commission. Ms. Liveratti said that members of the Department's staff were happy to work with the ICC whose October 21, 2011, letter was received on October 24, 2011.

Additionally, Ms. Liveratti informed the Commission that an administrative complaint was received from the Nevada Disability and Advocacy Law Center (NDALC) on October 10, 2011.

Ms. Liveratti reported that the Health Division's Individuals with Disabilities Education Act Part C Office investigated complaints and had 60 days or until December 9, 2011, to conduct its investigation. The NDALC administrative complaint, she said, was similar to the concerns previously expressed by members of ICC. Ms. Liveratti advised that facts were being gathered in the process of the investigation, which she would bring forward to the Commission during a subsequent meeting.

Ms. Liveratti acknowledged communication problems had occurred with the ICC and families of children with disabilities, which she advised the Department was working to improve. Rather than providing details during the current meeting, Ms. Liveratti indicated it would be preferable to wait until the conclusion of the investigation to bring the results to the Commission. Ms. Liveratti reaffirmed the Department's intention to improve communications and its working relationship with the ICC.

Vice Chair Leslie agreed that Ms. Liveratti's suggestion was an appropriate action and asked staff to schedule an agenda item for the Commission to hear the results of the investigation after December.

Mary Wherry, Deputy Administrator, Clinical Services, Health Division, Department of Health and Human Services, identified herself for the record. Ms. Wherry advised that the Health Division was in the process of carrying out the recommendations agreed to in the Legislatively approved budget. The goal, she said, was to absorb new caseload projections, remain within the Health Division's authority, and to serve the increased number of children within its abilities.

There were no questions from members of the Commission, and Vice Chair Leslie advised that no action was required for informational items.

#### 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.)

In response to Vice Chair Leslie's request for public comment, former Senator Dennis Nolan, identified himself for the record and introduced James Bennett, President of Stewart Title.

Mr. Nolan appeared before the Commission to address the unintended consequences that Assembly Bill (A.B.) No. 284, 76th Session (2011) had on the title and real estate industries. Mr. Nolan advised that A.B. 284 was an act that related to real property, and he said that if the problems contained within the bill could not be remedied within the next 30 days, emergency regulatory relief might be necessary.

Mr. Nolan defined A.B. 284, sponsored by Assemblymen Conklin, Horne, and Kirkpatrick, as landmark legislation intended to address several loopholes and abuses in the foreclosure process. He acknowledged that the bill was thoroughly vetted in the both the Assembly and the Senate and passed both houses by a super majority. The legislation, he said, provided much needed reforms in the transfer of foreclosed properties, redefined in the law who could act as beneficiaries and trustees, and imposed serious civil and criminal fines and sanctions for violations of the statute. Mr. Nolan explained, however, that following the bill's October 1, 2011, effective date, industry leaders began to be aware of the bills unintended consequences.

Vice Chair Leslie pointed out that the Commission did not have the power to change the law.



James Bennett, President, Stewart Title of Nevada, expressed agreement with the intent of the legislation, which, he said, had raised awareness on a national level of the behavior of trustees and trustee companies.

Mr. Bennett said, however, the bill had negative ramifications on the title industry. He explained, for example, that prior to the legislation, Clark County, in a typical month, had over 4,000 notices of breach while Reno had between 900 and 1,100 notices of breach. As of mid month, he said there were 23 notices in Clark County and 7 notices in Washoe County. Although the reduced number of notices appeared on the surface as effective, Mr. Bennett said that in actuality the "gates on the inventory of legitimate real estate transactions" would be closed because the language was not clear enough for title companies to proceed and issue insurance. He advised that based on some of the language and vagaries of the law, the risk, for private companies, was considered too great to proceed.

Mr. Bennett expressed his support for the concept of the bill but asked for clarification of the language because he said the title industry would not take the insurance risk based on the existing language in the bill.

Mr. Nolan advised that, in summary, the title industry, because of the criminal and civil sanctions to which they were subject, could not insure the process on foreclosed properties until clarification was received on some of the vague aspects of the statute.

Senator Leslie suggested that Mr. Nolan and Mr. Bennett provide Brenda Erdoes, Legislative Counsel, with the details concerning the language in A.B. 284 to which they objected. Vice Chair Leslie asked Ms. Erdoes to provide the Commission with information at the next meeting concerning what, if any, options were available.

Senator Roberson commented that he had also been approached by many constituents in the lending and title company communities that had expressed similar concerns regarding the language in A.B. 284. Senator Roberson pointed out that if a regulatory mechanism was not found to resolve the problems contained within the bill, there were concerns from many that Nevada would become a "judicial foreclosure state" and that many title companies would go out of business. Senator Roberson said that the Commission needed to look for solutions and asked Mr. Nolan and Mr. Bennett to provide ideas that could be considered by the Commission as soon as possible.

Mr. Nolan expressed appreciation for the offer to work with Legislative Counsel and reiterated that a potential solution might be emergency regulations or a request for "a stay of enforcement" until the problems could be resolved. Mr. Nolan thanked the members of the Commission for the opportunity to appear.

Senator Leslie expressed her thanks to Mr. Nolan and Mr. Bennett for making the Commission aware of the unintended consequences of A.B. 284 and advised that the concerns that had been raised would be looked into.

Hearing no response to her request for additional public comment, Vice Chair Leslie adjourned the meeting at 1:09 p.m.

Respectfully submitted,

Connie Davis, Secretary  
Legislative Commission

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Senator Steven Horsford, Chair  
Legislative Commission

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Senator Sheila Leslie, Vice Chair  
Legislative Commission

<b>EXHIBITS</b> <b>Nevada Legislative Commission</b> <b>Date –October 26, 2011 – Time 9:30 a.m.</b>		
<b>Exhibit</b>	<b>Witness/Agency</b>	<b>Description</b>
A		Agenda
B		Guest List
C	Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada (ACLU)	September 12, 2011 Letter from Allen Lichtenstein, General Counsel, American Civil Liberties Union of Nevada (ACLU)
D	Eric Schwamberger	Northern Nevada Newspaper Polls Regarding the Bear Hunt Regulation
E	Barry Lovgren	Letter dated September 29, 2011.
F	Melissa West, ICC Parent Cochair	Letter dated October 21, 2011
G	Paul Townsend, Legislative Auditor, Legislative Counsel Bureau	Letter dated October 18, 2011, from Senator Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee
H	Paul Townsend, Legislative Auditor, Legislative Counsel Bureau	Letter dated October 18, 2011, from Senator Sheila Leslie, Chair of the Legislative Commission's Audit Subcommittee
I	Paul Townsend, Legislative Auditor, Legislative Counsel Bureau	Schedule of Legislative Auditor Analysis of Six-Month Reports Presented to the Audit Subcommittee
J	Paul Townsend, Legislative Auditor, Legislative Counsel Bureau	October 13, 2011 letter to Members of the Legislative Commission
K	Paul Townsend, Legislative Auditor, Legislative Counsel Bureau	NRS 630.127 Performance Audits of Board
L	Lorne Malkiewich, Director, Legislative Counsel Bureau	Revised List of Persons Willing to Serve on the Interim Task Force on Out-of-School-Time Programs
M	Mary Shope, Coordinator, Nevada Silver Haired Legislative Forum	October 17, 2011, memorandum regarding Appointments to the Nevada Silver Haired Legislative Forum
N	Elaine Carrick, NoBearHuntNV.org, Reno, Nevada	Human Society of the United States' Comments in Opposition to the Bear Hunt Regulation

O	Christine Schwamberger, an attorney for NoBearHuntNV.org	NDOW Biological Bulletin No. 15
P	Christine Schwamberger, an attorney for NoBearHuntNV.org	Article from the Reno Gazette Journal regarding a hiker mistakenly shot by an Oregon bear hunter.
Q	Billy Howard, representing NoBearHuntNV.org	A flash drive containing documentation to which he referred during his testimony.
R	Gina Spaulding, Executive Director, Nevada State Board of Architecture, Interior Design and Residential Design	October 12, 2011 Letter to the Members of the Legislative Commission