MINUTES OF THE
LEGISLATIVE COMMISSION
NEVADA LEGISLATIVE COUNSEL BUREAU
***Nevada Revised Statutes* (NRS) 218E.150**

The Legislative Commission held its fifth meeting in Calendar Year 2017 on Tuesday, December 19, 2017. The meeting began at 9:10 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and was videoconferenced to Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

COMMISSION MEMBERS PRESENT:

Assemblyman Jason Frierson, Chair
Senator Kelvin D. Atkinson
Senator Moises (Mo) Denis
Senator Patricia Farley
Senator Aaron D. Ford
Senator Ben Kieckhefer
Senator James A. Settelmeyer for Senator Scott T. Hammond
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly for Assemblywoman Teresa Benitez-Thompson, Vice Chair
Assemblyman James Oscarson
Assemblyman Keith Pickard
Assemblyman Jim Wheeler

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Director
Rocky Cooper, Legislative Auditor, Audit Division
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division
Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division
Brenda J. Erdoes, Legislative Counsel, Legal Division
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division
Michael J. Stewart, Deputy Research Director, Research Division
Janet Coons, Manager of Secretarial Services, Research Division
Sylvia A. Wiese, Executive Assistant, Director's Office

Items taken out of sequence during the meeting have been placed in agenda order.

AGENDA ITEM I—ROLL CALL

Chair Frierson called the meeting to order.

AGENDA ITEM II—PUBLIC COMMENT

Chair Frierson called for public comment.

Quinn Cartwright, Project Manager, Nevada Community Health Worker Association, Dayton, Nevada, requested the Legislative Commission (LC) consider rejecting R133-15 for the community health worker pools. She suggested the regulation would have a negative impact on the utilization of more than 400 community health workers in Nevada and possibly other organizations that use support staff due to the broad definition of "community health worker" in the regulation.

Steve Messenger, Nevada Primary Care Association, representing the State's federally qualified health centers, agreed with Ms. Cartwright's comments.

AGENDA ITEM III—APPROVAL OF MINUTES OF THE SEPTEMBER 21, 2017, MEETING

MOTION: Senator Atkinson moved approval of the minutes of the September 21, 2017, meeting. Assemblywoman Carlton seconded the motion. The motion carried.

AGENDA ITEM IV—PROGRESS REPORT—LITIGATION CURRENTLY IN PROGRESS

Brenda J. Erdoes, previously identified, provided a summary of the following cases currently in progress:

1. *Little v. State*, First Judicial District Court (Carson City) and Nevada Supreme Court

This is the ongoing case challenging the constitutionality of the Catalyst Account. On March 17, 2017, the plaintiff filed a notice of appeal with the Nevada Supreme Court challenging the district court's order in favor of the State on all causes of action and claims for relief. On October 30, 2017, the parties completed the briefing for the appeal. We are waiting for the Nevada Supreme Court's decision as to whether there will be an oral argument or whether the Nevada Supreme Court will decide the case.

2. *Hansen and Wheeler v. Commission on Ethics*, First Judicial District Court (Carson City) and Nevada Supreme Court:

On June 29, 2017, the three-judge panel of the Nevada Supreme Court issued a published opinion holding that the public bodies must comply with the Open Meeting Law (OML) when authorizing legal counsel to file a notice of appeal, which has become the issue in this case. On September 29, 2017, the three-judge panel denied the Commission's petition for rehearing. On October 31, 2017, the Commission filed a petition for an en banc reconsideration asking the full Court to reconsider the panel's decision. We are waiting for the Nevada Supreme Court to determine whether to accept the petition for the en banc reconsideration.

3. *Doe v. State*, Eighth Judicial District Court (Clark County) and Nevada Supreme Court:

This case challenges the constitutionality of Nevada's medical marijuana registration program. On July 25, 2017, the Nevada Supreme Court affirmed the district court's decision that held the medical marijuana registry does not violate the Due Process Clause or Equal Protection Clause of the Fourteenth Amendment or the Self-Incrimination Clause of the Fifth Amendment of the *United States Constitution.* On September 21, 2017, the Nevada Supreme Court denied the plaintiff's petition for rehearing. On November 29, 2017, the Nevada Supreme Court granted the State's motion to reissue the unpublished opinion, closing the case.

4. *Board of Trustees of the Glazing Health & Welfare Trust v. Chambers*, United States District Court, District of Nevada, and U.S. Court of Appeals for the Ninth Circuit:

In this case, the State filed an amicus brief regarding the Labor Commissioner of the Office of Labor Commissioner, Department of Business and Industry (B&I), defending the constitutionality of Senate Bill 223 (Chapter 345, *Statutes of Nevada 2015*). The Labor Commissioner appealed the district's court order to the U.S. Court of Appeals for the Ninth Circuit, and we are waiting to see whether the Ninth Circuit will have oral arguments on the appeal.

5. Nonjudicial foreclosure of homeowners' associations super-priority liens cases for which we have been asked to file an amicus brief:

On December 11, 2017, the parties completed the briefing in the Nevada Supreme Court for the certified question case. As part of the briefing, the Legislature filed an amicus brief regarding the propriety of the statutory interpretation of the preamendment statutes to their facial constitutionality under the procedural due

process. The parties are waiting for the Nevada Supreme Court to determine whether it will have oral arguments or whether it will decide the case.

6. *Degraw v. Eighth Judicial District Court*, Nevada Supreme Court:

This case regards the constitutionality of the legislative continuance statute involving Assemblyman Keith Pickard. The statute reads that attorneys who are legislators are granted a continuance of cases that are scheduled during a legislative session. On October 9, 2017, the Nevada Supreme Court entered an order directing the clerk to schedule the case for oral argument; we are awaiting the next available calendar date.

7. *Pharmaceutical Research and Manufacturers of America (PhRMA) v. Sandoval*, United States District Court, District of Nevada:

This case regards the constitutionality of S.B. 539 (Chapter 592, *Statutes of Nevada 2017*), which created a system for filing information regarding diabetes drugs. In this case, PhRMA moved for a preliminary injunction, which was denied. On October 5, 2017, the Legislature filed a motion for summary judgment arguing the challenged provisions of S.B. 539 are facially constitutional. On October 26, 2017, the plaintiffs filed a cross motion for summary judgment. The parties are waiting for the federal district court to determine whether it will hear oral arguments on the summary judgment motions or whether it will decide the motions on the briefs.

AGENDA ITEM V—LEGISLATIVE COMMISSION POLICY

A. Review of Administrative Regulations Submitted Pursuant to NRS 233B.067

Please see the attached list of regulations (Agenda Item V A-1) to be considered. The list can also be accessed electronically at: https://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg_List_2017_Dec19.pdf.

Chair Frierson held the following regulations for discussion: R108-15, R133-15, R136-15, R112-16, R130-16, R131-16, R143-16, R003-17, R012-17, R022-17, R054-17, R057-17, R059-17, and R086-17.

MOTION: Senator Settelmeyer moved approval of the following regulations: R102-16, R109-16, R153-16, R156-16, R006-17, R010-17, R024-17, R025-17, R027-17, R029-17, R032-17, R034-17, R035-17, R036-17, R058-17, R060-17, R061-17, R088-17, and R115-17. Assemblywoman Carlton seconded the motion. The motion carried.

Regulation R112-16

A REGULATION relating to invasive body decorations; establishing provisions governing the permitting and operation of certain invasive body decoration establishments; prescribing fees for the issuance and renewal of certain permits relating to the operation of invasive body decoration establishments; and providing other matters properly relating thereto (Agenda Item V A-2).

Ross Armstrong, Deputy Administrator, Division of Public and Behavioral Health (DPBH), Department of Health and Human Services (DHHS), stated R112-16 adopts basic health and safety standards for invasive body art operators in order to align statewide standards with protections already in place in Carson City and Clark and Washoe Counties. The regulation includes: (1) the adoption of nationwide plumbing and disinfection standards; (2) standards for the preparation, use, and disposal of tools; (3) special event permitting; (4) documentation required for minors; and (5) the adoption of an infection control plan.

Assemblywoman Carlton questioned why a mobile operation suggested R112-16 would put it out of business, and she asked the reason for citing the Uniform Plumbing Code (UPC) in Section 34.

Mr. Armstrong clarified that an out-of-state operator noted the 14-day maximum special event limit and the 14-day notice prior to the special event permit would not allow the business to continue operation in Nevada.

Barrett Evans, Program Manager for Environmental Health, DPBH, DHHS, explained the UPC citation addresses requirements for hand washing sinks and sanitation components.

Chair Frierson asked whether the mobile business in question or the industry in general could still operate under this regulation.

Mr. Evans explained that although this was a hardship for one business, the 14-day limit provides assurance that events are inspected. If a mobile business is given an annual permit to operate, it would be difficult to trace its location when investigating infection complaints.

Senator Settelmeyer questioned how the operation of this mobile business is different from the operation of mobile orthodontic units.

Mr. Evans said the mobile businesses are permitted to operate in Nevada but there is a cap on the duration of time they can attend an event.

Senator Settelmeyer asked whether the State Board of Health (BOH) oversees everything dealing with body piercings or whether the State Board of Cosmetology also deals with piercings and permanent makeup.

Mr. Armstrong said these are the first regulations developed by the BOH that address piercings and body art. Since the local health authorities in Carson City and Clark and Washoe Counties have regulations in effect, R112-16 provides statewide standards to protect rural areas without local health districts.

Senator Kieckhefer, Mr. Evans, and Mr. Armstrong discussed whether the local governments are adequately regulating this industry. Mr. Armstrong suggested they are, and R112-16 models the regulations from the local health districts; none of the local districts will have to change their regulations based on R112-16.

Senator Kieckhefer asked whether an existing facility licensed by a local health district would also have to be licensed by the State under R112-16.

Mr. Evans said that would be the case only if the facility operates in a rural county that does not have a health district. He emphasized that a fixed location does not have to be licensed by the State if it is licensed by Carson City or Clark or Washoe Counties.

Assemblyman Daly echoed Assemblywoman Carlton's concerns of citing the UPC in Section 34. He questioned whether this relates only to the fixtures.

Mr. Armstrong reassured Assemblyman Daly that according to subsection 2 of Section 34, the BOH will continually review the standard plumbing regulations to ensure they are relevant and proper. If the UPC changes in a way that does not make sense for this regulation, the BOH is required to take action and adopt relevant regulations.

Referring to Section 4, Assemblyman Daly questioned the reference to apprentices, a defined term in NRS. He questioned whether there is a State-approved apprenticeship program for this type of work, to which Mr. Armstrong replied there is not.

Mr. Evans interjected that during the public workshops, "apprentice" was the term used by the industry to describe employees in training.

Assemblyman Daly and Mr. Armstrong discussed the appeal process as described in Section 114. Mr. Armstrong verified nothing in the regulation would preclude one's ability to access judicial remedies after a decision by the DHHS.

Assemblyman Oscarson asked the following questions about rural areas that do not have health districts: (1) were they solicited for information; (2) what will the cost

be for them to register with the State; (3) how long will they have to register; and (4) how will they be notified.

Mr. Evans replied they were solicited for comments; the annual permit fee is $290; and the rural areas will be notified within 30 days. He added the industry is in favor of these regulations, which it believes will prevent illness. Mr. Evans stressed the only public comment in opposition was from the mobile unit, which has already been discussed.

MOTION: Assemblywoman Carlton moved approval of R112-16. Senator Kieckhefer seconded the motion. The motion carried.

Regulation 130-16

A REGULATION relating to time shares; establishing provisions relating to abbreviated registrations; establishing provisions relating to the registration of certain time share exchange companies and time-share resale brokers; revising certain definitions; revising provisions relating to certain persons owing money to the Real Estate Division of the Department of Business and Industry; revising provisions relating to sales agents licensed as provisional licensees; revising provisions relating to branch offices; applying certain provisions to time-share resale brokers; revising provisions concerning time-share permits; revising provisions relating to standards and duties of certain persons; revising provisions concerning advertisements, promotional meetings and promotions; repealing certain provisions; and providing other matters properly relating thereto (Agenda Item V A-3).

Sharath Chandra, Administrator, Real Estate Division (RED), B&I, stated R130-16 contains amendments to conform to S.B. 383 (Chapter 334, *Statutes of Nevada*) and Assembly Bill 404 (Chapter 539, *Statutes of Nevada*) from the 2013 Legislative Session.

Regulation 143-16

A REGULATION relating to time shares; establishing provisions relating to required disclosures given to purchasers of previously sold time shares; and providing other matters properly relating thereto (Agenda Item V A-4).

Assemblyman Pickard asked where he can find the definitions deleted from R130-16.

Mr. Chandra said the definitions are addressed in Chapters 645 ("Real Estate Brokers and Salespersons") and 119A ("Time Shares") of NRS.

Assemblyman Pickard questioned the deletion of some advertising requirements in Section 36, subsection 2 of Section 38, Section 40, and Section 42 of R130-16. He suggested that removing protections from advertising could be misleading to

potential buyers, particularly if a project is proposed but not funded or moving forward. Assemblyman Pickard commented that since so much is done online, the only information some potential buyers might have is what they have garnered from advertisements or the public offering statements, but the regulation removes the requirement that this information not be misleading. He asked Mr. Chandra to explain why the RED agreed to delete these requirements.

Mr. Chandra explained the intent was not to mislead the public but to ensure that: (1) what is proposed is actually what is being built, rather than a rendering, which could eventually fall out of the plan; and (2) what is shown to potential buyers is what they should expect when they take possession of the product. He added that in the past, some disclosures were presented on a compact disc or electronically, but now, physical pieces of paper are required, which protects potential buyers. Mr. Chandra said a lot of the changes were solicited by the industry and through public comment; some things were eliminated because of duplication, but the intent was not to deceive.

Assemblyman Pickard commended the RED for its operations and desire to protect the public, but in his opinion, R130-16 opens the door for advertisements to contain statements, photographs, or sketches relating to facilities that are only proposed. He noted the regulation requires that an advertisement not contain a statement, photograph, or sketch relating to a public facility that is incomplete, which, in his view, would imply it has begun or is already underway. Assemblyman Pickard said R130-16 removes the important statement that a public facility already under construction is likely to be completed and the facility where ground has not yet been broken is less likely to be completed. He suggested that removing the phrase ". . . explanatory material that contradicts or changes, or tends to contradict or change, the meaning of any prior statement . . ." from Section 40 is important because it is necessary to point out to potential buyers things that might have changed.

Continuing, Assemblyman Pickard questioned why subsection 2 of Section 2 of R130-16 allows electronic format of various documents, with consent, and R143-16 requires the broker to provide a disclosure form in paper format only.

Mr. Chandra stated the electronic form is for people selling outside the State, and the paper format is for in-State sales.

Assemblyman Pickard stated this could be burdensome to the time-share industry. He questioned why local buyers are not given the option of an electronic version.

Mr. Chandra said the electronic version could be done, but he suggested the industry felt comfortable with the physical documents, which are practical because of the five-day cancellation rule.

As the sponsor of A.B. 404, Chair Frierson recalled the distinction was intentionally made after consulting with the industry because there is a difference between disclosures provided to people who have already purchased a time share and concerns about people being misled at a sale.

Assemblyman Pickard said he likes electronic versions, but without more understanding than what is provided, he expressed discomfort with R130-16.

Assemblyman Daly questioned why subsections 5, 6, 7, and 10 of Section 43 were being deleted from R130-16.

Mr. Chandra said the idea is not to micromanage these businesses because the scenarios are different and the market changes; the businesses serve a clientele and they know what suits them best. Addressing a purchaser's credit card mentioned in subsection 10, he pointed out a buyer has five days to cancel the sale. Mr. Chandra said he could not state the exact thoughts behind these deletions, but he surmised some of the changes were clarifying and others were to allow the businesses to self-regulate.

Assemblyman Daly offered a reminder that the original regulations were put in place as protection to stop dishonest or abusive procedures.

Chair Frierson recalled discussions about getting a group of potential buyers together in a room that was so loud people made decisions without clearly hearing the details of the discussion. He said A.B. 404 was an effort to remove some of those distractions to ensure potential buyers were not duped into a sale.

Reiterating his concerns that the regulations delete too many consumer protections, Assemblyman Pickard moved to not approve R130-16 and R143-16. He offered to work with the RED to resolve his concerns.

Chair Frierson agreed with Assemblyman Pickard's concerns.

MOTION: The previous motion by Assemblyman Pickard to not approve R130-16 and R143-16 was seconded by Senator Atkinson. The motion carried.

Regulation 131-16

A REGULATION relating to charter schools; authorizing a pupil at a multi-campus school to matriculate to another campus of the multi-campus school; authorizing the sponsor of a multi-campus school to close a campus of the multi-campus school without closing the multi-campus school; authorizing the sponsor of a charter school to require the governing body of the charter school to develop and submit a plan for the recruitment of pupils; establishing provisions relating to enrollment at a charter school; requiring a charter school to provide certain notices to the parents and guardians of pupils and potential pupils; establishing

provisions relating to the restarting of a charter school; establishing provisions relating to weighted lotteries for admission to a charter school; requiring a sponsor of a charter school to submit an application to the Department of Education before accepting an application to form a charter school in certain circumstances; requiring the use of the enrollment number from the current school year for the purpose of apportioning money from the State Distributive School Account in the State General Fund for a charter school in certain circumstances; establishing various provisions relating to audits of charter schools; authorizing a committee to form a charter school to create an organization to raise money on behalf of the charter school in certain circumstances; and providing other matters properly relating thereto (Agenda Item V A-5).

Steve Canavero, Ph. D., Superintendent of Public Instruction, Nevada's Department of Education (NDE), stated a workshop for R131-16 was held in the fall of 2015 following the passage of S.B. 509 (Chapter 516, *Statutes of Nevada 2015*). A public hearing was held on March 28, 2017, to solicit public comment on the proposed regulations, and an additional public hearing was held on July 31, 2017, to adopt changes made to the regulations as a result of the March 28 public hearing.

Dr. Canavero said the first few sections of R131-16 attempt to define and handle the notion of a single campus charter school versus a multi-campus charter school. He stated a particular charter holder and the organization board may have multiple physical campuses, and as a result of S.B. 509, there is a need to define what that means. Dr. Canavero provided a brief review of the following sections:

- Sections 8, 9, and 10 relate to nondiscriminatory enrollment practices;
- Section 11 clarifies how a sponsor may restart a charter school after revocation;
- Section 12 updates the weighted lottery process and procedures;
- Section 13 is consistent with NDE's responsibility to oversee charter sponsors and adds language regarding a "time-out" for a sponsor who does not review or accept applications and then later decides to do so;
- Section 16 clarifies language in statute related to a charter school that may deliberately cause a decline in the enrollment of pupils and how that relates to funding—particularly—the "hold harmless" provisions;
- Sections 18 and 19 are specific to the charter schools' annual audit process and clarifies certain requirements; and
- The remaining sections contain conforming language and parallel sections.

Senator Denis asked whether the regulation reflects legislation passed during the 2017 Legislative Session.

Patrick Gavin, Executive Director, State Public Charter School Authority, NDE, said these regulations respond to the adoption of S.B. 509 and S.B. 460 (Chapter 429, *Statutes of Nevada*) of the 2015 Session. These were workshopped, and the initial language was prepared prior to the 2017 Session.

Senator Denis asked whether R131-16 applies to all charter schools, regardless of sponsors, as well as charter schools in achievement school districts (ASDs).

Dr. Canavero replied the regulation does not differentiate by sponsor, and achievement charter schools (ACSs) are included. He added that anything specific to an ACS falls under the ACS regulations; an ACS is a charter school for the purposes of R131-16.

Senator Denis questioned the purpose of a multi-campus school.

Mr. Gavin explained that, historically, when an existing school adds another campus, there is a flurry of movement from one campus to another. This regulation provides if oversubscription occurs, an internal lottery is required to address legitimate parental concerns of hardship, and ensures that in the event there are fewer seats available than families who want to move, there is a fair and transparent process. He stated if additional seats open at either campus, the regular lottery process is used.

Senator Denis asked whether R131-16 provides for the ability to review a school and determine whether revocation of the charter is needed.

Mr. Gavin reiterated the regulations were developed prior to the 2017 Session and stressed the importance of additional public transparency related to finances. He emphasized that NDE looked at best practices from other states with high-performing charter school sectors; the language related to financial transparency draws from the language of the District of Columbia, and the language for equitable practices draws from Massachusetts and other states.

Senator Kieckhefer expressed concern about subsection 1(a) of Section 8, which prohibits a charter school from basing an enrollment decision on the results from any test of the ability or achievement of a prospective student and the weighted lottery system that creates a weight for students with limited English proficiency. If a test cannot be used to determine a student's English proficiency, he questioned how a weight can be created for that student.

Dr. Canavero answered that Section 8 deals with preenrollment screening to prevent discrimination prior to enrollment, and Section 12 addresses a student's subsequent placement within the school after enrollment.

Mr. Gavin clarified the testing-related section addresses placement tests after admission. He noted that after observing other states, particularly Colorado—the first state to receive authority from the U.S. Department of Education to implement weighted lotteries pursuant to the federal Charter Schools Program's grants—the disclosures to get additional weights in the lottery are strictly voluntary. They are not a requirement for a student to apply.

Senator Kieckhefer asked how a charter school could focus on students with limited English proficiency.

Mr. Gavin explained that under federal law, a school cannot be created that exclusively serves such a population, students with disabilities, or students with any other particular characteristic, with the sole exception of single-gender schools. He said the weighted lottery is intended to ensure underrepresentation of particularly vulnerable student populations and does not occur within the charter school sector. Mr. Gavin noted the charter school sector has seen significant increases in racial and ethnic diversity since the Authority's inception in 2011, as well as substantial increases in the percentages of students with disabilities and English language learners. In addition, he said the Authority has not seen commensurate increases in the percentage of students eligible for free and reduced-price lunch. Mr. Gavin pointed out the subgroups mentioned are specifically identified in the weighted lottery process and are substantially underrepresented in charter versus host districts. He stressed that the intent of the weighted lottery is to allow for more equitable enrollment of those three populations in particular, as well as in the event of a district desegregation order. This language was taken directly from the federal guidance based on Colorado's work. He added there also would be the ability to work on racial weights.

Senator Kieckhefer expressed concern the regulation is overly restrictive if a charter school wants to focus on a specific area of need. He asked for confirmation that these regulations do not pertain to university schools for profoundly gifted pupils, to which Dr. Canavero verified they do not.

Dr. Gavin added that Chapter 386 ("Local Administrative Organization") of *Nevada Administrative Code* (NAC) is reserved for charter schools, and Chapter 387 ("Financial Support of School system") of NAC refers to public school finances, which is the only place where specific language related to charter or university schools for profoundly gifted pupils is found.

Referring to Section 18, Assemblywoman Carlton asked for confirmation that the regulation is not aimed at creating religious charter schools.

Mr. Gavin assured Assemblywoman Carlton that is not the intent of R131-16. He noted Section 18 states a charter school may create an organization for the sole purpose of raising funds, and there is a statutory prohibition against sectarian activities by charter schools. Section 18 clearly identifies nonprofit guidelines for which charter schools are authorized. Mr. Gavin said the regulation attempts to address financial mismanagement issues uncovered in 2014, such as schools creating nonprofit entities that functioned as "stealth" education management organizations, or double-dipping, such as what was happening in Washington, D.C. He stressed if the Authority found greater issues, it would rereview the regulations.

MOTION: Senator Denis moved approval of R131-16. Assemblyman Pickard seconded the motion. The motion carried.

Regulation R108-15

A REGULATION relating to education; authorizing the Achievement School District to contract with certain professional and technical personnel; providing the process for selecting schools for conversion to achievement charter schools; authorizing a parent or legal guardian to petition to convert a public school to an achievement charter school or take certain other actions concerning an underperforming school; providing for performance compacts between a school district and the Department of Education; providing for the selection of an operator of an achievement charter school; establishing the priority for the enrollment of pupils at an achievement charter school; making various other changes concerning the operation and financing of an achievement charter school and a contract to operate an achievement charter school; and providing other matters properly relating thereto (Agenda Item V A-6).

Dr. Canavero said the regulation addresses ACSs, and it was previously heard at the LC's meeting on January 27, 2017. He provided an update from the time the LC first reviewed R108-15:

- Democracy Prep Public School opened as an ACS at the beginning of the 2017 school year at the Andre Agassi College Preparatory Academy, serving students from kindergarten through Grade 12.

- Futuro Academy Charter School opened at the beginning of the school year, serving students in kindergarten and first grade. Futuro is called a "fresh start," which means it is not a charter that converted an existing school building, but rather it is a stand-alone fresh start in a community of underserved families, with 100 students on the waiting list and only 116 student seats.

- Minimal public testimony was provided this year related to the ASD selection process, which is attributed to NDE's work with districts around performance compacts, deep engagement with Clark County around an initiative called the "partnership network," and three schools that will open next year have successfully engaged with the communities involved.

Dr. Canavero reported that since the regulations were first heard, NDE has significantly engaged with stakeholders through conversations facilitated by Senator Denis regarding S.B. 430 of the 2017 Session, a failed measure, and the regulatory workshop and public hearing process. The regulations include a number of changes as a result of these conversations and additional feedback from districts. He requested the LC's approval of the regulations to enable the program to move forward.

Brett Barley, Deputy Superintendent for Student Achievement, NDE, pointed out three overarching themes of R108-15:

1. Deep parental engagement—Parents of students in eligible schools can petition into the ASD or a locally led school improvement strategy, which is a result of conversations with districts regarding S.B. 430.

2. Performance contracts—The NDE will offer and not require a performance contract with schools and districts eligible for the ASD. If a school is meeting its improvement targets to become a three-star school in three years, the ASD would not recommend that school to the State Board of Education (SBE) for conversion to an ACS. There is also clarifying language in R108-15 regarding multiple years of school performance, which the SBE has ensured will remain and be included in the law going forward.

3. Facilities—The NDE had many productive conversations with school districts about facilities. At the districts' request, the regulation includes updated language concerning the definition of capital expenses and language related to warranties, fixtures, and improvements that stay with the buildings when they are returned to the districts.

Rebecca Feiden, Deputy Director, ASD, NDE, provided a brief overview of certain sections of R108-15, as follows:

- Section 7 aligns the ASD eligibility criteria to the Every Student Succeeds Act plan;

- Section 8 better aligns the eligibility list's timing and the information that will accompany the list and ensures information sharing between boards of trustees and the State in order to notify the community;

- Section 9 articulates the petition process that puts parents in the "driver's seat";

- Section 10 further articulates the petitioning rules of engagement in terms of how the petition is signed and who is able to sign it;

- Section 11 covers the process for reviewing and improving the petition;

- Section 12 includes actions that can be taken as a result of a valid petition;

- Section 13 refers to performance contracts;

- Section 14 covers how the ASD solicits parental input regarding school selection;

- Section 15 summarizes the process for narrowing the list of eligible schools into a final selection;

- Sections 16 and 17 refer to the application process for a charter organization to operate an ACS;

- Section 18 makes changes to sections that contradict with Chapter 386 of NAC that apply to ACSs; therefore, the additions of Sections 19 through 22 and 30 reflect Chapter 386 of NAC;

- Section 23 allows for nonenrolled students to opt in to extracurricular activities;

- Section 24 covers facilities;

- Section 25 is the charter contract requirements;

- Section 26 is the requirement for ACSs to report on progress, which is also the case for existing schools under a performance contract in order to create a level playing field;

- Sections 27 and 28 cover ACS contract termination; and

- Sections 29 and 30 detail the termination and closure process.

Senator Denis asked for the differences in R108-15 from when it was first heard by the LC.

Mr. Barley referred to a bill sponsored by Senator Denis during the 2017 Session regarding an A-Plus school or a school that had 100 percent of the funds flowing to it. The regulation includes all conversations the ASD had relating to S.B. 430;

however, because R108-15 is a regulation and not a bill, that element is not included.

Ms. Feiden indicated the most significant changes are: (1) the details regarding petitioning; previously, any school was allowed to petition the executive director of the ASD—the current version only allows for the petitioning of schools that have met the eligibility criteria, which was a request from the districts and extensively discussed during the last legislative session; (2) performance contracts were optional, but are now required; and (3) facilities.

Senator Denis remarked that when the regulation was initially discussed, there was concern the State was going to take over schools, but the revised regulation provides an opportunity for parental input. He inquired of the ASD's response to the revised regulation.

Mr. Barley reported the NDE had good conversations with the ASD. He said the ASD participated in the workshop and public hearing, the NDE incorporated the ASD's feedback in a number of places highlighted by Ms. Feiden, and the process with the SBE was more collaborative and productive this year than last year. When the SBE decided to select schools and move forward with the process, representatives from the Clark County School District shared their enthusiasm for the partnership network concept.

Senator Denis said the partnership network concept is important because it shows the NDE is working hand-in-hand with the districts and he appreciates the parental choice language. Senator Denis stated the revised regulation is a step forward in changing a school's environment and helping the kids without being disruptive.

MOTION: Senator Denis moved approval of R108-15. Assemblyman Pickard seconded the motion. The motion carried.

Regulation R136-15

A REGULATION relating to education; prescribing when the Superintendent of Public Instruction will deem a person to have been convicted of a crime involving moral turpitude or offense involving moral turpitude for certain purposes relating to the hiring and licensing of personnel to work in a public school and the acceptance of volunteers at a public school; clarifying that certain other crimes may be grounds for denial of employment or service as a volunteer; authorizing an applicant for a license who has been convicted of a crime to request that the Superintendent or the Superintendent's designee request additional opinions concerning whether those crimes are related to a position with a charter school or county school district; and providing other matters properly relating thereto (Agenda Item V A-7).

Dr. Canavero reported R136-15 passed through a workshop in October 2015, followed by three public hearings that took place in June 2016 and February and November 2017. Stakeholders at the public hearings included licensed prep programs and multiple school districts, which assisted the NDE with revisions.

He noted the LC first heard the regulation on June 21, 2017. Chapter 391 ("Personnel") of NRS requires the NDE to run a background check on each new or renewal educator licensing applicant. The superintendent may deny an educator license when a background check reveals a felony or crime of moral turpitude conviction. Moral turpitude is not defined in Nevada law, and its interpretation has historically been left to the discretion of the sitting superintendent. The regulation intends to define moral turpitude for purposes of Chapter 391 regarding teacher licensing and other sections involving educators from Chapter 388A ("Charter Schools") and Chapter 388C ("University Schools for Profoundly Gifted Pupils") of NRS. Under existing law, it also clarifies for potential teachers the court's determination of moral turpitude. In this regard it minimizes the superintendent's discretion in determining moral turpitude, but the superintendent still retains the discretion to issue licensing if he or she determines the conviction is not related to an applicant's employment as a licensed educator. He commented that his first emphasis and primary motivation in pursuing R136-15 came from early testimony in the regulation's process from the NDE's educator prep programs and school districts in the recruitment of teachers and the absence of clarity of moral turpitude, which impairs their ability to counsel potential teachers into or out of teacher prep programs.

Michael Arakawa, Licensure Program Officer III, Educator Effectiveness and Family Engagement Division, NDE, stated that during the regulation process, the NDE made several changes in response to concerns from the LC and community stakeholders. The primary changes are as follows:

- Including language that ensures only a conviction for any of the offenses listed will result in licensure denial;

- Removing references to immigration violations from the list of disqualifying offenses as was a first conviction for certain misdemeanors—including battery, theft, and driving under the influence;

- Removing any reference to possession of personal-use marijuana;

- Removing "harboring a fugitive," which was vague and subject to interpretation, and replacing it with "Aiding another person in the commission of an offense punishable as a felony or gross misdemeanor or rescuing a prisoner from lawful custody ... "; and

- Restructuring language for ease in determining whether a conviction would result in a lifetime or ten-year denial of licensure.

Mr. Arakawa reiterated R136-15 retains the element of discretion for the superintendent to issue a license if he or she determines the conviction is not related to the applicant's employment as an educator. He said an appellant could request the superintendent review the denial with potential input from at least one other person.

Senator Ford questioned whether the appeal process also applies to an appeal to the court, to which Mr. Arakawa responded the regulation does not.

After naming several groups, Senator Ford asked which groups the NDE engaged with in determining the list of crimes considered to be moral turpitude.

Dr. Canavero replied that Gregory D. Ott, Senior Deputy Attorney General, Office of the Attorney General, went to great lengths to define "moral turpitude" through existing case law. He could not recall, with certainty, the names of all of the groups present or absent during the process of determining moral turpitude. Throughout the public hearings, dramatic and informative testimony was heard not only about moral turpitude but also about consideration of the disproportionate impact of convictions or arrests on particular communities and what that meant in policy. He said the NDE has that part figured out, in the sense of using existing case law, but also the retention aspect at the discretion of the superintendent as to whether a conviction is related to the position.

Mr. Ott explained the starting point was legal research about existing case law that found determinations of moral turpitude for specific crimes. That list was compiled and then items were removed based upon input from other stakeholders, such as immigration crimes and personal-use marijuana, which is the list the NDE must currently use without the definition.

Chair Frierson questioned how the ten-year window of time for certain offenses was determined. Regarding petty larceny, he asked whether someone at 18 years of age who might have had one or two run-ins at a convenience store would be precluded from licensure for ten years, absent action by the superintendent.

Mr. Ott confirmed the scenario presented by Chair Frierson would be correct because of a second-offense petty larceny; however, he indicated this is an area where the superintendent could use his or her discretion.

Assemblyman Pickard, in referring to subsection 3 of Section 5 regarding the discretion of the superintendent or the superintendent's designee to determine whether a conviction is related to the position, is of the opinion the superintendent

should make that decision. He expressed concern that a designee could be a lower-level employee who might not be qualified to make that decision and asked for the rationale behind allowing the language.

Dr. Canavero explained that, in practice, he is able to process actual denials through his designee—the Director of the Office of Educator Licensure, NDE—with or without Mr. Ott's aid. He conjectured that is the reason for the language structure.

Mr. Ott added that the language regarding denials places the authority for making the determination with the superintendent; however, the delegation to the designee was originally structured as a way to allow a designee to make a decision with the superintendent available for the appeal process.

Assemblyman Pickard said authorizing a designee to make those determinations somewhat departs from the usual practice, but it appears to be a matter of efficiency. Although this concern will not hold him up, Assemblyman Pickard suggested revisiting the practice of designation at an appropriate time.

Referring to subsection 1(n) of Section 1, Assemblyman Wheeler questioned the effect of a controlled substance conviction, prior to the legalization of recreational marijuana, on the licensure applicant.

Mr. Ott stated the manufacturing, cultivation, and distribution language is in the lifetime ban provision, but the personal-use marijuana was exempted to reflect actions that are no longer crimes, because the intent is not to deny licenses for things not currently criminalized in Nevada.

Chair Frierson pointed out that subsection 1(r) of Section 1 clarifies possession of an amount deemed to be for personal use would not be included.

Now that marijuana cultivation is legal in Nevada, Assemblyman Wheeler asked whether the lifetime ban is applicable.

Mr. Ott said although certain things have been decriminalized, subsection 1(r) remains in effect for controlled substances.

Senator Settelmeyer, referring to subsection 1(d) of Section 1 and the list of crimes from NRS 202.255 through 202.440 and 202.750 through 202.840, expressed concern regarding the violation of NRS 202.357—the prohibition against a child under 18 years of age possessing or being in custody or control of an electronic stun device on school grounds. He argued a designee would not have the authority to consider the circumstances surrounding such a conviction if the person convicted of the crime was in fear of his or her safety.

Dr. Canavero stated the purpose of addressing the definition of moral turpitude was not simply to appropriately advise candidates; it was also to have public discussion about the definition of moral turpitude for the sake of consistency in regulations. He explained the qualification of the crime of moral turpitude exists in case law; however, it does not automatically preclude licensure, which is where discretion is allowed.

Senator Settelmeyer asked whether Dr. Canavero, as the superintendent, uses discretion based upon the community and whether he gives weight to the input from a county's school superintendent.

Dr. Canavero said that when he reviews moral turpitude cases, he reads all of the information pertaining to the conviction, including testimonials from members of the community on behalf of the applicant.

Senator Ford asked for confirmation from Legislative Counsel regarding the application of the Administrative Procedure Act of 1946 (APA), 5 U.S.C.A. Section 501 et seq. and how it applies to R136-15, in the event of a revocation or denial of a license, and whether a decision can be appealed to a court.

Brenda J. Erdoes, previously identified, confirmed Senator Ford's understanding that a decision can be appealed to a court for the reason there is no prohibition, which may or may not have been effective anyway, but that is the standard.

MOTION: Senator Ford moved approval of R136-15. Assemblywoman Carlton seconded the motion. The motion carried.

Regulation R003-17

A REGULATION relating to peace officers; revising provisions relating to the minimum standard of training required for peace officers and reserve officers; revising requirements for the training course certain peace officers are required to complete before being awarded a basic certificate; and providing other matters properly relating thereto (Agenda Item V A-8).

Mike Sherlock, Executive Director, Peace Officers' Standards and Training (POST) Commission, said the changes to R003-17 address the training categories for Nevada peace officers as follows: the addition of Category II training; changes to training titles; and additional firearm training.

Senator Denis asked whether subsection 3(c) of Section 1 (lifetime fitness), replaces subsection 3(a) (health, fitness and wellness).

Mr. Sherlock replied that Senator Denis is correct. Previously, there was different wording for each category; therefore, in combining the categories, POST sought to make it consistent. He said the term *lifetime fitness* is based on industry standards

and or input from training organizations across Nevada, and POST developed performance objectives mandated for the training academies. He further explained the lifetime fitness training category pertains to exercise, nutrition, and personal health and well-being. Physical fitness requirements, for certification, exist within the training academies, but are different from lifetime fitness skills.

Senator Denis asked whether lifetime fitness continues after POST training.

Mr. Sherlock replied there is yearly maintenance training, but aside from perishable skills, additional training is at the discretion of the employing agency.

Assemblywoman Carlton, pointing out the differences in the three categories, asked why there is seemingly unrelated overlapping training, particularly taking into consideration the number of training hours required for each category.

Mr. Sherlock replied most Category I participants are sheriff deputies and police officers. All counties and many cities in Nevada have jails, which, potentially, make agencies liable. The statutes require categorized training based upon job assignment. Prior to the changes in regulation, if a deputy went through a Category I academy and a jailer called in sick, it is not unusual for a sheriff's department to have a person on the street work in the jail, regardless of that person having Category I training, which is required by statute. Category II training includes parole and probation, but it also includes juvenile probation, alternative sentencing, et cetera, that have a direct connection to custody. He said POST is of the opinion it would be to their benefit to understand Category III training. In terms of time, POST and other training academies reviewed how the cross-training would impact the number of hours. Mr. Sherlock stated two and one-half days were added due to the abundance of overlapping training.

Assemblywoman Carlton said because this will be minimum course training, she is of the opinion some of the additional training qualifications would not benefit trainees in positions for which they have been hired, noting the difficulty in hiring for these positions.

Mr. Sherlock explained the regulation does not make significant changes to academy training; much of it is wording and title changes, and some custody training was included, but the impact is minor and benefits the trainees.

Assemblywoman Carlton inquired as to the answers given to the questions asked during public comment at the October 16, 2017, hearing on R003-17 (Agenda Item V A-7) regarding whether the changes would allow an officer to start the academy and whether the officer could receive the Category III certificate and leave the academy when the requirements were met.

Mr. Sherlock acknowledged that, initially, there was some confusion, but the amendments do not change Category III only. He said POST, as it incorporated Category III training, allowed agencies to attend that portion of training and then leave with their certificate.

Assemblywoman Carlton stated she still has concerns, particularly with the deletion of stress management.

Assemblyman Pickard also stated his concern regarding the deletion of stress management. In light of today's political climate, he asked whether the deletion of sexual harassment training from subsection 2(d)(19) of Section 5 was wise.

Mr. Sherlock established POST is a regulatory agency that develops regulations for all Nevada entities. City and county agencies have their own mandated and ongoing sexual harassment training programs, which POST trainees have already attended. It was determined that with limited time and basic training, sexual harassment training was redundant and had no value from a basic training standpoint.

Chair Frierson questioned whether trainees' proof of sexual harassment training is required.

Mr. Sherlock said POST polled the agencies it services to ensure initial and ongoing sexual harassment training has and is being provided to individuals prior to academy training.

Chair Frierson was pleased to have that information on the record and stressed the importance of staying current with sexual harassment prevention.

MOTION: Assemblyman Pickard moved approval of R003-17. Senator Denis seconded the motion. The motion carried. Assemblywoman Carlton voted no.

Regulation R012-17

A REGULATION relating to peace officers; requiring a peace officer who is authorized to use a firearm to demonstrate a minimum level of proficiency in the use of each type of firearm he or she is authorized to use; requiring certain peace officers to satisfy certain requirements before commencing or resuming their duties as a peace officer; making various changes regarding the certification of courses for training above the level of basic training; and providing other matters properly relating thereto (Agenda Item V A-9).

Mr. Sherlock stated R012-17 addresses language related to the basic peace officer certificate, maintenance, requirements, firearms proficiency, and professional development training by providers within Nevada and out-of-state vendors who are certified by POST.

Assemblywoman Carlton questioned whether the regulation requires out-of-state vendors that provide training in Nevada, such as Northwestern University (NU), to be tested by POST.

Mr. Sherlock said NU is a good example of the reason for the regulation because NU is not certified in Nevada. However, R012-17 forces out-of-state vendors to participate in a national certification project (NCP), which most large training vendors are utilizing, and it allows out-of-state vendors certification in Nevada. He stated NU and many other out-of-state vendors provide much training in Nevada, but NU has not chosen to go through Nevada's POST process; however, the NCP might make it easier to become certified.

In response to Assemblywoman Carlton's question as to whether NU has requested to be certified in Nevada, Mr. Sherlock responded that it had not.

Assemblywoman Carlton asked whether R012-17 would prevent NU from providing training in Nevada.

Mr. Sherlock replied that it would not. The regulation acts as an incentive to allow noncertified, out-of-state vendors to become certified in Nevada, if that is what they want.

Assemblywoman Carlton questioned POST's reason for getting involved in a professional development program when its purpose is to ensure minimum training requirements are provided.

Mr. Sherlock said POST is mandated to provide continuing education and professional development. He explained that POST provides four levels in advanced training certification: (1) intermediate; (2) advanced; (3) management; and (4) executive. It is not uncommon for out-of-state training providers to attempt to obtain certification for every state offering certification. Therefore, POST spends much time on certifying courses from out-of-state that do not provide training to Nevada peace officers. Many states require all training to go through the NCP, and its standard is higher than Nevada's minimum standard.

Assemblywoman Carlton commented she has concerns the language could deter vendors, like NU, from providing excellent training in Nevada and the unintended consequences of the regulation.

Senator Ford asked whether NU would need to be certified before coming into Nevada to teach if R012-17 is approved.

Mr. Sherlock stated R012-17 does not make any changes to the certification training requirements, and NU will be allowed to continue training in Nevada. He explained that if a Nevada peace officer wishes to apply for the next level of

occupational training certification, a certain number of service years, college units, and POST-certified training are required. Mr. Sherlock reiterated the regulation allows for out-of-state certification, if desired, and the NCP certification process is similar to that of Nevada.

Mr. Sherlock confirmed Senator Ford's summation of the regulation that it does not place a new requirement on NU before it can train Nevada's officers.

MOTION: Senator Ford moved approval of R012-17. Assemblyman Pickard seconded the motion. The motion carried.

Regulation R022-17

A REGULATION relating to energy; adopting provisions governing the use of money in the Renewable Energy Account in the State General Fund; revising provisions relating to the denial of certain applications for certain partial abatements of property taxes by the Director of the Office of Energy; revising provisions relating to eligibility for certain energy-related tax incentives; providing that the Director may, upon request, provide an extension of time to file the annual compliance report for certain persons who execute certain abatement agreements with the Office; and providing other matters properly relating thereto (Agenda Item V A-10).

Angela Dykema, Director of the Governor's Office of Energy (GOE), provided an overview of the Renewable Energy Tax Abatement Program. The Program came under the GOE's jurisdiction in July 2009, and administrative regulations were adopted in 2010. Since then, there have been a couple of rulemakings in an effort to streamline the administration of the Program and make the process as efficient and transparent as possible; those efforts include R022-17. She said the Program awards partial sales and use tax and partial property tax abatements to developers of renewable energy projects located in Nevada. To be eligible, projects must employ at least 50 percent Nevada workers, pay 175 percent of Nevada's average wage, and offer healthcare benefits to workers and their dependents. The GOE reviews the applications, conducts public hearings to determine eligibility, and reviews annual compliance reports after abatements are granted. The Program is a crucial tool in attracting more renewable energy development and bringing economic benefits to Nevada. The Program increases Nevada's tax revenue and leads to job creation in a growing industry. Since the Program's inception, Nevada's investment of $734 million in tax incentives has attracted nearly $7 billion in capital investments, payroll, and taxes paid, which represents a 10 to 1 return on investment. Abatement projects have created over 4,600 jobs, paying an average wage of over $37 per hour, and they represent a total of 30 renewable energy power plants that have chosen to build in Nevada.

The intent of the amendments in Section 2 of R022-17 is to ensure compliance with subsection 2(b)(1) and (2) of NRS 701A.365. According to statute, the GOE is supposed to deny an application from a developer of a renewable energy facility if a board of county commissioners in which the facility is located determines one of two findings: (1) the cost of services the local government is required to provide to the facility will exceed the amount of tax revenue the local government is projected to receive as a result of the abatement; or (2) the projected financial benefits that will result to the county from the employment by the facility of the residents of Nevada and from capital investments by the facility in the county will not exceed the projected loss of tax revenue that will result from the abatement. The amendment reads that a board of county commissioners must provide supporting evidence to the GOE that backs one of the determinations so that it can ensure the application denial is based upon one of the two findings and is not an arbitrary and capricious denial. It is against statutory intent of the law for the GOE to deny an application if it does not meet one of those findings/determinations as previously cited. Ms. Dykema noted the importance of having access to relevant information should, for example, the GOE overrule a fiscal impact note of Nevada's Department of Taxation. By requiring the county to provide supporting evidence, the GOE is promoting transparency and expediency in the process that should prevent costly and lengthy lawsuits that would delay future renewable energy projects and prohibit financing and development, and, ultimately, the number of renewables choosing to locate in Nevada.

Ms. Dykema stated that currently, the GOE does not have regulatory authority to require counties to provide supporting evidence for its determinations. She recounted a case in 2014 where had a county not provided its supporting evidence, a denial of application for a renewable energy project, based on inaccurate information, would have occurred and the State likely would have been sued. Continuing, Ms. Dykema stated a county recommended the GOE deny an application based upon subsection 2(b)(1) and (2) of NRS 701A.365. The GOE asked the county to provide supporting evidence of its determination. The then GOE Deputy Attorney General (DAG) indicated it did not have authority to obtain such evidence. The DAG recommended that in the future the GOE address this issue through regulations by clarifying counties would provide supporting evidence for their determinations. In this particular case, the county maintained and provided supporting documentation for its determination, and a mistake was found in the calculated estimation of capital the project would bring to Nevada's economy. Therefore, the finding could not be made. As the record will reflect during the hearing of this application, Taxation's deputy director walked through the capital investments the county could expect from the project and, after hearing nothing further from the county, the GOE approved the application. She reiterated the GOE is attempting to provide transparency in this process. Ms. Dykema stated the requirement to provide supporting evidence is the change that has received the most opposition. The remaining amendments are straightforward.

Senator Farley asked whether the regulation gives the GOE authority to override a county's abatement denial and make a final determination. If so, she questioned whether that authority is through regulation or statute.

Ms. Dykema said the statute is clear in that the county must make a determination based upon one of the two findings. The GOE is attempting to require a county to provide supporting evidence in the case of a denial so it can see what the determination was based upon.

Senator Farley questioned whether, in the 2014 example, the county or the GOE approved the application after the error was found, and, if the GOE did approve the application, did it force the county to concur. She contemplated whether the regulation would give the GOE significantly more authority than what should be given through statute.

Joshua Woodbury, DAG, Office of the Attorney General, explained that in a case, such as the one just mentioned, the Director has the ability to approve the application if a recommendation of denial is made. However, in the 2014 case, it was not a denial based upon subsection 2(b)(1) and (2) of NRS 701A.365, but rather, it was a recommendation of a denial. According to statute, the application was deemed approved because it was not specifically denied pursuant to one of the two sections. As written, if a county denies an application, the regulation requires that it must be done pursuant to one of the two categories. If it does not, it would be deemed admission, and, therefore, the Director would have statutory authority to approve the application.

Senator Farley requested further clarification from Ms. Erdoes.

Ms. Erdoes stated the statute supports the GOE's reading of the statute itself, which is that a board of county commissioners must have sufficient evidence to deny an application. The pre-2013 statute reads the counties had absolute veto power, which was retracted in 2013. The first bills introduced removed that power and then there was a meeting in the middle where there were two bills that were the same. The result was a county can deny a project if there is sufficient evidence showing the abatement would cost more than it would produce. This regulation indicates the GOE is going to require a statement from the county in compliance with the law. The counties' concern is the GOE does not have the authority to do that. She confirmed the Legal Division is of the opinion the GOE has the statutory authority to require a statement from a county.

Chair Frierson commented he was originally under the impression the regulation would undermine the legislation, but he now understands the legislation "peeled back" the counties' absolute veto authority. There seems to be legislative history suggesting the Legislature was trying to peel back some local government veto authority. He said the use of the word *sufficient* and who makes that

determination is challenging. Chair Frierson stated local government has an opportunity to address concerns, but because their authority was retracted in 2013, an argument could be made the intention was to not give local government absolute veto authority. He stated the counties' steps for delivering input is unclear.

Senator Settelmeyer said he remembered presenting legislation in 2013 to retract the counties' right to deny application and replaced it with the concept of the test. He expressed concern that the counties have a test to meet, but when they meet it, the GOE is being given the ability to decide whether the right determination has not been met. Senator Settelmeyer agrees the counties should have to provide "reasonable" documentation as opposed to "sufficient" documentation because that is subjective.

Ms. Erdoes clarified the Legal Division has found that the GOE has the authority to pass R022-17. She said the question posed is the use of the word *sufficient*. The intended writing of the regulation, as requested by the GOE, was to make it into a test, and the Director's finding that the evidence submitted was sufficient to show that a denial meets the reasonable test in statute.

Senator Ford remarked that he is now satisfied the regulation is within the GOE's authority. He questioned why the current status and procedure is insufficient to address an arbitrary and capricious denial of an abatement application.

Ms. Dykema stated the intent is to ensure the supporting evidence backs up either determination.

Senator Ford asked why the current procedure does not sufficiently address the challenge of an arbitrary and capricious action.

Ms. Dykema replied there is nothing specific in NAC 701A.575 that gives the GOE clear regulatory authority to require supporting evidence. She said the information could probably be obtained through a Freedom of Information Reform Act request.

Senator Ford reworded his question and asked what the current process is for addressing the challenge of an arbitrary and capricious denial of an application.

Ms. Dykema assumed a lawsuit would ensue. She confirmed that the current process does not include an administrative appeal from a board of county commissioner's decision between its denial and going to court, and the GOE is trying to provide an extra step in providing a stamp of approval from the OG that the decision was either correct or incorrect under the arbitrary and capricious standard. If the OG were to agree with a board, the remedy for the aggrieved would be to go to court. Ms. Dykema assumed if the OG were to disagree with

the board, the applicant would be approved and the board, under R022-17 or NRS, could challenge the GOE's decision in court.

Senator Ford conveyed he is trying to understand what the remedy would be for challengers as well as noncounty aggrieved individuals, noting the National Association of Counties does not like the regulation.

Ms. Erdoes stated she does not think there is a prohibition on going to court, but she cannot say whether the court would decide to hear it based on adequate or inadequate standing on behalf of the county to challenge. She confirmed there is no expressed authorization that governs this type of situation that would give someone the right to go to court.

Senator Farley asked the following questions: (1) under what circumstances would a county reject a renewable energy project, notwithstanding the example previously given; and (2) given the counties and cities are entrusted to do their jobs, why would the GOE want to usurp that authority.

Ms. Dykema agreed with Senator Farley's points and said some tax revenue is better than none, but she is uncertain about the reasons for counties and cities to reject a project. She reiterated the GOE, going forward, is trying to prevent situations where there is a recommended denial that is not in finding with either of the determinations subsection 2(b)(1) and (2) of NRS 701A.365 by requiring all information to be presented and by expediting the process and making it as transparent as possible.

Referring to Section 1 of R022-77, Senator Kieckhefer said NRS gives the GOE the authority to promulgate regulations that outline other uses for the money in the Renewable Energy Account in the State General Fund. However, according to Section 1, if the regulation is approved, it appears the money could be used for any purpose the GOE deems appropriate. He stated that is much more latitude than most departments have in terms of the use of funding already appropriated by the Legislature, which he is uncomfortable with granting.

Ms. Dykema acknowledged the GOE is able to utilize the money in the Account to help it meet the Governor's and Legislature's goals and its performance measures that are presented during the annual budget review. In addition, the State has significant funds from the Volkswagen settlement where a 20 percent match is required for 15 percent of the settlement funding that can be used for installing electric vehicle charging infrastructure across Nevada's highway system, which has been the GOE's goal for a long time. The amendment clarifies the GOE would use the Account to provide the 20 percent Volkswagen match.

Senator Kieckhefer asked whether the Volkswagen settlement is being streamlined into the Account.

Ms. Dykema stated Nevada selected the Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources (SDCNR), as the beneficiary. She said NDEP is the agency that will be filing for reimbursement of the funds; however, the GOE decided that the 15 percent allowable of the settlement money will be handled by the GOE to meet the goals of the Nevada Electric Highway initiative. The GOE will be handling the electric vehicle charging infrastructure and will work with NDEP to file for reimbursement from the settlement for that purpose. The match is anything that is not available or not publically owned but is, perhaps, on a private commercial host site. The settlement funds will cover 80 percent, and the State is required to provide the matching 20 percent.

Senator Kieckhefer said these types of issues are usually dealt with significantly more detail in the Interim Finance Committee (NRS 218E.400) rather than the LC, and he would expect, by reading the statute, they would be included in regulation with some specificity. His concern is R022-17 is significantly more broad than what the LC generally grants, and it does not lay out other uses of the money.

Ms. Dykema conveyed the GOE is not trying to be overarching in any way. The specific language accomplishes the initiatives and goals of the Governor and the GOE and the intent of Nevada's laws. She noted that when the GOE goes through the budget planning process and presents its agency goals, it tries to make the information as public as possible.

Referring to subsection 6(a) of Section 4 of R022-17, Assemblyman Wheeler questioned why the average hourly wage is statewide rather than county specific, because a pay scale in Clark County might be very different from a pay scale in another county. He also asked why the average statewide hourly wage went from 100 to 110 percent, recalling recent past sessions and the Legislature's attempts to save money on public works due to the recession. He cautioned the State could, again, be in that situation.

Ms. Dykema replied the language is derived from statute. The regulation's purpose is to provide clarity regarding the wage requirement. There is no adjusted annual wage report commencing on August 1 because the Department of Employment, Training and Rehabilitation (DETR) releases the required wage based on the calendar year and not the State fiscal year. She said the GOE is clarifying that the wage should be based on the current wage reported by DETR. The 110 percent figure of the statewide hourly wage repeats statutory language; the GOE is not proposing changes concerning that figure.

Assemblyman Daly, expressing similar concerns as that of Senator Kieckhefer, said the regulation language regarding the use of Account funds appears to allow the GOE to use the money for anything it wants, as long as the Governor and the GOE are in compliance with *any* State law. He stated the GOE needs to narrow the

language, and he is unsure whether he can support the regulation based upon that concern.

Assemblyman Daly referred to subsection 6(1) of Section 4 of R022-17. He pondered whether the August 1 date will work for the GOE being DETR does not release its report at that time, and he pointed out that deleting subsection 4 appears to leave the construction portion unaddressed as far as the statewide hourly wage is concerned. He asked what the requirement would be on the construction side. Assemblyman Daly further commented on other subsections that are affected as a result of deleting subsection 4, specifically, satisfying the average hourly wage requirements and the application of the 110 percent wage applied to workers after construction. Assemblyman Daly questioned how the GOE can do that, why subsection 4 was deleted, and how there cannot be a similar requirement for the construction side of wage rates.

Ms. Dykema stated she thinks the deletion of subsection 4 is incorrect.

Assemblyman Daly remarked because of the issues with subsection 4 and the broad language regarding the use of the money in the Account, he is not going to support the regulation.

Chair Frierson explained the LC can either adopt or defer the regulation. He said he is inclined to defer it in order to provide the GOE an opportunity to have discussions with members. Afterward, the LC will decide whether to move forward with the regulation, as written, or whether the process should be restarted with additional hearings.

MOTION: Senator Atkinson moved to defer R022-17. Assemblyman Oscarson seconded the motion. The motion carried.

Regulation R054-17

A REGULATION relating to public employees; providing, under certain circumstances, for the Executive Officer employed by the Board of the Public Employees' Benefits Program to be subrogated to the rights of certain public officers or employees against certain persons; and providing other matters properly relating thereto (Agenda Item V A-11).

Assemblywoman Carlton requested the Board of the Public Employees' Benefits Program (PEBP) identify the problem it is trying to solve regarding the subrogation agreements and in applying them toward deductibles.

Damon Haycock, Executive Officer, PEBP, explained that PEBP has been subrogating against first- and third-party coverage for many years, and it has collected funds on first-party coverage to offset members' cost of care. He said PEBP has not always authorized members to utilize portions of the first-party

coverage to pay for their current out-of-pocket costs, which has caused them much consternation because they are paying coverage premiums through other insurance companies, which PEBP then subrogates to pay for costs it has incurred. Mr. Haycock stated PEBP is attempting to provide members with the ability to become more whole and use the money they have in first-party coverage to offset PEBP's out-of-pocket costs, such as deductibles, coinsurance, and out-of-pocket maximums. The result is the member gets treated and PEBP is able to collect the amount it is due as the other insurance company is considered liable. In addition, Mr. Haycock shared that the regulation also includes language allowing the organization or agency to be more lenient, when it makes sense. Often, there is not enough money to go around. The current industry practice, when multiple parties are vying for the same available settlement dollars, is an equal split of those dollars between PEBP, the member, and the member's counsel, which is significantly less than PEBP has incurred.

Assemblywoman Carlton asked for clarification of first- and third party coverage. The scenario she envisions is: (1) an employee is in an accident; (2) PEBP pays for the care; (3) the insurance company sues the other insurance company and (4) the money is paid. She surmised PEBP cannot cover the deductibles, coinsurance, and or the out-of-pocket maximum. The regulation would allow that to happen, but she said she is trying to determine where the third-party insurance comes in. In addition, there are the attorneys' fees.

Mr. Haycock replied that an example of third-party insurance would be if Mr. Haycock were in a car accident and his insurance is through one company and the other party's insurance is through another. If the other party were at fault, PEBP would go after the other party's insurance company to offset its costs. An example of first-party insurance would be if he were underinsured or had uninsured motorist coverage, and the other party does not have sufficient insurance to cover the costs; therefore, his first-party insurance would offset those costs and settle out.

Assemblyman Daly provided a hypothetical situation where someone is injured and the costs are $100,000, and insurance only covers $50,000 to $75,000. According to the signed subrogation agreement, that person is entitled to the entire $75,000, but then there is nothing left to pay other expenses, such as medical, vehicle replacement, attorney's fees, et cetera. He questioned why there is no judicial review and whether PEBP's intent is to be able to make that determination without getting sued by the participant. Assemblyman Daly said he questions language where individuals lose the right to go to court to remedy what they believe is a mistake.

Mr. Haycock explained the idea was to streamline the process and prevent the inclusion of a series of administrative additions while not removing members' rights. Often, when liens are placed against settlements, there is an opportunity

for payment delays to a member until a settlement is solved. He said there are members who want and are deserving of funding to offset their costs, but because of the subrogation process taking considerable time, they are not receiving it. The point of the regulation is to take care of the member and protect PEBP's fiduciary responsibilities.

Dennis L. Belcourt, DAG, Civil Division, AG, stated the language regarding judicial review was added in the review process. He explained that he does not think persons, by regulation, can be prohibited from going to court for the determination of their rights. He is of the opinion the intent was to address the possibility of the issue being addressed through administrative proceedings, but the language would not preclude the parties from going to court, if need be.

Assemblyman Daly said, most of the time, when leniency decisions are being made, participation is beneficial because money is being deferred that otherwise might be collected. The attorney needs to be billed either way and does not anticipate PEBP being sued. He stated if language reads that the resolution of a claim is not subject to judicial review, the court takes notice; however, he stated he is satisfied with the explanation.

MOTION: Assemblywoman Carlton moved approval of R054-17. Senator Denis seconded the motion. The motion carried.

Regulation R057-17

A REGULATION relating to transportation network companies; revising provisions relating to the annual regulatory assessment paid by a transportation network company; and providing other matters properly relating thereto (Agenda Item V A-12).

David W. Newton, Senior DAG, AG, on behalf of the Nevada Transportation Authority (NTA), B&I, stated R057-17 is an amended version of the regulation presented to the LC one year prior and attempts to include amounts the NTA needs to collect in order to administer and enforce Chapter 706A ("Transportation Network Companies") of NRS.

Senator Kieckhefer asked for the current cost to regulate transportation network companies (TNCs) considering the significant spike in the NTA's assessments.

Mr. Newton said the anticipated cost of regulating TNCs in this fiscal year is $1.7 to $1.8 million. The reason for the significant spike is because nine additional employees were added to the TNC section of the NTA during the last legislative session, which nearly doubled the TNC's staff size. Most of the new positions have not been filled, but the TNCs are generating more regulatory business, and the NTA is struggling with TNC drivers operating off of the TNC app, which, primarily, is what TNC enforcement officers are investigating.

Senator Kieckhefer commented that because he has not heard from either of the two major TNCs regulated in Nevada and the Legislature approved the additional positions, he would support the regulation.

Mr. Newton clarified there are two major TNCs in Nevada and a third is on suspended status, but it pulled out of Nevada and concentrated its efforts in Texas when Texas changed its rules regarding fingerprint background checks for TNC drivers. That company is not operating cars in Nevada, but it still has a certificate. A fourth TNC was recently approved that is in the compliance period of its application and is getting its cars and drivers together. He anticipates the new TNC will be in operation within the next month.

Senator Settelmeyer said that with only four TNCs and ten categories, he is concerned with the NTA's assessment increasing from $500,000 to $1.2 million. He asked whether that figure was in addition to TNCs' annual licensure fee.

Mr. Newton replied TNCs do not pay annual licensure fees, but rather, they pay an initial licensure fee; thereafter, the NTA looks at TNCs' gross operating revenues and then determines its budgetary needs in order to enforce Chapter 706A. The NTA and TNCs met before the assessment was proposed and discussed the NTA's needs and its methodology, and he said the NTA determined each TNC would fall within the matrix (Agenda Item V A-12).

Senator Settelmeyer questioned whether the TNC would be able to use the enforcement officers for other purposes, such as going after "gypsy cabs."

Mr. Newton said that view has changed since TNCs began operating. The NTA looks at enforcement activities against gypsy operators as beneficial to TNC and nonTNC regulated carriers; therefore, the NTA is blending some of the enforcement activity.

Assemblyman Wheeler asked where the extra income would go if enforcement costs are increased to $1.7 million and income is increased $2.4 million.

Based on the matrix within the regulation, Mr. Newton said the NTA would collect $1.715 million. One of the TNC's falls into the $1.2 million category and the other falls into the next category; both TNCs do not fall into the highest category based on their gross operating revenue.

Assemblyman Pickard asked for confirmation of whether the two major TNCs have had input on the regulation and that they support it.

Mr. Newton said the NTA met with the TNCs prior to initiating the regulatory process. The TNCs attended both the workshop and adoption hearing, and there was no discussion regarding the amounts. He indicated subsection 4 of

R057-17 is the result of one of the TNC's requests to be able to pay their assessment quarterly rather than all at once.

Assemblyman Pickard said he was also surprised at the magnitude of the assessment increase if TNCs are running on a 3 to 4 percent profit margin, but he will not stand in the way if TNCs agreed to the assessment.

Mr. Newton noted the NTA received much input regarding whether the TNCs should expect similar assessment spikes in the future, to which the NTA told them it was not anticipating that. He said when the budget was submitted during the 2017 Session, the NTA requested two new positions; based on the budget hearings, the Legislature increased the number from two to nine. The NTA explained to the TNCs that one more position will be funded in the next budget year; therefore, the numbers will slightly change when the NTA returns to the LC at that time.

Mr. Newton confirmed for Senator Denis the number of positions is based on the amount of TNC and nonTNC enforcement work done by the NTA, and the only reason for an increase would be if more enforcement officers are needed.

Senator Settelmeyer asked for the number of citations given by the NTA to the TNCs and how many have been proven as errors.

Mr. Newton reported the NTA is averaging two to three car impounds per week for operating off of the app and about 95 percent of those violations are proven. There have been a few cases where individuals have proven they were not operating off the app, or were not in violation of Chapters 706 ("Motor Carriers") or 706A of NRS.

MOTION: Senator Atkinson moved approval of R057-17. Assemblyman Pickard seconded the motion. The motion carried. Senator Settelmeyer voted no.

Regulation R059-17

A REGULATION relating to telecommunications; revising provisions governing eligibility for, termination of and de-enrollment from Lifeline service; and providing other matters properly relating thereto (Agenda Item V A-13).

Donald J. Lomoljo, Utilities Hearings Officer, Public Utilities Commission of Nevada, (PUCN) stated R059-17 was necessitated by action at the Federal Communications Commission (FCC) that adopted the Lifeline Modernization Order in 2016. The two primary purposes of the Order were to: (1) expand federal Lifeline support to broadband service; and (2) eliminate fraud and waste in the federal Lifeline support arena, which relates to R059-17. Nevada has its own Lifeline support law and regulation that provides monetary support to Nevada customers who qualify under a certain low-income criteria to receive telecommunications service. After

the Order was adopted, states had a limited amount of time to align their state Lifeline regimes with the federal criteria; otherwise, they were at risk of losing federal funding. Other reasons for aligning Nevada's Lifeline regulations with federal regulations are to: (1) ease the administration of the program; and (2) avoid consumer confusion under qualifying criteria between the State and federal programs. Those changes are reflected in Section 1 of R059-17. When the PUCN originally adopted R059-17 as a temporary regulation, the PUCN was concerned about Nevada customers losing Lifeline support, and, in that vein, the PUCN included the following language in the adopting Order as follows:

> The federal Lifeline program is a vital and important service that provides telephone access and financial assistance to qualifying low-income residents and allows those participants to maintain connections to jobs, family, and emergency resources that they may otherwise not have. The basis for the new rulemaking docket and regulatory amendments set forth in attachment 1 are solely to ensure that Nevada maintains compliance with the standards for eligibility as determined by the FCC. To ensure that no currently enrolled subscriber in the Lifeline program is left without telephone access by the new FCC directed changes, the PUCN will direct its staff to work with any subscriber negatively impacted by these amendments, the program administrator for Nevada, the telecommunications providers, appropriate state agencies, and any nonprofit community entities to identify alternative assistance and resources so that all Nevadans, even those experiencing financial hardship, remain connected.

Mr. Lomoljo said the PUCN reached out to the Lifeline administrator to assess whether there were any customers who would lose benefits under the new regulation; the PUCN was assured minimal loss would occur, if any, because current customers would likely qualify under the other qualifying criteria listed under Section 1 of the regulation.

Senator Atkinson asked why subsection 1(b)(5)(6) and (7) of Section 1 were omitted.

Mr. Lomoljo replied the reason is to align Nevada's regulations with the federal regulations adopted in the Order so that Nevada does not lose federal funding. He clarified the PUCN was assured that anyone under stricken subparagraphs (5), (6), and (7) would likely qualify for the programs listed in subparagraphs (1) through (4), new subparagraph (5), and remaining subparagraphs (6) through (9) of the revised regulation. He confirmed for Senator Atkinson that low-income individuals would "most certainly" qualify for the programs listed. Mr. Lomoljo added that PUCN staff was directed to find other support sources for anyone negatively affected.

Senator Atkinson remarked as long as that was on the record, he was satisfied.

Mr. Lomoljo confirmed for Senator Denis the PUCN has been working with individuals since the temporary regulation was adopted in October 2016 to see whether they qualify for one of the other categories, adding he is not aware of any customers who have been negatively affected.

Senator Denis asked why the Order retained the tribally administered Temporary Assistance for Needy Families program but deleted it for the nontribal, to which Mr. Lomoljo replied he did not know.

In responding to questions from Senator Ford, Mr. Lomoljo stated: (1) the federal regulations were adopted under President Obama's administration; and (2) the list of programs under subparagraphs (a) and (b) of Section 1 are exhaustive, meaning only those programs qualify; subparagraph (a) is the income threshold, and subparagraph (b) includes the qualifying program thresholds.

Mr. Lomoljo clarified for Assemblywoman Carlton the criteria are in effect at the federal level and were adopted as a temporary regulation in Nevada. He stated Nevada is not restricted to the federal criteria, however; if it deviates from the federal criteria, the risks are: (1) Nevada might lose customers' federal support; and (2) there would be different qualifying criteria at the State and federal level, which might cause confusion for Nevada consumers between qualifying for State and federal support.

Assemblywoman Carlton requested the PUCN keep track of whether there are any problems with individuals losing service so the Legislature can address them during the next session and do so without putting Nevada in conflict with the federal government and in jeopardy of losing federal dollars. She suggested setting up another system to ensure that people who have been served, or will possibly be in the future, stay in the system. That way, the data will be available to evaluate how the changes are working and then move forward from there.

Mr. Lomoljo replied the PUCN would be happy to track any problems that might arise.

Senator Denis remarked he appreciates the statement read by Mr. Lomoljo at the beginning of his testimony. It is important to legislators to see the PUCN has pondered these issues to ensure nobody misses out.

MOTION: Senator Atkinson moved approval of R059-17. Assemblywoman Carlton seconded the motion. The motion carried.

Regulation R086-17

A REGULATION relating to recreation; revising provisions governing the issuance of and the payment of fees for a permit to enter and use the facilities of a state park or recreational area; revising certain authorized activities and periods of use for certain state parks and recreational areas; and providing other matters properly relating thereto (Agenda Item V A-14).

Eric Johnson, Administrator, Division of State Parks (NDSP), SDCNR, explained the primary change in the regulation is to Nevada's state parks' fee structure. The NDSP's goal is to simplify and standardize the fees. He said the change is a result of the public not being able to understand the fee structure because it was inconsistent. To rectify the problem, the NDSP has created two tiers of fees rather than multiple, inconsistent tiers.

Senator Kieckhefer remarked he likes the new fee structure. He pointed out the NDSP used to provide free access to parks for promotional purposes; however, it appears the changes divide the regulation so that any member of the media, regardless of whether that person is working at the time, is given free access.

Mr. Johnson replied the assumption is the person is in a working capacity, and it has never come up where someone has requested to enter a park simply because he or she works for a news media organization.

Senator Kieckhefer said he is satisfied as long as that is the NDSP's intent.

MOTION: Senator Kieckhefer moved approval of R086-17. Assemblyman Oscarson seconded the motion. The motion carried.

Regulation R133-15

A REGULATION relating to health; establishing the requirements governing the licensing and operation of community health worker pools; establishing the qualifications and duties of administrators of such pools; establishing the qualifications and training required of community health workers; establishing the fees that the Division of Public and Behavioral Health of the Department of Health and Human Services will charge for the issuance and renewal of a license to operate a community health worker pool; and providing other matters properly relating thereto (Agenda Item V A-15).

Amy Roukie, MBA, Administrator, DPBH, DHHS, introduced herself.

Ross Armstrong, previously identified, stated R133-15 includes basic requirements for the operation of community health worker pools, pursuant to S.B. 498 (Chapter 384, *Statutes of Nevada 2015*) and was discussed at the last LC meeting. He indicated no changes have been made to the regulation since the last LC

meeting, and his understanding from the last meeting is members wanted more time to look over the regulation before making a decision.

MOTION: Assemblywoman Carlton moved approval of R133-15. Senator Denis seconded the motion.

Senator Kieckhefer, while recognizing it is incumbent upon the DPBH to put a law into action, said he supported the bill in 2015, but he worries the regulation is overregulating and that he will oppose it.

Assemblyman Oscarson shared that when the bill was passed, there was optimism it would provide great support to existing services, but he has questions and concerns, as do his constituents. Regretfully, he said he also would not be able to support the regulation.

The motion made by Assemblywoman Carlton and seconded by Senator Denis carried. Senator Kieckhefer, Senator Settelmeyer, Assemblyman Oscarson, and Assemblyman Wheeler voted no.

B. Approval of Amendments to the Legislative Counsel Bureau's Anti-Harassment Policy

Rick Combs, previously identified, indicated he is seeking approval of a change to the Legislative Counsel Bureau's Anti-Harassment Policy (Agenda Item V B) that adds a new Section 11 regarding staff training, as follows:

> Staff Training: The Director of the Legislative Counsel Bureau is responsible for developing a program of training to ensure the working environment is free from sexual harassment and other harassment. The program of training will require that new employees of the Legislative Counsel Bureau receive training regarding this policy within 30 days after beginning employment and that all employees of the Legislative Counsel Bureau receive training regarding this policy at least once every two years.

Mr. Combs explained the LCB's Legal Division has provided a very good training program for staff; however, there has not been a policy in place requiring the training to be conducted at specific intervals. In addition, an intranet harassment prevention video is available for LCB employees. The LCB is trying to ensure it is conducting training that helps people recognize their rights and responsibilities in the workplace of the Legislature. He pointed out the policy is directed at LCB staff, and clarified there is no immediate concern for bringing the policy before the LC today. Mr. Combs stated LCB staff is not the only group of people within the legislative branch that requires this kind of attention, but he thinks this is what he should do within his purview as the LCB Director to ensure training should be

provided on a regular basis. Training will include not only the definition of harassment and how to avoid it, but also the complaint processes and what employees should do if they encounter a situation they believe is inappropriate.

He mentioned, at the request of Chair Frierson, Assembly Concurrent Resolution No. 12 (File No. 44, *Statutes of Nevada 2017*) requires the LCB to establish a reporting system that allows a person to anonymously submit an anti-harassment violation complaint. In addition, Mr. Combs said the LCB's goal is to deliver a comprehensive anti-harassment system, but it will not be completed before year's end simply because the LCB wants to ensure the system works. He stated he will contact certain members of the press, who had inquired earlier about the status of the program, with an update. When the system is ready, Mr. Combs said he will bring it before the LC for its consideration for approval.

Chair Frierson commented on the LCB's revised anti-harassment policy, as follows:

- The LCB has attempted to address sexual harassment in a global way;

- The LCB's sexual harassment policy has been expanded to deal with not only legislators, but also staff and lobbyists;

- The policy revisions create an atmosphere where reporting is not discouraged and complaints can be made anonymously;

- Nevada's collaboration and networking with other states, legislatures, and organizations to deliver a quality system is important to the process;

- Nevada has been ahead of the curve in strengthening its anti-harassment policies and has made them a priority; and

- The Nevada Legislature needs to change with the times, which includes an increased awareness and sensitivity to the realities of the workplace and power differentials.

Chair Frierson thanked the Legal Division for developing a model that will work for Nevada, and he thanked members for their support of the policy's expansion during the last hours of the 2017 Session. He expressed pride in Nevada taking the lead on this issue and looks forward to being a leader for other states to follow. Chair Frierson said he anticipates the reporting system will be ready in the coming weeks and that it will send a statement the Legislature is serious about this issue and is supportive of victims who need an opportunity to be heard.

Senator Ford echoed Chair Frierson's comments. He shared that he and the Chair evaluated the sexual harassment issue at the beginning of the 2017 Session in an effort to create an environment that is free from harassment. Senator Ford stated

he was delighted at the passage of A.C.R. 12 on the last night of the 2017 Session and that it expands the anti-harassment policy to include lobbyists during and between sessions. The expanded policy is an important step to LCB staff in ensuring they receive sexual harassment and other anti-harassment training within 30 days of employment, in addition to refresher training. He stated once the regulations/policies for A.C.R. 12 are set, another dedicated effort will be seen on the part of the Legislature to ensure everyone operating and working in the LCB buildings can do so free from harassment. He commended the Chair and the other legislators for unanimously supporting the resolution.

Chair Frierson added the revised anti-harassment policy incorporates a timeline for training that is already in place with respect to LCB staff. New and sitting legislator training policies will also be incorporated into the policy.

In an effort to establish faith in the process, Senator Kieckhefer suggested collaboration regarding the long-term goals of handling complaints and investigations against legislative members.

Chair Frierson remarked he would like the Commission on Ethics to meet and to:

- Fine-tune the process;
- Send a message there is a body ready to hear complaints; and
- Make clear the LCB has a zero tolerance for sexual harassment conduct.

He said he welcomes a collaborative conversation about the process before it is put into place.

Senator Kieckhefer stated, under the current system, much of the work is handled by the majority leader and the speaker; however, there are times when both individuals are members of the same party. There is the ability for standing committees to work on these types of issues in a bipartisan manner, which will help insulate politics from the process. He said he looks forward to collaborating in the future.

Senator Ford put forward that A.C.R. 12 language, the anti-harassment policy, and the new rules include an expanded list of individuals, beyond the majority leader, the speaker, and the LCB director, to whom a complaint may be submitted, and the newly established reporting system can be a mechanism by which aggrieved persons may present their cases.

MOTION: Senator Ford moved approval of the Amendments to the Legislative Counsel Bureau's Anti-Harassment Policy. Assemblywoman Carlton seconded the motion. The motion carried.

AGENDA ITEM VI—APPOINTMENTS

A. Appointment of Members to the Nevada Silver Haired Legislative Forum (NRS 427A.330)

Rick Combs, previously identified, directed the Commission members to a memorandum identifying recommendations for reappointment (Agenda Item VI A).

Senator Atkinson also recommended reappointment of Verlia Davis-Hoggard.

Senator Farley also recommended reappointment of Evelyn A. Cannestra.

Senator Settelmeyer also recommended reappointment of Carol A. Swanson.

MOTION: Senator Atkinson moved approval of the reappointment of Joann M. Bongiorno, Evelyn A. Cannestra, Verlia Davis-Hoggard, John Paul (Jack) Ginter Jr., Marilyn E. Jordan, and Rick Kuhlmey to the Nevada Silver Haired Legislative Forum. Assemblyman Oscarson seconded the motion. The motion carried.

B. Appointment of Member to Legislative Committee on Health Care (NRS 439B.200)

Mr. Combs explained the Commission inadvertently appointed three Democratic Senators to the Legislative Committee on Health Care at the September 21, 2017, meeting. He said Senator Joyce Woodhouse has agreed not to serve on the Committee, and Senator Joseph (Joe) P. Hardy, M.D., has been recommended to take her place (Agenda Item VI B).

MOTION: Senator Ford moved approval of Senator Hardy to the Legislative Committee on Health Care. Assemblyman Oscarson seconded the motion. The motion carried.

C. Approval of Appointment of Member to the Commission on Ethics (NRS 281A.200)

Mr. Combs said there is one vacancy to fill, and he explained the necessary qualifications of the appointee (Agenda Item VI C).

Chair Frierson expressed his desire to appoint former Assemblywoman April Mastroluca to the Commission on Ethics.

MOTION: Senator Ford moved approval of April Mastroluca to the Commission on Ethics. Assemblywoman Carlton seconded the motion. The motion carried.

D. Approval of Appointment of the Research Director (NRS 218F.800)

Mr. Combs announced that Susan E. Scholley, Research Director, Research Division, LCB, is retiring effective January 5, 2018. He requested the Commission's approval to appoint Michael J. Stewart, Deputy Director, Research Division, LCB, to the position.

MOTION: Assemblywoman Carlton moved approval of Michael J. Stewart as the Research Director. Senator Farley seconded the motion. The motion carried.

AGENDA ITEM VII—INFORMATIONAL ITEMS

There was no discussion on any of the informational items.

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

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

1. Semi-Annual Report Regarding Sales Tax Revenue Statistics for Businesses Operating in Tourism Improvement Districts in Washoe County and Clark County (Star Bond Districts) January 2017 through June 2017

2. City of Tonopah Fire Department's Quarterly (Q1 2018) and Annual (FY 2017–2018) Reports on Sales and Use Tax Imposed to Recruit, Employ and Equip Public Safety Personnel Pursuant to Section 17.5 of the Nye County Sales and Use Tax Act of 2007

3. Department of Business and Industry, Nevada Transportation Authority's 2016 (September 2016–September 2017) Transportation Network Company's Crash/Insurance Report, Aggregate Data Pursuant to NRS 706A.270(1–3)

4. Department of Health and Human Services, Division of Child and Family Services' Annual Cost of Child Protective Services Report for SFY 2017 Pursuant to NRS 432B.327

5. Henderson Redevelopment Agency, Education Set-Aside Funding Recommendations—2017–2018 Pursuant to NRS 279.676

6. Nevada Governor's Office of Economic Development, Nevada Battle Born Growth Escalator, Inc. Annual Report 2017 Pursuant to NRS 231.0545

7. Office of the State Treasurer, 2017 Annual Report of Nevada Capital Investment Corporation (NCIC) Pursuant to NRS 355.270

8. City of Las Vegas, Annual Redevelopment Agency Legislative Report Pursuant to NRS 279.685

9. Governor's Office of Economic Development, Annual Report of the Nevada Film Office, October 1, 2017, Pursuant to NRS 360.7598

10. Governor's Office of Economic Development, Annual Report Regarding Projects with Capital Investments of $1 Billion Pursuant to NRS 360.895

11. Governor's Office of Economic Development, Annual Report Regarding Projects with Capital Investments of $3.5 Billion Pursuant to NRS 360.975

12. Storey County, FY 2017 Annual Report Regarding Tesla's Gigafactory Pursuant to NRS 360.896

13. Governor's Office of Economic Development, Nevada Local Emerging Small Business Program Report, December 1, 2017, Pursuant to NRS 231.1405, 231.14065, and 231.1407

AGENDA ITEM VIII—PUBLIC COMMENT

Chair Frierson called for public comment.

John Wiles, Director, Unified Construction Industry Council (UCIC), stated the UCIC is composed of the Southern Nevada Building Trades Unions and their signatory contractors. In addressing the issue of apprentices, he focused his comments on R112-16 (Agenda Item V A-2). Mr. Wiles said the requirements in Chapter 610 ("Apprenticeships") of NRS require that certain apprentice program standards are met; however, he is of the opinion that language in R112-16 dilutes the meaning of apprentice because rather than being mentored, individuals in training are to have one responsible person supervise an unspecified number of individuals. He argued that this is a matter of public health and safety. Mr. Wiles stated the term *apprentice* means something to people, and if the regulation's definition of apprentice is used for anybody learning the trade, it will undermine the value and safety of that term.

The following document was submitted for the record:

A letter dated December 15, 2017, by Charles Duarte, CEO, Community Health Alliance, Reno, Nevada (Agenda Item VIII).

AGENDA ITEM IX—ADJOURNMENT

There being no further business to come before the Commission, the meeting was adjourned at 1:18 p.m.

Respectfully submitted,

Debbie Gleason
Secretary for Minutes

APPROVED BY:

Assemblyman Jason Frierson, Chair
Legislative Commission

MEETING MATERIALS

AGENDA ITEM	WITNESS/ENTITY	DESCRIPTION
Agenda Item V A-1	Legal Division, Legislative Council Bureau (LCB)	List of administrative regulations
Agenda Item V A-2	Legal Division, LCB	Adopted Regulation of the State Board of Health, LCB File No. R112-16
Agenda Item V A-3	Legal Division, LCB	Adopted Regulation of the Real Estate Division of the Department of Business and Industry, LCB File No. R130-16
Agenda Item V A-4	Legal Division, LCB	Adopted Regulation of the Real Estate Administrator, LCB File No. R143-16
Agenda Item V A-5	Legal Division, LCB	Adopted Regulation of the Department of Education, LCB File No. R131-16
Agenda Item V A-6	Legal Division, LCB	Fourth Revised Adopted Regulation of the Department of Education, LCB File No. R108-15
Agenda Item V A-7	Legal Division, LCB	Revised Adopted Regulation of the Superintendent of Public Instruction, LCB File No. R136-15
Agenda Item V A-8	Legal Division, LCB	Adopted Regulation of the Peace Officers' Standards and Training Commission, LCB File No. R003-17
Agenda Item V A-9	Legal Division, LCB	Adopted Regulation of the Peace Officers' Standards and Training Commission, LCB File No. R012-17

Agenda Item V A-10	Legal Division, LCB	Adopted Regulation of the Director of the Office of Energy, LCB File No. R022-17
Agenda Item V A-11	Legal Division, LCB	Adopted Regulation of the Board of the Public Employees' Benefits Program, LCB File No. R054-17
Agenda Item V A-12	Legal Division, LCB	Adopted Regulation of the Nevada Transportation Authority, LCB File No. R057-17
Agenda Item V A-13	Legal Division, LCB	Adopted Regulation of the Public Utilities Commission of Nevada, LCB File No. R059-17
Agenda Item V A-14	Legal Division, LCB	Adopted Regulation of the Administrator of the Division of State Parks of the State Department of Conservation and Natural Resources, LCB File No. R086-17
Agenda Item V A-15	Legal Division, LCB	Adopted Regulation of the State Board of Health, LCB File No. R133-15
Agenda Item V B	Rick Combs, Director, LCB	Anti-Harassment Policy
Agenda Item VI A	Rick Combs, Director, LCB	Memorandum dated December 13, 2017, re Appointments to the Nevada Silver Haired Legislative Forum (NRS 427A.330)
Agenda Item VI B	Rick Combs, Director, LCB	Appointment to Legislative Committee on Health Care (NRS 439B.200)

Agenda Item VI C	Rick Combs, Director, LCB	Appointment of Member to the Commission on Ethics (NRS 281A.200)
Agenda Item VIII	Charles Duarte, CEO, Community Health Alliance, Reno, Nevada	Letter dated December 15, 2017, re LCB File No. R133-15

This set of "Minutes of the Legislative Commission" is an informational service. Meeting materials are on file in the Director's Office of the Legislative Counsel Bureau, Carson City, Nevada.