



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

The Legislative Commission held its first meeting in Calendar Year 2017 on Friday, January 27, 2017. The meeting began at 9:42 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:**

Senator Michael Roberson, Chair  
Senator James A. Settelmeyer, Vice Chair  
Senator Kelvin D. Atkinson  
Senator Moises (Mo) Denis  
Senator Ben Kieckhefer  
Senator Joyce Woodhouse for Senator Aaron D. Ford  
Assemblyman Nelson Araujo  
Assemblywoman Irene Bustamante Adams  
Assemblyman John Hambrick  
Assemblyman Ira Hansen  
Assemblywoman Amber Joiner for Assemblywoman Teresa Benitez-Thompson  
Assemblyman James Oscarson

**OTHER LEGISLATORS PRESENT:**

Assemblyman Al Kramer, Assembly District No. 40

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Rick Combs, Director  
Rocky Cooper, Legislative Auditor, Audit Division  
Brenda J. Erdoes, Legislative Counsel, Legal Division  
Risa B. Lang, Chief Deputy Legislative Counsel, Legal Division  
Marshellah D. Lyons, Chief Principal Research Analyst, Research Division  
Debbie Gleason, Secretary for Minutes, Research Division  
Sylvia A. Wiese, Executive Assistant, Director's Office

**OTHER LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Kevin C. Powers, Chief Litigation Counsel, Legal Division

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

## **AGENDA ITEM I—ROLL CALL**

Chair Roberson called the meeting to order.

## **AGENDA ITEM II—PUBLIC COMMENT**

Chair Roberson called for public comment.

Knight Allen, Nevada resident, expressed his opposition to Senate Joint Resolution No. 13 (File No. 41, *Statutes of Nevada*) of the 2015 Session and encouraged the Legislature to approve Assembly Bill 43 of the 2017 Session. He said he and other knowledgeable people vetted the bill and concluded that it deals with the unintended consequences of rolling averages, which is a system that would create a .30 percent property tax increase rather than a 3 percent increase as agreed to in 2005. Mr. Allen stated A.B. 43 is a good bill that everybody can accept as long as the property tax cap is not disturbed.

Bill Hamlin, Nevada resident, spoke in opposition to the Nevada Achievement School District (ASD). He said that prior to Governors Gibbons' and Sandoval's administrations, the Clark County School District (CCSD) was nationally recognized as the fastest improving district in the nation. However, Mr. Hamlin suggested there was a major culture change with the aforementioned governors, which resulted in the withdrawal of educational funding and giving it to nonprofit organizations and foundations. This resulted in no professional development for teachers when new math, English language arts, and science standards, were developed by Nevada's Department of Education (NDE). Mr. Hamlin indicated this practice partly created the problems, and schools do not have good, qualified, and experienced teachers. He cited Nevada as having some of the largest first-year algebra class sizes in the nation, and if legislators do not make sure the resources get to the classrooms, they are to blame. In his opinion, the ASD is just another detractor that competes with CCSD reorganization. Mr. Hamlin said it is about time Nevada takes care of its students, and diverting funds from public education so others can be rewarded is not acceptable.

Craig M. Stevens, Director, Intergovernmental Relations, CCSD, provided written testimony ([Agenda Item II](#)) concerning R108-15 ([Agenda Item IV A-2](#)). He stated CCSD's preexisting and continuous issues with R108-15 are: (1) the expansion of the list of eligible schools into the ASD beyond what was authorized in A.B. 448 (Chapter 539, *Statutes of Nevada 2015*); (2) the qualification standards of an incoming charter management organization; and (3) the \$15,000 limit that would determine whether a cost is a maintenance or capital expense. In his written testimony, he outlined various sections of the revised regulation with which CCSD has concerns.

John Ritter, Chair, Nevada Advisory Council on Federal Assistance, Office of Grant Procurement, Coordination and Management, Department of Administration, drew the Commission's attention to the Council's 2016 annual report ([Agenda Item VI](#)). He remarked that being on the Council has been a great experience, and it made significant progress last year. Mr. Ritter expressed his appreciation for the agencies, Council members, the Governor, legislators, and members of the community for their tremendous support and work to improve Nevada's competitiveness in obtaining federal grants.

Ignacio Prado, Executive Director, Futuro Academy Charter School, spoke in favor of R108-15 ([Agenda Item IV A-2](#)). He said Futuro is thankful for greater clarity in the ASD process as well as regulations that clarify the intent and/or letter of the law, which is helpful to its board of directors. In addition, Mr. Prado pointed out that parent engagement is an important variable for the success of a school, and Futuro is always trying to find ways to drive parent engagement and collaboration. Mechanisms in R108-15 provide additional avenues for parents to become involved in the direction of their schools by being able to petition into the ASD.

Lindsey Dalley, resident, Logandale, Nevada; Member, Moapa Valley Community Education Advisory Board; and community school organization team member, encouraged passage of R108-15. He said the vision of the Advisory Board is when parents feel their children's schools are underperforming, they have the option to petition into the ASD to improve the schools through a locally formed and governed nonprofit educational group overseen by the ASD. Mr. Dalley stated the ability to petition into the ASD encourages school reform and is critical to keeping children first. The ASD model allows an administration, children, parents, and teachers to collaborate free from a central bureaucracy and without upsetting the whole. He supports moving the regulation forward to elevate parental involvement and begin positive change.

Monica Dominguez, resident, Moapa Valley, Nevada; President, Parent Teacher Organization (PTO), Ute V. Perkins Elementary School, CCSD; and mother of four children who attend schools within CCSD, testified in favor of R108-15 ([Agenda Item IV A-2](#)). She said the regulation will boost parental participation in the schools by allowing them to petition into the ASD model. Ms. Dominguez indicated that due to CCSD policies, Perkins Elementary has had five new principals within the last five years. She stated the school has been used as a stepping stone for the principals, which damages its ability to build trusting and stable relationships for the children, parents, and the PTO.

Wendy Jensen, resident, Clark County, Nevada; former president, PTO, CCSD; and mother of four children—three of whom attend a CCSD school—provided the following reasons for her support of R108-15:

1. Parental difficulty with volunteering in classrooms because they no longer feel welcome at the school.
2. CCSD food policies make it impossible for the PTO to conduct fundraisers.
3. Food regulations allot children a certain number of calories each week; if they have eaten a majority of those calories at the beginning of the week, they get very little to eat toward the end of the week and complain about being hungry at school.
4. Teachers are intimidated and threatened with their jobs if they communicate to parents when things happen at school; parents cannot help their children and the teachers if they do not know what is happening at school.

Ms. Jensen concluded her remarks by saying the ASD can solve these issues by giving parents the option of more voice through locally developed nonprofit charter organizations designed for specific schools and communities.

Wendy Mulcock, resident, Moapa Valley, Nevada, and mother of five children who graduated from CCSD schools, testified in support of R108-15. She gave an account of her years of booster club service when parent volunteers raised \$20,000 annually through membership drives by selling hot dogs and nachos, among other items, where the proceeds went directly into the schools and for scholarships. Ms. Mulcock said there has been a dramatic squelching of parental involvement by CCSD in recent years. She recounted a recent community education advisory board meeting, on which she serves, where members expressed their displeasure regarding legislators who enacted laws that instructed the board on how to fix their failing schools. Ms. Mulcock stated that during public comment, the board members supported individuals who agreed with its views but argued with the parents who did not. She expressed her astonishment and embarrassment by the board's hostility toward two ASD committee members in a more recent board meeting after they gave a presentation on the ASD's plan to implement A.B. 448. The board also refused to name any of its schools as possible charter school candidates. Ms. Mulcock pointed out that research confirms children succeed in schools where effective instruction is coupled with a deep commitment to nurturing relationships with students and their parents and guardians, which, she opined, is not happening in CCSD. She encouraged the Commission to approve R108-15.

Assemblyman Oscarson remarked the individuals testifying in support of R108-15 are his constituents who are on the front lines every day fighting for their children. He confirmed what they said is accurate because he has experienced the board meetings first hand where there is no consistency, respect, or mutual discussions; the parents are dictated to and told how they are going to educate their children without the ability for input, which, he suggested, is only the tip of

the iceberg. Assemblyman Oscarson said many other things go on in rural schools that impact children's ability to learn and move forward, particularly when there is great opportunity for parents who want to be supported and involved in the educational process. He stated parents should be given the opportunity to work through the educational process as opposed to being alienated from it.

Dionne Lawson, Cochair, School Organizational Team, H. P. Fitzgerald Elementary School, CCSD, and parent of an H. P. Fitzgerald student, conveyed her experience at H. P. Fitzgerald where parental and community involvement is encouraged. Although she is of the opinion the ASD can bring value to some schools, as a parent, she likes having a choice. Ms. Lawson expressed concern that charter schools are able to release several teachers all at once, yet the teachers have no rights. When teachers are replaced, students have to start over again, which is why she moved her daughter from a charter school to a traditional public school. Ms. Lawson stated she that she has easy access to her daughter's teachers and is welcomed on campus and in the classrooms.

Suynn J. Davis, resident, North Las Vegas, Nevada, and United States Air Force veteran, stated she is heavily involved in CCSD schools and in the community. She gave an account of many of her children, grandchildren, and great-grandchildren who have benefitted by attending CCSD schools; many of whom started at H. P. Fitzgerald and have flourished in their educational endeavors. Ms. Davis explained that had H. P. Fitzgerald, a Turnaround school, been converted into a charter school without parental choice, the last community school in her neighborhood would have been removed; instead, H. P. Fitzgerald has made great progress. Ms. Davis requested parents be given a choice by allowing H. P. Fitzgerald to remain a community school.

Dr. Sylvester S. Rogers, pastor, Greater Mount Sinai Missionary Recruiting Ministries; and president, Ministers of Alliance Association of Southern Nevada, Las Vegas, expressed his concerns regarding A.B. 448. Being that he has been a pastor for 30 years and is heavily involved in the community, in his opinion CCSD is capable of correcting the low achievement schools. He said the community is concerned about: (1) parental choice being taken away; (2) certain schools not wanting to be staffed by members of the community; and (3) its children being educated by people who are not familiar with the community.

Alaina M. Criner, Principal, Matt Kelly Elementary School, CCSD, urged the Commission to revise A.B. 448 and encouraged offering parental choice prior to the selection of a conversion school. She emphasized the communities' data should be heavily analyzed and considered before bringing something in that could have a devastating impact for generations to come.

Tara Shephard, Assistant Principal, Arturo Cambeiro Elementary School, CCSD, stated her school community is relieved about the recent developments regarding

the ASD and its plans to not convert Cambeiro into a charter school. However, she said Cambeiro is still concerned about a system that would allow such a takeover in its district and community. Ms. Shephard shared that she is glad ASD will no longer support Celerity Schools as a charter school option. She said a Futuro charter school is opening down the street from Cambeiro, which will be supported by the community because it gives families the choice to send their kindergarteners to either school. This option would also allow Cambeiro to continue to be part of CCSD, and the ASD will have its charter program with Futuro; it is a win-win situation for all parties involved. Ms. Shephard indicated Cambeiro is not against charter schools, but rather it is for choice. She asked that the Commission keep schools' progress in mind, which is not measured by standardized test scores alone.

Karen Jensen, resident, Moapa Valley, Nevada, testified that she is a mother of three and is a school organizational team member at her children's elementary school. She said for the past five years she has become increasingly alarmed at the lack of local parental input in almost every aspect of the students' education. Ms. Jensen stated she attributes the lack of input to parents' frustration with a massive school bureaucracy; specifically, regulations, red tape, and controls mandated by CCSD. She said CCSD is stifling parental involvement and educational improvement, and if parents are not satisfied with their schools' performance, they should be able to petition the ASD. She encouraged support of R108-15.

Jermel Jones, Nevada resident, expressed his appreciation of Matt Kelly Elementary School, CCSD. Like H. P. Fitzgerald, Matt Kelly is a wonderful community school with great leadership where parents and teachers come together every chance they get to make changes for the better. Going forward, he would like to see the community and school continue with their mission and not be redirected.

Marquessa Aikele, Nevada resident; parent of four CCSD students; and former PTO member, school volunteer, and organizational team member, said the theme heard in today's testimonies is parents' desire to make a difference in their children's schools. She said teachers and local administrators listen and try to help, but they are restricted by bureaucracy and red tape. Ms. Aikele stated she is excited about the opportunity for parents to petition into the ASD because, according to studies, increased parental involvement equals greater educational success. She pointed out that an ASD school would have the autonomy to solve its own problems by customizing education and working with teachers, parents, and community leaders to find the best results without being concerned about how their decisions may affect the entire CCSD.

Kenneth Thompson, resident, Clark County, Nevada, stated he is a concerned citizen with grandchildren. In his opinion, the educational process is more

concerned with economics than with providing education, and the worth of a child's education is being weighed against the projected profits. Mr. Thompson said the cost of education is based on each child's ability to become a contributor to the world, not just locally. Education comes from collective bargaining, debate, and community input, not from dictating to the community based on economics. The information gleaned from collaborative efforts must be used to provide a proper education to every child, regardless of race. He said a proper education also requires providing students with a stable learning environment and one that enables them to make choices based on input from their parents.

**AGENDA ITEM III—LEGISLATIVE AUDITOR**—Summary of Audit Reports Presented to Legislative Commission's Audit Subcommittee (NRS 218G.240)

Rocky Cooper, previously identified, drew the Commission's attention to a letter dated January 18, 2017, from Senator Ben Kieckhefer, Chair, Audit Subcommittee of the Legislative Commission (NRS 218G.240) ([Agenda Item III A-1](#)) indicating that on that date a meeting of the Audit Subcommittee was held in which five audit reports were presented. He provided a summary of each report, as follows:

Investigation Division, Department of Public Safety (DPS) ([Agenda Item III A-2](#))

The audit focused on fuel purchases, performance measures, and confidential drug-buy funds. The audit found the Investigation Division could improve administrative controls over these areas. The Division did not have a process for reviewing fuel purchases to verify purchases were made only for Division vehicles. In addition, DPS did not have an established process for cancelling fuel cards. The audit identified 61 fuel cards as being assigned to investigators who were no longer with the Division. However, it is important to note that none of the cards were used after the investigators' termination. The reliability of the Division's performance measures can also be strengthened. In other control weaknesses, inadequate segregation of duties over a bank account under the Division's control was identified. The Division accepted the five recommendations to improve controls.

Use of Class-Size Reduction Funds by School Districts, Nevada's Department of Education ([Agenda Item III A-3](#))

The audit was required by A.B. 278 (Chapter 499, *Statutes of Nevada 2015*) in order to evaluate the use of class-size reduction funds, commonly referred to as CSR funds, by each school district for the 2013–2015 Biennium and to analyze the use of CSR funds for school districts that elected "Plus 2" flexibility, which allows school districts to use the portion of the CSR funds for grades 4 through 12. Overall, CSR funds were spent appropriately and used to pay for the cost of CSR-grade teachers, and school districts used the portion of CSR funds permitted to be spent on school districts for grades 4 through 12—the upper grades for Plus 2 savings as intended by the Legislature. Although CSR funds were spent appropriately, NDE needs to improve its monitoring of class-size ratios by grade on

a district-wide basis that provides assurance for the State and local decision-makers that districts are spending enough nonCSR and CSR funds on teachers in order to achieve target ratios. The Audit Division also identified that CCSD did not return approximately \$6.1 million of unused kindergarten CSR funds received during the 2013–2015 Biennium, as required by law. The unused funds were required to be reverted to the State General Fund after June 30, 2015. This was not detected by NDE due to an inadequate review of annual reports of expenditures by school districts. After the audit was completed in November 2016, CCSD returned the unused funds to the State in December 2016. The NDE accepted the two Audit recommendations related to monitoring district-wide ratios and reports to identify unused CSR funds.

Aging and Disability Services Division, Department of Health and Human Services (Agenda Item III A-4)

The purpose of the audit was to review controls over payments to providers of supportive living arrangement services (SLA) and jobs and day-training (JDT) services. Providers offer residential support services and job and living skills to individuals with intellectual disabilities. The Audit Division reviewed the Aging and Disability Services Division's (ADSD) monitoring of providers to ensure the safety and welfare of individuals who received care. The Audit Division found the ADSD needs additional controls to prevent overpayments to providers. Based on Audit's test results, it was estimated the ADSD overpaid providers a combined total of \$3.5 million to \$4.3 million during Calendar Year 2015. Specifically, it is estimated the ADSD overpaid providers of 24-hour SLA services between \$2.2 million and \$3 million in 2015. Providers billed for more services than were actually provided, according to Audit's detailed review of provider staffing logs and payroll records. It was estimated the ADSD overpaid providers of SLA services an additional \$504,000 for days when more hours were provided than were agreed upon. Further, providers billed an estimated \$766,000 more for JDT services than were provided. Some of the overbilling problems may be the result of provider fraud while others may be unintentional errors. Because of the nature and extent of overbilling, the information was reported to the Governor, each legislator, and the Office of the Attorney General (AG) on December 2, 2016, in accordance with Chapter 218G ("Legislative Audits") of NRS.

The ADSD also needs to improve its oversight process to ensure the safety and welfare of individuals with intellectual disabilities. Of the 29 largest SLA providers, 27 were not certified timely. The ADSD has not developed a rigorous process for certifying JDT providers, and regulations for certifying SLA providers were supposed to be developed after legislation was passed in 2009, but that still has not happened. The Audit Division found the ADSD inspected homes timely but did not have an effective follow-up process to ensure the homes with deficiencies had corrective action. The ADSD did not have documentation showing actions were completed for 6 out of 14 homes with deficiencies. The ADSD accepted the ten



recommendations to address overpayment issues and improve the safety of clients in the homes.

Nevada's Department of Wildlife ([Agenda Item III A-5](#))

In this audit, Nevada's Department of Wildlife's (NDOW) strategic planning process and performance measures were reviewed. The Audit Division found NDOW can strengthen its strategic planning process. The most recent strategic plan was missing a mission statement and performance measures, and the 2009 plan was outdated and incomplete. Regarding performance measures, Audit found the reported measures were not always reliable, and improvements are needed to align the measures with NDOW's strategic plan. For example, 16 out of 20 measures for 2014 and 3 out of 19 measures for 2015 were not adequately supported by underlying records required by State policy. Five measures for 2014 and two for 2015 were not calculated using a sound and consistent methodology. Some measurement descriptions did not match what was reported, and most measures were not aligned with NDOW's objectives and strategic plan and lacked required policies and procedures to guide staff in preparing the measures and documenting performance. Nevada's Department of Wildlife accepted the four recommendations and has been taking steps to improve its strategic plan and performance measures, including hiring a consultant with federal funds. Management indicated the strategic plan would be revised by July 2017.

Review of Governmental and Private Facilities for Children—January 2017 ([Agenda Item III A-6](#))

A statutory responsibility of the Audit Division is to conduct reviews of certain governmental and private facilities that have physical custody of children pursuant to an order of the court. The audit report includes the results of four facility reviews. The most significant review noted was of an entity that did not provide reasonable assurance it protected the health, safety, and welfare of youths at its facility. An unlocked filing cabinet containing a large quantity of psychotropic medications was found in an unlocked room without inventory, and the facility management was not aware of the drugs. Also noted was a lack of consent forms for the administration of psychotropic medications. The audit also found inadequate treatment plans and personnel records, including background checks and required training. Because of the significant issues, Audit reported its concerns to the licensing agency, the Clark County Department of Family Services, in August 2016. At the meeting of the Audit Subcommittee on January 18, 2017, Audit was informed the provider was no longer licensed and does not have youths in its care. Other issues noted include lack of procedures for consent to administer psychotropic medications, untimely medication administration training, and incomplete treatment plans.

Mr. Cooper commented the Audit Subcommittee recommends the Commission accept the five reports.

Assemblywoman Bustamante Adams questioned whether CCSD returned the \$6.1 million of unused kindergarten CSR funds ([Agenda Item III A-3](#)), to which Mr. Cooper replied Audit received confirmation in December 2016 that the funds were returned.

Regarding the ADSD report ([Agenda Item III A-4](#)), Assemblywoman Bustamante Adams asked whether providers repaid ADSD for the overpaid amounts.

Mr. Cooper stated Audit developed a one-page communication in an effort to provide ADSD with guidance so that it could move forward and collect the funds, request overpayments, or refer the accounts to the Medicaid fraud control unit. Audit also gave ADSD a chance to make changes for its budget; the ADSD will report that information to the Legislature. Mr. Cooper said Audit recommended that ADSD review recent billings of 24-hour care and JDT providers to determine significant overpayments since Audit had taken statistical samples because it needed to complete the audit timely, noting ADSD has a lot of work to do.

Regarding the children's facilities ([Agenda Item III A-6](#)), Assemblywoman Bustamante Adams questioned how many out of the 30 facilities on which 1,723 complaints were reported to the Legislative Auditor are privately owned.

Mr. Cooper replied there are 20 government and 36 private children's facilities.

Assemblyman Hansen expressed frustration and concern that NDOW has still not developed a mission statement, and its performance measures for each activity are either nonexistent or outdated. Further, the agency's plan does not include future development of these requirements that are mandated by NRS 353.205. He indicated that, in a previous audit, NDOW was supposed to have developed performance evaluations that could be monitored year-by-year. Assemblyman Hansen pointed out the current report indicates NDOW plans to revise its strategic plan by July 2017, but he said they should have already had one in place years ago. He also noted the report reads the *State Administrative Manual* requires records used in computing performance measures must be retained for three fiscal years, but the lack of underlying records by NDOW prevents measurement results. Assemblyman Hansen's main concern is NDOW does not comport with State law. He emphasized if important activities, such as performance measures, cannot be evaluated to determine NDOW's success, the Commission cannot conclude its own evaluation of the agency, which is relevant in his district. He questioned whether there is a remedy to compel NDOW, an agency that affects hundreds of thousands of Nevadans, to comport with State law.

Mr. Cooper explained Audit reviews many agencies that need assistance with performance measures. He stated he is confident NDOW will move forward with its strategic plan with help from its consultant and by working with Audit.

Mr. Cooper agreed with Assemblyman Hansen that the bigger issue is the lack of good communication with the Legislature and the ability to measure what is important for tracking and making adjustments because some measures are not as important as others. He concluded measuring performance is an area that needs continuous work.

Assemblyman Hansen recalled a meeting with then Legislative Auditor, Paul V. Townsend, in 2011 when NDOW had its 2009 performance evaluations in place. He said Mr. Townsend and he discussed NDOW's goals and where it should be five years from then. Assemblyman Hansen stated the 2009 strategic report, audited by Mr. Townsend in 2011, is worthless because goals were not established. He questioned who might be held accountable.

Chair Roberson remarked the 2017 Session begins in ten days, and the Legislature has the power to change law as well as allocate funds. He suggested if it is the will of the Legislature to make changes to the law and to address some of the issues Assemblyman Hansen raises, members can work together to achieve that goal. He suggested discussing the Legislature's options with the Legislative Counsel Bureau (LCB) to ensure agencies improve their performance going forward, and if they do not improve, then to make sure there are consequences.

Assemblyman Hansen concurred with Chair Roberson's remarks. Continuing, he stated NDOW's audit report and a prior CSR audit report—where approximately \$350 million could not be accounted for by NDE, but has since been accounted for under the direction of Steve Canavero, Ph.D., Superintendent of Public Instruction, NDE—are the worst he has seen. He said he would gladly work with LCB. Lastly, Assemblyman Hansen remarked the agencies are either ignoring the law or simply dismissing it because there are no consequences for failure to obey.

Chair Roberson suggested embedding real consequences in the laws for failure to abide by them.

#### **AGENDA ITEM IV—LEGISLATIVE COMMISSION POLICY**

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

Please see the attached list of regulations ([Agenda Item IV A-1](#)) to be considered. The list can also be accessed electronically at: <https://www.leg.state.nv.us/Regis ter/IndexesRegsReviewed/LCMtg List 2017 Jan27.pdf>.

Chair Roberson asked members to identify the regulations they would like held for discussion.

- Senator Kieckhefer—R111-15, R068-16, and R146-16;
- Senator Denis—R108-15; and
- Vice Chair Settlemeyer—R125-16.

He noted the State Board of Osteopathic Medicine has voluntarily withdrawn R069-16.

**MOTION:** Vice Chair Settlemeyer moved approval of R089-15, R097-15, R070-16, R126-16, R132-16, and R137-16. Assemblywoman Bustamante Adams seconded the motion. The motion carried.

#### Regulation 108-15

A REGULATION relating to education; providing the process for selecting schools for conversion to an achievement charter school; authorizing a person or governmental entity 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 operators of achievement charter schools; establishing the priority in enrollment of pupils at an achievement charter school; making various other changes concerning the operation of an achievement charter school and contracts to operate achievement charter schools; and providing other matters properly relating thereto ([Agenda Item IV A-2](#)).

Steve Canavero, Ph.D., previously identified, stated that in a previous Commission meeting, NDE presented regulations that were not acted upon. At that meeting, he said NDE would continue implementing A.B. 394 (Chapter 543, *Statutes of Nevada 2015*), which it has done. In addition, NDE has worked on the ASD regulations based on feedback from the Commission and others; the result of which is a 29-page document labeled Item #1 in the R108-15 packet ([Agenda Item IV A-2](#)). The packet provides historical documentation of requests made through testimony and written comments and actions taken by NDE, including the location of those actions. He explained the ASD is not a referendum on CCSD, but rather it is a referendum on low expectations and the opportunity gap in some schools that do not adequately prepare students for claiming the future opportunities they deserve. The NDE, the State, and others are doing better than ever in ASD outreach and conveying its potential.

In NDE's opinion, R108-15 reflects elevation of parental voice and clear processes that identify performance compacts or other means whereby NDE can articulate high expectations for adults and the ability to hold adults accountable for delivering on behalf of Nevada's children. He stated he is proud of NDE's team involvement, but it can only respond to those concerns brought to its attention. Today, CCSD

brought forth new concerns not previously presented to NDE. Dr. Canavero suggested R108-15 provides the necessary protections and clarity to move forward with the ASD, improve the State's performance, and provide children with the opportunity they deserve. He emphasized R108-15 offers a continuum of autonomy and empowerment to opt-in to a level of control over schools for parents and communities, which is a nuance that bares discussion. Dr. Canavero said it is clear the Legislature moved to provide more community and parental input in the schools during the 2015 Session by approving A.B. 394.

Brett Barley, Deputy Superintendent for Student Achievement, NDE, provided a summary on five categories of feedback received by NDE and ASD during multiple regulation hearings on R108-15 ([Agenda Item IV A-2](#)) held since the initial hearing in September 2016.

#### 1. School Identification and District Consultation Process

NDE received feedback from CCSD and the Washoe County School District (WCSD) regarding the need to consider multiple years of data. The State Board of Education (SBE) has been doing that in practice over the last year, but NDE amended Section 9 of the regulation to reflect that recommendation. The districts also wanted to see their efforts taken into consideration when evaluating the list of eligible schools. The SBE also engaged in that practice over the last year, but subsection 3 of Section 14 includes an explicit requirement that SBE consider any efforts of the board of trustees in a school district in which a public school is located to include pupil achievement. Also included is an opportunity for school districts to enter into student performance compacts with the ASD so that NDE can set a clear bar concerning what is expected in terms of student learning. It also allows district efforts to continue with new opportunities as long as they are designed well, research-based, and lead to increased student performance in the eyes of NDE. There was feedback from both districts regarding ASD consulting with districts throughout the process. Language was added to Section 14.2 concerning notification every step of the way. A school narrowing process exists over a two-month period; the regulation contains language pertaining to school district notification during that period. NDE heard feedback from CCSD about regulatory inclusion of criteria for ASD eligibility. The bottom 5 percent of elementary and middle schools and high schools with a graduation rate of less than 60 percent are eligible based on the statutory requirement. The original regulation, heard by the Commission in November 2016, had schools that qualified for comprehensive support and intervention. Under federal guidelines, schools that receive the lowest rating, according to the Nevada School Performance Framework (NSPF) (the State's system of accountability) and schools that receive the second lowest rating on the NSPF that are either flat or downward trending in their performance are also included in the regulation.

The following criteria are eliminated from the original regulation:

- Schools in the bottom 10 percent of student subgroup performance for a given year and schools in a feeder pattern with schools that are in the lowest or second lowest performance on the NSPF.
- Regulatory criteria that outlines an option for school communities that are within the regulatory criteria to enter a performance compact, whereby they could select a school improvement strategy that would include an autonomous school, an empowerment school, a nonprofit partnership, or other local or State intervention, in addition to potentially moving into the ASD. The engagement process through which that could have taken place was organized around an existing law in California and language from a bill sponsored by Senator Ford during the 2013 Session.

## 2. Parental Engagement

The ASD and NDE spent much time considering what parental involvement could look like through the stakeholder engagement process. Based on feedback from the school districts, there is a requirement that while NDE does want to engage in parental input, it also wants to ensure it is reasonable and that an unnecessary burden is not placed on school sites with people showing up on campus. Therefore, NDE added "reasonable" to the regulation. There is also a requirement that in order to have meaningful engagement with parents, contact information must be provided, which is included in subsection 3 of Section 6. NDE also heard from John Vellardita, Executive Director, Clark County Education Association about the need for parental involvement. Therefore, subsection 3 of Section 6 includes language regarding the ASD endeavoring to reach the majority of parents of pupils who attend eligible schools. Based on parent group feedback, new language pertaining to opting in to the ASD is in Section 8. The selection of one of the interventions is outlined in subsection 3 of Section 12 and further includes detail around the interventions and full menu of options that will be provided to parents and communities. Dr. Canavero wanted to ensure language concerning community options was clear to allow them the opportunity to transform their schools into their own vision.

## 3. ASD Language and Intent Clarification

NDE received significant feedback regarding the need to clarify ASD language and intent. Subsection 4(f) of Section 15 refers to engaging with independent reviewers of ASD charter school applications, which had already been the practice during the last year, but this language makes it clear. Through feedback from WCSD, NDE clarified the best interests of students in the State and provided that ASD school expansion would benefit underperforming students. The NDE wanted to make the recruiting of high-quality, out-of-state operators a priority; therefore, the regulation includes language regarding

operators with schools in other states that have a successful track record. At the last regulatory hearing, there was confusion surrounding the annual and four-year reviews of ASD schools. Language regarding the four-year review was removed and language regarding the one-year annual review was strengthened. The ASD schools will be scrutinized annually to see whether student learning is progressing.

#### 4. Restated Laws

Certain laws were restated in order to alleviate concerns voiced through the stakeholder engagement process with the clarification of enrollment practices being one of them. During the Commission's November 2016 meeting, there was discussion about how students would be prioritized. It has always been the intent of the ASD to prioritize low-income students who are zoned for failing schools. The NDE worked with the Legal Division, LCB, and tried to make that language clearer, which resulted in subsection 3(b) of Section 17 of the regulation that refers to the enrollment of pupils with a household income that is less than 185 percent of the federally designated poverty level who reside within the zone of underperforming schools. There were a couple of areas where districts would have been more comfortable if NDE had reiterated existing law. Subsection 4 of Section 17 makes clear that ASD schools serve all students, including those with special needs, and subsection 4 of Section 14 includes a prohibition on exclusionary practices by citing existing NRS and restating civil rights law.

#### 5. Buildings and Facilities

Section 19 reflects feedback pertaining to buildings and facilities. Subsection 4 of Section 19 is in response to a request for fee for service agreements and questions surrounding property ownership and maintenance. The \$15,000 figure for capital improvements mentioned in earlier testimony today is the result of a recommendation from the school districts at NDE's first regulatory hearing in September 2016. However, the districts have since asked for that figure to be reconsidered. During the second regulation hearing in December 2016, NDE asked the school districts to provide a definition of language they would like used, but NDE did not receive that definition; therefore, the language remains the same. The NDE is open to revising that language to address district needs.

Jana Wilcox-Lavin, Superintendent in Residence, ASD, NDE, stated the regulation provides an exciting opportunity for parents to work in partnership with NDE and the school community. It also allows parents to petition in favor of something rather than against something, which puts them in a position of power by weighing in on their schools' improvement plan.

She provided commentary on the following four flow charts ([Agenda Item IV A-2](#)) from NDE that clarify and simplify the parent engagement process:



### Rising Star School Engagement Process ([Agenda Item IV A-2](#))

The Rising Star School Engagement Process demonstrates the necessary steps for:

- Evaluating school performance;
- Determining a school's eligibility for consideration into the ASD;
- Aligning accountability targets using the performance compact; and
- Allowing a school community—if not selected for the ASD and in partnership with its parents, teachers, and administrators within a school district—to petition for an alternate plan from one of the six options as indicated at the bottom of the chart.

Each of the schools, regardless of whether they go through the ASD conversion process or a neighborhood option, would be held to the same accountability target. The NDE would simplify for families what schools are driving toward, and it would be able to regularly report that information.

### Parent Petition Flow Chart ([Agenda Item IV A-2](#))

The parent petition flow chart demonstrates school ASD eligibility and the leveraging of statutory language. Suggesting additional regulatory language, as identified by NDE, would allow an opportunity for parents to work in partnership. The partnership would enable a plan for an empowerment or autonomous school—in accordance with the State Turnaround designation—using the school performance plan and evidence-based strategies under the Every Student Succeeds Act and other State and local interventions. This would highlight current intervention efforts in successful districts, such as the nonprofit partnership in the City of Las Vegas with its Reinvent Schools. The City has brought together a cohesive set of nonprofit partners with the intent to design a plan for serving kids. The parent petitioning process would allow parents, school communities, or charter operators to move forward with seeking a majority of families to sign on to a particular plan. The process could be initiated by any of those bodies, including an out-of-state operator, depending on who was seeking to directly partner with the school. As a reminder, the ASD has a cap of six-schools-per-year. It is going to require effort on behalf of everyone across Nevada to put a plan into place in order to achieve the level of momentum and change envisioned for students. This option provides for extending school improvement opportunities in an effort to move forward further and faster.

### Nevada ASD Selection Process ([Agenda Item IV A-2](#))

The codification of school community engagement is evident throughout the ASD selection process, which has always been a central component of the ASD's intent.



### Nevada ASD Petition-In Process ([Agenda Item IV A-2](#))

Based on testimony from families heard today and during NDE regulation hearings, the core concern is not solely based on a school's underperformance, but rather it is about feeling disempowered to partner and invest in a school's transformation as much as some families would like. The petition-in option was proposed to allow parents to partner with their school community by running an autonomous school that is aligned with the same NDE accountability targets, whereby ensuring the same expectations for student performance.

Chair Roberson solicited questions and concerns from the members.

Senator Denis stated he appreciates the opportunity to discuss parent participation and in giving parents choice concerning quality schools. He said that language was not in the regulation the last time it was heard by the Commission nor was there an opportunity to discuss the subject during the previous legislative session. Senator Denis noted the Commission had just received R108-15, which has a lot of new language that he has not yet had the chance to thoroughly vet. He surmised there would be opportunities to discuss parental choice during the 2017 Session.

Senator Denis expressed the following questions and/or concerns:

1. Hundreds of parents were not in favor of part of the Andre Agassi College Preparatory Academy going to Democracy Prep Public Schools, yet that still occurred. He questioned how the parent process worked in that situation.
2. Funds used for charter school capital improvement projects could set a precedent. He questioned how that ties into the ASD.
3. The NDE is committed to securing high-quality charter school operators, but it recently discovered that one of the selected operators is being investigated by the federal government. Although it cannot be determined how that will turn out, there were some indicators that should have raised a red flag.
4. Section 13 uses "reasonable" regarding the Director soliciting input from parents. Senator Denis stated he needed to know more about what that means, while speculating it could depend on whether NDE likes the comments from the parents.

Senator Denis recounted the Commission's original hearing on ASD regulations several months earlier. He said that he attended frequent school meetings in his district where hundreds of parents attended, and they were being told what was going to happen. Senator Denis surmised that explains the increase in discussions on the subject because parents now have a choice. He stated he gets frustrated during the process because it appears some parents are given choices while others are not. Parental choice is needed when it comes to a school's performance, and

the legislative process gives them that opportunity. Senator Denis acknowledged R108-15 rectifies previous language that included neighboring schools on the ASD conversion list that were doing well.

Continuing, Senator Denis said there is some merit in what NDE is trying to accomplish, but he is unsure whether everything being proposed was considered when A.B. 394 was passed. He cautioned against falling into the habit of creating things that were not legislatively intended, noting he has observed situations in the past where that has happened. Senator Denis speculated whether the Legal Division could make that determination.

Chair Roberson invited NDE to respond.

Dr. Canavero thanked the Commission for its recognition of NDE for its work and responsiveness in incorporating parent feedback into the regulations. He stated NDE shares the Commission's frustration with communications experienced early in the regulation process. Dr. Canavero explained the ASD was essentially locked out. In his opinion, this pattern was cast when the regulations were initially discussed but not yet considered for adoption by the Commission. He said CCSD produced a list of more than 90 schools and then began discussing the takeover of those schools in meetings that unnecessarily incited a level of fear and confusion that, in his opinion, was beneficial to CCSD in undermining ASD efforts. Dr. Canavero stated NDE has tried to offer a fair playing field to parents by providing them with full disclosure of the information they need to make informed decisions. He explained the term "reasonable" was the best word the Legal Division and LCB staff could determine that best captures the intent of the ASD. Dr. Canavero said the last thing NDE wants is ASD staff or charter operators disrupting instructional programs at a school. The "reasonable" standard is being applied to the ASD itself with regard to how it engages with families and schools in order to provide an honest representation of available options.

Mr. Barley emphasized the "reasonable" requirement would be self-imposed by the ASD and that it was included in the regulation at the request of the school districts. He reiterated that NDE and ASD are required to engage with school sites in an appropriate and reasonable manner.

Senator Denis conveyed his appreciation to Dr. Canavero, his staff, and Ms. Wilcox-Lavin for meeting with him to discuss R108-15, and he empathized with NDE's frustration over the regulation process. Senator Denis questioned why the original regulation did not include parental input and engagement language. He wondered whether that was because it was not required in legislation and therefore not considered, or perhaps because the request for parent input and engagement was not acknowledged by NDE until it was raised by the Commission.

Dr. Canavero stated continued discussions with families and Commission members, specifically Senator Denis, revealed parental engagement expressed in the regulation presented to the Commission in November 2016 could have been emphasized more. Therefore, NDE quickly developed a framework to that end by loosely modeling language after a bill introduced in a previous session. He said as the process evolves, the ASD, in addition to many other tools and interventions, represents NDE's efforts to provide options. Referring to the Reinvent Schools in Las Vegas, Dr. Canavero said more often local districts honor interventions that work against clear, objective, high-expectation outcomes that communities can engage in with their schools with achievement as the goal. The regulation allows families to engage in the educational process as NDE listens and learns and includes what the process would look like with various opportunities for parental autonomy. He said R108-15 reiterates previous language, in addition to being clearer and more explicit, which NDE determined was needed for folks to feel more comfortable. Lastly, it provides another opportunity for parents to petition-in.

Senator Denis stated he appreciates the opportunity to discuss parental involvement regarding the education of Nevada's children's—a topic that appears to need much discussion.

Vice Chair Settlemeyer remarked the Commission has heard R108-15 before, and it has been delayed numerous times. He emphasized the Commission's job is to ensure regulations are consistent with legislative intent, regardless of how legislators may have voted on a particular bill. Vice Chair Settlemeyer solicited comments from any Commission members who think R108-15 is inconsistent with legislation.

Senator Denis stated the Assembly held many hearings on ASD legislation during the 2015 Session, but the Senate did not. He opined segments of the regulation do not comport with legislative intent, noting the Legal Division might be able to assist in that respect.

Assemblyman Oscarson offered that, in his view, the overall intent of education reform was about giving parents educational options for their children and to be engaged in that process.

Assemblyman Araujo stated he is opposed to R108-15 because, in his view, further discussion and careful consideration is needed before making such a critical decision, particularly when ASD updates are provided regularly. He suggested taking advantage of the opportunity to have those discussions during the 2017 Session.

Chair Roberson acknowledged NDE for its great work on the regulation. In his opinion, the misinformation campaign perpetuated by certain entrenched interests has been breathtaking to watch. Regardless, A.B. 448 is the law and will

be implemented with or without regulations. To the extent the regulation addresses concerns previously voiced pertaining to A.B. 448, it would seem prudent for those members of the Commission who have such concerns to vote in favor of R108-15 today. The alternative is for A.B. 448 to move forward without such concerns being addressed in regulation. That is the reality. Chair Roberson entertained a motion to approve R108-15.

Senator Denis requested clarification from the Legal Division whether the ASD and NDE may move forward with the regulation without the Commission's approval.

Chair Roberson pointed out that NDE also has its own legal counsel for advisement on what they may do.

Risa B. Lang, previously identified, replied that NDE has gone forward with A.B. 448 in the absence of regulations. In her opinion, there likely are portions of legislation that require regulations, but NDE has put the legislation into motion and is moving forward.

Senator Denis questioned whether that would not be the case had NDE not moved forward.

Ms. Lang responded the regulation provides for school selection, but there are also various parts that may go forward without regulations. She said she did not know whether the Legal Division fully analyzed all portions of the regulation in that respect and reiterated there is a good amount that may take place without regulations.

Chair Roberson referred to Vice Chair Settlemeyer's bill, Senate Bill 168 (Chapter 490, *Statutes of Nevada 2015*), that did not have sufficient votes from the Commission to approve regulations, yet it has gone forward. He noted that does not mean additional work cannot continue on R108-15 during the 2017 Session. Chair Roberson said he expects there will be interest from the Legislature in continuing to fine-tune the law, and he is sure all Commission members are willing to work together to make that happen. He said the Commission needs to make a decision whether to pass the regulation, which, in his opinion, addresses concerns raised in A.B. 448. Chair Roberson reiterated that if R108-15 is not approved, the law will be implemented without those concerns being addressed in regulation.

Vice Chair Settlemeyer commented the regulation is consistent with legislative intent and is drastically improved by including parental involvement.

**MOTION:** Vice Chair Settlemeyer moved approval of R108-15. Assemblyman Oscarson seconded the motion.

Chair Roberson stated there are not enough votes to pass the regulation with six members voting yes and six voting no. He thanked NDE for its earnest work on the regulation, and he said he was certain NDE would be asked to update the 2017 Session Legislature regarding the implementation of R108-15.

#### Regulation 111-15

A REGULATION relating to education; specifying the manner by which a pupil may report an incident of bullying or cyber-bullying; prescribing the requirements for responding to an incident of bullying or cyber-bullying; requiring the board of trustees of each school district to adopt a policy relating to the appeal of certain investigations and disciplinary decisions concerning bullying and cyber-bullying; prescribing the requirements for filing a complaint regarding the outcome of an appeal of the result of an investigation of an incident of bullying or cyber-bullying; prescribing the requirements for reporting certain statistics concerning bullying and cyber-bullying; and providing other matters properly relating thereto ([Agenda Item IV A-3](#)).

Dr. Canavero introduced Christina (Christy) McGill, Director, Office for a Safe and Respectful Learning Environment (OSRLE), NDE. He stated R111-15 is in response to the OSRLE law that provides for detailed procedures with respect to investigations, processes, and policies that are required thereto.

Senator Kieckhefer maintained R111-15 is legislatively in line with what was envisioned. He questioned whether the requirement to report a bullying violation of a student to the principal on the same day the violation was reported to or witnessed by any person named in subsection 1 (a) of Section 3 also applies to volunteers, noting "volunteer" is not included in NRS 388.135, but it is included in the regulation.

There was general discussion concerning whether liability would exist for a volunteer should that person be the recipient of a complaint of bullying and failed to report, to which Dr. Canavero replied he would research that question and follow up with Senator Kieckhefer.

Ms. McGill remarked the spirit and intent of including volunteers was so any adult in the school could report an incident.

Senator Kieckhefer surmised a school district would have insurance liability that covers its employees but potentially not its volunteers. He said the point need not hold up the regulation, but it would be good to be aware of any potential exposure for school volunteers because interested parties do not want to disincentivize individuals from engaging.

Regarding a possible conflict between Sections 6 and 8 of the regulation concerning NDE's reporting of findings of an investigation to parties of an incident,

Dr. Canavero clarified the first report relates to an incident at the school district level, and only upon appeal by the parents or a party would NDE receive the complaint. At that point, NDE discussed the limitation of its ability to provide legal advice. Therefore, the prohibition is on NDE with the school district acting as the investigating body.

**MOTION:** Senator Kieckhefer moved approval of R111-15. Senator Denis seconded the motion. The motion carried.

#### Regulation 068-16

A REGULATION relating to emergency medical services; authorizing the establishment of training centers to provide continuing education and exempting such training centers from certain requirements; authorizing a service or an attendant to apply to the Division of Public and Behavioral Health of the Department of Health and Human Services for an endorsement to provide community paramedicine services; authorizing certain services to apply to the Division for authorization to operate a driver-only program; imposing requirements relating to the confidentiality of information maintained in the Nevada Trauma Registry and authorizing qualified persons to apply to the Division for access to such information; requiring a host organization to submit to the appropriate health authority a plan for providing emergency medical care at a special event; revising provisions governing licenses, certificates and endorsements for emergency medical personnel and services; revising provisions relating to the operation of emergency medical equipment; establishing fees; imposing administrative penalties; and providing other matters properly relating thereto ([Agenda Item IV A-4](#)).

Joe Pollock, Deputy Administrator of Regulatory and Planning Services, Division of Public and Behavioral Health (DPBH), Department of Health and Human Services (DHHS), introduced himself. He also introduced Chad Westom, Chief, Advisory Board on Maternal and Child Health, DPBH, DHHS; and Tina Smith, Manager, Emergency Medical Systems (EMS), DPBH, DHHS. Mr. Pollock explained DPBH worked closely with stakeholders and the Committee on Emergency Medical Systems in drafting R068-16, which reflects amendments to Chapter 450B ("Emergency Medical Services") of the *Nevada Administrative Code*.

Referring to the two definitions of paramedicine endorsements (attendant and service), Senator Kieckhefer asked for confirmation that "attendant" is the individual providing the service and "service" is for the EMS agency, and that they need to be endorsed separately, to which Ms. Smith confirmed they did.

Senator Kieckhefer and Ms. Smith discussed the "driver only program." They established the program includes a certified driver as well as an additional driver, and the program is for rural areas that have difficulty recruiting a sufficient level of volunteer emergency medical technicians (EMTs). The drivers would be trained in

ambulance emergency driving services and procedures and would provide only those services. In addition, a driver must be trained and approved by DPBH. Communities with a population of 100,000 or more would be excluded from the program. Clark County falls under the Southern Nevada Health District; therefore, it would need to approach the District if it wanted to participate in the program. The program is geared to assist rural agencies in smaller areas that do not have the community base to support two certified EMTs per ambulance; a driver without EMT certification would be used only as a last resort.

**MOTION:** Senator Kieckhefer moved approval of R068-16. Senator Denis seconded the motion. The motion carried. Assemblyman Oscarson was not present for the vote.

#### Regulation 125-16

A REGULATION relating to mortgage lending; imposing certain requirements upon a mortgage broker who acts as a mortgage servicer in certain circumstances; revising provisions relating to a change of control of a mortgage broker; requiring a mortgage broker to pay an annual fee for supervision; revising provisions relating to examinations, investigations and audits of mortgage brokers; making various changes relating to the business and oversight of mortgage brokers; and providing other matters properly relating thereto ([Agenda Item IV A-5](#)).

Bruce Breslow, Director, Department of Business and Industry (B&I), introduced himself; Cathy Sheehy, Commissioner, Division of Mortgage Lending (DML), B&I; and Scott Whittemore, Deputy Commissioner, DML, B&I.

Vice Chair Settlemeyer stated he wanted to make sure the regulation does not expand the authority of the DML's authority. He asked whether the regulation still only applies to commercial loans on real property and not to non-real estate commercial loans.

Ms. Sheehy confirmed R125-16 does not apply to non-real estate commercial loans.

**MOTION:** Vice Chair Settlemeyer moved approval of R125-16. Assemblyman Araujo seconded the motion. The motion carried. Assemblyman Oscarson was not present for the vote.

#### Regulation 146-16

A REGULATION relating to agricultural products; revising certain provisions relating to issuing certified producer's certificates for agricultural products; providing a fee relating to aquaculture products; and providing other matters properly relating thereto ([Agenda Item IV A-6](#)).

Robert Little, Administrator, Division of Plant Industry, State Department of Agriculture, stated R146-16 includes the practice of aquaculture regarding agriculture in Nevada.

Senator Kieckhefer raised the fact that the regulation also expands the definition of agriculture to include eggs and honey. He questioned the implications for individuals who collect and sell those items at farmers' markets and whether they would be regulated by the Department.

Mr. Little stated the Department's Deputy AG advised including eggs and honey in the regulation since the chapter was already open because the Department has historically required that a producer's certificate be obtained, which the industry has complied with for years. He also confirmed production volume does not determine whether a certificate is required; anyone who wants to produce and sell eggs and honey in Nevada is required to obtain a producer's certificate.

Mr. Little confirmed for Senator Kieckhefer that if individuals cultivate honey and/or eggs on their ranch, for example, and sell them at a farmers' market, they are statutorily regulated by the Department, and the regulation does not expand the Department's oversight of those people.

**MOTION:** Senator Kieckhefer moved approval of R146-16. Senator Denis seconded the motion. The motion carried. Assemblyman Oscarson was not present for the vote.

B. Approval of Transfer of Appropriated Sums Among the Legislative Commission, the Various Divisions of the Legislative Counsel Bureau, and the Interim Legislative Operations Pursuant to Section 49 of S.B. 514 (Chapter 534, *Statutes of Nevada 2015*)

Rick Combs, previously identified, explained the Appropriations Act provides the Legislative Branch with the authority to request the Commission's approval to move funds from one area of the LCB budget to another during a biennium. He compared the request to that of the Executive Branch's authority process with the Interim Finance Committee (NRS 218E.400). Mr. Combs stated he has not asked for this authority every fiscal year, but he anticipates situations in the current fiscal year where it might be necessary to move some money between the various divisions as well as the interim Nevada Legislature. He stressed approval would not increase the overall expenditure authority for the Legislative Branch.

Senator Denis and Mr. Combs discussed specific situations where the movement of funds might be necessary. The cost of living adjustment (COLA) granted in the second year of the 2017–2019 Biennium in the current fiscal year was funded at only 80 percent, which was consistent with Executive Branch agencies' funding for that COLA; the difference being those agencies have access to a pool of funds



they can tap into, if needed. The transfer of money from one account with additional funds to another is how the LCB would handle such a situation, if necessary.

Mr. Combs offered to provide the Commission with information regarding any transfers of money if the Commission directs him to do so.

**MOTION:** Senator Denis moved approval of the request to transfer appropriated sums among the Legislative Commission, the various divisions of the Legislative Counsel Bureau, and the Interim Legislative Operations. Senator Woodhouse seconded the motion. The motion carried. Assemblyman Oscarson was not present for the vote.

## **AGENDA ITEM V—PROGRESS REPORTS AND APPOINTMENTS**

### **A. Litigation Currently in Progress**

Kevin C. Powers, previously identified, provided an overview of cases in litigation.

1. In the case of *People's Legislature v. Miller*, which is a federal case where the plaintiffs are challenging the constitutionality of the statutes governing initiatives and referendums, the parties completed discovery in September 2016. Thereafter, the plaintiffs asked for leave to add new plaintiffs to the case. The State defendants filed an opposition to that and a counter motion to dismiss on the grounds the plaintiffs lacked jurisdictional standing under the *United States Constitution* to bring their claims. Specifically, the defendants are arguing the plaintiffs have never filed petitions for initiatives and referendum and, therefore, do not have standing to challenge the statutes that govern initiatives and referendum. It is an attack on the standing of the plaintiffs in that case. The State defendants are waiting for the federal district court to make a decision on those motions.
2. The Catalyst Account case, *Little v. State*, which is in the Carson City District Court, has had various procedural issues. The District Court initially dismissed the facial constitutional challenge to the Catalyst Account statutes but said the "as applied" constitutional challenge should go to a bench trial. The plaintiff then sought review from the Supreme Court of Nevada of the dismissal of the facial claim. The Supreme Court said it was not appropriate and timely to seek judicial review on an appellate level at that time and sent the case back to the District Court. On January 30, 2017, there will be a hearing before the District Court to determine whether the plaintiffs can proceed on their facial and "as applied" claims. Thereafter, the District Court will determine how the case will proceed at the District Court level.

3. Regarding the Nevada Commission on Ethics (COE) case, which was an ethics complaint alleging legislators violated the ethics law by requesting an opinion from the LCB, the District Court found the assemblyman's actions in requesting the LCB opinion were within the sphere of legislative activity and protected by legislative privilege and immunity, and only the Nevada Assembly had the jurisdiction to review the actions of the assemblyman requesting the opinion. The COE appealed that determination to the Nevada Supreme Court. Then, the LCB filed a motion in the Supreme Court to dismiss for lack of appellate jurisdiction because the COE did not hold a public meeting to a vote to appeal that determination to the Supreme Court. The motion to dismiss for lack of appellate jurisdiction is pending before the Supreme Court.
4. In the medical marijuana case, *Doe v. State*, the plaintiffs are challenging the constitutionality of the medical marijuana registry. The District Court upheld the constitutionality of the registry, the plaintiffs appealed, and the briefing of the appeal is complete. The Nevada Supreme Court has directed scheduling of the appeal for oral argument on the next available calendar.
5. The next case, *Fink v. Nelson*, involves former Assemblyman Erven T. Nelson and his residential qualifications to serve as an assemblyman. The case was brought while he was a member of the Nevada Assembly. His residential qualifications were challenged on the grounds that his announcement to run for a different legislative position caused him to lose his residency for the Nevada Assembly. The District Court rejected the challenge; the plaintiffs appealed; and then after the appeal was pending, Assemblyman Nelson resigned from office as an Assembly Member. The Nevada Supreme Court dismissed the appeal because it was no longer an active case or controversy, which made the case moot because there was no decision the Supreme Court could make that would have affected the former assemblyman. The case is closed.
6. The next case, *The Board of Trustees of the Glazing Health and Welfare Trust v. Chambers*, concerns S.B. 223 (Chapter 345, *Statutes of Nevada 2015*) and involves federal preemption under the Employee Retirement Income Security Act of 1974 (ERISA). The federal district court found S.B. 223 was entirely preempted by ERISA. The Office of Labor Commissioner, B&I, appealed that decision to the United States Court of Appeals for the Ninth Circuit, and the LCB filed an amicus brief on behalf of the Legislature in support of the Labor Commissioner. That case is pending before the Ninth Circuit to determine whether it will decide the case on the briefs or have oral argument.
7. The next cases have to do with the statutes dealing with nonjudicial foreclosure of homeowners' association super priority liens. There is a series of state and federal cases involving this issue. The statutes authorize homeowners' associations to file a foreclosure procedure against a unit in the association if the dues are not paid. Several banks have challenged the facial constitutionality

of the statutes because once the homeowners' association forecloses on the lien it extinguishes all other liens on the property, including first deeds of trust by the mortgage lenders and the banks. The result is a split between the Ninth Circuit and the Nevada Supreme Court. In *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, the Ninth Circuit found the statutes were facially unconstitutional in violation of procedural due process because they did not provide enough notice to the mortgage lenders. In another recent case, *Saticoy Bay, LLC v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, NA*, the Nevada Supreme Court had the same issue before it, and it upheld the statutes and concluded that they did not violate procedural due process. When a federal circuit court concludes one thing on the constitutionality of statutes and a state supreme court concludes the opposite, the only court that can resolve the conflict is the Supreme Court of the United States. Therefore, in the *Bourne Valley* case it is likely that Bourne Valley will file a petition for review before the U.S. Supreme Court seeking review of the Ninth Circuit decision; it is also possible that in the Nevada Supreme Court case, Wells Fargo will file a petition for review before the U.S. Supreme Court seeking review of the Nevada Supreme Court decision. Ultimately, the U.S. Supreme Court should resolve these matters. The Legislature has been filing amicus briefs in support of the constitutionality of the statutes with the Ninth Circuit and the Nevada Supreme Court. If one or both of these cases goes to the U.S. Supreme Court, the Legislature will be filing an amicus brief in favor of the constitutionality of the statutes.

8. In the Clark County School District Reorganization case, the Clark County School Board of School Trustees filed an action in the Carson City District Court against Nevada's Department of Education and the State Board of Education. The CCSD is challenging the regulations adopted by SBE to implement the reorganization of CCSD. Assembly Bill 394 directed the Advisory Committee to Develop a Plan to Reorganize the Clark County School District (Advisory Committee) (Section 25 of A.B. 394) to propose a plan and provide recommendations for the reorganization. The Advisory Committee submitted the plan and recommendations to SBE, which is required to adopt regulations necessary and appropriate to effectuate the implementation of the reorganization. Those regulations were adopted on September 1, 2016, by SBE, and the Commission approved them on September 9, 2016. On December 21, 2016, CCSD filed a complaint for declaratory injunctive relief in the District Court. The CCSD claims the regulations are invalid because they: (1) were adopted in violation of the procedural requirements of Chapter 233B ("Nevada Administrative Procedure Act") of NRS; (2) exceed statutory authority provided by A.B. 394; (3) are arbitrary and capricious; (4) constitute an unlawful and unfunded mandate in violation of NRS 354.599; and (5) violate the separation of powers in Section 1 of Article 3 of the *Nevada Constitution* because A.B. 394 unconstitutionally delegated the Legislature's lawmaking authority to the Advisory Committee, and

the Advisory Committee unconstitutionally usurped and exercised the Executive powers conferred on SBE. On January 19, 2017, CCSD filed a motion for a preliminary injunction to enjoin SBE from implementing the regulations. In response, the Legal Division is preparing appropriate pleadings and briefs in opposition to CCSD's complaint and motion in order to defend the constitutionality of A.B. 394 and the validity of the regulations approved by the Commission.

Referring to the cases involving nonjudicial foreclosure of homeowners' association super priority liens, Senator Kieckhefer questioned how the law will be applied in Nevada pending resolution by the U.S. Supreme Court.

Mr. Powers stated resolution depends on the court in which litigation is taking place. For example, if litigation takes place in a federal district court, it is bound by the Ninth Circuit, so the federal district courts will have to apply the Ninth Circuit's decision. He explained what usually happens, given the conflict between the State and federal courts, is the federal district courts will stay the cases until there is resolution before the U.S. Supreme Court, which is also true with the State court. Mr. Powers said if someone is in a State trial court, that person is bound by the Nevada Supreme Court, and the Ninth Circuit's decisions cannot be followed. Therefore, if a person is in State court, the statutes are constitutional. However, if someone is in federal court, those statutes are unconstitutional. He stated that he suspects all parties in those cases will be asking for stays so that no decision is made until the U.S. Supreme Court resolves the constitutional issues. Mr. Powers confirmed that because of the conflict, a bank would generally file in federal court, and a homeowners' association would generally file in State court.

#### B. Appointment of Members to the Commission on Ethics (NRS 281A.200)

Chair Roberson stated there are two vacancies on the Commission on Ethics that must be filled with public officers or employees ([Agenda Item V](#)). Only one of the two appointees may be a registered Republican and may be from any county in the State. He recommended former Assemblyman Lynn D. Stewart to fill one of the vacancies, noting there is not yet a recommendation for the second vacancy.

**MOTION:** Senator Denis moved approval of the appointment of former Assemblyman Lynn D. Stewart to the Commission on Ethics. Senator Woodhouse seconded the motion. The motion carried. Assemblyman Oscarson was not present for the vote.

#### **AGENDA ITEM VI—INFORMATIONAL ITEMS**

Assemblywoman Bustamante Adams stated she had questions pertaining to Item A.

A. Department of Administration, Office of Grant Procurement, Coordination and Management, Nevada Advisory Council on Federal Assistance—2016 Annual Report Pursuant to NRS 358.030

Connie Lucido, Chief, Grants Procurement, Office of Grant Procurement, Coordination and Management, Department of Administration, remarked the Office submitted its 2016 report ([Agenda Item VI](#)) on behalf of the Nevada Advisory Council on Federal Assistance. She shared that the Council has met monthly beginning in December 2016, and it has presented five recommendations for the Commission's consideration, noting many of them are already in process.

Referring to the implemented structural improvements provided on page 3 of the report ([Agenda Item VI](#)), Assemblywoman Bustamante Adams pointed out the Council has helped various State agencies collect nearly \$85 million in grant awards, and the return on investments for 2015 was \$221 for every dollar invested. She questioned whether those figures are also available for 2014 and, if so, the difference in those figures from 2014 to 2015. Assemblywoman Bustamante Adams also questioned whether the report is or will be ongoing.

Ms. Lucido replied she would follow up with those figures. She said collected grant award dollars and investment returns are part of the Office's performance measures, which is the Office's budget divided by the dollar amount the Office assists agencies in bringing in. She noted many of the programs are quite large.

Referring to page 4 of the report ([Agenda Item VI](#)), Assemblywoman Bustamante Adams questioned whether new funding could potentially reach \$258 million if the Council's recommendations are implemented.

Ms. Lucido replied that, according to a Pew Charitable Trusts report, they could. She stated the recommendation that would substantially affect the new funding increase, if approved, is the request for a budget enhancement grants management system. The system is in the Office's budget request for the Legislature's consideration during the 2017 Session. Further, she said the system would better identify available opportunities, and it would assist the Office in measuring which agencies and organizations are pursuing those opportunities and the outcomes thereof. Currently, the Office is only able to measure that data if it is engaged by an agency.

Referring to page 3 of the report ([Agenda Item VI](#)), Assemblywoman Bustamante Adams asked about Nevada's potential ranking for receiving competitive federal grants if the Council's recommendations are implemented.

Ms. Lucido said she could not provide a realistic answer. She emphasized Nevada cannot move up if it does not know what is available to agencies and community organizations. The Office plans to analyze the formula in categorical funding

coming into the State, which would be another avenue of pursuit to elevate Nevada's ranking.

Assemblywoman Bustamante Adams thanked Ms. Lucido and her staff for their work throughout Nevada, noting the return on investment has been phenomenal. She remarked there is still a lot of money "left on the table" that Nevada can pursue.

Ms. Lucido acknowledged State agencies are the Office's subject matter experts when it comes to pursuing grant award dollars and investment return opportunities and that the numbers would not be possible without their support.

Senator Denis and Risa B. Lang, previously identified, discussed when State agencies are required to have approved regulations in place in order to implement laws and when the laws may be implemented without regulations.

Ms. Lang explained the law will be explicit in determining which parts may be implemented without approved regulations and which parts must have approved regulations in order to be implemented. For example, the implementation of ASD school selection and parent petitions would not be available to NDE without approved regulations, yet the statute provided for certain implementations of the law NDE could do on its own. Responding to Senator Denis's query regarding what to do when an agency adopts regulations that conflict with the Commission's interpretation of a law, Ms. Lang reiterated some things are not specified in statute; therefore, it is left to the agency to interpret the law.

Senator Denis said Ms. Lang's explanation was helpful.

Chair Roberson emphasized that every law passed by the Legislature does not need a regulation for it to be implemented. He expressed concern the Commission is refusing to support regulations.

B. Report Regarding Contracts with Construction Managers at Risk (CMAR) Pursuant to Section 14.5 of A.B. 283 (2013 Session), Department of Transportation's 2016 Annual Program Report

C. Governor's Office of Energy Biennial Report on Energy Reduction in State Buildings Pursuant to NRS 701.215

## **AGENDA ITEM VII—PUBLIC COMMENT**

Chair Roberson called for public comment.

David Gomez, President, Nevada Peace Alliance; Deputy Director of Education Reform, League of United Latin American Citizens (LULAC); and parent to four children who attend schools in CCSD, provided testimony in favor of R108-15. His comments focused on the following issues:

- Parental choice regarding schools;
- Benefits of parental choice;
- Detrimental effects when parents are not given a choice;
- Disrespectful treatment of parents and students at individualized education programs' (special education services) meetings;
- Parental frustration with prolonged delays in adopting regulations; and
- Other matters relating thereto.

Assemblywoman Bustamante Adams and Mr. Gomez briefly discussed whom Mr. Gomez represents. Mr. Gomez stated the opinions are his, but the issues are LULAC's.

## **AGENDA ITEM VIII—ADJOURNMENT**

There being no further business to come before the Commission, the meeting was adjourned at 12:57 p.m.

Respectfully submitted,

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Debbie Gleason  
Secretary for Minutes

APPROVED BY:

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Senator Michael Roberson, Chair  
Legislative Commission



## MEETING MATERIALS

AGENDA ITEM	WITNESS/ENTITY	DESCRIPTION
<a href="#"><u>Agenda Item II</u></a>	Craig M. Stevens, Director, Intergovernmental Relations, Clark County School District	Written testimony concerning R108-15
<a href="#"><u>Agenda Item III A-1</u></a>	Rocky Cooper, Legislative Auditor (LA), Legislative Counsel Bureau (LCB)	Letter dated January 18, 2017, from Senator Ben Kieckhefer, Chair, Audit Subcommittee of the Legislative Commission
<a href="#"><u>Agenda Item III A-2</u></a>	Rocky Cooper, LA, LCB	Summary Audit Report: Investigation Division, Department of Public Safety
<a href="#"><u>Agenda Item III A-3</u></a>	Rocky Cooper, LA, LCB	Summary Audit Report: Nevada's Department of Education—Use of Class-Size Reduction Funds by School Districts
<a href="#"><u>Agenda Item III A-4</u></a>	Rocky Cooper, LA, LCB	Summary Audit Report: Aging and Disability Services Division, Department of Health and Human Services
<a href="#"><u>Agenda Item III A-5</u></a>	Rocky Cooper, LA, LCB	Summary Audit Report: Nevada's Department of Wildlife
<a href="#"><u>Agenda Item III A-6</u></a>	Rocky Cooper, LA, LCB	Summary Audit Report: Review of Governmental and Private Facilities for Children —January 2017
<a href="#"><u>Agenda Item IV A-1</u></a>	Legal Division, LCB	List of administrative regulations

<a href="#"><u>Agenda Item IV A-2</u></a>	Legal Division, LCB	Adopted Regulation of the Department of Education, LCB File No. 108-15
<a href="#"><u>Agenda Item IV A-3</u></a>	Legal Division, LCB	Adopted Regulation of the State Board of Education, LCB File No. 111-15
<a href="#"><u>Agenda Item IV A-4</u></a>	Legal Division, LCB	Adopted Regulation of the State Board of Health, LCB File No. 068-16
<a href="#"><u>Agenda Item IV A-5</u></a>	Legal Division, LCB	Adopted Regulation of the Commissioner of Mortgage Lending, LCB File No. 125-16
<a href="#"><u>Agenda Item IV A-6</u></a>	Legal Division, LCB	Adopted Regulation of the State Department of Agriculture, LCB File No. 146-16
<a href="#"><u>Agenda Item V</u></a>	Rick Combs, Director, LCB	Appointment of Members to the Commission on Ethics
<a href="#"><u>Agenda Item VI</u></a>	John Ritter, Chair, Nevada Advisory Council on Federal Assistance (ACFA), Office of Grant Procurement, Coordination and Management, Department of Administration	ACFA 2016 Annual Report

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.