



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 2018 on Thursday, October 25, 2018. The meeting began at 8:30 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
Assemblywoman Teresa Benitez-Thompson, Vice Chair
Senator Kelvin D. Atkinson
Senator Moises (Mo) Denis
Senator Patricia Farley
Senator Scott T. Hammond
Senator Ben Kieckhefer
Senator Aaron D. Ford
Assemblywoman Maggie Carlton
Assemblyman Chris Edwards for Assemblyman James Oscarson
Assemblyman Keith Pickard
Assemblyman Jim Wheeler

OTHER LEGISLATOR PRESENT:

Senator David R. Parks, Senate District 7

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rick Combs, Director
Rocky Cooper, Legislative Auditor, Audit 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
Kevin C. Powers, Chief Litigation Counsel, Legal Division

Michael J. Stewart, Research Director, Research Division
Carol M. Stonefield, Deputy Research Director, Research Division
Jan Brase, Research Policy Assistant, Research Division
Janet Coons, Manager of Research Policy Assistants, 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

Jan Brisco, Executive Director, Tahoe Lakefront Owners' Association, submitted materials in opposition to R167-18 ([Agenda Item IV A-11](#)), which addresses an annual permit fee schedule for recreational structures such as piers and buoys on Nevada's submerged sovereign lands ([Agenda Item II A](#)).

Brooke Maylath, President and Advocate, Transgender Allies Group, expressed support for R051-18 ([Agenda Item IV A-3](#)), R095-18 ([Agenda Item IV A-4](#)), and R122-18 ([Agenda Item IV A-5](#)), which are regulations in compliance with [Assembly Bill 99](#) (2017). She explained that AB 99 provides support for lesbian, gay, bisexual, transgender, or gender nonconforming children within state custody.

Juan M. Sclafoni, Nevada resident, stated his opposition to R099-17 ([Agenda Item IV A-1](#)). He opined the regulation is illegal and immoral and will require students to comply with compelled language. Mr. Sclafoni voiced his belief that we are all accountable for our actions, which God will judge.

Erin Phillips, President, Power2Parent, said she agrees with the anti-bullying policies that are in place to protect children, but she suggested R099-17 goes beyond the intent of [Senate Bill 225](#) (2017). Ms. Phillips opined the with Nevada's Department of Education (NDE) has followed their guidance process, and public records indicate that Gender Justice Nevada is essentially writing regulations and has been promised the training contracts. She requested the regulation process and the law be followed and parents should be included in the writing process of the regulation.

Lindsey Dalley, representing Moapa Valley Community Education Advisory Board, suggested there is a disconnect between the language of SB 225 and R099-17. He expressed concern about the tone and direction of the regulation and submitted written remarks ([Agenda Item II B](#)).

Laura Hernandez, Family and Youth Services Coordinator, Gender Justice Nevada, testified that as an advocate for families of gender diverse students, over the last five years, she has supported close to 100 families through their children's transition. She said that as a parent of a gender diverse child, she has had to navigate through years of obstacles and discrimination from a school district that was frozen by fear and lack of understanding. Ms. Hernandez related that as a result, her daughter

endured violence and humiliation. She stressed the importance of training school staff and supporting gender diverse students. She expressed appreciation for living in Nevada where gender diverse individuals are protected by statute and policy. Ms. Hernandez asked the Commission to extend these protections to schools and continue to create inclusive change in Nevada.

An unidentified member of the public voiced opposition to R099-17 and said language in the regulation appeared to mirror language in a document known as [*Schools in Transition, A Guide for Supporting Transgender Students in K-12 Schools*](#), which is supported by the Human Rights Campaign and other left-leaning organizations. After requesting information from NDE, he learned the Department has met with small groups of activists when no parents were included. He noted, the regulation clearly states that all stakeholders need to be involved in this process. Continuing, he said a public information request, submitted in May, concerning meetings held with stakeholder groups will not be available until the day following the Legislative Commission meeting when the regulation will be considered. He does not believe NDE has information demonstrating that all stakeholders and parents groups have been engaged. Concluding, he requested R099-17 be returned to NDE for further consideration and the opportunity for parent groups to provide input.

Linda Buckardt, representing NevadansCAN, expressed opposition to R099-17 and submitted written remarks ([Agenda Item II C](#)).

William Tarbell, Nevada resident, shared three main points regarding regulations relating to gender diversity: (1) a professor from Brown University was criticized when she disclosed her research suggesting that rapid onset gender dysphoria might have nonphysical origins; (2) recent studies have claimed there is no evidence of physical causes of gender diversity; and (3) a young man has reported regretting his decision to undergo transition surgery at 11 years of age. Mr. Tarbell said not enough is known about gender diversity to enact legislation on the topic, though he agreed with those who are committed to protecting children from bullying, discrimination, and abuse.

David W. Carter, Member, State Board of Education, District 2, submitted written comments regarding R099-17 and the risk that students and staff can be deemed guilty of bullying without the presumption of innocence or a need for evidence ([Agenda Item II D](#)).

Ms. Maylath, testified to a recent situation when a transgender student was left in a vulnerable position during a school emergency drill. She said that R099-17 will

provide schools with clear and definitive guidelines, which will protect all students. She stressed the need for all children to be treated with dignity and respect.

Rex Reed, Outreach Coordinator, ACLU of Nevada, conveyed support for R099-17 and said it will provide equitable treatment of gender diverse students. She expressed gratitude to NDE for its efforts in listening to interested communities and concerned parents.

Jason (last name inaudible), Nevada resident, expressed his support for gender diverse policies. He stated University of Nevada, Las Vegas student body organization passed a resolution supporting gender minority children and those questioning their sexual identity or orientation. He said these students have a right to equitable opportunities and a safe environment. He suggested that school personnel can intervene and protect gender diverse students by addressing and stopping bullying and harassment, developing administrative policies to eliminate discrimination based on gender identity and expression, and valuing education for students and staff on the needs of gender diverse students.

Senator David R. Parks, Senate District 7, spoke in support of R099-17. He said the regulation offers protection for gender diverse students and supports their rights and needs within the school setting. Senator Parks explained the passage of SB 225 requires NDE to amend existing model policy for supporting safe and respectful learning environment to include requirements and methods for addressing the rights and needs of persons of diverse gender identities or expressions.

Senator Parks explained the same model policies are required by [NRS 388.133](#). He said the state's model policy sets the minimum standards of policies that must be adopted by all district school boards and trustees of governing bodies of charter schools. He clarified that this regulation is proposed to be implemented on an individualized basis addressing each student's unique circumstances. Additionally, Senator Parks said the intent of the regulation is not to propose school-wide reform or changes that will impact an entire student body, but rather to increase gender diverse students' ability to feel safe and welcome in their school.

Senator Parks observed there is no intention to infringe on the rights of other students by the adoption of this regulation. He noted numerous workshops were conducted by the NDE and the Clark County School District (CCSD), and the proposed regulation, as currently drafted, includes most of the elements that were considered by these bodies. He noted ample opportunity was provided to all individuals to be heard and to have their concerns addressed. Senator Parks said that while some individual's views were not adopted, this should not reflect negatively on the regulation.

The Human Rights Campaign submitted remarks in support of R099-17 ([Agenda Item II E](#)).

Numerous letters were received from members of the public opposing R099-17 ([Agenda Item II F](#)).

AGENDA ITEM III—APPROVAL OF MINUTES OF THE JUNE 26, 2018, AND AUGUST 30, 2018, MEETINGS

Senator Atkinson moved approval of the minutes of the June 26, 2018, and August 30, 2018, meetings. The motion was seconded by Assemblywoman Carlton and passed unanimously.

AGENDA ITEM IV—LEGISLATIVE COMMISSION POLICY

A. Review of Administrative Regulations Submitted Pursuant to [NRS 233B.067](#).

The list of regulations ([Agenda Item IV A](#)) can be accessed electronically at: https://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg_List_2018_Oct_25.pdf.

The following regulations were identified by members to be held for discussion: R099-17, R016-18, R051-18, R060-18, R082-18, R083-18, R088-18, R095-18, R102-18, R122-18, and R167-18.

MOTION: Senator Atkinson moved approval of: R118-17, R066-18, R067-18, R089-18, R125-18, R142-18, R151-18, and R152-18. The motion was seconded by Assemblywoman Carlton and passed unanimously.

Regulation R099-17

A REGULATION relating to education; authorizing a private school and its governing body or administrator to comply with the anti-bullying provisions of regulation; prescribing requirements and methods for a public school to use when addressing the rights and needs of persons with diverse gender identities or expressions; providing that the Department of Education will provide certain information to the governing body of each public school; revising certain terminology to clarify that the anti-bullying provisions of regulation apply to all public schools, including charter schools; and providing other matters properly relating thereto ([Agenda Item IV A-1](#)).

Assemblyman Pickard noted that he supported [SB 225](#) with the understanding regulations would be developed after careful consideration of the views of all interested parties. He also expected that a uniform, statewide policy would be established to support the provisions of SB 225. Referring to Sections 9 and 10 of

R099-17, Assemblyman Pickard suggested R099-17 varies from the enabling legislation in that it does not appear to address the concerns of many of those who participated in the review process. Additionally, he observed the proposed regulation requires individual school districts to determine policy details. Assemblyman Pickard requested clarification.

Steve Canavero, Ph.D., Superintendent of Public Instruction, NDE, reviewed the engagement process in developing R099-17. He said beginning in July 2017 through May 2018, public hearings were held, comments were heard, and written remarks were accepted. Dr. Canavero explained conceptual changes were made to the proposed regulation based on public feedback and suggestions from district superintendents. He indicated he is confident the process was conducted to include and consider viewpoints and concerns of all interested parties. Referring to Assemblyman Pickard's concern related to a need for uniform, statewide standards, Dr. Canavero explained R099-17 was written to align with existing statute and policy that address bullying. He said school districts have flexibility to make adjustments to statewide guidelines as needed.

Assemblyman Pickard reiterated his understanding that SB 225 was characterized as a means of extending protections from bullying to a population of students whose concerns were not addressed in existing statute or policy. He observed CCSD has adopted an expansion of statutory anti-bullying policy before NDE has adopted R099-17.

Dr. Canavero said the formulation of regulations has been a cooperative effort among the school districts and NDE. He stated his understanding that CCSD will finalize policies relating to bullying after a decision is made on R099-17 and will comply with policy prescribed by NDE as required in SB 225. Dr. Canavero explained the model policy in R099-17 appears to be consistent with CCSD proposed rules.

Assemblyman Pickard expressed his view that CCSD has proposed policies, which go beyond the issue of bullying and are not supported by SB 225 or by R099-17.

Chair Frierson understood NDE's challenge in proposing regulations meant to apply to all school districts in Nevada. He said R099-17 provides for flexibility at the district and individual level, which appears to be consistent with SB 225.

Responding to Senator Ford's question, Dr. Canavero noted the Office of the Attorney General helped NDE develop R099-17.

Referring to Section 3, subsection 2(b) of R099-17, Assemblyman Wheeler questioned whether a policy providing for disciplinary action for "the failure to refer

to a pupil using a name or pronoun identified by the parent or guardian” would constitute compelled speech thus making school districts and the state vulnerable to legal action.

Dr. Canavero addressed NDE efforts to ensure employees, volunteers, and pupils are not unfairly disciplined for using improper language and to protect school districts from charges of compelled speech.

In response to a question from Chair Frierson, Dr. Canavero agreed R099-17 addresses the use of language intentionally meant to bully or harass students.

Assemblyman Wheeler questioned the process for determining whether language is meant as harassment. He suggested the decision can be subjective and reiterated his concern regarding legal actions and lawsuits.

Dr. Canavero explained early sections of the regulation outline the process. He said parents will collaborate with school staff to create a plan and designate students’ preferences, which will be reflected in official school records. He said a number of provisions in existing law and regulations ensure a proper and fair process for adjudicating instances of bullying.

Assemblyman Edwards asked for specifics regarding teams established by school administrators that meet to develop individualized plans to address rights and needs of gender diverse pupils. He questioned whether those accused of bullying would have representation on these teams or fair treatment in the investigation process.

Dr. Canavero clarified the work considered by the individualized planning team. He said the team referenced on page 3 of R099-17 is tasked with developing a plan for approval by the administrator. Dr. Canavero stated this plan addresses the rights and preferences of the individual student.

Amber Reid, Education Programs Professional, NDE, said [SB 504](#) (2015) required NDE to create a model policy for providing a safe and respectful learning environment. She said R099-17, as required by SB 225, expands protections to include individuals with diverse gender identities or expressions. Responding to Assemblyman Edwards’ concern that those reported as aggressors receive fair treatment, Ms. Reid outlined the investigation and adjudication process, which is designed to protect the rights of all students involved.

Assemblyman Edwards expressed concern that preferences of students with diverse gender identities may not be generally known. He said students, staff, and/or administrators may inadvertently offend and be held responsible.

Ms. Reid said the goal is, not to punish, but to educate and teach positive behaviors. She noted an appeal process is outlined in the regulation, which allows for several levels of review. Responding to an inquiry from Assemblyman Edwards, Ms. Reid explained that because plans are developed to accommodate students individually, they may involve various levels of confidentiality. She said disciplinary measures will only be taken when an action: (1) meets the standards of existing anti-bullying laws; and/or (2) violates a provision of existing policy of the governing body of a school district or charter school.

Assemblyman Edwards opined that R099-17 is ambiguous in terms of the disciplinary process. He expressed concern that without needed clarity, students, parents, and school staff may be confused and frustrated, possibly resulting in legal action.

Chair Frierson stated that [NRS 388.122](#) defines *bullying*, gives direction, and provides clarifying examples. He said R099-17 supports the structure of the statute, which was codified in 2015. He stressed the importance of understanding that the issue is not punishment for an inadvertent mistake, but for intentional conduct that is ongoing and pervasive.

Senator Ford agreed and said there is a statutory framework from which to determine a reasonable person's standard of bullying or misuse of proper pronouns. He said some statements are objectively offensive and protections are delineated in statute and carried out through regulation.

Assemblyman Edwards reiterated a need for clarity in regulation to avoid confusion and legal consequences.

MOTION: Assemblywoman Carlton moved approval of R099-17. Senator Atkinson seconded the motion.

Prior to voting, Chair Frierson and Senator Denis commended all those who participated in the development of R099-17 and stated the importance of supporting all students and promoting a safe learning environment.

Senator Kieckhefer said R099-17, from a regulatory standpoint, satisfies the intent of SB 225. He stated that he continues to be concerned by the number of parents and families who have expressed frustration at not being sufficiently included in the process of finalizing the proposed regulation.

Assemblyman Edwards expressed his concern that constituents' opinions have not been adequately addressed.

Senator Hammond agreed and said he has heard from stakeholders who are of the opinion they have not been allowed representation.

Vice Chair Benitez-Thompson noted the many hours of discussion and time spent responding to concerns from stakeholders and expressed her understanding that the focus is to provide a safe environment for all students.

Senator Atkinson agreed and said the proposed regulation is an important step in protecting students from bullying.

Assemblyman Pickard stated his opposition to R099-17. He emphasized his support for the protection of children but indicated his concern the proposed regulation goes beyond the authorization of SB 225. Additionally, Assemblyman Pickard said the issue of due process must be considered.

Senator Ford affirmed his support of R099-17 and said the proposed regulation is meant to be inclusive and offers protection to all students.

The previous motion made by Assemblywoman Carlton and seconded by Senator Atkinson passed. Senators Hammond and Kieckhefer and Assembly Members Edwards Pickard, and Wheeler voted no.

Regulation R016-18

A REGULATION relating to education; establishing when a volunteer at a public school will be deemed to have regular contact with pupils; deeming certain students enrolled at an institution of higher education not to be volunteers in certain circumstances; exempting a volunteer from undergoing a background check if the volunteer has undergone a background check by another entity in certain circumstances; and providing other matters properly relating thereto ([Agenda Item IV A-2](#)).

Assemblyman Pickard requested information relating to fingerprinting and background check requirements of R016-18.

Dr. Canavero explained that statute requires school volunteers, before the beginning of their service and at least once every five years thereafter, to submit to the governing body of a school a complete set of fingerprints for the purpose of undergoing a criminal background check. He noted the proposed regulation was drafted to comply with statute.

Assemblyman Edwards expressed concern relating to unintended consequences of statute and the proposed regulation. He is aware of a decline in school volunteerism resulting from the cost and inconvenience of the fingerprinting requirement. Assemblyman Edwards questioned whether an accommodation could be made for those, especially parents, who wish to volunteer but cannot afford the cost of a background check.

Dr. Canavero replied R016-18 provides some exemptions and said the matter continues to be studied and may be addressed in the upcoming legislative session.

MOTION: Senator Denis moved approval of R016-18. The motion was seconded by Assemblywoman Carlton.

Prior to voting, Assemblyman Edwards stated his opposition to the proposed regulation. He said he will support an effort to amend the statute during the 2019 Legislative Session.

Senator Hammond expressed support for R016-18 and stated the value of a volunteer verification system, which protects students. He added he will also consider improving and clarifying statute during the next legislative session.

The previous motion made by Senator Denis and seconded by Assemblywoman Carlton passed. Assemblyman Edwards voted no.

Regulation R051-18

A REGULATION relating to child welfare; establishing a process for filing and resolving a grievance concerning a foster care agency or a foster home; revising the training requirements for licensees who operate a foster home and for the direct care staff of specialized foster homes and foster care agencies; revising provisions governing the licensing and operation of a foster home; and providing other matters properly relating thereto ([Agenda Item IV A-3](#)).

Referring to subsection 12, Section 10 of R051-18, Assemblyman Pickard requested clarification of the requirement that foster care facilities ensure that each foster child who is placed in a foster home is treated in all respects in accordance with the child's gender identity or expression, including the choice of clothing, hairstyle, and makeup. Assemblyman Pickard related concerns from foster parents whose parenting decisions on these subjects have been undermined by foster care agencies and questioned how disagreements between foster parents and licensing authorities are settled. Assemblyman Pickard asked whether this provision would discourage potential foster parents from participating in the program.

Laurie Jackson, Social Services Chief, Division of Child and Family Services (DCFS), Department of Health and Human Services (DHHS), explained the proposed

regulation added discussion of gender identity, if appropriate, in an ongoing, open conversation between licensing authorities and parents. She commented that during the placement process, foster parents and agency personnel discuss children's preferences, including clothing, hairstyles, and names. She said the intent is to avoid disagreements and misunderstandings before a child is placed in a home.

Discussion among Chair Frierson, Vice Chair Benitez-Thompson, and Assemblyman Pickard discussed statutory parameters in the foster care system as addressed in [NRS 432B](#) ("Protection of Children From Abuse and Neglect").

Assemblyman Pickard surmised that R051-18 provides for requirements, which are outside statute and which may undermine foster parents' authority to the detriment of the children.

Ms. Jackson stressed the intent is to support an ongoing dialog and relationship among caseworkers, foster parents, licensing authorities, and foster children on all matters concerning the children during every phase of the process. In response to a question from Assemblyman Edwards, Ms. Jackson explained that conflicts or disagreements between foster parents and foster children can, generally, be resolved before it becomes necessary to remove children from the home.

Senator Farley, who is a licensed foster parent, related her personal experience and said she has not had her parental authority questioned or usurped. She stated she does not consider R051-18 a burdensome regulation.

MOTION: Senator Atkinson moved approval of R051-18. Assemblywoman Carlton seconded the motion.

Prior to the vote, Assemblyman Pickard expressed admiration for all involved in foster care programs and indicated he would support the regulation.

The previous motion made by Senator Atkinson and seconded by Assemblywoman Carlton passed. Assembly Members Edwards and Wheeler voted no.

Regulation R095-18

A REGULATION relating to child welfare; establishing factors for a juvenile court to consider before committing a child to certain public or private institutions or agencies; establishing protocols that such an institution or agency is required to follow under certain circumstances; and providing other matters properly relating thereto ([Agenda Item IV A-4](#)).

Regulation R122-18

A REGULATION relating to mental health; establishing factors for a court to consider before committing a child to certain facilities; requiring certain facilities to adopt a

policy to ensure that each child committed to the facility by a court order is treated in accordance with the gender identity or expression of the child; and providing other matters properly relating thereto ([Agenda Item IV A-5](#)).

Assemblyman Pickard noted both R095-18 and R122-18 contain mandates relating to gender identity and juvenile courts. He questioned practical considerations in implementing the regulations and suggested it may be difficult to find a placement in Nevada for juvenile offenders who identify as a gender other than that presumed at birth.

Tracey Bowles, Clinical Program Manager, DCFS, DHHS, addressed R122-18 and explained the consideration of an individual's gender expression is one aspect of the regulation. She said R0122-18 also requires facilities to address the practical considerations of accommodating juveniles with special needs while keeping children safe.

Referring to Section 3, Assemblyman Pickard noted R0122-18 states each facility "shall adopt a policy to ensure that each child who is committed to the facility by a court order is treated in all respects in accordance with the child's gender identity or expression." He asked how it is possible to reconcile this requirement with the reality that facilities may not be equipped to comply.

Ms. Bowles, noted DCFS is assisting facilities in complying with the regulation.

Chair Frierson asserted that R095-18 and R122-18 address treatment of committed juveniles rather than their placement. He suggested it is preferable that both the court and the facility consider all aspects of a juvenile's circumstance and that the ability to accommodate is a separate question.

Senator Kieckhefer asked whether R095-18, which concerns facilities managed by the state, requires the judge to consider the appropriateness of placement and requires agencies to establish procedures.

Leslie Bittleston, Social Services Chief, DCFS, DHHS, clarified that R095-18 relates to three juvenile correction facilities operated by DCFS: (1) Nevada Youth Training Center; (2) Caliente Youth Center; and (3) Summit View Youth Center. She said the regulation also applies to seven county-operated secure detention facilities and two county-operated youth camps. She said when a juvenile is committed to DCFS custody, a needs assessment is completed. Ms. Bittleston stated DCFS makes a recommendation to the facility deemed most appropriate, but the facility has the option to accept or decline placement.

Senator Kieckhefer noted that the only facility available for girls is Caliente Youth Center. He questioned placement for a girl who identifies as a boy.

Ms. Bittleston said a needs assessment determines placement but R095-18 is required for direction in writing policy in these situations.

Senator Kieckhefer observed that the proposed regulation does not provide needed clarity regarding safe placement of juveniles in custody.

Ms. Bittleston explained that the Prison Rape Elimination Act of 2013 (PREA) standards have been adopted in Nevada and are meant to protect those in custody from sexual assault and sexual harassment. She said the statewide PREA policy is written to include protections for LGBTQ juveniles and those who identify as a gender other than that presumed at birth. Ms. Bittleston reported R095-18 builds on the PREA standard and said there is a good deal of overlap in the policies.

Senator Kieckhefer referred to Section 5 of R095-18, which addresses placement procedure and requires taking the child's wishes into consideration. He asked how much authority would be given to the child's wishes. Senator Kieckhefer expressed concern the regulation creates a standard, which may be vulnerable to challenge if it is not met.

Ms. Bittleston explained the housing assignment process and confirmed that once a needs assessment is completed and a placement determined, juveniles' wishes are considered.

Responding to Assemblyman Pickard's query, Ms. Bittleston confirmed when a juvenile offender is committed to DCFS, the agency is responsible for correctional placement. She reiterated that placement is the only function of DCFS at this point in the process, and parents do not lose custody of the child.

Assemblyman Pickard voiced his concern that language in Section 5, subsection 2 (c) of R095-18, which identifies "A child who is held at the institution or in the custody or control of the agency..." may require clarification to distinguish those in correctional facilities from those in community placements such as group homes.

MOTION: Assemblywoman Carlton moved approval of R095-18 and R122-18. The motion was seconded by Senator Farley and passed. Assemblyman Pickard voted no. Assemblyman Wheeler was absent for the vote.

Regulation R060-18

A REGULATION relating to electric utilities; requiring a resource plan submitted by an electric utility to contain certain information concerning the reduction of consumer exposure to the price volatility of fossil fuels and the potential social cost of carbon; establishing the method for calculating the social cost of carbon; requiring an electric utility to hold a meeting with certain parties and interested persons before filing a resource plan or an amendment to a resource plan;

establishing requirements for providing notice of such a meeting; and providing other matters properly relating thereto ([Agenda Item IV A-6](#)).

Assemblywoman Carlton requested clarification relating to perceived disparities between R060-18 and [SB 65](#) (2017), which is the enabling legislation.

Donald Lomoljo, Esq., Utilities Hearing Officer, Public Utilities Commission of Nevada (PUCN), referring to Section 3, subsection 5 of R060-18, stated the language, "The utility shall submit information supporting the method used by the utility to calculate the social cost of carbon," is meant to establish flexibility for the utility and the Commission in determining the social cost of carbon.

Assemblyman Pickard indicated language in SB 65 described costs of carbon but did not address social costs of carbon. He requested clarification of the term and asked how these costs are calculated.

Mr. Lomoljo agreed that SB 65 did not specifically reference the social costs of carbon. He explained that the utilities industry recognizes two categories of costs, which are identified and outlined in Section 3, subsection 5 of the proposed regulation: (1) the private cost to the utility as defined by costs of compliance; and (2) the social cost as defined by the health and economic costs of carbon emissions. He stated that within the PUCN process, it would be incumbent upon a utility, which is filing an integrated resource plan (IRP), to submit suggestions for the calculation of the social cost of carbon, supported by evidence and testimony. Mr. Lomoljo indicated that within the IRP process, other interested parties who are granted intervention status may put forward their own evidence related to an alternative calculation. Mr. Lomoljo said the PUCN considers all evidence when making a final ruling.

Responding to Assemblyman Pickard's question, Mr. Lomoljo explained the technical support document cited in Section 5 of R060-18 is an example of an impact analysis and is not prescriptive. He stated there is no prescribed calculation for the social cost of carbon.

Assemblyman Pickard asked if there is no standard on which everyone agrees, whether R060-18 directions to the PUCN to interpret IRP filings.

Mr. Lomoljo observed the PUCN has discretion when evaluating cost calculations submitted by interested parties.

Senator Kieckhefer expressed concern that SB 65 required a targeted financial review and did not specify a need for a determination of the social impact of carbon. Citing the technical support document referenced in Section 5 of R060-18, Senator Kieckhefer said the language states the social cost of carbon is intended to

include changes in net agriculture productivity and human health, product damages, flood risks, and the value of ecosystems services due to climate change. He stated this was not intended by SB 65 and is, in Senator Kieckhefer's opinion, a broad overreach. Concluding, he stated this is an example of a regulation that is clearly not in conformance with approved legislation.

MOTION: Senator Atkinson moved approval of R060-18. The motion was seconded by Assemblywoman Carlton. Senators Hammond and Kieckhefer and Assembly Members Edwards and Pickard voted no. Assemblyman Wheeler was absent for the vote.

Rick Combs, previously identified, responding to Chair Frierson's inquiry affirmed the long-standing practice of the Legislative Commission requiring seven affirmative votes for approval of a measure. He noted only six members voted to approve R060-18.

Chair Frierson stated the motion failed and R060-18 would be reconsidered at the next meeting of the Legislative Commission when all members are present.

Regulation R082-18

A REGULATION relating to landscape architects; increasing certain fees charged by the State Board of Landscape Architecture; revising provisions relating to the examination for a certificate to practice as a landscape architect intern; revising provisions concerning complaints filed against persons who hold a certificate of registration as a landscape architect or a certificate to practice as a landscape architect intern; and providing other matters properly relating thereto ([Agenda Item IV A-7](#)).

Assemblyman Pickard requested clarification regarding proposed increases in licensing fees to the State Board of Landscape Architecture.

Ellis L. Antunez, F.A.S.L.A., Executive Director, State Board of Landscape Architecture, explained the intent is to align fees in *Nevada Administrative Code* (NAC) with those required by [NRS 623A.240](#).

MOTION: Senator Atkinson moved approval of R082-18. The motion was seconded by Assemblywoman Carlton and passed. Assemblyman Wheeler was absent for the vote.

Regulation R083-18

A REGULATION relating to landscape architects; establishing requirements for continuing education for a person who holds a certificate of registration as a landscape architect issued by the State Board of Landscape Architecture; providing certain exemptions from such requirements; providing that the failure

of a registrant to complete such requirements is grounds for the nonrenewal of his or her certificate of registration; and providing other matters properly relating thereto ([Agenda Item IV A-8](#)).

Mr. Antunez noted the increase in fees proposed in R083-18 align NAC with NRS.

MOTION: Assemblywoman Carlton moved approval of R083-18. The motion was seconded by Senator Denis and passed. Assemblyman Wheeler was absent for the vote.

Regulation R088-18

A REGULATION relating to educational personnel; revising provisions relating to the statewide performance evaluation system for school-level administrators and teachers; and providing other matters properly relating thereto ([Agenda Item IV A-9](#)).

Assemblyman Pickard requested clarification on proposed revisions to education personnel performance evaluations. He expressed concern regarding a lack of measureable standards.

Kathleen Galland-Collins, Education Programs Supervisor, Office of Educator Development and Support, NDE, explained that NRS and NAC and the Nevada Educator Performance Framework (NEPF), specifies performance standards, criteria, and measurements. She said the NEPF includes detailed requirements for goal setting, planning, and self-assessment.

Assemblyman Pickard recognized that standards are outlined in regulation, statute, and the NEPF, but suggested there may be a lack of clarity. He asked whether NDE anticipates addressing ambiguities in performance standards.

Ms. Galland-Collins noted the NEPF outlines five instructional practice standards and five professional responsibility standards, all of which focus on student learning. She explained the expectations and guidelines are also found in NEPF protocols.

Assemblyman Edwards, referring to page 3 of R088-18, questioned the efficacy of relying on students to provide critical analysis and assessment of educators' performance. Additionally, he surmised the performance protocols are excessively complicated and inquired how they compare to other, more successful, states' educator evaluations.

Ms. Galland-Collins stated pupils are included in the evaluation process because they are the primary stakeholders in the education system. She indicated that students' perceptions are included in multiple indicators within the NEPF and are an important component in creating a valuable learning experience. Responding to

Assemblyman Edwards' question regarding educator evaluations in other jurisdictions, Ms. Galland-Collins noted that high-performing schools in Nevada are those that focus on structural leadership and structural practices. She said the practice of self-assessment, goal-setting, and pre- and postobservation conferences are steps to improving and developing educators' skills and performance.

Assemblyman Edwards reiterated his concern that students cannot adequately assess their teachers' performance. He stated his view that teachers should be evaluated by qualified adults.

Assemblyman Pickard stated his support for R088-18, but he encouraged NDE to consider taking steps to simplify the performance evaluation process.

MOTION: Senator Atkinson moved approval of R088-18. The motion was seconded by Assemblywoman Carlton and passed. Assemblyman Edwards voted no. Assemblyman Wheeler was absent for the vote.

Regulation R102-18

A REGULATION relating to emergency medical services; authorizing a holder of a license to operate a hospital to obtain a service community paramedicine endorsement; expanding the period in which an applicant for a license as an attendant or firefighter must be found to have met certain physical and mental criteria; revising the criteria for determining the medical facility to which an injured patient will be transported; and providing other matters properly relating thereto ([Agenda Item IV A-10](#)).

Assemblywoman Carlton requested clarification of the proposed regulation and how it addresses service between community paramedicine providers and hospitals without emergency departments.

Tina Smith, Manager, Emergency Medical Systems Program, Division of Public and Behavioral Health, DHHS, explained when community paramedicine providers are aware of an emergent situation, they defer action to emergency services in the community.

Assemblywoman Carlton moved approval of R102-18. The motion was seconded by Senator Farley and passed. Assemblyman Wheeler was absent for the vote.

Regulation R167-18

A REGULATION relating to state lands; establishing certain application and annual use fees for state lands; clarifying that the State Land Registrar may issue authorizations for uses of state lands not associated with navigable bodies of water; requiring an application for authorization to use state lands be on a form provided by the Division of State Lands of the State Department of Conservation

and Natural Resources; and providing other matters properly relating thereto ([Agenda Item IV A-11](#)).

Assemblyman Pickard inquired about the proposed increase in fees for use of public lands.

Charles Donohue, Administrator, Division of State Lands, and State Land Registrar, State Department of Conservation and Natural Resources (DCNR), explained that statute requires charging a fee for the use and occupancy of state lands. He said [SB 512](#) (2017) required the state land registrar to establish the amount of fees for certain state lands by regulation rather than statute. Mr. Donohue submitted a staff report detailing drafting of the proposed regulation ([Agenda Item IV A-12](#)).

Responding to Assemblyman Pickard's question, Mr. Donohue said SB 512 directed a comparative analysis among states, acknowledging the fee structure in statute was below fair market value.

Senator Kieckhefer requested an explanation of the fair market value evaluation process and expressed his concern that the regulation represents a dramatic departure from the enabling legislation.

Ellery Stahler, Deputy Administrator, Division of State Lands, DCNR, explained the process began with a review of SB 512, which recognized the fee schedule has not been modified since 1995. She said [subsection 1\(b\) of NRS 322.100](#), provides that the state land registrar may determine fees that are based upon the fair market value. She related that the Division engaged in a comprehensive research effort including: (1) a study of fees set in statute in 1993; (2) a review of fees charged by other western states; (3) an in-house evaluation and market analysis; and (4) a report from an independent appraiser. Ms. Stahler indicated the Division also solicited public comment. Concluding, she said as a result of a combination of these efforts, an appropriate fee structure for public land use was determined.

Responding to Senator Kieckhefer's inquiry, Mr. Donohue acknowledged the fee structure proposed in R167-18 is significantly below amounts suggested in the independent appraiser's report.

Senator Kieckhefer questioned disregarding the appraiser's reported values and inquired how the final fees were determined.

Mr. Donohue noted fair market value was one factor, but he emphasized fees should be reasonable. He said, for example, the average annual use fee for a pier on the California portion of Lake Tahoe is \$1,000, while the appraiser's report suggested an annual fee of \$12,000 based on the fair market value.

Mr. Donohue discussed: (1) appraisal methodology and assumptions; (2) establishment of a uniform annual use fee with yearly increases; and (3) serviceability of structures subject to fees.

Senator Kieckhefer requested clarification of the term *pier enhancement value*. He indicated that part of the appraiser's consideration in his suggested fee structure was that a pier enhances the value of the associated property. Senator Kieckhefer remarked that property owners with piers pay taxes based on an enhanced property value.

Mr. Donohue noted fees assessed are not taxes, but are use and occupancy fees. He pointed out property owners' decisions to build a pier or place a buoy is purely voluntary. He emphasized there is no requirement to do so. Mr. Donohue indicated he has a responsibility as state lands registrar to ensure the public has access to public lands.

Senator Kieckhefer emphasized the importance of removing any reference to the value of associated properties from fee structure formulations.

Mr. Donohue stated the Division's fee structures are not based on these principles. Responding to Senator Kieckhefer's concern that at some point in the future use fees may be increased in line with the appraiser's determination of fair market value, Mr. Donohue said appraisals are considered void after six months. He assured the Commission that no change in the fee structure would be considered for a minimum of five years, and the review process would restart at that time.

Commenting on the fee structure, Vice Chair Benitez-Thompson pointed out that the regulation allows for gradual price increases over a three-year period. She said the fees appear to be reasonable for the privilege of using a pier or buoy on public lands.

Discussion ensued regarding the consequences of deferring a decision on R167-18. Senator Kieckhefer said existing statutory fees remain in place until proposed regulations are adopted.

Risa B. Lang, previously identified, agreed and stated SB 512 removed fees from statute, but they remain in effect until regulations establishing new fees are adopted.

Responding to Assemblyman Pickard's question relating to the appraiser's qualifications, Ms. Stahler confirmed the appraiser was contracted from a list required by statute, and the report adhered to reporting requirements under Uniform Standards of Professional Appraisal Practice Standards Rule 2-2 (a). She said no extraordinary assumptions were made, and no hypothetical conditions were utilized.

The appraiser is qualified under [NRS 321.007](#), which states the determination of the state land registrar as to the qualifications of an appraiser is conclusive.

Mr. Donohue added that the appraiser has 25 years of experience appraising property in the Lake Tahoe area and has worked for a number of state agencies.

Chair Frierson deferred R167-18 to a future meeting of the Legislative Commission.

- B. Amendment to the Rules and Policies of the Legislative Counsel Bureau Concerning the Legislative Commission, Political Activities of Employees, Break Times for Certain Employees and Employee Leave—Risa Lang, Chief Deputy Legislative Counsel ([Agenda Item IV B](#))

Senator Atkinson moved approval of amendments to the rules and policies of the Legislative Counsel Bureau concerning the Legislative Commission, political activities of employees, break times for certain employees, and employee leave. The motion was seconded by Assemblywoman Carlton and passed. Assemblyman Wheeler was absent for the vote.

- C. Recommendations for the Elimination of Obsolete or Redundant Reports to the Legislature and the Revision of Reporting Requirements Pursuant to [NRS 218D.385](#) ([Agenda Item IV C](#)).

Assemblyman Pickard requested information regarding grants to victims of domestic violence.

Mr. Combs stated the recommendations support continuation of reporting requirements to DCFS while eliminating reports to the Legislature.

MOTION: Senator Farley moved approval of recommendations for the elimination of obsolete or redundant reports to the Legislature and the revision of reporting requirements. The motion was seconded by Assemblyman Pickard and passed. Assemblyman Wheeler was absent for the vote.

AGENDA ITEM V—PROGRESS REPORTS—SUMMARY REPORTS OF MAJOR STUDIES IN PROGRESS PURSUANT TO FILE NO. 6 OF THE RULES AND POLICIES OF THE LEGISLATIVE COUNSEL BUREAU

Mr. Combs informed members the Legislative Commission meeting packet contains a summary of studies conducted during the 2017–2018 Interim and requested approval for completion and publishing of a final report ([Agenda Item V](#)).

MOTION: Senator Atkinson moved approval of Mr. Combs' request. The motion was seconded by Assemblywoman Carlton and passed. Assemblyman Wheeler was absent for the vote.

AGENDA ITEM VI—INFORMATIONAL ITEMS

Chair Frierson asked Commission members whether there were any information items they wanted to discuss; however, no items were requested.

A. Interim Committee Reports

B. Summary of Quarterly reports on Disciplinary Action from the Licensing Boards and State Agencies

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

1. Washoe County School District's Report on Contracts for Public Works Awarded to Contractors, Applicants or Design-Build Teams Who Receive Preference in Bidding Pursuant to [NRS 338.0117\(7\)](#)
2. Nevada Legislature Oral History Program—Report to the Legislative Commission Pursuant to [NRS 218A.350\(7\)](#)
3. Department of Taxation, Sales Tax Revenue Statistics for Businesses Operating in a Tourism Improvement District (TID) in Washoe and Clark Counties Star Bond Districts Pursuant to [NRS 271A.105\(2\)\(a\)](#)
4. Nevada Department of Veterans Services, 2018 Review of the Report of Preferences for Local Businesses Owned by Veterans with Service Connected Disabilities Pursuant to [NRS 417.105](#), [NRS 333.3366](#) and [NRS 338.13843](#)
5. Quarterly and Annual Reports on Sales and Use Taxes 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](#)

AGENDA ITEM VII—PUBLIC COMMENT

Chair Frierson called for public comment; however, no testimony was presented.

AGENDA ITEM VIII—ADJOURNMENT

There being no further business to come before the Commission, the meeting was adjourned at 12:36 p.m.

Respectfully submitted,

Jan Brase
Research Policy Assistant

APPROVED BY:

Jason Frierson, Chair
Legislative Commission

MEETING MATERIALS

AGENDA ITEM	WITNESS/ENTITY	DESCRIPTION
<u>Agenda Item II A</u>	Jan Briscoe, Executive Director, Tahoe Lakefront Owners' Association	Written comments regarding R167-18
<u>Agenda Item II B</u>	Lindsey Dalley, representing Moapa Valley Community Education Advisory Board	Written comments regarding R099-17
<u>Agenda Item II C</u>	Linda Buckardt, NevadansCAN	Written comments regarding R099-17
<u>Agenda Item II D</u>	David W. Carter, Member State Board of Education, District 2	Written comments regarding R099-17
<u>Agenda Item II E</u>	Human Rights Campaign	Written comments supporting R099-17
<u>Agenda Item II F</u>	General Public	Written comments opposing R099-17
<u>Agenda Item IV A</u>	Legal Division, Legislative Council Bureau (LCB)	List of administrative regulations
<u>Agenda Item IV A-1</u>	Legal Division, LCB	Adopted Regulation of the Department of Education, LCB File No. R099-17
<u>Agenda Item IV A-2</u>	Legal Division, LCB	Adopted Regulation of the State Board of Education, LCB File No. R016-18
<u>Agenda Item IV A-3</u>	Legal Division, LCB	Adopted Regulation of the Division of Child and Family Services (DCFS) of the Department of Health and Human Services (DHHS), LCB File No. R051-18
<u>Agenda Item IV A-4</u>	Legal Division, LCB	Adopted Regulation of DCFS, DHHS, LCB File No. R095-18
<u>Agenda Item IV A-5</u>	Legal Division, LCB	Adopted Regulation of DCFS, DHHS, LCB File No. R122-18

<u>Agenda Item IV A-6</u>	Legal Division, LCB	Adopted Regulation of the Public Utilities Commission of Nevada, LCB File No. R060-18
<u>Agenda Item IV A-7</u>	Legal Division, LCB	Adopted Regulation of the State Board of Landscape Architecture, LCB File No. R082-18
<u>Agenda Item IV A-8</u>	Legal Division, LCB	Adopted Regulation of the State Board of Landscape Architecture, LCB File No. R083-18
<u>Agenda Item IV A-9</u>	Legal Division, LCB	Adopted Regulation of the State Board of Education, LCB File No. R088-18
<u>Agenda Item IV A-10</u>	Legal Division, LCB	Adopted Regulation of the State Board of Health, LCB File No. R102-18
<u>Agenda Item IV A-11</u>	Legal Division, LCB	Adopted Regulation of the State Land Registrar, LCB File No. R167-18
<u>Agenda Item IV A-12</u>	Charles Donohue, Administrator, Division of State Lands, State Department of Conservation and Natural Resources	Staff Report
<u>Agenda Item IV B</u>	Rick Combs, Director, LCB	Digest for proposed revisions to the rules and policies of the LCB
<u>Agenda Item IV C</u>	Rick Combs, Director, LCB	Recommendations for the elimination of reports to the Legislature

Agenda Item V	Rick Combs	Progress Reports – Summary of major studies in progress
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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.