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

The Legislative Commission held its second meeting in Calendar Year 2019 on Tuesday, June 25, 2019. The meeting began at 1:30 p.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 Nicole J. Cannizzaro, Chair
Senator Julia Ratti, Vice Chair
Senator Moises (Mo) Denis
Senator Joseph (Joe) Hardy, M.D.
Senator James A. Settelmeyer
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman Jason Frierson
Assemblywoman Lisa Krasner
Assemblyman Jim Wheeler

COMMISSION MEMBER ABSENT:

Senator Scott T. Hammond

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
Michael J. Stewart, Research Director, Research Division

Jan Brase, Research Policy Assistant, 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 Cannizzaro called the meeting to order.

AGENDA ITEM II—PUBLIC COMMENT

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

Chair Cannizzaro recognized the upcoming retirement of Rocky Cooper, Legislative Auditor, Audit Division, Legislative Counsel Bureau (LCB). She noted after earning his master's degree, Mr. Cooper joined the LCB in January 1990, and he has since been a valuable member of the LCB staff. Chair Cannizzaro expressed her thanks and best wishes for an enjoyable and restful retirement.

Rocky Cooper, previously identified, conveyed his appreciation and noted the importance of the support that the Audit Division staff receives from the Legislature and the Legislative Commission in ensuring that state agencies implement audit recommendations. He said working with the staff of the LCB, Director Rick Combs, and the Legislature has been an honor.

Assemblywoman Benitez-Thompson, Senator Denis, and Senator Settelmeyer expressed their gratitude to Mr. Cooper for his professionalism and many years of dedicated service to the LCB and the Audit Division. They noted that meaningful policy changes and improvements to state services have been implemented as a result of Mr. Cooper's efforts.

AGENDA ITEM III–APPROVAL OF MINUTES OF THE DECEMBER 19, 2018, AND JUNE 3, 2019, MEETINGS

MOTION: Senator Settelmeyer moved to approve the minutes of the December 19, 2018, meeting. The motion was seconded by Assemblywoman Carlton and passed unanimously.

MOTION: Assemblyman Frierson moved to approve the minutes of the June 3, 2019, meeting. The motion was seconded by Senator Hardy and passed unanimously.

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 of regulations can be accessed electronically at: https://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg_List_2019_Jun25.pdf.

The following regulations were identified by members to be held for discussion: R078-17, R055-18, R057-18, R105-18, R114-18, R119-18, R130-18, R161-18, R168-18, R177-18, R178-18, R180-18, R187-18, and R192-18.

Rick Combs, previously identified, noted two regulations included in the meeting materials have been removed at agencies' request: R012-18 and R167-18.

MOTION: Senator Settelmeyer moved approval of R009-17, R041-17, R004-18, R005-18, R007-18, R069-18, R071-18, R106-18, R107-18, R110-18, R112-18, R113-18, R116-18, R117-18, R118-18, R145-18, R154-18, R158-18, R 159-18, R160-18, and R198-18. The motion was seconded by Senator Hardy and passed unanimously.

Regulation R078-17

A REGULATION relating to educational personnel; prescribing the qualifications for an endorsement to serve as a mental health professional in a school; and providing other matters properly relating thereto (Agenda Item IV A-2).

Assemblywoman Benitez-Thompson noted the proposed regulation identifies positions that fall under the definition "mental health professional." She indicated licensed clinical social workers are not included in the classification and requested clarification.

Michael Arakawa, Background Investigations Manager, Nevada's Department of Education (NDE), explained the regulation was brought forward at the request of the Office for a Safe and Respectful Learning Environment (OSRLE) (NRS 388.1323), NDE. He said there is a separate path to licensure for clinical social workers, which is outlined in another regulation, and that inclusion of the professional category in R078-17 may lead to misunderstandings.

Mr. Arakawa affirmed Assemblywoman Benitez-Thompson was correct in her understanding that the proposed regulation will not prevent or exclude licensed clinical social workers from providing services offered by mental health professionals as defined in R078-17. He further explained, the OSRLE requested the proposed regulation clearly delineate professions defined as mental health professionals in order to provide clarity.

In response to Senator Hardy's inquiry, Mr. Arakawa explained that under the proposed regulation, a licensed nurse practitioner who is a specialist in mental health will not be excluded from classification as a school mental health professional.

Assemblywoman Benitez-Thompson requested clarification of provisions of R158-18, which relate to school nurses who hold a special license with an endorsement.

Jason E. Dietrich, Director, Office of Educator Licensure, NDE, and Secretary, Commission on Professional Standards in Education (NRS 391.011), explained R158-18 relates to competency testing exemptions for certain school nurses and is unrelated to issues addressed by R078-17.

Senator Hardy expressed his concern that regulations may restrict qualified, licensed mental health professionals from providing services to students in Nevada.

Mr. Dietrich assured Senator Hardy that anyone who holds a mental health professional license issued by a licensing board in the State of Nevada would qualify for an endorsement identified in R158-18.

MOTION: Assemblywoman Benitez-Thompson moved approval of R078-17. The motion was seconded by Senator Denis and passed unanimously.

Regulation R105-18

A REGULATION relating to educational personnel; revising requirements for teaching pupils in a program of early childhood education; and providing other matters properly relating thereto (Agenda Item IV A-3).

Regulation R114-18

A REGULATION relating to educational personnel; revising requirements for teaching pupils in a program of early childhood education; and providing other matters properly relating thereto (Agenda Item IV A-4).

Assemblywoman Benitez-Thompson noted the proposed regulations relate to licensing requirements for preschool teachers. She said R105-18 restricts licensing to those who hold a license to teach pupils in a program of early childhood education. Regarding paragraphs (b) and (c), subsection 2 of Section 1 of R105-18, Assemblywoman Benitez-Thompson asked whether the sections provide for an exemption for teachers employed full-time since July 1, 2002.

Mr. Dietrich explained that early childhood education was, at one time, an endorsement to elementary teaching licenses. However, following approval of Assembly Bill 77 (2017), the early childhood endorsement has been designated a standalone license. Mr. Dietrich said many recent regulations clarify this change.

Responding to Assemblywoman Benitez-Thompson's question, Mr. Dietrich stated individuals who have maintained an elementary license with an early childhood

endorsement since July 2002 are exempt from the requirements of R105-18, Section 1.

Assemblywoman Benitez-Thompson asked how the decision was made to allow for this "grandfathering" exemption.

Mr. Dietrich explained the exemption is existing language and has been included in regulation for some time.

MOTION: Assemblywoman Benitez-Thompson moved approval of R105-18 and R114-18. The motion was seconded by Senator Denis and passed unanimously.

Regulation R119-18

A REGULATION relating to educational personnel; revising the requirements to obtain an endorsement to teach pupils who have speech and language impairments; and providing other matters properly relating thereto (Agenda Item IV A-5).

Assemblywoman Benitez-Thompson asked how the proposed regulation would impact those currently employed as speech pathologists in Nevada schools who do not have a master's degree in speech pathology.

Mr. Arakawa explained the proposed regulation is meant to apply to individuals who, following implementation of the regulation, wish to receive an endorsement to teach pupils who have speech and language impairments. It is not meant to apply to individuals who are currently licensed to teach such pupils. He said the regulation identifies different pathways that can be followed to authorize an individual to teach pupils who have speech and language impairments.

Continuing, Mr. Arakawa explained the proposed regulation allows for alternative pathways to licensure as a speech/language pathologist.

Assemblywoman Benitez-Thompson requested clarification of those sections of R119-18 relating to alternative pathways to licensure.

Referring to relevant paragraphs in subsection 2 of Section 1, Mr. Arakawa explained new regulatory language in paragraph (b) requires a master's degree in an area of concentration in speech and language impairments and a certificate of clinical competence in speech from the American Speech-Language-Hearing Association or an equivalent license from the Speech–Language Pathology, Audiology and Hearing Aid Dispensing Board (NRS 637B.100).

Mr. Arakawa explained paragraph (c), which relates to speech pathologists who relocate to Nevada and hold a license or certificate from their home state. He stated these individuals will be eligible to receive an endorsement in Nevada. He described

provisions of paragraph (d), which would primarily apply to individuals completing a preparation program within the state with the anticipation of working within schools as a speech language pathologist. Mr. Arakawa said Nevada State College provides a program that incorporates clinical practicums, field teaching experiences, and a bachelor's degree.

Concluding, Mr. Arakawa said paragraph (e) is a catchall provision for anyone who holds a bachelor's or master's degree and chooses to complete additional coursework in addition to a student teaching program in speech pathology.

Assemblywoman Benitez-Thompson questioned the number of speech pathologists who are employed in Nevada's school and do not hold a bachelor's or master's degrees.

Mr. Arakawa replied that speech pathologists are required by regulation to hold at least a bachelor's degree, but he does not know how many are currently working with only a bachelor's degree.

Assemblywoman Carlton and Senator Hardy expressed concern regarding a lack of clarity in the proposed regulation as it applies to currently serving speech pathologists. Assemblywoman Carlton noted the possibility that, in an effort to recruit speech and language specialists from other states, current employees may lose their eligibility if suddenly the department decides to change its practice and not allow people to be grandfathered if they do not comply with this regulation.

Brenda J. Erdoes, previously identified, said Assemblywoman Carlton has stated the requirements correctly.

Assemblyman Frierson stated that even if the intention is to grandfather employees, it may result in creating two classes of professionals. He suggested, before making a decision, that it is necessary to know how many people will be impacted. Assemblyman Frierson noted the intention is to assure no jobs are lost, but more certainty in the language is needed.

Mr. Dietrich suggested delaying action on R119-18 to allow for additional review, further study, and potential revisions by NDE in order to provide clarity.

Senator Hardy stated that in terms of a review, it would be important to address the question of the employment status of a speech pathologist who takes a leave of absence or who moves to another district with a break in service.

Assemblywoman Carlton stressed the need to provide adequate notice and opportunity for existing employees to comply with upgraded licensure requirements.

Mr. Dietrich acknowledged Assemblywoman Carlton's concern, and he noted a need to adjust language in the proposed regulation to clarify the intent was not to change requirements for those individuals who are currently licensed.

Chair Cannizzaro stated action regarding R119-18 will be deferred to allow NDE to further review the regulation and bring it back for action by the Legislative Commission at a future meeting.

Regulation R130-18

A REGULATION relating to education; prescribing requirements concerning courses in multicultural education for certain licensed teachers; clarifying that certain applicants for the issuance or renewal of a license as a teacher must submit proof of completion of a course in multicultural education; and providing other matters properly relating thereto (Agenda Item IV A-6).

Senator Denis questioned whether the regulation resulted from enacted legislation.

Mr. Dietrich confirmed R130-18 complies with AB 234 (2015) and SB 41 (2019).

Senator Denis requested information related to testimony during public hearings and the process of developing R130-18.

Mr. Dietrich confirmed one person, Dr. Christine Clark, Ed. D., of the University of Nevada, Las Vegas testified in favor of the proposed regulation and there was no opposition. He stated following the adoption of AB 234, NDE formed a working group of educators and community stakeholders, which came to a consensus after meeting many times over approximately two years. Mr. Dietrich explained the proposed regulation was written based on the working group's input. He noted the effort was led by Dr. Clark, who is a recognized expert in the field of multicultural education.

In response to Senator Denis's question, Mr. Dietrich confirmed members of the working group were satisfied with the proposed regulation and support its approval.

MOTION: Senator Denis moved approval of R130-18. The motion was seconded by Assemblywoman Carlton and passed unanimously.

Regulation R161-18

A REGULATION relating to educational personnel; establishing provisions related to educator ethics; and providing other matters properly relating thereto (Agenda Item IV A-7).

Assemblyman Daly questioned the intent of subsection 3 of Section 2 of the proposed regulation with respect to whether training educators on the *Model Code of Ethics for Educators* would result in those provisions becoming a standard of

professional conduct. He asked for confirmation it was not meant to become a standard that could result in discipline.

Mr. Arakawa confirmed the *Model Code of Ethics for Educators* was not written to define standards of conduct. He said it was designed to inform decisions leading to conduct and to delineate a set of responsibilities, which educators should be aware of when making decisions. Mr. Arakawa explained educator conduct is defined in NRS and in school district policy.

MOTION: Assemblyman Daly moved approval of R161-18. The motion was seconded by Senator Hardy and passed unanimously.

Regulation R055-18

A REGULATION relating to electric utilities; establishing for electric utilities annual goals for energy savings resulting from energy efficiency programs; requiring the inclusion of certain information relating to energy efficiency and conservation in the demand side plan submitted by an electric utility to the Public Utilities Commission of Nevada; revising provisions relating to the recovery of costs based on the implementation by an electric utility of energy efficiency and conservation programs; and providing other matters properly relating thereto (Agenda Item IV A-8).

In response to an inquiry from Assemblyman Daly regarding whether the regulation would apply to utility cooperatives, Ann C. Pongracz, Chair, Public Utilities Commission of Nevada (PUCN), stated the regulation does not apply to cooperative nonregulated sections of the energy industry.

Assemblyman Daly asked how these utility cooperatives are regulated.

Ms. Pongracz clarified R055-18 addresses legislation enacted during the 2017 Session of the Legislature. She said the PUCN has not yet begun an analysis of the approach to be taken in developing regulations enacted by the 2019 Legislature regarding utility cooperatives.

MOTION: Assemblyman Daly moved approval of R055-18. The motion was seconded by Senator Settelmeyer and passed unanimously.

Regulation R057-18

A REGULATION relating to state employees; revising provisions concerning reports on performance; revises provisions relating to adjustment of grievances; and providing other matters properly relating thereto (Agenda Item IV A-9).

Assemblyman Daly questioned deletion of the term "overall" from subsection 4 of Section 1, which applies to NRS 284.340. He noted the statute requires multiple performance reports and was unclear how the proposed regulation would be applied.

Peter Long, Administrator, Division of Human Resource Management (DHRM), Department of Administration, explained the subsection does not refer to a compilation of all of an employee's performance appraisals. He said it applies to an individual appraisal with multiple elements and ratings.

Assemblyman Daly stated the regulation provides for circumstances when a performance report is not submitted and asked for clarification regarding what the agency is doing when a performance report is required to be submitted.

Mr. Long indicated that though supervisors are required to submit performance reports on a timely and regularly scheduled basis, they are not always in compliance. He said when a report is not filed on or before the required date, the employee's performance is deemed to be standard. Mr. Long stated the intent is to assure the employee is not penalized when his or her supervisor fails to submit a performance evaluation.

Referring to subsection 9 of Section 1, Assemblyman Daly noted the required discussion between the employee and his or her supervisor has been changed to read between the employee and "the person who prepared the report." He asked for clarification and expressed concern that when the person preparing the report is not the employee's immediate supervisor, the employee may not be effectively evaluated.

Mr. Long said the intent is to allow for situations when there is an unresolved conflict between an employee and his or her immediate supervisor. He clarified the provision does not preclude a supervisor from preparing and discussing the performance review with the employee but does provide options for someone else to do so in certain circumstances.

Discussion ensued relating to the means of delivery and notice of final performance reports to employees. Assemblyman Daly expressed concern regarding a lack of specificity in the proposed regulation and suggested future action be taken to provide clarity.

Assemblywoman Carlton stated Section 4 of R057-18 addresses procedures for adjusting grievances but does not apply to situations involving coworkers. She asked for an explanation of the purpose of the regulation.

Mr. Long replied that *grievance* is defined as a "conflict between employees and employers," and the grievance process is designed to address these conflicts. He

said statute does not provide for coworkers to bring grievances against their peers. Mr. Long stated R057-18 proposes to clarify the distinction.

Assemblywoman Carlton asked how an employee might address a grievance or complaint against a coworker, if not provided in statute.

Mr. Long explained there are a number of pathways for redress. He said there is a sexual harassment and discrimination investigation unit within DHRM. Remediation and resolution conferences are also available for employees, which result in contracts between the parties to resolve conflicts.

Assemblywoman Carlton noted that in instances when employers either neglect or refuse to address conflicts between coworkers, aggrieved employees are left without an avenue for resolution.

In this situation, Mr. Long replied the employee would have standing to bring a grievance against his or her employer.

Assemblywoman Carlton expressed concern that the regulation has been proposed before a state employee grievance process has been fully considered, defined, and articulated.

Chair Cannizzaro stated R057-18 will be deferred for action during a future Commission meeting.

Regulation R168-18

A REGULATION relating to liquefied petroleum gas; authorizing the staff of the Board for the Regulation of Liquefied Petroleum Gas to issue a citation and impose an administrative fine for certain violations relating to the regulation of liquefied petroleum gas; revising provisions relating to the availability of emergency personnel in case of an emergency relating to a licensee's petroleum business; revising provisions relating to certain regulations adopted by reference by the Board; revising provisions relating to the handling of complaints filed with the Board; revising provisions relating to administrative proceedings before the Board; and providing other matters properly relating thereto (Agenda Item IV A-10).

Assemblyman Daly asked whether the administrative fine in subsection 2 of Section 2 is levied in addition to fines for violations outlined in subsection 2 of Section 1.

Rick Drake, Chief Inspector, Board for the Regulation of Liquefied Petroleum Gas, explained fines for violation of provisions of the Nevada Liquefied Petroleum Gas Act are the only fines levied. He said an administrative fine would be contemplated only

in the event of the need for an investigation and/or administrative hearing related to a violation.

Assemblyman Daly and Mr. Drake discussed the definition of "immediate area." Mr. Drake indicated an owner or manager of a business who does not live near his or her service area is required to employ a staff member who is available at all times in case of an emergency. He explained the term "immediate area" applies to the defined service area.

Assemblyman Daly noted R168-18 states the Board adopts a number of regulations by reference but also that the Board will review them for suitability for Nevada. He questioned the Board's options when a review determines an adopted regulation is not suitable for Nevada.

Mr. Drake replied the Board regularly reviews new code books and is obligated to exempt requirements that are not suitable to the health, safety, and welfare of the citizens of Nevada within 120 days. He said when no changes are made within that time frame, the code book is adopted as written.

Assemblyman Daly questioned removal of the requirement for posthearing briefs as outlined in subsection 7 of Section 14. He noted the proposed regulation removes several other legal requirements and asked whether this is because the Board is subject to the administrative procedures for contested cases under NRS 233B.032.

Mr. Drake confirmed Assemblyman Daly's presumption that all parties will retain their access to due process and that the regulations merely attempt to clean up the current provisions.

MOTION: Assemblyman Daly moved approval of R168-18. The motion was seconded by Assemblyman Frierson and passed unanimously.

Regulation R177-18

A REGULATION relating to licensure by endorsement; prescribing the requirements for licensure by endorsement as an escrow agent or escrow agency; and providing other matters properly relating thereto (Agenda Item IV A-11).

Regulation R178-18

A REGULATION relating to mortgage lending; prescribing the requirements for licensure by endorsement as a mortgage broker or mortgage agent; revising provisions governing certain monthly reports filed by mortgage brokers; revising continuing education requirements for mortgage brokers and mortgage agents; and providing other matters properly relating thereto (Agenda Item IV A-12).

Regulation R180-18

A REGULATION relating to licensure by endorsement; prescribing the requirements for licensure by endorsement as a covered service provider, foreclosure consultant, loan modification consultant or mortgage servicer; and providing other matters properly relating thereto (Agenda Item IV A-13).

Assemblyman Daly asked whether there is more than one path to licensure as an escrow agent or an escrow agency.

Cathy Sheehy, Commissioner, DML, B&I, responded that the track followed for a license by endorsement is slightly different than the track for a regular application, but the process for the two tracks are very similar.

Assemblyman Daly asked for clarification based on the fact that subsection 1 of Section 2 of R177-18 reads "submits to the Commissioner all of the following" and outlines an extensive list of standards required for licensure by endorsement.

Donna LaGue, Legal Research Assistant, Division of Mortgage Lending (DML), Department of Business and Industry (B&I), explained there is one track as long as the applicant is licensed in a recognizable jurisdiction and has completed substantially equal or similar education requirements and meets criteria required by SB 69 (2017).

Responding to Assemblyman Daly's question, Ms. Sheehy, explained that all states require a license to act as an escrow agent or agency.

MOTION: Assemblyman Daly moved to approve R177-18, R178-18, and R180-18. The motion was seconded by Senator Denis and passed unanimously.

Regulation R187-18

A REGULATION relating to communicable diseases; adding certain communicable diseases to the list of communicable diseases required to be reported to the health authority and the Chief Medical Officer; requiring the health authority to investigate each report of those communicable diseases; adopting certain guidelines relating to communicable diseases by reference; revising requirements governing the reporting and control of certain communicable diseases; and providing other matters properly relating thereto (Agenda Item IV A-14).

Referring to subsection 1 of Section 2, Assemblyman Daly requested information related to the allocation and availability of resources for investigation and reporting of communicable diseases. He asked whether contingency funds are an option when dedicated funds are not available. Assemblyman Daly expressed his concern and said that funding should always be accessible to support health authorities' needs.

Melissa Peek-Bullock, State Epidemiologist, Public Health Informatics and Epidemiology, Division of Public and Behavioral Health, Department of Health and Human Services, stated that in the event a high volume of lab reports is received by health authorities, the proposed regulation would allow for prioritization of certain communicable disease reports and, thus, assure adequate funding to investigate a severe outbreak of disease.

MOTION: Assemblyman Daly moved approval of R187-18. The motion was seconded by Senator Hardy and passed unanimously.

Regulation R192-18

A REGULATION relating to wildlife; revising requirements relating to the removal of personal information from certain lists distributed by the Department of Wildlife; and providing other matters properly relating thereto (Agenda Item IV A-15).

Senator Settelmeyer questioned the reason for submitting R192-18. He noted there was a good deal of opposition expressed during the Department's hearings, and he had received a number of emails regarding the regulation.

Tony Wasley, Director, Nevada's Department of Wildlife (NDOW), explained that in 2004, regulations were adopted allowing customers to request, in writing, that their personal information be withheld from salable lists. He said on the advice of Sarah Bradley, Senior Deputy Attorney General, Office of the Attorney General (OAG), the agency has taken steps to update and modernize the process by which customers can submit these requests. The revisions would provide for a process to electronically request that personal information be withheld from salable lists. During the transition to a new computer system, the Department had modified the system to an opt-in process. Mr. Wasley stated in the event R192-18 is not approved, existing regulations and authorities would remain in force. Additionally, NDOW recognizes that SB 388 (2019), reinforces the actions undertaken with this regulation.

Senator Settelmeyer expressed concern relating to small businesses that provide services to customers whose information will not be accessible. He suggested that these businesses are important because they work to ensure customers' safety in the field. Senator Settelmeyer asked whether such concerns were addressed in the regulation workshop process.

Mr. Wasley stated there are 101 licensed master guides in the State of Nevada and nearly 75,000 applicants for big game tags, of which 30,000 are issued annually. He said if safety is the overriding and primary concern, we are falling short in the ability to meet the needs of hunters in the state. Mr. Wasley stressed that completion of a hunter safety course is required to be eligible for the tag lottery. He acknowledged licensed master guides can provide an improved level of safety.

Assemblyman Daly asked whether NDOW is acting within the scope of its authority and in compliance with public records requirements. He expressed his opposition to making information confidential by regulation and suggested the proper process is to work through the legislature and codify changes in NRS. Assemblyman Daly conveyed his opposition to adoption of R192-18.

Mr. Wasley said this regulation protects personally identifiable information, rather than NDOW transactions. Reading from subsection 1 of Section 1, SB 388, Mr. Wasley noted:

> … a record or portion of a record that contains personally identifiable information collected by automated means over the Internet or other digital network by a governmental entity as part of the electronic collection of information from the general public if confidential if the governmental entity determines that the disclosure of the personally identifiable information could potentially create negative consequences, including, without limitation, financial loss, stigmatization, harm to reputation, anxiety, embarrassment, fear or other physical or emotional harm, for the person to whom the information pertains.

Mr. Wasley offered to provide specific instances of harm caused to individuals and businesses following the public release of personally identifiable information. He stated NDOW recognizes the importance of providing customers an easily accessible process to request privacy protections.

Assemblyman Daly inquired about the ability to redact all of an individual's information except his or her name.

Mr. Wasley explained those who oppose providing a privacy option to NDOW customers do so because lists with names, addresses, and telephone numbers are used for marketing purposes. He added individuals who have opted to remove personal information have expressed a wish to avoid mailings and sales calls.

Assemblyman Daly restated his preference that changes to public records requirements be made by legislation rather than regulation.

Mr. Wasley reiterated NDOW's interpretation, supported by the OAG opinion, that should R192-18 not be adopted, NDOW maintains authority to provide customers a privacy option. He stressed the purpose of the proposed regulation is to modernize and simplify the process.

In response to Senator Hardy's inquiry, Mr. Wasley affirmed some applicants are required to provide their social security numbers. He stated the United States Coast

Guard requires social security numbers for recreational licenses and clarified it is a federal, not a state policy.

Senator Hardy asked whether the social security numbers will become discoverable if R192-18 is not adopted.

Mr. Wasley replied the social security numbers are protected and are not at risk.

Chair Cannizzaro called for public comment on R192-18.

Rachel Buzzetti, representing Nevada Outfitters and Guides Association (NOGA), noted that for a year and a half, NOGA has been operating under NDOW's decision to propose this change in regulation to *Nevada Administrative Code* 502.211. She said this change has denied the release of the complete salable list of applicants who draw big game tags in Nevada.

Ms. Buzzetti stated NDOW is correct that historically, for the past 25 years, the salable list has been made available to outfitters and guides from the vendor who conducted the draw. She said the salable list contains only names and addresses, and NOGA has never requested other information.

Ms. Buzzetti stated residents and nonresidents who want to request a guide have the opportunity to receive a brochure by mail. The Department of Wildlife initiated denial of the salable list in January 2018, when NDOW placed a box on the application allowing sportsmen to remove their personal information from the salable list. She explained the application process cannot be completed unless sportsmen choose to opt in or opt out.

Ms. Buzzetti stressed her concern that NDOW's decision has resulted in economic hardship for outfitters, guides, and other businesses that support hunters and sportsmen. She said her organization estimates the industry has lost $500,000 over the past two years.

Ms. Buzzetti said Governor Steve Sisolak has approved several landmark bills and is committed to investing in and protecting public lands and the industries that rely on them. She urged Commission members to oppose R192-18.

Henry Krenka, President, NOGA, stated he opposes R192-18 mainly because of the lack of transparency and argued the regulation removes privacy, confidentiality, and integrity from Nevada's big game tag draw system. He said the problem was further complicated when NDOW contracted with an out-of-state company to conduct the draw. He noted, for these reasons, many former advocates of the system are no longer applying for the draw.

Mr. Krenka cited concerns related to the proposed regulation:

- Participants in the draw already have the ability to request confidentiality;

- NDOW retains authority to contact sportsmen but the proposed regulation would not provide the same ability to outfitters and guides;

- NDOW has claimed without evidence that sportsmen who prefer anonymity would not use the services of outfitters and guides;

- NDOW implemented provisions of the regulation before conducting a small business impact survey. This action violated NRS 233B.0608 requiring the preparation of a small business impact statement, which shall be made available to the public not less than 15 days before workshops for the proposed regulations pursuant to NRS 223B.061;

- The salable list is an effective marketing tool for guides, and the changes have caused loss of revenue, estimated at $20,000 to $60,000 per outfitter each year;

- NDOW has not abided by the requirement that applicants' requests for anonymity be submitted in writing; and

- Landowners have had the option to sell tags to unsuccessful hunting applicants but, without contact information, are not able to identify these applicants. Additionally, landowners use contact information to notify sportsmen of private land that is open for hunting.

Concluding, Mr. Krenka explained his organization does not object to the removal of applicants' information from the public record while proper procedures are followed. He said regulations are written for everyone's protection and asserted NDOW has overstepped its authority. He noted voting registration information is available to the public and elected officials and requested that outfitters and guides be given the same opportunity to access public records.

Walt Gardner, Nevada resident, stated citizens' personal information is available in public records through voter registration, employee records, and tax rolls. Referring to information submitted to the Legislative Commission by NDOW, Mr. Gardner pointed out that names, addresses, and telephone numbers of those who testified during public hearings are listed and publically available. He said, of those who spoke during NDOW workshops, 5 favored changes to regulations and 12 were opposed.

Mr. Gardner said three sportsmen reported having been harassed, but he maintained the harassment resulted, not because their names and contact information were

made available by NDOW, but because they had posted inflammatory materials on social media.

Mr. Gardner argued that requiring public disclosure of sportsmen's names and home cities is a small price to pay for transparency and urged Commission members to reject R192-18.

Gerald A. Lent, representing Nevada Hunters Association and Hunters Alert in Southern Nevada, and past chair, Board of Wildlife Commissioners, spoke and submitted written remarks (Agenda Item IV A-16) opposing R192-18.

Don Molde, Nevada resident, expressed his opposition to R192-18 and noted the proposed regulation violates provisions of SB 287 (2019). He said public sentiment regarding hunting and wildlife has dramatically altered since 2004 and stated his opinion that proposed changes to regulation are related to recent instances of hunters publicly posting evidence of their trophy hunting. Mr. Molde opined the reason for holding a hunters tag draw is that wildlife is a public asset and a public trust, which must be protected. He stated protection and preservation of Nevada's wildlife in a responsible manner is more important than an individual's concern about his or her personal information.

Jim Puryean, Nevada resident, has been an outfitter in Nevada since 1985 and opposes R192-18. He stated his business has declined by 50 to 60 percent over the past two years. Mr. Puryean said he has tried to make adjustments but has found that lack of access to a salable list has left him with an unworkable business model.

Mr. Puryean indicated that after he was denied a sportsman's contact information from NDOW by means of a Freedom of Information Act request, he was informed that NDOW was relying on an opinion from Nevada's OAG. Mr. Puryean said he requested a copy of the opinion but was told the decision was relayed to NDOW by telephone. He expressed concern that an important and impactful ruling was not detailed and provided in writing.

Vice Chair Ratti requested information related to the tag draw system and the resulting lists. She stated her understanding is that there are two lists—one list indicates names and hometowns of successful tag applicants and is publicly available, and the second list includes contact information, also known as a salable list, and is available for purchase by outfitters and market researchers.

Mr. Wasley confirmed there are two lists as described by Vice Chair Ratti. He said when implementing the electronic opt-in/opt-out portion of applications, there was some confusion relating to the two categories. He stated the application has been updated and now provides applicants the opportunity to opt-in/opt-out of one or both of the categories.

Mr. Wasley explained many sportsmen are amenable to sharing their names as successful applicants, but during the recent draw process, approximately 90 percent of applicants opted out of providing contact information on a salable list. He noted the requirement that sportsmen submit a written request for anonymity has been a barrier, which NDOW has sought to overcome with provisions in R192-18.

Responding to Vice Chair Ratti's inquiry, Mr. Wasley confirmed that 54 percent of recent applicants chose to publically share information relating to their names, city of residence, and type of tag for which they had applied. He noted NDOW provides tag holders a list of all licensed guides in Nevada. Further, NDOW maintains a searchable spreadsheet on its website that identifies tag applicants.

Mr. Wasley indicated NDOW's intent is to provide transparency, abide by regulatory and statutory requirements, and offer easily accessible options to sportsmen and businesses in Nevada.

Addressing the availability of contact information on various public lists, Vice Chair Ratti questioned whether auto dealerships can access Department of Motor Vehicle (DMV) records for drivers' personal information.

Kailey Taylor, Management Analyst, NDOW, said regulations protect personal information of DMV customers.

Vice Chair Ratti questioned whether there is a compelling public need to provide NDOW customers' personal information for marketing purposes. She acknowledged her empathy for Nevada businesses but suggested that when 90 percent of applicants indicate their desire for privacy, legislators are obligated to respect their wishes.

Responding to Vice Chair Ratti's comments, Mr. Wasley confirmed all successful tag applicants are provided with contact information for Nevada's guides and outfitters. He added the list and hunting guidelines are also available on NDOW's website. Mr. Wasley indicated several western states employ data control systems similar to that proposed in R192-18.

Jack Robb, Deputy Director, NDOW, stated his understanding that Nevada is one of the last western states to update the draw application process by including an opt-in/opt-out provision.

Ms. Taylor noted NDOW's requests for hunters' personal information from neighboring states have been denied based on privacy concerns.

In response to Assemblyman Wheeler's question, regarding how NDOW had gone to an opt-in system prior to the approval of this regulation, Mr. Robb explained

applicants have had the ability to withhold personal information from public records since 2004. He said during the process of contracting with a new vendor to conduct gaming tag draws, NDOW conducted a review of processes, regulations, and statutory requirements. Mr. Robb noted one of the findings was that customers' mechanism for withholding personal information required an update. He explained the Department, in consultation with Nevada public records experts, determined adding an opt-in/opt-out provision on applications is within NDOW's authority. Concluding, Mr. Robb said R192-18 has been proposed to add clarity and update regulations.

Responding to concerns voiced by a member of the public, Mr. Robb expressed understanding for the loss of business resulting from changes in the application process. However, he noted after a thorough review by Nevada's OAG, NDOW decided it was important to respect the wishes of those who have previously chosen to opt out.

Responding to Assemblyman Wheeler's concern that the regulation has been in place since 2004, but had not been implemented until 2018, Mr. Wasley clarified the regulation has been implemented since 2004. He said what has changed is that customers have been made more aware of their options and are provided with a user-friendly mechanism to opt in or opt out when completing applications. Previously, customers were required to opt out in writing to keep their information protected.

Mr. Wasley explained R192-18 represents clarification and modernization of existing regulations, which currently provide authority for allowing customers to request their personal information be withheld.

Senator Settelmeyer asked whether it would be possible to hold further discussion for the purpose of coming to a compromise among interested parties. He expressed his opposition to R192-18 as written and said that, as a property owner, he prefers hunters to work with guides who will prevent unlawful intrusion on his land.

Senator Denis asked for an explanation of opt-in/opt-out language on the application form.

Mr. Wasley stated the intent was to make the language as concise and neutral as possible and offered to provide the Commission with an example of the application at a future date.

Senator Denis referred to NDOW's small business impact statement and asked whether the Department has definitive information relating to the number of sportsmen who chose to employ guides and outfitters.

Mr. Wasley replied NDOW's understanding is that there are far more sportsmen in Nevada than there are guides, but he does not have conclusive information.
Senator Denis indicated concern regarding regulatory impact on businesses and the rural economy. Recognizing the importance of protecting personal data, he suggested further review.

Mr. Wasley reiterated that NDOW has been implementing the regulation and the proposed updates are meant to improve that implementation. In terms of rural economies, Mr. Wasley suggested successful tag holders will continue to contribute to rural economies whether or not outfitters and guides have access to hunters' information. Concluding, Mr. Wasley said several master guides have expressed the new system is working well for them, and they have built a reputation and customers seek them out for their expertise without their having to solicit for clients. He requested support of R192-18.

Ms. Buzzetti submitted the following documents for the record:

1. Testimonies from Nevada guides and outfitters (Agenda Item IV A-17);

2. Materials related to R192-18 dated January 25, 2019 (Agenda Item IV A-18); and

3. Materials related to R192-18 dated November 2, 2018 (Agenda Item IV A-19).

Curtis F. Moore, Director, Elko County Natural Resources, submitted a letter regarding R192-18 on behalf of the Elko County Board of Commissioners (Agenda Item IV A-20).

Recognizing both the impact on small businesses and the importance of safeguarding citizens' personal information, Chair Cannizzaro said the best course is to defer action on R192-18 for further review, consultation, and discussion.

B. Request to Remove Minutes of the October 21, 2003, Meeting of the Nevada Mental Health Plan Implementation Commission (SB 301, Chapter 445, *Statutes of Nevada 2003*) from the Legislature's Website

Rick Combs, previously identified, drew the Commission's attention to a request from an attorney representing a person who testified before the Nevada Mental Health Plan Implementation Commission during the 2003–2004 Interim to delete or redact the person's testimony from the Commission's minutes.

Mr. Combs explained there is no statutory or regulatory requirement that minutes of Legislative minutes must be posted on the website. Mr. Combs proposed removing the minutes from the LCB website and refer interested parties to the LCB Research Library for a printed copy of the document. He said this would accomplish shielding

personal information from a computer search, which would satisfy the testifier's request for anonymity. Concluding, he clarified action on this measure would not constitute adopting a policy but rather provided for action on this issue and in similar issues that arise in the future on a case-by-case basis.

Assemblywoman Carlton recognized a need to support a request for privacy of medical information but noted the importance of preserving accessibility to public records.

MOTION: Senator Settelmeyer moved to remove minutes of the October 21, 2003, meeting of the Nevada Mental Health Plan Implementation Commission from the LCB website and direct inquiries to the LCB Research Library. The motion was seconded by Senator Hardy and passed. Assemblywoman Benitez-Thompson voted no and Assemblyman Wheeler was absent for the vote.

AGENDA ITEM V—LEGISLATIVE AUDITOR—SUMMARY OF AUDIT REPORT PRESENTED TO LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE (NRS 218G.240)

Rocky Cooper, previously identified, drew the Commission's attention to a letter dated May 30, 2019, from Assemblywoman Benitez-Thompson, Chair, Audit Subcommittee of the Legislative Commission (Agenda Item V A-1), indicating on March 14, 2019, an audit report on the Marijuana Regulation and Enforcement, Department of Taxation, was presented to the Audit Subcommittee. He explained after reports are submitted to the Audit Subcommittee a report summary is presented to the Legislative Commission.

Mr. Cooper noted the Audit Division submitted seven report summaries during the 2019 Legislative Session, which, by statute, are not presented to the Commission. He said the reports were available to standing committees during the session.

Marijuana Regulation and Enforcement, Department of Taxation (Agenda Item V A-2)
The audit found the Department needs to improve its regulation and oversight of the marijuana industry. For instance, the Marijuana Enforcement Tracking Reporting and Compliance (METRC) information system was not accurate or complete. The METRC information system is central to the Department's regulation of the industry because it is required to track the marijuana inventory system from seed to sale. Inaccurate and incomplete data occurred because of ineffective monitoring and oversight. In addition, there was inadequate guidance provided to licensees. For example, the Department did not reconcile METRC data to licensee inventory records or tax returns to ensure system data accuracy and completion. The audit compared tax returns of ten cultivators and five dispensaries to METRC data for a six-month period and found significant variances. For example, for retail marijuana tax returns filed by dispensaries, METRC data did not agree in approximately 57 percent of the cases.

Variances reflected lower inventory and sales and transfers in METRC when compared to tax return data, which indicate licensees are not recording all appropriate transactions in the seed to sale system. Conversely, sales and transfer totals in METRC exceeding amounts recorded on tax returns suggested that tax collections may be inadequate.

In addition, the audit found the Department did not review the accuracy of marijuana waste entered into the METRC system. Nine of ten cultivators tested did not enter data or entered meaningless information into the system. Monitoring waste is important for preventing marijuana products from being diverted outside the regulated system. We also found that high tetrahydrocannabinol medical products were sold to recreational customers; 262 of 610 single units of medical products tested were sold inappropriately.

The Department has submitted its plan of corrective action and has already made substantial progress on implementing the 13 audit recommendations. In addition, the establishment of the Cannabis Compliance Board during the 80th Legislative Session will improve regulation of the industry.

Mr. Cooper stated the Audit Subcommittee recommends the Legislative Commission accept the audit report.

MOTION: Senator Denis moved approval of the summary audit report presented to the Legislative Commission's Audit Subcommittee. The motion was seconded by Assemblywoman Carlton and passed. Assemblyman Wheeler was absent for the vote.

AGENDA ITEM VI—APPOINTMENTS OF MEMBERS TO COMMITTEES AND SIMILAR ENTITIES

A. Board of Directors for Corporation for Public Benefit for Nevada Youth Legislature (NRS 219A.300)

Rick Combs, previously identified, described statutory requirements for the Board, which administers the Nevada Youth Legislature (NYL). He explained this section was amended during the 80th Legislative Session to require that one member of the Senate and one member of the Assembly, at a minimum, be appointed to the Board. Additionally, Board membership shall include one representative of the public and, if practicable, one person who previously served as a member of the NYL (Agenda Item VI A).

Mr. Combs noted three current members have expressed interest in reappointment: Senator Valerie Wiener (Ret.), former Youth Legislator Zhan Okuda-Lim, and Victoria Carreón. He said these appointments would satisfy membership

requirements of a former youth legislator and a public representative. Upon approval, Mr. Combs explained four vacancies would remain.
Chair Cannizzaro recommended appointing Senator Dallas Harris and Senator Joyce Woodhouse.

Assemblyman Frierson recommended appointing Assemblywoman Selena Torres and Assemblywoman Connie Munk.

MOTION: Chair Cannizzaro moved approval of the appointment of recommended members to the Board of Directors for Corporation for Public Benefit for Nevada Youth Legislature. The motion was seconded by Senator Denis and passed. Assemblyman Wheeler was absent for the vote.

B. Nevada Silver Haired Legislative Forum (NRS 427A.320)

Mr. Combs drew the Commission's attention to a memo dated June 20, 2019, from Patrick B. Ashton, Senior Policy Analyst, Research Division, LCB, indicating there are two recommendations for appointment to the Nevada Silver Haired Legislative Forum (Agenda Item VI B). He noted that subsequent to submission of Mr. Ashton's memo Senator Patricia (Pat) Spearman, Senate District 1, submitted a membership recommendation. The recommendations are:

- Senate District 1—Rosie Tyler;
- Senate District 9—Barbara Altman (reappointment); and
- Senate District 15—Diane Baranowski.

MOTION: Senator Settelmeyer moved approval of the appointment of Rosie Tyler and Diane Baranowski and the reappointment of Barbara Altman to the Nevada Silver Haired Legislative Forum. The motion was seconded by Assemblywoman Benitez-Thompson and passed. Assemblyman Wheeler was absent for the vote.

C. Nevada Commission on Minority Affairs (NRS 232.852)

Mr. Combs referenced the statutory provision regarding the Nevada Commission on Minority Affairs (NCMA) and noted the Commission consists of nine members appointed by the Legislative Commission (Agenda Item VI C). He said a letter dated June 19, 2019, from Emily Ku, Management Analyst, NCMA, B&I, indicates there will soon be three vacancies. Ms. Ku provided, pursuant to statute, names for the Legislative Commission's consideration:

- Mercedes Krause;
- Amy Emiko Shaw; and
- Kathleen Taylor.

Mr. Combs explained the letter also outlines membership demographics as required by statute.

Responding to a question from Senator Denis, Ms. Ku assured the Commission that the nominated members are representative of Nevada's population as required by statute. She stated NCMA membership consists of a balance in race and ethnicity.

MOTION: Assemblyman Frierson moved approval of the appointment of Mercedes Krause, Amy Emiko Shaw, and Kathleen Taylor to the Nevada Commission on Minority Affairs. The motion was seconded by Senator Denis and passed. Assemblyman Wheeler was absent for the vote.

AGENDA ITEM VII—INFORMATIONAL ITEMS

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

   1. Occupational Licensing, Quarter 1 of 2019

   2. Occupational Licensing, Quarter 2 of 2019

B. Washoe County School District, Report Regarding Contracts With Construction Managers at Risk Pursuant to Section 14.5 of AB 283 (2013)

C. Department of Taxation, Sales Tax Revenue Statistics for Businesses Operating in a Tourism Improvement District in Washoe Formed by the City of Reno and City of Sparks and Clark Counties Star Bond Districts Pursuant to NRS 271A.105(2)(a).

D. Department of Tourism and Cultural Affairs, Division of Museums and History, Annual Report on Revenue Transfers From the Renewal of License Plates Commemorating the 150th Anniversary of Nevada's Admission Into the Union Pursuant to Section 4 of SB 37 (2017)

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

AGENDA ITEM VIII—PUBLIC COMMENT

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

AGENDA ITEM IX—ADJOURNMENT

There being no further business to come before the Commission, the meeting was adjourned at 4:46 p.m.

Respectfully submitted,

Jan Brase
Research Policy Assistant

APPROVED BY:

Nicole J. Cannizzaro, Chair
Legislative Commission

MEETING MATERIALS

AGENDA ITEM	WITNESS/ENTITY	DESCRIPTION
Agenda Item IV A-1	Legal Division, Legislative Counsel Bureau, (LCB)	List of administrative regulations
Agenda Item IV A-2	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education, LCB File R078-17
Agenda Item IV A-3	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education, LCB File R105-18
Agenda Item IV A-4	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education, LCB File R114-18
Agenda Item IV A-5	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education, LCB File R119-18
Agenda Item IV A-6	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education, LCB File R130-18
Agenda Item IV A-7	Legal Division, LCB	Adopted Regulation of the Commission on Professional Standards in Education, LCB File R161-18

Agenda Item IV A-8	Legal Division, LCB	Adopted Regulation of the Public Utilities Commission of Nevada, LCB File R055-18
Agenda Item IV A-9	Legal Division, LCB	Adopted Regulation of the Personnel Commission, LCB File R057-18
Agenda Item IV A-10	Legal Division, LCB	Adopted Regulation of the Board for the Regulation of Liquefied Petroleum Gas, LCB File R168-18
Agenda Item IV A-11	Legal Division, LCB	Adopted Regulation of the Commissioner of Mortgage Lending, LCB File R177-18
Agenda Item IV A-12	Legal Division, LCB	Adopted Regulation of the Commissioner of Mortgage Lending, LCB File R178-18
Agenda Item IV A-13	Legal Division, LCB	Adopted Regulation of the Commissioner of Mortgage Lending, LCB File R180-18
Agenda Item IV A-14	Legal Division, LCB	Adopted Regulation of the State Board of Health, LCB File R187-18
Agenda Item IV A-15	Legal Division, LCB	Adopted Regulation of the Board of Wildlife Commissioners, LCB File R192-18
Agenda Item IV A-16	Gerald Lent, representing Nevada Hunters Association and Hunters Alert in Southern Nevada	Written comments regarding R192-18
Agenda Item IV A-17	Rachel Buzzetti, representing Nevada Outfitters and Guides Association (NOGA)	Testimonies from Nevada guides and outfitters

Agenda Item IV A-18	Rachel Buzzetti, representing NOGA	Materials dated January 25, 2019, related to R192-18
Agenda Item IV A-19	Rachel Buzzetti, representing NOGA	Materials dated November 2, 2018, related to R192-18
Agenda Item IV A-20	Curtis F. Moore, Director, Elko County Natural Resources	Letter related to R192-18
Agenda Item V A-1	Rocky Cooper, Legislative Auditor, Audit Division, LCB	Letter dated May 30, 2019, regarding audit report
Agenda Item V A-2	Rocky Cooper, Legislative Auditor, Audit Division, LCB	Summary report Marijuana Regulation and Enforcement, Department of Taxation
Agenda Item VI A	Rick Combs, Director, LCB	Recommended appointments to the Board of Directors for Corporation for Public Benefit for Nevada Youth Legislature (NRS 219A.300)
Agenda Item VI B	Rick Combs, Director, LCB	Recommended appointments to the Nevada Silver Haired Legislative Forum (NRS 427A.320)
Agenda Item VI C	Rick Combs, Director, LCB	Recommended appointments to the Nevada Commission on Minority Affairs (NRS 232.852)

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.