MINUTES OF THE 2019-2020 INTERIM
LEGISLATIVE COMMISSION

December 30, 2019

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 9:43 a.m. at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via videoconference at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada.

Exhibit A is the Agenda, and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Senator Nicole Cannizzaro, Senatorial District No. 6; Chair
Senator Moises Denis, Senatorial District No. 2
Senator Scott Hammond, Senatorial District No. 18
Senator Joseph Hardy, Senatorial District No. 12
Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblyman Jason Frierson, Assembly District No. 8

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Senator Julia Ratti, Senatorial District No. 13; Vice Chair
Senator James Settelmeyer, Senatorial District No. 17
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblyman Skip Daly, Assembly District No. 31
Assemblywoman Lisa Krasner, Assembly District No. 26
Assemblyman Jim Wheeler, Assembly District No. 39

STAFF MEMBERS:

Rick Combs, Director, Legislative Counsel Bureau
Brenda Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau
Kevin Powers, Chief Litigation Counsel, Legal Division, Legislative Counsel Bureau
Risa Lang, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Dan Crossman, Legislative Auditor, Audit Division, Legislative Counsel Bureau
Michael Stewart, Research Director, Research Division, Legislative Counsel Bureau

OTHERS PRESENT:

Warren Hardy, Representative, Nevada Pest Management Association
Dr. Sharon Robb
Ashley Jeppson, Division Administrator, Plant Industry Division, Nevada Department of Agriculture
Paul Anderson, Chairman, Board of Agriculture
Bret Allen, Environmental Scientist, Nevada Department of Agriculture
Heather Lackey, Member, State Board of Agriculture
Shannon Chambers, Labor Commissioner
Darin Tedford, Assistant Director of Operations, Nevada Department of Transportation
Seth Daniels, Assistant Chief Traffic Operations Engineer, Nevada Department of Transportation
Richard Perry, Administrator, Division of Minerals
Shannon McDaniel, Chief, Well-Drilling Regulations and Adjudications Section, Division of Water Resources, Department of Conservation and Natural Resources
Mike Visher, Deputy Administrator, Division of Minerals
Neena Laxalt, Representative, Nevada Physical Therapy Board
Jennifer Nash, Legislative Liaison, Nevada Physical Therapy Board
Bruce Snyder, Commissioner, Government Employee-Management Relations Board
Lenora Mueller, Notary Administrator, Office of the Secretary of State
Kimberly Gaa, Administrator, Employment Security Division of the Department of Employment, Training and Rehabilitation
Alex Capello, Research Analyst, Department of Employment, Training and Rehabilitation
Caren Jenkins, Executive Director, State Board of Optometry
Laura Rich, Interim Executive Officer, Public Employees' Benefits Program

Senator Nicole Cannizzaro (Senatorial District No. 6; Chair):

Welcome to the meeting. We will go ahead and open it up at this point in time both in Carson City and here in Las Vegas for any public comment, if there's anyone wishing to give public comment. It looks like we do have at least one here in Las Vegas. Welcome. Good to see you, Mr. Hardy. Whenever you are ready. Just as a reminder, we'll keep everybody who gives public comment to 3 minutes, and if there's anyone in Carson City who wants to give public comment, you can go ahead and fill those chairs and we'll come up to you next. Mr. Hardy, when you're ready.

Warren Hardy (Representative, Nevada Pest Management Association):

Thank you Madam Chair, members of the Commission. As a point of clarification, I have a concern. I wanted to testify on one of the regulations under agenda item IV A. Will there be an opportunity during the discussion on that or do I need to make my comments now?

Chair Cannizzaro:

That's a great point for clarification. We'll take any comments on regulations or anything that folks would want to provide to the Commission during public comment. We'll open with public comment now, so now would be the appropriate time to do so, and that would go for everyone in Carson City as well. Then we will also have public comment at the end, but if there is something on a regulation, I would highly recommend to sit in and give some public comment at this point in time.

Mr. Hardy:

Thank you, Madam Chair, for that clarification. Our concern is relative to regulation R154-17, both to the regulation itself and to the process that was followed. We believe—the Assembly Bill (AB) 32 regulations we have no concern with. Those are promulgated based on AB 32 of the 2017 Session. We have no concern with that. However, there is a section 23 that we do have some concern with, and to give you some historical background, prior to the 2017 Session, there were public hearings relative to what would be contained in AB 32 that—and we have a concern about, which is the labeling of service containers, was discussed for inclusion in AB 32. I have a letter from former Director Barbee indicating that they weren't going to go forward with that in the AB 32 statute, legislation, and they did not. However, subsequent to that when they began to promulgate regulations for this, they did include that provision, which we feel is a complete redundancy in a requirement for our operators in the field. Currently, service containers by regulation are required to be labeled with the pesticide that is contained. A service container has always been interpreted to be the container that is used to transport pesticides from one job site to another. There has never been a requirement—in fact, the NAC (Nevada Administrative Code) specifically says that application devices are not service containers, so we have never been required to label application devices before. That is included in this new regulation. Now, the reason we think that's redundant is that the service containers that are on the truck are already required to be labeled in detail. In addition to that, we are required to provide to the homeowner a detailed list of what was applied to their property. That is available to the driver. That is available to anybody who requests it, so we think this is completely redundant, and we have applicators or companies that believe this will cost them in the tens of thousands, a hundred thousand dollars a year, one estimate was. The other concern I have is, during this process, Madam Chair, there was no business impact statement process whatsoever. I'll refer you to your own document. So, our members didn't have a real opportunity to check in on this. We found out very late in the process that this was going to be included. In your report from the agency when it talks about the need for this, it says that these proposed regulations will reduce the requirement for labeling on service devices. That's exactly the opposite of what it does, so that's misleading. In every public announcement, it announced that we were going to implement the provisions of AB 32. Well, this goes beyond the provisions of AB 32. We had members call and they were told this is the implementation of AB 32 and it reduces the requirement, but my concern from a procedural perspective is there was no business impact statement, and it acknowledged that in the report to this

Legislature that there was no statement. We were told that our opportunity to have input on this would be during the public hearing process, and then in addition to that, in the business impact statement you'll notice that they reference that—that was our input—and then they reference a field study that was done in 2017 that had nothing to do with a business impact statement. So, the process has not been followed closely here, Madam Chair, and we feel like the members of our industry were not given a sufficient opportunity to speak to the impact. I guess I'll leave it at that for now, Madam Chair, but I would also indicate that in some of this, in the business impact statement that was provided to you, they indicated that there was support for this in the industry. I would say, although I was not able to confirm this because there are no minutes available online or from the agency for any of these records. I requested them on December 18. I was sent some documents on December 24. There are no minutes, so I've been unable to confirm this, but there was no testimony in favor. Everybody that was there during the public hearings testified in opposition to that provision, so I'm unclear as to why the agency feels there's no business impact statement, because there is a significant business impact statement. Thank you.

Chair Cannizzaro:

Thank you. Is there anyone else wishing to give public comment at this time? I don't see anyone moving in Carson City. If you would like to give public comment in Carson City, please take those chairs and we'll come up next, but here in Las Vegas?

Dr. Sharon Robb:

I just had a public comment statement regarding the proposed regulations for Senate Bill 186 regarding dry needling, and so I had just some questions and concerns about the regulations as they were proposed. The first is that, as I understood it, the statute indicated that in order to perform dry needling that a practitioner would need 150 hours of didactic and in-person education just in dry needling, and yet my reading of the proposed regulation says 25 hours, so I was just wanting to bring that to the Commission's attention, if my reading is indeed correct that the number of hours was changed between the statute and the proposed regulation. Also, the definition of needle retention seems to be, to my reading, changed a bit, because needle retention, as I understand it, is when you put a needle in a human body and then leave it there and move on and either do additional needles or additional types of therapy, but in my reading of the proposed regulation, it seems like they've changed the definition of needle retention to mean just holding onto needles for some future use in the future for some other purpose later on as opposed to maintaining a needle in a human body for any extended period of time. Those were two items, and then the last was just regarding disposal of needles as they're used. The proposed regulation seems to indicate that an area of the body could be—the same needle could be used multiple times as long as it's being used in that same area, and my understanding of the statute is that once a needle is used one time, it should be disposed of, and so all of these are public health and safety concerns I have, as well as just making

sure that the regulations properly reflect the intent of the statute. So, that was it for me. Thank you very much.

Chair Cannizzaro:

Thank you. Is there anyone else wishing to give public comment either here in Las Vegas or in Carson City? All right, seeing none, we will move on to our next agenda item, item III, which is the approval of minutes from the October 30, 2019 meeting (Agenda Item III). Those minutes had been provided to members of the Committee and were available online, so I'm hoping that everyone had a chance to review those. At this point, I would take a motion to approve.

> ASSEMBLYMAN FRIERSON MOVED TO APPROVE THE MINUTES OF THE OCTOBER 30, 2019 MEETING.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We are next going to move to item IV, which is review of administrative regulations (Agenda Item IV). I do have some regulations from members who've already informed me of items that they wish to have pulled for further discussion, so I'm going to read through those, and then if there's any other items that members of the Commission would like to have pulled so that we can have additional discussion on those particular items, we would take that at that time. The first thing I have is regulation R154-17, the Department of Agriculture. The second one is R032-19, the Commission on Mineral Resources. The next one is R054-19, the Physical Therapy Board. The last one I have is R096-19, Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation. One additional one for members of the Commission, R056-19 for the Government Employee-Management Relations Board. Are there any other additional regulations that members of the Commission would like to have pulled for some further discussion?

Assemblyman Skip Daly (Assembly District No. 31):

I have R019-18, R155-18, R044-19, R046-19, R065-19 and R066-19. That's it for me.

Chair Cannizzaro:

Okay. I'm going to go through the full list just one more time to make sure we've got everything. I'll start on the first page: R154-17 from the Department of Agriculture, R019-18 for the Labor Commissioner, R155-18 for the Department of Transportation, R032-19 for the Commission on Mineral Resources, R044-19 for the Commission on Mineral Resources, R046-19 for the State Environmental Commission, R054-19 for the Physical Therapy Board, R056-19 for the Government Employee-Management Relations Board, R065-19 for the Secretary of State, R096-19 for the Administrator of the Employment Security Division, Department of Employment, Training and Rehabilitation, and R066-19. That's an early review for the State Board of Optometry. Anything else that is missing or anyone else wants to have pulled or that I missed? Okay, seeing none, then the remainder of the regulations that we have for our approval, those that have not been listed as being pulled for further consideration, what I would do is accept a motion to pass.

SENATOR DENIS MOVED TO APPROVE R021-18, R004-19, R005-19, R006-19, R015-19, R016-19, R043-19, R050-19, R052-19, R055-19, R060-19, R062-19 AND R067-19.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We will then proceed with our regulations, and we'll go through them in order, so we'll start with R154-17 (Agenda Item IV), which is the State Department of Agriculture, and we'll invite representatives from the Department of Agriculture to come on up. Just as another procedural matter, we do have informational items. We did ask for some additional—received additional requests for information on item VIII (B) for the Public Employees' Benefits Program, so any of the other information items we will not be taking testimony on. So, if you're here for those, we will not need you, unless you're here for VIII (B). It looks like we are settled down in Carson City, so what we'll do is we'll go through just a brief overview of the regulation, then we'll pass it along for Commission members for questions. Please proceed, whoever would like to begin.

Ashley Jeppson (Division Administrator, Plant Industry Division, Nevada Department of Agriculture):

I have with me Bret Allen, who runs our pest control compliance program. I also have Paul Anderson, who is the Chair for our Nevada Board of Agriculture, and Heather Lackey, who represents our pesticide industry as a member on the Board of Agriculture. With that, I will provide a little bit of background on how these regulations came forward and what the intents of those are. Really, everything that we're going to be talking about today, it boils down to public and environmental health, as well as to those that are actually applying these pesticides. In terms of the government licensing provisions, those were brought about per AB 32 to ensure that there was a licensing provision for those that were providing any pest control within a government entity to ensure that they were aware of the regulations, they were aware of how to properly apply, and they were doing so in a safe manner. These regulations built upon that AB 32. With that, we had extensive conversations, meetings with government agencies to ensure that we were encompassing their concerns, to ensure that we were addressing really the biggest piece, which was ensuring that they were familiar with how to properly do this in the interest of public and environmental health. Some of the concerns that were expressed were concerns involving seasonal employment or those that are doing it in a limited basis, so we made sure to encompass those provisions within the regulations that took into account those considerations. We did not find any significant economic impacts based on these provisions because a lot of these folks were already doing restricted-use pesticide licensing. This licensing criteria opened it up for general and restricted use, so broadening it out, and again, just making sure that that training component is there. The cost was the same, $50 over a 4-year period. So, based on that, we continued to move forward.

In terms of the clarification involving labeling, this process started in 2016 as part of a separate register document. We met with industry to talk about our intent to further clarify what an application device was. Prior to this, it fell under the definition of a service container, which is the transport—sorry, I'll actually read it. That will probably be a little bit cleaner. A service container is used to store or transport any other concentrated or diluted pesticide registered in the state. So, at that time, application devices fell under that criteria. However, for clarification, we wanted to further define that and also ensure that labeling provisions were in place. The biggest concern here is there can be transition in employees. There can be multiple service containers and/or application devices on a vehicle, making sure that it's clearly labeled what is in that container to ensure that it's not misapplied, it's not applied in a home, perhaps, if it's not approved for that. This was a means of ensuring that that was in place. It was already there for service containers, but we were trying to actually simplify it for an application device where it didn't require five different components of a label, it just required the simple identification of what is in that application device.

So, we did reach out to industry. We had several meetings with Nevada Pest Management Association, with other groups that were potentially impacted, and in 2016 they wanted us to continue to examine whether these were justified, whether it was

duplicative, so we performed a study. We had our staff out inspecting people that were doing pesticide applications on trucks that had the different service containers and application devices to see how familiar they were with the contents of their actual containers. This, over the year-course that we assessed this, substantiated that the provisions needed to be in place to have the labeling, because we found very significantly there was unfamiliarity with what was in the container or it was not in the proper concentrations, and we found a correlation as well to that, that as they became more familiar in actually applying the label that they had better practices. So, based on that, we continued to move forward with the labeling simplifications in this register document following that, and we also worked—we still wanted to consider the concerns of industry in terms of having labeling or any extra effort that that may require, so we actually did reach out to some of our pest control operators that were already actively performing the labeling and received that it was a very simple process, it was not creating an economic hardship, and we've continued to share that information. But based on the fact that it was simplifying the regulation and really that the intent was public and environmental health, we continued to move forward with these. But over the last 3 years, there's been extensive communication, interaction with our Board of Agriculture, the representatives that represent our industry through that, also through our associations and our pest control operators, so there's been quite a bit of back and forth on that that really led to us pushing through these regulations. So with that, I'd like a member of the Board to present some of the information on what they found as well.

Paul Anderson (Chairman, Board of Agriculture):

Unlike what you heard a little bit earlier in public comment, the belief that it had not been properly recognized, there were actually four opportunities for public comment as well as industry to come forward before the Board. The first step was when the Division brought this towards the Board of Agriculture to get permission to go to workshop and hearing. There was no representation from members of the industry at that point. It went to workshop, then it went to hearing, and both of those were attended, 21 people for the workshop, 19 for the hearing, but then when it came back to the Board of Agriculture, none of us on the Board heard anything from industry concerned with the potential regulation. The only time anyone had reached out to me or contacted me regarding this was Mr. Hardy did call and voice his concern. Likewise, it was going to cost a large amount of money for the industry to be able to label these containers properly. I contacted my fellow Board member, Heather Lackey, since she is in the industry, asking her thoughts and opinions, and she said to the contrary that it wasn't going to cost anything at all. In fact, if I remember correctly, she was already doing the proper labeling at that point. I reached out to a couple other industry members in Northern Nevada to verify and make sure, since I hadn't heard from anyone, and they said that either they are doing it or that they were going to do it as simply as a business card with the product name on the back of it and laminating and putting it on a ring to be able to attach it to the container. So, I guess, as the Board member that we were involved with this—the Board voted unanimously because we never did hear anything other than Mr. Hardy as far as any concerns about this from the industry, and like I said, contrary, everyone was concerned

about the public safety involved with having containers that were not properly labeled. Thank you.

Chair Cannizzaro:

Thank you. We will go ahead and have members of the Commission ask any questions they have.

Senator Joseph Hardy (Senatorial District No. 12):

Thank you, Madam Chair. In public comment, obviously you were there for that, one of the things that concerns me is we had allegedly the AB 32 come up, and a discussion was had about this issue, and then we as the Legislature approved something and had some kind of agreement that something would not be imposed, and yet having had the Legislature look at that, we see something imposed that was over and above different from what the agreement was that the Legislature understood. So, can you walk us through what you folks felt was understood with the agreement of the law that passed, signed, and then we now are faced with a regulation that goes beyond what the law allowed to have happened? At least, that's my understanding. So, can you walk us through that process, just how that happened, how we're faced with a regulation that allegedly went above and beyond what was agreed upon in the legislation and by legislators themselves? Thank you, Madam Chair.

Ms. Jeppson:

Yes, to my understanding in looking through the history and in this coming forward is the proposed addition of the labeling was in register document R093-15, and based on the comment that we received during workshop and hearing from Nevada Pest Management Association involving whether there were still needed labeling requirements in general, we agreed to perform a study. We wanted to make sure that we weren't coming down too heavy-handed and that we actually had a regulation in place that was needed, so we agreed to hold off for a year and actually do this study to ensure that it was in fact a public health risk, potentially, that there was misuse taking place. So, we took that year to perform that study, which is why it didn't go into AB 32. It was outside of that. We were trying to directly address some of the concerns that were expressed.

Senator Hardy:

So, if you can be more specific as far as what year, because I've heard 2016, I've heard 2017, I've heard now there is a study, and the study allegedly was probably done before the 2019 Session, and so why is it we didn't hear about this in the 2019 Session to do something different than what AB 32 was doing and the study that was done? So, how are we hearing a regulation that we had ample time to have a study and have it reported and have it addressed in the 2019 Session? Thank you.

Ms. Jeppson:

I will say that part of the holdup in this taking so long was we did have some staff transition. This has gone through three different administrators and two different program coordinators, so with that, we actually thought that it had been pending Commission review and identified that it was not, so that is some of the delay in terms of what took place and why it wasn't submitted. We thought it actually was pending review. Back to your question on the timeline, it was part of register document R093-15 where the labeling was being assessed, and then it was tabled for that next year for us to do the assessment, and then as we identified that there was critical need, we continued to put that language and further clarification into this current register document which was initiated in 2017. So, hopefully that helps.

Senator Hardy:

So, 2017 was 2 1/2 years ago. Why didn't we address this in 2019 during the legislative session for what seems to be an overreach of the regulation that went beyond the 2017 Session?

Ms. Jeppson:

We thought it was pending as part of that, and again, I want to emphasize too that this was really simplifying the language that we already had in regulation, so it wasn't adding additional requirements, simply reducing the level of labeling requirements needed.

Senator Hardy:

I think we've heard today in public comment that it increased the requirements as opposed to decrease the requirements. Did I miss something in that?

Ms. Jeppson:

It’s the type of container that really makes a difference in where our clarification was taking place. So, the service container before, regardless, it felt the language that's in our current regulations, it falls under application and service container. They were both the intent and the use was in that definition, really just to ensure that the reviewers understood the transition between a concentrated pesticide and an undiluted pesticide into that application device was aware. We were trying to provide clarification in this regulation and where we actually established per feedback that we received that labeling was still needed, but that we could do it at a simplified measure. So, that's where really the five-point was already there. We could be enforcing that now with the five-label definition, but these regulations would allow us to only enforce that just the pesticide itself is labeled.

Assemblywoman Maggie Carlton (Assembly District No. 14):

Thank you very much, Madam Chair. I want to walk through this because I want to understand it, because I have a guy that comes where I work. We have a food pantry, so I'm sure he treats the food pantry differently than he would treat, like, a childcare facility. So, it's my understanding that the large containers, what you're calling the service containers, on the truck currently have to be labeled. The contention is the applicator which gets loaded each time a technician does an application, and those can be loaded in different ways with different proportions depending upon what the situation is. Is that correct?

Ms. Jeppson:

Yes, those containers can be used in different means. A lot of these vehicles will have several application devices, which can create confusion, which is where it stems from, needing the labeling.

Assemblywoman Carlton:

Okay. So, if that particular application container is used in a situation, when it's done, is it emptied back out? Is it disposed of? What happens to it?

Bret Allen (Environmental Scientist, Nevada Department of Agriculture):

Yes, these application devices can be reused. It’s supposed to be triple-rinsed per the label instructions, cleaned out, and then they can be used over and over again.

Assemblywoman Carlton:

So, the difference of opinion on this is having to relabel that application container every time an application is done, and it's my understanding that these technicians can do six, seven, eight applications in a day depending upon how much driving time they have to spend, so they would have to reapply this label every time that they would use that application container.

Heather Lackey (Member, State Board of Agriculture):

Department of Agriculture, representing pest control. So, the containers can be used multiple times and they can be rinsed and they can be reused. The problem that we’ve run into is we can have multiple employees using the same vehicles. There can be confusion with that. If there were an accident, we want to know what is in these containers. The most important thing we really need to remember is what we’re talking about is poison. This is really what we’re addressing. This is pesticides. This is not milk. This is very important. It is a public safety problem. We've had situations in the past through the Department of Agriculture where pesticides have been applied incorrectly because the

applicator did not know what was in that service container and it has deemed certain structures unusable to people. This is what we're trying to avoid. We're trying to close that loophole, that every person that is using a service container out there in the field knows exactly what is in that container at all times. It's very easy, as we said, to label it with an old business card. You can write down all the information on the back of the card, laminate it and stick it to that container. It can stay on that container. You can use that container over and over as long as it's labeled, but that is what we're asking for is that everything be clearly labeled, because if we didn't do it, it would be erroneous. This is so important for the citizens of Nevada that we know what is in our containers. Thank you.

Assemblywoman Carlton:

Thank you, Madam Chair. I just see a lot of redundancies here. I don't see the issue, so thank you.

Senator James Settelmeyer (Senatorial District No. 17):

Thank you, Madam Chair. I appreciate the discussion of individual labeling. One of the things, though, I wanted to discuss, because again, I do use a fair amount of pesticides on my property. On occasion you run across aphids and things of that nature. I'm more worried, and it's not a comment directly to the Department of Agriculture, I'd like to direct it to all agencies, make sure to please include any associations in your mailing list from the get-go, and that way maybe we can address issues and problems before they arise. But the impact studies have always bothered me, because a lot of times I feel that all agencies need to do a little bit better job of trying to reach out to get that information, but one of the things this informational items give to us, the number of persons who attended each hearing, there's nothing written there. Testified at each hearing, nothing written there. Submitted written comments, nothing there. Then you have the number in attendance, 21 and 19, but there's nothing listed as far as number of people who testified or the written statements submitted, and I know that there are several individuals who have reached out to me and I was courtesy copied on the emails to your Department of their comments on the regulation, yet I don't see that, and that bothers me. I just personally feel that we should just back off. I know the regulation has taken a fair amount of time to date, but in that respect, another opportunity to pull back and have a meeting with the entities that are affected by this, especially the counties that are actually doing a good job of having a weed and a pesticide district, which there's only one, as we know, but in that respect, reach out to them to make sure that we're not making it so over-burdensome that they will not be able to continue to do the job that they're doing, which sadly isn't enough at times, as we know, as we try to battle either noxious weeds or pesticides or pests in that respect. But just in my opinion as a general statement that we just pull back and hold this for time and allow some more interaction between the association and, more importantly to me, the government entities that actually are doing these jobs, because I would hate to have fallout and have more problems with pests than less. Thank you.

Assemblyman Daly:

Thank you, Madam Chair. Mine's not about labeling. I had a question where we use the language throughout the regulation regarding unlicensed but under the supervision, and I couldn't see anywhere, and it might be someplace else in other parts of the regulation, I couldn't see anywhere in the regulation where it defined what the supervision is. I know in section 26, existing language talks about fumigation and it says that it's direct on-site supervision, but it only covers that section. So, do you have a definition for supervision? Do they have to be within 75 miles or do they have to be on the job? What is the standard on that?

Ms. Jeppson:

It's in regulation, which is why you may not have seen it there. We'll pull it up right now and get you clarification.

Assemblyman Daly:

As long as it's there. If you can just send a citation or whatever. I know it was in one section on that, but I wanted to make sure. So, what is it? Is it direct supervision, they have to be on-site?

Ms. Jeppson:

Yes, it has to be immediate, on-site, direct supervision. Immediate supervision means supervision by a licensed applicator who is present and responsible for a person applying the pesticide for pest control.

Assemblyman Daly:

Thank you.

Senator Julia Ratti (Senatorial District No. 13; Vice Chair):

Thank you, Madam Chair. So, I wanted to follow up a little bit on what Assemblywoman Carlton was going towards with her question about the reusability of those containers, and I understand—if I understand, the application container can be used multiple times as long as it's rinsed, but what I'm really not understanding is, if you have a pest control operator out there and they're using one of these applicators and that applicator has—you've now taken the material out of the main container that is labeled and you've put it in the applicator. Does it always, always get used in that one application, or if an applicator has six stops, could they be using that on stop number one and stop number two and stop number three, and so while they're driving around town, that applicator is basically serving as a storage container while they're driving around town during that day or maybe multiple days? That's the part that I didn't quite get from your answer before. So, is it

always just being used in that one-site single application, and so really maybe there is some redundancy because it's just going to get put into that container and emptied out, or is it sometimes being used at multiple sites over multiple days?

Ms. Lackey:

So, the service containers, it depends on the business is what it comes down to. Some applicators will have multiple containers in the back of their truck and they'll do several services throughout the day, and then there are other applicators that may go back to a shop, empty their container, rinse it, put another chemical in it. But if you already have the labeling on a ring, all you have to do is take off the label that's currently on the container and snap another one on and you're protected. Does that answer your question?

Senator Ratti:

With no offense intended, not directly. What I really want to know is, are there situations where the applicator is serving as the container, and not in the process of applicating but being transported from one site to another with pesticides, or, to your word, poison in it and nobody knows what's in there?

Ms. Lackey:

Yes, that can happen.

Senator Ratti:

All right, and then my second question is a follow up on public comment about the letter that was sent by the Director of the Department, and I understand that this has probably been a challenging process for those of you who are sitting here, that you've had multiple directors and you've had multiple program managers, so I don't know if this is an answerable question, but what we heard in public comment was that there was a letter that was sent by the Department that said, "We're not going to address this and AB 32" that gave the industry the impression that this was off the table. Can anybody speak to that, and has there been a change of an opinion because we have a new Director? Is it fair that the industry might be a little bit confused because they received this letter from the very top administrator of the Department and now they're getting a different answer?

Ms. Jeppson:

I have not seen the specific letter, but going back through all the documentation that we have that's led up to this, it really shows that the holdup in between of it potentially being pulled was really to assess and make sure that our current regulations were appropriate for the need, and that also we wanted to look at what was happening in the field. With that, in the survey in your small business impact statement, it talks about how over 70

different companies were surveyed, over a hundred samples were taken. Also in the study, we found that 13 percent of those were unaware of what was in their containers, 52 percent didn't pass the dilution rates that they were supposed to be at and 9 percent of those that were found, also they didn't have—9 percent of the products that were identified, they were not what the actual person interviewed claimed was actually in the container. As we found more of this information, we found it's a bigger issue, and our Director is well informed on that and is continuing to push us to move forward because of these findings as well.

Senator Ratti:

Okay, and then a final question if I may, Madam Chair. There's lots more in this regulation that's in red in our documents, and they're changes to what you've been working on than this, what is a very small and maybe even side issue. This was not the issue that you started doing these regulations about, so if we were to delay today and not pass this regulation, what other things are in this regulation that you are concerned about? We've already been delayed since 2017. What are the things that are in here that may be more urgent than this other issue that we're talking about that you're hoping that we're going to act on today, and are there any that are particularly time sensitive if we decided that more time was appropriate?

Ms. Jeppson:

I think the biggest concern would be further delaying the government licensing. We'd like to have those provisions in place just to start moving forward and to get those processes in place. I know this is outside of what you're looking for, but still, the public health concerns of not requiring the labeling.

Senator Ratti:

Okay, thank you.

Assemblyman Jim Wheeler (Assembly District No. 39):

Thank you, Madam Chair. Ashley, you said during your original testimony that there was no significant impact financially on it, yet during the public testimony I heard that there can be a financial impact up to six figures. What do you consider to be significant?

Ms. Jeppson:

The feedback that we received from Nevada Pest Management Association was really taking into account that these would be completely new requirements. We didn't see significant impact because the requirements are present now that exceed what is being proposed. So, we could already be taking action. We could already be enforcing these

regulations as they stand now at a higher level, so to say that there's additional economic impact of our current regulations was misleading.

Assemblyman Wheeler:

Okay, thank you. The reason I ask is that, again, in public comment we heard there was no true business impact statement, and then I looked at the notes from the Director here that are included and we see that we had some people, as the Senator from my district said, some people attending, but we see nothing here on public comment for that. We see nothing on testimony, we see nothing on written testimony, as far as our notes are concerned. So, how do you know that there is no—without a business impact statement and without, according to your own Director's notes, without testimony during any of these hearings, how do you know there's no significant impact? I've got one more informational question for you that just kind of intrigues me.

Ms. Jeppson:

What we really based that off of—we did watch—we have video recordings of the workshops that were held that took into account public comment. On top of that, all the meetings that we held, we did hear from Nevada Pest Management Association that they believe that they would have some economic impact, but really our decision was based on the survey work that we did with those that were actively implementing it who indicated it was a very minimal implementation, and they've been doing it for years because it's been in the regulations, so we based it off of the feedback that we received from some of those pest control companies in addition to, again, this being a reduction in the requirements that currently are present.

Assemblyman Wheeler:

Okay, thank you. Madam Chair, may I ask one informational question?

Chair Cannizzaro:

Please.

Assemblyman Wheeler:

Thank you. The subject of rinsing out and using for another application, a different type of application, just kind of intrigued me a little bit, because I had a ranch in a different state. It actually was kind of large and we applied our own, and I had to have a license to do that, so I went through some of the classes, etc. It was 15 years ago or something like that. But we weren't allowed to rinse out because it couldn't get into the—unless it was in a controlled area, because you didn't want it going into the sewers, you didn't want it going into the septic tanks, you didn't want it just dumping on the ground. What kind of regulations do we have here to make sure that doesn't happen?

Ms. Lackey:

A lot of times what pesticide applicators will do is they'll rinse and then they'll go apply it to a site that is applicable to the label. So, if you have herbicide and you're destroying plants, obviously you would rinse that spray where herbicide would be applicable. You wouldn't just dump it on the ground. You would continue to use that, and that kind of cleans out the nozzle and everything of your container as well. Thank you.

Mr. Allen:

We also have a pesticide waste disposal program where we can take the rinsate if it's not applicable to apply it as if it were a dilution correctly to a site, so we can take their rinsate, which is the rinsing material from an application device, for proper disposal.

Assemblyman Wheeler:

So if you're at one site doing an application and you're going to another site that needs another application but you need that container, you're going to have to go over to this public disposal area between sites to get rid of that rinse?

Mr. Allen:

No, sometimes—the majority of the times, it's like Heather mentioned. It's applied as if it were a dilution to apply the material correctly per the label instructions to the site, and if someone wants to clean the container out in a controlled way and put it into a bucket and seal the bucket and label it, then we could take that as rinsate for proper disposal.

Assemblyman Wheeler:

Thank you.

Senator Scott Hammond (Senatorial District No. 18):

Thank you, Madam Chair. I've been following the discussion. I actually appreciate the comments that Assemblywoman Carlton started down that path in talking about the applicator, those people who come to your homes, and obviously that's the only interaction I've had are people who come to my home and apply a pesticide of some sort and then leave, and of course they have the applicator. I guess I'm going back to some of the discussion I heard from Director Jeppson and talking about the applicator and how it was already in the regulations as part of the service containers. I keep hearing it almost seems like we're using both of those words interchangeably, and yet that's not what I heard from the public comment earlier. We also heard from public comment earlier that a lot of what you have determined from your workshops didn't seem to get into a report to us as far as an impact study. I'm wondering, if it pleases the Chair, if we couldn't have the person who represents the industry here, Warren Hardy, come up and sort of talk a little

bit more and clarify what he meant by there wasn't any voice from the industry and yet we're hearing that we do have somebody on the Board that is from the industry. So, if he could come up and clarify, if it would be all right with the Chair?

Chair Cannizzaro:

And Senator, earlier we did discuss with Mr. Hardy that we wouldn't be taking testimony at this point in time, just to talk with the Division and the Department about the regulation.

Senator Hammond:

Then I guess I'm stuck and confused again about why we need to continue to label even more if everything is in the truck, and like you said, let's say there is a situation where you have to know what's in the applicator. Isn't everything that we need to know in the truck itself because everything is labeled in the service containers, so won't it then surmise that if there's leakage of some sort that we could already tell what might be in the container? I mean, I just don't know why we're going beyond that and going to every single applicator when applicators change from time to time.

Ms. Jeppson:

The issue here is they may have several different service containers or pesticide containers in general on there, so with the number of application devices that they may have on that vehicle, ensuring that they are tracking and they're not grabbing one that may be only used externally and then using that in a home, especially with the number of visits that they might be making, is really what that labeling on the container so it can't be confused, it's clear that that is specifically what is there. We heard that the service tickets could be used as a means of tracking that, and it's a first-step indicator, but again, if they didn't record that information right or if they were transporting a container that was already moving from point A to point B and they didn't confirm that content, they could be speculating, and that's really what we found in our assessment. So, that's the concern is really making sure that anybody and everybody that grabs that container knows what's in it and isn't playing a guessing game, because the consequences are significant on that.

Senator Hammond:

Okay, and earlier I heard you say that this is already regulation and we're moving forward. If this is already regulation, why are we spending time on this particular thing now? What's the difference between what's in regulation and what you want to do? I know you keep saying clarification, but what's the clarification point? That's why I wanted to bring up somebody who's representing the industry.

Ms. Jeppson:

Well, it's clear that there has been some confusion on what the next step is and if the service container applies to this application device. We had that in there to ensure that everybody was on the same page, and that was a significant piece of it, and it was also to allow us to just make it a little bit simpler by just indicating what's in it as opposed to all those other five aspects, which include the registration number, the product, the company name, the precautionary statement. There were several other things that were required now, and per industry request, we wanted to make that a little bit simpler with really the end-all goal of just making sure they know what's there.

Assemblywoman Lisa Krasner (Assembly District No. 26):

Thank you, Madam Chair. So, I'm not particularly in favor of government overregulation. However, as you said, we're talking about poison here, so just doing a little research because I don't know a lot about poison or pesticides, there are studies that are ongoing that say being made near or exposure to poison, pesticide causes neurodevelopmental effects and negative effects, especially in children. You also made the comment about 52 percent of the time when tested, the poison is not the concentrate that's listed on the label, so that's a little concerning. But again, not being an expert in poison or pesticide, I have a question. Is there a possibility that somebody who sprays the pesticide would go out to a place where there's noxious weeds that are difficult to maintain and spray this chemical and then, not knowing the strength of it, use that same chemical at maybe an elementary school? Is that a possible situation? Thank you.

Ms. Lackey:

We have regulations for every application. There's laws that we have to follow for every application, and there's always the possibility that someone could take a chemical and use it in the wrong area. If that's exactly what the question is, absolutely, and that's why all of us have to go through training and know when it's okay, when it's not okay, and you have to make judgment calls, when it is acceptable, when it's not acceptable to use a pesticide. So yes, it is possible that a pesticide could show up in the wrong location, and that's exactly what we're trying to stop. I think that what's happening here is we're kind of confused with the clarification on the container. See, when we go purchase pesticides, it comes in the original container, which is obviously labeled, and then that will go into an application device like a spray canister in the back of the vehicle. That is what needs to be labeled because that is what can fall out of the truck, bounce down the road. I've had stories told to me from NHP (Nevada Highway Patrol) officers where they've found pesticide containers out of service vehicles on the sides of the highway, and are they labeled or not labeled, so this is what we're dealing with. We're trying to make it safer, making sure that if you buy a pesticide that's labeled, you take it out of that original container and you put it into a service container, that container needs to be labeled. It does get used for transport. Yes, it does sit in the back of our vehicle, it does go around, but any given pesticide applicator might have 10 or 15 types of poison in their vehicle at

any given day of the week, so we need to be very clear with our employees and with our clients what we're using and why, and the only way we can do that is by having it in black and white, exactly what is in that container. We need to know without a shadow of a doubt what is in that container because we are dealing in pesticides. It's very, very important. Thank you.

Assemblywoman Krasner:

Thank you.

Senator Moises Denis (Senatorial District No. 2):

I guess I'm trying to see where—I'm trying to understand the safety issue. You mentioned that currently they're required to label, correct?

Ms. Jeppson:

Yes.

Senator Denis:

And the way I understand it is that the labeling requirements now are actually more stringent than what you're proposing here, is that what I heard?

Ms. Jeppson:

Yes, that's correct.

Senator Denis:

So we're talking about a safety issue and we're actually making it, I guess, less stringent. I don't know, I guess I'm just having a hard time. If it's such a safety issue, why didn't we just do this in session? The other thing I think you mentioned, the label for an accident, but do they treat different poisons differently in an accident or is it all treated the same?

Ms. Lackey:

Yes, different pesticides are dealt with in spills in different ways, yes.

Senator Denis:

So when they come in and they actually have to know what is in each one of these in an accident and they try to separate all that, is that—because my understanding was that when they treat this, they treat it all as a poison, but not necessarily individual pieces of it.

Ms. Lackey:

Yes, it depends on the type of pesticide that you're dealing with. If it's granules, they'd obviously just be swept up, but if it's a chemical there may be different ways. You may use cat sand, you may use other foams. There's other ways that we may deal with it, and that brings another issue is if there is an accident, when the emergency vehicles come along, those gentlemen need to know what's in these containers as well, not just the operators in the vehicle. What if I'm driving down the road and I have an accident and I crash my truck and I've got 15 different listed pesticides in the back of my vehicle? I'm unconscious. I have an MSDS (Material Safety Data Sheet) in my truck, so we know what's supposed to be in there, but what is in each container? We don't really know that. That's the important part that we want to make sure that that service container is labeled. If you were going to put a pesticide in a container in your own home, wouldn't you label it? If it said bleach, you would label it. If it's a pesticide and it's going to be going out of there into the world, doesn't it make sense that it would be labeled?

Senator Denis:

Okay, but you just said that they are currently required to label this stuff, so I think the issue is that perhaps some of them aren't labeling it even though it's currently required.

Ms. Lackey:

Yes, that's exactly the problem. Some people are not labeling it, and we're trying to find a way to make it simpler so that the laws will be followed so that it will be safer for the citizens of Nevada. We're trying to find a way to make it easier so that the laws will be followed.

Senator Denis:

Okay, thank you.

Chair Cannizzaro:

Any other members of the Commission have questions? I'm not seeing any. I think that there have been a lot of comments and questions here that are still outstanding, and so for today's purposes, I want to thank everyone for being here to help present the regulation, but at this point we are not going to take action on it and send it back to hopefully get a little bit more information on this item, so thank you for being here.

We're going to go ahead and move then to the next regulation that we have to be pulled, which is R019-18 for the Labor Commissioner (Agenda Item IV), and if we could have some folks come up for that. Once you get settled, if you could do just a very brief overview of the regulation, and then we'll turn it over. I believe Assemblyman Daly had some questions on this.

Shannon Chambers (Labor Commissioner):

Good morning, members of the Committee. So, the purpose of regulation file R019-18 is to really streamline some of the rules of practice before the Labor Commissioner. Specifically, it allows for electronic filing and reduces the need to file multiple copies of documents with our office. It also provides how the computation of time will be calculated with our office. It also outlines when the Labor Commissioner can deviate from the provisions of NAC 607 and also just provides some general consistency in the language, and I certainly don't want to jump ahead to questions that Assemblyman Daly might have, but I will tell you that one of the purposes of the changes in this regulation package is to kind of clarify the procedures dealing with what I like to call ordinary wage claims, wage claims involving overtime, minimum wage, versus wage claims that involve public works and prevailing wage claims, so that's a whole separate section in the Nevada Administrative Code. That's section 338, so we're trying to clarify the procedures that apply to normal wage claims, like I said, minimum wage, overtime, versus what applies to public works and prevailing wage, and when I became Labor Commissioner back in 2014, there were some cases that had been lingering in our office for years upon years where that dynamic between Nevada Administrative Code 607 and Administrative Code 338 went through the court system and, quite frankly, were not handled properly by our office, so that is also one of the intent and plans of this regulation package is to separate the two and make sure that if we have a prevailing wage or a public works complaint or claim that that goes through the process in Nevada Administrative Code section 338, and if there's wages owed, then a hearing would be held by the Labor Commissioner and it would go through that process. I'm happy to answer any additional questions, but really the main intent of this package is to streamline things in our office, electronic filing, speed up notice of claims, speed up determinations so that obviously if workers are owed money, we can make that process go faster. So again, happy to answer any questions.

Chair Cannizzaro:

Thank you. Assemblyman Daly, we'll let you go ahead and start with your questions.

Assemblyman Daly:

Thank you, Madam Chair, and thank you for the clarification. It was one of the things that I just wanted to have on the record to clarify and to just make sure, because when I read it, in section 5 where you add the word that they can make a complaint electronically, it struck me as to say that's the only way they can do it. Not everybody has a computer. And then of course in section 10, it says nothing's officially received by the Labor Commissioner until you either get it in the mail or electronically, so I wanted to make sure that there wasn't an inconsistency there. People can still, they could walk in, I suppose, and submit a written complaint if they wanted to, just electronically is permitted now.

Ms. Chambers:

We certainly will always allow walk-in claims, written claims. The goal is to move towards electronic filing. I'll be quite honest, in the 2015 Session we received money for an electronic case tracking system. That was upgraded in 2017, which has worked very, very well. I'll be very honest, we're up to between about 75 percent claims being filed online, but certainly especially our Las Vegas office. If you walk into that office on any given day, there's probably 15 or 20 people there to file in person, so they can absolutely still do that.

Assemblyman Daly:

Thank you. My follow-up question to the next part is in section 5, and I know a lot of that is existing language. You took out the provisions about sending a notice of whatever proposed penalty there would be, and I'm not 100 percent. I know on the 338 side a little bit more, but complaints do get filed not just under 338 for prevailing wage. I know 607.200, you can file a complaint there, an administrative complaint, various things under 338, and I know you have language in this on that. But what I wanted to make sure and get clarified on the record, and you said part of it in your explanation, is this is for the more simple ones. "Hey, I didn't get paid the right hourly rate," or somebody makes an error on a deduction or something and they make a wage claim. But my concern is, and this is part existing language, is that when you send them the complaint and if they accept it and pay, that's the end of it and there's no record or anything else. So, I was just concerned if it's more than just some simple deal, it's more of an egregious or more significant penalty, something that should go to a hearing and that a guy's just not going to say, "I'll pay whatever they caught me for because I got away with 20 others." I didn't want a person to be able to game the system in that fashion. So, there are safeguards for that in there, and I know the 338 stuff is different and you can file under 338.

Ms. Chambers:

Specifically addressing the 338 issue, public works, prevailing wage, there is specific language in the statute on how you calculate forfeitures, how you calculate penalties. So, this particular section in Administrative Code section 607 in eliminating the penalties in there is because what happens is when we get a wage claim and we send out a notice of claim, and let's say a person is owed $20 and the penalties show $1,000 or $2,000, oftentimes employers are not as eager to come in and settle the claim. So, we certainly don't let egregious behavior go unchecked, but we've had cases where a paycheck was a day late and the penalty is technically $50 or $100 when the person is only owed $100, so we don't want to put that in the notice of claim right up front. We want to do an investigation, find out what happened. Sometimes it's actually not the employer's fault. Sometimes there's a mistake, sometimes the employee, quite frankly, is not being truthful. After the investigation, once we find if there are penalties owed and there is in fact egregious behavior, that will go in the determination along with an administrative penalty, and potentially on the 338 side, it can also go with disqualification of the contractor.

Assemblyman Daly:

And I appreciate that, and like I say, on the non-prevailing wage stuff, I'm not as familiar with the process on that. I do know on the prevailing wage side, though, is that you can't really do an administrative penalty or even back wages if somebody objects without having a hearing. I know that's in the statute in two different places that says after an opportunity for a hearing, you can do those things. We want to make sure that those things don't slip through. You're saying this is for more of your run of the mill stuff, and I wanted to just clarify there are other ways, or if you find additional information that says, "Hey, there's more to it than this," you're not going to just send the letter and say, "Hey, this is what you owe," because the way the statute reads now, in subsection 5 there is that if they get that and they are served it and they pay it, that ends the claim and that's the end of their obligation, and I don't want that to be a process that gets abused was my concern, but I think I'm satisfied on that.

My only other comment is one that I've talked to you about a couple of different times regarding prehearing conferences, and I know you have that section in this regulation, but you didn't change the one provision. The problem I got with the language in the prehearing conference, and I've experienced this myself although it's been some time, when you get a notice for a prehearing conference, you're required to come in. You cannot make a record. The conference gets notice that says, "Hey, we were here to discover and see what the issues are." I know it says that you're supposed to act in good faith to try to come to a settlement through agreement or stipulation, but there's no requirement to settle, and then the last section in there says if the Labor Commissioner determines that it can't be settled, you can just issue a determination, and if that determination included any type of penalty, I think it would be against the law because you can't administer that penalty or collect back wages without a hearing. I was hoping we would fix that at some time, and I know you have provisions in there that someone can come to you and say, "Hey, we want to change these regulations." You can consider it that way. I don't want to hold this up today, but I did want to get those things on the record and make sure that we're not creating a situation where people that are bad actors can skate through this system by saying, "Okay, I don't object. I'm going to pay it," and their claim is over, and the prehearing conference thing is still a problem.

Ms. Chambers:

I would just say, in my tenure as Labor Commissioner, the Labor Commissioner has issued an order using that section once. That did go on a petition for judicial review and that decision was affirmed. I will tell you on the record, it is not something that the Labor Commissioner likes to use, that provision, intends to use that provision. It typically applies if it's a case that's very, very old or the employer has left town or declared bankruptcy or the employee is gone, which happens in many cases where we literally cannot find the employee. So, it certainly is a tool that the Labor Commissioner has, but it is not something that is used—it hasn't been used since 2014, and I'm being quite honest with you, Assemblyman Daly, it's—again, do I think it's something that the Labor

Commissioner should have the authority to do based on extenuating circumstances—and again, that decision can be reviewed by a higher court, and that's why it was not taken out in this particular section.

Assemblyman Daly:

And thank you for that, but with all due respect, at the same time, I'm not surprised that it was confirmed on judicial review because there was no record to review, and under the standards of judicial review, they can't supplant your judgment for theirs, and if there's no record, of course they have to uphold it because there's no basis, and that's the problem. That's the real problem. That'll all I got. Thank you.

Chair Cannizzaro:

Any other questions by members of the Commission?

SENATOR HARDY MOVED TO APPROVE R019-18.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Ms. Chambers:

Thank you very much.

Chair Cannizzaro:

Thank you. We'll move to the next item on our agenda for regulations. It's R155-18 for the Department of Transportation (Agenda Item IV). Once you're settled, please give us just a very brief overview of the regulation, and then I will turn it over to, I believe Assemblyman Daly I had for that particular regulation.

Darin Tedford (Assistant Director of Operations, Nevada Department of Transportation):

Thank you, Madam Chair. Good morning. My name is Darin Tedford, newly appointed Assistant Director of Operations for the Department of Transportation. I have with me Mr. Daniels and Mr. Whalen of our Traffic Operations Division. These gentlemen have been intimately involved with the process of developing these regulations. I'll have Mr. Daniels

provide the brief overview of the regulation, and then we will be eager to answer any questions the Commission has. Thank you.

Seth Daniels (Assistant Chief Traffic Operations Engineer, Nevada Department of Transportation):

This is a regulation for statewide telecommunications, particularly infrastructure sharing. It kind of sets out compensation between—and the regulation is particularly for interstate right-of-way. Senate Bill 53 back in 2017 established a policy outline for our non-interstate right-of-way, and this regulation is to promote broadband connectivity statewide and partnerships with telecommunications providers to better serve particularly the underserved areas of the state.

Chair Cannizzaro:

Assemblyman Daly, if you would like, please go ahead.

Assemblyman Daly:

Thank you, Madam Chair, and then you gentlemen are new, which is part of the reason I wanted to get some things on the record from you. I do remember Senate Bill 53 from 2017 which allowed for this and supported that bill. On that same line of questioning in the committee at the time, and I just want to make sure that it's still the case and we're going to go forward under these regulations using the same criteria, that primarily the Department and the Department's contractor is going to be putting in the conduit or any spare conduit, various things. It's not going to be the provider, other than they're going to do just their work to run their fiber in if they're going to or use an access point to get in the right-of-way. But when we talked about that, we didn't want any blurring of the lines between what's private work and what's public work. Is that still your understanding, that if there's conduits going to be putting in, you're going to put in a bank—someone's only contracted with you for one line, which you're going to put in 16 tubes, basically, for the length of this project. That's going to be done under the DOT (Department of Transportation) contract by the DOT contractor and it's not going to be considered private work, if you will. We want to make sure we're not blurring those lines, and that was the indication we had gotten in the testimony in the committee when we passed the bill, and just want to make sure that still holds up.

Mr. Daniels:

Yeah, that is correct. As part of our portion of this, when we're doing a construction project, particularly in areas that are hard to dig, we want to preserve the pavement and not have it re-dug up if someone, a utility company, wants to come back and put conduit in if they're planning on serving that area, so we will put those in under our transportation road construction contracts in these cases. Now, utility companies can put their own

infrastructure in our right-of-way through our permit process. None of that has changed, but what you're describing is correct.

Assemblyman Daly:

And thank you on that. The second question I think was in section 6, the very last section there, where if they're doing restoration, various things, the telecommunication provider or contractor must comply with special restoration conditions imposed on the Department. What did you guys have in mind on special restoration? Again, I just want to make sure you're not going to require them to put in more than what was taken out and say, "Hey, while you're there, go in and put this access ramp in," or any of that kind of stuff. Wanted to again make sure we're not doing that, and then I have one final question if I can, Madam Chair.

Mr. Daniels:

Yeah, that isn't our intention. I think that special restoration just means maybe what's there existing, some landscape, erosion control, stuff like that, environmental concerns, just making sure it meets the previous condition if they disturb anything.

Assemblyman Daly:

And I appreciate that answer. Just want to make sure it's on the record. Then the last thing I think was in section 7(8) regarding a discount, and I would like to get a little more information on what you guys are—I just sometimes wonder if it's a good idea for the state to be in the discount business and then worry about someone saying, "You got a better deal than I did," or "He got his on sale and I want mine on sale," etc., so I'm not sure that's a good idea, but if you could give me a little more explanation on what you're thinking and why you think that's going to be useful to the state, I'd be interested in hearing.

Mr. Daniels:

I believe that one was put in just for if we have a particularly hard area to get served, if it's not of financial benefit to the service provider but it's a need that really needs to be filled, and we're probably more talking particularly education, telemedicine type thing. It's not something that we've contemplated in the non-interstate version. We have done a few trades, but I think it was put in there as an option, but we don't—it would have to be an option presented to everyone interested in that. We couldn't single it out. If we gave it to one, we would have to give it to another. This is meant to be very noncompetitive and mutually beneficial, if that answers your question.

Assemblyman Daly:

I believe it does, and like you say, I appreciate that. So, you're more gearing it towards an area that would not otherwise be served to try to say, "Hey, why don't you go ahead and put this in. We won't charge you as much on the deal," and you would offer that to anybody that was in the same circumstance. That does make sense, and I think it could be beneficial, but otherwise you guys don't want to be in the discount business. That's all I have, Madam Chair.

Chair Cannizzaro:

Okay. Any other questions or comments from members of the Commission?

SENATOR HARDY MOVED TO APPROVE R155-18.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you for being here. We are going to move on to the next item on our agenda. It is R032-19, the Commission on Mineral Resources (Agenda Item IV), and I believe that Assemblyman Daly had a question on that one. We'll invite you up, and once you're settled, you can go ahead and begin.

Richard Perry (Administrator, Division of Minerals):

Thank you, Madam Chair. To my right is Shannon McDaniel, who is the Chief of Well-Drilling Regulations and Adjudication for the State Engineer's Office and was a member of the team that updated these regulations, and to her right is Mike Visher, who's the Deputy Administrator for the Division of Minerals and also was part of the team that updated these regulations. Just a quick synopsis of the regulations: R032-19 is an update of Nevada Administrative Code Chapter 534A, which are the geothermal resource regulations for the State of Nevada. The Division of Minerals is the permitting agency that oversees this and also oversees the operation of geothermal fields in the state. This chapter first came into being in 1985, and 30-something years later, we now have 27 different fields, 550 geothermal wells in the state and generate 3.5 million megawatts of power from those, so this is an industry that we see a regular application coming in on a regular basis for these wells, both for new wells and for maintaining existing wells. This

chapter was in need of an update as it had been changed several times since 1985 and had become a bit disjointed, so we literally rewrote and reorganized the entire chapter and addressed several things that were critical, safety being one of those. Back in 1985, there was basically water well drillers drilling these, and now these are professional drillers that drill large diameter, very deep holes in the state, so there was some things that need to be addressed there. Bonding: when a geothermal well application comes in, an entity that is the proponent has to bond for the closure, plugging and abandonment of that well so we know that if something happens that we can get that done, and we felt like we were under-bonded with the number that was in there. Well logs needed clarification of the type of logs, which have evolved very much in the last 30 years. Directional drilling is done in this type of geothermal drilling, so we need to have well logs that show where that casing is underground. We needed a temperature definition for geothermal water, what constituted geothermal water, and we needed a clarification of what constitutes a geothermal domestic well as there was confusion in that out there, and there's a number of those in the state and a regular diet of them, but we needed to define what it is so people couldn't try to drill a second water well on their property claiming that it was a geothermal well. The process that we went through here started last summer. We went through first a stakeholder meeting with industry to gather up some thoughts and then two separate public workshops that were spaced in between when we had this submitted to LCB (Legislative Counsel Bureau) to gather up input from industry and the public, and then finally an adoption hearing before the Commission on Mineral Resources, which is the body that does the adoption for this kind of regulation for the Division of Minerals, and that was in November. Thank you.

Assemblyman Daly:

Thank you, Madam Chair. My first question, and it creates a significant problem for me and I don't think I can support it the way it's written, where it says the Administrator can grant an exception to the entire chapter, but there's no parameter, there's no review, there's no content to what might receive an exception, and then obviously no recourse or whatever, and I know maybe you would say, "Well, we would never exempt this, we would never exempt that." The problem is, do you know who the next Administrator is going to be and what he's going to interpret or understand that section to mean? I just think that any type of blanket exception like that would be unacceptable. Maybe you can explain, but I'd be interested to hear if you can.

Mr. Perry:

I can. First of all, there can be no granting of an exception for fees or anything like that that are in there. What that is intended to do is to look at variance in when an entity is drilling a well, because when we get an application in to drill a geothermal well, it's like an engineering application that you send to the county for a building analysis. We look at the casing integrity, we look at what type of—how the depth of the well that they intend to go to, where they intend to put cement against the casing. But once they—and we evaluate that and do approvals that have contingencies in them, because once they start drilling,

we really don't know what is going to happen because you're drilling into subsurface geology, and that is not consistent or known when they drill into it. So, as they drill down, there may be exceptions to what we have in the regulations with regards to the type of cement based on the geology, the type of casing, where casing is set, the depth of the casing, whether they want to try to directional drill because they found that the fractures for the geothermal resources are in a different place than they thought they were. The intent is to be able to do what is called a sundry process, which is allowed for in here, which is a variant to the original approved application to drill. That's really the intent, because once the drill rig is going and they're out there, they're reporting to us every day in their drill logs of where they're at. Drilling a geothermal well any more, a typical geothermal well is 1 to 3 million dollars to drill by a proponent, so we're in communication with them on a daily basis and we need the ability to do a variance to what was perhaps originally approved in the drilling permit, because they can't vary from it unless they have something from us. So, that's the intent of being able to do that.

Assemblyman Daly:

And I appreciate the answer, and it does say upon written application and for good cause shown, and your explanation makes sense. In regard to we don't know what's going to do, it's like any construction project. You have change orders or the original plan isn't going to work so we need to go to a different material and various things. But it doesn't say or equivalent or it has to at least meet the standards otherwise engineered, approved. It just says the Administrator for good cause, in his opinion, can make the change, and I understand the intent, but like I said, whoever the next Administrator is, that intent doesn't do me any good. I've got to go back and look and say, "What do the words say," and the words say we don't have enough to just go with, "Well, that's our intent." Like I say, I go back and say, "What do the words say?" That Administrator can say, "I found good cause and I'm going to allow this," and there's no equation to what the standards are, no requirement that it's equivalent, etc., and it's one person. There are other sections when I read through, I think section 17 and section 23, existing language that provides for exceptions on the 100-foot, I think, away from the property line, various things, but those are individual exceptions that are there for each deal. I think that might be a better way to go. A blanket exception, though, I got the problem there, because what do the words say in the end? It doesn't completely capture your intent.

Mr. Perry:

Thank you. I will comment on that. It would be very difficult to try to articulate in this chapter every possible exception and put an engineering component to it, so that would be a challenge for us, and that is the intent of the words for good cause, which is an engineering term.

Assemblyman Daly:

My other question I think is for section 37 regarding hearings. The question is, what would be considered by the Administrator? What would they consider to make a hearing necessary, if I read it correctly?

Mr. Perry:

Thank you for the question, Assemblyman Daly, and these have occurred before. The triggering for a hearing would be someone feels like they have a resource conflict. The word's a geothermal lease in one area where someone wants to drill a well that's next to a different owner's geothermal lease in another area, so there's a potential resource issue, and that would have to take place on private ground, as probably over half of the geothermal wells in the state, I think about 60 percent, are on federal ground and they are the adjudicators of that. We are a dual-permitting state with respect to geothermal wells, so if a lease is on federal ground and an authority to drill is granted on that lease on federal ground, that proponent also has to get a permit from the state. Our regulations are actually more stringent than the BLM (Bureau of Land Management), so the BLM looks to us. Plus, there are potential resource conflicts with water, and of course water belongs to the state and the federal government doesn't have input on that, so we have to make sure in any type of hearing that there isn't a water rights conflict that could trigger one, because if you notice there, the hearing would be before the Administrator of the Division of Minerals and the State Engineer, or have the potential to be. If there is someone who is a nearby neighbor that has some issue there, that would be another reason to call a hearing, but the ones that we've seen in the past have been mostly related to resource-type conflicts.

Assemblyman Daly:

And again, I understand the old language says a petition for a—it says re-hearing must be filed, but you have to put in an application for a hearing, and now it just says if the Administrator determines that a public hearing is necessary. What's going to trigger that, and is the Administrator going to say, "I don't think you need a hearing, not going to give you one." Where do they go? Are these contested cases? Do you then go to 233B, because that's the next question on how you resolve that. Is it completely in your statute or is it a contested case, and it may be in a part of the regulation that wasn't up in our view. I'm assuming people have the opportunity to go to judicial review if they're not getting—or if there's an appeal process.

Mr. Perry:

Yes, and actually section 37 was borrowed from other sections that are used in other resource agencies because it was supplied by the Attorney General's Office. He was a member also. Sorry, the Deputy Attorney General provided that, to be consistent with what other chapters had been adopted. That's why the language was changed.

Assemblyman Daly:

Yes, and if you've been in any of our previous hearings, just because it was done by somebody else wrong doesn't mean you get to do it wrong again, so that's always been my response in those types of situations.

Chair Cannizzaro:

Any other questions or comments from members of the Commission? Seeing none, is there a motion to pass? Sorry, I think we may have one more question. Assemblywoman Carlton, please.

Assemblywoman Carlton:

Thank you very much, Madam Chair. I was trying to think about how to phrase this. Director Perry, the concern that Assemblyman Daly has over the good cause, did I hear you correctly to say that, in that section, that good cause actually has an engineering definition, determination, that there would actually be a definition of good cause in there, or did I misunderstand that?

Mr. Perry:

Thank you, Assemblywoman Carlton. There isn't a definition in this chapter of that. I'm going to ask my cohort here with the State Engineer's Office if that's used in any of the water definitions under the water drilling code.

Shannon McDaniel (Chief, Well-Drilling Regulations and Adjudications Section, Division of Water Resources, Department of Conservation and Natural Resources):

We don't directly define it in anything that I'm aware of, but we do use it in our regulations as well.

Assemblywoman Carlton:

Okay, that would—and I guess that's where the concern is stemming from, that we're not sure what would actually be in the future. Nothing against you guys, we always like the ones we have, but we don't know who's going to be there 20 years from now, and without any parameters, we're not sure what could possibly happen, and we hear about stories in other parts of the country with problems people are having with some of the drilling that's going on, so we're just trying to be cautious on that. Without any definition, I would have some concerns also. Thank you.

Mr. Perry:

Thank you, Assemblywoman Carlton. If I could ask my Deputy Administrator who passed on one piece of information that's in the regulation?

Mike Visher (Deputy Administrator, Division of Minerals):

I just wanted to point out that in the statute, in statute 534A, we cannot issue a permit unless it is consistent with several other statutes and regulations. Among those are 445A, 445B, 533, 534 and 501, and what those address are protection of waters of the state, wildlife, as well as surface and subsurface waters. The permits that come in for consideration, they have to meet not just our regulations but they have to be consistent with all the other facets of protecting other assets of the state, including waters and wildlife, and any exception that would be considered as part of the permit application would still have to meet those requirements. Thank you.

Assemblywoman Carlton:

Thank you, Madam Chair. This isn't a blanket good cause statement. There are still some parameters on this. This would be merely more along the engineering side of the project, not the public policy or biological protection side of the project?

Mr. Perry:

Thank you. That's correct.

Assemblywoman Carlton:

Thank you.

Chair Cannizzaro:

Any other questions or concerns based on any of that? No. Okay, so at this point, if there's a motion to be made?

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE R032-19.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN BENITEZ-THOMPSON AND ASSEMBLYMAN DALY VOTED NO).

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Mr. Perry:

Thank you.

Chair Cannizzaro:

We will move on to our next item, and I think actually you all can stay seated for right now. We're at R044-19 (Agenda Item IV). What I think we can probably do is just go forward. It's the Commission on Mineral Resources.

Mr. Visher:

This regulation change is really done to make clarifications to the existing regulations. There haven't been any changes in quite a while. We want to make it consistent with current practices. We also would like to make some changes to clarify some of the language for the participants to better understand how they can gain participation in the bond pool, and we would also like to try to incentivize the use of the bond pool but also the reclamation performance component of the bond pool. We have two components of the bond pool. One is for notice level that's 5 acres or less. The bond pool that we operate is really an insurance company. We provide bonds to satisfy the regulators. The regulators are either the BLM or the BLM and the Division of Environmental Protection. The bond pool was set up in 2000 to assist the small mining companies that do not have a sufficient track record to go out and get a surety or do not have financial resources to post the full amount of the bond. Bonds have to be complete to the amount necessary to effectuate all the reclamation that is proposed in the permit up front, so the bond pool acts as a co-principal and allows for participants to come in at a slightly reduced rate, but then over the course of 5 years if it's a plan of operations, the bond can be made whole through accelerated payments. If its notice level is still 100 percent, so there's no liability to the state, the bond pool has sufficient resources for the proposed minimum premium reduction as well as increasing the amount that's refunded to the operators once they perform all the necessary reclamation and the regulator determines there's no need for an obligation anymore or the participant has enough of a track record, has sufficient capital, they go out and secure their own financial surety, then they can exit the bond pool. The way it's structured right now, it's a bit of a disincentive for an operator to leave the bond pool because they have to make up too much of the difference. It's kind of like if a renter wants to go buy a house, when you leave your apartment you only get your first month's deposit back. The same thing happens with the bond pool participants. They only get their deposit back, which can be as low as 50 percent of the bond amount, then they have to come up with the additional 50 percent, and that's a considerable burden for them to leave. They're stuck having to pay rent, essentially. We only have five plan-level participants. The bonds are all whole, meaning they have paid into the bond pool more than the bond amount, than the obligation is, so we have sufficient resources to cover these rate reductions, and the Division of Insurance has required under our regulations, reviewed the premium rate reduction to make sure that the bond pool would be financially stable, and they agreed with that. I'd be happy to take any other questions. Thank you.

Chair Cannizzaro:

I believe Assemblyman Daly had some questions, so Assemblyman, whenever you're ready.

Assemblyman Daly:

Thank you, Madam Chair. Just quick clarification, section 5, you removed the language about the aggregate and sand pits no longer being excluded as a mining facility, I believe it is? And just clarification, I did talk to a couple of people that operate sand and aggregate pits. I believe they called you guys. But that elimination in this section only would allow them to then participate if they wanted to into the bond pool. It doesn't require them to and it doesn't change any other statutes where aggregate and sand pits are excluded from the net proceeds and some other NDEP (Nevada Division of Environmental Protection) requirements and various things? That's the only change that's going to be to them, that they can now participate in the bond pool if they want to?

Mr. Visher:

Thank you, Assemblyman Daly. Yes, that's correct. In the past, we have had aggregate operations in the bond pool, and we have one current bond pool participant who is an aggregate operation who is regulated by the BLM, so we're trying to make sure that it's an open playing field for all the operators. It only affects their participation in the bond pool. It doesn't affect the rest of chapter 519A and the requirements for NDEP, nor does it affect anything with taxation. It's just the participation, so you're absolutely correct.

Assemblyman Daly:

Thank you. Just needed that clarification, and I would make a motion whenever you're ready, Madam Chair.

ASSEMBLYMAN DALY MOVED TO APPROVE R044-19.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you. We will move on to R046-19, the State Environmental Commission (Agenda Item IV), and I believe we do have one clarification to make before we get started. Ms. Erdoes, if you wanted to, please proceed.

Brenda Erdoes (Legislative Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Madam Chair. I just want to make sure that it was clear to everyone that section 12 of this regulation was corrected at some point during the process. Section 12 is the effective date section. It initially said that the entire regulation became effective on January 1, 2020, but as the regulation evolved through this process, it changed so that actually part of it became effective on July 1, 2020, and that is section 4, 5, 8 and portions of section 9, which is, I think, what caused the initial issue with this section. The parts of section 9 that are effective on January 1, 2020 are subsections 4, 5 and 6, and then, and this gets really down to the detail, and the fees for the renewal of class I and class II operating permits pursuant to section 1 also become effective on January 1, 2020. So, those things are spelled out in the new effective date section, and I just wanted to make sure that everyone had the right information as you consider this. Thank you.

Chair Cannizzaro:

Thank you. I believe Assemblyman Daly had some questions on this one, so what I'd like to do is just go ahead and turn it over to you, Assemblyman.

Assemblyman Daly:

Yes, Madam Chair. I was just going to say, and sorry if I held them up, actually, my questions—I'm fine on this one—are answered, so unless someone else has a question, I'm good.

Chair Cannizzaro:

Okay. Are there any other questions from members of the Commission?

SENATOR DENIS MOVED TO APPROVE R046-19.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you. All right, we'll move on to the next item on our agenda for further discussion, which is R054-19, the Nevada Physical Therapy Board (Agenda Item IV). Please come on up. I know we heard a little bit on this particular regulation in public comment, but I do believe that Assemblywoman Carlton had some questions, so why don't we go ahead and, Assemblywoman, I'll let you sort of kick it off and we'll go from there.

Assemblywoman Carlton:

Thank you very much, Madam Chair. This was a very well discussed issue in the last legislative session, and one thing that came up over and over and over again was this discussion around a needle-retention language that was put into SB (Senate Bill) 186, and I just wanted to make sure that we're all on the same page. I don't see that being referred to in the language, and I actually have some concerns. Under section 3, my major concern is under section 3(2)(b) in disposing of a needle after completing a portion of a procedure, and then there is an "or" in there in the second line under (b), if the entire procedure is performed on one area of the body, after completing the procedure. I'm sure no one is actually proposing that a needle can be moved around in one area of the body. I'm sure that's not the intent, especially after all the conversations that we've had about this, but if you read this and if you would actually find someone who was doing this, I think they would have a legal argument that they would be able to do this. I do not believe this is clear enough to protect the public as far as single-use needles only being used in one pinpoint spot and not being moved around, let's say, a shoulder area, a neck area, lower back. I just want to make sure that there is no room for discussion on single-use needles. This county has gone through a couple of issues with doctors and single-use needles and the horrible feelings that folks had about it, and I just have concerns that that section is not strong enough, and that would be my opposition to this regulation.

Neena Laxalt (Representative, Nevada Physical Therapy Board):

Down in Las Vegas I have Jennifer Nash, who is Legislative Chair, and Charles Harvey. Let me state, Assemblywoman, that there was no intention of using a needle more than one time. In other words, one insertion, one disposal. I believe the way this is outlined, and I want to say that the draft given to the LCB was much more specific, so I'm assuming that the LCB's response, which is this draft, is simply because perhaps it was already spelled out quite clearly and then it would be redundant with the statutes. The reason that (2)(b) is spelled out the way it is is because, after completing a portion of a procedure performed on a specific area, that is specifically drawn out so that people weren't using them in separate areas of a body. So, if you're working on one portion of a body and you're also going to work on a second portion of a body, in other words a shoulder and an ankle, and I don't know if that works that way, but after you have worked on the shoulder and you're using one insertion, one disposal, after you've worked on that area of the body, you cannot go and be working on the second area of the body at the same time, or if the entire procedure is performed only in one area of the body. I believe that's

how that is meant to be, and if the LCB can clarify that, in fact, the way it is set out, it cannot be used for any more than one insertion.

Assemblywoman Carlton:

Thank you, Ms. Laxalt. I know that was your intent, and it was made very clear in the last session, especially around the needle retention issue. That was the intent, but when I read this—and I've had needles inserted for physical therapy. Things happen, so I've had a couple treatments—there can be multiple needles in one area, and we don't want to allow a person to use one needle even in that shoulder area multiple times in that area, and I'm not sure this is specifically clear enough on that, and I think if the Board had tried to discipline someone for multiple use that they might be able to cite this and say that it was not clear enough. That's my concern. I know we're all on the same page. I just don't think we've made it clear enough to give the Board the hammer that they need to go after someone who would violate the one-one-one rule.

Ms. Laxalt:

And I agree with you, Assemblywoman. Subsection 3 of NRS 640.050 specifically states that shall not insert the same needle more than one time during the performance of dry needling, so I'm hoping that LCB might be able to determine that, in fact, that was their intention. I know what we submitted to them specifically said, I believe a couple times, shall not be inserted more than one time, so I'm hoping maybe somebody who's here can help me with that. I also want to, while I'm here, address the 150 hours of training and education and the fact that that was changed, and in fact, it was not changed. All it says here is that at least of those 150 hours, 25 of those hours have to be through postgraduate education and course of study. The other 125 can be provided through a graduate-level program, so that hasn't been changed at all as far as the total 150 hours. It's just at least 25 of those have to be a postgraduate, at least 25.

Assemblywoman Carlton:

And if I may, Madam Chair, I did receive some communication from the original sponsor of the bill, and he does have concerns about that also. I wasn't going to particularly address that, but I do have concerns about that, and I always like to follow the lead of the person who put their heart and soul into working on the bill, especially if they have concerns over it. So, there still are concerns around that, so with that, Madam Chair, I think I'm done.

Ms. Laxalt:

Thank you, and if I could continue on, the 150 hours is specifically spelled out in statute, and I believe that is why it wasn't necessary to specify it in regulation. But those 150 hours are still very much in line and have not been changed at all. The only reason that the 25 hours—and this again was the change from the LCB, because we specifically had or the

other 125 hours can be done through graduate school, not postgraduate but graduate school, so instead of playing with the numbers of 125 here and 25 here, it's at least this. It can be more than that. The only thing that was really positive was that at least 25 of those hours had to be done through postgraduate. The rest of them, it can be 50 and then it would be less in graduate, or it could be 25 and then the 125 could be in graduate, or it could be 150 in postgraduate, but at least 25 of those have to be done in postgraduate, and that's what this is describing.

Chair Cannizzaro:

Senator Settelmeyer, did you still have questions?

Senator Settelmeyer:

Thank you, Madam Chair. On that aspect, I'm a little worried that the language isn't as clear as it could be in that particular section so that all individuals who are reading it will clearly understand that we are not changing the NRS in any way, shape or form. It still requires 150 total, but at least 25 of it for this profession would be required postgraduate, and I understand your clarification. I appreciate that. I'm still a little concerned that the general individual reading this may get confused and would prefer it to directly mirror the NRS with the further explanation of that. Again, I'm just concerned about that. Thank you, Madam Chair.

Ms. Laxalt:

And I agree, there's already been some confusion, so that already says there's going to be some confusion. Again, I just want to say that all that was spelled out specifically in the draft that we provided to the LCB, and I think just because they used common sense and understand the law and know that the statute still stays in place, perhaps they minimized it just to not be redundant with the statute currently in line.

Chair Cannizzaro:

Do other members of the Commission have any questions? Senator Hardy, please.

Senator Hardy:

Thank you, Madam Chair. What was the rationale for at least 125 hours be or 150 hours be after you get your doctorate? What was the rationale of waiting for after you get your doctorate to have at least 25 hours of didactic instruction and training when you are bottom line probably more supervised as a "student" than you are when you're getting continuing medical education in the 25 hours afterwards? Was there something that was happening afterwards that you didn't get when you were more closely supervised and had to be signed off?

Ms. Laxalt:

Dr. Hardy, again, I believe that is in statute, and I'm just pulling that up. Again, let me look closely here for a minute, and if Charles Harvey or Jen Nash can help me out here with this?

Jennifer Nash (Legislative Liaison, Nevada Physical Therapy Board):

We had the 25 hours specifically once they are licensed and able to then attend a specific course where they are tested both didactically and psychomotorly on their skills of performing dry needling.

Senator Hardy:

I appreciate that. So, usually when there is a continuing medical education course, there probably is less testing, I'll call it less how do you prove that you did it, versus during school where you really get to perform in order to get your license, versus a CME (continuing medical education) where you go and you fill out a form or something. Is there some qualification of the CME that requires you to pass a test so that 25 hours requires a successful completion of a written and practical examination, which is unusual for a CME, but with that verbiage, I think you're okay. Just kind of curious why you want to wait until after they get their license to do that.

Ms. Nash:

We have had the requirement that they are licensed and have patient care experience prior to being able to apply to attend one of these courses, and if accepted into this course, it is a course over 3 days that requires some pre-work, and then in line one-on-one checking off of their skills provided that they pass the written test as well for this dry needling skills. It is not at this point something that we determined as being able to do a skill that you can do when you are a student, so no students are allowed to perform dry needling, therefore we have this postgraduate requirement.

Senator Hardy:

I don't read that you have to be seeing patients and have some—is there something in here that says you have to be seeing patients and have certain qualifications before you take the test? Could you not take the 25 hours immediately upon graduation, according to the regulation you've written?

Ms. Nash:

Thank you for the question. I am not one that performs dry needling, but I will tell you that what I know of the courses require that you have a license. I do believe that there is some patient care hours. It is not the Board's intention to govern that. These are what the

courses have mandated themselves and so that we have gone by those standards.

Chair Cannizzaro:

Anyone else have questions or comments? Seeing none, I think I too share some of the concerns about the confusion over the hours that were prescribed in the bill and then what we're seeing in these regulations, and then I think some clarity is needed for the needles as well. At this point, we are not going to take any action on this particular regulation. I think there is some additional clarification to be had before we can feel comfortable moving it. Thank you very much for being here today. Thank you again for being patient and sitting with us.

At this point, I'm actually going to take one item out of order. We are going to move to item V. This was an item that I had a request to hear a little bit earlier, but obviously we are still hearing some regulations and that's taking just some more time than I think we had anticipated, so what I'd like to do at this point in time is move to item V and then we'll come back for the remaining regulations that we have pulled for today. That puts us right about four left. At this point, what we'll do is we will move to item V. It is a progress report on litigation in progress. Mr. Powers, I believe, is in Carson City, and he will be giving the report, so we will go ahead and turn it over to him. Mr. Powers, whenever you are ready.

Kevin Powers (Chief Litigation Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Madam Chair. There's four cases to report in the progress report. The first three, I will report on those and ask if there's any questions. The fourth case, we will deal with that separately because it has an item for possible action.

The first case is *Board of Trustees of Glazing Health & Welfare Trust v. Chambers*. This case has been ongoing since the fall of 2015. It involves Senate Bill 223 of the 2015 Legislative Session, which dealt with vicarious liability of prime contractors for the wages and benefits that subcontractors failed to pay their employees. In 2016, the Federal District Court found that SB 223 is preempted by the Employee Retirement Income Security Act of 1974, otherwise known as ERISA. That's a federal act. The Nevada Labor Commissioner appealed the District Court's decision to the United States Ninth Circuit Court of Appeals. While the appeal was pending during the 2017 Legislative Session, the Legislature repealed SB 223 from the prior session and replaced it with different pieces of legislation. When a three-member panel of the Ninth Circuit first heard the case in the summer of 2018, the question was whether the repeal of SB 223 mooted the case and whether it was still a live controversy to decide. Shortly thereafter, the three-judge panel of the Ninth Circuit heard the case and by a two-one decision determined that the case was not moot and that the District Court erred by finding SB 223 was preempted. After the panel's decision, the plaintiffs then responded and filed a petition for reconsideration and rehearing before the Ninth Circuit by a larger panel, which is known as en banc reconsideration. The Ninth Circuit agreed, and a panel of 11 Ninth Circuit judges heard

oral arguments on the case in June of 2019. Recently, the Ninth Circuit entered its decision in that case. The en banc court on November 7, 2019 dismissed the appeal as moot because the Legislature had repealed SB 223 and replaced it with legislation that did not include similar provisions to those being challenged from SB 223. Because the appeal was dismissed as moot, the Ninth Circuit also directed the Federal District Court to vacate its prior judgment finding preemption, and as a result, the Federal District Court's decision that SB 223 was preempted by ERISA has no binding effect and no precedential value—and this is one thing that I do like to say—therefore this case is closed.

The next case is *Charleston v. State*. In this case, the plaintiffs are challenging the Nevada statutes that give less populated counties in Nevada the local option to allow businesses to operate legal brothels. The plaintiffs claim that the state laws that allow the counties to license and authorize legal brothels and the ordinances that also allow that are preempted by federal law that regulates and prohibits sex trafficking and other sex crimes in foreign and interstate commerce. The plaintiff claims that the federal laws would preempt both the Nevada state laws and the local ordinances, and therefore Nevada would not be able to regulate and license legal brothels. The plaintiffs named as defendants the Governor and the Legislature. Both the Governor and the Legislature filed motions to dismiss. On October 29, 2019, the Federal District Court dismissed the plaintiffs' complaint for lack of standing to pursue the preemption claims because the Court found that the plaintiffs, who were all residents of Texas, could not establish that Nevada's laws concerning legal brothels caused the plaintiffs any personal injury in fact that was traceable to the Nevada laws and redressable by the federal courts. So, in the absence of constitutional standing under article 3 of the United States Constitution, the Federal District Court dismissed the case. On December 2, 2019, the plaintiffs filed a notice of appeal with the Ninth Circuit Court of Appeals, and the parties are in the process of briefing that appeal.

The next case is *Morency v. State*. On August 15, 2019, the plaintiffs filed a complaint challenging the constitutionality of Assembly Bill 458 of the 2019 Legislative Session. AB 458 revised the provisions relating to tax credits for the Nevada Educational Choice Scholarship Program. The plaintiffs claim that AB 458 was a bill which created, generated or increased public revenue and that the bill violated article 4, section 18 of the Nevada Constitution because the bill did not receive a two-thirds majority vote in the Senate. The plaintiffs name several state officials and agencies as defendants. On October 9, 2019, the District Court granted the Legislature's motion to intervene as a defendant to defend the constitutionality of the legislation. The Legislature has filed its answer to the plaintiffs' complaint. The executive branch defendants filed a motion to dismiss the complaint, claiming that the plaintiffs lacked standing and that the claims were not ripe for review yet. On December 5, 2019, the District Court heard arguments on the motion to dismiss based on standing and ripeness. On December 27, 2019, the Court denied the motion to dismiss and ordered the parties to establish a procedural schedule for briefing dispositive motions to determine the merits of the underlying constitutional two-thirds issue. The parties are in the process of establishing that briefing schedule. So, those are the first three cases, Madam Chair. I'm certainly open to any questions that members would have

on those cases.

Chair Cannizzaro:

Do any members of the Commission have any questions at this point? Okay, seeing none, Mr. Powers?

Mr. Powers:

Thank you, Madam Chair. The fourth and final case to discuss is *Settelmeyer v. State*. That case is in the First Judicial District Court in Carson City. On July 30, 2019, the plaintiffs filed a first amended complaint challenging the constitutionality of Senate Bill 542 and Senate Bill 551 of the 2019 Legislative Session. The plaintiffs claim that those bills created, generated or increased public revenue and that the bills violated article 4, section 18 of the Nevada Constitution because the bills did not receive a two-thirds majority vote in the Senate.

The parties in this case are important, so I have to go through them. The plaintiffs consist of (1) 8 members of the Senate, known as the plaintiff Senators, who voted against SB 542 and SB 551. The plaintiffs also include several private businesses, associations and other entities that pay or whose members pay certain taxes and fees associated with SB 542 and SB 551. The plaintiffs name several state officers and agencies of the executive branch and legislative branch as defendants in their official capacity. The executive branch defendants are the Lieutenant Governor, Kate Marshall, the Governor, Steve Sisolak, the Nevada Department of Taxation and the Nevada Department of Motor Vehicles. The Nevada Department of Taxation administers SB 551 and the Nevada Department of Motor Vehicles administers SB 542. The executive branch defendants have been represented in their official capacity by the Office of the Attorney General. The legislative branch defendants in this case are Senator Cannizzaro in her official capacity as Senate Majority Leader and Claire Clift in her official capacity as Secretary of the Senate. From the onset of this litigation, the legislative defendants have been represented in their official capacity by LCB Legal as their statutorily authorized counsel under NRS 218F.720.

In October, the District Court approved the stipulation and order that set specific dates for the parties to brief dispositive motions on the question of the constitutionality of the legislation under the two-thirds majority requirement. While that dispositive motion briefing was going on, the plaintiff Senators filed a motion to disqualify LCB Legal as counsel for the legislative defendants. After the motion to disqualify was filed, the District Court approved the stipulation and order staying the proceedings on the merits of the constitutional question until the District Court resolved the motion to disqualify LCB Legal as counsel. In response to the motion, LCB Legal filed on behalf of the legislative defendants in opposition. Shortly thereafter as well, LCB Legal filed on behalf of the Legislature a motion to intervene as a defendant pursuant to NRS 218F.720 so that the Legislature could defend the constitutionality of the legislation. In response, the plaintiff

Senators filed a motion to disqualify LCB Legal as counsel for the Legislature as a defendant intervenor. On December 19, 2019, the District Court entered an order which disqualified LCB Legal from representing the legislative defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. The District Court's order also required the legislative defendants to obtain separate outside counsel to represent them in their official capacity. The District Court also denied LCB's request for a stay of the District Court proceedings in order to address the consequences of having the legislative defendants obtain separate outside counsel. Finally, the District Court set a procedural schedule for briefing dispositive motions on the merits of the constitutional issue. Under that briefing schedule, the legislative defendants have to obtain outside counsel and file oppositions to the plaintiffs' motions for summary judgment and file their own countermotion for summary judgment not later than January 21, 2020. Also on December 19, 2019, the District Court entered a separate order which granted the Legislature's motion to intervene as a defendant intervenor. In that order, the District Court also denied the motion to disqualify LCB Legal from representing the Legislature as its statutorily authorized counsel under NRS 218F.720. Thus, the District Court allowed LCB to represent the Legislature for the purpose of defending the Legislature's official interests. However, the District Court prohibited LCB Legal from representing the individual legislative defendants even though those legislative defendants are being sued in their official capacity as constituents of the Legislature as an organization and even though LCB Legal has the same statutory authorization under NRS 218F.720 to represent the legislative defendants for the purpose of defending the Legislature's official interests.

The District Court based its disqualification order on the Nevada Rules of Professional Conduct adopted by the Nevada Supreme Court. The District Court believed that LCB Legal's representation of the legislative defendants was governed by the conflict of interest provisions of Rule 1.7 of those professional conduct rules. That rule provides, with certain exceptions, that a lawyer cannot represent a client if the representation of that client would be directly adverse to another client. Based on its belief that Rule 1.7 applied, the District Court determined that LCB Legal could not represent the legislative defendants because that representation would be directly adverse to the interest of the plaintiff Senators. In the District Court, LCB Legal argued that its representation of the legislative defendants was governed by Rule 1.11, not Rule 1.7. Rule 1.11 applies specifically to government lawyers. Under that rule, the conflict of interest provisions of Rule 1.7 will generally apply to government lawyers except “as law may otherwise expressly permit.” LCB Legal argued that, based on the except clause in Rule 1.11, the conflict of interest provisions of Rule 1.7 are limited by law, including the statutory duties of government lawyers to provide legal representation to their government clients when required by law. Because LCB Legal has been given express statutory authorization by state law to represent the legislative defendants in this case, LCB argued that the conflict of interest provisions of 1.7 were not applicable because of that law in NRS 218F.720. Therefore, LCB Legal argued that it should be allowed to fulfill its statutory duties to provide legal representation to the legislative defendants in their official capacity. The District Court obviously disagreed with LCB's arguments.

It should be noted that the conflict of interest provisions of Rule 1.7 are not limited to litigation. Those provisions apply to all legal work performed by a lawyer, and for LCB Legal's purposes, that would include legal work performed under express provisions of law such as bill drafting under NRS 218D.110 and providing legal opinions under NRS 218F.710. So, according to the reasoning in the District Court's disqualification order, because the except clause in Rule 1.11 is not applicable to LCB Legal's work under express provisions of law, it raises a serious question as to whether LCB Legal will be able to provide bill drafting and legal opinions to a legislator if that legal work would be directly adverse to the interests of any other legislator. Thus, the District Court's disqualification order has a significant implication for the official interests of the Legislature. The District Court's disqualification order will be binding on LCB Legal unless appellate review is sought of that disqualification order. Under Nevada Supreme Court case law, appellate review may be sought of a District Court disqualification order by filing a petition for writ of mandamus with the Nevada Supreme Court directly asking for the court to review the disqualification order.

Therefore, the item that's before the Legislative Commission today for possible action is as follows: the item would be that, to protect the official interests of the Legislature, the Legislative Commission directs the Legislative Counsel and LCB Legal under NRS 218F.720 to take all actions necessary to seek, commence, prosecute a mandamus appellate review action in the Nevada Supreme Court to seek appellate review of the District Court's disqualification order in the case of *Settelmeyer v. State*. Thank you, Madam Chair. I am open for any questions.

Chair Cannizzaro:

Do any members of the Commission have any questions?

Senator Settelmeyer:

Thank you, Madam Chair. Just real quick, there is some discussion between LCB and myself pertaining to Rule 23. To me, though, the question that really comes about with Rule 23 is do I have an economic interest that differs from outside—other legislators or from society at large. In accordance with Rule 23, then I would have to abstain from the matter, but since the Senate Republicans are currently paying their own legal costs in this motion and it does not benefit us economically and unless somebody actually amended the motion to pay our legal fees, which I don't think is likely, then in the matter of defending the Constitution, then I would have to abstain, but until that time I will be participating in this discussion and voting on the matter. Thank you, Madam Chair.

Senator Hardy:

Thank you, Madam Chair. I was going to ask Mr. Powers if he could repeat that. I'm smiling. So, it's been interesting as I have looked at this "conflict," whether it's potential or real, and the reality of the ethics that if I disclose and abstain, otherwise I must vote

because that's what I've been elected to do and that's our requirement, and I have no economic benefit that I can see different than any other person. So, I'm looking at this inasmuch as I'm not paying anybody and not requiring anybody to represent me, and if there was a time to have a real conflict, then the option is open to decline that help, as it were, much as it is that I don't have to fill out my sheet that says I was here for a half a day or a day and took mileage. So, two lawyers are great because they have two different opinions, and when you have confidential advice that may be a conflict with what has been just said, is that a conflict or could it be a conflict or may it be a conflict is an issue. Therefore, number one, I will vote as I have no conflict nor can I see one, and two, ethically, I need to vote as I have been voted on to represent a constituency that anticipates me saying something instead of hiding behind a "potential conflict," and then thirdly, there is a situation where one side of the aisle is taking an exception to the other side of the aisle's expenses to be paid to contest the constitutionality of a clause in the Constitution that the voters put into effect, so this would put into place, if passed, the potential opposition in the Legislature that would encourage litigation funded by the state yet opposed to a minority that could effectively change a two-thirds majority necessary to pass a tax, a fee or a rate increase, and fourthly, I am concerned that the real potential conflict would be if I voted yes to have the state fund litigation proposed by the prevailing party if I were part of that prevailing party. So, there are more questions that I have than I have answers, and I think that the rendition that our LCB attorney gave was emblematic of what did he really say and what did he really mean and how does that affect me and what I'm doing today. So, I think this may be premature to say how and why and how come and am I at risk for the Ethics Commission for not voting, am I at risk if I vote no, am I at risk if I vote yes, and are the people who are for something, are they at risk as well but in a different way. I think this is a conundrum that I'm waiting for the Gordian Knot to be sliced by somebody else's sword. Thank you.

Senator Hammond:

Thank you, Madam Chair. I don't know if I have a question either. It's more of a statement. I've listened to my two colleagues express their feelings on this, and I don't want to add much more to it. I think Senator Hardy expressed it quite clearly. I received an email as well, went through the email several times. The question at hand was would I potentially be conflicting myself if I don't abstain from a vote, the whole premise based upon the idea of gaining some sort of financial—well, gaining something financially through private means or as a private citizen, but as I kept looking at this, I know that—well, first of all, I feel like we just need to get to the bottom of the question at hand. We are asking now to extend, I guess, the question out, and I just feel like I need to be able to vote on this. I don't see any conflict whatsoever as far as me gaining financially. This whole lawsuit is in the capacity as a Senator and I don't see that I will be gaining. I'm not going to be gaining privately in any way, shape or form from this, and so I really feel like, at this time, I will not be abstaining from voting, and in fact, as I looked at the email, I was reminded that the judge's ruling on this was that in this case LCB was being asked not to represent, and yet here I am getting an email telling me from the LCB lawyers, who I respect and admire a lot. I just felt like they were in this case somewhat conflicted, because now

they're giving me information to back away from something that they want to enter into. I just don't understand where we're going with this, so I'm just going to go ahead and vote today.

Assemblyman Jason Frierson (Assembly District No. 8):

Thank you, Madam Chair. I'll say at the outset, I think this is a sad day for our state and we have forgotten how to govern and legislate and have decided to lead by lawsuit. That being said, we are in the position that we are in. I'd like to say, and I'd like to ask Legal if I'm wrong on this, personal financial gain is not the only way that a legislator can be unethical, and I believe that there are other ethics concerns that can create problems, so it's not simply a function of whether or not you have a personal financial stake in an outcome that guides whether or not there is an ethical conflict. That being said, I also would like to ask Legal mechanically what the consequences of a legislator taking an action such as voting when there's been a determination that that would be inappropriate so that this body is making an informed decision. I will say all of this with the caveat that I didn't get this email that is being discussed. I don't know what that email contains, but if Legal has said that this creates a conflict and a legislator decides to disregard that conclusion, where does that leave the consequences so that we can figure out how to move forward instead of relitigating something that we've been talking about for a year?

Ms. Erdoes:

Thank you, Madam Chair. I think what I would want to say is that Rule Number 23 spells out the reasons for needing to abstain, and the one that is being cited here is private economic interest, and that term includes both a benefit to the legislator as well as a detriment to the legislator. So, if the additional cost that could be accounted for based on the additional mandamus action could be a cost to the plaintiffs, then we would normally think that that could be in there. However, I would want to say also that this is a determination that needs to be made by each individual legislator as to how this affects them, and so that is the basis for what happens here. Your other question I think was simply what's the effect. That's also covered in Rule 23, which is that someone could file a complaint with the Ethics Commission, in this case the Senate Committee on Ethics that's created by this section, and then the body would take that up. There is no notion of what would be—and I'd also just like to put on the record that the rules for the code of conduct allow for screening people in our office, and that's what happened here. The person who sent the email was screened from working on the case, just for the record.

Chair Cannizzaro:

Any other questions from members of the Commission?

Senator Settelmeyer:

Thank you, Madam Chair. I was just curious, is the only motion then that's going to be

before us is appealing the judge's decision that a conflict exists, or will we pursue a parallel track at the same time as to not delay justice to put forth a motion to pay for legal counsel for those members that were ruled by the judge needed outside counsel so that we can still keep the judicial calendar of the 21st in time, or will that not be entertained at this time?

Chair Cannizzaro:

I think Mr. Powers can probably answer that particular question.

Mr. Powers:

Thank you, Madam Chair. The action item before the Legislative Commission is for LCB Legal to take all actions necessary to seek, commence and prosecute the mandamus appellate review, and that would include seeking a stay of the District Court proceedings while the appellate review is being conducted. The reason for that is if you do not seek appellate review of the disqualification order as soon as possible, you could possibly lose the right to seek that appellate review. If the District Court proceedings are allowed to continue to final judgment and it's later determined that LCB Legal could still have been the counsel, then the parties' right to their counsel has been deprived because the District Court has already conducted its proceedings, and then so being told later that they could have had LCB Legal as counsel would not be an adequate remedy. So, in order to seek review in the appellate courts, LCB Legal will be filing a mandamus petition and also seeking a stay to ensure that the review of the disqualification order is not rendered moot by the trial court proceedings going forward and therefore ruining the opportunity of appellate review for the disqualification order. Thank you, Madam Chair.

Senator Hardy:

Thank you, Madam Chair. I guess that gets—it's interesting that we find ourselves in a position that we don't have verbiage, language before us about what we're voting on, and then I find it curious that we're voting for a potential issue of a benefit or detriment to us individually because that's how it affects us potentially individually, which I don't think it affects me individually, but hey. So, if there is a benefit or a detriment either way, that is in the Rule 23, so if I get counsel from the LCB paid for by the state, that's a benefit. If I don't get counsel from the state, then that's a detriment, and either way I'm supposed to disclose and abstain, otherwise I'm subject to an ethics complaint, and so that sword cuts both ways. So, who benefits, whose detriment, and either way we have to decide where we stand to accept LCB paid for by the state or say that we are already covered by somebody else not paid by the state and not accepting anything from the state, and so one of the fascinating things that's happening now is we find—let me say I find it interesting that the LCB is in a position where a Chinese wall has been set up so that a person who is trying to advise us who is a member of the LCB potentially would not be in a potential to know what the aspects of the—because of the screening that has taken place to know how to advise with knowledge as opposed to advise with feeling, and so it

seems to me that we have a Legislature that has been separated in a very unique way, that one gets legitimate, sanctioned, approved help by the LCB and one gets not approved, knowledgeable help by the LCB, and so this concept of Chinese wall is kind of like the dam in Holland where you put your thumb in and try to stop the leaks but there are a lot of leaks, so it's not a perfect Chinese wall. So, I think realistically it won't make any difference how I vote because I will have either benefited or had a detriment come to me if I don't disclose and then abstain, but if I—how do I disclose something that I don't know if it's a potential thing I don't know, and if it's a real thing, then I know. So, the concept of how we disclose is flawed because I don't know how to disclose something that I don't know, and I think that is what we used to call unfair and my kids used to say that's not fair, and I'm probably mimicking what they're trying to say is life is unfair, and so we're going to go on and I'll do my duty and vote. Thank you.

Chair Cannizzaro:

Any other questions or comments from members of the Commission?

Senator Ratti:

Thank you, Madam Chair. We've spent a lot of time focused, understandably, on the individual obligations of each of the members, and I respect the concerns that are being expressed but I do want to make sure that we at least have something on the record that gets back to the heart of the matter, and so I want to just make sure that we're clarifying and that I'm understanding what Mr. Powers is saying, that there's been a lot of focus on whether or not LCB can represent our Majority Leader Cannizzaro and Secretary Clift as part of this action. But the bigger concern is that while we're all fighting with each other over this one specific issue that we don't tear down the whole fabric of the nonpartisan LCB legal structure, and again, with all respect to the individual concerns, to me, as a body, all of us, whether we choose to be able to vote or not in this because of our individual conflicts, when we do get to the point of voting, making sure that our own squabbles over two bills in the last legislative session don't destroy our Legislative Counsel Bureau's ability to do the good work that they do, that they have a tremendous track record of over many, many years of the bill drafting and the legal opinions and the ways in which they support each of us as individual legislators, but also us as an institution charged with doing the very important work of creating the laws of the State of Nevada. So, for me, there's a very compelling need to act and act today to make sure that our very capable legal counsel can protect not necessarily Majority Leader Cannizzaro and Secretary Clift, but that they can protect the very role and institution of our nonpartisan legal staff, so I feel like we have to act today. I am sympathetic to the concerns of members who would like more time to figure out their own conflicts or lack of a conflict, but for me, I hope that we can all rise above all of that and make sure that the institution survives the disagreements that we have as individuals. So, I just wanted to make sure that that was on the record and that that didn't get lost in the conversation.

Chair Cannizzaro:

Are there any additional questions from members of the Commission?

Senator Hardy:

Thank you, Madam Chair. I appreciate the words of Senator Ratti. Realistically, when we start looking at a topic where we disagree on, we each have access to legal counsel, and in this particular instance, those who have taken a stand that has quite frankly nothing to do with individuals as much as it does with philosophy, and so if our philosophy is to have a bipartisan debate, as it were, then both sides should have access to a counsel that has traditionally been very bipartisan and very helpful to all of us individually and collectively, and so at this point in time, I think there has been a feeling that maybe that counsel has not been available to those who have been in a minority position, and that may be a fault of us in the minority position not expressing that adequately, but I think this particular issue is bigger than just "a difference of opinion." This is something that is precedent-setting, and the precedent we're setting is representation by people who have voted and people who have understood that we have traditionally had a very bipartisan approach to what we do in the State of Nevada, and this is a chilling concept that is happening, that one person, I'll call it one philosophy, can be represented adequately and the other philosophy is screened out and can't be represented adequately. Thank you, Madam Chair.

Assemblyman Frierson:

Thank you, Madam Chair. I think that we could debate this forever. I think that we will always have a prevailing side, and we can't file a lawsuit every time we are not on that side, and so I would, if the Chair is seeking it, would make a motion to direct the LCB to take whatever legal action necessary to represent the state and represent the Legislature in this action as set forth by Mr. Powers.

> ASSEMBLYMAN FRIERSON MOVED TO DIRECT THE LEGISLATIVE COUNSEL BUREAU TO TAKE WHATEVER LEGAL ACTION NECESSARY TO REPRESENT THE STATE AND THE LEGISLATURE IN THE ACTION, AS SET FORTH BY MR. POWERS.
>
> SENATOR DENIS SECONDED THE MOTION.

Chair Cannizzaro:

Okay, there is a motion by Speaker Frierson and a second from Senator Denis. Discussion on the motion?

Senator Hardy:

Thank you, Madam Chair. I think this is the first time—I mean, I understand why, but this is the first time I'm voting on a motion where I don't have a clue what the "take any action" is, and I think it's the wrong way to have a motion, and I would love to see if Legal has "whatever action" they want to take has a voice and what action they want to take in order to have a vote that is clear what we're voting on. Thank you.

Senator Settelmeyer:

Thank you, Madam Chair. In that respect, I appreciate the comments by the Senator from District 13 and my colleague up here in the north. I understand her concerns. I agree with the Speaker; this is a sad date. It just comes down to me, though, that this is an issue where one viewpoint, the majority, and the minority are at conflict that has been established by simply the filing of the court case, and I tend to agree with the current rule of law as put forth by the judge, that a conflict has been established, and we should try to resolve the issue at hand, and I will not be supporting this motion. Thank you.

Chair Cannizzaro:

I do also have—I will disclose that, to comply with Rule 23 of the Senate Standing Rules, I would disclose, and I think we've heard, that I am a named defendant in my official capacity in this action that is under consideration today, so because of this, I will not be voting and will be abstaining from participation in this item on the agenda. Any additional questions, comments on the motion?

THE MOTION PASSED (SENATORS HAMMOND, HARDY AND SETTELMEYER, ASSEMBLYWOMAN KRASNER AND ASSEMBLYMAN WHEELER VOTED NO; SENATOR CANNIZZARO ABSTAINED.)

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Chair Cannizzaro:

Okay, thank you everyone. We are going to actually move back to item IV and continue with our review of the regulations that we've pulled for today. We have four more left. The next one on our list is R056-19, and it is the Government Employee-Management Relations Board (Agenda Item IV), and I believe Assemblyman Daly had some questions. So, once you get settled, we'll turn it over to Assemblyman Daly to go ahead with his questions. Welcome.

Bruce Snyder (Commissioner, Government Employee-Management Relations Board):

Do I just do the questions, or I can give an overview, if you wish?

Chair Cannizzaro:

Assemblyman Daly, if you're ready, we can actually go ahead and we'll go with your questions or comments, clarifications.

Assemblyman Daly:

Thank you, Madam Chair. Most of my questions are in regard to section 5, and I went back and I looked at section 27 of Senate Bill 135 and it does talk about holding or potentially doing a preliminary investigation once a complaint gets filed. I asked someone who practices in front of the Board regularly to look at that and give me some comments back. He had the same concerns that I did on what the Board will consider in 5(1)(a), (b), (c) and (d), so I'd like to get a little explanation around why those are relevant, how they're being interpreted, and then what the process is really going to be in determining whether or not you even do a preliminary investigation, because then, based on that investigation, you're either going to say, "Hey, there's merit to the claim," and schedule it for a hearing, or you're going to dismiss it. If I recall, you're going to take (a) or (b) of section 27. So, the first one is whether a complaint or a petitioner is represented by counsel, and I thought back and forth on that, so maybe you're going to say—because the language in the bill says you may do a preliminary, you don't have to. If they're represented by counsel, is that somehow going to say, "Hey, we don't need to do an investigation or a preliminary investigation because they're represented by counsel," and if the counsel's bringing forward a complaint, and I'm going to cite what the attorney told me is that I think rule 11 of the Nevada Rules of Civil Procedure already required attorneys putting in that case to certify that they've taken—they've already made an inquiry reasonable under the circumstances, so how are you viewing the relevance of someone being represented by counsel as a consideration of whether you're going to go forward with a preliminary hearing, and then I have a question on each of the four.

Mr. Snyder:

The EMRB (Employee-Management Relations Board) is finishing up tomorrow its fiftieth anniversary, and during those 50 years we have never done an investigation. This is a new provision that only applies to the state for unfair labor practice cases, so this is something new for us. First of all, we do not have anybody set aside to do solely investigations, so that would fall on me to do any investigations of any complaints at the state level. We discussed this at the first workshop in particular where there was some concern that going away from the EMRB being an impartial body acting more like a court instead doing an investigation and taking sides based on that investigation, whether or not that would hinder the agency as a whole and me in particular as the Commissioner in

my interactions with the Board. I'll be up front, the preference here is not to do investigations, and these are the things that we would look at: (a) is whether or not they're represented by counsel. Right now, about 99 percent of our cases are represented by counsel. Each government has their own labor attorneys either in-house or on retainer, same with the labor organizations. They have either in-house or on retainer. We do get a few pro se complaints, and many of the—there aren't many to begin with anyways, but the pro se complaints tend to be people who don't really understand what our agency does, and even when we tell them, they still insist on filing a complaint. Almost universally when they get before the Board, there's a motion to dismiss that's filed, and quite often when such a complaint does get before the Board, the complaint is dismissed as not being under the jurisdiction of the EMRB. One of the things that we would look at here under (a) is whether or not the complainant has counsel or not. If they don't have counsel, instead of waiting for the Board to take action or have a hearing and spend those resources, whether or not it might be beneficial to more favor taking some of my time and doing an investigation up front to determine mostly whether or not this is something that's even within the jurisdiction of the agency. So, that's why that distinction was made between counsel and not having counsel.

Assemblyman Daly:

And I appreciate that. So, if somebody does have counsel, you're less inclined to do a preliminary investigation? Is that what you're saying?

Mr. Snyder:

Yes, because we have a small cadre of attorneys, probably about 50 or 60, who practice before the Board. They're well versed in our agency and what can and cannot be brought before our agency versus, let's say, another agency, and so they know that distinction, and when it comes to someone representing themselves, who through just not being counseled in the law, they're looking for an agency to go to, and so at some point in time, there's either going to be a motion to dismiss filed. It's almost always filed in a pro se case, or whether or not it would be more beneficial to at least do an initial investigation, or I could write a report saying yes, this claim does fall within one of the unfair labor practices within our law, or no, it does not, and save everybody some time.

Assemblyman Daly:

Okay. Well, I'm not exactly sure we're making progress there. So, when you're looking at these on whether you're going to do the preliminary, and I understand what you said, that this is a new provision. You didn't have to do this kind of stuff before on a preliminary investigation, but when you're looking at—when I look at the things that you're going to consider on whether or not you're going to do it, I'm looking for either some comfort or understanding on why persons represented by counsel makes a difference to you and then what direction you might be headed based on that. People do have the right to represent themselves. They can file a complaint, if it's in your jurisdiction, etc., etc. I

understand 99 percent, like you said, represented by counsel. To me, that would mean 99 percent of them are not going to need a preliminary investigation because that attorney, if he's putting the case forward, has already done under the rule a reasonable inquiry under the circumstances. I'm just looking at this and telling you the concerns that I had and the concerns that someone who practices in front of your Board has based on where you're at. On (1)(b), whether the complaint or petitioner has conducted an investigation of the complaint or similar complaints, my thought was on that, I say, "Well, how is a person if they're representing themselves, especially, supposed to do an investigation against the state agency or whatever to other complaints and various things?" You're going to consider that, and then what weight is that going to be in your consideration of whether you're going to do a preliminary one? Is this a case of first impressions, never happened before? It's the first issue you've had under this executive branch agency who now is under these rules who wasn't before, so it seems to me all of these cases are going to be new.

Mr. Snyder:

Well, a number of the cases that come before our Board are also filed as a grievance under the collective bargaining agreement. So, let's say someone was terminated and they believe that they were unlawfully terminated and that they also—their termination somehow violates our act. The parties to the case at the arbitration at the grievance level, they've already done their investigation. The attorneys in those cases know the case very well, so for us as an agency to do our own investigation would be not only duplicative but very likely not as well done as the ones done already by the attorneys who have already represented the person at the grievance level, who have lived that case and know it inside out. So, to the extent there's already been a separate investigation done, it would be less likely that we would do our own. That's what this is saying.

Assemblyman Daly:

And I think we're conflating two different things, because this particular bill applies to state employees and doesn't already cover the county and city who already had collective bargaining, so my understanding is that this procedure is only going to apply to state employees who may or may not even have a collective bargaining agreement, and I think you've answered one of my other questions. So, they could negotiate a grievance procedure separate from the EMRB process and just go to an arbitration if and when they have an agreement, an approved unit and all that kind of stuff?

Mr. Snyder:

Correct. There are no CBAs (collective bargaining agreements) today at the state level. Of course, there will not be any in effect until July of 2021. But assuming that we do have labor organizations that are designated for the bargaining units and they have contracts, I can rest assured that they will have something in there about the whole grievance process. I don't know of any collective bargaining agreement that doesn't have such a

process broken out already in the contract.

Assemblyman Daly:

Again, I'm not sure we're there yet. So, (c), the number of persons affected by the alleged violation, I'm not seeing how that's relevant to whether or not you would want to get to the bottom of it if you were going to do a preliminary investigation.

Mr. Snyder:

I think what this is trying to say is we're more likely to do an investigation not only when one hasn't been done under (b), but under (c) when it affects more people. If it's a case where, let's say, an unfair labor practice affects 100 people at the state level due to some practice that maybe the state is imposing that the labor organization thinks is not correct or vice versa, that given our resources we would be more likely to do an investigation than if it only affected one person.

Assemblyman Daly:

And I think I probably have a problem with that as well, but nevertheless, so the—and I'm trying to—when you get a complaint, it says you may do this preliminary investigation, so if you decide not to do a preliminary investigation, how are you going to base whether or not the complaint has merit, go forward and various things, or are you going to just dismiss it? Well, don't have the resources, which gets me to (d), the amount of time and resources necessary to conduct investigations. I think that's a problematic factor as well. You're going to say, "Well, this one, I just don't have the resources to do it. They may have a perfectly legitimate claim, but we don't have the resources or it's just not worth it. There's only one person affected, so we're not going to do it and we don't have enough information based just on their complaint, so we're going to dismiss the complaint." That's my concern, that this whole process is kind of getting set up on whether you're going to do this investigation on whether or not a person's going to get a hearing, and that's really my concern is that too much of this stuff is going to be up to somebody making a bureaucratic decision based on dollars or based on the number of people that dump a person's claim and say they don't have—especially like you said, when you don't have bargaining units in place yet, there may be organizations, some people that are helping them, but I just think these parameters are not useful parameters on you deciding whether or not you're going to have a hearing and a case is going to go forward or you're going to get rid of it.

Mr. Snyder:

Okay. Everybody who files a complaint will either get a hearing before the Board or at least have a motion to dismiss heard before the Board. You file a complaint. The other side, if they file a motion to dismiss, the Board will then rule on the motion and either grant the motion, in which case the case is dismissed, or not. That is not a function of the

Commissioner, me. If they deny the motion to dismiss, then you automatically get a hearing before the Board. This only sets up an optional procedure prior to any of that taking place where, if we think that maybe it would be useful for the Board in determining whether or not a hearing should be granted to do some form of a preliminary investigation, the results of the investigation will then be presented to the Board who will then still have to decide whether or not to grant a hearing. They're the ones who decide whether or not to grant a hearing. If no investigation is done, then the parties under our rules would file prehearing statements where they flesh out more about their case, and that would be used as, in effect, the substitute for the investigation. This process is only whether or not we can provide additional information up front that would be useful. For example, whether or not this complaint is actually under our Board's jurisdiction, and it's not meant as a way to screen out cases and prevent them from having a hearing.

Assemblyman Daly:

And I appreciate that, and that's what I want to try to get to is that there's a process. So, if there is a motion to dismiss, and you said most likely there is—and like I say, I don't do the public sector. I don't know these rules as well. That's why I called someone who practices in front of them and said, "Hey, what information can you give me?" So, if there's a motion to dismiss, there's going to be a hearing on that particular motion whether or not it should be dismissed or not, so they're going to get their hearing and availability to get their information out, and then if it's not in your jurisdiction, you can uphold the motion or deny it if it is and say, "No, we're going to go forward, there's sufficient evidence," because you're just looking for the smoke, not necessarily the fire. That would be in the testimony and the evidence that's presented in a hearing. Is that correct?

Mr. Snyder:

Yes, correct, and then under (3) it says if a motion to dismiss has been filed, then our preliminary investigation process would not be used or would stop in its place because now that there's a motion that's before the Board and there's no longer a need for the investigation.

Assemblyman Daly:

And I appreciate that, and I was going to ask that question but you got to it before I had a chance. So, let's switch gears real quick to, let's say, you are going to be doing a preliminary investigation, I think under (2)(a) and (2)(b). I had several questions that were posed to me and I didn't really think of, is if you are going forward and you're doing this and you're talking to people, will those interviews and stuff be on the record? Will they be recorded? Will the opposing party be able to be in those interviews? Will the witnesses be allowed to be represented when you're doing those interviews? Those were the type of process questions that came up when I posed the question to my attorney friend, and that's not in your rule. What would be your normal procedure on that? Usually if you're having a hearing, all of those answers are answered in the affirmative. Yes, it's recorded,

people would get the right to be represented, etc. But in this preliminary process, it doesn't show that you've adopted any of those types of measures, and then would it be on the record? Would it be confidential? Would it be able to be used in the proceeding? All of those questions.

Mr. Snyder:

The person could be represented by counsel. Again, I was envisioning using this more often when people do not have counsel, but they could be represented by counsel, of course. It would be on the record if I do an interview. A lot of it would be collection of documents that might be pertinent and then there would be a public record, and then I would envision that anything that was accumulated during the investigation would be an appendix to the report that would be prepared for presentation to the Board so that the Board could see not only my investigation but also the supporting documents that would give credence to whatever recommendation was made before the Board, and then it's up to the Board to decide what they want to do.

Assemblyman Daly:

And I appreciate—thank you. I think I'm almost to the end, Madam Chair. Again, in section (2)(b) where you're being asked for records and production of documents and various things, that's kind of incumbent on the person, which would normally come out at the hearing in the testimony, so this new area where you're going to potentially do this preliminary investigation to determine if there's a case and then do one of two things under the statute, which is dismiss it or set it for a hearing, I don't know that it's completely fleshed out and that the reasoning is—I'm still not 100 percent comfortable with it, and I don't know how urgent some of this stuff is right now, but I still have several questions and go back with some of your answers and say what's the rest of the story.

Mr. Snyder:

This section is not urgent right now because, per the terms of Senate Bill 135, very few unfair labor practice cases can be filed at this time. The only ones that could be filed at this time are those related to a labor organization seeking to become the exclusive representative. None of those have been filed. It is truly our intent, and I think I heard that at the workshop, I've heard it from our Board members also, that they're used to operating as a court, an independent body where you take both sides who normally do their own investigative work and through examination at a hearing, a cross examination, you'd want to come up with the truth, and so it would be—although the law allows it and we put something in the regulations that would try to flesh that out a little bit more, it is truly a concern of mine not to overuse this process at all, because I think we've been well served for the last 50 years of acting more like a court and not acting more like a prosecuting body where we take sides up front as to this is the side that should win and this is the side that should lose and go into before the Board with that type of attitude where staff has already chosen sides. I want to assure everybody that this would be judiciously used

and seldom used, and may not for the next year or two be used at all, and if that's the case, then I would not be adverse to coming back before you after the next session and fleshing this out some more. But I guess the presumption is not to use this.

Assemblyman Daly:

Right, and the statute does say may. It doesn't say you have to, it's permissive. However, if it's there, and like I said to I think one of the other guys earlier, is I understand the intent and where you're at and various things, but then I look at, well, what do the words say, and that's really the bottom line, what do the words say, and you don't know who the next Director's going to be either, right?

Mr. Snyder:

No, I have no idea.

Assemblyman Daly:

Yeah, exactly, and neither do we, which is why we try to make sure that we get these words right now, if it's not urgent. I think at least the part that says, "Hey, if you're doing this," that it would be on the record, it would be discoverable, they would have a right to an attorney. I think all that stuff needs to be—people's rights need to be enumerated and not just leave it up to, well, that's been our practice, and that'll be the practice right up until it isn't. So, I think those things at least need to be put in, and then try to get some answers on those four criteria you're going to use. Consider on that on what that means and why those things make a difference, especially the resource one's causing me problems. I don't want someone to look at it in the future and say, "Don't have resources so we're not doing it."

Mr. Snyder:

There is no urgency on this section. However, I do need to advise everybody there is an urgency overall. Senate Bill 135, section 53(4) prohibits the Board from designating any labor organization as their representative of a bargaining unit until the regulations are finalized. Our Board is set 2 weeks from tomorrow to hopefully designate labor organizations for 5 of the 11 bargaining units, but if the regulations are held up, then of course that would have to be postponed.

Assemblyman Daly:

Well, I don't want to postpone the whole thing, but I also want to get these sections fixed.

Mr. Snyder:

If it helps everybody, I would be glad to put on the record that we will not use this provision

and come back at a later time and clean it up. But I would be really heartbroken if we would hold up the entire thing because of this. I would be agreeable not to use it.

Assemblyman Daly:

Not to use it and come back with—go through the regulatory process again and make amendments to this particular section before it would be implemented. And I'll take your word on that. You look like an honest fellow.

Mr. Snyder:

If that's what the body would want. It's up to you guys. I'm just trying to tell you that we've worked hard to get where we are today and to be ready to have all 11 units designated in time for the bargaining to start. This would slow things down for sure.

Assemblyman Daly:

Final comment, Madam Chair, and then I'll go ahead and make a motion after that. But we can't dictate to you that you come back and do the regulation. We just take your word. If we could do that, we'd be a different body. So right now, all we can do is up or down on the vote, but on your assurances that you wouldn't be using this until you've gone through the regulatory process to address some of the issues that were brought up today, I can support going forward because we don't want to hold up the other stuff, but we do want to make sure that these sections get cleaned up. With that, I'll make a motion, Madam Chair.

ASSEMBLYMAN DALY MOVED TO APPROVE R056-19.

Chair Cannizzaro:

Okay, and so that's a motion to approve the regulation because that would be the appropriate motion for us to make today would just be to approve these regulations as they're before the Commission.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Mr. Snyder:

Thank you very much, and I want to thank Brenda Erdoes and her staff for working on this. Thank you.

Chair Cannizzaro:

Thank you. All right, that brings us to our next item on the agenda. It's R065-19 for the Secretary of State (Agenda Item IV).

Assemblyman Daly:

Madam Chair, I just have one comment, and I don't know if they need to go through their whole thing on that, but in section 34 it makes some information confidential, and as I've stated before, I don't like to see things be made confidential by regulation. That's my concern. If nobody else has any other questions, we can move forward. I'll just vote no and go from there.

Chair Cannizzaro:

I don't know if anybody else has any questions or comments or if the Secretary of State's Office wanted to just very, very briefly address that reason why that would be confidential in that regulation.

Lenora Mueller (Notary Administrator, Office of the Secretary of State):

Let me turn to section 34. Can you be more specific what your question is? I'm sorry.

Assemblyman Daly:

It was in section 34. It just makes the information—and I'm not saying that the information that's there shouldn't be confidential and that it's not reasonable, I just don't like to see it in regulation is all. That was my comment. I'm just trying to be consistent with the positions I've taken in the past on other regulations that have made things confidential by regulation. I'd rather see it be done in statute.

Ms. Mueller:

So noted.

Chair Cannizzaro:

Any other questions or comments from the commission?

SENATOR HARDY MOVED TO APPROVE R065-19.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYMAN DALY VOTED NO).

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Chair Cannizzaro:

Thank you very much for being here and hanging with us. We'll move on to the next item. It is R096-19, Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation (Agenda Item IV). Once we have folks settled, I will turn it over to Assemblywoman Carlton, who has some questions.

Assemblywoman Carlton:

Thank you, Madam Chair. I appreciate the time and being able to discuss this. This is one that comes before us on a regular basis. If I understand this correctly, it adjusts the schedule of contribution rates for the employers for calendar year 2020. The rates will be going down, and the way that I'm reading this, it is a little confusing. I have concerns. Employers are currently paying these rates. For those of us that survived the recession and had a lot of work to do with unemployment compensation and having to go out and actually have to take out loans in order to be able to deal with unemployment—in that time, we had a significant reserve. Things had been very good in the state. When I see these numbers go down, I always have a bit of concern. We know that there are some projects out there that have time limits on them and there will be folks who may be needing to access this support in the future, and I'd just like to hear where we are with the reserves and what it actually looks like, because we have been living, I believe, on borrowed time with our economy here in this state and we are due for a downturn, and I just want to make sure that we're not lowering a rate that everyone is currently paying just to save everyone a little bit of money when our reserves may not be where they need to be in order to address the needs that might be coming down the road within the next year.

Kimberly Gaa (Administrator, Employment Security Division of the Department of Employment, Training and Rehabilitation):

We just got updated numbers this morning. We are at $1.937 billion in our trust fund as of today, and comparing that to 2010, we were already borrowing $10 billion. Sorry, I'm going to phone a friend. I'm going to have Alex Capello go into more detail.

Alex Capello (Research Analyst, Department of Employment, Training and Rehabilitation):

As Kim mentioned, we stand at $1.93 billion in the trust fund. Our previous high point prior to the recession was just slightly north of $800 million, so we've literally added $1.1 billion. The tax rate that is being proposed will continue to grow the trust fund. We've basically been—our foot's been on the gas for the last few, 4 or 5 years—well, more than that; actually, 6 or 7 years—and so this is kind of bringing that rate down to a number that is kind of equal to the historical rates that would kind of keep the trust fund in balance while also continuing to grow, because unemployment insurance activity is at all-time lows. So, that's kind of where we're at.

Assemblywoman Carlton:

Okay, thank you, and I appreciate that. I guess my concern is just a philosophical one, having to sit and listen to businesses say, "Why are you raising this when we're in a downturn?" We should be paying this when times are good. We should be saving when times are good. The last thing we want to do is be put in the position that we were put in the last time of having to adjust rates when businesses were struggling, so I guess I just have a concern. But hearing the numbers that you have and not a full packet on where we actually are with employees in the state, the actual costs that we would have to bear, I understand that you do want to lower the cost to these businesses, but it just seems to me that the time to save and be prepared is when times are good. Thank you very much.

Senator Hardy:

Thank you, Madam Chair. Just to correct in case it gets into the minutes, in 2010, what was your fund? How much was it? Was it $10 billion or was that a misspoke?

Mr. Capello:

These are all quarterly ending balances. The trust fund was around $-500 million at the end of 2010.

Senator Hardy:

So we're actually in a better position than we were in 2009, 2008 than as we are now?

Mr. Capello:

Yes. One of the ways that this fund is kind of determined what is a solvent trust fund is it uses those worst years in the recession to kind of guide a state as to what the appropriate balance is. One of the measures used is called the average high cost multiple. It takes those 3 worst years and puts them against your current trust fund balance. We currently are at our highest since the early 1980s, 1.5, and again, it's adjusted for that worst

experience. So, we're growing, continuing to grow and are already at kind of our record levels with that.

Senator Hardy:

All right, thank you. Thank you, Madam Chair.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission?

SENATOR HARDY MOVED TO APPROVE R096-19.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN CARLTON VOTED NO).

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Chair Cannizzaro:

The last regulation that we have for consideration today—thank you very much for being here—is R066-19, and it's an early review for the State Board of Optometry (Agenda Item IV). Welcome. I believe Assemblyman Daly had a question, so we'll turn it over to you, Assemblyman.

Assemblyman Daly:

Quick questions, relatively easy. I think in section 17(2) it says the Board or its designee. Just wanted to make sure their designee is going to be someone that's in your staff, not delegated out. It's going to be state employees, basically looking—normal language, but it's your employees?

Caren Jenkins (Executive Director, State Board of Optometry):

The intention is to allow the Board to delegate to the Executive Director the ability to approve standard—an applicant meeting standard licensure requirements.

Assemblyman Daly:

And then, the only other question I got was in deleted sections. I think 636.330 on page 35, you're deleting the reference to an intervenor. Are people still going to be able to

intervene in some of these cases? It's somewhere else in the regulation or in statute?

Ms. Jenkins:

Assemblyman Daly, you may recall from our legislative session when we revised a lot of our statute, and this is part of the revision that refers to 233B and the administrative procedures act rather than having those provisions in our statute, and this simply takes them out of our regulation as well.

Assemblyman Daly:

And that's all I needed to know. Thank you.

Ms. Jenkins:

Thank you.

SENATOR DENIS MOVED TO APPROVE R066-19.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you. That concludes item IV on our agenda. We had already taken care of item V, so we will move to item VI, which is review of proposal to conduct performance audit of the State Board of Medical Examiners. Members of the Committee may remember that we discussed this a bit at our October 30 meeting and authorized an RFP (request for proposal) and approved the issuance of the RFP and to consider that, and so I am going to turn it over to Dan Crossman. Mr. Crossman, whenever you're ready, if you can walk us through that agenda item?

Dan Crossman (Legislative Auditor, Audit Division, Legislative Counsel Bureau):

Thank you, Chair. I will move right through the unnecessary pieces. The proposal was submitted timely by the Federation to Director Combs and is located in your packet (Agenda Item VI). You may notice there is a copy. It should be in front of you. We had some scanning issues, so the full copy should be there on your desk. I'll briefly just review the proposal and its contents. Page 4 of the proposal does provide an overview of the

legislative mandate and discusses the objectives of the audit. Those objectives that they included in the proposal are consistent with statute and include a review of the methodology and efficiency of the Board in responding to complaints filed by the public against a licensee or by licensees against licensees; the methodology and efficiency in conducting investigations of licensees with two or more malpractice complaints in a 12-month period or who have been subject to certain peer review actions at a medical facility; methodology and efficiency in taking preventative or progressive actions to remedy or deter unprofessional conduct by licensees before such conduct results in a violation and warrants disciplinary action; and finally, the managerial and administrative efficiency of the Board in using the fees it collects. Skipping to page 10, the Federation does indicate they have no conflict of interest which would result in a disqualification of the proposal. On page 11, the proposal includes some technical and background information noting that the Federation does represent 70 medical boards within the United States and its territories. Their mission is to serve as a voice for the state medical boards and support them through education, assessment, research and advocacy while providing services and initiatives that promote patient safety, quality health care and regulatory best practices. On to page 12, it describes their capabilities, and they do note that they did perform this audit in 2003 and 2012 as well as evaluations of numerous other boards. On page 13, it does include the costs of the audit, which was $26,540, and under the provisions of statute would be paid by the Nevada State Board of Medical Examiners. Pages 14 to 16 describes their work plan and methodology. Pages 17 to 19 provide information of the staffing and some of the background of those team members that would be performing the audit. Pages 20 and 21 provide additional representations regarding confidentiality and responsibilities of the parties involved. According to NRS 630.127, if the Legislative Commission determines the Federation is able to conduct a fair and impartial performance audit of the Board based on the proposal, the Federation would be engaged to perform the audit. The Audit Division would then work with Director Combs and the Federation to execute a contract. If the Commission determines the Federation does not have the ability or is otherwise unable to perform a fair and impartial audit of the Board, the Commission would then direct the Audit Division of the Legislative Counsel Bureau to conduct the audit. With that, I'll conclude my testimony and welcome questions. I have asked Shannon Ryan, the Chief Deputy in our office, to be at the table today to help me with any difficult questions as she has some familiarity with this process in the past.

Chair Cannizzaro:

Great, thank you.

Senator Hardy:

Thank you, Madam Chair. It's been my impression as I've looked at the LCB audits that they not only are adequate but they have a follow-up option to them as opposed to we just receive it in 2012, and then what did we do with it? I look at the state doing things and I say, okay, the state has done a yeoman's job at trying to figure out what the findings

and corrections were. We are in the lowest 10 percent of states in trying to have doctors in Nevada. The performance of doctors, how to accept them, how to do the application, how to accept endorsements, how to report finances to the Board so that we're not surprised when there's a $3.4 million building and we say, "Where did that money come from other than dues," and are there enough investigators, reviewers? Are they up to date? Is there timing to hear the complaints and resolve them? Is there a length of time to license? Do we have the ability to observe the number of applications that are complete versus partial, how to get them complete and licensed, the salaries of the staff commensurate with statute as well as the community? The State Board's capable and likely to benefit from becoming landlords themselves or other state agencies, and the effectiveness of inviting and securing doctors coming to Nevada. That's the kind of audit that I'm looking for, one that is active, proactive and efficient in doing something, and I love the state audits because it gives me that kind of information as opposed to an every-7-year audit from the FSMB (Federation of State Medical Boards), so I like the state doing it, and that's my opinion. Thank you, Madam Chair.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission?

Senator Ratti:

Thank you, Madam Chair. So, what I'm wondering is if they are mutually exclusive, because I tend to agree with Senator Hardy's comments that the state audits have been so effective. I think the example of the work that was done on CBLAs (community-based living arrangements) really turned into some meaningful legislation in the last legislative session, and I too would be interested in our State Auditors' work on this issue, but I wonder if our State Auditor would benefit from the work that would be done on having this outside person do it, because what they're going to bring to the table is comparative data and anecdotal data from other states and what other states are doing well that we may not be doing well and set us up to be able to use that to then give our State Auditors the information that they need to be able to give us really state-specific solutions. I got to sit on the Occupational Licensing Learning Consortium, and if we learned anything it's that all of the states have very different approaches, and so I think that those state-specific solutions are very important, the ones that could come from a State Auditor, but I also think that learning from what other states have done could be helpful. So, my main question is, is it mutually exclusive? Could we do this and then have our own auditors build off of this? I guess that question's probably to our State Auditors. Would they see that there's value in having this information before they dug in?

Mr. Crossman:

Thank you for the question, Senator Ratti. I think it's important to note that the Federation is the expert in understanding the regulatory process of the medical boards. The information they currently maintain is not something we have access to today, if you will.

There would be value to me in obtaining their review with an understanding that the work we would do generally would be more detailed. We would dig deeper into the issues we might find. An audit performed by us, it's highly risk-based, and where we found issues and found risk, we would do more work in those areas so that—to go back and answer that question directly, I think there would be value in understanding what the Federation would find through their process, and then if we were asked to do an audit following up on that, we would then obviously not address the same issues they have and do our best to provide value.

Senator Ratti:

And if I may follow up, Madam Chair?

Chair Cannizzaro:

Yes, please.

Senator Ratti:

My question to that is—because again, Senator Hardy and I are very much on the same page here, that I believe that this is a significant risk to our state that we don't have enough providers, and figuring out ways that we increase the number of providers is important. Is that a way that auditors would define risk, or are you really only looking for things where there's a liability issue, or is risk also policy-level risks of provider shortages and not being able to address some of those needs for the state?

Mr. Crossman:

Senator Ratti, risk could be in any area where there is risk, whether it be financial, procedural, so if directed by the Commission to go beyond—some of those areas that you're discussing are encompassed in the statute. Some of them may be considered outside of the specifically defined areas in 630.127, but at the direction of the Commission, we could look at any areas within the Board.

Senator Ratti:

Thank you.

Senator Hardy:

I am obviously not opposed to having two eyes looking at the State of Nevada, how we can deliver/get/have available access to care, and if the state audit would do that, that's great. If the Federation of State Medical Boards were able to do that, I think the additional input would be fine. So, the question comes back then, can I vote to approve the Federation of State Medical Boards and the state audit in the same motion today and get

both done?

Mr. Combs:

I would suggest that maybe I just need to hear from Dan real quick to see kind of what his plan for starting such a two-part audit process would be, because it might be that he just includes the audit of the Board of Medical Examiners on the next list of agencies that he's going to come and ask this Commission for authority to audit, because this one isn't supposed to wrap up until this summer, I think. So, Dan, would that kind of be your idea in this, is that that would be easiest would just to agree to include it in the next cycle's audit plan that you would take the Federation's findings and then start an audit using that as a starting place?

Mr. Crossman:

We could definitely include that in the audit plan which would come before the Commission next fall.

Senator Hardy:

Would next fall be the completion of the audit or next fall be the beginning of the audit? Not that I'm interested in the spring after that next fall, but that would be the time that we could actually do something legislatively. So, is it in time for the legislation to take place?

Mr. Crossman:

If we were to put it on the audit schedule for next fall, that would be when it would be approved, and we would begin work after that. To complete an audit in the late fall and have it ready for session would be very difficult, so if it was the Commission's desire to have us complete this audit before session, my recommendation would probably be to have that recommendation come to us at the next Commission meeting and that way we could dedicate the resources we would need to begin that audit while not duplicating efforts and not stepping on the toes of the Board while they have the Federation there during the audit. It would take us a couple months for them to get through their process and then we would begin an audit once they had finished and we had received their findings.

Senator Hardy:

So, is that a yes, you'd love to do it?

Mr. Crossman:

No comment. We would be happy to perform any audit that the Commission desired.

Mr. Combs:

I just wanted to state that my thought was more along the lines of, between the time they finish in June, the Federation would finish in June and our next audit program would only be about 3 months, is the reason I suggested it the way I did to Dan, but if the Commission's will is to start it immediately upon completion of the Federation's audit, I believe—and I've talked to legal counsel and they've confirmed that the agenda item, the way it's worded together with the statute that talks about this item, would allow you to do what you're trying to do, which is to go ahead and approve a two-step process and direct the Legislative Auditor to start the audit immediately after we receive back the Federation's work.

Senator Hardy:

If you're ready for a motion, I would move that we so do the Federation of State Medical Boards and upon completion in June, immediately start the Nevada State Audit with the intent of having it done and available before the session.

> SENATOR HARDY MOVED TO APPROVE THE REQUEST FOR PROPOSAL FROM THE FEDERATION OF STATE MEDICAL BOARDS AND TO CARRY OUT THE AUDIT OF THE STATE BOARD OF MEDICAL EXAMINERS AS DESCRIBED.

Mr. Combs:

Dan, I just want to make sure again that that's not an over-commitment. Would it be before the session ended, like in April or something? Is that reasonable, or do you think you could get it done before the start of session?

Mr. Crossman:

It's difficult at the moment to say when we'd have it done. My concern would be, in order to break down what the federation has completed and then to go in and to do our preliminary work and run through the different areas and to vet out—there's a myriad of issues that have been brought forth today during the meeting of concerns or areas potentially for us to address. During session is what my heart tells me realistically, unless we pulled people off of other projects and dedicated some significant resources to try to push this to have it done before session.

Senator Hardy:

When during session?

Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27):

Chairwoman, could I interrupt to ask kind of a procedural question?

Chair Cannizzaro:

Yes, please.

Assemblywoman Benitez-Thompson:

Okay. So, we have the Audit Subcommittee that hasn't met yet but will be meeting. Is there a way, as opposed to kind of backing ourselves into a corner on a timeframe before we let the Audit Subcommittee kind of talk through—because typically if we insist on an audit being done in a specific timeframe, we can accomplish that, but it usually means another audit has to be changed, either dropped from the schedule or pushed back on the schedule, and I think that's what I'm hearing Mr. Crossman talk about when he's talking about available resources. That Subcommittee usually kind of has that discretion or that conversation around the ordering of the audits and prioritizing them, and I'm just wondering if we leave it to that Subcommittee when they meet to kind of have that conversation as well, and then just authorize what we need to authorize today, which is, I think, making the big decision about if we do the external.

Chair Cannizzaro:

I know we have a pending motion to approve the RFP for the Federation and then to have LCB sort of follow up on that, but I believe the clarification that was requested from Assemblywoman Benitez-Thompson would be to allow the Audit Subcommittee to help with the timeline for that in terms of prioritizing and all of that, with the idea being that ideally we would love to have this information sooner rather than later, but there are obviously resource constraints associated with that as well that would be better considered, at least in part, by the Audit Subcommittee.

Senator Hardy:

Would you like an amended motion? I would move that we approve the Federation of State Medical Boards and the State Board audit to start according to the ability and the input from the Audit Committee of the state with the goal of having that information in the next legislative session.

SENATOR HARDY MOVED TO AMEND HIS MOTION AS DESCRIBED.

SENATOR RATTI SECONDED THE MOTION.

Chair Cannizzaro:

And obviously I think the stated goal is obviously to get that information, but obviously we understand that the timing will be kind of dependent on that resource allocation and consideration as well. I have a motion and a second. Any other discussion on the motion?

Assemblywoman Carlton:

Thank you, Madam Chair, and I have concerns about how the motion was actually stated. I do support the audits being done and I have full faith that our Audit Division can do the job that we ask them to do. When we put artificial timelines on work, we may not get the actual product that we really need, and I hate to see redundancies, as the Majority Leader said earlier. Depending upon how the Audit Subcommittee would look at this, something very important might get put to the side, and let's just think about what happened to the community living homes. If that issue had been put to the side, how many people could have been harmed? I understand that there are some members of this Committee who really want to see this Board investigated very, very thoroughly, but I don't see it as being a priority over other important issues of the state, so I think having the Federation do its audit and then having our Audit Division look at that and decide what needs to go further, that's their job. They know their job, and I don't feel it's my responsibility to put undue pressure on them to go after something that may not necessarily need to be done. I can support this with the caveat that our Audit Division knows what work they need to do and where the priorities are, and I don't want to see this Board be prioritized over other very important work that our Division needs to get done.

Assemblyman Frierson:

Thank you, Madam Chair. If I may just reiterate the same concern. I think we vote frequently with certain expectations, and that's typical, but to put the actual hope in the motion gives me concern. I would reiterate the same issue, that obviously there's an interest in getting this done and getting this done timely, but we are expecting more and more without giving more and more resources necessary to get it done, and there are some other, I think, tasks that may derail it, and I just don't want to set an expectation that is different than what we do here all the time. We pass regulations here all the time, and we expect them to get those regulations done, but here we are right now looking at a regulation on this agenda from 2017, and so things happen, things get derailed, and I don't want to have some artificial technicality cloud, I think, taking action to do the right thing. I guess I give the same caveat, that the portion of what we are about to vote on that sets a timeline is aspirational. At least, that's what I am voting on, recognizing that things happen and they may need to shuffle. I just don't want them to feel like they're not in compliance with the law or what the directive of the Legislative Commission is if they just didn't get it accomplished before the end of next session for whatever reason.

Senator Hardy:

Madam Chair, I'm ready to make an amendment to the motion. So, I would move that we accept the Federation of State Medical Boards' proposal and have the Audit Committee of the State of Nevada consider the state audit commensurate with their findings of priority so that we can have the State Board of Medical Examiners have an audit at the appropriate time and place with the appropriate resources allocated as the State Audit Committee so justifies.

SENATOR HARDY MOVED TO AMEND HIS MOTION AS DESCRIBED.

SENATOR RATTI SECONDED THE MOTION.

Chair Cannizzaro:

Okay, so we have a motion from Senator Hardy that has been amended and a second from Senator Ratti. Any further discussion on the motion?

THE MOTION PASSED UNANIMOUSLY.

*****

We will go ahead and move down to item VII, appointment of a member to the Nevada State Silver-Haired Legislative Forum, and I will turn this over to Mr. Combs for a brief rundown.

Mr. Combs:

Thank you, Madam Chair. This is your typical appointment to the Nevada Silver-Haired Legislative Forum. Again, all 21 Senators receive an appointment with the advice and counsel of the Assembly people within that Senate district. This particular request is for the appointment of Toby Cooling to Senate District 17 at the recommendation of Senator Settelmeyer (Agenda Item VII).

Chair Cannizzaro:

Any questions or comments from members of the Commission?

SENATOR HARDY MOVED TO APPOINT TOBY COOLING TO THE NEVADA SILVER-HAIRED LEGISLATIVE FORUM.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

The next item on the agenda is item VIII. We have informational items on that portion of our agenda, and we did get a request prior to today's hearing to hear some additional testimony with respect to item VIII-B, the Public Employees' Benefits Program's annual report (Agenda Item VIII-B), so we will invite them to come up to the table. I believe Senator Ratti may have some questions that she would like to ask. Senator Ratti, whenever you and they are ready.

Senator Ratti:

Thank you, Madam Chair, and thank you for your time and patience in spending the afternoon or the morning with us. I'm interested in—in your report, there's a PowerPoint. It has the Health Plan of Nevada logo on the right-hand side and there's a slide, in our packet it's the eleventh slide, in that presentation titled "Common Diagnosis Categories," and there's—we're doing a lot of work on behavioral health and mental health issues in the Interim Health Committee, and I was just interested in what looks like a significant increase, it's about 25 percent, in the mental disorders column, and if you could give us any sense as to why you're seeing that kind of an increase in cost, and then the second piece is what kinds of disorders are included in that category, because I know we define behavioral health and mental health sometimes differently in different spaces. I'm just looking for some clarity on that and thinking that what's happening in PEBP (Public Employees' Benefits Program) might help us to understand what's happening in some other spaces in the state. Thank you.

Laura Rich (Interim Executive Officer, Public Employees' Benefits Program):

With me today I have Cari Eaton, who is the Chief Financial Officer. Unfortunately, with the Health Plan of Nevada—so, we have three health plans that we offer through the Public Employees' Benefits Program. Health Plan of Nevada is our HMO (health maintenance organization), which is administered by Health Plan of Nevada. The other two health plans, the consumer-driven health plan and the exclusive provider organization, those two are administered by PEBP so we have more immediate access into doing an analysis on claims for those two plans versus the Health Plan of Nevada.

What I can tell you, I will take that back to Health Plan of Nevada and get more detailed information on that. What I can tell you, though, is that the consumer-driven health plan did experience a similar experience with mental health costs. We experienced, it looks like, a 23.9 percent, so almost a 24 percent rise in mental health care costs, and that was not just due to costs. It's also due to an increase in utilization as well. You asked for the top three categories. Alcohol-related disorders is the top category that we're spending on in that consumer-driven health plan. Substance-related disorders as well, and mood disorders. That's in our consumer-driven health plan. In our exclusive provider organization, we're looking at very similar—mood disorders, anxiety disorders and adjustment disorders in that plan as well. As you can see, they're very similar. I can't speak to Health Plan of Nevada. I'm going to have to take that back. I'm happy to bring that back to the Commission.

Senator Ratti:

And do you have any sense of what's driving that increased utilization? It's not an increase in the number of participants, so are we just doing a better job of getting the word out that people should seek help? Do you have any idea?

Ms. Rich:

You can only speculate on that. It's not more participants, it's more utilization, so people are definitely using it more. The costs are also higher as well, so it's not just that people are using it more but it's more costly. Seeking those services are more costly.

Senator Ratti:

Okay, thank you. Thank you, Madam Chair.

Chair Cannizzaro:

Thank you. Any other comments or questions from the Commission? I just again want to thank you all for being so patient with us this morning in getting through our very long agenda and for being present to answer what I think are really important questions. We don't always take testimony on informational items, but we can't continue to do the good job that we're doing and get the information if you all aren't willing to come down here and indulge us every once in a while. So, thank you very much for being here with us today. We really appreciate it.

Ms. Rich:

You're very welcome.

Chair Cannizzaro:

Thank you. So, before we move to item IX, some of you on the Commission may know that Rick Combs, our Director, is leaving us and going off into the wonderful world of retirement and has done a fabulous job representing us and helping us here at the Legislative Commission, and so, this being his last Legislative Commission meeting with all of us, I wanted to share just a little bit about Rick before we wish him on his very merry way. So, a few things about Rick Combs that you may know and some things that you may not know. He has worked for the Legislative Counsel Bureau since 1994, which is almost 26 years, a very long time and a well deserved retirement for sure. He started his legislative service career in the Legal Division as a Deputy Legislative Counsel, where he drafted regulations and bills and completed legal opinions for members of the Legislature. He then transferred to the Fiscal Analysis Division in 1997, where he served as a Program Analyst from 1997 to 2002, and from 2002 through 2004 as a Deputy Fiscal Analyst working in the Division's tax team and staffing the Senate Committee on Taxation. He also covered the epic tax-related special sessions in the summer of 2003. He then returned as a Program Analyst from 2004 to 2008 and was promoted to Senior Program Analyst in 2008. In these roles, he analyzed and provided recommendations for numerous executive branch agency budgets, including budgets for the Department of Health and Human Services—that's a very big one—the Department of Business and Industry, the Department of Public Safety and the judicial branch. Rick was promoted to Assembly Fiscal Analyst in 2010 and served as the primary staff to the Assembly Committee on Ways and Means and the Interim Finance Committee and jointly managed the operations of the Fiscal Analysis Division. In May of 2012, he was selected as the Director of LCB, and as Director he oversees the operations of five divisions: Administrative, Audit, Fiscal Analysis, Legal and Research. He handles the day-to-day operations of the Legislature, responds to press inquiries and ensures the smooth operations of the LCB and the Legislature as a whole. Rick also serves as the primary staff to the Legislative Commission and the Committee to Consult with the Director and works behind the scenes to make sure the Legislature functions efficiently, and we've certainly seen that during our legislative sessions and our ability to kind of do everything we're able to do in such a short period of time, thanks in large part to Rick. A few other things that you might not know about Rick is that he is an Eagle Scout and he earned his law degree from the University of Tennessee School of Law and a Bachelor of Science from the University of Tennessee at Chattanooga. He served as a vice chair for the CSG (Council of State Governments) West Legislative Staff Agency and Research Directors' Professional Development Group. He regularly speaks and presents to various groups, dignitaries, leadership programs and other organizations on the functions and operations of the Legislature. He is affectionately known as the Falcon Master of the LCB as he dealt with the falcon perching problem at the back of the Legislative Building. He also has some really wonderful leadership qualities, organizational skills, outstanding knowledge of budget matters, and of course, a great sense of humor. It has been my absolute privilege and pleasure to work with you, Rick, and I can definitely say that even as a young legislator when I sort of was asking a lot of questions, you'd have them answered and you were ready, willing and able to answer them, and I think you even accommodated a group of UNR (University of Nevada,

Reno) students to come to the Legislature on the off-season so that we could kind of show them the Legislative Building, which I did as a student when I was young and it was, I think, a good experience. I have enjoyed working with you very much, and just thank you for your wonderful service and all that you do for us. We will certainly miss you, that is to be sure, and so I just wanted to take a couple of minutes and acknowledge the really great work that you have done for the LCB and congratulate you on your very well deserved retirement.

Assemblyman Frierson:

If I may, Madam Chair. If I have known Rick Combs as well as I believe I have, this has probably been the most uncomfortable 5 minutes because he doesn't like the attention being on him. But I just want to briefly thank you, Rick, for your service to the state, and your family has given a great deal to the state, and also for your friendship. We have seen a lot over the years in this process, even before I was elected, and so I have enjoyed it, but more importantly, I think the state has benefited tremendously from what you have given. Just know that what you have done is going to go on. For those of us that had the opportunity to work with you, what we accomplish in serving this state and in running this state and in governing, I think you should always know, is part of your legacy as well.

Assemblywoman Carlton:

Thank you, and just on a personal note as well, I owe Mr. Combs a great debt of gratitude because I almost broke the Constitution my first year as the Chair of Ways and Means. I just started reeling off bills on the Assembly floor and Mr. Combs came running around the corner and stopped us before we processed a bill that we weren't supposed to process because I was in a hurry to get home, so just a personal note of gratitude. I love telling that story when I go out and talk to freshmen legislators and other folks, that we can stand on the floor and do the job, but it's all the folks that make us look good and support us and keep us from making mistakes that the public really should be thanking every day. Thank you very much, Mr. Combs, for keeping me out of trouble that afternoon.

Chair Cannizzaro:

Are there any members up north who wanted to add anything? Now would be the time.

Senator Settelmeyer:

Thank you. Mr. Combs, thank you so much for the work you've done. Having been on the Legislative Commission when we actually all got together and voted to give you the job, definitely one of the best votes we ever took. Thank you for your service.

Mr. Combs:

Thank you all very much. I don't want equal time, but I would like to just say thank you,

and thank you for allowing me to do this as a big part of my life. My goal as the Director has kind of been to make sure that I stay in the background as much as possible, as Speaker Frierson said, and so I do want to say thank you from the bottom of my heart. What this job has done for me and my family is something I'll never forget, and I would say to anyone out there that's thinking about a career in public service, I don't think there's much you can do out there that's a whole lot more rewarding than that, so please, please do consider it. Finally, I'm done talking about myself and I want to talk about the people that work at the Legislative Counsel Bureau and what good hands I'm leaving the place in. I do want you to know that. I believe it from the bottom of my heart. They are a very gifted and talented group of people who do have the best interests of the Legislature and the state at heart, and I know you always haven't agreed with me and you don't always agree with them, but I do hope that you'll keep that in the back of your minds as you move forward, that I can personally attest to the fact that this organization, probably better than any other organization in the state, has a unified purpose and goal, and it's part of our culture. I just hope you'll know that going forward. Again, thank you so much for the kind words and the way you've treated me for the past 25 years. I couldn't ask for much better. Thank you.

Chair Cannizzaro:

Thank you again, Rick, for everything. With that, we'll open it up for any final public comment. If there's anyone in Carson City or here in Vegas who wishes to give any public comment? Looks like the room is pretty empty, so that said, we will go ahead and adjourn at 1:46 p.m. Thank you, everyone, for your patience in allowing us to get through some good stuff today, and have a wonderful new year.

RESPECTFULLY SUBMITTED:

_____
Jordan Haas, Secretary

APPROVED BY:

_____
Senator Nicole Cannizzaro, Chair

Date: _____

Agenda Item	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III	Jan Brase, Secretary	Draft Minutes from the October 30, 2019 Meeting
Agenda Item IV	Brenda J. Erdoes, Legislative Counsel	Administrative Regulations for Review
Agenda Item VI		Proposal for Performance Audit of the State Board of Medical Examiners by the Federation of State Medical Boards
Agenda Item VII	Marsheilah Lyons, Deputy Research Director	Appointment to the Nevada Silver-Haired Legislative Forum
Agenda Item VIII-A		Informational Item: Reports from the Douglas County Sheriff and the Office of the City Attorney of the City of Las Vegas
Agenda Item VIII-B		Report Regarding the Public Employees' Benefits Program
Agenda Item VIII-C		Report from the Nevada Transportation Authority
Agenda Item VIII-D		Report from the Nevada Capital Investment Corporation
Agenda Item VIII-E		Report Regarding the Nevada Battle Born Growth Escalator, Inc.
Agenda Item VIII-F		Report from the State Treasurer
Agenda Item VIII-G		Report from the City of Las Vegas Redevelopment Agency