

## **MINUTES OF THE 2019-2020 INTERIM LEGISLATIVE COMMISSION**

**June 5, 2020**

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 1:10 p.m. Pursuant to Governor Sisolak's [Emergency Directive 006](#), the meeting took place via webconference and did not have a physical location.

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:**

Senator Nicole Cannizzaro, Senatorial District No. 6; Chair  
Senator Julia Ratti, Senatorial District No. 13; Vice Chair  
Senator Moises Denis, Senatorial District No. 2  
Senator Scott Hammond, Senatorial District No. 18  
Senator Joseph Hardy, Senatorial District No. 12  
Senator James Settlemeyer, Senatorial District No. 17  
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27  
Assemblywoman Maggie Carlton, Assembly District No. 14  
Assemblyman Skip Daly, Assembly District No. 31  
Assemblyman Jason Frierson, Assembly District No. 8  
Assemblywoman Lisa Krasner, Assembly District No. 26  
Assemblyman Jim Wheeler, Assembly District No. 39

### **STAFF MEMBERS PRESENT:**

Brenda Erdoes, Director, 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 Division, Legislative Counsel Bureau  
Cindy Jones, Assembly Fiscal Analyst, Fiscal Division, Legislative Counsel Bureau  
Daniel Crossman, Legislative Auditor, Audit Division, Legislative Counsel Bureau  
Michael Stewart, Research Director, Research Division, Legislative Counsel Bureau  
Roger Wilkerson, Chief, Administrative Division, Legislative Counsel Bureau  
Chuck Anderson, Supervisor, Broadcast and Production Services, Administrative Division, Legislative Counsel Bureau  
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau  
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

### **OTHERS PRESENT:**

Julia Bledsoe, President, Nevada System of Higher Education Classified Council

Douglas Unger, Chair, UNLV Chapter, Nevada Faculty Alliance

Joe Greer, Dean, Roseman University College of Medicine, Roseman University of Health Sciences

Kent Ervin, Nevada Faculty Alliance

Tonja Brown

Shannon Chambers, Labor Commissioner

Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry

Tim Geswein, General Counsel, State Contractors' Board

Dennis Perea, Deputy Director, Nevada Department of Employment, Training and Rehabilitation

Donald Lomoljo, Utilities Hearing Officer, Public Utilities Commission of Nevada

Peter Long, Administrator, Division of Human Resource Management, Department of Administration

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

We are going to call this meeting of the Legislative Commission to order. Good morning and welcome to our first virtual meeting of this Commission. We have had the opportunity to do some virtual meetings with IFC (Interim Finance Committee) and with some other committees, so not the first time that our amazing staff has done such a great job of getting us connected and providing for some good outlets for public comment and public participation as well, and of course getting all of us on here. Thank you to them for doing an outstanding job on that. But this is the first virtual meeting of our Legislative Commission. As you will see, we have a pretty full agenda today, so we will probably be discussing some things. Hopefully this will all go well.

I want to go over a quick reminder of some housekeeping manners. Of course, anyone who is testifying today, if you could please make sure that you state and spell your name for the record before you testify. That way we have that for our minutes. If anybody would like to receive a copy of the Commission's agendas, minutes or reports, you may be added to the mailing list by following the links on the website of the Nevada Legislature or by providing information to our staff so that you can get all of those items. Contact information for staff is also listed on the website. Please just make sure that if you would like to receive all of those items that you get on that mailing list so we can get those out to you.

With that, we will go ahead and move on to our second agenda item, which is public comment. If you have called in—because we do have call-in options for public comment. If you have called in and you would like to speak now, you'll be notified by our Broadcast and Production Services (BPS) when you have been connected and it is your turn to speak. Please remember that at this point in time, comments will be limited to not more than two minutes per person. You're of course welcome to submit any additional comments in writing and they will be added to the record for this meeting. We have, of course, for all the Commission members—we did receive some comments, especially

with respect to the ballot questions that we're considering later today. We did receive some written public comment. All members of the Commission should have received that, and I believe all members of the Commission do have copies of those. We've had an opportunity to review those comments for anyone who submitted written comments, so if you are speaking today and you would like to add some additional comments in writing, you can certainly do so and we will add those to the minutes and make sure that all the Commission members get a copy of those. We will also be having a second period for public comment, so if you prefer to wait and speak until later in this particular meeting, we will have another section of public comment at the end of the meeting.

I am now going to turn this over to our BPS team to queue up those calling in to speak and they will inform you when it is your turn, and then we welcome your comments. Again, just a brief reminder that we are limited to comments at this point in time for two minutes with any additional comments to be submitted in writing. We'll turn it over to our awesome staff.

**Julia Bledsoe (President, Nevada System of Higher Education Classified Council):**

I represent the Nevada System of Higher Education (NSHE) Classified Employees' Council and I'm also speaking today on behalf of the Nevada Police Union ([Agenda Item II A](#)). We wish to acknowledge the severity of the state budget crisis faced by our state, the Governor's Office and the Nevada State Legislature. It is a rightful cause for concern. So too is the livelihood of all classified employees statewide. While we understand furloughs may be the only way forward, they will again be a hardship for classified employees who sacrificed the loss of income in the form of furloughs, frozen step increases, no COLA (cost-of-living adjustment), pay cuts and permanent loss of longevity between 2010 and 2016. These losses are still felt today as we face yet another round of such losses. Any loss and/or reduction in classified employees' salaries and direct monetary compensation should be negotiated through shared government and/or collective bargaining in accordance with NRS (Nevada Revised Statutes) 288.150 to promote equality amongst its employees. As we move forward, we are especially focused on essential workers, classified employees in these categories: responsible for public health, public safety and the cleanliness and sanitation of our campuses and public spaces. We ask that these essential employees be spared participation in furloughs as the need for their services will continue to be in greater demand and we cannot afford to reduce their effectiveness. If furloughs must be imposed, please consider a stepped or progressive model, such as the one in our full resolution, which impacts all classified at the lowest level to a lesser degree and no furloughs for the aforementioned categories of essential employees. We also request any decisions include language which ensures that retirement benefits for state employees who furlough would not be affected by the furloughed amount. We request a sunset date on any implemented furloughs no later than the end of the 2021-2023 biennium. We request classified step increases continue to be awarded. This will ensure classified employees continue to be recognized and valued for their service. Thank you, and the Classified Council extends its sincere appreciation to the Nevada Legislature for its consideration of this resolution.

**Douglas Unger (Chair, UNLV Chapter, Nevada Faculty Alliance):**

Douglas Unger, past chair, Council of Faculty Senate Chairs, NSHE, and President-Elect, UNLV Chapter, Nevada Faculty Alliance. Please know how much we appreciate the responsive drafting process of Ballot Question No. 1 before the Commission today ([Agenda Item II B](#)). With objective neutrality as to the outcome, our educators wish you to consider making just three deletions to make sure voters will consider the most honest and neutral language as follows. In lines 9 and 10 of the first paragraph of the explanation and digest, deletion of the clause “including those that provide for the election of board members” and deletion of the repetition of the same phrase in lines 4 and 5 of the third paragraph of the digest. We ask this language be deleted for the reason that it could mislead voters as to the possibility if passed that the Legislature could choose to replace election of regents by another means of appointment or selection. We also request the deletion of a clause on line 15 of the fourth paragraph with the arguments for passage section referring to the proposed but never included in any NSHE budget before the Legislature of a \$90 million appropriation to address salary inequities. “And will remain as an ongoing annual obligation” is the phrase. Considering that no merit or other salary increases have been approved—percent and probably greater cut in salaries due to the COVID-19 catastrophe. The suggestion of an ongoing annual obligation sounds like a very wrongly timed joke, unintentional though it may be, or at least so highly speculative as to be false and misleading. If this language is left as stands, I predict it will result in a bitter and ironic scrutiny by informed voters, especially Nevada educators. Putting the period after them is a strong enough argument and preserves the objectivity and fairness that should characterize any ballot question language. Thank you, and wishing you all to stay well and safe during these most difficult times.

**Joe Greer (Dean, Roseman University College of Medicine, Roseman University of Health Sciences):**

I am the new Dean at the Roseman University of Health Sciences College of Medicine. I came here with my team and am joining the team at Roseman from Florida International University in Miami, where we began a medical school there during the recession. At that time, we developed a unique curriculum which included a delivery system referred to as household-centered care, where we addressed the uninsured and the underinsured by identifying and mitigating the social determinants of health that affect both the households and the individuals. We ended up becoming the only medical school in the State of Florida that got funding from the Department of Health in the state by showing them a return of investment of over 1600 percent. Doing the same thing with private hospital systems, just by calculating the return on investment of over-utilizers of emergency rooms, the return on investment was 600 to 800 percent on a monthly basis. We hope to address this in the areas of need in Las Vegas and the region and in the entire state with the Roseman Medical Group until we begin with medical students and utilize them as we produce a future workforce to improve the health of the region. This is just an informative call, and I look forward to working with all of you and we are thrilled to be in the state. I also didn't

realize you could tell the difference between 105 and 109 degrees, but you can. I wish you all a great weekend and to stay healthy and to lead this great state. Thank you.

**Kent Ervin (Nevada Faculty Alliance):**

I'm representing the Nevada Faculty Alliance (NFA). The NFA does not currently have an official position on Question 1, Assembly Joint Resolution (AJR) 5, itself, but we do want the ballot language to be completely fair and balanced. We greatly appreciate that the LCB (Legislative Counsel Bureau) has fixed the most glaring errors and misrepresentation in the initial draft. However, there are several items that still need attention, and I have also submitted details in writing ([Agenda Item II C](#)). First, the explanation and digest section specifically call out existing statutes for electing regents but do not equally clearly state that the elections could be eliminated after passage. These sections should be absolutely neutral. Having the single statute about elections gives the appearance of bias to avoid a backlash from Nevada voters who had previously rejected changing the elected status of the board. Those references should be deleted and reserved for arguments for and against. Second, in the for arguments, the attribution of the \$90 million salary compression problem to the lack of an overall compensation philosophy is inaccurate and misleading. My written comments cite the relevant legislative testimony and reports which indicated that salary compression has resulted not from a lack of a philosophy but from the non-funding of NSHE's performance-based professional merit system. That was the compensation philosophy before it stopped being funded. Many NFA members tend to favor AJR 5 for the increased accountability of the regents and presidents, but the harsh criticisms of NSHE and the for arguments will be seen as unfair and slanted. Faculty, our voters and their friends and neighbors will ask for advice on Question 1. It would be more persuasive to state the positive changes that could or would happen upon passage. Finally, the arguments do not inform voters that the measure expands the traditional concept of academic freedom beyond faculty engaged in teaching and scholarship to also include new classes, students, non-faculty employees and even contractors. My written comments provide a statement to bring this unwise provision to the attention of voters. Thank you for your consideration and thank you for your work, and everybody stay safe.

**Tonja Brown:**

Tonja Brown, advocate for the inmates and the innocent. I'm here to speak on behalf of Ballot Question No. 3, the Pardons Board. I have some concerns from family members in need and some of the inmates pertaining to this language. Under section 3, it states, "Except as may be provided by law, a sentence of death or a sentence of life imprisonment without the possibility of parole may not be commuted to a sentence which would allow parole." We have some inmates in our corrections that have been sentenced to life without the possibility of parole for nonviolent offenses. Some of these crimes that they have been convicted of no longer are crimes, such as possession of marijuana. For some, the laws have changed to—burglary has gone up, and they may have been convicted at the time it was \$100, so some of these are—they are concerned about this.

Now, I have provided you some information from an inmate who has had six felony convictions ([Agenda Item II D](#)). He has life without the possibility of parole. On the right-hand side of the pages I have numbered all of the pages, and 1 through 3 is his—he outlines NRS 213. I would like to see and they would like to see NRS 213.085, number 1(b), to include in 2021 the words, "Unless the offender was convicted of nonviolent crimes," and to include that in number 2(b) as well to include, "Unless the offender was convicted of nonviolent crimes." Also, the criteria for the Pardons Board application—that's page number 4, number 4—it says, "Applications from inmates sentenced to death or life without the possibility of parole for an offense committed up to July 1, 1995 will not be considered for commutation of a sentence that allows for parole." We have talked over the years about repeat offenders and them having a drug and alcohol addiction. These individuals should not be sentenced to life without the possibility of parole for these types of crimes. They should be able to seek treatment. We've done things differently over the years and we would like to see that the laws change to include those individuals who have been convicted of crimes, for nonviolent crimes, that the access to the Pardons Board—and possibly change the language in this. If not, in 2021—to consider changing the laws to include a chance for these offenders who've been convicted of nonviolent crimes a chance at a Pardons Board hearing and have their sentence commuted. Thank you.

**Elliott Anderson:**

My name is Elliott Anderson and I'm here in my private capacity speaking only for myself in support of Question 1's ballot language as marked up in your packet. If approved by Nevada voters, Question 1 creates accountability, oversight, transparency and will modernize higher education. No longer will the Board of Regents have essentially unchecked power. Question 1 does not make the Board appointed. NRS 396.040 requires election. This ballot language makes this legal effect clear and it is necessary to remain in the language so that voters are not misled that passing Question 1 will not directly lead to appointments. Under Question 1, the Board continues to manage higher education as required by NRS 396.020, which is not repealed by Question 1. Question 1 simply removes the Board of Regents from the Constitution, putting the power back into the hands of the people. The Legislature will not have complete control over education. The regents will still run it. Instead, like every other agency, the regents will be accountable to the Legislature. Time and time again, the regents have attempted to disrupt the Legislature's ability to provide oversight and hold the Board accountable to Nevada taxpayers by suing or threatening to sue based upon the Nevada Constitution and misleading the Legislature on funding matters. No other state agency operates like the regents, shielded from accountability. Question 1 makes the regents accountable to the Legislature that funds them, like every other government agency and like K-12 education in Nevada. It also keeps the Board elected and in control of higher education. We need the accountability, transparency and modernization of the system to move Nevada forward. Just as a reminder, Question 1 finds support from a diverse and bipartisan coalition. Please vote yes on the marked-up language. Thank you.

**Chuck Anderson (Supervisor, Broadcast and Production Services, Administrative Division, Legislative Counsel Bureau):**

Madam Chair, that concludes public comment at this time.

**Chair Cannizzaro:**

Thank you, and just a reminder, you can always submit additional public comment in written form, and we'll also be having public comment at the end of this meeting. We will move on then to our next agenda item, which is approval of the minutes of the meeting held on February 26, 2020 ([Agenda Item III](#)). I would note that all members of the Legislative Commission have received a copy of those minutes as part of your meeting packet for today's meeting. I have not heard of any changes, and seeing no additional requests at this time or hearing no requests at this time for a change to any of those minutes, I will accept a motion.

SENATOR RATTI MOVED TO APPROVE THE MINUTES OF THE MEETING HELD ON FEBRUARY 26, 2020.

SPEAKER FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We will move on to item IV of our agenda. We have a few items under this particular agenda item, the first of which is a review and approval of language for the ballot questions. I would note that all members of the Legislative Commission have received language from the ballot questions as proposed, and also I believe there are some additional public comment documents that have been submitted. Anyone who had submitted public comment in the form of a written form has also been included, and you'll find those under each item for each corresponding question that will appear on the ballot and the way in which it will appear on the ballot. With that, I'm going to ask for Brenda Erdoes to go ahead and walk us through the approval, and we'll begin with Ballot Question No. 1.

**Brenda Erdoes (Director, Legislative Counsel Bureau):**

Thank you, Madam Chair. NRS 218D.810 provides for the preparation of the ballot materials for all constitutional amendments proposed by the Legislature before the

questions are submitted to a vote of the people. The statute requires the Legal, Research and Fiscal Analysis Divisions of the LCB to prepare the condensations, an explanation and a fiscal note. The statute also provides that the condensations, explanations, arguments and fiscal note be of a reasonable length and written in easily understood language. The explanation is required to include a digest. The digest must include a concise and clear summary of any existing laws directly relating to the constitutional amendment and a summary of how the constitutional amendment adds to, changes or repeals any existing laws. The Commission is required by statute to review, revise and approve the condensation, explanation, arguments and fiscal note for delivery to the Secretary of State on or before July 1 of the year in which the general election will be held.

We followed the same procedure for the four ballot questions this interim that has been successfully used in the past, except that instead of meeting in person using whiteboards and PowerPoints to collaborate, the ballot question team held 12 virtual meetings from March 30 through May 4. The team approved the finalized draft questions on May 6 and immediately launched the 2-week period of public comment, which ended on May 20. A copy of all public comments received is in the materials posted on the Commission's webpage and the Legislature's website, and it's in the packets that were sent to all the Legislators as well. From May 21 to May 26, right after that public comment period, the team met to review the 79 pages of public comments that were received and they revised the drafts based upon these comments. The ballot questions were then incorporated into the Legislative Commission materials that were emailed to the members of the Commission and posted on the Legislative website and are before you today for final approval. Unlike administrative regulations and other documents that come before the Legislative Commission for consideration and approval, the Legislative Commission is allowed to make changes to the ballot questions today before voting.

I'd like to express my appreciation to the 2020 ballot question team for their extraordinary efforts, especially under the unusual circumstances and expedited timeline that we had here. Those members included Diane Thornton, Patrick Guinan, Kelly Richard, Julianne King and Alex Drozdoff from the Research Division, Michael Nakamoto and Joe Reel from the Fiscal Analysis Division, and Eileen O'Grady, Bryan Fernley and Kevin Powers from the Legal Division.

At this point, I would like to ask Kevin Powers to walk through the ballot questions for you, and he is well equipped today to making revisions to the documents before approval if the Commission desires that. Thank you.

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

Thank you, Madam Chair. We will go through in the order of the ballot questions as they appear, as Questions 1, 2, 3 and 4. Just so you know, Question 1, which is AJR 5 involving the Board of Regents, had the bulk of the public comments and the bulk of the revisions.

Question 2, which is dealing with the same-sex marriage question, had a few public comments and a few revisions. The remaining two questions did not have any public comments or any revisions, so the bulk of our time will probably be spent dealing with Question 1, which is AJR 5, dealing with the Board of Regents.

In your booklets, you'll have three documents dealing with the ballot question language ([Agenda Item IV-A-1](#)). The first document in it is the LCB's proposed ballot question language after the revisions were made after public comment. The document behind that is a red-line showing the revisions that the LCB made to the original documents submitted for public comment, and then after the red-line is the document that was submitted for public comment. Our focus today is the first document under the resolution dealing with Question 1 because that is the proposed LCB draft after the revisions were made based on the public comment.

I think it would be appropriate now, because we had some callers come in and give public comment before this agenda item today, that I'll address some of those so that it will help the Committee focus on those particular public comments. Mr. Unger and Mr. Ervin were focusing on language in the explanation and digest which dealt with the effects of the resolution, changing the status of the Board of Regents from a constitutional body to essentially a statutory body, and as the explanation and digest state, it provides that this ballot measure would not repeal any existing statutory provisions governing the Board of Regents, "including those that provide for the election of the Board members," and that's the phrase they're concerned with, "including those that provide for the election of the Board members." What would make the Board a statutory body whose structure, membership, powers, duties are governed by the existing statutory provision subject to any statutory changes made through the legislative process. That specific phrase, "including those that provide for the election of the Board" of Regents, is taken directly from AJR 5 in the final whereas clause in AJR 5, and those are legislative findings. The Legislature made clear that amending the Nevada Constitution to remove the Board of Regents' constitutional status will not repeal, either expressly or by implication, the existing statutory provisions which apply to the Board of Regents, the state university and all other institutions, programs and operations of the Nevada System of Higher Education, including, without limitation, the existing statutory provisions that provide for the voters to elect the members of the Board of Regents.

The language that you see in the explanation and digest dealing with the election of the Board of Regents tracks the resolution and the whereas clause. That language is also found in the digest of the resolution as well, so it would be the recommendation of the ballot team that that language, "including those that provide for the election of Board members," is consistent with the resolution and therefore is appropriate in the explanation and digest.

The next issue raised by Mr. Ervin was the provision of the arguments for passage. Those provisions contain a sentence that deals with the legislative interim study in 2017-2018 relating to the funding of higher education. The sentence at issue provides that as part of

another legislative study of higher education in 2017-2018, testimony indicated that NSHE's lack of an overall compensation philosophy contributed to a faculty pay imbalance that will cost approximately \$90 million to address initially and will remain as an ongoing annual financial obligation. The concern of Mr. Ervin's is with the phrase "and will remain as an ongoing annual financial obligation." What this sentence provides is an accurate description of the conclusions of the Legislature's 2017-2018 Legislative Study on Higher Education Funding. This phrase, "will remain as an ongoing annual financial obligation," is supported by the interim study's final report and also the minutes of the May 8, 2018 meeting of that interim committee where it was made clear in the minutes that the cost to address pay compensation is estimated at \$90 million per year annually. Those implementation costs will be an annual requirement. Also in those minutes, it made clear that because there was no compensation philosophy in place that NSHE has had to rely on state funding because of a lack of a compensation philosophy.

Once again, the ballot team believes that this statement in the arguments for passage is supported by the legislative study's findings and by the minutes of the legislative study's meetings and therefore is a legally factually accurate statement.

Finally, Mr. Ervin brought up one other matter with regard to academic freedom. He said that this ballot question will create the potential for expanding the concept of academic freedom beyond professors to also include students and contractors. What the ballot question refers to is the resolution itself provides that the Legislature shall provide by law for the reasonable protection of individual academic freedom for persons who are enrolled in or who are employees or contractors of the state university and other public institutions of higher education in the state. The Legislature, if this resolution were to pass, would have the power to define "reasonable protection of academic freedom" for not only professors but students and contractors. But it would be up to the Legislature to define the parameters, as long as the Legislature met all constitutional minimums for protecting constitutional freedom.

It is the recommendation of the ballot team that the ballot question materials, the language in both the explanation, digest and also in the arguments for and against passage, make clear that the Legislature provide reasonable protection of academic freedom for not only professors, but it also says in all the materials "students and contractors," so the voters will be informed that this ballot question will provide for the reasonable protection of individual academic freedom for not only faculty members but also employees and contractors and students.

That would address the specific comments that were made today during the public comment period. I'm certainly open to any other questions that the Committee may have with regard to Question 1. Thank you, Madam Chair.

**Chair Cannizzaro:**

Thank you, Mr. Powers, for walking us through that. I will take questions from members of the Commission at this point.

**Senator Joseph Hardy (Senatorial District No 12):**

It's a political question. I was a little confused about the red-line edition, that there were no red lines because it's in black and white, but I was assured that the red lines are where it is crossed out and the underlines are in and the current ones are in. But when I read the condensation, the fourth and fifth line down of Question 1, it talks about the reasonable protection of individual academic freedom and then it crosses out for students, employees, contractors, specifically crosses that out. So, if Kevin Powers can tell me why it's crossed out in the condensation but it's included in his argument that it protects the very people that that red line crosses out?

**Mr. Powers:**

Thank you, Madam Chair. The condensation is the actual question that will go on the ballot that is presented to the voters. The rest of the material, the explanation and the digest, the arguments for and against passage and the fiscal note, will be part of the sample ballot that is sent out to the voters, and I just wanted to let you know those are the differences. One of the comments that the ballot team received in response to all four of the questions was the Office of the Secretary of State asked that, if possible, the condensations be reduced in the number of words. So, although all of the other materials, the explanation and digest, arguments for and against passage, refer to students, contractors and employees, those words were taken out of the condensation in order to save words on the request of the Office of the Secretary of State. However, we certainly can restore to the ballot question, the condensation, those specific words if the Committee feels that would be more helpful for the voters, because although removing words to shorten the condensation is a legitimate goal, it's more important to provide all the necessary information to the voters. The ballot team believes we could easily reinsert those words into the condensation and that that would match up then with the explanation and digest and the arguments for and against passage. Thank you, Madam Chair.

**Senator Hardy:**

And it seems to me if we make that consistent throughout—I'm looking at the last page of the question, and we have a lot of blank room. That would probably be room enough to put in seven words in the condensation without making another page necessary. I think that may be one of the concerns. If we're trying to protect academic freedom, we probably ought to say that right up front. That's how I feel. Thanks.

**Senator James Settelmeyer (Senatorial District No. 17):**

Thank you, Madam Chair. I was just wondering, a long time ago when I was on Legislative Commission and what Barbara Buckley explained to me, and I just wanted to get it on record and see if Brenda agrees. Right now, the Legislative Commission's job is to make sure that the language accurately reflects what the body passed, not necessarily do we approve or disapprove of the particular political issue. That's for the voters to decide. But at this point in time, our job is merely just to make sure that it adequately represents what this body passed, correct?

**Ms. Erdoes:**

Yes, that's exactly what the statute says. I believe you expressed it correctly.

**Senator Settelmeyer:**

Thank you. I appreciate that. I just wanted to get that on the record. I do agree with Dr. Hardy that that could provide a little more clarity, though, for the voters. Thank you.

**Chair Cannizzaro:**

Additional questions or comments from members of the Commission? I'm not seeing any hands. I guess I would just add, while I understand the concern about the additional language, students, employees and contractors, I do see that that is included in the explanation and digest, and when I'm looking at the ballot question—and I always know this is a concern when we hear from folks is how can we make sure that it is easy to read and digest and understand. From my perspective, I think the marked-up version makes a lot of sense just because it is pretty easy to read, and the explanation and digest does include a lot of the language regarding the students, employees, contractors, which I think makes sense in the digest as opposed to in the question. I'm certainly cognizant of the need and desire to make sure that the ballot questions are easy to read and fall within those parameters as provided by the Secretary of State.

At this point, I don't see anyone else jumping up. I would accept a motion to approve the marked-up version of this particular question.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE THE LANGUAGE FOR BALLOT QUESTION NO. 1 AS SUBMITTED.

ASSEMBLYMAN DALY SECONDED THE MOTION.

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

I'm sorry, Madam Chair, I just wanted to be clear. We're doing them one at a time? So, this is just on the first question? This motion just includes the first question?

**Chair Cannizzaro:**

Yes.

**Senator Ratti:**

Thank you for the clarification.

**Senator Hardy:**

Did we have discussion on a motion?

**Chair Cannizzaro:**

Yes, I'm sorry. I called for discussion. I must have missed you. Please, before we call the roll then, Senator Hardy.

**Senator Hardy:**

The discussion that I would have would be, realistically when— I hate to admit this, but some people don't read the explanation and the digest. They read the question and they say yes or no, and that's as far as they get, or they ask me how they should vote and I say, "This is how I'm voting." I think it's a matter of ease of understanding what they're voting for, and they may not vote for this because they didn't understand that they had to read past the first 10 lines and read another 5 pages in order to find out what it was about. I think we're doing ourselves a disservice to the people who are regular, real people who don't read the whole thing when it doesn't—it's no big deal to put other words in the condensation, which is what they're going to read, because that is what they're going to read, just above yes or no. I've said my piece.

**Chair Cannizzaro:**

Any further discussion on the motion? I think it will be better if you do have a question or comment to just go ahead and unmute yourself, and that way I won't miss any more hands. Okay, seeing and hearing none.

THE MOTION PASSED (SENATOR HARDY VOTED NO).

\*\*\*\*\*

**Chair Cannizzaro:**

We will go ahead and move on then to Ballot Question No. 2. Ms. Erdoes or Mr. Powers, whoever would like to walk us through that one?

**Mr. Powers:**

Thank you, Madam Chair. Ballot Question No. 2 involves Assembly Joint Resolution 2, proposing to amend the Nevada Constitution to require the recognition of all marriages regardless of gender ([Agenda Item IV-A-2](#)). I think for ease of discussion, if the Committee goes to the red-line version, or the black and white strikethrough and underlined version, the only changes that were being proposed in this draft before the Legislative Commission—if you look on page 3 of the red-line version with the strikethrough and the underline in the arguments against passage, these modifications were made based on a few public comments that the ballot question drafting team received in response, and it was just to provide additional clarification to some of the wording in the arguments against passage.

**Chair Cannizzaro:**

I would again just note that members of the Commission do have copies of submitted written public comment on Question 2. At this point in time, any comments or questions from members of the Commission on this ballot question? Seeing and hearing none, I would accept a motion to approve the marked-up version of Ballot Question No. 2 as submitted for today's meeting.

SENATOR RATTI MOVED TO APPROVE THE LANGUAGE FOR BALLOT QUESTION NO. 2 AS SUBMITTED.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We will move on then to Ballot Question No. 3, and I'll turn it over to Mr. Powers.

**Mr. Powers:**

Thank you, Madam Chair. Ballot Question No. 3 involves Senate Joint Resolution 1, which proposes to amend the Nevada Constitution to expressly provide for the State Board of Pardons Commissioners and revise the duties of the State Board of Pardons Commissioners ([Agenda Item IV-A-3](#)). There is no red line or mark up before you because the ballot question team did not have any changes to be made after the public comment. The ballot question team did receive public comment from Tonja Brown, who also made public comment at the beginning of today's Legislative Commission meeting. However, Ms. Brown's comments were not directed to the language of the condensation, the explanation or digest, the arguments for or against passage, or the fiscal note. Rather, her comments were directed at the actual substance of the proposed constitutional amendment, as well as at today's meeting she was proposing substantive changes to existing provisions of the law. So, although her comments are related to the State Board of Pardons Commissioners, they're not specifically related to any parts of the ballot materials. Therefore, we received no other public comments and no other changes were made to the version of the ballot question materials that were submitted to public comment, so that same document is being submitted to the Legislative Commission for review and approval. Thank you, Madam Chair.

**Chair Cannizzaro:**

Thank you, Mr. Powers. Any questions or comments from members of the Commission? Seeing and hearing none, I would accept a motion to approve this ballot language as drafted by the ballot question team.

SENATOR DENIS MOVED TO APPROVE THE LANGUAGE FOR BALLOT QUESTION NO. 3 AS SUBMITTED.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We'll move on to Ballot Question No. 4 then, and I'll turn it over to Mr. Powers.

**Mr. Powers:**

Thank you, Madam Chair. The final ballot question materials before the Commission is Ballot Question No. 4, which is Senate Joint Resolution Number 3, proposing to amend the Nevada Constitution to provide certain rights to voters ([Agenda Item IV-A-4](#)). Similarly to the last ballot question, there were a few public comments received. They weren't directed to the actual ballot question materials, the condensation, the explanation and digest, arguments for or against passage, or fiscal note. Instead, they were comments directed at the substance or merits of the resolution and proposed constitutional amendment itself. In the absence of any public comments requesting changes, there is no marked-up version, and so the version that was submitted for public comment is also being submitted for the Legislative Commission's review and approval. Thank you, Madam Chair.

**Chair Cannizzaro:**

Thank you. Any questions or comments from members of the Commission? Okay, hearing and seeing none, I would accept a motion then to approve the language as proposed by the ballot question committee, which the members have before them.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE LANGUAGE FOR  
BALLOT QUESTION NO. 4 AS SUBMITTED.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

With that, that concludes our review for the proposed ballot question language, and so we'll move on to the next item under item IV, which is the review of administrative regulations. These are administrative regulations that have been adopted since our last meeting and is our usual method for addressing regulations. I will ask members to let me know if there is a regulation which they would like to hold for further discussion. After that, we'll take a motion to approve any remaining regulations for which there have not been a request to hold for further discussion, and then we'll go through each of the regulations which have been pulled and ask the agency to address the questions related to that regulation. I did receive some requests from members of the Commission just prior to today's meeting to pull several regulations, and I'll read those and then open it up for any additional regulations that members would like to have pulled for individual consideration.

Members, I would also note that you have a list of those regulations and you should have also received a binder with all of the supporting documents for each of those regulations as proposed today ([Agenda Item IV-B](#)). We will go through and I'll highlight—these are the ones that I have received requests from members just before the meeting to pull: R018-18, R176-18, R014-19, R039-19, R075-19, R117-19 and finally R047-20P.

At this point, I'd ask for any members who would like additional regulations to be pulled than those which were just listed to go ahead and unmute themselves so they can be recognized, and we can get those on our list of items to pull.

**Senator Settelmeyer:**

Madam Chair, are you ready for a motion?

**Chair Cannizzaro:**

Having heard no additional ones to be pulled, yes, Senator Settelmeyer, I would accept a motion.

SENATOR SETTELMAYER MOVED TO APPROVE REGULATIONS R056-18, R090-18, R123-18, R018-19, R063-19, R068-19, R069-19, R074-19, R092-19, R093-19, R095-19, R106-19, R109-19, R124-19, R007-20, R019-20, R054-19 and R054-20RP1.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

Thank you. With that, we will move on then and take each of the pulled regulations in order, the first of which being R018-18 for the Labor Commissioner ([Agenda Item IV-B](#)). This was a request of Assemblyman Daly, so I will turn it over to him to go ahead and ask his questions or comments and then we'll hear from the Labor Commissioner.

**Assemblyman Skip Daly (Assembly District No. 31):**

Thank you, Madam Chair. Real quick, I just have some clarifications, if I can, and obviously I read through this regulation several times both for my regular job and for this job, but my main question's on the revised language in section 3, and if the Labor

Commissioner can try to give a little clarification on using the local area practice survey in accordance with DOL (Department of Labor) guidelines and various things. I wanted to get a little idea of how that was going to work, if the Labor Commissioner was going to do that survey, if the Labor Commissioner has ever done such a survey before, and then how that's going to square with the advisory opinion already—that the Labor Commissioner's—if there's other resolution processes in place, that the Labor Commissioner's going to stay out of those types of disputes between unions, and then if there is any idea of the difference between local area practice and the term that's used in the statute of established practice. Just wanted to get a little bit of information on the record on how that's being done and interpreted, or possibly interpreted, so we have that on the record in case the issue comes up on how it should be interpreted and utilized in the future when this stuff comes up.

**Shannon Chambers (Labor Commissioner):**

Madam Chair and members of the Commission, thank you for the opportunity to comment on Assemblyman Daly's questions. Assemblyman Daly, to your first point about the addition of the language, the new section, or subdivision 3, it is merely another option for the Labor Commissioner. In the past year, the Labor Commissioner did receive an objection to the prevailing wage rates in Clark County. It involved two prevailing wage rates that were collectively bargained by two different unions. The Labor Commissioner told both of those unions that I was not going to get involved in a jurisdictional dispute, and I have put that on the record not only in an advisory opinion but also in this regulation package. It is simply another option that the Labor Commissioner could use. When different unions are claiming different work in different regions or in different areas, what the federal government does sometimes is they conduct what they call a local area practice survey to sort out where the work is assigned, what unions it's assigned to. The Labor Commissioner would just have this as another option. If there was an objection, it would not be something that the Labor Commissioner would ever intend to embark upon on her own or his own, whoever that may be in this position, but it's simply another option. I have no intention as the current Labor Commissioner of getting involved in labor disputes between the different unions. That is governed by their collective bargain agreements, and I have put that on the record, like I said, in an advisory opinion and in this regulation package. So, to that point, there would be absolutely no intention of using this unilaterally under the powers of the Labor Commissioner. It would simply be evidence that potentially could be considered if an objection was filed by different unions regarding the state prevailing wage rates.

**Assemblyman Daly:**

And if I can follow up real quick, Madam Chair?

**Chair Cannizzaro:**

Go ahead.

**Assemblyman Daly:**

Thank you, and I agree, Commissioner Chambers. I just wanted to get a little bit of something on the record, and the one thing that you said, you as the current Labor Commissioner, we like to try to have the record so any future Labor Commissioner would hopefully use this as a guideline on how they would do that, and the record that's established if this regulation is passed is this is what we understood and our intent when we approved it. The only thing that kind of threw me off a little bit, it was—and I know this is just a technical thing, but it says that the Labor Commissioner will interpret evidence presented, which just caused me a little bit of confusion. I don't think it's a big deal. I'm certainly not going to hold up the regulation. There's a lot of other good things in this. But the evidence presented is usually presented from somebody outside, and this then contemplates that as part of our evidence we want you to then go do a survey, and it seemed backward, cart before the horse. A person is making a complaint, they have to substantiate it and provide the evidence, not ask you to go out and do an investigation. But we'll go from there. I just wanted to kind of see that as a cart before the horse type of a deal the way it's written. But other than that, I have no further questions, Madam Chair, and if you're ready for a motion, I would make that to approve.

**Chair Cannizzaro:**

I don't hear any other questions or comments from members of the Commission, so I accept a motion from Assemblyman Daly to approve the regulation.

ASSEMBLYMAN DALY MOVED TO APPROVE R018-18.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

Okay, thank you. We'll move to our next regulation to be discussed, which is R176-18, the Commission of Appraisers of Real Estate ([Agenda Item IV-B](#)). This was also asked to be pulled by Assemblyman Daly. So, Assemblyman Daly, if you could go over your concern and then we'll turn it over to the agency to answer.

**Assemblyman Daly:**

Thank you, Madam Chair, and just some clarification or questions for me, and I notice that we're changing from the Commission to the Division, but then there's also a significant amount of language about an administrator, and I was curious about how those three levels of management interacted, why we're making some of those changes. It wasn't entirely clear to me on who's supposed to do what, and then I think in subsection 5(4)(c), it says that continuing education can be approved, and it's in other places in the regulation as well and in existing language. That can be approved by the director or I think the administrator, but then it only refers to administrator in one section in that (4)(c). I was just curious about how and why that worked, and then the last question I had might just be for Legal. In section 8 where they're listing all the fees, the first fee has a dollar sign next to it and none of the rest of the fees. I didn't know if that was a consistency thing or if anybody else cares, just something that I noticed.

**Sharath Chandra (Administrator, Real Estate Division, Department of Business and Industry):**

Just as a clarification, when we went through the regulation, Senator, the structure is essentially the administrator and then there is the Appraisal Commission. Again, these are market participants. What we tried to do is—we try to meet about four times a year at the minimum, one up north and then one in the south and then the rest of them dispersed in between. The intent is to bring cases to the Commission, so things that are technical in nature, appraisal-related matters. Most of the other stuff we believe is administratively handled, especially education. The sponsor or the educator would provide us the curriculum, we'd go over it and then we would approve it. It's just that the problem is because the meetings happen in increments of every 3 months. Approvals are not that efficient, and so we do that across the board. We also have the CIC, Common Interest Community, Commission. We also have the Real Estate Commission. This was just bringing some consistency in the regulation across all the three chapters, and so that was the reason where a lot of times it's a division administrator. We cleaned it up and then LCB kind of took a look at it and adjusted it accordingly, and so the intent was always—and so the next step of that question is, if there is a person that is disapproved by the administrator at the administrative level, they can appeal it to the Commission, so there is definitely that step. Ultimately the authority lies in the Commission to approve or disapprove an education course or anything that the Division would deny.

**Assemblyman Daly:**

Okay. Madam Chair, if I may?

**Chair Cannizzaro:**

Yes.

**Assemblyman Daly:**

Thank you. Thank you for that explanation, because I wasn't figuring out who was what. We're changing from the Commission to the Division, but the Division is basically on paper, and the Division then—the figurehead or the person in charge of the Division is the administrator, that's his title, who oversees, carries out the policy of the state and the direction of the Commission. The Commission is the final authority, but they only meet quarterly and then can change whatever the administrator may have done in between, various things. I think I understand that hierarchy. I was just curious on that question. When I read it, I didn't know. I'm not familiar with all of that, but I wanted to understand that a little bit better, and then that makes sense in the section 5 question that I had. The administrator on behalf of the Division, which then would have to go to the Commission later if they wanted to change something that the administrator did.

The only other question that I had then was if we need to put dollar signs in for the rest of the—and that would be a staff question. Or if you have it?

**Risa Lang (Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):**

Thank you, Madam Chair. That's consistent with the way we do fees in other sections as well. We just put it in the first one and just have that carry down.

**Assemblyman Daly:**

Sounds good to me.

**Chair Cannizzaro:**

It sounds like Assemblyman Daly's questions have been answered. Any other additional questions or comments from members of the Commission? Hearing and seeing none, I would accept a motion to approve regulation R176-18.

ASSEMBLYMAN DALY MOVED TO APPROVE R176-18.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We'll move on to the next regulation, which is R014-19 from the State Contractors' Board ([Agenda Item IV-B](#)), and this was also a request of Assemblyman Daly. Assemblyman Daly, if you could, please go ahead with your comments and questions and then we'll go to the State Contractors' Board.

**Assemblyman Daly:**

Thank you again, Madam Chair, and so I did have a couple of questions, but I'm hoping the Board can answer as I go rather than putting them all out there. I don't want to get them mixed up. The first question is in section 4 regarding the contractor being put on probation for that. I just want to get a little explanation. I think I understand one way. I want to hear how they do—and I was curious if probation is a defined term anywhere, and then how the Board has handled that in the past, if a contractor gets his license suspended or that he can continue the work that he has but he can't bid any more work. I was looking for a little clarification on that. It wasn't as clear as it could have been to me. If they can answer that question first.

**Tim Geswein (General Counsel, State Contractors' Board):**

Thank you, Madam Chair. Assemblyman Daly, speaking to section number 4, the concept behind probation is a corrective sanction for contractors who simply require more guidance by the Contractors' Board to effectively perform as licensees under the chapter. It's distinct from a suspension. A suspension prohibits the person from acting as a contractor during the terms of the suspension, although sometimes suspensions may be imposed but partially stayed add to new or existing projects. I have seen hearing officers do that in the past. A probation, which I don't believe is a defined term in the regulations, is a flexible process by which a hearing officer can impose discipline on a contractor and continue that discipline over a period of time, such that the contractor has certain obligations to meet to continue to function as a contractor under the statute. This means that the contractor is reviewed, say, for instance, for compliance with the statutes, building codes, workers' compensation insurance, all these matters that are embedded in the chapter. Through that review and process, the contractors are believed to rehabilitate themselves such that they can be removed from the probationary status, or if there are concerns, the probation may be extended.

**Assemblyman Daly:**

So, if I may, and I understand that if you get suspended—the way I understood it is that then a contractor can finish the work that he already has under contract but he is not able to bid any more, secure any more work. How does that work if he's under probation, he's behind on his workman's comp or whatever it might be, and you're saying, "Hey, we're going to put you on probation. You have 30 days to fix this," etc., which I think—we won't go there. I'll just use that as an example. It's probably not a good one, because that's a

pretty serious offense, but what can they or can't they do if they're under probation if it's not a defined term? I understand there's some flexibility there, but what's their penalty? Can they still continue to get work and secure new projects even though they're "on probation"? What would be the things they can't do while on probation?

**Mr. Geswein:**

During a probation, a contractor is typically limited both in the monetary limit and the scope of the work. Additionally, some unusual or atypical conditions can be imposed. For instance, periodic financial reviews on a set schedule. Many times qualifiers for the licenses are demanded to retake examinations, particularly what we call the CMS exam. That is the legal exam. Furthermore, building department permits will be both presented by the contractor and reviewed independently by the Contractors' Board to confirm that the contractor who is on the probationary status complies with Nevada law. Now, probation is in addition to the penalties imposed by statute for violations. For instance, a probation is normally imposed when there is an offender, a licensee who has demonstrated on more than one occasion a failure to abide by the terms of chapter 624. For instance, bidding out of scope, failing to pull building permits, not providing required notices. Those types of infractions when they are a repeat offender but they are correctable with coaching and guidance can be placed on the probation.

**Assemblyman Daly:**

Thank you. If I can, Madam Chair? I understand that, and you said the thing that causes me the concern. I've had discussions with the Contractors' Board over this very type of issue where a contractor, he would get on probation if he more than one time violated the statutes, etc., and I know we've talked about what the penalties are and some of that, and one of my later questions is about some discretion that could be doled out. Those are some of the issues that I have with reviewing this and looking at this, and I know some of the legislation from last session—it's always been about what discretion happens and when should things be more prescribed, and to me, this just gives more discretion, and there's been a lot of people that have had problems with the use of discretion by the Board for contractors that are repeatedly violating stuff. They shouldn't be getting as many chances as they are. I'll move on from that. I think you answered my question. It's still a concern for me, and I'm not sure that I'll be able to get past it here today.

On section 13, I believe it's subsection 12 where I believe it requires a signature of the executive director only. They're striking the language "or his or her designee," which then brings me to the question, what happens if at some point in the future we're between executive directors? Is the agency going to be unable to write some of these orders, especially cease and desist orders, etc.? Why would you want to remove that language? I understand you want to make sure that the executive director—and that those types of major decisions are done at the highest levels. It seems to me you're going to have to put somebody in that place, at least as a temporary executive director, so there's no gap in that, or if the executive director is out on vacation for two weeks or something, time limits

may pass on some of the stuff you have to do. I'm just curious why that change would be made and reduce a flexibility, creating a block, potentially.

**Mr. Geswein:**

Thank you. Regarding the signature requirement of the executive officer, the removal of the designee language was really just to match the removal of that language throughout. However, in the event that the executive officer would be, say, temporarily unavailable, we would have to have an internal process to create a way to reach the person. Say, for instance, as you expressed, an out of town absence, a vacation. My experience is the executive officer has been very reachable and very able to continue with the functions of the job. But in a larger, more extended break, say for medical illness or some other unanticipated catastrophe, there would most likely need to be some sort of acting or temporary executive officer. I'm not sure of exactly the mechanisms there, but I hear your concern.

**Assemblyman Daly:**

I appreciate it. I know it's a low-risk thing and it may not happen and won't be a problem right up until it is a problem. The next question is on section 15, I believe it's subsection 3, and it's talking about "unless otherwise prohibited by law, the Board or its designee may reduce or stay a fine." This is existing language pursuant to subsection 1, "or any other penalty imposed pursuant to chapter 624 pending completion of the training program examination required by the Board or its designee or upon any other just term." As I alluded to you before, there's been a great deal of complaint back and forth to the Board over complaints that are submitted to the Contractors' Board: contractors having violations, some worse than others, and them going through the process and getting a slap on the hand, basically. A lot of people that I deal with that have concerns with the Contractors' Board, and we went through all this in the last session on a couple of the bills that came through. More prescribed penalties, and we understand some flexibility is necessary. Not everybody deserves a \$50,000 fine, which is your max, but people certainly deserve fines for some of the processes that go forward. I just think "or upon other just terms" and leaving that open to a designee goes against what I've been trying to push. People have asked me about how does the Contractors' Board really work, and I'll just tell you the perception and the way that it's perceived by many of the people that I work with in the building trades. It's a good old boys' club, and you can put your complaint in and they'll protect the guy if he's in favor. I'm just telling you what the perception is. I'm not saying these are facts, but that is the perception, and that language lends to that. I don't believe I'm going to be able to support that either. That's three that I have concerns with in this particular regulation. Please respond. I know that's probably not the intent, but that is the perception, and this language just furthers that perception in my view.

**Mr. Geswein:**

Thank you. The using of the phrasing “or other just terms” is to give the hearing officer—who is a non-market participant, typically. When we say “the Board or its designee,” that refers to the hearing officer to have equity to impose the discipline such that the discipline is tailored to the offense and the seriousness of the offense. This does go hand in hand with some of the concepts earlier we discussed about probation or suspension or suspension that’s stayed pending completion of existing projects. These are an opportunity for a hearing officer to impose discipline that is sound public policy and consistent with the terms of the chapter.

**Assemblyman Daly:**

If I can, Madam Chair? Thank you. I'm sure the rest of our colleagues on the Commission here recall a regulation, I believe earlier during this interim, based on some legislation that was passed this last session that you're the designee or the other person. Typically, the hearing officer is a qualified person. It's someone who has the background, and you put in regulation that these are the qualifications. You use an administrative law judge or some other person of that status. I think I understand that, but still, that language is causing me some problems, and I'd be happy to—well, if we could defer this today and talk some more with the Contractors' Board to see if we can at least understand it a little bit better and potentially bring this back. I know it's only a 2019 regulation so you still have time. You're not going to run into any time bars, I don't believe, if that's a possibility, because like I said, you've got three things that are causing me some concern, and I'm familiar with the interactions of the Board and many of the people in the building trades. I guess that was a comment, Madam Chair, and I would request that we defer this at this time today.

**Chair Cannizzaro:**

At this point, I will open it up for any other questions or comments from members of the Commission. I don't think I see or hear any other questions or comments for the State Contractors' Board. However, I do think, Assemblyman, that you have brought up some good concerns, so at this point I'm going to ask to defer this particular regulation and request that the State Contractors' Board do some additional follow-up so we can get some clarification and ensure that the discretion that is being used is used appropriately to hold those accountable who need to be held accountable and provide some more guidance so that we can feel a little more comfortable that we're engaging in good faith with the public and can hold folks where they need to be.

With that, thank you for being here with us today. We will go ahead and move on to our next regulation that has been requested to be pulled, which is R039-19 ([Agenda Item IV-B](#)). Senator Settelmeyer did ask to pull this particular regulation for the Employment Security Division of the Department of Employment, Training and Rehabilitation, so we'll

turn it over to Senator Settelmeyer. If you could please go ahead with your questions and comments, and then we will let the agency respond.

**Senator Settelmeyer:**

Thank you, Madam Chair. Specifically within the regulation, I was concerned about the reimbursement rate to a nonprofit being increased from 10 percent up to potentially 20 percent, and I was curious the reasoning or need for that since this would then mean that less money would actually get to the intended purpose. I was wondering if someone could provide some more clarity on that.

**Dennis Perea (Deputy Director, Nevada Department of Employment, Training and Rehabilitation):**

Just as a quick history on this program, when it was implemented we put these regulations in place with the 10 percent and we did release RFPs (request for proposal) under the current regulations and received no interest. Subsequently to that, we did reach out to our brethren over in Business and Industry, understanding that they had more expertise than we did on administering small business loans, and asked them for their support, and they actually did launch the program on our behalf using their existing relationships. They were able to have a pretty good run of 2 years, but it was clear that the lenders that they had were doing it as a favor and would no longer do it after that point. So, in conversation with Business and Industry, we decided to raise it to 20 percent, knowing that the vendors actually wanted more than that, but we believed that we would be able to get interest in administering the program going forward at 20 percent.

**Senator Settelmeyer:**

Thank you for that explanation. Thank you, Madam Chair.

**Assemblywoman Maggie Carlton (Assembly District No. 14):**

Madam Chair, may I ask a question?

**Chair Cannizzaro:**

Yes. Please, Assemblywoman.

**Assemblywoman Carlton:**

Thank you very much. Mr. Perea, when you say vendor, are you referring to the nonprofit or to a financial institution?

**Mr. Perea:**

The nonprofit institution.

**Assemblywoman Carlton:**

Okay, and just out of curiosity, about how large are these loans?

**Mr. Perea:**

The regulation says that it's a maximum of \$15,000 that can be extended to not more than \$20,000 by the administrator.

**Assemblywoman Carlton:**

Thank you, Mr. Perea. I think that puts a little bit different light on it. You know, 10 percent of \$1 million is one thing, and 20 percent of \$25,000 is another. That can be misleading, so I understand the barriers you might have been running into because of the time and effort it takes to manage that amount of money is the same time and effort as if it's got a couple more zeros behind it. I understand where you're trying to get. Thank you very much.

**Chair Cannizzaro:**

Any other questions or comments from members of the Commission? Seeing and hearing none, I would accept a motion.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE R039-19.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

Thank you. We will move to the next regulation requested for individual consideration. It's R075-19, the Board of Environmental Health Specialists ([Agenda Item IV-B](#)). This was a request from Assemblyman Daly, so I will turn it over to you and let you go ahead and ask your question or comments and then we'll let the agency respond.

**Assemblyman Daly:**

Thank you, Madam Chair. Real quick on this one, I reached out to the sponsor of the legislation from last session on, I think it was AB (Assembly Bill) 175. Assemblywoman Peters asked if I would just ask a couple of questions along the lines of, it looks like—and we're hoping and in light of some of the things that have happened since the session and the emergencies and the state being able to respond to the things, and especially in the environmental health sciences might become an issue. So, these regulations, the way we're looking forward, some of the things that were passed is hopefully—are we anticipating that it's going to give the state the tools and the resources they need to meet increased response or emergency response? Then, reciprocity, temporary licensing and various things, and I believe the fee was lowered for trainees and various things, so that should be helpful as well. If you could just comment on that. Those are the things that the Assemblywoman wanted on the record.

**Ms. Lang:**

I think this agency might have needed to leave a little early, so they may not be here to answer right now. We can forward your questions to them and get an answer back, and you can decide if that's something you need now or if you want to get that later.

**Assemblyman Daly:**

Later is fine with me. I don't think there is any reason to hold up the regulation. Everybody I reached out to on this believes that it was right in line with legislation and it's good to go. They just wanted those clarifying questions just to make sure we're moving in the right direction and that we can respond quickly if needed, which appears to be the case.

**Chair Cannizzaro:**

I believe I had Senator Ratti who also had a question on this particular regulation.

**Vice Chair Ratti:**

Thank you, Madam Chair. Again, if we can't get the answer today, that's fine. I can get it in the future and it's not worth holding it up for. But I really was just curious, in section 2 when we're trying to talk about the qualifications of the hearing officer, and it says they "must possess a level of education or experience equivalent to, at a minimum, a bachelor's degree in a field directly related to administrative law," and I was having a hard time understanding an example of what that bachelor's degree might be. It seems to be pretty narrow depending on how tightly that would be interpreted, with law being, of course, a law degree. So, what is a bachelor's degree that is related to administrative law? I could just be ignorant here.

**Ms. Lang:**

I don't have that information right off, but again, I'm happy to get that information to them, the questions that you have, and get back to you with their answers.

**Chair Cannizzaro:**

I think I heard from both Assemblyman Daly and Senator Ratti that those concerns or clarification was not impactful on a request to move this regulation along and approve it, and it looks like we can probably get some additional information from the agency to clarify some of those things. We'll include those, if we could, with the record for this regulation just so that we can have that clarification as well for those items.

With that said, I don't know if any other members of the Commission have questions or comments. I would accept a motion to approve.

ASSEMBLYMAN DALY MOVED TO APPROVE R075-19.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN CARLTON VOTED NO).

\*\*\*\*\*

**Chair Cannizzaro:**

We will move on to our next item that was requested to be pulled. It is R117-19, the Public Utilities Commission of Nevada (PUC) ([Agenda Item IV-B](#)). That was also a request of Assemblyman Daly, so I will go ahead and turn it over to you for your questions and comments, and then we will let the agency respond.

**Assemblyman Daly:**

Thank you, Madam Chair, and this is just a clarification-type question, not anything in the section. I understand that reading it is—so adding renewable gas to their system. If they can explain, and my understanding with the renewable portfolio standards and various things that may be not required, but highly encouraged, or next to it, required. People need to add the renewable gas, the portfolio, and then they have to go in front of the PUC in order to get whatever project they're doing to facilitate the renewable gas approved by the PUC, but then that approval doesn't include the finding of prudence so they can be reimbursed for that infrastructure upgrade for their renewable policies, so they have to get renewable, they have to add it, they have to meet certain criteria and they have to get

approval. It just seems to me it creates a conflict if somebody is going to say, "Hey, I've got to do this. I want to go forward. But then, now that I've paid for it, I don't know if I'm going to recoup any of the costs through the ratepayers because I don't have approval that it was prudent and I have to wait until it's already done and in place and then go back again for a rate increase to find out if it was prudent or not." It just seems backwards to me in that it conflicts and stifles a person wanting to go forward with otherwise reasonable renewable projects. If they could address why we have that conflict, and this isn't the only area where it's there, but it just seems backwards to me, where it should be included in the approval or there should be a new process so it can be included in the approval. If someone could explain that to me, I would be happy.

**Donald Lomoljo (Utilities Hearing Officer, Public Utilities Commission of Nevada):**

Thank you, Assemblyman. Regarding the prudence issue, that process is actually standard for our natural gas utilities in the state in that they do not have what is called resource planning, which the electric utilities do, and they would request a predetermination of prudence within a resourcing planning process, which was established by statute for major projects. Natural gas utilities do not have that sort of standard for them with all projects, not just the renewable natural gas aspects, to build a project and then seek a prudence determination and recovery of costs afterwards in a general rate case proceeding. However, in this case with the renewable natural gas projects, the Commission would already have an idea of the scope of the project as well as costs of the project, where under the project would be approved with the understanding of those guideposts, so the determination of prudence in a subsequent rate case would not be totally blind or without guidance from a preapproval process in this process.

**Assemblyman Daly:**

If I can, Madam Chair? I understand. That's the way I understood it, and as I've learned here over the course of time the differences between some of the utilities, it still just seems that it creates a rub. Am I going to go and do this project and may not get reimbursed for the cost of that project, or only partially reimbursed, because some part of this wasn't prudent? Seems to me those two things should be married together a little bit better, and maybe if it does take some legislative change or whatever, that should be looked at, because the way I read this is that if you're required to go get this renewable stuff and meet standards and portfolio goals and various things and you have to go and get the approval, and then you may or may not get paid back for it, it creates a reluctance if there's a high degree of uncertainty whether or not that's going to be fulfilled. That was my comment, and I understand the process is what it is. It will take a different kind of change to correct it. So, if nobody else has any questions, when it's appropriate I would make a motion to approve, but I just wanted to understand that process a little bit better. Thank you.

**Senator Moises Denis (Senatorial District No. 2):**

I just had a question in the language in section 2(f)(2). It refers to a 180-day time limit for responding, and normally they have 220 days. I'm wondering why they reduced it to 180 days, because I know there's a lot of stuff going on now when it comes to energy and so I just want to understand what the process was. I noticed that the Bureau of Consumer Protection had an issue with that also. So, if somebody could respond to that?

**Mr. Lomoljo:**

Thank you, Senator Denis. The 180-day timeline in this proceeding was determined to be appropriate because of the discreet nature of these applications. They would only deal with one or a couple projects at a time. I think you're referring to the 210-day application process for general rate cases, and that would be, for example, for Southwest Gas when they came in to adjust their general rates, where the Commission would be examining the entire operation of the utilities. It takes longer for that. The Commission thought that in this case that these were discreet enough that 180 days was appropriate.

**Senator Denis:**

Okay. Thank you very much. Thank you, Madam Chair.

**Chair Cannizzaro:**

Any additional comments or questions from members of the Commission? Okay, hearing and seeing none, I would accept a motion to approve.

ASSEMBLYMAN DALY MOVED TO APPROVE R117-19.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We will move on to our final regulation for individual consideration. It is R047-20P on behalf of the Personnel Commission ([Agenda Item IV-B](#)). This was a request from Senator Settelmeyer, so we will turn it over to you, Senator, for your questions and comments and then to the agency to respond.

**Senator Settelmeyer:**

Thank you, Madam Chair. I'm always concerned with advance proposals, because again, it sometimes stymies the ability for people during public comment of those proposals to interact. I'm kind of curious of a couple of things in this particular bill, if you would. Specifically, is this already happening, where individuals have been allowed to go home due to health concerns with pay?

**Peter Long (Administrator, Division of Human Resource Management, Department of Administration):**

Yes, Senator. This regulation was passed as an emergency regulation on March 15. It has been in effect since that point. Basically, current, existing administrative regulation did not allow for an employee to go home under mandatory quarantine, mandatory isolation or self-imposed quarantine unless an entire office was closed down, nor did existing regulations say if they were ill due to this what type of leave would apply. So, an emergency regulation passed which allowed under an emergency declaration that employees could use this for health and safety purposes. It's mainly to address, like I said, the mandatory isolation, quarantine or the self-imposed quarantine when someone believes they may have had probable exposure. This is all related to COVID-19.

**Senator Settelmeyer:**

With that, I understand that NAC (Nevada Administrative Code) 284.580 allows the Governor to do furloughs and send people home without pay. This specifically is looking to give them pay, and if you already have the authority, is it due to the fact that an emergency regulation has—how many days does an emergency regulation have before it has to come to the Legislative Commission in order for approval to make it valid going forward?

**Mr. Long:**

An emergency regulation is good for 90 days, so this is good until July 15.

**Senator Settelmeyer:**

In that respect—and I understand the concept—does this apply to entire departments, or is this only on an individual case-by-case scenario? Obviously, if an individual had a pre-existing condition that left them more vulnerable due to their age, or lung concerns, respiratory concerns where they shouldn't be at work, or is this just a blanket policy that applies to entire departments?

**Mr. Long:**

I'm sorry, I'm not sure I understand the question. It would be for all departments, but by individuals. It's for the executive branch, but an individual would have to be either required by a health authority to quarantine at home due to probable exposure or required by a health authority to isolate at home due to probable infection or a self-imposed quarantine, which is the employee has a reasonable belief that they have had probable exposure. This was to protect both the employee themselves as well as their coworkers in those offices that are functioning with skeleton crews. It's statewide for the executive branch, but it's for individual employees to apply.

**Senator Settlemeyer:**

Okay, and I was concerned because I did hear of a few executive departments that, when this occurred, they sent their entire staffs home for 2 weeks with pay. Again, some of those did not necessarily have concerns, but it seems very questionable to me in that it's a nice concept, but can we really afford this, and especially in light of the current economic realities. That was my concern. You're saying this will not be given to an entire agency, this will be only an individual case-by-case scenario, correct?

**Mr. Long:**

For the isolation and quarantine, employees where offices are closed down are expected to telecommute and work from home if they can. If not, they are eligible for life and safety purposes to use admin leave under this provision.

**Senator Settlemeyer:**

So, with that being said, then an entire department could qualify?

**Mr. Long:**

Correct.

**Senator Settlemeyer:**

Thank you. Thank you, Madam Chair. I have concerns with that.

**Assemblyman Daly:**

Thank you, Madam Chair, and if the gentleman could answer, the way I read this, my understanding is this new section and the parts that we were just talking about would only be applicable if there's a state of emergency declared by the Governor and all of the criteria for that are met. Is that the case? This new provision, there has to be a state of

emergency declared before this stuff would kick in, otherwise it's just the regular rules that we've had prior to this. Is that a fair statement?

**Mr. Long:**

You are correct, Assemblyman. That is an accurate statement.

**Assemblyman Daly:**

Thank you. That was my only question. I just wanted that on the record. Nothing really changed, unless there's a state of emergency declared, and then that circumstance would apply and what this regulation is covering.

**Assemblyman Jim Wheeler (Assembly District No. 39):**

Thank you, Madam Chair. I was just wondering, this is kind of just for my own edification right now, but would any of this be reimbursable under the CARES (Coronavirus Aid, Relief and Economic Security) Act as a COVID-19 related expense?

**Mr. Long:**

I'm not the fiscal person, I'm HR (human resources), but I believe certain percentages, if not all, are reimbursable under the CARES Act depending on whether it was sick, whether an employee was staying home because of school closure or day care, etc., so yes.

**Assemblyman Wheeler:**

Thank you.

**Chair Cannizzaro:**

Additional questions or comments from members of the Commission? With that, I would accept if there's a motion to approve.

SENATOR RATTI MOVED TO APPROVE R047-20P.

ASSEMBLYMAN DALY SECONDED THE MOTION.

**Senator Settelmeyer:**

Thank you, Madam Chair. I support the motion with respect for individuals who have pre-existing conditions and therefore definitely should not have come in at a risk to their own life, and I completely approve of that. This concept though, that if a department is shut

down and didn't have the ability to telecommute, that it would apply to a whole department, I find problematic and costly to the state and therefore cannot support it. Thank you, Madam Chair.

**Vice Chair Ratti:**

Thank you for recognizing me, Madam Chair. I understand my colleague's concerns in that times are tight and we need to make sure that we're paying attention to every dollar. However, I think at this point on June 5, it's starting to get easy for folks to forget what it was like back in mid-March or early March when this emergency declaration was declared and our number one priority as a state was to reduce the spread of COVID-19 so that we could make sure that we didn't have such a surge in cases that would shut down our hospitals. So, I think that what we're talking about here at the state is a very standard practice that was used not only in state government, it was used in local governments, it was used at the universities, but it was also used in the private sector to say if you can work from home, let's make a yeoman's effort, and I believe that the state did make a yeoman's effort. I have been working directly with state employees who have been working from home and I know that every effort was made, but if there was any way possible to continue that work and continue it out of state facilities where you weren't in contact with people that a lot of good work got done. I think it was a relatively small, limited number of instances where we didn't want people to come in because we didn't want to have a spread of COVID-19 and we didn't want to see a surge in spread. Again, our number one priority was protecting our hospitals so they didn't get overrun, and we didn't want those folks to come in, but we also couldn't—due to the nature of their work, perhaps they're an electrician, perhaps they're a facilities person, whatever that looks like where they couldn't work from home, that that was an appropriate decision for the health and safety of our state and that it would be inappropriate to ask that employee to bear the financial burden of the fact that we're in an epidemic and they couldn't work during that time. I do think it is fair that those employees got compensation. I think over time—now we're in June. We're in phase 2—let's just say 2—and folks are coming back to work. We don't have the same level of surge. We clearly don't want to have wholesale allowing of departments to not be doing their work, because the work of the state is very important, but I think in the context of the epidemic and the tough decisions that had to be made not just by state government, by local governments and by private businesses, that continuing to pay people when, of nothing that they could control, they couldn't work, was good for that employee and also good for our economy. Let's remember we're also in an unemployment crisis and we don't need additional employees who are trying to get into our unemployment system, which as we all know has struggled to meet the 1,400 percent increase in claims. I also think it was a good decision for the economy to keep those employees paid and working, even if they weren't actually able to work, so that's how I perceive this. I see it a little bit differently, and I definitely will be supporting this motion.

THE MOTION PASSED (SENATORS HAMMOND AND SETTELMAYER AND ASSEMBLYMAN WHEELER VOTED NO; SENATOR HARDY WAS ABSENT FOR THE VOTE).

\*\*\*\*\*

**Angela Hartzler (Secretary, Legal Division, Legislative Counsel Bureau):**

I'm unable to get a response from Senator Hardy.

**Chair Cannizzaro:**

That will conclude our discussion of regulations for consideration. At this point, we will move on to the next item of our agenda, which is approval of appointments. We have some appointments within the Legislative Counsel Bureau to consider, so I will turn it over to Ms. Erdoes to present the information relating to those appointments.

**Ms. Erdoes:**

Thank you, Madam Chair. Item IV(C) is the appointment of General Counsel and Legislative Counsel. Under 218F.100 and 218F.110 of NRS, the Director is responsible for supervising the organization and personnel of the LCB and its divisions to ensure the efficient, effective delivery of professional services to the Legislature. As part of the Director's duties, the Director appoints the Legislative Counsel with approval of the Legislative Commission. The Director also has a duty to employ any other legal professionals whom the Director determines are necessary in providing efficient and effective legal services to the Legislature. As you know, the primary legal services provided by the Legal Division involve the legislative process, including bill drafting and advising the Legislature and its members on legal issues regarding the legislative process. The main focus of the Legislative Counsel is directed primarily towards ensuring that the Legal Division is able to provide legal services for the legislative process in the most efficient and effective manner. Over the years since I've been in the Legislative Counsel position, the Legal Division has been tasked with providing a variety of specialized legal services extending beyond the traditional legislative process. So, in addition to more complex and basically drafting tasks that we've gotten, we've also gotten into specialized legal services which are necessary and need to be done, but they are different, like representing the official interests of the Legislature in litigation before administrative agencies and courts, advising legislators on matters relating to ethics, prohibited gifts, educational information, meetings and trips and financial disclosure statements. This is an area of pretty large growth where there are a lot of very precise statutory rules and policies that need to be interpreted correctly for legislators pretty much throughout the interim. The third thing is providing legal support for legislative investigations of alleged improper conduct in the workplace and for associated

disciplinary proceedings, such as the proceedings regarding the expulsion of the member of the Assembly in 2013. We have seen an uptick in these kinds of things that's probably maybe a little less than the country overall, but still we are seeing an increase, and these are matters that you need legal advice for.

To assist the operation of the Legal Division, we've developed a revised organizational structure in which the Legal Division would be guided by both the Legislative Counsel and a General Counsel. Under the revised organizational structure, the main focus of the Legislative Counsel will remain directed primarily towards overseeing the legal services provided for the traditional legislative process, and it's my hope that this will help in meeting all the deadlines, which we haven't been able to do for a little while even though we were really trying. At the same time, the main focus of the General Counsel would be directed primarily towards overseeing the specialized legal services provided by the Division beyond the traditional legislative process. In addition to what I talked about earlier, there's also drafting contracts and negotiating personnel issues and things like that for the Legislative Counsel Bureau as a whole. We believe this revised organizational structure will help ensure that the Legal Division can continue its long history of efficiently and effectively providing legal services to the Legislature and its members. For that reason, I would ask the Legislative Commission's approval of these two appointments today. I'm happy to answer any questions, if I can.

**Chair Cannizzaro:**

Thank you, Ms. Erdoes, for giving us that rundown and providing us with details about this decision, and I think it makes a lot of sense. We'll open it up at this point for any questions, comments from members of the Commission.

**Senator Settlemeyer:**

Thank you, Madam Chair. I appreciate the concept of revising the organizational structure. I believe in the future it will provide more clarity and impartiality to the process and maybe not allow some of the feelings that have developed over the last couple of sessions in that respect. With that, I was curious if you planned to take item (C) individually, (1) and (2), or if you're going to take a vote on both at the same time?

**Chair Cannizzaro:**

It will be a vote for both, and I would note that the members of the Commission do also have in their meeting packets copies for both of the particular positions, resumes for the two individuals ([Agenda Item IV-C](#)).

**Senator Settlemeyer:**

With that being said, then I guess I need to make these comments at this time. In that respect, I've had the pleasure of working with Mr. Fernley. He has always been very

impartial and bipartisan. Occasionally we've disagreed on particular viewpoints. However, again, he's always been very impartial and bipartisan. I do not necessarily feel the same way about Mr. Powers and will be voting no. Thank you.

**Vice Chair Ratti:**

Thank you. So, if this were filling any other position and we weren't just creating these positions newly, does the Legislative Commission typically get involved in approving or disapproving appointments or is that at the full discretion of the Director of the LCB if this was just an existing position?

**Ms. Erdoes:**

The only positions that are required to be approved by the Legislative Commission in the LCB are the division chiefs, so the Legislative Counsel in this case. I chose to bring the General Counsel to the Commission at the same time because I feel like it is a similar type of position and it just seemed appropriate to me. It isn't required by statute. However, we would be proposing in the future to include this, the General Counsel, in the statutes just to make it clear and protect that for posterity.

**Vice Chair Ratti:**

Great, that's helpful for my understanding. Thank you.

**Assemblywoman Carlton:**

Thank you, Madam Chair, and I look at this as voting for the evolution of our LCB and the work that has been done. I've watched these folks work for a very, very long time and get amazing things done in the timeframes that we give them. I believe with all the increased litigation, it seems like everything we do, somebody wants to sue us, sometimes friendly, sometimes not, that we do need to have a splittiness so that the LCB can get its work accomplished. I don't believe making a decision on creating a new position should depend upon who's going to fill that position. I believe it should be dependent upon is this how we would really like to see our LCB evolve and get its work done. Therefore, I am totally supportive of this going forward, and simply because Mr. Powers' name was brought up, I've worked with Mr. Powers since 1999 and have the utmost respect for him. We have disagreed on things where he has told me that I am wrong and has proved it to me, and I always appreciate that. Even though we don't always agree, he does a fantastic job of making sure that we're always on the right path and doing what we need to do for the State of Nevada. Thank you very much, Madam Chair.

**Assemblyman Wheeler:**

Thank you, Madam Chair. Madam Chair, I have to disagree a little bit here. We're not just voting on the position. We're voting on two separate things here. We're voting on the new

positions and we're voting on who will fill those positions, so it's two separate things, and I'd like to personally request that we have two separate votes on it. Thank you.

**Senator Hardy:**

I've been kicked off three times in the last little while, so I think it was probably because they didn't want to hear me, but that's my own paranoid thinking. I appreciate the bifurcation that we're talking about. I think the time is ripe to do that, and likewise, I would be remiss if I didn't say that I have been singularly impressed with the ability that Kevin Powers has to argue a case and think on his feet and do all of those things. Unfortunately, I don't agree with him, and one of the challenges I think we have in that particular position is—and I was grateful to hear that somebody on a different party than I am didn't always agree with him. But the reality of an attorney is also not just to argue but to give advice, so I think it's regrettable that sometimes the advice on a constitutional amendment, per chance, created such a stir without having had a full look at what could happen if we voted without using a two-thirds rule. I'm concerned about the nonpartisanship, the neutrality, the bipartisanship in that particular position. But my no vote will have nothing to do with the ability of an attorney, but it would have everything to do with talking about the reality of the trust factor in the advice and the neutrality involved. By the same token, if these votes are put together, I think the reality is that I know that the bifurcation is something that should be done. Thank you for listening, and hopefully we'll get something done. I appreciate it.

**Assemblyman Jason Frierson (Assembly District No. 8):**

Thank you. I had one question. I wanted to make sure I understood it correctly. Did we establish that the second part of who is not even something that would necessarily have to be subject to a vote and that we're just doing this out of an interest in putting it all together in one act? Am I correct in that?

**Ms. Erdoes:**

Yes, Speaker Frierson. The statute requires the current division chiefs to be—for the Director to appoint someone with the approval of the Legislative Commission. Because this isn't yet established in the statute as a division chief position, technically the statute doesn't require approval of the position. However, because the reorganization is seeking to have an additional division chief level person, that's why it was brought to you today.

**Assemblyman Frierson:**

Thank you, and if I may follow up, or actually really just make a comment, Madam Chair. I appreciate the division. I don't know that all of the body appreciates fully that the conversation about this division occurred long before we all decided to start suing each other. This has been something that's been worked on and discussed for a very long time and it started long before there were any particular people in mind for the position. As a

lawyer, I will say the worst of my colleagues are the ones that tell their clients always what they want to hear. I have never known a good lawyer to tell me only what I want to hear, and that goes for Ms. Erdoes, as well as everyone. I think that Mr. Powers and Bryan both have provided sound advice, not all of which I have always agreed with, and I'm quite honestly baffled at the picture being painted that either one of them are partisan, but people are certainly entitled to their opinions. Again, I have disagreed with our counsel plenty of times, but I know that their job isn't to tell me what I want to hear and I appreciate that. I won't speak to the wisdom of making a decision based on a structural change in a personnel matter and pending litigation or whether or not my view is the view that counsel agrees with, but I applaud the efforts to come up with a reorganization that better serves Nevada and better serves the Legislature, and I want members to know that this reflects a great deal of work and time going into it and talking to other states and what other institutions have done to make the flow work better to deal with the new kind of challenges that legislatures are experiencing. So, with that, I'm fully in support of what I believe is what should matter, and I think it's less about the who and more about the work that has gone into better representing the Legislature.

**Senator Denis:**

I just wanted to second what the Speaker said. This isn't something that all of a sudden just came up. It's something that's going to make our institution better as we move forward, and it was something that was there long before, as the Speaker said, any specific individual. I think this is really good for us as we move forward, and I would agree. I don't think we always agree on things and haven't always liked the way some opinions have gone, but this is to help make our institution better as we move forward and better serve the public, and it also will save money in the long run because of having to use outside counsel and those kinds of things. I appreciate Ms. Erdoes bringing this forward. Thank you.

**Senator Settelmeyer:**

Thank you, Madam Chair. I would gladly vote and move for the bifurcation if we could divide the vote.

**Senator Hardy:**

Second.

**Chair Cannizzaro:**

I think we've kind of gone over this. This is a motion to approve the two different positions with the individuals that we've been discussing and not a bifurcated vote. Any additional questions, comments? With that, I would accept a motion to approve the two different positions with the appointments as recommended by Ms. Erdoes and as has been discussed.

ASSEMBLYMAN DALY MOVED TO APPROVE THE APPOINTMENTS OF KEVIN POWERS AS GENERAL COUNSEL AND BRYAN FERNLEY AS LEGISLATIVE COUNSEL.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

**Vice Chair Ratti:**

Thank you, Madam Chair. I appreciate it. Because this has become to a certain degree personal, I agree with the Speaker that everybody is entitled to their own opinion, but I just want to be very clear that my opinion is that my experience with all of the LCB staff day in and day out has been that they do everything that they can to be nonpartisan. I have experienced that directly. I've experienced that with Mr. Powers specifically and I just feel compelled to say that I stand by not just the position and the organizational structure, but also by the individual. I feel like he's demonstrated himself many, many times to have the best interest of the institution and not to be particularly aligned with anything else, so I just feel the need to say that.

**Assemblyman Wheeler:**

Thank you, Madam Chair. I just wanted to get on the record that I believe everyone agrees that the bifurcation is what we need, and I think it's a very good idea. Were the votes separate, I believe you would probably get a unanimous vote on that, and I just wanted to put that on the record. Thank you very much.

THE MOTION PASSED (SENATORS HAMMOND, HARDY AND SETTELMAYER, ASSEMBLYWOMAN KRASNER AND ASSEMBLYMAN WHEELER VOTED NO).

\*\*\*\*\*

**Chair Cannizzaro:**

We will move to the next item on our agenda, which is item (D), approval of recommendations of the Committee to Conduct an Interim Study of the Requirements for Reapportionment and Redistricting in the State of Nevada. Ms. Erdoes, I will turn it over to you to present that item. This is an approval of recommendations that were made from the Committee with respect to both, I believe, some software and then also positions to accompany that ([Agenda Item IV-D](#)). Ms. Erdoes, if you could walk us through that item?

**Ms. Erdoes:**

Thank you. At the second meeting of the Committee to Conduct an Interim Study of the Requirements for Reapportionment and Redistricting in the State of Nevada on May 27, 2020, the Committee considered many issues, including redistricting software options and redistricting hardware essentials and geographic information systems (GIS) technician positions. Continuing the tradition of the past several decades, the Committee adopted the following recommendations for presentation for the approval of the Legislative Commission today. There's three recommendations total. Recommendation 1 is the redistricting software, and we are asking for the Commission to authorize the Director of the Legislative Counsel Bureau to purchase autoBound by Citygate GIS software. The total recommended authorization is \$67,000. Recommendation 2 is redistricting hardware essentials, and so the request is to authorize the Director of the Legislative Counsel Bureau to purchase computer printer hardware for staff and public GIS workstations. The total recommended authorization is \$34,800. Recommendation 3 is the GIS, or geographic information systems, technician positions, and so the recommendation was to authorize the Director of the Counsel Bureau to employ, if necessary, four temporary geographic information systems technicians at a grade 35.

Because of the uncertainties relating to the US Census Bureau getting us the information, if the Commission approves this item today, the LCB will treat this as a maximum amount approved to be expended on each of these items as needed. In other words, we're not asking to spend this money right away. We want to make sure that we're able to do this as quickly as possible once the need becomes apparent. I'm happy to answer any questions about this.

**Senator Denis:**

Thank you. I had a couple of questions. On the software, because I didn't get—I don't have the information from the meeting. So, autoBound, is that the same—that's not the same software that we used last time. Is that correct, or is it?

**Ms. Erdoes:**

I believe that is the same software that you used last time. That was my understanding, yes.

**Senator Denis:**

Okay, so this is just an updated version?

**Ms. Erdoes:**

Yes, I'm sorry. It's not exactly the same. It's not the 10-year-old version. It is the same company and they have kept their system up. I think there were five or six options that

were discussed, so this was reevaluated completely and then we came back to this same vendor that we had 10 years ago.

**Senator Denis:**

Great, and then for the hardware, \$34,000 doesn't seem like a lot. Is that just workstations? There's no servers involved?

**Ms. Erdoes:**

Yes, it's just the actual workstations and the printer hardware for staff, so it's workstations but it's also any additional—there was some purchase of hardware for staff in the last budget that was passed by the 2019 Legislature. There was some of the plotting and stuff. I'm sorry, I don't have the names of the exact equipment, but some of that was purchased, or at least was authorized for purchase, and I think we already have it actually, so this will add to that.

**Senator Denis:**

Okay, thank you. Thank you, Madam Chair.

SENATOR DENIS MOVED TO APPROVE THE RECOMMENDATIONS OF THE COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE REQUIREMENTS FOR REAPPORTIONMENT AND REDISTRICTING IN THE STATE OF NEVADA.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED (SENATOR HARDY WAS ABSENT FOR THE VOTE).

\*\*\*\*\*

**Chair Cannizzaro:**

I know that Senator Hardy has been having some technical difficulties, so we'll make sure to get his vote, I think both on this one and there was one other, I think the last regulation, perhaps, that he missed. We'll be sure to get his vote and include it in the tally, because I know he's been having just those technical difficulties, which comes along with sometimes doing these virtual meetings. But in any event, that particular motion does pass, and so we will move on to the next item on our agenda, item (E), the approval of requests for extension of deadlines for certain interim and statutory committees. We of course have had some delayed meetings and difficulties over the last several months, so it's not surprising that we do have some committees that had meetings that were

cancelled or were unable to schedule meetings as they would have been able to without some of the delays just by virtue of the pandemic and our inability to meet in person and have to really set up this virtual system. Again, I just want to commend staff for doing such an amazing job of getting us up and running. I know that we had several committees that have reached out. They are finding that they need more time to complete their business. I'm going to turn it over to Ms. Erdoes to walk us through these particular items and requests.

**Ms. Erdoes:**

Thank you, Madam Chair—

**Senator Hardy:**

Madam Chair, if I disappear it's because I'm getting kicked off here regularly.

**Ms. Erdoes:**

Did you want to confirm your vote from the last item?

**Senator Hardy:**

Is that the question—the last three that came together?

**Ms. Erdoes:**

It was item (D). Yes, the three recommendations for the redistricting software, hardware and technical positions.

**Senator Hardy:**

I'm a yes.

**Ms. Erdoes:**

Thank you.

**Senator Hardy:**

Thank you.

**Ms. Erdoes:**

So, on item IV(E), NRS 218E.205 provides that interim studies assigned to the Legislative Commission must not meet later than June 30 of an even-numbered year, unless an

exception is granted by the Legislative Commission. In addition, NRS 218.160 requires that any BDR (bill draft request) of these committees be submitted to the Legislative Counsel on or before September 1, 2020. There's information in your packets requesting that this Commission grant an extension of one or both of those deadlines for the Committee to Conduct an Interim Study of Issues Relating to Pretrial Release of Defendants in Criminal Cases, the Committee to Conduct an Interim Study Concerning the Costs of Prescription Drugs, the Committee to Conduct an Interim Study Concerning Wildfires, the Committee to Conduct an Interim Study of Issues Relating to Driving Under the Influence of Marijuana, the Committee to Conduct an Interim Study of Requirements for Reapportionment and Redistricting in the State of Nevada and the Sunset Subcommittee of the Legislative Commission ([Agenda Item IV-E](#)). The reasons for the extension requests are as stated by the Chair. There's also an issue for the Redistricting and Reapportionment Committee relating to the US Census Bureau delays as well. I believe the exemptions for these 6 committees, that the 6 committees out of 26 legislative statutory and interim studies, indicates that we're actually doing really well in terms of this interim, given the circumstances.

I'm happy to answer any questions that you may have, and the Commission can choose to vote on all six of these at the same time or vote on each one of the six requests separately, whatever is your desire. Thank you.

**Chair Cannizzaro:**

Thank you. Members of the Commission, any questions or comments regarding these requests?

**Senator Hardy:**

I would move we vote on all of them all at once.

SENATOR HARDY MOVED TO APPROVE THE REQUESTS FOR EXTENSION OF DEADLINES FOR THE COMMITTEE TO CONDUCT AN INTERIM STUDY OF ISSUES RELATING TO PRETRIAL RELEASE OF DEFENDANTS IN CRIMINAL CASES, THE COMMITTEE TO CONDUCT AN INTERIM STUDY CONCERNING THE COSTS OF PRESCRIPTION DRUGS, THE COMMITTEE TO CONDUCT AN INTERIM STUDY CONCERNING WILDFIRES, THE COMMITTEE TO CONDUCT AN INTERIM STUDY OF ISSUES RELATING TO DRIVING UNDER THE INFLUENCE OF MARIJUANA, THE COMMITTEE TO CONDUCT AN INTERIM STUDY OF REQUIREMENTS FOR REAPPORTIONMENT AND REDISTRICTING IN THE STATE OF NEVADA AND THE SUNSET SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION.

ASSEMBLYMAN WHEELER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

With that, we'll move on to the next item on our agenda. It's item (G), the appointment to the Nevada Silver Haired Legislative Forum. It is to fill a vacancy in Senate District 8. There is a nomination included in the packets from Senator Marilyn Dondero Loop to appoint Laura Leavitt to fill that vacancy ([Agenda Item IV-G](#)). At this point, I would ask whether members of the Commission have any comments regarding that nomination, or other nominations they would like to make at this point. Seeing and hearing none, I would accept a motion to approve the appointment of Laura Leavitt to the Nevada Silver Haired Legislative Forum.

SENATOR RATTI MOVED TO APPOINT LAURA LEAVITT TO THE NEVADA SILVER HAired LEGISLATIVE FORUM.

SPEAKER FRIERSON SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN CARLTON WAS ABSENT FOR THE VOTE).

\*\*\*\*\*

**Chair Cannizzaro:**

The motion carries, and we'll be sure to get Assemblywoman Carlton's vote because I'm sure she just had been kicked off momentarily. We're going to move actually back to item (F), which I inadvertently skipped over, which should have been the next item for our consideration, the approval of a bill draft request concerning the Legislature and the Legislative Counsel Bureau. We'll actually address item (F). This particular item relates to the opportunity that LCB has each legislative session to request a bill draft to address issues affecting the Legislature and the LCB. I will turn it over to Ms. Erdoes to present information concerning the request that's being made for our next legislative session.

**Ms. Erdoes:**

Thank you, Madam Chair. I am doing this primarily because it is traditional and it allows us to get started on combining ideas of things that may be needed. The one thing that we

will likely put in this based on the vote today is the amendments regarding the General Counsel in the statute. We try to work with everybody in the Counsel Bureau to make sure that everything gets covered and we put them in there, and then if this is approved today, we will come back with the list of all the things that we think should be in there for approval before a draft is finalized or anything. I'm happy to answer any questions.

**Senator Denis:**

Just a quick question. I don't have a tab F in my materials, so I don't know if there was any materials there that I should have looked at.

**Ms. Erdoes:**

There were no materials for this item.

**Senator Denis:**

All right, thanks. I just didn't see a tab so I wanted to make sure I wasn't missing something. Thank you.

**Ms. Erdoes:**

No, you're right. Thank you.

**Assemblywoman Carlton:**

I was able to call in.

**Chair Cannizzaro:**

Fantastic, welcome. We're discussing item (F), which is the allotment of a legislative bill draft request for the Legislature and Legislative Counsel Bureau. Any additional questions from members of the Commission? Seeing no other questions or comments, I would accept a motion to authorize this particular request for a bill draft for the next legislative session for our Legislature and LCB.

SENATOR HARDY MOVED TO APPROVE THE BILL DRAFT REQUEST CONCERNING THE LEGISLATURE AND THE LEGISLATIVE COUNSEL BUREAU.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We'll move on to item (H), which is the appointment to the Washoe Regional Behavioral Health Policy Board. It is for a member to that Board, which I will turn it over to Senator Ratti to make a nomination for this particular appointment.

**Vice Chair Ratti:**

Thank you, Madam Chair. I have been the appointment of the Legislature to this particular Board. I've had a shift in my day job that makes it make sense for me to resign but still participate representing the agency that I'm now working for, just to keep it a little bit more clear if I'm sitting there as an employer or if I'm sitting there as a senator. Assemblywoman Sarah Peters has shown an interest, and so I would like to recommend that this Commission appoint Assemblywoman Sarah Peters to represent the Legislature.

**Chair Cannizzaro:**

Okay. Any questions or comments or other recommendations from members of the Commission for this particular vacancy? Seeing and hearing none, then I would accept a motion to appoint Assemblywoman Sarah Peters to fill the vacancy for the position that was held by Senator Ratti on the Washoe Regional Behavioral Health Policy Board.

SENATOR RATTI MOVED TO APPOINT ASSEMBLYWOMAN SARAH PETERS  
TO THE WASHOE REGIONAL BEHAVIORAL HEALTH POLICY BOARD.

SPEAKER FRIERSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Cannizzaro:**

We will move on to the next item on our agenda, which is item (I), the approval of early session hires for the 2021 Legislative Session. Of course, as we all know, there's a tremendous amount of work that goes into making the legislative session work, and each

session there are a number of employees hired for those sessions who are asked to begin before the session to help LCB get prepared and carry out the many tasks necessary before the Legislature arrives. I'm going to ask Ms. Erdoes to outline this request for approval of the early session hires for the next legislative session and turn it over to her.

**Ms. Erdoes:**

Thank you, Madam Chair. In your packet, you have a list of all of the numbers that we're proposing and the different positions that we're proposing ([Agenda Item IV-I](#)). This is traditionally done at the June meeting of the Legislative Commission. There's a second tranche of positions generally requested, early session hires, that wouldn't start until later in the fall. That might be requested in August. The request here is the same number of positions as requested for the 2019 Session, except for in the Administrative Division. In 2019, we asked for 7 janitor positions and now we're asking for 18. I know that seems like a large jump. We would not be hiring them all at once, but we feel that we have to be prepared. Once the buildings are populated again, that is depending on how many people are working in the buildings as the summer progresses, we will add janitors because we will need to have janitors based on the CDC (Centers for Disease Control and Prevention) requirements during the day to continue to sterilize surfaces. I guess maybe it's not sterilize, but clean surfaces to de-germ them. Sorry, I'm sure there's a good term for that. But anyway, we want to make sure that we can do that efficiently and effectively. This is the number that we need, and we would be again adding them as we need them, but we just want to be prepared.

Also, there's a typo for the mail clerks. Last time we did ask for two, and we would ask for two again. On the chart it says one, but we actually need two of the mail clerks and at that same role. That was just a typo on my part. I apologize for that. In the Legal Division, there were no attorneys requested, no early session hires requested, in 2018, but the request for deputy legislative counsels that you see here today is the same as it was in past sessions. We just didn't ask for any last session and we kind of learned a lesson there, so we are requesting those positions again. In the Fiscal Division, we are requesting 1 additional program analyst for 12 months as well. So again, pretty much the same as in the past except for a lot more janitors. I'd be happy to answer any questions.

**Chair Cannizzaro:**

Great, thank you. Members of the Commission, any questions or comments? Seeing and hearing none, I would accept a motion to approve the early session hires as recommended here before you today.

SPEAKER FRIERSON MOVED TO APPROVE THE EARLY SESSION HIRES FOR THE 2021 LEGISLATIVE SESSION AS REQUESTED.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED (VICE CHAIR RATTI WAS ABSENT FOR THE VOTE).

\*\*\*\*\*

**Chair Cannizzaro:**

I think we may have lost Senator Ratti. That brings us to item V on our agenda, which is the Legislative Audit, and so I will ask Daniel Crossman, our Legislative Auditor, to give us a summary of some of the audit reports. Mr. Crossman, whenever you are ready.

**Daniel Crossman (Legislative Auditor, Audit Division, Legislative Counsel Bureau):**

Thank you, Madam Chair, members of the Legislative Commission. Under agenda item V(A) you'll see a letter from Senator Parks, Chair of the Audit Subcommittee, indicating that on February 18 of this year a meeting of the Audit Subcommittee of the Legislative Commission was held in which six reports were presented and accepted ([Agenda Item V-A](#)). During that meeting, we presented a summary of the audits to the Subcommittee, we answered questions of the members. Representatives of the agencies also joined us, provided remarks and answered some questions. Today, I'll just briefly go over some of the key findings from those reports, and just please note that the full reports are available on our website where many more details can be obtained on our findings.

Turning to the next page is the audit summary for the audit of the Division of Consumer Equitability. The purpose of this report was to evaluate policies, procedures and controls for inspections, complaints and billings related to the weights and measures program. We found that the Division did not have effective policies, procedures or controls related to oversight of weights and measures. The Division did not always perform inspections timely or take enforcement actions for out-of-tolerance devices. About 9 percent of all locations did not receive an inspection in the 2-year period we tested. We also found that invoicing was not consistent or compliant with regulations, late fees were not always applied and the enforcement of annual fees was not always equitably applied. The lack of controls in these areas could leave consumers vulnerable to deficient weighing and measuring devices. We made seven recommendations in this audit, which the Division accepted and is actively implementing.

Turning to the next page is the summary of the audit of the Nevada Office of the Western Interstate Commission for Higher Education, or WICHE. The purpose of this audit was to evaluate if the program had adequate controls over ensuring participants meet contractual obligations and whether the controls over loan advancements and repayments were adequate. Overall, we found that the Office does not have strong controls to ensure participants' obligations to the program are met, including repayment of program fees and fulfilling in-state practice requirements. We performed an extensive review of the Office's files and noted a lack of support for practice requirements for more

than 40 percent of the files we tested. Stronger controls will help maintain the program's liability. Additionally, financial transactions were not always properly recorded, nor were participant records accurate and complete. Reconciliations between the Office's records and the state accounting system were also not occurring. Finally, we found that the Office does not have clear documentation on the division of roles and responsibilities between the Office, the Office of Science, Innovation and Technology, and the WICHE Commission. The Office accepted our 10 recommendations we made to improve their operations.

On the next page is the summary of the audit of the Division of Welfare and Supportive Services. The purpose of this audit was to determine whether the Division had sufficient controls over eligibility, income determinations and fraud. Our testing found that generally the Division is properly assessing available information at the time of eligibility determinations for most programs. However, it could improve its processes over identifying unreported wages and wage increases that may impact participants' eligibility. Using quarterly wage information from DETR (Department of Employment, Training and Rehabilitation) more robustly could identify instances of ineligibility between eligibility determinations. Based on our testing, we conservatively estimate that ineligible recipients of Medicaid and SNAP (Supplemental Nutrition Assistance Program) received more than \$69 million per year in benefits due to wage increases not reported between eligibility determinations. However, unless recipients self-report wage increases, most of the ineligible payments are not preventable by the Division using the available wage information from DETR. We also found that the Division can improve its processes over detecting, deterring and recognizing improper public assistance payments. Prioritization of investigations of overpayment claims could also reduce some of their backlogs. Finally, the Division's fraud detection system for the SNAP program could be more fully utilized by identifying the most useful reports and developing policies and procedures over these processes. The Division accepted our eight recommendations we made in this report.

On the next page is the summary for our review of governmental and private facilities for children. This report includes the results of four detailed reviews of facilities. We found that two of the four only provided marginal assurance that they were adequately protecting the health, safety and welfare of the youth. The most common issues we identified related to consent to administer psychotropic medication, annual medication trainings, background investigations and the complaints process. As the administration of psychotropic medication has been a recurring concern, we contacted 56 facilities to remind them of the requirements for obtaining consent prior to administering such medications. We also surveyed them and found that some need to develop policies and procedures related to this important function and need to distribute their policies to their staff. We also performed unannounced site visits at 11 other facilities. These were smaller, shorter reviews that we do. At 3 of the 11, we had significant concerns. At two facilities, we contacted their licensing agency, which in turn helped ensure that corrective actions were taken to improve the deficiencies at those locations. At the remaining facility, we brought our concerns to the attention of the licensing agency and the licensing agency

subsequently closed the facility. Many more details on these reviews are included in our report.

Next is the audit summary for the audit of Public Employees' Benefits Program (PEBP) information security. This audit determined if the agency had adequate controls to protect the confidentiality, integrity and availability of its information systems. We found PEBP needs to strengthen its information system controls. Control weaknesses included inadequate security over computers and network devices, such as computers missing operating system and antivirus updates, not adequately managing user accounts, including lack of account review and noncompliance with background checks and security awareness training requirements, and lastly, incomplete security-related plans, including IT (information technology) contingency planning and documentation of data recovery processes. We issued 14 recommendations to PEBP in this report, which they accepted.

Finally, the next summary is for our report of the Fleet Services Division. This audit was to determine if controls were adequate to ensure the economic utilization of vehicles and to evaluate controls over fuel and procurement cards. We found weak controls hindered the Division from ensuring the economic utilization of the fleet. Vehicles were frequently driven less than the required annual mileage. Complete vehicle usage information was also not always obtained, or when obtained, not accurate. Preventative maintenance on vehicles also was not always performed timely. The deficiencies that we identified in this audit were similar to those noted in our prior audit in 2010. We also found that controls over purchasing cards were adequate, but monitoring of fuel card purchases could be improved. Additionally, it needs to maintain an accurate listing of the fuel cards it has in service. Our five recommendations to the Fleet Services Division were accepted by the Division.

Madam Chair, that would conclude my summary of the audit reports that we issued on February 18. The Audit Subcommittee recommends that the Legislative Commission accept these six reports. Thank you.

**Senator Hardy:**

Thank you, Madam Chair. On the Division of Welfare and Supportive Services, how much of the \$69 million per year estimated came out of our state and are there ways that we can recoup some of that money and help ourselves out?

**Mr. Crossman:**

The exact percentage on those individual claims, I don't have that exact number in front of me. When we identified these instances, we did a sample and looked at specific cases. We did work with Health Care Financing and Policy on these specific items too, just to get their input on them, and they did look into those cases. The wage information that we utilized comes from DETR. The Division did express concerns in their response to the audit that that information is considered unverified wages. We recognize that and admit

that in the report. We understand that some additional steps would have to be taken before action could be taken. Specifically, I do not have a number on how much could be potentially carved back. Our projection is simply a projection at that point. It would be up to the Division to implement these additional controls and identify instances where additional wages are being earned but not being reported to the Division.

**Senator Hardy:**

So, my first part of the question was, \$69 million, how much of that is state and how much of that is federal?

**Mr. Crossman:**

I don't know that exact percentage.

**Senator Hardy:**

Is it 90 percent as in some of our Medicare, Medicaid and federal match, or is that—so is it 10 percent, or is that all out of our state? Give me a ballpark.

**Mr. Crossman:**

I can't speak directly to that full number because that's a projected number. I want to say it's around 40 percent, but I don't have that. There would be somebody else that could probably speak better to that of what the split between the federal would be on that number and the state.

**Senator Hardy:**

So we're looking at \$30 million that came out of the state?

**Mr. Crossman:**

There is the potential for that, yes.

**Senator Hardy:**

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

**Chair Cannizzaro:**

Additional questions, comments from members of the Commission? Seeing and hearing none, I would accept a motion to accept these audit reports.

ASSEMBLYMAN WHEELER MOVED TO ACCEPT THE SUMMARY OF AUDIT REPORTS AS PRESENTED TO THE LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED (SENATOR RATTI WAS ABSENT FOR THE VOTE).

\*\*\*\*\*

**Chair Cannizzaro:**

Mr. Crossman, I didn't know if you had anything additional to add with respect to item V(B) or if you want to walk us through that item in our packets?

**Mr. Crossman:**

Thank you, Madam Chair. I just have a very short little presentation on that and then you can take a vote on that one. Under agenda item V(B), you'll see another letter from Senator Parks, Chair of the Audit Subcommittee, which indicates that 13 6-month reports were reviewed at the February 18 meeting of the Audit Subcommittee ([Agenda Item V-B](#)). The letter shows that the implementation status of those recommendations as of February shows 96 of 106 recommendations were fully implemented. The process, as you're well aware, 6 months after the 60-day plan of corrective action is issued by the agencies that we audit, the Division of Internal Audits at the Governor's Finance Office will go in and review the implementation status. This is a product of their report. On the following page in the packet, I have included a summary of the status of recommendations as of May 18, the last opportunity we had to update those recommendations, and at that time of the 106, 101 are fully implemented, 4 are partial and 1 has no action. The Audit Subcommittee in the letter recommends that the Commission accept these 13 6-month reports. I'll turn it back over to you, Chair Cannizzaro. Thank you.

**Chair Cannizzaro:**

Thank you. Any questions, comments from members of the Commission? Seeing and hearing none, I would accept a motion to accept this report under item (B).

SENATOR HARDY MOVED TO ACCEPT THE SUMMARY OF 6-MONTH STATUS REPORTS ON THE IMPLEMENTATION OF THE AUDIT RECOMMENDATIONS BY THE LEGISLATIVE AUDITOR AS SUBMITTED TO THE LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED (VICE CHAIR RATTI WAS ABSENT FOR THE VOTE).

\*\*\*\*\*

**Chair Cannizzaro:**

Thank you, Mr. Crossman, for your presentation. We'll move on to item VI on our agenda, progress reports of litigation. I'll invite Mr. Powers from the Legal Division to provide us a summary on the status of the various court cases involving the Legislature that are in progress. Mr. Powers, whenever you are ready.

**Mr. Powers:**

Thank you, Madam Chair. I have five cases to report on today ([Agenda Item VI](#)). Two of the cases will require substantial elaboration, but three we should be able to go through fairly quickly.

The first case is *Charleston v. State*, and that's in the United States Court of Appeals for the Ninth Circuit. In this case, the plaintiffs are challenging the constitutionality of Nevada's laws that give certain less populated counties in Nevada the local option to license and regulate legal brothels. The plaintiffs claim that the state laws and the implementing local ordinances are preempted by the federal criminal laws which involve interstate travel and illegal prostitution, or sex trafficking. On October 29, 2019, the Federal District Court dismissed the complaint for lack of constitutional standing to pursue their preemption claims because the District 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 Nevada's laws and redressable by the federal courts. On December 2, 2019, the plaintiffs filed a notice of appeal with the Ninth Circuit. The parties began the briefing process on March 4, 2020. Plaintiffs filed their opening brief this week on June 3, 2020. The state and the Legislature each filed their respective answering briefs, and the plaintiffs have a reply brief that is due on July 24, 2020. That is the current status of that case.

The next case is *Morency v. State*, and that's in the Eighth Judicial District Court in Clark County. We have a decision in this case, and this is a significant decision so I'm going to go through this case in some detail. In this case, the plaintiffs filed a complaint challenging the constitutionality of Assembly Bill 458 of the 2019 Legislative Session. AB 458 revised the amount of tax credits that are available under the Nevada Educational Choice Scholarship program. Those tax credits are found in subsection 4 of NRS 363A.139 and 363B.119, and I'll refer to those as the subsection 4 tax credits. Now, before the passage of AB 458, the Department of Taxation was authorized to approve subsection 4 tax credits

in the amount of \$6.655 million for the fiscal year beginning on July 1, 2018. In addition to the amount of subsection 4 tax credits, the Department would have been authorized to approve under the scholarship program for the next fiscal year beginning on July 1, 2019 and for other future fiscal years would have increased by 10 percent at the beginning of each fiscal year. However, when the Legislature passed AB 458, those potential future tax increases, they were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of that fiscal year on July 1, 2019 and then the beginning of the fiscal year thereafter. Through the passage of AB 458, the Legislature froze the subsection 4 tax credits at their existing amount of \$6.655 million. The Legislature also eliminated those potential future 10 percent increases that would have taken effect at the beginning of each fiscal year. Because AB 458 froze the amount of subsection 4 tax credits and eliminated that 10 percent annual increase at the beginning of each fiscal year, the plaintiffs claim that AB 458 was a bill which created, generated or increased public revenue and that it was subject to Article 4, Section 18 of the Nevada Constitution, which is the two-thirds requirement, because the bill did not receive a two-thirds majority in the Senate.

The plaintiffs named several state officials and agencies as defendants, and on October 9, 2019, the District Court granted the Legislature's motion to intervene as a defendant to defend the constitutionality of AB 458. Thereafter, the parties filed motions for summary judgment and the District Court heard oral arguments on the motions on April 23, 2020. On May 20, 2020, the District Court entered an order granting summary judgment in favor of the state and the Legislature and upholding the constitutionality of AB 458. In its order, the District Court found that AB 458 did not increase public revenue because the bill froze the amount of subsection 4 tax credits at their existing amount of \$6.655 million. The District Court thus concluded that AB 458 was not subject to the two-thirds requirement. In reaching its conclusion, the District Court reviewed the LCB Legal's opinion interpreting the two-thirds requirement that was given to the Legislature during the 2019 Legislative Session. The District Court found that because the Legislature acted on the LCB Legal's opinion, which the District Court determined was a reasonable interpretation of the two-thirds requirement, the District Court concluded that the Legislature was entitled to deference in its counseled selection of this reasonable interpretation by LCB Legal. The District Court also reviewed the legislative history of the two-thirds requirement in Nevada and also case law interpreting super majority provisions in other states. Based on that review, the District Court found that the intent of the two-thirds requirement was to limit the Legislature only when it was enacting bills raising new taxes or increasing the tax rate of existing taxes. The District Court concluded that the two-thirds requirement was not intended to apply to bills that repeal, reduce or freeze existing tax credits, like was the case with AB 458. After the District Court entered its orders, the plaintiffs filed a notice of appeal with the Nevada Supreme Court on May 29, 2020, and the case now will proceed in the appellate court on appeal. That is the report for that case.

Going on to the next two cases, we'll take them together. These are *Settlemeyer v. State of Nevada*, which is in the First Judicial District Court in Carson City, and also *State ex rel. Cannizzaro v. First Judicial District Court*, which is in the Nevada Supreme Court. This

office went over these cases extensively at the Legislative Commission meetings on December 30 and February 6, so I will refer anyone back to those lengthy discussions. I will provide a quick summary and move on to the current status of the case. In this case, the plaintiffs are challenging the constitutionality of SB (Senate Bill) 542 and SB 551 of the 2019 Legislative Session. Plaintiffs claim that these bills created, generated or increased public revenue and that they violated Article 4, Section 18 of the Nevada Constitution because the bills did not receive a two-thirds majority vote in the Senate. The plaintiffs include eight members of the Senate, also known as the plaintiff Senators who voted against SB 542 and SB 551. The legislative defendants include Senator Cannizzaro in her official capacity as Senate Majority Leader and also Claire Clift in her official capacity as Secretary of the Senate. In the District Court, the plaintiff Senators moved to disqualify LCB Legal from representing the legislative defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. The District Court agreed with that motion and entered an order disqualifying LCB Legal. LCB Legal then with the authorization of the Legislative Commission on January 3, 2020 filed a petition for writ of mandamus with the Nevada Supreme Court challenging the District Court's disqualification order. After LCB Legal filed the mandamus action, the Nevada Supreme Court issued an order on January 10 which stayed all District Court proceedings pending resolution of the mandamus action. It directed the plaintiff Senators to file an answer to the mandamus action, directed the petitioners to file a reply and then scheduled oral argument, and that oral argument occurred on February 11, 2020 in Las Vegas before the full 7-member Nevada Supreme Court. Now that all briefing and oral arguments are completed, the parties are awaiting a decision from the Nevada Supreme Court.

The final case to report on today is a new case and it involves a regulation that the Legislative Commission approved recently. It's a regulation of the State Land Registrar, regulation number LCB file R167-18, and it involves annual use fees for state lands. This one I'll elaborate on a little more as well because it's a new case and it involves both legislation and regulations. The background on this case is that during the 2017 Legislative Session, the Legislature enacted Senate Bill 512 which amended NRS 322.120 and revised the statutory authority of the State Land Registrar to charge fees for the use of piers and mooring buoys or similar devices for vessels that are moored on navigable waters of the state. In particular, SB 512 eliminated the existing fees for such use that were set by statute and instead authorized the State Land Registrar to charge fees for such use in an amount established by regulation. SB 512 also provided that the existing fees under the statute would remain in effect until the State Land Registrar established those fees by regulation. Under the statutory authority provided by SB 512, the State Land Registrar promulgated a revised adopted regulation designated LCB file number R167-18, which I'll refer to as the regulation, in accordance with the provisions of the Nevada Administrative Procedure Act, otherwise known as the APA. Under section 3 of the regulation, the State Land Registrar is required to charge and collect annual use fees for the use of piers and mooring buoys or similar devices for vessels that are associated with the navigable body of waters of the state. Under Article 3, Section 1 of the Nevada Constitution and NRS 233B.067 of the APA, the State Land Registrar was required to submit the regulation to the Legislative Commission to determine whether to

approve the regulation. The Legislative Commission approved the regulation at its meeting on August 21, 2019.

On March 17, 2020, the petitioners filed a petition for declaratory relief in the Second Judicial District Court, Washoe County, under the APA challenging the validity of the provisions of the regulation relating to the annual use fees for the piers and mooring buoys. The petitioners include owners of lakefront property who pay such annual use fees for the use of piers and mooring buoys in portions of Lake Tahoe that are located in Washoe County and Douglas County. The respondents are the State of Nevada and the State Land Registrar, who is the Administrator of the Division of State Lands of the State Department of Conservation and Natural Resources. The respondents are represented by the Attorney General's Office.

In their petition for declaratory relief, the petitioners claim that the challenged provisions of the regulation are invalid for multiple reasons. As part of their claims, petitioners allege that the challenged provisions of the regulation are invalid because the regulation was not approved by the Legislative Commission by a two-thirds vote. The petitioners allege that that circumvents the requirements of the State Constitution. The petitioners base their two-thirds claim on Article 4, Section 18 of the Nevada Constitution which, as we know, requires a two-thirds majority vote in both houses of the Legislature for the passage of certain bills which create, generate or increase public revenue. The petitioners acknowledge that SB 512, the underlying legislation, was passed by a two-thirds majority vote in both houses of the Legislature. Nevertheless, the plaintiffs contend that the constitutional two-thirds requirement also applies to the approval of regulations by the Legislative Commission.

Because the petitioners raised the two-thirds claims involving the Legislative Commission, the Attorney General's Office provided notice of the lawsuit to the LCB Legal Division. After the LCB Legal Division advised the Chair of the Legislative Commission regarding the lawsuit, the Chair directed the LCB Legal Division under NRS 218F.720 to take all actions necessary to intervene in the lawsuit and defend the constitutionality of the Legislative Commission's approval of the regulation and also defend the validity of the regulation under the statutory authority provided by SB 512. On May 4, 2020, the LCB Legal Division contacted counsel for the petitioners and the Attorney General's Office and asked counsel whether they would be willing to consider and enter into a stipulation regarding the intervention of the Legislative Commission as a respondent. On May 11, 2020, counsel for the petitioners and the Attorney General's Office both responded that they would consult with their clients regarding the proposed stipulation for intervention. On May 12, 2020, the Attorney General's Office agreed to stipulate to the intervention of the Legislative Commission. However, the LCB Legal Division did not hear back from counsel for the petitioners. On June 1, 2020, after not hearing back from counsel for the petitioners, LCB Legal Division contacted counsel and asked if they were willing to engage in the stipulation. Counsel at that time asked for an additional period of time to consult with their clients regarding the stipulated intervention. The LCB Legal Division agreed to give counsel additional time, until the end of June 3, to consult with their clients

and make a determination. After that additional time, counsel for the plaintiffs did not respond as to whether or not they would agree to stipulation to intervention. Therefore, in the absence of such a stipulation, the LCB Legal Division will be filing a motion to intervene on behalf of the Legislative Commission to defend its actions in approving the regulation and to defend the validity of the regulation under the authorizing legislation in SB 512.

Thank you, Madam Chair. That covers the litigation report and those are the cases in progress currently.

**Chair Cannizzaro:**

Thank you, Mr. Powers. Any questions from members of the Commission? Okay, seeing and hearing none, then we will move on to our next item on the agenda, which is our second portion of public comment. If there's anyone who wishes to provide any public comment, please call the number that has been indicated on the agenda and you'll be informed by our Broadcast and Production Services when you have been connected and it is your turn to speak. Again, we will be limiting public comments to two minutes per person, but of course you can always submit any additional comments in writing to be included in the record. I am now going to turn this over to BPS to queue up those calling in to speak and they will inform you when it is your turn to speak. We'll give them just a couple of minutes and also for anyone who is wanting to call in for that public comment. The Commission will be at ease for just a minute or two.

Okay, we've given it a few minutes. I don't hear anybody calling in. There doesn't appear to be anyone else that was waiting for public comment.

**Mr. Anderson:**

Madam Chair, the line is open and working. However, the public comment line is empty.

**Chair Cannizzaro:**

Okay. Well, we've given it a few minutes for folks to call in, but seeing as though there's no one else on the public comment line, we will move to item VIII, which is adjournment. Seeing no further business to come before this Commission, this meeting is adjourned at 4:37 p.m. Thank you everyone for your time and patience as we worked our way through our items, and we will see you all very soon.

RESPECTFULLY SUBMITTED:

---

Jordan Haas, Secretary

APPROVED BY:

---

Senator Nicole Cannizzaro, Chair

Date: \_\_\_\_\_

<b>Agenda Item</b>	<b>Witness/Agency</b>	<b>Description</b>
A		Agenda
B		Attendance Roster
<a href="#">Agenda Item II A</a>	Julia Bledsoe, NSHE Classified Council	Public Comment
<a href="#">Agenda Item II B</a>	Douglas Unger, Nevada Faculty Alliance	Public Comment
<a href="#">Agenda Item II C</a>	Kent Irvin, Nevada Faculty Alliance	Public Comment
<a href="#">Agenda Item II D</a>	Tonja Brown	Public Comment
<a href="#">Agenda Item III</a>	Jordan Haas, Secretary	Draft Minutes of the February 26, 2020 Meeting
<a href="#">Agenda Item IV-A-1</a>		Ballot Question No. 1
<a href="#">Agenda Item IV-A-2</a>		Ballot Question No. 2
<a href="#">Agenda Item IV-A-3</a>		Ballot Question No. 3
<a href="#">Agenda Item IV-A-4</a>		Ballot Question No. 4
<a href="#">Agenda Item IV-B</a>		Administrative Regulations for Review
<a href="#">Agenda Item IV-C</a>		Resumes of Kevin Powers and Bryan Fernley
<a href="#">Agenda Item IV-D</a>		Recommendations of the Committee to Conduct an Interim Study of the Requirements for Reapportionment and Redistricting in the State of Nevada
<a href="#">Agenda Item IV-E</a>		Requests for Extensions of Deadlines for Certain Interim and Statutory Committees

<a href="#"><u>Agenda Item IV-G</u></a>	Marsheilah Lyons, Deputy Research Director	Appointment to the Nevada Silver Haired Legislative Forum
<a href="#"><u>Agenda Item IV-I</u></a>	Brenda Erdoes, Director	Early Session Hires for the 2021 Legislative Session
<a href="#"><u>Agenda Item V-A</u></a>	Daniel Crossman, Legislative Auditor	Summary of Audit Reports Submitted to the Legislative Commission's Audit Subcommittee
<a href="#"><u>Agenda Item V-B</u></a>	Daniel Crossman, Legislative Auditor	Summary of 6-Month Status Reports Submitted to the Legislative Commission's Audit Subcommittee
<a href="#"><u>Agenda Item VI</u></a>	Kevin Powers, Chief Litigation Counsel	Litigation Currently in Progress