MINUTES OF THE 2019-2020 INTERIM
LEGISLATIVE COMMISSION

August 25, 2020

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 1:13 p.m. Pursuant to Sections 2 to 9, inclusive, of chapter 2, Statutes of Nevada 2020, 32nd Special Session, at pages 9-11, 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 Settelmeyer, 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, General Counsel, Legal Division, Legislative Counsel Bureau
Bryan Fernley, Legislative Counsel, Legislative Counsel Bureau
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
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
Broadcast and Production Services Staff, Administrative Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Lisa Sherych, Administrator, Division of Public and Behavioral Health, Department of Health and Human Services
Margot Chappel, Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services
Paul Shubert, Bureau Chief, Bureau of Health Care Quality and Compliance, Department of Health and Human Services
Jennifer Frischmann, Quality Assurance Manager, Division of Aging and Disability Services, Department of Health and Human Services
Dr. Brighid Fronapfel, President, Board of Applied Behavior Analysis
Daren Winkelman, Bureau Chief, Bureau of Sustainable Materials Management, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources
Skylar Jones, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources
Greg Lovato, Division Administrator, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources
Danilo Dragoni, Bureau Chief, Bureau of Air Quality Planning, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources
Stephen Wood, Division of Public and Behavioral Health, Department of Health and Human Services
Dr. Leon Ravin, Statewide Psychiatric Medical Director, Division of Public and Behavioral Health, Department of Health and Human Services
Joe Sawyer, Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources

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

Good afternoon everybody, and welcome to this meeting of the Legislative Commission. We are going to proceed with our agenda. The second item on our agenda is public comment. Before we get there though, I have a couple of housekeeping matters that I wanted to just take note of. Anyone who testifies today, be it public comment or during our review of the regulations or other items on our agenda, please make sure that you state and spell your name so that we have a proper record of that and a proper record of you testifying. If anyone would like to receive a copy of any of the Commission's agendas, minutes, reports, you of course may be added to our mailing list by following the links on the website of the Nevada Legislature or by providing information to our staff. Contact information for staff is also listed on the website. Of course, Committee members have received all of the copies of the regulations and our agenda items and reports for our meeting today, but for anyone else who is looking for that, you can find that information on the website.

With that, we are going to go ahead and move to item II on our agenda, which is public comment. We will be taking two periods of public comment. This one we'll take at the beginning and then there also will be a portion of the meeting that will be dedicated to public comment at the end. This would be the appropriate time if you have general public comments you would like to share with the Commission for any of our business or that are related to any of the regulations or other items that are on our agenda for today. This would be the appropriate time to share those thoughts with members of the Commission. If you have called in according to the instructions on our agenda and would like to speak during this part of the meeting, you will be notified by our Broadcast and Production Services (BPS) when you have been connected and it is your turn to speak. Please remember that we will keep comments limited to not more than two minutes per person, and you are of course welcome to submit any additional comments in writing and they will be added to the record for this meeting. If you prefer to wait and speak until we get to that second portion of public comment, you can of course wait for that period at the end of the meeting. At this point in time I am going to turn it over to our BPS folks to queue up those who are calling in to speak, and they will inform you when it is your turn to speak. I will turn it over to them to lead us through our public comment.

Broadcast and Production Services Staff (Administrative Division, Legislative Counsel Bureau):

Thank you, Chair Cannizzaro. The public comment line is open and working but there are no callers at this time.

Chair Cannizzaro:

Okay. Seeing that we have no callers, at this point we will move on to the next item on our agenda. Again, for anyone who is joining us online, should you wish to give public comment, we will again take that at the end of the meeting as well. The next item on our agenda is the approval of the minutes for the meeting held on June 5, 2020 (Agenda Item III). Each of the members have received copies of the minutes from the last meeting. At this point in time I would ask members of the Commission if anyone has any changes to the minutes from that June 5 meeting.

ASSEMBLYMAN WHEELER MOVED TO APPROVE THE MINUTES OF THE MEETING HELD ON JUNE 5, 2020.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We will then move on to item IV on our agenda, which is Legislative Commission policy. We have a few items on here that we will take first and then we will get down into some of the regulations that we have for approval as well. We will move on first to item IV-A, which is a request by the Division of Public and Behavioral Health (DPBH) of the Department of Health and Human Services to continue a regulation not adopted within 2 years after submission to the Legislative Counsel. This request relates to regulation R182-18, and it again applies because it was not adopted within 2 years as required by statute. Members will of course recall that subsection 4 of NRS (Nevada Revised Statutes) 233B.040 provides that each proposed regulation must be adopted within 2 years after submission to the Legislative Counsel. If the regulation is not adopted by the agency within that time, the executive head of the agency must seek an extension from the Legislative Commission to continue or begin the process for adopting the regulation anew.

I do believe that we should be joined by the Administrator of the Division of Public and Behavioral Health, Lisa Sherych, who is with us on Zoom this afternoon who will make the request, and of course, Commission members, we are joined by Bryan Fernley, our Legislative Counsel, as well, who can answer any legal questions that may arise. I will turn it over to Administrator Sherych to give any comments on that particular request and then we will turn it over to Commission members for any questions that you may have of Ms. Sherych or Mr. Fernley.

Lisa Sherych (Administrator, Division of Public and Behavioral Health, Department of Health and Human Services):

I'm here today to request to continue regulation R182-18 that was not adopted within the 2-year requirement. Rather, it was completed 2 months late. During the 2-year period, DPBH worked with the child care industry to find the balance between the best protection for children while accommodating small businesses. Initially, R182-18 and R135-18 were filed as a single set of regulations to LCB (Legislative Counsel Bureau) on June 8, 2018. LCB identified the error and in turn proposed splitting the regulations into two separate files on July 20, 2018. DPBH then accomplished two separate sets of small business impact studies and workshops held on August 29, 2019. Both of these regulations required errata, much of which was established after public workshops and through negotiations with the industry to make the language acceptable. Both of these regulations received public hearings for adoption during the COVID pandemic. It was necessary to wait for the adoption of R135-18 on June 5, 2020 before scheduling a hearing to adopt R182-18 on August 5, 2020 because language in R182-18 relies on the severity and scope scoring language in R135-18 in order to assign grades to facilities. Thank you for your consideration of the extension requested.

Chair Cannizzaro:

Members of the Commission who have questions for either Ms. Sherych or Mr. Fernley?

Senator Joseph Hardy (Senatorial District No. 12):

Thank you, Madam Chair. Do we have a copy of that regulation, separate and distinct from R135-18?

Chair Cannizzaro:

I believe you should have a copy, and I will invite Ms. Erdoes to correct me if I'm wrong, but I think a copy of that regulation should be in your meeting packet as well (Agenda Item IV-B).

Brenda Erdoes (Director, Legislative Counsel Bureau):

It is in the packet because we were prepared for—if you approved this item, then it will be up for approval today, so it's in your packet under that number.

Senator Hardy:

Under the agenda?

Ms. Erdoes:

Yes.

Senator Hardy:

It's not under the whole adopted regulation?

Ms. Erdoes:

It's in the binder for the regulations part.

Senator Hardy:

Under the binder for the regulations, I have R135-18.

Ms. Erdoes:

You should also have R182-18.

Senator Hardy:

Okay. I found it.

Ms. Erdoes:

Okay, good.

Senator Hardy:

Thank you.

Ms. Erdoes:

Sure.

Senator Hardy:

If I could ask another question? I am looking under R182-18A. Is it R182-18A, R182-18S or R182-18B?

Ms. Erdoes:

It's R182-18A, the adopted.

Senator Hardy:

R182-18A, okay. Thank you. Got it, looked at it, and thank you. I am comfortable with it. Thank you, Madam Chair.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission? Okay, seeing none, I would take a motion to approve the request to continue the regulation.

SENATOR RATTI MOVED TO APPROVE THE REQUEST TO CONTINUE REGULATION R182-18.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

That brings us to the next item on our agenda. The next item on our agenda is a review of regulations submitted to us. I do have several requests from at least one member of the Commission. These are regulations, of course, which have been adopted since our last meeting. The members should have a binder or an electronic copy of all the regulations, including the required informational materials (Agenda Item IV-B). This material is also available for those of you who are joining us online as a link from the agenda and on the Legislative Commission page of the Legislature's website. We do have representatives from all the agencies that have regulations on this list. They are joining us on this Zoom this afternoon. In case anyone has questions about any of those regulations, we are also joined by our Legislative Counsel, Bryan Fernley, who is available to answer any legal questions on the regulations.

As is our normal procedure and method for addressing regulations, I will first ask any of the Commission members who have not already contacted me to identify any regulation which you would like to have pulled for a discussion, and after that we will then take a motion to approve the remaining regulations so that those agencies whose regulations are approved will be able to get back to work. We will go through each of the regulations that were asked to be pulled or held so that we can ask additional questions. We will have the agency come forward to address the questions that are related to that regulation and we will go individually through each of those regarding any approval for those. I already have pulled for discussion R135-18, R084-19, R120-19 and R018-20. Any additional regulations? Senator Hardy, we will start with you.

Senator Hardy:

Thank you, Madam Chair. R135-18, and did you say R045-19?

Chair Cannizzaro:

No, but we will add that one.

Senator Hardy:

And R099-19, R011-20 and R012-20.

Chair Cannizzaro:

I have added to the list R045-19, R099-19, R011-20 and R012-20.

Senator Hardy:

Thank you.

Chair Cannizzaro:

Additional regulations requested to be pulled by members of the Commission? Okay, then at this point, seeing no other hands, I would accept a motion to approve the following regulations: R022-19, R118-19, R121-19, R013-20, R017-20, R022-20, R040-20, R041-20 and R050-20.

SENATOR RATTI MOVED TO APPROVE REGULATIONS R022-19, R118-19, R121-19, R013-20, R017-20, R022-20, R040-20, R041-20 AND R050-20.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We will go ahead and take the regulations that have been requested for some additional conversations and questions in the order that they are on our agenda. We will begin with R135-18, which was requested for discussion by Assemblyman Daly and Senator Hardy, from the State Board of Health. We will start with Assemblyman Daly. If you want to go ahead with your question, and then we can go from there.

Assemblyman Skip Daly (Assembly District No. 31):

Thank you, Madam Chair. I have a couple of questions. I think they can be answered. For my satisfaction, I just want to make sure. My first one is basically for my information. On section 13(7) where we try to define serious harm, most of the things that are in there you can measure, you can see if there is serious harm or the potential for serious harm or injuries, those types of things, but I was curious on—what's the standard for serious mental harm (Agenda Item IV-B)? Is there a rulebook or guide or something that tells you what serious mental harm is, because that's a person-by-person type thing if you ask me. Are the inspectors trained to identify mental harm? If you can shed a little light on that, that's my first question.

Margot Chappel (Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services):

I'm going to defer to staff that is in the southern office in Las Vegas, mainly Paul Shubert is right there to answer that question. Thank you.

Paul Shubert (Bureau Chief, Bureau of Health Care Quality and Compliance, Department of Health and Human Services):

The question is interesting in terms of, it's a subjective term when we look at serious mental harm because it's not something that we can objectively look at and measure really. Again, we are dealing with children here, which makes it even a little tougher because maybe they can't tell you exactly how they're feeling about a situation, but how we would describe this situation within a citation that we would make for a facility would let us know whether or not we should look at it at that level of concern or that level of a deficiency that the facility has allowed to occur. I know I don't have a direct answer that I can tell you, "Here's the measurement and here's the tool we use." Rather, it is going to be a case-by-case basis and looking at the circumstances of an individual case that has occurred that has created a situation where we may be considering serious mental harm.

Assemblyman Daly:

If I can, Madam Chair, and I suspected as I stated that it would probably be something along those lines. There are cases, histories or studies where people would normally be subject to some type of mental harm for certain things, whatever, or you would suspect it. It is a reasonable person standard almost, if you will, if that's fair to say. I'm good with that. I just wanted to get a little clarification.

My second question, if I can, Madam Chair, is regarding the monetary penalties and the interests. I know there is—in the regulation you have an initial monetary penalty which is subject to rehearing, and then you have an additional daily monetary penalty, my understanding is also subject to interest. I'm just trying to get some information on how the interest works. If you have a citation and there's a monetary penalty, of course they can have a hearing, but the way I read the regulation is that the interest on that, pending the hearing, starts to accumulate as soon as you, I believe, provide a notice, or does it start immediately? It's almost like they've got to pay upfront and then have a hearing afterward to prove their innocence or guilt or whatever, but they have to pay upfront, kind of like if you get a traffic citation, you've got to pay the bail and you can go to court, but you've still got to pay the bail before you start. Can you shed a little light on how that interest works? Is there an appeal to the daily monetary penalty and various things? I understand and read the regulation and some of the digest about when you had public comment. Is that the only way you think you can affect some of these behaviors is through dollars and cents? I understand that, but the interest and how it accrues is unclear, or I'm not sure it's fair.

Mr. Shubert:

Understood. Yes, if we charge interest on a penalty, then it starts actually as of the day that the penalty was due. If a facility appeals a monetary fine, then that fine is stayed until such time as we actually have the hearing on appeal. Once a decision is made by a hearing officer that yes, the fine was valid, then interest would begin accruing, again, only

if we are charging any interest. At that point, if the facility pays the fine, then there's no interest accrued, and I believe it's 10 percent per annum. So again, it doesn't start from the day the penalty is assigned or the notice is delivered to the facility that we are assigning a monetary penalty, but rather after the appeal process has occurred. If the facility is appealing, then once the fine is validated then the interest would begin accruing, again, if the facility doesn't actually pay the fine at that point.

Ms. Chappel:

I would add to Mr. Shubert's testimony that it is not the intent of the Division to charge those fines unless we absolutely have to. The people who run child care centers will be given the opportunity to continue to address their issues prior to assigning those as we move forward.

Assemblyman Daly:

Thank you, Madam Chair. When I read it, I wasn't sure that that's how it would be done. I'm satisfied with that answer. I just wanted to make sure that people had their day and due process and various things before they were given a penalty and then had to pay interest if they didn't pay, because when I got to section 29, I think subsection 3, it says that if they don't pay within 10 days, then you must automatically suspend, but that's after they've had their hearing and it's been determined that they owe the money and that's when the interest would start. As long as they get their time before they've got to pay and the interest doesn't accrue pending their appeal, then I'm okay. Thank you.

Ms. Chappel:

Yes sir, thank you very much. Just to confirm, that is the intention, just to have people comply. Thank you so much.

Chair Cannizzaro:

I believe Senator Hardy had some questions as well.

Senator Hardy:

One of the things that I had a problem with was section 39(6) where a caregiver should not consume or be under the influence of alcohol or psychoactive drugs while caring for children in the facility. I looked up the definition of psychoactive drug, which includes "a chemical substance that changes brain function or results in alteration in perception, mood, consciousness, cognition or behavior. These substances may be used medically, recreationally to purposefully improve performance or alter one's consciousness." In other words, everything that the psychiatrist uses, for instance for adult ADD (Attention Deficit Disorder), for depression—so what do we do with the person who takes Ritalin with a medical prescription with Prozac for their depression or for their medical marijuana for

their anxiety or whatever they use it for? A psychoactive drug could be used very appropriately by somebody, and we are thus outlawing people who need their medicine in order to function as they have been functioning very well. I think overall, I look at this, in particular good intention, I'll call it, for this regulation, but I think it has serious consequences, leads to subjective interpretation by the reviewers, by the parents, by the lawyers, and so I think it's well intentioned but I think it's got major flaws. I will not be supporting this regulation. Thank you.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission? Seeing none, what's the pleasure of the Commission?

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE R135-18.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

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

Thank you so much. I'll just say that we tend to have lots of these finer conversations about child care regulation in Legislative Commission, and when I look at the regulations what I always look for is the ability for folks to come forward to be able to talk about the grievances that are presented to them, and I see a structure here that allows for facilities to have discourse back and forth. It's not too much of a heavy hammer too quick. It allows for corrective action plans, and ultimately that's what I think that we want. It allows, to Senator Hardy's comment, if someone appears to be under the influence of something, then there's the opportunity for someone to have a contextual conversation about whether or not that is warranted or accurate or whether it's not, which parents might be very much concerned about. I'm very supportive of this regulation.

Senator Hardy:

I appreciate the good intentions of the bill and I appreciate the good intentions of the people who are caring for. I have major misgivings about the people who are going to be hired are going to have a chilling effect on—in as much as we have up to 8 to 10 percent of people at a given time are on—have depression and I'm going to take those out of the employment pool. I think it goes too far and I think it's—thank you.

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

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Chair Cannizzaro:

Thank you very much for those of you from the State Board of Health for joining us. We appreciate it. We will move then to the next item that has been requested for some additional discussion. It is regulation R045-19 from the Board of Applied Behavior Analysis, and we have Senator Hardy who had some questions, so we will turn it over to you, Senator Hardy, to go ahead and ask those questions and go from there.

Senator Hardy:

Thank you, Madam Chair. On the applied behavior analysis-type folks, page 5, section 3(4)(a), it talks about bringing somebody in to be able to evaluate their moral character (Agenda Item IV-B). I understand that we all have an understanding of what moral character is or isn't, and the good thing about that is we probably disagree about what goal post or what fences are around that. I think it's problematic when we start looking at "moral character." Does that mean that the person isn't married but is living with somebody? Does that mean that somebody did a speeding ticket? Does that mean somebody voted for the wrong person, because we hear that in the Legislature all the time, that we have a moral right for this or a moral right for that. How is a board supposed to—what are the parameters for "bringing somebody in and interviewing them" for "moral character"? How do we determine that? I'm sure Brenda or someone can help us with that "definition" and how we can do it.

Jennifer Frischmann (Quality Assurance Manager, Division of Aging and Disability Services, Department of Health and Human Services):

I'm with Aging and Disability Services. I serve as the Quality Assurance Manager for the Division, however I am the unofficial Executive Director of the Board of Applied Behavior Analysis. With me today I have President Dr. Brighid Fronapfel with us as well, and she might be able to answer some of those questions.

Dr. Brighid Fronapfel (President, Board of Applied Behavior Analysis):

Thank you for your question, Senator Hardy. In terms of moral character, what we really look at is whether or not they are practicing in alignment with our national regulation. It's not necessarily marriage or things like that. It's bound more to our ethical practice and what is defined for us by way of our national practice. You will see other language in the

bill as well deferring to the Board. It's the BACB, the Behavior Analyst Certification Board. As ethical practitioners, that's really what we rely on in terms of whether or not someone is fit to practice or someone is fit to carry a license. So, have they passed the exam, do we have any ethical complaints against them or is there a history of questionable behavior, those sorts of things.

Senator Hardy:

Dumb question: why didn't you put that in instead of moral character that doesn't have that definition?

Ms. Frischmann:

I think when we were originally adopting a lot of these regulations, because we are a new board, a lot of the language was taken from the Psychology Board. A lot of this is carryover from what we had with our previous regulations, and then part of this process is cleaning a little bit of that up. This is, to be honest with you, a conversation that the Board has had in terms of operational definitions of moral character, so I appreciate that you've pointed this out.

Senator Hardy:

I guess I'm supposed to respond and say then, "How come you didn't say in alignment with our accepted ways of practicing that are understood that you have to maintain the ethical practice and the competency practice of the training that you were given as opposed to 'moral character,'" because you deliberately put in moral character, separate and distinct from how you're judged by how you practice. It's a separate line.

Ms. Frischmann:

I think, to Dr. Fronapfel's point, this is a relatively new board. This was a board that was created during the 2017 Legislative Session. The regulations had to be—we did emergency regulations, we have done temporary regulations, and these are now our permanent regulations. As she indicated, we copied a lot of that from the Board of Psychological Examiners who previously licensed the behavioral analysts and assisted behavioral analysts. I'm aware that in previous discussions, I know Assemblywoman Titus has brought this up regarding moral character, fitness for duty, fitness for practice. I think that's something that we can certainly take into consideration, to put in that verbiage that you indicated. Right now, as Dr. Fronapfel said, that is something that we look at when we look at applications and processing is that have they had complaints against their license, have they had other things in their background that might suggest that they are not fit to practice and are not following the ethics of the National Board. I think that's absolutely something that we can take into consideration and I appreciate the feedback.

Senator Hardy:

Thank you, Madam Chair.

Chair Cannizzaro:

You can harken back to applying for a bar license, because we have very similar—and I don't know that it would be phrased necessarily the same way. I think it's character and fitness, and you have to have a reputation for good character in order to be confirmed for a bar license, and that can be everything from whenever you have academic complaints for students that may have plagiarized something to if you have past criminal history to if you have past financial issues. Those kinds of things are to be looked at when granting a bar license. For me, I guess I don't know that I have the same concern or reaction to that because I think this is fairly standard. I don't know if there are other areas. I know you mentioned that this came from another board, and I can't remember if you said Psychiatry or Psychology. I don't know if they use the same language in terms of moral character, if we have other boards that use the phrase moral character. I know we have something very similar in regards to law licenses. I didn't actually have a lot of heartburn or concern over that phraseology. I guess my question—or if anybody knows, I don't know the answer—if that particular language is used in other board certifications or not.

Kevin Powers (General Counsel, Legal Division, Legislative Counsel Bureau):

Thank you, Madam Chair. I may be able to provide some elaboration on the points that the Chair was just highlighting. The term moral character is used in a significant number of the regulatory chapters of the boards. One of the first professions that was regulated by license was the medical profession, and that started to occur in the late 1880s. The first medical practice act nationally used the term good moral character as a standard for the licensing board to determine whether that person was fit to practice that profession based on the professional standards that were applicable to that profession. Because that was used in the early medical practice acts, the term good moral character has been interpreted by case law for the last century-plus, and so it has a significant legal term of art interpretation to it by the courts. Good moral character is a term that is used in the Board of Medical Examiners chapter in NRS and in NAC (Nevada Administrative Code) and in the Board of Dentistry and in other professional regulatory licensing boards. Again, what good moral character means—fitness to practice that profession under the professional, ethical standards for that profession—varies by profession, but there are clear ethical standards for each profession, whether you are a medical doctor, a dentist or, in this case, this type of regulatory agency. Thank you, Madam Chair.

Senator Hardy:

Thank you for recognizing me again. I would point out that we are going to hear a veterinarian regulation that uses Kevin's words "good moral character" in R099-19, and it says "good moral character." The state of the art is not moral character, the state of the

art is good moral character, so why are we putting in moral character as opposed to good moral character? I think if you are going to copy something then you copy the state of the art verbiage. I'm not going to use the word excuse, but the rationale for this is we copied somebody else who also—but did they say "good moral character" or did they say "moral character"? I know I'm beating this up, but it seems to me if we are going to make something that has the force of law then we probably ought to do it the way it's supposed to be done. As Kevin has told us, it's "good moral character" as opposed to "moral character." Thank you, Madam Chair.

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

Thank you, Madam Chair. I have been participating—we wrapped up most of our work, but with Senator Denis and several others in the efforts of the Interstate Licensing Consortium looking at professional licensing and some of the concerns. I will say that, within that forum at some of our national meetings, there's concern about these terms, good moral character, moral character, moral turpitude, and where they live in the licensing laws and regulations and how they are being wielded by some licensing boards and in effect being wielded at some populations more than others, in some cases serving as a barrier for people with a criminal history to get back into some sort of licensed position to just disparate use for people of color to all different kinds of things. I'll just say that there's a national movement towards trying to wherever possible define these much more specifically, and understanding what Mr. Powers says, that there is case law that is helpful, taking discretion out wherever possible. I think this is a conversation that we will continue to have. We just had one at the Health Committee as well where I believe the Health Committee chose to send a letter to the Legislative Commission to say, "Hey, we'd really like to see more definition on these moving forward." I'm not proposing that we solve this today. I'm comfortable voting yes on this regulation because this board is getting started and they need to get going and there is the case law, but I do think that one of the things that we're going to continue to see in probably the Commerce Committee will end up having conversations about is how we deal with moral character and moral turpitude and more broadly across all of the boards to make sure that everywhere that it can be defined more clearly, it is defined more clearly, and that it is specifically necessary for the health and safety of the public. Again, I don't think we should solve this today, but I do think there is a bigger issue here. It's not just about this one board, it's about all the boards, and there's a more comprehensive fix that we should start working towards. Thank you. I will be voting yes.

Senator Hardy:

I will be the red flag vote no. Thanks.

ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE R045-19.

SENATOR DENIS SECONDED THE MOTION.

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

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Chair Cannizzaro:

Thank you, everybody, for being able to answer all of our questions on that one. We are going to go ahead and move to our next regulation for consideration from the State Environmental Commission. It is R084-19 and a request from Assemblyman Daly to pull that regulation. We will turn it over to you, Assemblyman, to go ahead and proceed with your questions and go from there.

Assemblyman Daly:

Thank you, Madam Chair. I guess the first baseline question—and I know reading some of these regulations and statutes and various things, you don't see all of the parts, so when one part gets deleted, if it's covered by someplace else—so I just wanted to make sure on a couple of things. This first one is in section 5 where the language is being deleted, and I recognize that the term "conditionally exempt small quantity generator" is being replaced with a new term, but the two sections of NAC that are also being deleted, they wouldn't have to comply with them being deleted—has to do with restrictions for those types of facilities when they are in a floodplain or wetlands (Agenda Item IV-B). Are they still going to be subject to those two provisions of the existing NAC somewhere else that I didn't catch, or when you delete that language—what do they call it, “a very small quantity generator” may be the term they have. Are they not going to be subject to those new requirements in regards to floodplains and wetlands?

Daren Winkelman (Bureau Chief, Bureau of Sustainable Materials Management, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources):

Those regulations at the state level for us are handled through the EPA (Environmental Protection Agency). Those are sections that are being deleted for cleanup, but industry that is still in a wetland area would be handled through the US Environmental Protection Agency.

Assemblyman Daly:

When they are being deleted here, the new term that's given to the conditionally exempt, now it's a very small hazardous waste generator. This only applies to clean up, so help clarify there. People that are covered by it now are not going to be covered under this regulation?

Mr. Winkelman:

They still will be covered under this regulation.

Assemblyman Daly:

In another section?

Mr. Winkelman:

I would have to go back and find that information out for you and what section it is, because that still falls under like I said—was I muted during that conversation? I'm sorry if I was muted.

Assemblyman Daly:

I believe you were.

Mr. Winkelman:

Sorry about that. Yes, they are still covered under this regulation. I'm not sure exactly what section they were. I would have to go back and get that section for you, but they are covered under the US EPA side.

Assemblyman Daly:

Okay. I have a couple more questions if I can, Madam Chair. Essentially, when I look at these—and maybe I'm paranoid, but who knows. When I look at the feds changing some of their standards and regulations and various things, and then we're basically adopting not 100 percent but basically reflecting what the federal requirements are. Is this changes in here, are they going to lower, remain the same, increase the safety standards on hazardous materials in the state, because I wouldn't want to see any lowering of the standards by us adopting the federal standard. You hear all the time about the elimination of regulations. Regulations are put in place for a purpose and they are vetted, they go through a lot of scrutiny, but if we are lowering the standards in the State of Nevada, I would have concern with that. I know there is reference to that in section 4, section 9, 10, 11, 15, where we are adopting the federal standards. Is that going to change even marginally the levels of standards that we currently have in the state?

Mr. Winkelman:

I'm going to defer to Skylar Jones on this one. Thank you.

Skylar Jones (Nevada Division of Environmental Protection, Department of Conservation and Natural Resources):

Thank you, Daren. The regulations are not less stringent than they were before. We actually have opted to not adopt a few of the provisions that we thought were making the hazardous waste regulations less stringent than we would like to keep them. There are a few provisions that are listed that we have chosen not to adopt to make sure that we ensure that our regulations stay up to par and are protective of the environment and public health.

Assemblyman Daly:

I appreciate that. I just wanted to make sure to have that on the record. I did reach out to a couple of people and they didn't see any red flags. I do see several places in the regulation when you read it—you say we're adopting federal regulation, whatever it is, except for this section. I am assuming that's the provision where you say "hey, that's lowering what we already have, we are not going to make that change." I appreciate that, I just wanted to have that on the record. Two other quick questions, I believe it was section 13. Where we are deleting language again, where they have to provide a notice where there is a delivery. I understand it's only by railroad that that delivery is being deleted. But I know we've had issues recently. Some of you may recall, I'm sure with secret shipments to the State of Nevada, so why would we want to delete that requirement to report materials or hazardous materials that have been delivered by any method. Although, this only calls for notification by rail?

Greg Lovato (Division Administrator, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources):

Just to start to answer your question, the materials that you may have been referring to there may have been shipments of plutonium by the Department of Energy. Those are actually outside the scope of our hazardous waste regulations. Those are regulated under the Atomic Energy Act as well as the Nuclear Waste Policy Act. Those basically—would not have received notification of those. But then, with respect to your specific question about whether we are being notified and whether that's changing, I will shift over back to Skylar Jones.

Ms. Jones:

Thank you. We have actually moved to an electronic manifesting system, so every manifest, every waste shipment of hazardous waste, is actually being recorded and we

can go onto the database at any point in time and search those manifests and make sure that we know what is going in and out of our state.

Assemblyman Daly:

Very good. So, that's just a cleanup measure because you've already got it covered in another fashion somewhere else in the rest of your stuff. We don't see every single piece of it so I'm just trying to figure out how the pieces of the puzzle fit together when I see a deletion like that. My last question, if I can, and there's probably a similar answer. There's a deletion for the fee for processing review of applications. Is the review no longer happening, or will there still be a review? It's just a different process or it's included in something else? I don't have the section here for that one, the deletion of the fee for processing review of application.

Ms. Jones:

I believe you are referring to the fee that we had in our regulations for processing a variance. Those variances are actually variances from federal regulations which we do not process. The EPA, the Environmental Protection Agency, processes those. We have removed those regulations for clarity and to minimize confusion.

Assemblyman Daly:

Okay. Those were all my questions, Madam Chair.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission?

Assemblyman Daly:

I can make a motion to approve.

Chair Cannizzaro:

Yes, I'm not seeing anyone else who has questions or comments.

ASSEMBLYMAN DALY MOVED TO APPROVE R084-19.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We are going to take just a moment because I was notified that I actually inadvertently had left off the regulation that had been continued, R182-18 from the Division of Public and Behavioral Health, but I did not read that in the consent agenda for the remaining items. We did not have a request to pull that one. Members of the Committee will remember that this was the regulation that was requested to be continued. It should have been included in our consent agenda since we did not have a request to pull this for individual consideration, but at this point in time, if there is no additional questions or concerns from members of the Commission on this one, I would accept a motion to approve R182-18 from the Division of Public and Behavioral Health.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE R182-18.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you so much. That regulation is also deemed passed and will be adopted. Thank you, members of the Commission, for allowing me to jump in there with that one. We are going to move back to the ones that were pulled for individual consideration. The next item on our agenda that was requested for some additional conversation was R099-19 from the Nevada State Board of Veterinary Medical Examiners. Senator Hardy had requested for that one to be pulled, so we will turn it over to you, Senator Hardy.

Senator Hardy:

Thank you, Madam Chair. It was to point out that Kevin Powers' language is in that, "is of good moral character" (Agenda Item IV-B). I think it's consistent with what we were doing and what we were talking about, consistent with the original intent. I am comfortable with having people use the same things that have been proven and have it be used, and it's not being changed, by the way. It is just included in it. I am comfortable with the regulation as it's proposed.

SENATOR HARDY MOVED TO APPROVE R099-19.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We will move to the next item on our agenda with a request for some additional consideration, which is R120-19 from the State Environmental Commission. That was a request from Assemblyman Daly. Assemblyman Daly, if you would, please go ahead and we will go from there.

Assemblyman Daly:

Thank you, Madam Chair. Very similar question to the last one from the Environmental Commission or the regulations that we are adopting in relation to the federal CFRs (code of federal regulations) that have been adopted, going through to change or lower the standards of air quality in the state in any fashion—or did we do the same thing as you mentioned before, that if it was going to lower it, you said we're not accepting that or we're not adopting that part of the regulation (Agenda Item IV-B)? I just wanted to—very similar question to the last regulation, I want to make sure we are maintaining the standards that we have in the State of Nevada already.

Danilo Dragoni (Bureau Chief, Bureau of Air Quality Planning, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources):

That's an excellent question. As we evaluate these federal rules as the EPA is approving them, one of the main questions that we ask ourselves with the air program is what's the impact with the Nevada air quality, as we did also with this batch of regulations. We deemed that none of these regulations is significantly impacting air quality in Nevada. If that was the case, we would have probably taken actions at the time when the EPA was approving this regulation and possibly taking action through our state regulatory process, but currently we haven't seen any of these rules impacting air quality in Nevada.

Assemblyman Daly:

Thank you, Madam Chair. That was what I was looking for. Like I said, we don't want to have the feds change regulations that impact air quality in the State of Nevada. I know we are allowed to have regulations higher than the feds, we just can't have them be lower. I just want the state levels that we've enjoyed to be maintained, at the very least. That

was it. Thank you, Madam Chair. I can make a motion, unless someone else has a question.

ASSEMBLYMAN DALY MOVED TO APPROVE R120-19.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Great, thank you. Moving on to our next item on our agenda for additional consideration for regulations is R011-20, which was a request by Senator Hardy, from the State Board of Health. We will do that one first and then R012-20, also from the State Board of Health, also a request from Senator Hardy. Senator Hardy, if you want to, go ahead.

Senator Hardy:

Thank you, Madam Chair. I had a timing question. We talk in this bill in the regulation about 48 hours before or no later than 48 hours, and my question for the folks who wrote it is, how does the 48 hours and the 72 hours—72-hour hold, as it were—how do those two things mesh, or are they disparate and they don't (Agenda Item IV-B)? Are they apples and oranges? Can you kind of describe the difference?

Stephen Wood (Division of Public and Behavioral Health, Department of Health and Human Services):

Thank you, Madam Chair and Senator Hardy. If I could, I would like to defer that question to our State Psychiatric Medical Director, Dr. Leon Ravin, who should be on the line.

Dr. Leon Ravin (Statewide Psychiatric Medical Director, Division of Public and Behavioral Health, Department of Health and Human Services):

Dr. Hardy, thank you for your question. I was wondering if you could direct me a little closer to the specific section of the regulation that you just referenced.

Senator Hardy:

So, looking at section 8, for instance, "No more than 48 hours after receiving an application." Through the bill, we are talking about 48 hours as opposed to 72. Are we

making a decision at 48 hours or are we saying that's part of the 72 hours if they are a danger to their self or others? Where's the clock start, where does it end and is it changing the 72 hours to 48 hours? I'm just kind of confused about how it relates to the 72-hour holds.

Dr. Ravin:

The hold decision is not going to be affected at all. The 48 hours in the provision that I see is strictly for reporting purposes. It is for data gathering purposes, but the decision on petitioning for involuntary commitment to the facility still remains within 72 hours from the beginning of the hold. This update—you will look at section 8—it is pretty much meant to promptly provide the data as required by law on a patient's disposition.

Senator Hardy:

So the theory is that by 48 hours you have to set everything in motion if you are going to keep a person for 72 hours or beyond 72 hours?

Dr. Ravin:

Again, the 48 hours is the data collection timeframe. It does not affect the decision on proceeding with the application for involuntary admission of the person, the alleged person, in a mental health crisis. Those 48-hour requirements are only applicable to the point when the decision has been made whether or not to pursue involuntary commitment or discharge the person from the mental health facility. Again, that timeframe does not have any impact on the decisions on whether or not somebody needs to be placed in the psychiatric facility against their will or not.

Senator Hardy:

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

SENATOR HARDY MOVED TO APPROVE R011-20.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN KRASNER VOTED NO).

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Chair Cannizzaro:

Thank you. We will move to the next regulation, and Senator Hardy, this was a request from you as well, R012-20 from the State Board of Health as well. I will turn it over to you for any additional follow-up questions.

Senator Hardy:

Thank you, Madam Chair. I was interested in the verbiage that talks about when somebody is admitted, they can only be admitted after everything is said and done by the psychiatrist as opposed to somebody else who may have privileges (Agenda Item IV-B). I guess I'd like to hear the rationale for why "just a psychiatrist" approves?

Mr. Wood:

Thank you again, Dr. Hardy and Chair Cannizzaro. I am going to have to again defer to Dr. Ravin for that question. Thank you.

Dr. Ravin:

Thank you. Once again, Senator Hardy, if you could point out to me the specific section of the regulation that you have concerns?

Senator Hardy:

I would be looking at "on conclusion of the hearing," and I have to say it's on page 6, subsection 5 and it says, "Upon conclusion of the hearing, the committee may recommend approving the request to involuntarily administer psychotropic medication to the patient only if the member of the committee who is a psychiatrist or at least one other member determined that the patient presents a substantial likelihood of serious harm to himself or herself or others, as determined pursuant to."

Dr. Ravin:

Thank you, Senator Hardy. I would like to indicate that the committee, according to this regulation, consists of three members, and one of those three members must be a psychiatrist. The intent of this regulation, what you called it, that section is to make sure that when the majority of the committee, which is two out of three members, agree to proceed with involuntarily administering psychotropic medication that at least one of those two members of the committee in the majority is a psychiatrist. Thank you for all the—the psychiatrist is in a position then to—go ahead, Senator.

Senator Hardy:

Can that be done in the rurals by telehealth, or how does my rural population that doesn't have a psychiatrist deal with somebody who needs to be protected from themselves or protect them from somebody else?

Dr. Ravin:

Thank you, Senator Hardy, for this question. This regulation is only intended for facilities that are able to conduct the process of review for involuntary administration of medication internally. For those facilities that are too small, they will continue with their current process. If I may draw your attention to section—I apologize, one second.

Senator Hardy:

It was section 13 that we were on.

Dr. Ravin:

Right, but there is an earlier section in the regulation that spells that out. Facilities that are not able to do the internal process, internal review, should continue with the current court hearings as currently established process. I apologize, I will give you a specific reference to this document in a second.

Senator Hardy:

There is a mechanism that we can—

Dr. Ravin:

It's subsection 8, actually. On page 3, it says, "If a public or private mental hospital has not established the procedures set forth in sections 9 through 14, inclusive, of this regulation, psychotropic medication must not be administered to the patient without consent unless the patient has been admitted involuntarily and the practitioner who is the primary responsible for treatment of the patient obtains from the court that order." Subsection 8 actually outlines the process for those facilities that are not able to pursue internal review of the application for involuntary administration of the medications.

Senator Hardy:

The court, meaning the judge, who isn't a doctor, will determine if the person, if he/she is convinced that the doctor says, "You know, I've got to do something." The court, meaning the judge, can say, "Yes, you can go ahead and do something."

Dr. Ravin:

Yes, you are correct. Presently, the process involves court review. The same court that orders involuntary admission also reviews the request for involuntary administration of the medication. However, based on the US Supreme Court decisions, institutions that are able to arrange for internal review of the request may do so with the process outlined in this regulation.

Senator Hardy:

How do they do it now?

Dr. Ravin:

Currently, they go through the court regardless of whether or not the facility is able to conduct internal reviews. All those decisions are strictly within the courts' jurisdiction. However, with this regulation, facilities that are able to arrange for internal review would be able to do that internally.

Senator Hardy:

I appreciate it. Thank you. Thank you, Dr. Ravin. Thank you, Madam Chair.

SENATOR HARDY MOVED TO APPROVE R012-20.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you. Our final regulation for consideration is R018-20, which was a request by Assemblyman Daly. Assemblyman Daly, if you want to go ahead for the State Environmental Commission, go ahead and ask your questions and we will go from there.

Assemblyman Daly:

Thank you, Madam Chair. My question is in section 10(3) (Agenda Item IV-B). I just wanted to get some clarification on why (c) and (g), subsection 3, wouldn't require a new notice when it says (c) is a material modification that significantly deviates from the

previously approved design during construction. Now, I can understand why maybe just changing the design and construction wouldn't impact the overall project that would require a new hearing, but I wanted to get clarification on that. With (g) where it says a change to the operating plan, if the change alters potential to degrade the waters of the state, why would that not need to go through a new hearing if it's potentially going to degrade the water of the state? I was curious on those two things, quickly if you could give some explanation with that new language that's being added.

Joe Sawyer (Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Division of Environmental Protection, Department of Conservation and Natural Resources):

Could you just state your question for me again, one more time, specifically what you are looking for?

Assemblyman Daly:

Yes, it was in section 10(3), examples of modifications to the engineering design of a facility which do not constitute a major or minor modification and do not require a new public notice pursuant to subsection 1, then specifically was the changes where it says there's a material modification that significantly deviates from the previously approved design during construction. Then I said I understand if a change in a design in construction that may be significant may not change the nature of the overall facility and what they are doing, but then in subsection (g) as well where it says a change in the operating plan, if the change alters the potential to degrade the waters of the state. Why would those not need additional notice and hearing if there are significant changes?

Mr. Sawyer:

Basically, we are looking at the potential to degrade waters of the state. I don't know if you want to jump in. I'm not sure what I can give to complete this.

Mr. Lovato:

I think what we were really trying to cover here is that generally these are engineering design changes. We are not really talking about increasing the potential of waters to degrade the state. Sometimes if we get an engineering design change in and they are changing material, we normally don't subject material, the actual type of equipment they use. That type of modification is normally not subject to public review and comment. Ordinarily the design itself is normally just subject to an engineering design review, but actual comments on the type of material used are not normally subject to public comment. I think we were just trying to in this section clarify that those would not be subject to public comment and review. There would be a lot of time spent on major modifications, major facility expansions, but most of the time engineering design itself doesn't get subjected to

public comment and review. I think that's what we're trying to just clarify here is that those types of changes would not be subject to that public notice and review.

Assemblyman Daly:

Would that be in regard to subsection (c) when you are talking about construction changes? Now, I understand if I'm—say I'm going to have an open pit mine or I'm going to have an underground mine or whatever and I am going to have a processing mill above ground and they say, "Hey, I was going to use this type of processing mill and I want to use a different one, same location, same footprint, same deal." Say we are making that type of change to construction. I could potentially understand that, but if they were going to say, "Hey, we want to double it and have a second one" and various things and you're saying that's not subject to additional notice and review. Then when I read—and I want you to talk to me back or respond to that, but when I read (g), so it says—and this is not going to be subject to additional review. It says they change the operating plans, right, so it reads to me that there is a change in operating plans. Then it says "if the change alters the potential to degrade the waters of the state," so it would say that any other change to the plans if it's going to change the air quality, if it's going to change the footprint, it's going to change underground to underground and surface, all those would be subject, but only if it's going to degrade the water that it's not subject. It's either bad language or it's unclear or you are specifically saying, "You can do what you want if it's going to degrade the water, but anything else you have to go to a hearing." It doesn't read correctly do me. Tell me if I'm reading it wrong, but it doesn't—it says only exempt if it's going to degrade water.

Mr. Sawyer:

No, I think the intent here is just looking at minor modifications that are the lowest level for engineering design of a facility. I think as part of this you would have to look at what constitutes a major modification and what constitutes a minor modification and really look at all that in total. Some of the things that you described, if they were to change facilities, that would most definitely rise to the level of a major modification which would require a public notice. Say, even if you had a milling facility and you added a new circuit or a different processing circuit, it might rise to the level of a minor modification. Really, these here relate just to engineering design changes, which is our lowest level of modification.

Assemblyman Daly:

Okay. I can read in subsection 1, and that's what subsection 3 refers back to, if there was changes in the modification design and engineering. I can accept your answer. I think you guys are trying to do the job and be fair to everybody on those things and then not have additional burdens. I know it can be a lengthy process to get approvals and various things, but I was just curious about those two in particular because it uses the term in (c) "significantly deviates," not subject, and then degrading the water quality, and that's where I was there. So then it's not only subjective, there's going to be some standards that you have in other parts of your regulation that's going to determine whether it's a design

modification or some other type of modification on that and whether or not you have to go back to a hearing. I think that clarifies it when you put it together. I just wanted to be sure that it's only the design modifications and various things on that. Thank you for the clarification.

Mr. Lovato:

If I could add one more? Thank you, Assemblyman Daly. Yeah, I think actually this whole side of the regulation that we are introducing here—we are trying to make sure that these engineering design modifications that relate to material selection and specific design choices that those are specifically subject to review and approval by the agency. We are trying to clarify for applicants, "Yes, if you change this, yes," and "If you change that, that's subject to additional review and approval by NDEP (Nevada Division of Environmental Protection)." It's just not subject to an outside public notice review and comment again. This was really just trying to clarify what the process is going to look like. This isn't something currently that we would require some type of public notice and comment. That's really reserved for facility applications and major modifications. This is just clarifying that for this additional level of review, we're requesting explicit approval authority for engineering design changes that are material. Those are the ones that an applicant knows ahead of time—now more transparently—they have to come back to the agency for review and approval. As opposed to being a decrease in regulation, it's actually a clarification just to make sure everyone's on the same page with respect to this. I think you are following along with what our intent was here.

Assemblyman Daly:

Understood, and thank you for the explanation. That's why I asked the question, and I agree with you. The burden to get some of these things through is substantial. It takes years, sometimes public comment and arguments and various things back and forth. It can take a substantial period of time. I do, with the explanation, understand that this would be additional review if they have gone through all of that public processing and they want to make an engineering or design change that has to go back through review but doesn't have to go through the possibly year-long process of public comment and various things. People should do their homework, get their first bite at the apple, and if it is significant then I suppose they can always still challenge those approvals if they chose. But with that, Madam Chair, I don't have any other questions, and I am comfortable with the understanding of it now and would make a motion when you are ready.

ASSEMBLYMAN DALY MOVED TO APPROVE R018-20.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

That will conclude our review of regulations under section B. We are going to go ahead and move—and thank you again to all the agency heads who were here with us and agency representatives who have been able to answer all of our question. We really appreciate you being with us today. We are going to go ahead and move to item C on our agenda. These are requests for approval of extension of deadlines for interim and statutory committees. This item of course relates to deadlines that we have for completing interim studies and submitting BDRs (bill draft request) requested by those committees to the Legislative Counsel Bureau. This item was requested by the Director of the Legislative Counsel Bureau, and so we will turn it over to Ms. Erdoes, if you could go ahead and present this item to the Commission.

Ms. Erdoes:

Thank you, Madam Chair. This item relates to the deadlines for completing the work of the interim and statutory committee studies this interim and for submitting the BDR requests that come from those interim committees. You may recall that at the June 5, 2020 meeting of this Commission, 6 committees asked for and were granted extensions of their deadlines for completing their work this interim and for submitting the BDRs to the Legislative Counsel. Those requests were all based on delays caused by the COVID-19 pandemic. Since then, in addition to difficulties related to the pandemic, we've also had two special sessions over a period of about 3 weeks. These unique circumstances have now affected all of the interim committees for the most part, and it's the reason that I'm suggesting that the Legislative Commission extend both the deadlines for completing the interim and statutory studies and the deadline for submitting any BDRs that might be approved by those committees to the Legislative Counsel. I believe that a reasonable deadline would be September 30, 2020, but the LCB is willing to make any deadline work. We are just looking at trying to end this process in time for us to recover and be ready for the legislative session and for any BDRs coming from these committees for there to be time for these to be drafted. That's our request on this today. Thank you.

Chair Cannizzaro:

Thank you. Members of the Commission, any questions or discussion? Senator Hardy, please.

Senator Hardy:

So, the obvious question is, does that extend the legislators' deadlines for BDRs? I'm smiling.

Ms. Erdoes:

Not that we intended.

Chair Cannizzaro:

Still the same deadline, Senator. Any additional questions or comments from members of the Commission? I'm not seeing any. Sorry, Senator Settelmeyer, please.

Senator James Settelmeyer (Senatorial District No. 17):

Madam Chair, I was curious though. It does bring forth the valid point, I believe, that Senator Hardy discusses. Legislators still had to deal with special session and still had to operate under the deadlines or lose their BDRs, so what's the difference?

Ms. Erdoes:

I'm not sure if you're looking to me for an answer. I'm not the Legislative Counsel anymore. The difference here is that, at least in my mind, for whatever it's worth, this is a coordinated effort between three or four groups of people for each one of these committees. We have the staff from the Legislative Counsel Bureau, including Research, Fiscal or Legal staff or all of them, plus the staff for BPS to make sure that these meetings can happen. Then we have all the legislators who do drive this, the chairs of each one of these committees, but also all the members. Getting all of this done within the time of the requirements there, I just don't think it's possible at this point, hence the recommendation that's on the agenda today.

Senator Settelmeyer:

I appreciate that. As a follow up, would the bill drafts of these individual committees now that they are going to be delayed—will priority be given to individuals who get their bills in first or will these committees be given the priority they had in the past?

Ms. Erdoes:

Actually, the statute requires that after a certain date, I think it's this fall, all of the legislators' BDRs be given priority, so it's up to the Legal Division to get all these things done within the time allowed, which is going to be very difficult this time, especially with a fairly new staff, but I'm betting on them to make this work.

Senator Settelmeyer:

Thank you. Thank you, Brenda. Thank you, Madam Chair.

Chair Cannizzaro:

Additional questions or comments from members of the Commission? Seeing none, I would accept a motion to approve the request for the extension as outlined by Ms. Erdoes.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE REQUEST FOR EXTENSION OF DEADLINES FOR CERTAIN INTERIM AND STATUTORY COMMITTEES.

SENATOR HARDY SECONDED THE MOTION.

Assemblywoman Maggie Carlton (Assembly District No. 14):

Thank you, Madam Chair, and thank you, Ms. Erdoes, for bringing this forward. We know Broadcast and Production Services has done an excellent job, and we know with all these meetings trying to be scheduled that we are bumping into each other all the time doing just one a day. We might end up having to do two in a day. I appreciate you giving everyone the opportunity to get their work done. That being said, the chairs need to put it into high gear and get their meetings scheduled and get their work done. The sooner their work gets in, the faster it will get drafted, so hopefully they will get that message.

Chair Cannizzaro:

I could not agree more, Assemblywoman. Again, I know we have kind of all said it, but a huge thank you to all of the very hardworking staff who has been able to facilitate this new way of us having meetings and being able to conduct our business. Yes, it is incumbent upon all of us as legislators to make sure that we are getting our work done in a timely fashion. Again, just a huge thank you to all of the really wonderful and brilliant folks who are helping to make this work and get us up and going for all these meetings. We truly appreciate it.

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

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Chair Cannizzaro:

Again, to the Assemblywoman’s point, we need to make sure that as chairs and members of the committee we are all on top of it, and certainly to our chairs outside of the Legislative Commission, to make sure that we are getting our work done. Thank you.

We will move on to item D on our agenda, which is a request for approval of session hires. We of course all know that there is a tremendous amount of work that does go into making our legislative sessions run and to facilitating each of those. Each session there are a number of employees who are hired ahead of session who are asked to begin before we actually start to help the Legislative Counsel Bureau get prepared and carry out some of

those very many tasks that are necessary before we begin meeting. I am going to again turn it over to Ms. Erdoes as she has this request to outline for all of us and can talk more about the early session hires for the next legislative session. Ms. Erdoes, whenever you are ready.

Ms. Erdoes:

Thank you, Madam Chair. There's a chart of proposed session hires for which we are seeking approval today in the materials for this item in the packets and also on the Legislature's website under the tab for this meeting (Agenda Item IV-D). In addition to the normal session hires that we would have, and those are all the things that we know we are going to need, we are asking for approval and we are going forward with those, pretty much for certain. There are some anomalies today that I just sort of wanted to explain, and I am happy to answer questions on any of these, actually.

The first sort of oddity is probably the 32 BPS intern/camera operators. What we are trying to do just generally in the LCB is to plan ahead for the 2021 Session. We believe that to properly do that, to ensure that we are ready for whatever happens here, we have determined that we need to work with all of our folks and the two houses to figure out some contingency plans. We don't know yet. Perhaps it will be just a normal session with no virtual meetings. I could be, I guess, theoretically completely virtual where you as legislators are working from your offices, but the best guess that I have seen is probably somewhere in the middle where we would have some virtual meetings. We would only hire these positions if they were needed to allow us to do—frankly what that would be for is if you wanted to do most or all of the committee meetings during the legislative session every day in the same way that you have been doing them, where you can have up to 8 or 10 going at the same time in a day. To do that with the system that we have currently, which is what we will be working with for session, we would need this number of BPS camera folks in order to do the things that you've heard. Like during the special session, you heard it's the camera folks who are working there all the time that you are in those meetings to make sure that everything is working right, but also to call upon, say, members of the public or the people on Zoom to come forward. It's the whole "press *9 to raise your hand," that kind of stuff. All of those people are what we are talking about here. Not all of them would need to be onsite. You might have recognized some of the voices during the special session. A number of those were the folks who actually work in the Las Vegas Office and they were working from home, as were some of the folks that work in Carson City working from home, and they are able to do that on their computer and provide these services. That's really what we are talking about here. Again, the reason that we would like to get approval for the amount that we think would be needed is so that we can continue with those plans and know that if we do need to trigger that plan that we will have our resources available, but we would not hire them until we have determined that we need to do it and to go in this fashion.

Another, I think, sort of anomaly is that under the Director's Office I added three human resources trainers. I didn't really know what else to call them. It's probably not too

accurate, but what I know now is that we have a number of senior people in the Counsel Bureau who are eligible to retire and who are truly thinking about it. If we get some number of those retirements right before session, I would like to be able to contract with at least a few of them to come back to help train their replacements, especially in divisions where we don't have a lot of backup for those folks. That's what those three positions would be used for, should that come to pass.

I think the rest of these things that you see there are pretty much de rigueur for a session, but I am happy to answer any questions that you might have about these positions.

Senator Moises Denis (Senatorial District No. 2):

Brenda, on the 32 intern/camera operators, what do we normally have? In the past, what have we used?

Ms. Erdoes:

We normally add three to five, I believe, for the session, for the expense of session. Then actually some of those people end up staying and filling other positions that become available.

Senator Denis:

Then you're looking at—you kind of cut out a little bit, but I thought I heard three to five. Is that right?

Ms. Erdoes:

Yes, sorry about that.

Senator Denis:

This is quite a bit more. Like you said, you wouldn't hire these until we got closer to session. I mean, you would hire some, but you would wait to see what we needed. Is that what you were saying?

Ms. Erdoes:

Yes, that's exactly right.

Senator Denis:

All right, thank you very much. That's all I have. Thank you, Madam Chair.

Assemblywoman Carlton:

Ms. Erdoes, do you see these positions being north and south, then, since they can work remotely? The positions would be posted at both ends of the state?

Ms. Erdoes:

Yes, that is our intent. Again, as we get closer to this we would have to formalize those plans, but again, that has worked in the past for these two special sessions, so I don't see why not.

Assemblywoman Carlton:

I think that's a great idea. We have a lot of very well-qualified folks that choreographed and did shows on the Strip that won't be working for a while. They might be interested in something like this. I think you would have a wealth of people available to you in Southern Nevada who might be interested in this type of thing. Thank you.

Chair Cannizzaro:

Additional questions from members of the Commission? Hearing and seeing none, is there a motion to approve the session hires as outlined by Ms. Erdoes?

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE REQUEST FOR SESSION HIRES FOR THE 2021 LEGISLATIVE SESSION.

SENATOR HARDY SECONDED THE MOTION.

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

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Chair Cannizzaro:

We will move on to the next item on our agenda, item E, the request for approval of transfer of funds appropriated for Fiscal Year 2019-20 to Fiscal Year 2020-21. Ms. Erdoes, can you go ahead and walk us through this item, and then I believe also Mr. Krmpotic is available if we should have any additional questions. Ms. Erdoes, whenever you are ready.

Ms. Erdoes:

Thank you, Madam Chair. As you indicated, these requests were from the Fiscal Analysis Division. There was one for the continued improvements of the Budget Account System of Nevada, BASN. I believe those changes became necessary because of changes that were made on the executive branch system that it parallels. Then, the conference room chairs and the conference room table, the delay in there was because of COVID. That was fully intended and I think, but for that reason, would have all been made in the correct year, but because they weren't, we are asking to move these amounts to the year that we are currently in now. As the Chair indicated, Mark Krmpotic is, I believe, on here too. He is probably more able to answer any questions that you might have about this.

Senator Hardy:

Thank you, Madam Chair. The conference room table and the chairs, are they designed to be six feet apart for social distancing, or where are we going to put the conference room chairs and table if we don't have a conference room big enough? Or do we?

Mark Krmpotic (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):

The chairs were ordered as replacement chairs for some very old chairs that we have in the conference room. The conference room is not designed for social distancing at this time, but the chairs were budgeted and ordered prior to COVID coming into place. We do use the conference rooms, just for far fewer people than we normally would, and the chairs are necessary for that purpose. The table itself, we are looking to get a larger table, which it was not originally intended to be such, but it would lend itself more to social distancing with a larger conference room table in our largest conference room in the Fiscal Analysis Division.

Senator Hardy:

Thank you. Thank you, Madam Chair.

Chair Cannizzaro:

Additional questions or comments from members of the Commission? I am not seeing any. I would accept a motion to approve the transfer of funds as outlined.

SENATOR HARDY MOVED TO APPROVE THE REQUEST TO TRANSFER FUNDS APPROPRIATED FOR FISCAL YEAR 2019-20 TO FISCAL YEAR 2020-21.

ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

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

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Chair Cannizzaro:

We will move on to the next item on our agenda, item F, which is appointments of members to committees and similar entities. We have some members to be appointed to both the Nevada Commission on Minority Affairs (Agenda Item IV-F-1) and the Advisory Council on Mortgage Investment and Mortgage Lending (Agenda Item IV-F-2). Members should have the information regarding these appointments in your meeting packet under separate tabs for each of those. That information is also available on the legislative website for those of you who are joining us virtually and would like to take a look at those meeting materials. They contain the information for both of the appointments to both of those particular entities. I'm going to turn it over to Ms. Erdoes to walk us through that information.

Ms. Erdoes:

Thank you, Madam Chair. The first thing under that tab is a letter to the chair from Emily Ku, the management analyst for the Commission on Minority Affairs (Agenda Item IV-F-1). There are two vacant positions and three reappointments that they are asking for. They are asking for the appointment of two new members, and they are listed there as the first two members listed, Yette Martell-De Luca and Angelica Villarta. The next three members are asking to be reappointed for their second terms. What follows this in our packets and in the information that's on the website is the resumes of those people. I think that is everything that's in here. You just need to determine whether you wish to appoint these two new members and reappoint the three other members that are listed there.

Chair Cannizzaro:

Thank you, Ms. Erdoes. We appreciate it.

Senator Denis:

Just a quick question. Emily Ku, my question was for her about the process that she went through to get submissions for the position, if she's on.

Chair Cannizzaro:

I don't know that we have her with us.

Senator Denis:

If we don't, I'm okay with moving forward. I can always follow up later. When we do these kind of appointments, I just wanted to make sure how we go through selecting individuals.

Chair Cannizzaro:

I don't know if Ms. Erdoes has any additional information on that particular process. I know that this was certainly information that was provided to us by the Department of Business and Industry. Ms. Ku had sent over the letter along with all of the letters of recommendation for the individuals who had either—to this. I won't speak out of turn, but I believe there is an application process that must be accompanied by some of these other items that are included in your meeting packet as well in terms of appointing those members. Ms. Erdoes, do you have any additional information on how that process works?

Ms. Erdoes:

Madam Chair, I apologize, I do not. I haven't been involved in this process before, but I think that what we will do in the future for these sorts of appointments is ask that question and ask them to include that in the material they that provide to us.

Senator Denis:

Madam Chair, I am willing to make a motion. I think they are both highly qualified great candidates. If we are ready for a motion, I would make that motion.

Chair Cannizzaro:

I am not seeing any additional questions or comments from members of the Commission. I do have a motion from Senator Denis to approve the appointments to the Commission on Minority Affairs and the Advisory Council on Mortgage Investments and Mortgage Lending.

SENATOR DENIS MOVED TO APPROVE THE APPOINTMENTS OF MEMBERS TO THE NEVADA COMMISSION ON MINORITY AFFAIRS AND THE ADVISORY COUNCIL ON MORTGAGE INVESTMENTS AND MORTGAGE LENDING.

SENATOR HARDY SECONDED THE MOTION.

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

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Chair Cannizzaro:

The motion carries and the appointments are approved.

Senator Denis:

I just realized I wasn't clear, but I think everybody understood this, that we were approving the two new ones plus the reappointment of the other three.

Senator Hardy:

That's what I seconded.

Senator Denis:

Thank you.

Chair Cannizzaro:

The new appointments as well as the reappointments for the other three on the Commission on Minority Affairs and the two on the Commission on Mortgage Lending. Okay, that brings us to item V on our agenda from the Legislative Auditor. The next two items will be presented—oh, excuse me, I see Ms. Erdoes.

Ms. Erdoes:

We have a second group of two reappointments to make to the Advisory Council on Mortgage Investments and Mortgage Lending today. If you look in the packet, you have a letter from Cathy Sheehy asking for Adam Horowitz and Alicia Taylor to be reappointed (Agenda Item IV-F-2). Behind that letter is a letter from Adam Horowitz asking to be reappointed, and then also Alicia Taylor's resume and a similar request to be reappointed. Thank you, Madam Chair.

Chair Cannizzaro:

I apologize, I believed we had done that under the same motion, but it would require a separate motion, Ms. Erdoes?

Ms. Erdoes:

Yes. Thank you. Sorry, I should have read through those in the beginning.

Chair Cannizzaro:

That's okay. We will go ahead then and consider the appointments for the Advisory Council on Mortgage Investments and Mortgage Lending. Were there any additional questions from members of the Committee on those two reappointments? Seeing none, is there a motion to be made to approve the two reappointments as outlined in your meeting materials?

> ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE THE APPOINTMENT OF MEMBERS TO THE ADVISORY COUNCIL ON MORTGAGE INVESTMENTS AND MORTGAGE LENDING.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION PASSED (SENATOR RATTI WAS ABSENT FOR THE VOTE).

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Chair Cannizzaro:

That motion then will pass as well for our reappointment of the members for the Advisory Council on Mortgage Investments and Mortgage Lending. That will conclude our action on the appointments for those committees. We will move on now to item V under the Legislative Auditor. The next two items on our agenda will be presented by our very own Legislative Auditor, Dan Crossman, and we will turn it over to you to go through the two items under subsections (a) and (b).

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

Thank you. Good afternoon, Chair Cannizzaro and members of the Legislative Commission. I have two quick items for your consideration today under agenda items V(A) and V(B). Under tab V, you'll see a letter from the Commission dated August 10, 2020 requesting permission for the Audit Division to perform audits (Agenda Item V). The

first paragraph in that letter pertains to agenda item V(A), schedule 1, which is on the next page. It lists the audits we currently have in progress. In accordance with NRS 218E.205, we are requesting approval to continue these audits as we will not be able to present all of them to the Audit Subcommittee of the Legislative Commission before the start of the 2021 Legislative Session. As a result, we respectfully request that the Commission approve continuation of these audits under agenda item V(A). Thank you.

Chair Cannizzaro:

Questions or concerns from members of the Commission for agenda item V(A)?

SENATOR HARDY MOVED TO APPROVE THE REQUEST TO CONTINUE AUDITS CURRENTLY IN PROGRESS BEYOND THE BEGINNING OF THE 2021 LEGISLATIVE SESSION.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED (SENATORS HAMMOND AND RATTI WERE ABSENT FOR THE VOTE).

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Chair Cannizzaro:

Mr. Crossman, we will turn in back over to you under agenda item V(B).

Mr. Crossman:

Thank you. Under agenda item V(B), pursuant to NRS 218.120, we are requesting approval of our biennial audit plan, which is included as schedule 2 on the next page (Agenda Item V). With agencies that have multiple divisions or programs, it is possible that we will perform more than one audit of those agencies. The timing of the audits is contingent upon available staffing, resources and may be impacted by additional audits placed upon the Audit Division by the Legislative Commission or by the Legislature during the 2021 Legislative Session. The proposed audits were selected using a risk assessment process. This process includes various factors, including the length of time between audits, size and complexity of the agency, the nature of issues and legislative interest. With that, Madam Chair, I respectfully request approval of our biennial audit plan under agenda item V(B). Thank you.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE REQUEST FOR THE BASIC AUDIT PROGRAM.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED (SENATORS HAMMOND AND RATTI WERE ABSENT FOR THE VOTE).

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Chair Cannizzaro:

Thank you, Mr. Crossman, for being here to walk us through those items under agenda item V. We appreciate it. We will now move to the next item on our agenda, which is item VI. It is a progress report regarding litigation. We are joined by Kevin Powers, our General Counsel, who will provide us with a report regarding the various court cases involving the Legislature that are currently in progress.

Mr. Powers:

Thank you, Madam Chair. LCB Legal will be reporting on two cases today because those are the two cases that we have developments in since the last Legislative Commission meeting. Both of these cases are related, so I will discuss them together. Those cases are *Settelmeyer v. State of Nevada*, which is in the First Judicial District Court, and then *State ex rel. Cannizzaro v. First Judicial District Court*, which is in the Nevada Supreme Court. This office discussed these cases extensively at the Legislative Commission meetings on December 30, 2019 and on February 6, 2020, so I will refer anyone back to those lengthy discussions in the minutes of those meetings. For today's report, I will provide a quick summary of the cases and focus on the Nevada Supreme Court's published opinion overturning the District Court's order disqualifying LCB Legal as counsel for the legislative defendants.

The underling case in the District Court: the plaintiffs are challenging the constitutionality of Senate Bill (SB) 542 and 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, or eight senators, 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 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 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 which stayed all District Court proceedings pending resolution of the mandamus action. The parties briefed the mandamus action and presented oral argument on February 11, 2020 before the full seven members of the Nevada Supreme Court.

On June 26, 2020, the Nevada Supreme Court issued a published opinion in writ of mandamus overturning the disqualification order and lifting the stay. That opinion is in *State ex rel. Cannizzaro v. First Judicial District Court*, 136 Nev., Advance Opinion 34 (2020). The Nevada Supreme Court's published opinion includes a discussion of several important principles governing the legal services provided by LCB Legal to legislators. Therefore, I will provide an extensive overview and synopsis of the published opinion. The Nevada Supreme Court found that LCB Legal's client is the Legislature and it represents individual legislators only in their official capacities as constituent members of the Legislature acting on the Legislature's behalf. The plaintiff senators sued Senator Cannizzaro and Secretary Clift in their official capacities for actions taken on behalf of the Legislature related to the passage of the two senate bills. In LCB Legal's defense of the Senator and Secretary, which was part of an ancillary to the defense of that legislation—but in challenging the legislation, the Nevada Supreme Court found that the plaintiff senators are not similarly acting on the Legislature's behalf, thus they are not considered LCB Legal's client in the situation of this litigation. Under NRS 218F.720, LCB Legal is authorized to represent the legislative defendants because they were sued in their official capacity to defend against claims challenging the constitutionality of legislation and to protect the institutional interest of the Legislature. The District Court characterized LCB Legal's representation as picking sides, but that characterization is unfair and unsupported, according to the Nevada Supreme Court, and counsel for the plaintiff senators acknowledged at oral argument that nothing in the record supports that LCB Legal picked sides or chose to represent the legislative defendants. Instead, LCB Legal serves as nonpartisan legal counsel for the Legislature acting through its duly authorized constituents. LCB Legal is not authorized to advocate against legislation or official legislative acts, and thus LCB Legal did not pick sides in this litigation. As counsel for the plaintiff senators acknowledged at oral argument, LCB Legal cannot take a position contrary to the Legislature. Thus, LCB Legal could not represent the plaintiff senators in the underlying litigation even if Senator Cannizzaro and Secretary Clift had not been named as defendants. LCB Legal's representation of the legislative defendants likewise does not damage its neutrality as defending a bill's constitutionality is a public nonpartisan function, and pursuant to NRS 218F.720, LCB Legal would defend such a bill regardless of which political party is in the majority.

Finally, the Court found that the basis for LCB Legal's legal opinion regarding the two-thirds requirement was not political, and counsel for the plaintiff senators acknowledged that there was nothing improper about LCB Legal providing a legal opinion that was neutral to both the majority and minority leaders during the legislative session. Moreover, nothing in the record, briefs or arguments suggests that LCB Legal cannot continue to

give advice on bill drafts and provide legal opinions to both minority and majority members of the Legislature in their roles as constituent members of the Legislature while also defending the constitutionality of legislation passed by the Legislature that is presumed to be constitutional. Therefore, the Nevada Supreme Court issued a writ of mandamus directing the District Court to vacate its order disqualifying LCB Legal. On July 9, 2020, the District Court entered that order and vacated the disqualification order.

On August 13, 2020, the District Court approved a stipulation and order establishing a briefing schedule in the District Court for the parties' dispositive motions on the underlying constitutional issue with regards to the two-thirds question. That briefing will be completed on September 14, 2020 and the District Court will hear oral arguments regarding the parties' dispositive motions at the hearing in the Carson City Courthouse set for September 21, 2020 at 1:30 p.m.

That is an overview of the two cases that have major developments in them since the last Legislative Commission meeting, Madam Chair, and I am certainly open for any questions. Thank you.

Chair Cannizzaro:

Thank you. Any questions from members of the Commission? Okay, seeing none, thank you, Mr. Powers. We appreciate your overview and explanation as always.

We will now move to item VII on our agenda. For those of you who are watching and joining with us online, this is now the second public comment offering that we will have for this meeting. If there is anyone who wishes to provide public comment, please refer to our agenda and call the number that is indicated on there. Once you have called in, you will be informed by our Broadcast and Production Services when you have been connected and when it is your turn to speak. Again, comments are going to be limited to two minutes per person, but you of course may always submit additional comments to us in writing to be included in the record. At this point in time, I am going to turn this over to our Broadcast and Production Services staff to go ahead and queue up those calling in to speak, and they will of course again inform you when it is your turn to speak. Just another reminder, if you are going to be giving public comment, please state and spell your name so that we will have that for the record. Now we will turn it over to our Broadcast and Production Services.

Broadcast and Production Services Staff:

Madam Chair, we're going to give the public two minutes to call in.

Chair Cannizzaro, the public line is open and working. There are no callers at this time.

Chair Cannizzaro:

We thank you for being able, as always, to help facilitate not only our meetings but public participation as well. With that, we will go ahead and close public comment at this point in time under item VII. The final item on our agenda is agenda item VIII, which is our adjournment. Seeing no additional business before the Commission at this point, the meeting is adjourned at 3:44 p.m. Thank you, Commission members, for being here today, and thank you to all of our wonderful staff for being able to not only facilitate our meeting but answer all of our questions and make sure that we can conduct our business safely. I'm sure we will see each other soon. Thank you, everybody.

RESPECTFULLY SUBMITTED:

_____
Jordan Haas, Secretary

APPROVED BY:

_____
Senator Nicole Cannizzaro, Chair

Date: _____

Agenda Item	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III	Jordan Haas, Commission Secretary	Draft Minutes of the June 5, 2020 Meeting
Agenda Item IV-B	Bryan J. Fernley, Legislative Counsel	Administrative Regulations for Review
Agenda Item IV-D	Brenda Erdoes, Director	Request for Approval of Session Hires for the 2021 Legislative Session
Agenda Item IV-E	Mark Krmpotic, Senate Fiscal Analyst	Request for Approval of Transfer of Funds Appropriated for Fiscal Year 2019-20 to Fiscal Year 2020-21
Agenda Item IV-F-1		Appointments to the Nevada Commission on Minority Affairs
Agenda Item IV-F-2		Appointments to the Advisory Council on Mortgage Investments and Mortgage Lending
Agenda Item V	Daniel Crossman, Legislative Auditor	Request for Approval to Perform Audits