MINUTES OF THE 2019-2020 INTERIM
LEGISLATIVE COMMISSION

September 18, 2020

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 1:31 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 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
Senator Patricia Spearman, Senatorial District No. 1 (Alternate for Senator Julia Ratti)
Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblyman Skip Daly, Assembly District No. 31
Assemblywoman Sandra Jauregui, Assembly District No. 41 (Alternate for Assemblywoman Teresa Benitez-Thompson)
Assemblywoman Lisa Krasner, Assembly District No. 26
Assemblyman Tom Roberts, Assembly District No. 13 (Alternate for Assemblyman Jim Wheeler)
Assemblyman Steve Yeager, Assembly District No. 9 (Alternate for Assemblyman Jason Frierson)

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:

Donald Smith, Senior Division Counsel, Division of Industrial Relations, Department of Business and Industry
Alexis Motarex
Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada

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

A couple of housekeeping matters for everyone who is joining us and for all the members: anyone who is testifying today, if you could please make sure to state and spell your name for the record before you testify so that we have an accurate record of that. Of course, all members of the Commission did receive a copy of the agenda in your meeting packet as well as the items that we will be discussing during today's meeting. If anyone would like to receive a copy of the Commission's agendas, minutes or reports, you can be added to the mailing list by following the links on our website for the Nevada Legislature or by providing your information to our staff for the Legislative Commission, and contact information for staff is also listed on the website.

With those couple of things, we are going to move to item II on our agenda, which is public comment. The next item we will take is that. For those of you who have called in and would like to speak during this part of the meeting, you will be notified by our Legislative Counsel Bureau (LCB) Broadcast and Production Services (BPS) when you have been connected and it is your turn to speak. Please remember that comments at this point in time will be limited to two minutes. We will also have a point in time at the end of the meeting to do public comment for anyone who wishes to give public comment and would rather do that at the end of the meeting. We will be making sure that we are keeping those to two minutes at this time. 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 again prefer to speak until later, just hang on until the end of the meeting because we will have that second period for public comment.

At this point, I am going to turn over the public comment portion to our BPS staff to queue up those who have been calling in to speak, and if you listen carefully they will inform you when it is your turn to speak.

Donald Smith (Senior Division Counsel, Division of Industrial Relations, Department of Business and Industry):

Actually, I am appearing on item III(A) on behalf of the Division of Industrial Relations. I just wanted to make sure that I could get on here now. If III(A) is the appropriate time for me to be on, then I'll do it then. Thank you.

Chair Cannizzaro:

Thank you, and we will be moving to III(A) so just hang on with us until we get to that point.

Mr. Smith:

Thank you, Madam Chair.

Alexis Motarex:

I'm representing the Nevada Chapter of Associated General Contractors (AGC) and the Nevada Mechanical Contractors. We are in full support of the changes being proposed to NAC (Nevada Administrative Code) 455C under Item III(A). These changes have been vetted by the industry and we look forward to seeing them enacted. On behalf of the Nevada AGC and the Nevada Mechanical Contractors, I would like to thank the Department of Business and Industry and especially the staff with the Mechanical Compliance Division of DIR (Division of Industrial Relations) for working with us to address our concerns. Thank you.

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

Madam Chair, there are no more callers at this time.

Chair Cannizzaro:

Thank you. We will move on to the next item on our agenda, which is our Legislative Commission policy review. We will begin with our Legislative Counsel, Bryan Fernley, who is going to help us get through all of the regulations for today's meeting. There is one regulation that an agency submitted for early review and one other that was adopted since our last meeting and is being considered today because it needs to be expedited. We will move on to item III(A) on our agenda. Since we just have a couple of early review items, we will go ahead and hear about those. The regulation under III(A) is submitted for preapproval pursuant to NRS (Nevada Revised Statutes) 233B.0681 and it is R045-20. I would note that all members of the Commission do have a copy of all of these items as well (Agenda Item III-A). You may also recall that NRS 233B.0681 provides that an agency may request the early review of a proposed permanent regulation after the agency has given notice of a hearing on the regulation but before the hearing is held. If the Legislative Commission approves the regulation pursuant to the request and the regulation is adopted after the hearing is identical to the regulation submitted for early review, the Legislative Counsel is required to file the regulation with the Secretary of State and the regulation becomes effective upon filing with the Secretary of State.

I know that we did have and hopefully we still have with us Donald Smith representing the Division of Industrial Relations, and he is available for any questions or comments that members of the Commission may have. I will open it up to members of the Legislative Commission, and if anyone has a question or a comment, we will go ahead and move to that at this point, and hopefully Mr. Smith is still with us and can be available to answer those. Members of the Commission, does anyone have comments or questions on R045-20? I don't see anyone unmuting or raising their hands or jumping up and down. All right, at this point in time since we have had an opportunity to review this particular regulation, I would, if anyone is so inclined, accept a motion to preapprove R045-20 pursuant to NRS 233B.0681.

ASSEMBLYMAN DALY MOVED TO APPROVE R045-20.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We will move on to the next item on our agenda, which is under item III(B). We have one regulation to consider this time under our regular approval process for regulations that have been all the way through the process for the adoption of permanent regulations set forth in chapter 233B of the Nevada Revised Statutes. Again, all members of the Commission, and they should be available online as well, have copies of these regulations (Agenda Item III-B). For R142-20, I do believe that we have Brett Kandt or Shirley Hunting who are representing the State Board of Pharmacy available to answer any questions that we may have. At this point in time, I will turn it over to the members of the Commission to see if anyone has questions or comments on R142-20. It doesn't appear that we have anyone who's got questions or comments at this point in time. With that, I would accept a motion to approve R142-20 if it is so desired by the Commission.

ASSEMBLYMAN DALY MOVED TO APPROVE R142-20.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

That concludes our items on our agenda under item III for our Legislative Commission policy. We will now move to item—excuse me, it does not conclude our items under III, it concludes III(B). We will move to item III(C). I'm getting ahead of myself a bit. We'll move to item III(C), the approval of a request for extension of deadlines for certain interim and statutory committees. I will turn it over to Ms. Erdoes to address the request of the Legislative Committee on Child Welfare and Juvenile Justice to extend the deadline for completing its business. Ms. Erdoes, whenever you are ready.

Brenda Erdoes (Director, Legislative Counsel Bureau):

Thank you, Madam Chair. In the meeting materials online, there is a memorandum from Senator Ohrenschall in his capacity as Chair of the Legislative Committee on Child Welfare and Juvenile Justice (Agenda Item III-C). He is requesting an extension of the deadline for concluding business of the Committee and for requesting BDRs (bill draft request) for the 2021 Session. As you may recall, we had extended the deadline to the end of September previously with all the other committees, but his memo points out that the Committee was assigned three interim studies in addition to its regular oversight duties for this interim. Though the Committee has tried, it has not been possible to complete all of the work given the delays caused by the pandemic and also the special sessions. This request today is for the Legislative Commission to grant both an extension of the deadline for holding the last meeting of the Committee to the latter half of October, so from the end of September to the latter half of October, and then an extension of the deadline for requesting BDRs for the 2021 Session to no later than October 31, 2020. I am happy to answer any questions that you may have regarding this request.

Chair Cannizzaro:

Thank you. I would add that I was contacted by the vice chair of that particular Committee who also had mentioned that they ended up needing to cancel I think it was five of the meetings that they had originally scheduled due to the scheduling that we have seen happen. Our amazing staff has been able to put up all of these virtual meetings to allow for us to continue to meet, but with all of the special sessions and other meetings that have had to be scheduled and our limited capacity to do multiple meetings at the same time, I know that they ultimately had to cancel five of those meetings. I just wanted to add that for the Committee's consideration. Does anyone have any questions or comments for Ms. Erdoes or on this item? I'm not seeing any. At this point in time, I would accept a motion to approve the request to extend the deadlines for the Legislative Committee on Child Welfare and Juvenile Justice, allow them to hold its final meeting in the latter half of October and then submit any BDRs to the Legislative Counsel no later than October 31, 2020.

ASSEMBLYWOMAN JAUREGUI MOVED TO APPROVE THE REQUEST FOR EXTENSION OF DEADLINES FOR THE LEGISLATIVE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE.

ASSEMBLYMAN DALY SECONDED THE MOTION.

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

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Chair Cannizzaro:

We are going to move to the next item on our agenda, which is item III(D), the approval of appointments. This is a request from the Director of the Legislative Counsel Bureau for approval of the appointments of Senate and Assembly Fiscal Analyst to replace Mark Krmpotic and Cindy Jones, who are both retiring this fall and will be very much missed, but we're very grateful for all of their service. I am going to turn this item over to Ms. Erdoes to talk to us a bit about these appointments.

Ms. Erdoes:

Thank you, Madam Chair. As you are likely aware, subsection 3 of NRS 218F.100 requires the Director of the Legislative Counsel Bureau to appoint an Assembly Fiscal Analyst and a Senate Fiscal Analyst with approval of the Legislative Commission. I'm bringing this item to you today as the Chair said because we've been given notice that both of the fiscal analysts are retiring sometime this fall, and we are hoping to be able to have some overlap between the newly designated fiscal analysts and the retiring folks to enhance the knowledge transfer there. That's why we are trying to get ahead of this. The meeting materials online for this meeting include the resumes of Sarah Coffman (Agenda Item III-D-2) and Wayne Thorley (Agenda Item III-D-1). These two individuals were selected by a five-member panel unanimously. I believe that both have the potential to lead the Fiscal Analysis Division into the future in a manner that will ensure that the Fiscal Analysis Division continues to be an amazingly dynamic group of extremely knowledgeable folks who are very dedicated and are a trusted source of information for the Legislature. That's really important to me and I hope that it is to you too. I would ask the Legislative Commission's approval of these two appointments today, and I'm happy to answer any questions that you might have.

Chair Cannizzaro:

We will turn it over to the Commission and see if anyone has any questions or comments on item III(D).

Assemblywoman Maggie Carlton (Assembly District No. 14):

I've sort of been sucked into the Fiscal Analysis Division over the last decade, so I do have just a few questions, if I can. I know that our current analysts have worked very, very hard to create a culture of teamwork within the Fiscal Analysis Division. I remember back in the day where it was really siloed, where we had Senate staff doing one thing and Assembly staff doing another. I know the folks we have now and all the team members that have been there since I've been privileged to serve with them have worked very, very hard to make sure that everyone worked together. I just want to make sure that that philosophy continues. I think it's been very beneficial to the process, to both committees and all the members of the Legislature because these folks do answer questions for everyone. The fiscal side of our work can sometimes be very confusing and complicated, as I believe we all witnessed in our first special session this summer of how everything is intertwined and the work that needs to be done. I know that there has been a lot of succession planning going forward, and I am absolutely thrilled that Ms. Coffman has been chosen to move forward. I have worked with her for years and I am very, very comfortable with her. I do have a question with Mr. Thorley coming in from the outside and not having the benefit of the changes that have happened over the last 4 to 6 years in how we do our business at the Legislature. When will he be coming in? What will the overlap look like? We are already into budget meetings and conferences. I know when I first started it was like drinking from a fire hose, and I just want to make sure that we have a good plan in place because we are bringing someone in that has not been part of that succession planning to make sure that when this all happens that there is the appropriate amount of time. Do we have an idea of when Mr. Thorley will be transitioning from his current position to his next position?

Ms. Erdoes:

I'm happy to take that question, Madam Chair. I believe that Mr. Thorley has indicated that he will need to give two weeks' notice and then I believe that he will be on board. I also believe that Mr. Krmpotic is planning to help with this transition and stay on through most of November, if not longer if we can persuade him, so I think there will be a good transition period there. In the interview process we talked a lot about the culture of the Fiscal Division and I was pleased that Mr. Thorley had worked in the Division for, I think, a little over 5 years before, so he does have a good idea of what's going on there, but we will certainly need to obviously spend a lot of time with the current fiscal analyst to get to where he needs to be. I think he is dedicated and has made a commitment to work to do that and to continue working with the Fiscal Analysis Division in the manner as you described.

Assemblywoman Carlton:

Thank you, Madam Chair, for allowing me to ask the questions. I do have some concerns bringing someone in at this particular time, but knowing full well that the committee that

did the process, did the interviewing, will work forward with all of this. With that, my other question is will these be taken as one motion?

Chair Cannizzaro:

The intent is for them to be taken as one motion.

Assemblywoman Carlton:

Okay. I do plan on supporting both, but I do have a few concerns. But I'll be more than happy to work with all the particulars in this to make sure that—my goal is to leave this Legislature a little bit better than I found it and to make sure that all of our fiscal folks, who are the backbone of what the state needs to get done, have everything that they need and are where they need to be to move forward. We can have all the great bills in the world that we want, but if we don't have a state budget, we're not getting anywhere. With that, I just wanted to make sure my concerns were on the record, and I would be happy to support the motion when it's made. Thank you very much.

Chair Cannizzaro:

Thank you, Assemblywoman. I always appreciate your perspective and point of view, especially when it comes to fiscal matters. Thank you for your questions and comments. I appreciate it.

Senator James Settelmeyer (Senatorial District No. 17):

Thank you, Madam Chair. I appreciate both individuals that were found in order to help try to fill the hole. I believe Mr. Thorley will do an excellent job within the Senate. I appreciate, though, that the time will be given to allow Mr. Thorley to transition, not only for the sake of the Fiscal Division but also for the sake of the Secretary of State, because obviously she does have a minor election coming up and we are taking one of her main people, so I appreciate that time being given. I have no fear of the transition since it has been given a fairly lengthy period of time for that. In that respect, though, I do have to say at this point in time I'm extremely sad. The institutional knowledge that we are about to lose before walking into the next session cannot even be stated. Talk about gigantic shoes to fill and the brain drain that is about to occur. I don't care who steps into these positions, they cannot take the place of individuals who have sadly had to undergo basically the trials of almost a war in the last couple special sessions in order to try to clobber together the state's financial house. With that, I'm very sorry to see you leave, to Mr. Krmpotic and Ms. Jones. However, I understand why you are leaving and it's understandable. That being said, thank you for everything you have done for the State of Nevada to those two. Thank you, Madam Chair.

Senator Patricia Spearman (Senatorial District No. 1):

Thank you, Madam Chair. I just want to echo the comments of my colleague. It's going to be a tremendous loss, but I am confident based upon the comments of Ms. Erdoes that although it will be an enormous task, eventually we will be able to get back to where we were. This is just another—Mr. Krmpotic and Cindy—example of how dedicated our public servants are and one of the reasons we fight so fiercely to make sure they are protected, to make sure that their retirement is protected and to make sure that people understand how much they give to the whole institution. I just want to say thank you. Thank you. Sorry to see them go, but I really understand it. Enjoy life after this.

Senator Joseph Hardy (Senatorial District No. 12):

Thank you, Madam Chair. I would be remiss if I didn't thank both the Assembly and the Senate for their fiscal staffs, plural, and their being able to work so well together. Cindy, working with the Assembly—it's not just one person, obviously, and Mark being able to do so much helping with the Senate. They have been a great help to me personally and us as a group. Thank you, Mark, and thank you, Cindy, for what you have done and what you have been able to put up with, and I wish you well and greener pastures. Thank you.

Senator Moises Denis (Senatorial District No. 2):

Thank you, Madam Chair. I remember, it seems like it wasn't that long ago when Mark and Cindy both started and they were the new ones trying to learn all this and all that they have gone through all the last few years. I appreciate the work that they have done. Having worked with both of the candidates coming in in the past, I think we've got some good folks coming in that can pick up on it quickly, and I feel comfortable. I have the same concern any time you switch, regardless of the situation that we are in, when it comes to the finance of the state, but I think the committee has done a great job in bringing forth some good candidates so I support the motion, and once again, I'm appreciative to Mark and Cindy for all the work that they have done. Thank you, Madam Chair.

Chair Cannizzaro:

Anyone else, questions or comments? I'm not seeing any. I too just wanted to take a moment to thank both Mark and Cindy for their amazingly diligent and professional work in the Legislature. It has been a true pleasure to be able to work with both of you. I definitely know that you will be missed. I can't remember who said it, but they are extremely large shoes to fill, and of course we wish you the best. Thank you so much for all of your hard work and for all of your dedication and making sure that we can get our questions answered and hopefully leave the state a little better than we found it in this position. Thank you. Thank you very much. Thank you to Ms. Erdoes for walking us through the appointments and for you and your committee's work to bring forward these recommendations. I look forward to working with the next fiscal analysts. Do I have a

motion to approve the appointments of Sarah Coffman to be the next Assembly Fiscal Analyst and Wayne Thorley to be the next Senate Fiscal Analyst?

> SENATOR HAMMOND MOVED TO APPROVE THE APPOINTMENT OF SARAH COFFMAN AS ASSEMBLY FISCAL ANALYST AND WAYNE THORLEY AS SENATE FISCAL ANALYST.
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> SENATOR DENIS SECONDED THE MOTION.
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> THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Congratulations to them both. We look forward to working with both of you. We will move then next to item IV on our agenda, which is the litigation. I will ask our General Counsel, Kevin Powers, to proceed with presenting two resolutions regarding litigation for consideration by the Legislative Commission today.

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

Thank you, Madam Chair. We are going to take each of these agenda items separately, so we will start with agenda item IV(A). That involves the case of *Nevada Policy Research Institute v. Cannizzaro* that's in the Eighth Judicial District Court in Clark County. What you'll have in your meeting packet is two things: the resolution that is being presented to the Legislative Commission today, and in addition there is an opinion letter from the LCB Legal Division that is related to the legal issue in the underlying litigation (Agenda Item IV-A). In this litigation, the issue is whether or not state legislators are prohibited by the separation of powers provision in the Nevada Constitution from holding positions of public employment with the state executive branch or with local governments. As the resolution lays out, this is an issue that the LCB Legal Division has been asked to provide written legal opinions on since at least 2002, and over the last 18 years we have addressed this issue repeatedly. We have always come to the same conclusion, that the separation of powers provision does not prohibit legislators from serving in positions of public employment in the state executive branch or with local governments. In 2004, there was a Nevada Supreme Court case where this issue was argued. However, the Nevada Supreme Court did not address the merits of the issue but resolved the case on different legal grounds. That was *Heller v. Legislature*, 120 Nevada 456 from 2004. This has been an outstanding issue, obviously, for several decades.

Recently, the Nevada Policy Research Institute (NPRI) instituted this underlying action in the Eighth Judicial District Court in Clark County. They named as the defendants several

members of the Nevada Legislature in their capacity as public employees with the state executive branch or with local governments. That complaint was filed on July 9, 2020. They filed then an amended complaint on July 28, 2020. On August 29, 2020 was the first time that they actually served the summons and a copy of the amended complaint on one of the legislative defendants. In the amended complaint, the NPRI alleges several claims for declaratory and injunctive relief, and they allege that all of the defendants named, the members of the Legislature who are serving in those positions of public employment, are simultaneously holding elected offices in the Legislature and paid positions with the state executive branch or with local governments in violation of the separation of powers provision. Those allegations are directly implicating a legal opinion that the LCB Legal Division has been providing to the Legislature, as I mentioned, for at least two decades now.

Pursuant to NRS 218F.720, when deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding in court, the Legislative Commission may direct the General Counsel and the Legal Division to appear in, commence, prosecute, defend or intervene in any action or proceeding. Because this action or proceeding does involve the Legislature's interest, in particular as I mentioned it deals with specific issues with regard to who may or may not be members of the Legislature depending on what types of positions they hold in their capacity as employees. In addition, the Legislature has enacted statutes that reflect the public policy of this state to support a citizen legislature. In particular, NRS 281A.020 provides that it's the public policy of this state that state legislators serve in a citizen legislature and they are citizen legislators who have other occupations and business interests who are expected to have particular philosophies and perspectives that are necessarily influenced by the life experiences of those legislators and that they are expected to contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. The Legislature has established a policy over time that all the members in a citizen legislature should reflect all the different walks of life and professions, including public employment. The Legislature has an official interest in this litigation. Therefore, pursuant to NRS 218F.720, the resolution will direct the General Counsel and the Legal Division to take all actions that are necessary for the Legislature to appear in, commence, prosecute, defend or intervene in the *NPRI* action and in any other related or associated actions, including any appeals, any petitions for extraordinary relief or any other appellate review or other relief.

That is an overview of the case and the resolution that is before the Legislative Commission. I am certainly open for any questions, Madam Chair. Thank you.

Chair Cannizzaro:

Thank you. At this point in time, we will see if any members of the Commission have any questions or comments on item IV(A).

Assemblyman Tom Roberts (Assembly District No. 13):

Thank you, Madam Chair. Just a quick question. Most of these legislators that are named actually have, obviously, government jobs. The legal that we provide here will be in conjunction with the other party? I'm just curious. For instance, whatever local government the employee or the legislator may work for.

Mr. Powers:

Thank you, Madam Chair. The legislators who are named as individual defendants, they need to obtain and have been obtaining their own counsel to represent them in the matter. In this case, the Legislature as an institution will be intervening in the action and the LCB Legal Division will be representing the Legislature as an institution. The Legislature, if allowed to intervene by the court, will become a defendant and the individual members who are named in the complaint will also be defendants. We will all be defending against the separation of powers issue, but the legislators will have separate counsel and the Legislature will have separate counsel, which will be the LCB Legal Division. The LCB Legal Division will not be representing any of the individual legislator defendants in this action. However, obviously we have a common interest in that our legal arguments will be similar, so in that sense all of the defendants will be defending against the constitutionality of having legislators serving as also public employees. But again, the LCB Legal Division will only be representing the Legislature as an institution. Thank you, Madam Chair.

Assemblyman Roberts:

Thank you very much for the answer.

Chair Cannizzaro:

Anyone else, questions or comments on item IV(A)? I am not seeing any other questions or comments at this point in time. Before we take a vote on this item, I would like to disclose that pursuant to Senate Standing Rule Number 23, I do believe that I have a conflict regarding this item, as pretty clearly indicated by the title of the case. Out of an abundance of caution, I will be abstaining from the vote on this item. But at this time, I would accept a motion under item IV(A) to approve the mentioned resolution directing the General Counsel and the Legal Division to take the actions as described by Mr. Powers if one exists by the Committee.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE RESOLUTION AS DESCRIBED BY LEGAL COUNSEL.

SENATOR SPEARMAN SECONDED THE MOTION.

Assemblywoman Carlton:

Thank you, Madam Chair. I believe this is just a very important issue that needs to get resolved. It's sort of been hanging as a cloud over the Legislature for a long time. I remember the discussions about it and I am looking forward to this issue coming to some rest. I believe if I choose to run for office, my profession coming from the service industry or any other industry should not prohibit me from participating in our democracy.

Assemblywoman Lisa Krasner (Assembly District No. 26):

Thank you, Chair. I wanted to let the Commission know that I previously worked for Truckee Meadows Community College but resigned several months ago for personal reasons. I just wanted to let everyone know that. Thank you.

THE MOTION PASSED (CHAIR CANNIZZARO ABSTAINED).

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Chair Cannizzaro:

We will now move on to the next item on our agenda, which is item IV(B). I will again turn it over to Mr. Powers to walk us through this item.

Mr. Powers:

Thank you, Madam Chair. The second case before the Commission today is *Lander County v. State of Nevada*, and that's in the First Judicial District Court in Carson City. This case involves the three joint resolutions proposing constitutional amendments that were passed by the Legislature during the 32nd Special Session. Those resolutions were SJR (Senate Joint Resolution) 1, AJR (Assembly Joint Resolution) 1 and AJR 2. Each of those resolutions proposed revising provisions of the Nevada Constitution relating to the taxation of mines, mining claims and extracted minerals. During the Legislative Session, the 32nd Special Session, the Legal Division of the Legislative Counsel Bureau received a request for a legal opinion and provided that opinion to members of the Legislature in which the Legal Division concluded that under the 2012 constitutional amendment that revised the state constitutional provisions governing special sessions, it is the opinion of the Legal Division that at a special session convened by the Governor under Article 5, Section 9 of the Nevada Constitution, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1 of the Nevada Constitution regardless of whether those joint resolutions are related to the business for which the Legislature has been convened by the Governor under Article 5, Section 9 of the Nevada Constitution. The opinion letter of the Legislative

Counsel Bureau of the LCB Legal Division is included in the materials with item IV(B) (Agenda Item IV-B). In addition, the LCB Legal Division's opinion letter was also included in the record during the special session, both in the journals of each house and in the records of the Committee of the Whole of each house.

Just to give you a summary quickly of that opinion, because of that 2012 constitutional amendment, the former provisions governing special sessions said essentially that the Legislature shall transact no legislative business during the special session except for that which was prescribed by the Governor in convening the special session. However, those provisions were changed in 2012 to provide that the Legislature should not introduce, consider or pass any bills during a special session that weren't in the subject that was set forth by the Governor for the special session. Using the term "bills" only and excluding the term "resolutions" created a situation where the limitation on the Legislature was only being applied to bills. The general rule at a special session is the Legislature has all the powers it would otherwise have in a regular session unless there is specific constitutional limitations. Because the specific constitutional limitations under the 2012 constitutional amendment applies only to bills, that means the Legislature at a special session would have all its normal powers at a regular session dealing with resolutions. One of those normal powers obviously is to pass joint resolutions proposing constitutional amendments. Therefore, it was the opinion of the LCB Legal Division that the Legislature could consider SJR 1, AJR 1 and AJR 2 at the 32nd Special Session, and the fact that those resolutions were not included in the Governor's proclamation did not prevent the Legislature from considering and passing those resolutions. In response to the passage of those resolutions, then Lander County filed a complaint claiming that the Legislature exceeded its constitutional authority to pass those three resolutions, specifically claiming that the resolutions were outside the scope of the Governor's proclamation and that the resolutions were passed on an expedited basis in the special session without allowing real and meaningful input from affected parties or the public at large given the restrictions placed on the special session due to the COVID-19 pandemic. With those allegations in mind, this is a direct challenge to the Legislature's power to pass joint resolutions proposing constitutional amendments during special sessions. Therefore, obviously this litigation implicates the official interest of the Legislature.

Again, pursuant to NRS 218F.720, this is an issue for which the Legislative Commission can direct the General Counsel and the Legal Division to intervene in the action and the proceeding. Therefore, the resolution proposes directing the General Counsel and the Legal Division to take any and all actions on behalf of the Legislature that are necessary for the Legislature to appear in, commence, prosecute, defend and intervene in the *Lander County* action and in any related, associated or similar actions, including any appeals, any petitions for extraordinary writs and any other appellate review or relief of any other kind. Thank you, Madam Chair. That's an overview of the *Lander County* case. I am certainly open to any questions.

Chair Cannizzaro:

Thank you. Any members of the Commission have a question or a comment on item IV(B)?

Senator Settelmeyer:

Thank you, Madam Chair, I appreciate that. I tend to agree with Lander County. I know you are shocked by that. I understand that it may actually not be a question of violating the word of law, the actual letter of the law, but I do believe this violates the intent, having a free for all during special session on subjects. In that respect, I will be voting no today. Thank you, Madam Chair.

Senator Hardy:

Thank you, Madam Chair. I have a simple question. In a special session where the Governor sets the agenda, the legislators are in one place at one time and could they not call themselves into a special session irrespective of the Governor's agenda and then do whatever they want?

Mr. Powers:

Thank you, Madam Chair. In answer to the Senator's question, during a special session convened by the Governor, the Legislature by petition signed by two-thirds of the members of each house of the Legislature could convene itself into a special session while the other special session convened by the Governor is pending. Under Article 4, Section 2A, the Legislature when convening a special session by its members can call its special session so that it takes precedence over the Governor's special session. That is an option during a special session called by the Governor or the Legislature through two-thirds of its members to call a special session on its own behalf at that time as well. Thank you, Madam Chair.

Senator Hardy:

So thus, they could actually work on bills?

Mr. Powers:

Thank you, Madam Chair. That is correct, that during a special session called by the Legislature with the respective number of members from each house they could assign bills within subject areas that the Legislature would want to consider. That subject area would have to be specified in the petition signed by two-thirds of the members of each house. Thank you, Madam Chair.

Senator Hardy:

Thank you, Madam Chair.

Chair Cannizzaro:

Additional questions or comments from members of the Commission? I am not seeing any additional comments or questions. Thank you, Mr. Powers, for being able to answer all of our questions. At this point in time, I would accept a motion to approve the aforementioned resolution directing the General Counsel and the Legal Division to take the described actions in the *Lander County v. State of Nevada* case.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE RESOLUTION AS DESCRIBED BY LEGAL COUNSEL.

SENATOR DENIS SECONDED THE MOTION.

Assemblyman Steve Yeager (Assembly District No. 9):

Thank you, Madam Chair. I just wanted to say, obviously the members of this Commission, I think, have a difference of opinion on the LCB's legal opinion, but I think it's very important that litigation has now been enacted that LCB have a chance to be able to defend its opinion and the institution. Under our system of separation of power, the court is going to tell us whether they got it right or they didn't get it right. For that reason, I will be supporting this motion because I think it's important to give LCB the chance to go in and defend itself and make the case for why this was constitutional to do this in a special session. Thank you, Madam Chair.

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

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Chair Cannizzaro:

Thank you. We will now move to the next item on our agenda under item V, which is our second public comment portion of the meeting. If there is anyone who wishes to provide public comment, please call the number that is indicated on the agenda and you'll be notified by staff of the LCB Broadcast and Production Services when you have been connected and it is your turn to speak. Again, comments will be limited to two minutes per

person, but you're always welcome to submit additional comments in writing to be included in the record. I am now going to turn this over to BPS staff to queue up those calling in to speak and they will inform you when it is your turn to speak.

Broadcast and Production Services Staff:

Thank you, Madam Chair. If we could please take a two-minute break to allow for connectivity? Thank you.

Chair Cannizzaro:

Absolutely. We will take a brief two-minute break to allow those to join us for public comment who wish to give public comment at this time.

Liz MacMenamin (Vice President of Government Affairs, Retail Association of Nevada):

I just real quickly want to thank this Legislative Commission, the Governor and the Board of Pharmacy upon the passage of the regulation regarding the pharmaceutical technicians' ability to administer vaccinations in our state. Your vote gives the citizens of Nevada of our state the ability to obtain timely and in a convenient manner the upcoming vaccinations for COVID-19 and also helps to give these same citizens the ability to obtain their flu shots in a convenient and timely manner. I'd just like to thank each and every one of you for your vote. Thank you.

Broadcast and Production Services Staff:

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

Chair Cannizzaro:

Thank you so much for helping us get through the public comment with ease and being able to connect folks so that we can hear from them. We really appreciate all of your hard work. That will conclude item V on our agenda. Thank you everyone for being here this afternoon to attend the Legislative Commission meeting. At this point in time, seeing no further business before the Commission at this point in time, this meeting is adjourned at 2:28 p.m. 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-A	Bryan Fernley, Legislative Counsel	Administrative Regulations for Early Review
Agenda Item III-B	Bryan Fernley, Legislative Counsel	Administrative Regulations for Review
Agenda Item III-C	Senator James Ohrenschall, Chair, Legislative Committee on Child Welfare and Juvenile Justice	Request for Extension of Deadlines, Legislative Committee on Child Welfare and Juvenile Justice
Agenda Item III-D-1		Resume of Wayne Thorley
Agenda Item III-D-2		Resume of Sarah Coffman
Agenda Item IV-A	Kevin Powers, General Counsel	Resolution Regarding *Nevada Policy Research Institute v. Cannizzaro*
Agenda Item IV-B	Kevin Powers, General Counsel	Resolution Regarding *Lander County v. State of Nevada*