MINUTES OF THE 2019-2020 INTERIM
LEGISLATIVE COMMISSION

October 29, 2020

The meeting of the Legislative Commission was called to order by Chair Cannizzaro at 1:38 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.

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
Bryan Fernley, Legislative Counsel, Legal Division, Legislative Counsel Bureau
Kevin Powers, General Counsel, Legal Division, Legislative Counsel Bureau
Asher Killian, Chief Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Sarah Coffman, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau
Daniel Crossman, Legislative Auditor, Audit Division, Legislative Counsel Bureau
Marsheilah Lyons, Deputy 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:

Peter Tolsdorf, General Counsel, National Electrical Manufacturers Association
Andrew deLaski, Executive Director, Appliance Standards Awareness Project
Kyle Davis, Policy Director, Nevada Conservation League
Paul Anderson, Legal Counsel, Nevada Interscholastic Activities Association
Tedd Girouard, Chair, Nevada State Board of Athletic Trainers
Michelle Cothrun, Executive Secretary, Nevada State Board of Athletic Trainers
David Bobzien, Director, Nevada Governor's Office of Energy
Robin Yochum, Program Manager, Nevada Governor's Office of Energy
Anthony Walsh, Deputy Attorney General, Nevada Governor's Office of Energy
Mike Sherlock, Executive Director, Peace Officer Standards and Training Commission
Jeff Mitchell, Deputy Director, Nevada Department of Taxation
Dave Wuest, Executive Secretary, State Board of Pharmacy
Teri Baltisberger, Services Manager, Department of Motor Vehicles
Thomas Martin, Management Analyst, Department of Motor Vehicles
Senator Pat Spearman, Senatorial District No. 1

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

Good afternoon and welcome, everyone, to our virtual meeting of the Legislative Commission. A couple of housekeeping reminders just generally before we get started with everything today. I would ask that anyone who does testify either in public comment or during the course of our discussions today to please state and spell your name for the record before you testify so that we can have that accurately reflected in the records for this meeting. If anyone wants to receive a copy of the Commission's agendas, minutes, reports, you 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, and in addition, we do accept written comments, which may be emailed or mailed before, during or after our Legislative Commission meeting. The information regarding where to send written comments is also on the website and listed on the agenda for this meeting, or, of course, you can always call at (775) 684-6830.

We are going to go ahead and move to what is our first of two periods of public comment, and it is item II on our agenda for this Legislative Commission meeting. If you have called in and you would like to speak during this part of the meeting, you will be notified by our Broadcast and Production Services when you have been connected and it is your turn to speak. Please remember that all comments will be limited to not more than two minutes per person, and of course you're always welcome to submit additional written comments and they will be added to the record for this meeting as well. If you prefer to wait and speak later in the meeting, we are of course going to have that second period of public comment once we've done the business of the Committee, and you can always join us at

that point in time. I would also note that for anyone who is wishing to give comment on any of the items on our agenda—that would include regulations—for which the Commission is going to approve, now would be the time for you to voice those public comments, either now or during that second period of public comment, because when we hear the regulations we will be hearing from the entities and then allow the Commission to ask questions. If you are here wanting to give comment on any of the regulations we will be taking a look at today, now would be the time to do that or in that second period of public comment.

At this point in time, I am going to turn this over now to our BPS staff. They will queue up anyone who is calling in to speak and staff will, of course, inform you when it is your turn to speak.

Peter Tolsdorf (General Counsel, National Electrical Manufacturers Association):

I am the General Counsel for the National Electrical Manufacturers Association, NEMA. NEMA is a trade association that represents manufacturers of electrical equipment and products such as general service lamps. I speak today on behalf of NEMA to oppose an amendment to section 701 of the Nevada Administrative Code that would define general service lamps and impose a minimum efficiency standard of 45 lumens per watt. As described in much more detail in NEMA's letter of September 10, 2020 to the Legislative Counsel's office which is in the file record (Agenda Item II A), the rule is squarely preempted by federal law and would harm Nevada businesses and citizens, particularly if imposed on its effective date of January 1, 2021. The Federal Energy Policy Conservation Act, or EPCA, and subsequent amendments broadly preempts state energy conservation regulations concerning covered products, including general service lamps. EPCA preempts the rule because it seeks to regulate what is exclusively within federal authority. This is not just NEMA's view. The US Department of Energy in the December 27, 2019 regulation specifically noted that Nevada is preempted from setting such a standard itself under state law. Nevada joined a dozen other states in legally challenging this decision directly conflicting with today's proposed amendment. If the Legislative Commission disagrees with the Department of Energy's conclusion, NEMA respectfully requests that the rule be amended to state that it is "without effect to the extent preempted by federal law or regulation."

Nevada businesses and consumers would be harmed by the January 1, 2021 effective date. Nevada retailers would face a daunting challenge of identifying which of their products meet the rule's definition but are not within one of the rules in 28 enumerated exclusions, and then removing those products from inventory with just two months' notice heading into a busy holiday season during a global pandemic. The current state of the supply chain would almost guarantee that consumers would find empty shelves and few lighting options. At a minimum, we ask that the rule's effective date be set to September 10, 2021 to allow an orderly response by impacted businesses in Nevada and for a thorough consideration by the Commission of the rule's legal flaws.

In conclusion, NEMA requests that the rule be stopped. In the alternative, we request an implementation date of September 10, 2021 or that language be added to the regulation that it is without effect to the extent preempted by federal law or regulation. Thank you for your consideration.

Andrew deLaski (Executive Director, Appliance Standards Awareness Project):

I'm Executive Director of the Appliance Standards Awareness Project. We're a coalition project of consumer, environmental and energy efficiency advocacy organizations that work for cost effective energy efficiency standards. I want to respond, comment, in response to the previous caller's remarks who was representing the light bulb manufacturers. We are supportive of the light bulb regulations that have been developed by the Nevada Energy Office in response to a state law passed last year. As required by state law enacted in 2019, I want to make just four brief points. First of all, the light bulb standards required by the Legislature and developed by the Energy Office will effectively move the market in Nevada to LED light bulbs. These are very efficient bulbs that are widely available from retailers throughout the state and throughout the country indeed. A typical LED light bulb will save the consumer about $25 to $50 over the life of the bulb and it's far more efficient than the incandescent light bulbs that are being replaced. Incandescent light bulbs produce far more heat than light. Moving the market to LEDs makes a ton of sense, which is why the Legislature passed the law in 2019. The regulations were initially proposed in the fall of 2019. Indeed, state law initially required that the regulation take effect as of January 1, 2020, so we're a bit behind in getting the regulations in place, but I was very pleased to note that there was some initial concerns raised by the Nevada Resorts Association, but in dialogue with the Natural Resources Defense Council, Nevada Conservation League and others, consensus was developed as to what should be recommended for the scope of the standards of the regulations, and that recommendation was submitted to the Nevada Energy Office earlier this year. The regulations adopted in the summer reflect the recommendations of the Nevada Resorts Association as well as the environmental community, so it's a good consensus set of recommendations that address some initial concerns.

I also want to respond to the claim that Nevada is preempted. That is incorrect. Federal law provides a specific exemption for Nevada also enjoyed by California. Those are the two states that have this exemption from preemption. California implemented the standards on January 1 of this year. NEMA brought a lawsuit and the US District Court for the eastern district of California rejected the claims of NEMA. The standards are now being implemented, and quite successfully, across the border since January 1 of this year.

The final point I want to make is that these standards will provide significant emissions reductions for Nevada, helping to reduce electricity—means that we run our power plants less, and that provides significant reductions in emissions that contribute towards environmental problems.

Thank you for the chance to testify today, and I'd be welcome—I also want to direct you to the written comments that we submitted to this docket along with the Natural Resources Defense Council, the Nevada Conservation League and the Southwest Energy Efficiency partnerships which are on the record (Agenda Item II B). Thank you very much.

Kyle Davis (Policy Director, Nevada Conservation League):

I am here today on behalf of the Nevada Conservation League. We are here today in support of regulation R100-19. You should have a letter on NELIS (Nevada Electronic Legislative Information System) with our support which was mentioned earlier by Mr. deLaski along with accompanying legal analysis that will demonstrate the state's ability to adopt these regulations (Agenda Item II B). Our organization was proud to support AB (Assembly Bill) 54 during the 2019 Legislative Session, which I would note passed unanimously in both houses of the Legislature. We participated in the regulatory process which, as has been described, was a really good process that brought various parties together and arrived at a compromise solution that works for the State of Nevada. These regulations have broad support from a number of different entities that participated in this process, and I would encourage this Committee's adoption of these regulations. We feel that this is a positive step forward in terms of helping Nevadans save energy, save money on their utility bills and helping reduce pollution in our state. Thank you very much for your time.

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

At this time there are no additional callers. The public line is open and working.

Chair Cannizzaro:

Thank you so much for helping to facilitate our public comment. Again, there will be another period of public comment at the end of the meeting, so if you have missed this first segment of public comment please be sure to join us through until the end and you can give your public comment there, or alternatively give it in writing.

With that, we'll move to the next item on our agenda, which is item III, the approval of the minutes of the meetings held on August 25, 2020 (Agenda Item III A-1) and September 18, 2020 (Agenda Item III A-2). I would note that members of the Committee have had copies of those minutes and have had a chance to review them, and they are also available online for anyone who is joining us virtually. At this point in time, does anyone have any questions or comments on the minutes?

SENATOR SETTELMEYER MOVED TO APPROVE THE MINUTES OF THE MEETINGS HELD ON AUGUST 25, 2020 AND SEPTEMBER 18, 2020.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

We have approved both sets of minutes from our August 25 and September 18 meetings. That brings us to item IV on our agenda, which is our Legislative Commission policy. As is common with our review of regulations, we will first ask members of the Committee if they have any regulations that they would like to hold for additional discussion and then we'll vote to approve any of the remaining regulations (Agenda Item IV-A). After that, we will go item by item through the regulations that have been asked to be held and have the agency come forward who adopted the regulation to address any questions related to the regulation from members of the Committee.

I do already have a number of regulations that were requested to be pulled, and so I will read those off for members of the Committee so that, in case they're on your list, you can make sure to include them. I have already received a request from Senator Settelmeyer to pull R053-19 for the Board of Athletic Trainers, R100-19 for the Director of the Office of Energy within the Office of the Governor, R008-20 for the State Board of Pharmacy, R010-20 for the Department of Motor Vehicles and R150-20 for the Department of Motor Vehicles as well. Are there additional regulations that members of the Committee would like to have pulled?

Assemblyman Skip Daly (Assembly District No. 31):

Thank you, Madam Chair. To everyone's surprise, I only have one today and that would be R003-20.

Chair Cannizzaro:

R003-20 for the Committee on Local Government Finance?

Assemblyman Daly:

Correct. Yes.

Senator Joseph Hardy (Senatorial District No. 12):

Thank you, Madam Chair. I'd like to pull R047-19.

Chair Cannizzaro:

The Nevada Interscholastic Activities Association?

Senator Hardy:

Correct.

Chair Cannizzaro:

Any others that Committee members would like pulled?

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

Thank you so much. R112-19.

Chair Cannizzaro:

The Peace Officers' Standards and Training Commission?

Assemblywoman Benitez-Thompson:

Yes.

Chair Cannizzaro:

Any additional regulations the Committee would like to have pulled? I'm not seeing any, so I'm going to go through the full list of those that we are pulling to set aside for additional questions and comments so that members of the Committee have the full list and those of you who are following along online also have that full list. The first one is R047-19 for the Nevada Interscholastic Activities Association. The second one is R053-19 for the Board of Athletic Trainers, R100-19 for the Director of the Office of Energy within the Office of the Governor, R112-19 for the Peace Officers' Standards and Training Commission, R003-20 for the Committee on Local Government Finance, R008-20 for the State Board of Pharmacy, R010-20 for the Department of Motor Vehicles, R150-20 also for the Department of Motor Vehicles. If you just heard a regulation that you were waiting to potentially testify on, we will be taking additional testimony on those.

The remaining regulations are R103-19, R111-19, R002-20, R016-20, R020-20, R025-20, R035-20, R058-20, R065-20, R066-20, R070-20, R084-20 and R014-19 that are remaining, and I would accept a motion to approve those regulations if there is one.

ASSEMBLYMAN WHEELER MOVED TO APPROVE REGULATIONS R103-19, R111-19, R002-20, R016-20, R020-20, R025-20, R035-20, R058-20, R065-20, R066-20, R070-20, R084-20 and R014-19.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Those regulations have been adopted by the Legislative Commission. We will go back to our list of those regulations that have been requested to be pulled for additional discussion, and we'll start with the first one on our list, which is R047-19 for the Nevada Interscholastic Activities Association (NIAA) (Agenda Item IV-A). That was a request from Senator Hardy, and so when we are ready, I'll turn it over to Senator Hardy to ask the questions that he has.

Senator Hardy:

Thank you, Madam Chair. It's been my impression that in a small school there are students that play on JV (junior varsity) teams, and then to get experience they take them up to a varsity team. I'm concerned that this would not allow them to have that kind of experience in the same day, and I think it probably not wise to do it. I know there's probably a reason for the regulation, but I think that it probably may make a smaller school suffer more than a larger school.

Chair Cannizzaro:

Do we have anyone from the Interscholastic Activities Association here?

Paul Anderson (Legal Counsel, Nevada Interscholastic Activities Association):

Yes, Chair Cannizzaro. I'd be happy to address that question. I think the Assemblyman's understanding of the regulation may be a bit different than what's written. This regulation was passed primarily to help small schools. It was sponsored by our smaller classification schools based on the fact that they have a fewer number of students who are able to compete, and by allowing players to compete at more than one level in one day in a particular sport, for instance, basketball. A JV player who may be needed up on the varsity roster could play the JV game but could be up on the varsity roster as perhaps the tenth player on the team in case there was a need for a player based on a foul situation or whatever. It would allow that player an opportunity to get a full game in or whatever at the

JV level but still be able to be on the varsity team in case he or she was needed then. As I said, that's been requested by our smaller classification schools in order to allow them to continue to have multi-level teams, JV teams and varsity teams in a particular sport.

Senator Hardy:

Madam Chair, if I may? Maybe I'm reading this wrong. Section 1 of this regulation prohibits a pupil who participates in a sanctioned sport from participating in more than two levels of competition during a day, thereby allowing the pupil to participate in two levels of competition in a single day. So you're saying what then? When I read the word "prohibits," I get nervous. They're still allowed to do that? What are they prohibited from doing then in this regulation?

Mr. Anderson:

I think what you're looking at is the prior regulation prohibited students from doing that. The regulation now allows students to do that, to be able to participate other than in the sport of football in a particular sanctioned sport at two different levels in one day. For instance, a JV and a varsity level. That's what the regulation now allows.

Senator Hardy:

So if I've seen games recently that have been doing that, it's against the regulation?

Mr. Anderson:

Doing what? I'm not sure what you're asking.

Senator Hardy:

Apparently I'm misreading it, so I will withdraw my objection if the intent is to actually let them do exactly what you've said.

Senator Scott Hammond (Senatorial District No. 18):

Can I jump in, Madam Chair?

Chair Cannizzaro:

Yes, please.

Senator Hammond:

Senator Hardy, you don't mind if I jump in just for clarification?

Senator Hardy:

Go ahead, you who do basketball.

Senator Hammond:

I've coached at a small school, and the way the regulation read is it looked at the number of quarters per day at some point, and I think they may have changed that since then. The way I read this right here is we're basically saying you can play two games in a day, and I think it's two levels, but we're just going to consider that one game for the purposes of making sure that that student isn't ineligible or breaking any kind of rules. That's the way I read it, so it provides more flexibility the way I read the language of this particular regulation. Is that correct, Mr. Anderson?

Mr. Anderson:

Yes, what you're saying is correct, and what it allows, as I indicated earlier, is our smaller schools and our smaller communities as well—we have a lot of small charter schools now that have difficulties having more than one level of a particular sport, and so it allows them to have a varsity team and a junior varsity team to fill rosters, have enough players on each roster to where they can compete by allowing some of the players who may be junior varsity players to be up on the varsity after the junior varsity game and play, if needed. It doesn't necessarily mean that they're going to, and there are precautions in the reg that place some responsibility on the coaches to make sure for the safety of the students you're not over-playing somebody, but it does allow them to fill a roster and have a junior varsity team and a varsity team, lets the player play at both levels in one day, and as you indicated, it would only count as one game for that particular student going towards the maximum number of games he or she can play in a season.

Senator Hammond:

Basically, Mr. Anderson, I'm looking at section 1(3). It basically—you're not worried about the number of quarters in a night, so presumably again you're putting some of the responsibility on the coach and the school staff. You're basically saying you could play six quarters, you could play seven quarters, but it will still only count as one game, and that is by all definition more flexibility, especially for the small schools that do have a tough time fielding a JV team. If you can only field one team, you obviously want to field a varsity team, but there's several players that need more experience and they won't get it if they're not playing at least the JV level, so you bring down one or two players, let them play and then you have to have them for the varsity season as well for that to happen. That's the way I read it is that it creates that flexibility that's needed for at least the smaller schools.

Mr. Anderson:

That is correct.

Senator Hardy:

I'll be supporting that with that explanation. Thank you, Madam Chair.

Chair Cannizzaro:

Questions or comments from members of the Committee? I'm not seeing any.

ASSEMBLYMAN WHEELER MOVED TO APPROVE REGULATION R047-19.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

That regulation is passed. We will move to the next one on our list, which is R053-19 for the Board of Athletic Trainers (Agenda Item IV-A). That was a request from Senator Settelmeyer to pull that, and so we'll turn it over to him to ask his questions and go from there.

Senator James Settelmeyer (Senatorial District No. 17):

Thank you, Madam Chair. With that being said, I was curious, within this regulation, how many hours of actual physical work in the form of dry needling has to be done by a student before they are given the ability to practice dry needling? I was reading through the regulation and the number of hours—it doesn't specifically say. It says 150 hours, but how much of that actually has to be within physical utilization of dry needling?

Tedd Girouard (Chair, Nevada State Board of Athletic Trainers):

In response to that question, there is no actual definition as far as the number of hours actually inserting a dry needle into somebody. The courses in general are 25 to maybe 35 hours where the student would be—or the athletic trainer would be practicing dry needling during that time. I can't tell you exactly how many hours of actually putting needles in and taking needles out.

Senator Settelmeyer:

Okay, I appreciate that answer. During testimony, we had a lot of discussion in Commerce and Labor—I forget the new title of the Committee, sorry. But in that respect, it was indicated that due to the similarity with acupuncture that there would be some requirements on the actual number of hours that someone would actually have to manipulate and utilize dry needling. I appreciate the information, Madam Chair. Unfortunately, I will not be able to support this regulation since it does not do what we were told it would and I will be opposing.

Senator Hardy:

Thank you, Madam Chair. One of the nitty-picky things is that the athletic trainer will have to get consent from the patient, and athletic trainers many times do things to or with minors and they're not going to be able to logistically "get permission" from the patient when it happens to be a minor. One of the things that concerns me is we actually had this debate in the session to create an NRS (Nevada Revised Statutes) as opposed to an NAC (Nevada Administrative Code), and I think we're short-changing that process when we start looking at needles and pneumothoraces and hitting things. I get a little nervous with dry needles without the appropriate or the length of training that's needed, so I will not be supporting this either. Thank you.

Chair Cannizzaro:

Additional comments or questions from members of the Committee?

Assemblywoman Maggie Carlton (Assembly District No. 14):

Thank you very much. This was a very talked about piece of legislation during session, so I guess what I need to jog my memory, and if the gentleman from the Athletic Trainers—I know we had a lot of discussion about numerous sports—using some of these techniques on some other professional athletes that there were a number of athletic trainers in the state that were really not interested in this. This was sort of a different level of athletic trainer, so if the representative from the Board could elaborate a little bit on this, I just want to make sure that the same level of education is applied across the board for the same scope of practice. That's my key and that's what I've always looked at, so if we could get those answered, please?

Mr. Girouard:

Yes. The level of athletic training that in general is doing this is with the professional sports teams or the collegiate sports teams and/or performance medicine like Cirque du Soleil. These are advanced, highly trained people. They all have masters' degrees. They've all done advanced training in dry needling to this point. They are currently doing it. I recently was talking to the athletic trainers from the Golden Knights, actually just a few days ago,

and this is an integral part of their training and what they do on a day-to-day basis. It's the same with the Las Vegas Raiders. This is going on basically every day currently and we feel that the training is similar to what the physical therapists are doing as far as the advanced skills and courses that you need to do this. This regulation is basically the same as the physical therapists that was passed in December, and I'm happy to answer any more specific questions than that.

Assemblywoman Carlton:

Thank you very much, Madam Chair. Those are the things that I needed to hear, because I know we've had multiple discussions about this particular technique and always wanting to make sure that if a certain procedure or practice is used and we're going to categorize it that way within that particular practice, we always want to make sure that it's the same across the board. In a lot of the discussion that we had last session about dry needling, we wanted to make sure that we didn't take anybody out that would be qualified to do it, knowing that it's done in a lot of different areas. We just wanted to make sure that everybody did it safely and effectively and that everyone above all followed the one-one-one rule: one needle, one patient, one insertion. That was the major goal, and I am satisfied with the answers that I have and I would be able to support this regulation today. Thank you very much, Madam Chair.

Chair Cannizzaro:

Additional questions or comments from members of the Committee?

Senator Hardy:

Thank you, Madam Chair. I appreciate the people who admit that it's already being done by athletic trainers, which is somewhat interesting, but if we look at the athletic trainer that is doing this with the Cirque du Soleil, the athletes that are professional athletes, that's a little different, and I'm not sure that this differentiates other than 25 hours of didactic instruction and training, and that could be 24 hours of didactic and 1 hour of training. I'm a little uncomfortable that this opens the gate for athletic trainers that are doing things on the high school field, as it were. I understand there's a differentiation between the training of a professional athlete physical therapist as it were and athletic trainer, and what this—it opens too much, and again, you still don't have the patient being able to give direction, and so I suspect that what you are trying to say in this, and I'll ask for that clarification, is this will not be done by an athletic trainer on a minor the way the statute is written, or the way the regulation is written. Is that the understanding?

Mr. Girouard:

That is always kind of an understanding, but it's not written like that. This was written basically exactly the same as the physical therapy legislation which passed. I personally don't see someone doing this on a minor, especially without consent of their parent. As

far as people that have expressed interest in doing this clinically, which we surveyed our members—I don't think we—and Michelle is on the line here as well. I don't think we had anyone that was in that arena at this time. As far as the number of hours, it's 25 hours, you're right, of didactic instruction plus another 125 hours of didactic instructional training, so really it's 150 hours total of training.

Senator Hardy:

I can read a book for 124 hours—

Mr. Girouard:

I'm sorry to interrupt you, but this does say specifically related to dry needling, so the aspects of anatomy relevant to dry needling, the controlled bloodborne pathogens, the circumstances under which dry needling may or may not be appropriate. This is all related directly to that. And yes, I agree that you said it could be 1 hour of hands-on and 24 hours of coursework, but also these courses must be approved by the Board of Certification, which I can guarantee you will not approve a course that is 1 hour of hands-on. They have their own ways to assess these programs, as well as the Board of Athletic Training can also approve or deny these courses. We would not approve a course that was 1 hour of hands-on. In general, these are 3-day courses where people travel to and it is very much a hands-on practice.

Michelle Cothrun (Executive Secretary, Nevada State Board of Athletic Trainers):

Excuse me, if I may also interject? Also, the difference in the consideration between a physical therapist and an athletic trainer, an athletic trainer in the State of Nevada must work under physicians' orders. So a high school, in my understanding, would have a physician, and they are the ones that would give the orders to the athletic trainer. An athletic trainer would not have authorization on their own to perform dry needling on a minor.

Mr. Girouard:

That is correct. All athletic trainers in the State of Nevada work under the direct supervision and orders of a physician.

Senator Hardy:

I'm feeling a little more comfortable. I'm trying to envision the athletic trainer—you don't see this happening on the field, you see this in a clinic?

Mr. Girouard:

Yes.

Senator Hardy:

In which case a minor wouldn't be able to be there without a parent's approval.

Mr. Girouard:

Yes, technically they have to have consent to treat anything.

Senator Hardy:

I'm feeling more comfortable with it. I'm not sure I can go all the way, but I'm not as opposed as I used to be. How's that?

Mr. Girouard:

I appreciate that. I do appreciate that, and I think that as more professional sports teams move to Nevada, this is absolutely something that is being done throughout the country in professional sports. I really feel that by not having this, we could be very much limiting the ability of their athletic trainers to basically keep up with current trends in sports medicine.

Senator Hardy:

I love that concept. Let me ask it this way: the athletic trainers that are hired by high schools or working in high schools, they don't have an office?

Mr. Girouard:

No, they do. They have a small clinic in their high school.

Senator Hardy:

So does the physician come to that small clinic in the high school?

Mr. Girouard:

From time to time he provides—but mostly their direction is under standing orders. They would be writing standing orders, so this would be something that the athletic trainer at the high school, if they were to, let's say hypothetically, want to do this, they would need to have standing orders from their physician to allow them to do this in the high school, and I can't imagine that happening, that a physician would give them the standing orders, plus they would need the consent of the parent in order to do this as well. The steps to actually do this would be very difficult.

Senator Hardy:

I just am trying to envision the physician coming to the little room in the high school and supervising a dry needling procedure.

Mr. Girouard:

They're not going to. Honestly, I just don't see this happening in a high school setting.

Senator Hardy:

Neither do I, and that's why I see this as opening a door without differentiation. Thank you, Madam Chair.

Assemblyman Jim Wheeler (Assembly District No. 39):

Madam Chair, thank you very much. I'm reading section 3 here where it says "before performing dry needling, an athletic trainer must obtain a signed form which provides informed consent from the patient," but I see nothing in here that says that it must have consent from the patient's parent if the patient is under 18 years old. Why wasn't that added in here is what I'm asking, just to Senator Hardy's point.

Mr. Girouard:

It is my understanding that as far as an athletic trainer is concerned that we would always need consent to treat a minor in any way. I'm also the Director of the Athletic Training Education program at UNLV (University of Nevada, Las Vegas) and when we teach this in our curriculum, any time we treat a minor, we need consent to treat. It's just common sense in the medical world, and maybe this is something that should have been added to this, but that's why it wasn't is because we always need consent to treat a minor.

Assemblyman Wheeler:

Because what you have here is the signature of the patient. An athletic trainer performs dry needling, etc., etc., but again, nothing from the parents. I think you're right, it should have been added in here. I don't think I can support it if that's not in there. Is there a way to change that?

Mr. Girouard:

Well, Assemblyman, this was passed for physical therapists with the same language. Why was that not brought up in their case?

Assemblyman Wheeler:

Well, I wasn't in that committee so I couldn't tell you. Maybe someone from that committee could, because I kind of think I would have demanded that it was.

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

I would be curious from legal counsel if we can connect the dots anywhere to be able to say that if a regulation says that you have to have informed consent but there's another place in the law that says informed consent for somebody under the age of 18 is a minor to see if that's already handled. If it's not, what I would suggest is—our current state is that we have folks doing this without the permission. I think we generally support the idea of having more training and a better level of oversight over dry needling. My recommendation would be that we pass this regulation so that everything that is good about this regulation can move forward. If we don't have a connection someplace else in the law that makes it clear that the informed consent—anywhere that we say informed consent means that a minor would have to have a parent's permission, then we should probably bring back the regs, I hate to say this, but for all of the dry needling groups that would just add that line. For me, it doesn't sound to me like there is an imminent danger of dry needling happening on young people. I think we have time to come back and make it right if we need to make it right, but I think there is a challenge with not moving forward the good regs that are under way under dry needling that a lot of work went into making sure that we have more consistency, more compliance, more training, more standards in this area. So I think, for me, that's the right path forward. Move this along because it's got a lot of good things in it and then ask legal to say okay, does this cover it, and if it doesn't, then we should bring it back for dry needling consistently across the board as an amendment to the existing NAC. Thanks.

Chair Cannizzaro:

Additional questions or comments from members of the Committee?

Assemblyman Jason Frierson (Assembly District No. 8):

Thank you, Madam Chair. I'm just going back—this came out unanimously with respect to physical therapists, and so if it's ultimately a policy problem that we need to address down the road for parity's sake alone, I don't know why we're entertaining different treatment right now. I believe that there was testimony provided that nothing happens to a minor without their parents' permission by law. I would imagine the definition of consent means that you have to have capacity to provide it, which a child would not. So, for parity's sake alone, if we just did this unanimously last session for physical therapists, I don't know why we wouldn't be consistent. If there was a problem, we're debating a problem we never have heard exists with respect to whether or not somebody is running out on a football field with a dry needle. I think that we don't necessarily need to micromanage the folks that are overseeing this. We do it across the board in different areas, and not every

single possible scenario is specific and set out in statute or in regs. So, for the sake of being at the very least consistent with what we just did regarding physical therapists, it seems to me to make sense to continue that consistency, and if we need to put in the law that every physical therapist, every athletic trainer, every medical doctor, every medical professional when it comes to a child has to get permission from the parent or it wouldn't be considered consent, then that's a broader conversation, but I don't know that it's applicable to this principle—would be inconsistent in how we're giving the dry needling the oversight that is provided without the need for micromanagement.

Chair Cannizzaro:

Additional questions or comments from members of the Committee? With that, is there a motion to be made regarding regulation R053-19?

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE REGULATION R053-19.

SENATOR DENIS SECONDED THE MOTION.

Senator Settelmeyer:

Thank you, Madam Chair. As stated earlier, we did have this discussion during session and we were told that when regulations came about, we would see within that how many hours of actual manipulation were required in order for someone to be allowed to practice dry needling. We were okay with that during session. Therefore, it passed out unanimously with the understanding that it would be addressed in regulation. It is not. I agree with Senator Ratti that it should be all-inclusive across all boards—should all be the same, but I do believe there needs to be some actual requirements of physical manipulation, because as this reads right here, technically you could do 150 hours in class and then be able to do dry needling and I think it's improper considering what we require of acupuncturists to utilize needles. Therefore, I will be opposing. Thank you, Madam Chair.

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

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Chair Cannizzaro:

The motion passes. Regulation R053-19 will be adopted. We will move on to the next item on our list, which is R100-19 for the Director of the Office of Energy within the Office of the Governor (Agenda Item IV-A). I believe that actually Senator Hardy had requested for this one, so we'll turn it over to him to go ahead and ask some questions.

Senator Hardy:

Thank you, Madam Chair. I appreciated the opportunity to look at this from the standpoint of, in the middle of COVID, in the middle of what are people doing, and so I got out my general lamps and I looked at the cost of my general lamps. The general lamps that exist now that they showed pictures of in the regulation are things that I have in my closet that I've got ready to change out and to be able to do. I've changed three bulbs in the last week, and all of those bulbs that say they're long-lasting and long-life and give you the impression that they are going to last 10 years, it's not true. I would love to say all of those bulbs that are more expensive last 10 years, or 2 years even, but that hasn't been my personal experience. So yes, they are more expensive, and yes, I do buy them, but at the same time I know that come January when this regulation comes in, you're going to have people wake up and say, "My goodness, I can't afford those expensive bulbs," and at the very time they're suffering from COVID, laid-off jobs and evictions and food deserts and all of those things. This is the wrong time for something that is a good idea to save everything except people's money right now and people's ability to get a light bulb. I think this is a good intended effort, and I buy the bulbs that are long-lasting and I appreciate having some in my closet that I can use that I got before, but I think this is the wrong time to be imposing this on the citizens of Nevada. Let me put it this way: I would be nervous about having people call me up and say, "You've taken away my ability to get a light bulb I can afford." I think it's the wrong time. I will be opposing this. Thank you, Madam Chair.

Chair Cannizzaro:

Let me ask, is there anyone at the Governor's Office of Energy with us who wanted to address anything?

David Bobzien (Director, Nevada Governor's Office of Energy):

Thank you for the opportunity to present this regulation this afternoon. I frankly wasn't expecting a policy debate on this. I was expecting some questions about the federalism piece of this, which we're prepared to respond to, but I would respond to my good friend Senator Hardy that I have too been on the same journey to replace my household's light bulbs and I have not had that personal experience of these light bulbs not living up to their long-lasting promise. If anything, the bulbs have paid for themselves in my household, and I think from a policy perspective and what this offers for Nevadans, it is the energy savings and the costs associated with that that is the true policy advantage that we should be thinking of in these times.

Senator Settelmeyer:

Thank you, Madam Chair. I appreciate that, Mr. Bobzien. Good to see you again. It's been a while. In that respect, I myself have gone over to LED over time. I'm a little bit more persnickety, so I took a Sharpie and actually put the date that I put the bulbs up, and on certain bulbs, yeah, they last actually 10 years, so that's great. Sometimes they don't. It depends on if you're turning them on and off more often than the manufacturer thought you would. So, if you turn them on and off more, they actually will not make that life span. My question was more to an agricultural one. I know you're shocked. Will I still be able to buy a heat lamp bulb so that way, for the baby calf, when he's a little bit cold? Will I still be able to try to get a regular light bulb? Maybe it's not the right thing to do, but sometimes it's difficult to start farm machinery so sometimes you put a light bulb into the engine compartment in order to make it a little bit easier to start. However, LED bulbs don't really work that way. So, in that respect, will those still be available for individuals in that respect?

Mr. Bobzien:

Senator Settelmeyer, thank you for the question. I have with me today Robin Yochum, who is our Program Manager that is our lighting expert. We went through a very careful rulemaking process to make sure that how we were approaching these light bulbs did have room for these sorts of needed exceptions. I'll turn it over to her so that she can give you the definitive answer on your agriculture question.

Robin Yochum (Program Manager, Nevada Governor's Office of Energy):

Thank you, Senator Settelmeyer. Yes, you will still be able to get the heat lamps that you need for those baby calves.

Senator Settelmeyer:

Thank you. Could you guys touch on the federalism issue since you were all ready to talk about it anyways?

Mr. Bobzien:

Certainly, Senator. Just a quick trip down memory lane for the Legislature from a 30,000-foot level. Clear back to the 2007 Session of the Nevada Legislature, Nevada has occupied the field when it comes to enacting light bulb energy efficiency standards. In 2007, Nevada unanimously through AB 178 passed early legislation enacting an energy efficiency standard. Because of Nevada and other states going down that road, laboratories of democracy that pushed the federal government to look at an energy efficiency standard, Congress acted. It was always the understanding that the Department of Energy (DOE) was going to enact a standard, so for many years Nevada statute was on the books but regulations were not promulgated by my predecessors

because of the understanding that the federal government was going to act in response to Nevada and other states again occupying the field.

Fast forward to the last legislative session, AB 54, which was passed by both houses unanimously. When our Office presented the amendment and ultimately the bill in terms of this light bulb energy efficiency standard, we were very clear in front of both Growth and Infrastructure Committees as to the federalism puzzle before the Legislature as it pertains to this legislation, and now the regulation that is before you. We were concerned last session that there was going to be a rollback effort by the Department of Energy to step away from the understood 45 lumens per watt regulation that for many, many years industry, consumers, advocates all expected the federal government to enact. We were going to pursue our backstop option with the legislation. So, legislation was passed, the rollback happened, and so as such, our Office conducted the rulemaking to go forward to exercise our right to backstop what we expected the federal government to do.

I think Mr. deLaski from the Appliance Standards Awareness Project earlier in his public comment did a good job of touching on the legal issues (Agenda Item II B). I do have our Deputy Attorney General with us today who can update you on the litigation that was mentioned in the letter from the National Electrical Manufacturers Association, but I would just take a moment to respond to their letter (Agenda Item II A). We understand that their interests are not served by the fact that Nevada has a special place in this federalism puzzle because of our early action in 2007, but nonetheless, here we are. I would take issue though with the conclusion from Mr. Tolsdorf's letter that somehow our rulemaking process violated the Nevada Administrative Procedures Act—I think in their letter they referred to it as the Nevada Administrative Code—in that we had represented in our informational sheet for this regulation that the rule is no more stringent than federal law. I take exception to that. We did not violate the Act in terms of bringing this regulation to you. If anything, our answer to the question on that sheet is reflective of the fact that there is no standard at the federal level, and so that is why we have come forward with this regulation. With that, I will just introduce Mr. Anthony Walsh, our Deputy Attorney General, who can provide some more information and some background on this situation.

Anthony Walsh (Deputy Attorney General, Nevada Governor's Office of Energy):

Thank you, David. I appreciate that. Thank you, Senator Settelmeyer, for allowing me to speak today. As a brief bit of background for the Committee today, 42 US Code § 6297(b) and—as well as sub 1 on that specifically exempt California and Nevada in this federal rulemaking process, and the litigation that has come out of that has been mostly in California's federal district courts, and the rulings that have come down there, usually industry groups have been seeking injunctions and have not been able to receive them simply because California and Nevada are recognized as having these exemptions that had been enacted essentially post-2018 and prior to any federal rules that have been established. As Director Bobzien pointed out, no federal rule has been established at this point, so the preemption arguments furthered by opponents have not been met with success and essentially don't really go further than a motion for summary judgment

portion. Additionally, Nevada is part of a coalition of states that are challenging DOE's current rulemaking in terms of an anti-backsliding principle, whereas the object is to ask DOE not to move away—per lumens standard. If there are any additional questions related to that, I'd be happy to address that. Thank you.

Chair Cannizzaro:

Additional questions or comments from members of the Committee? Any of those, or additional issues or questions? I did have just one, because we heard during public comment and I just wanted to clarify. We had heard something that there was a requirement that the regulation be able to take effect in January of 2020, but obviously we're past that timeframe. Can you talk just a little bit about that requirement and the timelines that we're dealing with?

Mr. Bobzien:

Certainly, Madam Chair. It was eluded to in the public comment that there was some robust dialogue as to the technical specifics of the regulation, specifically addressing concerns brought to our Office by the Nevada Resort Association. As you can imagine, gaming deals with a variety of highly specialized light bulbs, and so it took some additional time to really work through the technical aspects of their concerns, and there again, if there are any questions on that, I'm happy to have our Program Manager, Robin Yochum, sign in on that one to talk about it. I would also note that, unfortunately, when the National Electrical Manufacturers Association became involved in the rulemaking process, there was no mention, no suggestion of the suggestion that they made during their public comment that we should somehow insert into this regulation a passage reading "without effect to the extent preempted by federal law." Number one: substantively, I would offer that that's a meaningless statement. Again, that tracks from Nevada's special right in this case to promulgate such a standard, but more importantly substantively, to process that was not offered during their engagement to the rulemaking process, so they are now coming in before you, late in the hour, to make that request. As was noted, in California this Association did try to stop the California Energy Commission from adopting their rule. They went to court on it, lost twice, so here we are in Nevada hearing the same arguments, but rather than going to court they're coming to the Commission to plead their case. Again, I would just respectfully disagree with their view on this and argue vociferously for the Legislature's right to continue to occupy the field on this policy.

Chair Cannizzaro:

Any additional questions or comments from members of the Committee?

Senator Hardy:

I love green. I love energy. I think realistically when I looked at this particular thing, I got online and I looked at the pictures of the light bulbs that would no longer be allowed. The

decorative light bulbs that go on my chandelier, all of those kinds of things are in—literally hard-wired what light bulbs there are, and there's a difference in what we're doing. So, to make this leap when people are struggling, I just don't think it's the right time. I love saving energy. This is not the time that we need–

Unidentified Speaker:

If you can do it, I don't have a problem with it—

Senator Hardy:

I don't know who said that.

Chair Cannizzaro:

Go ahead, Senator.

Mr. Bobzien:

Thank you, Madam Chair. Just to respond to Senator Hardy's concerns, I'm very tempted to flip my laptop screen skyward and I would show you the LED chandelier light bulbs that I have above my dining room table here that have been working for me quite well for at least a year. Again, I understand the policy concern, but I would respectfully disagree. The nominal cost involved to the consumer is more than offset by the energy savings. Additionally, a similar regulation has been in effect in the California market for over a year. Policy-wise, if we don't do this, Nevada stands to become the dumping ground for the product that is no longer the preeminent technology that will save consumers money on their electrical.

Senator Hardy:

What you're saying is we're going to get cheaper light bulbs for a while?

Mr. Bobzien:

Senator, I would offer—and I very much appreciate your concerns for consumers, and just as an informational point, we are hopeful—there is a docket open before the PUC (Public Utilities Commission) on NV Energy's demand response—I'm sorry, Demand Management Programs and what they are contemplating is a transition period where some incentive dollars will be used to assist consumers with the purchase of these more energy efficient light bulbs to help with the transition in the marketplace. I don't want anyone walking away from this meeting thinking that we are not in tune or having concern for consumers and retailers as we are making this shift.

Senator Hardy:

Madam Chair, if I may? I think that's wonderful. It's not in the regulation, obviously. It's wonderful to think about that, but this takes effect in less than 3 months.

Mr. Bobzien:

It is a standard that was assumed for close to a decade was going to happen at the national level.

Senator Hardy:

It didn't.

Assemblywoman Benitez-Thompson:

Are you ready for a motion, Madam Chairwoman?

Chair Cannizzaro:

I am, if there are no additional questions.

> ASSEMBLYWOMAN BENITEZ-THOMPSON MOVED TO APPROVE REGULATION R100-19.
>
> SENATOR RATTI SECONDED THE MOTION.
>
> THE MOTION PASSED (SENATORS HAMMOND, HARDY AND SETTELMEYER, ASSEMBLYWOMAN KRASNER AND ASSEMBLYMAN WHEELER VOTED NO.)

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Chair Cannizzaro:

The motion passes. Regulation R100-19 is adopted. We will go to the next item on our agenda for regulations consideration, which is R112-19, the Peace Officer Standards and Training (POST) Commission (Agenda Item IV-A), and we'll turn it over to Assemblywoman Benitez-Thompson. She requested to have this one pulled for additional discussion.

Assemblywoman Benitez-Thompson:

Thank you so much, Chairwoman. As I was reading the regulation, I guess I wanted to have a better understanding of what the goal was to accomplish this. It seems like we're discussing some very specific type of personnel and people who might move out of category I or category II position and then go into very other specific types of employment, like being with the Commission, and then the Director being able to reinstate them back in. I don't see that this regulation is prompted by any specific change in law, so I just wanted to understand more about the purpose this is trying to serve.

Mike Sherlock (Executive Director, Peace Officer Standards and Training Commission):

Thank you for that question. This regulation really was to kind of close a loophole under the current regulation if, say, a Las Vegas Metro officer goes to Utah and then 6 years later decides they want to move back to the State of Nevada. Reciprocity applies because they went to the State of Utah. On the other hand, if that same officer went to work for our academy here or the US Marshall Service, Secret Service, and they worked there for 6 years, they would be ineligible for the reciprocity track that we currently have. This was just trying to close that loophole of those officers that may work within the field but were left out of the reciprocity regulation. We've had issues with officers going to Secret Service or the Marshalls or FBI (Federal Bureau of Investigation) right here in Nevada but were unable to return under the reciprocity track because it wasn't covered in the current regulations.

Assemblywoman Benitez-Thompson:

I also see in the regulation that there's the language about their employment, being out of employment, for 5 consecutive years. So, is that the standard that already applies for the other portion of the population that does have some reciprocity?

Mr. Sherlock:

Yes, the 5 years is just making this new section consistent with the rest of the regulation, which is 60 months, so we kept it consistent, just brought them into that same fold.

Assemblywoman Benitez-Thompson:

We've got a small number of people we're talking about, but would you say that this has been an issue for 5 applicants in this past year, 10 applicants in this past year?

Mr. Sherlock:

I couldn't give you a number. I personally am aware of some that have elected not to return to Nevada because they were not eligible for the reciprocity track from all over the

state. Metro comes to mind, being a bigger agency where we see people leave and want to come back to the state, but I don't have a specific number for you. But it happens fairly frequently.

Assemblywoman Benitez-Thompson:

Okay, I guess I think that my concern was more about that 5 consecutive years of an inactive status and then not having to re-go through any of the basic certificates and the classes they're in, but it seems like if it's a concern, a bigger concern, among different types of groups within this conversation than just this specific group. Thank you for helping me to understand that.

Mr. Sherlock:

My pleasure. Just to clarify, most returning under this track are still required to meet the current hiring standards in terms of background. They have to go to a reciprocity academy, which is the only difference. They still have to meet the physical readiness requirements and pass the state certification test, so there are those requirements that still apply. It just allows them to return under that track.

Assemblywoman Benitez-Thompson:

Those are all of my questions.

Chair Cannizzaro:

Thank you. Any other members of the Commission have additional questions or comments?

Assemblyman Frierson:

Madam Chair, if I may? Just briefly, I want to make sure, and it's really more for the record to be clear and for the public, when we're talking about returning within a 5-year period of termination, we're not talking about the layman's interpretation of termination? We're not talking about folks that are fired that are able to come back within 5 years?

Mr. Sherlock:

Thank you for the question. Termination for us means separation, so clearly where they were terminated for cause and there is action on their certificate, this does not apply.

Assemblyman Frierson:

Thank you, Director, and for the Committee's edification, I should have brought this up with a previous matter, but when we did AB 478 and added items for POST training, we

didn't break down how many hours each topic needed to be covered, so I want to make it clear. This is consistent with how we frequently deal with policies and leave it up to agencies to do right by their agencies within the parameters of the requirements of training.

Chair Cannizzaro:

Thank you. Anyone else have questions or comments?

ASSEMBLYMAN WHEELER MOVED TO APPROVE REGULATION R112-19.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you. The motion has been approved and the regulation will be adopted. We will move to our next item on our agenda, which is R003-20, the Committee on Local Government Finance (Agenda Item IV-A), and Assemblyman Daly did request to have that one pulled so we'll turn it over to him to go ahead and proceed with his questions.

Assemblyman Daly:

Thank you, Madam Chair. Just a quick question, and it might even be more for legal than anything else. I'm looking at the language where it says that information is going to be requested by the department or the committee of the local government, then they have a provision where they can object and then putting documentation on why it should be narrowed, etc., and then that can be modified or upheld, and then the local government—it says the local government shall provide documentation based on the modification. I understand that everybody has the right to judicial review, etc. I just want to be clear that when the language says they add your objection, you can go to judicial review, but in the meantime you have to provide the information, not wait for some decision from the court. I think we would not be doing ourselves a service if that was the case. So, is there an automatic stay pending judicial review, or does the case proceed forward, and if the court—something different later they have to provide the information so the investigation can continue? I just want to make sure that the information is going to be provided without games being played and delayed.

Jeff Mitchell (Deputy Director, Nevada Department of Taxation):

Thank you for the question. We provide staff for the Committee on Local Government Finance. I, unfortunately, did not consider that question when helping to draft up the regulations and have not received a legal opinion on whether documentation would be stayed or not upon appeal up the judicial route. My apologies, but I do not have a clear answer for you on that one.

Assemblyman Daly:

Understanding maybe legal counsel has some light to shed on that, I understand either way. Whatever the rules are, if they don't have to provide it pending exhaustion of remedies, I don't know, but the language clearly does say they shall provide it and that it's a final determination, so I would pursue making them provide it, but I don't know what the rule is, so if someone can answer, I don't know.

Bryan Fernley (Legislative Counsel, Legal Division, Legislative Counsel Bureau):

Looking at that regulation, yes, you're right. Correct, the local government would be required to provide the documentation. As far as judicial review of that, if a local government decided to challenge that, it would be really up to the court to decide whether they needed to preserve the status quo and not require that documentation to be provided or whether to allow that information to be provided. I just don't think there's anything that could be done in the regulation to restrict the power of a court to prevent the information from being released, but again, under this regulation the local government would be required to provide it, and if they wanted to challenge that they'd have to go to court and the court would have to deal with it.

Assemblyman Daly:

Understood. Thank you, Madam Chair. I figured that would probably be the answer. I was just hoping to make sure that if somebody was under audit and we had these types of problems, I would suspect that the information is provided in a timely manner. Of course, if a local government has something to hide, I can imagine that they would take every delay tactic that they could. But when you're ready, I'm happy to make a motion to approve. I just wanted the clarification on that one issue.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission?

ASSEMBLYMAN DALY MOVED TO APPROVE REGULATION R003-20.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you. The motion does pass and the regulation will be adopted. We'll move to the next item on our agenda, which is R008-20 for the State Board of Pharmacy (Agenda Item IV-A), and that was a request from Senator Settelmeyer so we'll turn it over to him to go ahead and proceed with questions.

Senator Settelmeyer:

I appreciate that, Madam Chair. The text I had sent you previously did not include that, so if that was miscommunicated, I am sorry. In that respect, if no one else had a question, I would move to pass R008-20 unless someone else had questions.

Senator Hardy:

Well, he brought it up, so I'll ask a question if you will, Madam Chair.

Chair Cannizzaro:

Senator Hardy, and I apologize if I had gotten that wrong, but please, go ahead.

Senator Hardy:

My question isn't so much substantive as—on page 2 of the regulation talking about guidance on the use of expedited partner therapy in the treatment of gonorrhea available at the CDC (Centers for Disease Control and Prevention). Is this regulation simply, totally only about gonorrhea, or in subsection (b)—I guess I'm asking Bryan this—does that include the chlamydia and the syphilis as well? Recognizing that treating partners is critical in order to stop the passage of one bacteria to another person, does that include—

Dave Wuest (Executive Secretary, State Board of Pharmacy):

Dave Wuest is available too.

Senator Hardy:

He's even better.

Mr. Wuest:

I was wondering why you—I wasn't surprised you were going to ask a question, Senator Hardy. Do you want me to answer that question for you?

Senator Hardy:

Please.

Mr. Wuest:

Thank you, Senator, and thank you for your time. Just a little bit of background: the Board has worked very closely with the Health Department and the STD (sexually transmitted disease) prevention and control program, and as many of you know, Nevada ranks low in treatment for STDs. There are times when a doctor sees one partner but doesn't see the other partner, and the strictest reading of the definition of the law may have caused them to hesitate to treat the sexual partner, so the Board and the State Health Department wanted to make sure it was clear that that was a good thing to treat, as you said. The guidance at the CDC's website was selected by the commissions at the Health Department that it is the proper way to treat sexually transmitted disease. Those would include all the sexually transmitted diseases that the CDC is recommending.

Senator Hardy:

All right. Thank you, Madam Chair. I will go ahead and make a motion, if you'd like.

Chair Cannizzaro:

I do think we had heard a motion from Senator Settelmeyer, so we'll take that as a second. Any further discussion on the motion?

SENATOR SETTELMEYER MOVED TO APPROVE REGULATION R008-20.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

The motion does pass. The regulation will be adopted. We'll move to the next regulation I have on my list, which hopefully is the same regulation everyone else has on their list this time, R010-20 for Senator Settelmeyer's request (Agenda Item IV-A).

Senator Settelmeyer:

Thank you, Madam Chair. My question was, when that bill passed, did it make clear that you had to have a vote by the citizens before the diesel tax could be imposed? I didn't necessarily see that within the regulation, so if someone could just address that on the record. As long as it's clear that it has to be a vote of the people, then I would be okay with the regulation.

Teri Baltisberger (Services Manager, Department of Motor Vehicles):

Thank you for the question. Yes, Senator Settelmeyer, that does have to go through a vote, actually at two meetings. It's not a vote of the people, but it's two meetings of the boards of the counties. They can pass that and then they notify the Department of Motor Vehicles and we institute that.

Senator Settelmeyer:

I'm sorry, I thought the bill required a vote of the citizens first but then the body of the commissioners would implement the will of the people. Am I incorrect on that?

Ms. Baltisberger:

Yes, it's not a vote of the citizens. It's by ordinance of the counties.

Senator Settelmeyer:

Okay. Thank you, Madam Chair. I do have an issue with it.

Chair Cannizzaro:

If I could just clarify on that point, the requirement that it is a vote of the county commission, is that by operation of this regulation or was that by operation of the statute that had been passed requiring the regulation?

Ms. Baltisberger:

That was a requirement of the statute that requires this regulation.

Chair Cannizzaro:

So nothing in this regulation has changed that from what had been passed previously, is that right?

Ms. Baltisberger:

I'm sorry, what was the question?

Chair Cannizzaro:

Nothing about the operation of this regulation changed that?

Ms. Baltisberger:

That is correct. This was just to add in the requirement for the system for the refunds of those taxes to the users.

Mr. Fernley:

Madam Chair, I think I may have some answers on some of these questions, if that's all right?

Chair Cannizzaro:

Yes, please.

Mr. Fernley:

Yes, it was SB (Senate Bill) 48 of the 2019 Session authorized counties whose population is less than 100,000 to adopt the tax on diesel fuel. That bill says that the board cannot adopt that ordinance unless the ordinance is approved by at least two-thirds of the members of the board or the imposition of the tax is approved by the voters in the county. By statute, there are two ways for that tax to be imposed: a two-thirds vote of the board of county commissioners or by a vote of the people in the county. The statute would trump any regulation so that does not need to be placed in the regulation. The statute takes care of that, and this regulation would implement the tax should it be imposed in a county through the statutory mechanisms.

Chair Cannizzaro:

Thank you, Mr. Fernley. My understanding is, nothing about this regulation is changing or taking away any right of the vote of the people to vote on a particular tax. Rather, we're referring to the county commission. Per the statute, it would be—

Mr. Fernley:

Correct. By statute, for the tax to be imposed, it would need a two-thirds vote of the board of county commissioners or a vote of the people, so this regulation would only come into play once that had happened.

Chair Cannizzaro:

Right. Okay, I think that makes a bit more sense. Thank you for that clarification. Any additional questions or comments?

Senator Hardy:

Thank you, Madam Chair. So, for those counties that have three county commissioners, they have to have a two-thirds vote to pass anything? I almost think that it would be wise to have a vote of the people so the county commissioners could continue serving, but I appreciate the option because if your county commissioner and three-person—I think there are some—then you'd probably be wise to let the people do it. I guess I'm just kind of a babe in the woods on this one. I'm interested to see what my colleague who is still looking for light for his diesel to work, what he has to say.

Senator Settelmeyer:

Thank you, Madam Chair. With that being said, I just wanted clarification on the record that—and I appreciate Mr. Fernley's comment. This does not trump the NRS which requires either a vote of the people or a two-thirds vote. I didn't really care for that concept of the two-thirds vote, but as the old saying goes, we're not here on Legislative Commission to rehash or re-go through particular issues we may have lost the battle on during session. So, this is consistent with what has been passed, and in that respect I support it even though I don't support the concept because of the two-thirds, but I appreciate that clarification on the record. That is all I wanted to get, that this could not be used to assert the NRS which requires that vote of the people or of the two-thirds of the county. Madam Chair, with that, I'd say do pass even though I don't like it, if that is okay with you.

SENATOR SETTELMEYER MOVED TO APPROVE REGULATION R010-20.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE MOTION.

Senator Moises Denis (Senatorial District No. 2):

I just want to be clear. So, because it is in the statute, that trumps whatever we do in a regulation, but then the way I understand it is this will provide a regulation should it be

passed by two-thirds of the county commission, but should it be passed by a vote of the people, does that mean they have to come back with some additional regulation on how to do that, or does this cover that?

Mr. Fernley:

There would not need to be another regulation. The ordinance imposing the tax would require the two-thirds vote or approval of the people, and then this regulation would implement that action should that action occur. It would be implemented in both scenarios.

Senator Denis:

Thank you very much. Thank you, Madam Chair.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

The motion passes and the regulation will be adopted. We'll move on to the last regulation we have pulled under this agenda item, which is R150-20, also for the Department of Motor Vehicles (DMV) (Agenda Item IV-A), and we will turn it over to Senator Settelmeyer for his questions.

Senator Settelmeyer:

Thank you, Madam Chair. My issue or concern with this is I can't find it. Regulation R150-20 is not in our books. We have a tab. Maybe it was mailed to me individually that I did not see. In that respect, I looked online and I'm having a little bit of a problem finding it online, but that's nothing new. That being said, is there anybody there to try to explain it, or where I can find it or a link to it so I could actually read it? Or does everybody else have it in front of them and I'm the only one? I guess that's the other question.

Senator Hammond:

It's blank in my book too.

Assemblyman Wheeler:

I don't have it either.

Mr. Fernley:

That was one that we received that was emailed to all of the Commission members. I'm looking for the date on it. It looks like it should have been emailed to the Commission members on Tuesday. Today's Thursday, so it should have been emailed on Tuesday.

Chair Cannizzaro:

If you follow the link on the agenda of the regulations, it should be there as well. That's where I found it.

Senator Settelmeyer:

With that, I won't belabor the point. I will be voting no. The fact that it, to me, violates the Open Meeting Law process because we have not had it sufficiently for enough days—notification of the general public, I find problematic. I haven't read it at all, and I'm not saying it's good or it's bad. I just think it is flawed and should be delayed until the next Legislative Commission meeting so that there's appropriate time for the general public to be able to see it and not have any questions about the Open Meeting Law. In that respect, that's where I'm at at this point in time. Thank you, Madam Chair.

Senator Hardy:

Thank you. I've got several piles of things. I know that I have seen something. I can't remember what it was. It's not the proposed changes for NCCR (Nevada Cannabis Compliance Regulations) regulation 5 for adoption. I've got several things that I'm looking at, so I don't know what it was about. I can't remember. I can't remember what it was about, but I do know that it was sent and I saw it but I didn't retain it on one of my piles.

Chair Cannizzaro:

I want to clarify if there are a number of folks who have not been able to read this, because like I said, I am seeing it. It is online.

Senator Ratti:

I'm also seeing the link to it online which is linked from the agenda, which is I think where most of the public would go. I guess what my question is is when was it posted for the public? I know we all received it Tuesday, but was it posted for the public in time as well? Same similar timeline?

Mr. Fernley:

Yes, and the regulation would have gone through the adoption process in 233B so the agency would have had a workshop, had an adoption hearing and then they sent it to us and we posted it to the agenda for the Legislative Commission on Tuesday.

Senator Hardy:

Just for my own edification, what was it about?

Chair Cannizzaro:

Senator, it's a regulation that deals with services through the DMV's renewal online, a number of items and applications for identification cards.

Senator Hardy:

I remember it, but I do have concerns that if it's the same kind of thing we dealt with earlier with somebody not knowing something that was online or whatever. I think we'd be wise by not processing that. If some of our Committee members couldn't see it, then how can we have a higher standard for somebody who doesn't know how to find things otherwise as well? I think we'd be remiss trying to process that.

Senator Denis:

The way I read this particular one, and maybe we can have DMV speak to this, but it seems to me that this is allowing for folks to be able to—that weren't eligible before for alternative type services to be able to do that, and in the situation that we're in right now with the wait list that we have at DMV, I'm just wondering what a delay in this will do to being able to get more people to be able to get what they need to through the electronic means that they're asking for in this regulation. I don't know if we have somebody from DMV.

Chair Cannizzaro:

Do we have someone from the DMV with us?

Broadcast and Production Services Staff:

Madam Chair, we have Thomas Martin from DMV on the line. He called in with audio only. However, he has been having trouble unmuting.

Senator Denis:

Madam Chair, while we're waiting, I had asked about this before this meeting because I saw the reg before, and my concern is that currently I believe they're operating under temporary regulations and if we don't approve this today that those temporary regulations will expire, so then we'll have an even—we'll build up another backlog at DMV if we don't pass this today. That's my understanding, so hopefully we can get somebody to confirm.

Chair Cannizzaro:

Mr. Fernley may be trying to chime in.

Mr. Fernley:

Yes, thank you, Madam Chair. This is an emergency regulation of the Department of Motor Vehicles. That emergency regulation is currently in effect. What R150-20 does is it would adopt a permanent regulation to take the place of the emergency regulation that is currently in place. The emergency regulation expires November 23, 2020, and so the emergency expires November 23. What this regulation would do would adopt a permanent regulation to take the place of the emergency regulation that is currently in place.

Senator Settelmeyer:

Madam Chair, if it's okay with you, I'll ask Senator Denis a question. Is the concept of the—transaction, is this the process that we used to allow prior to Legislative Commission—one person could come in and do the paperwork for other individuals in order to help facilitate them, because they've created kind of their own business doing this because of the fact that so many of us go to the DMV and we don't necessarily have the right form or the right paperwork, and this side business kind of developed in order to help individuals through this process. Is that what I'm thinking about, or is this something different?

Senator Denis:

I don't know that I can answer that. My interest in this was the electronic submission of documents and those kind of things that they've been able to do during the pandemic to bring the wait list down. That's what I was looking at. As far as what you are referring to, I didn't ask about that, so I'm not sure whether that is or not. I guess DMV would have to answer that. Like I said, my concern was being able to do some of the electronic things that they've been able to allow people to do where in the past you had to come in in person to turn that paperwork in. This allows for some of that.

Senator Settelmeyer:

Thank you, Madam Chair.

Thomas Martin (Management Analyst, Department of Motor Vehicles):

Madam Chair, I am here to answer the questions and get everything on track here. To Senator Settelmeyer's question, these regulations do not speak to the concerns that you brought up. These regulations are simply—the current way the DMV, and has been for several years, offers an online platform for the MyDMV Portal for applicants to conduct address changes, duplicates, renewals, in a very limited capacity online using our internet services. What these regulations do is open that online transaction and actually all alternate services. We do transactions by mail service. We also have kiosk transactions, etc., but these regulations open those transactions up to a much larger group of our customers. For example, when we went to an 8-year driver's license back in 2014, we limited the scope of the applicants that could use those services. With federal law changes that have come out with the Real ID Act, etc., we are now able to open that back up and use an every-other-renewal kind of cycle to help keep people out of our offices and essentially limit the backlog that we have seen growing since the pandemic.

Senator Settelmeyer:

Madam Chair, with that, I would actually recommend do pass if you would accept.

SENATOR SETTELMEYER MOVED TO APPROVE REGULATION R150-20.

SENATOR DENIS SECONDED THE MOTION.

Senator Hammond:

I'm going to jump in real quick. I've got a quick question because my computer was freezing on everybody a little bit. I actually heard Senator Settelmeyer say something about an amendment? Did you say amend and do pass?

Chair Cannizzaro:

Just a do pass motion.

Senator Hammond:

Okay, confused there. Finally got through the regulation. All right.

THE MOTION PASSED (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE).

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Chair Cannizzaro:

The motion passes and the regulation is adopted. We are going to go ahead and move to the next item on our agenda, which is item IV-B, review of emergency regulations that have been submitted by the Department of Employment, Training and Rehabilitation (DETR) (Agenda Item IV-B). I am going to ask Bryan Fernley, our Legislative Counsel, to go ahead and explain this item for us. Mr. Fernley, whenever you are ready.

Mr. Fernley:

Thank you, Madam Chair. Because this was a new procedure that was enacted in SB 3 of the 32nd Special Session, I can just give the Committee some information about what this new procedure entails. SB 3, which was the bill that made various changes related to unemployment insurance—they established a procedure for the Administrator of the Employment Security Division to adopt emergency regulations related to unemployment insurance. Under this procedure, if the Administrator determines an emergency exists and the Governor signs the Administrator's written statement of emergency, the Administrator may adopt an emergency regulation. Upon adopting the emergency regulation, the Administrator is required to submit the regulation to the Legislative Counsel for transmission to the Legislative Commission, which is why you have the regulation before you today. If the Legislative Commission does not consider the emergency regulation within 15 days after submission to the Legislative Counsel, the Legislative Counsel will file the regulation with the Secretary of State and the regulation becomes effective at that time. If the Legislative Commission considers the emergency regulation within the 15-day period, the scope of the Commission's review is to determine whether the emergency regulation is consistent with federal law, conforms to statutory authority and carries out the intent of the Legislature in granting that authority. If the Commission objects to the emergency regulation, the regulation is returned to the Administrator to address the objection and would be resubmitted at a subsequent meeting of the Commission. If the Commission approves the regulation, the Legislative Counsel will file the regulation with the Secretary of State and it will become effective at that time. The emergency regulation that is before you today was sent to the Legislative Counsel last Friday, October 23, so we are within that 15-day period within which the Commission may consider the regulation and either approve or object to it. With that introduction, that's what this agenda item is about.

Chair Cannizzaro:

Thank you. Questions or comments from members of the Commission?

Assemblyman Daly:

Just real quick, Madam Chair. As it's an emergency regulation, do time limits for the duration of the regulation or emergency regulations still play, or because we approve it that makes it as if it's a permanent regulation, or do they have to come back and file and do the hearing and everything for a permanent regulation to be adopted at a later time?

Mr. Fernley:

Thank you, Assemblyman Daly. I'm glad you reminded me, I actually forgot to mention that. If the regulation is approved and becomes effective, it will be effective for 120 days. Unlike the 233B procedure for emergency regulation, an identical emergency regulation could be adopted and be effective for another 120 days, and that cycle could go continuously. The emergency regulation is effective for 120 days but the agency can use the same procedure to adopt the same regulation for another 120 days, or they could try to adopt a permanent regulation if they chose to do that.

Assemblyman Daly:

Understood. Thank you, Madam Chair. I just wanted to refresh my memory on that. So eventually they need to come back and do a regular permanent regulation, have a workshop, have a hearing, have public input, adopt a regulation that then comes before the Legislative Commission for regular approval for a permanent regulation. I understand we need to be flexible with all of the things that are going on right now, especially with DETR, so I'm in support but just wanted to have my memory refreshed on that leg of it.

Chair Cannizzaro:

Any additional questions or comments from members of the Commission? I'm not seeing any.

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE EMERGENCY REGULATION E009-20.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE).

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Chair Cannizzaro:

The motion passes and the regulation will be adopted. That will bring us to the next item on our agenda, which is a review of a regulation of the Nevada Cannabis Compliance Board (Agenda Item IV-C). It has been submitted for our consideration, and I am again going to turn it over to Bryan Fernley to help explain this item for all of us. Mr. Fernley, whenever you are ready.

Mr. Fernley:

Thank you, Madam Chair. This is another unique procedure for the Legislative Commission that's outside what the normal procedure is for the review of regulations. This one originates from AB 533 of the 2019 Session. Under NRS 233B.039 as amended by AB 533, the Cannabis Compliance Board is exempt from the provisions of chapter 233B of NRS, including the provisions of that chapter that require the submission of regulations to the LCB (Legislative Counsel Bureau) for drafting and the provisions requiring review and approval of regulations by the Legislative Commission or the Subcommittee to Review Regulations. However, NRS 678A.460, which was enacted by AB 533, prescribes a procedure for the Cannabis Compliance Board to adopt regulations. After the Board adopts a regulation, the Board is required to file a copy of that regulation with the Legislative Counsel, and the Board is prohibited from making the regulation effective by filing it with the Secretary of State until 15 days after the day on which the regulation was adopted. During that 15-day period, if any legislator requests that the Legislative Commission examine the Board's regulation, the Legislative Commission must review the regulation or refer it to the Subcommittee to Review Regulations. If it is reviewed, the scope of the review is to determine whether the regulation conforms to statutory authority and carries out legislative intent. If the Commission or the Subcommittee approves the regulation, the regulation will be filed with the Secretary of State and will become effective at that time. If the Commission or the Subcommittee objects to the regulation, the regulation is returned to the Board for revisions and must be returned with the necessary revisions within 60 days for resubmission to the Legislative Commission or the Subcommittee to Review Regulations. The Cannabis Compliance Board regulations that are before the Commission today were received on October 20, so we are currently within the 15-day period within which a legislator may request review. I did receive one request for review of this regulation from a legislator, so that is why it is before the Commission today.

Chair Cannizzaro:

Thank you for that explanation. With that, we'll turn it over for it sounds like questions from the Commission.

Senator Hardy:

Thank you. I asked Bryan Fernley for this to be reviewed, and I was kind of surprised that the Cannabis Board, I'll call it, has the ability to be exempt from transparency. That being said, I think where I'm coming from is I think every regulation that they have should come before us like everyone else does. I don't think there's a downside to transparency in something that deals with addictive qualities, and 1 out of 10 people who use it are addicted to it, 1 out of 6 if you start before the age of 18 you're addicted to it, and smoke is still smoke, and the plants vary in their intensiveness, so it's very hard for somebody who "gives a medical marijuana recommendation" to know how much is given and how often to give it. Doctors can't really prescribe it, so you go to a place and they tell you whether it is recreational or medicinal and they tell you what to do. We know that there is a continuum that's very hard to predict how effective it will be and how a given person will act. I think on the very nature of the challenge that we have with an addictive substance, to make this exempt from our direction is worrisome. Fortunately, the way it passed as amended, we do have the ability to bring it forward and so I think that that's a rational thing to do.

Two questions I had that weren't and aren't necessarily answerable is when I looked at the section 14, and maybe it's subsection 14.5, I don't have the whole bill before me, but I think what I had a problem with when it says anybody who has even less than a 5 percent ownership in a company that does the cannabis that the Board may require them to get a license, and I think how in the world do they know if somebody is there to investigate if they use the phrase "to exercise a significant influence over the licensee"? A significant influence over the licensee may be a boyfriend or a girlfriend or a child who says, "Dad, mom or sweetie, I think you should do this," and the owner then is in a position to keep his family member happy and the Cannabis Board never knows that, and so I have a major problem with having "a board may" but doesn't have any incentive or any direction or any stated—I have to find out who owns or owns a part of this enterprise that deals with a federally illegal to use drug. I will be voting no on this, and recognizing that the Cannabis Board, bless their hearts, has a huge challenge ahead of them making sure that we do this legally, but I think unless the Board has the ability to investigate somebody who is even less than a 5 percent owner or exercises influence over such a person who owns, I think we've got a gaping hole that people can take advantage of in the State of Nevada, so I will be voting no on this.

Assemblywoman Carlton:

Madam Chair, may I ask a question?

Chair Cannizzaro:

Yes, please, Assemblywoman Carlton.

Assemblywoman Carlton:

Thank you, Madam Chair. This is probably to Mr. Fernley. It was my understanding that a lot of the things that we put in for the Cannabis Compliance Board mirror the Gaming Control Board and that there are some things that will come before us and some things that won't because of the nature of the business. Is my recollection correct, Mr. Fernley?

Mr. Fernley:

Yes, Assemblywoman Carlton, you are correct. The bill was modeled on the Gaming Control Board provisions of NRS. Specifically, the Gaming Control Board is exempt also from the provisions of 233B. With a few very small exceptions, their regulations do not come to the LCB for drafting and are not put before the Legislative Commission for review and approval. This provision in the original version of AB 533—this procedure for Legislative Commission review was not in the original version of AB 533. It was amended into the bill during session to allow legislators to request review of the Legislative Commission. That is a difference from the Gaming Control Board in that the Legislative Commission can review regulations upon request of a legislator. 678A.460 also does lay out the procedure for the Cannabis Compliance Board to adopt regulations, and it does include posting notice and having a meeting to consider, posting the regulation for the public and having a public meeting at which the regulation is heard. But yes, Assemblywoman Carlton, you are correct. This was modeled on the provisions governing the Gaming Control Board.

Assemblywoman Carlton:

So, it would be my just common sense, figuring out on this that there's actually more transparency here than there is with the Gaming Control Board, if you compare the two with the statement that you just made.

Mr. Fernley:

The difference between the Gaming Control Board and the Cannabis Compliance Board is this procedure where a legislator can request that the Legislative Commission hear the regulation within 15 days after it's submitted to the Legislative Counsel. I guess in that sense there is more opportunity for the Legislative Commission to consider Cannabis Compliance Board regulations than there would be Gaming Control Board regulations.

Assemblywoman Carlton:

Thank you. In my estimation then, I believe there is more transparency than less, so I just wanted to make sure that we got that on the record. Thank you very much, Mr. Fernley. Thank you, Madam Chair.

Chair Cannizzaro:

Any additional questions from members of the Commission?

Assemblyman Daly:

Just a comment, Madam Chair, and following up on what Assemblywoman Carlton was just saying. So yes, when this came through the Judiciary Committee last session, they had the same language modeling after the State Gaming Control Board and adding an exemption to the rulemaking process in 233B. As you might imagine, if you can't tell by now, I pushed back on it pretty hard. This was the compromise that they came up with where it's a modified process, but we do get to review and take a look at the regulation. I think it is important, so in that fashion Assemblywoman Carlton is correct. It is more transparent—less transparent than the Gaming Control Board, but we do have that ability. I think I've mentioned this before, that we should have a standing request to review their regulations if they come to us in a timely fashion so that we can go through this process, but there were some arguments, and the compromise they made with this to have an expedited process where they could go through and make their regulations without the normal procedures. So, this was a compromise and I'm satisfied with it. It seems to be working. This is the second time we've seen their regulations, and apparently it's working as designed. Just a comment there, thank you.

Assemblyman Wheeler:

Thank you, Madam Chair. Just a comment. I think the Gaming Control Board has been around a little while and we've got a history with them, and so we know basically what they are doing. The Cannabis Board is new and I think we need to keep as much track of them and as much as we can oversight of them until we get the same kind of history, so I'm going to have to be a no on this as well.

Senator Hardy:

Thank you, Madam Chair. There is more transparency than the Gaming Control Board in that if we find out that they passed a regulation then we can say we would like it to come before us. But if we don't—and I would just ask each one of you, in your own head, did you know that there was a regulation that passed? And if we didn't know, then it would just happen which means that there's no transparency unless we do know. You can talk about more transparency, but translucence is not opaque and it's not transparent. So, just because we can see better through the smoke than we could through the wall doesn't mean that we actually can see clearly. I agree with Assemblyman Daly where we ought to have a standing rule that we see the regulations, and the process should be transparent, not translucent. Thank you, Madam Chair.

Chair Cannizzaro:

Any further questions or comments from members of the Commission?

Assemblyman Frierson:

Thank you, Madam Chair. I recognize this is relatively new territory that we're exploring and set out to be the gold standard, but I believe it would be a worse decision to do nothing than to do something. We have an industry that is here, we need to be able to regulate it, we need to facilitate a structure that has been vetted that will allow for better regulation of that industry, and I believe to fail to move would be a disservice and it would be an act of doing nothing rather than something, and so an improvement on transparency and moving this forward I think is responsible for being able to provide oversight and get the oversight of this industry going without losing even more time.

Chair Cannizzaro:

Thank you, Speaker Frierson. I would agree with those sentiments and certainly appreciate the ability to review the regulations and then bring them before the Commission for us to consider if we do have questions specifically about those regulations. Additional questions from members of the Commission? Seeing none is there a motion from the Commission?

ASSEMBLYWOMAN CARLTON MOVED TO APPROVE THE REGULATIONS FROM THE NEVADA CANNABIS COMPLIANCE BOARD.

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:

The motion passes, and thank you for giving us an overview of that, Mr. Fernley. We are going to go ahead and move to the next item on our agenda, which is item IV-D, the request for approval of session hires for the 2021 Legislative Session. I am going to turn it over to Ms. Erdoes who can discuss the need for additional session hires for the 2021 Legislative Session. Ms. Erdoes, whenever you are ready.

Brenda Erdoes (Director, Legislative Counsel Bureau):

Thank you, Madam Chair. I believe this should be the end of our requests for additional early session hires for the 2021 Session. The request today, as shown in the meeting packet materials and online, is for three additional session hires for approximately 8 months in our ITS (Information Technology Services) Unit at a grade 42 (Agenda Item IV-D). In addition to the seemingly increasing worldwide cyber threats in the past few months, we have been significantly increasing and are continuing to increase the number of laptops used in our system. Also, the new applications that are creating additional programs to enable efficient operation of our virtual operations. We believe these positions are necessary to ensure the security of our computer system and are seeking approval of the Legislative Commission for these positions today.

Chair Cannizzaro:

Thank you. Are there any questions or comments from members of the Commission on this item?

SENATOR HARDY MOVED TO APPROVE THE REQUEST FOR SESSION HIRES FOR THE 2021 LEGISLATIVE SESSION.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE).

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Chair Cannizzaro:

Okay, and we are approved for the new session hires. Thank you, Ms. Erdoes, for being able to present that to members of the Committee. We are going to go ahead and move on to item IV-E, which is the approval of appointments. Under this item of the agenda, we have the need to appoint a member to the Task Force on Alzheimer's Disease, which is created by NRS 439.5083. With the retirement of Senator Joyce Woodhouse and her alternate, Senator David Parks, there is a need for the Commission to appoint a replacement for Senator Woodhouse on the Task Force on Alzheimer's Disease because there is a meeting coming up shortly. I will turn it over to Senator Ratti because I believe she does have a nomination.

Senator Ratti:

Thank you, Madam Chair. I'd like to make a motion to nominate Marilyn Dondero Loop to fill that position on the Task Force on Alzheimer's Disease.

SENATOR RATTI MOVED TO APPOINT SENATOR DONDERO LOOP TO THE TASK FORCE ON ALZHEIMER'S DISEASE.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE).

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Chair Cannizzaro:

The motion passes and Senator Dondero Loop will be appointed to the Commission on Alzheimer's Disease. We are actually going to take—I received some information from Senator Spearman that we are going to take one item out of order. Instead of going to item V, which is the next item on our agenda, we are going to move briefly to item VII, which is the review of recommendations of the Sunset Subcommittee of the Legislative Commission (Agenda Item VII). As I understand, Senator Spearman does have another meeting that she has to be in very shortly. We do have her with us to present the recommendations of the Sunset Subcommittee. The members of the Legislative Commission will likely recall that there are no bill draft requests (BDRs) allocated by statute for the Sunset Subcommittee, and traditionally the Legislative Commission has used a portion of its allocation of 10 BDRs for this particular Commission. Senator Spearman, we will go ahead and turn it over to you. I do believe that she has a description and can provide some background on five BDRs that the Subcommittee would like to have approved by the Legislative Commission, and then we will go ahead and see what the Commission's pleasure is on this. Senator Spearman, if you could, please walk us through those requests.

Senator Pat Spearman (Senatorial District No. 1):

Thank you, Madam Chair, and thank you so much for your indulgence. It's good that it's Zoom and I don't have to drive across town, but that also creates some other difficulties so thank you for taking this out of order. Today I am here as the Chair of the Sunset Committee of the Legislative Commission for the 2019-2020 Interim to present the Subcommittee's recommendations for legislation. The 2011 Legislature created the Sunset Subcommittee with the passage of Senate Bill 251, and the Subcommittee has

never had the authority to request bill drafts. According to Nevada Revised Statutes, NRS 232B.250 requires the Subcommittee to submit its recommendations for legislation to the Legislative Commission. The Legislative Commission in turn has often included the Subcommittee's recommendations amongst its 10 authorized bill drafts.

Included in the meeting packet for today's meeting is an abstract providing background on the Subcommittee and the summary of recommendations approved by the Subcommittee at its final meeting on August 31, 2020 (Agenda Item VII). Over the course of 6 meetings this interim, the Subcommittee reviewed 15 entities and received reports from 20 entities reviewed last interim. The recommendations for legislation from the Subcommittee relate to five boards, committees and commissions in all of the recommendations, except for the one related to the Nevada Board of Homeopathic Medical Examiners we requested by the entities. I will briefly explain the five requests for each bill draft, and representatives for the most part of all the entities should be available for any detailed questions, along with the Subcommittee's policy analyst, Jennifer Ruedy, and the Subcommittee's counsel, Eileen O'Grady.

Number one: State Board of Parole Commissioners, NRS 213.108. The Subcommittee recommends legislation to amend NRS 213.1243 to require the district court judge to impose a sentence for the underlying crime and for the conditions of lifetime supervisions of sex offenders to be imposed after any period of probation or term of imprisonment and for any period of release on parole. Also, to amend 213.10885 to require comprehensive review of the standards adopted regarding risk assessment at least every 5 years instead of every 3 years.

Number two: the Commission to Study Governmental Purchasing. The Subcommittee recommends legislation to authorize the Commission to request up to two bill drafts for each regular legislative session.

Number three: Nevada Funeral and Cemetery Services Board, NRS 642.020. The Subcommittee recommends legislation to amend NRS 642.280 to require graduation from a mortuary science program instead of specific hours of coursework to satisfy the requirement for licensure as an embalmment. This would bring Nevada in line with the majority of states that simply require graduation from a mortuary science program and facilitate the use of the closest funeral home even if it is across the state border. California has legislation allowing for the transport of human remains to an adjacent state for disposition without a death certificate or permit or disposition transfer under specific circumstances, including a body being found within specific mileage from the state border and release from the coroner with the jurisdiction wherein the remains are found. The Office of Vital Records has indicated support to address this complex issue.

Number four: the Advisory Committee to Study Laws Concerning Sex Offender Registration, NRS 179D.132. The Subcommittee recommends, as requested by the Office of the Attorney General, legislation to terminate the Committee and transfer its duties to the Advisory Commission on the Administration of Justice, NRS 176.0123, the

Nevada Sentencing Commission, NRS 176.0133, of the newly created Department of Sentencing Policy, NRS 176.01323, or both entities. Neither the Office of the Attorney General nor the Subcommittee had a preference on which entity should take on these additional duties.

Number five: finally, the Subcommittee voted to require the Nevada Board of Homeopathic Medical Examiners, NRS 630A.100, to report to the Legislature on or before the first day of the 2021 Session on its progress implementing the provisions of Senate Bill 98 in 2019. Further, the Subcommittee recommends that a bill draft be requested in case the report does not indicate that the total of the provisions of SB 98, including the appointment of new Board members to replace all members serving at the time when legislation was enacted, have been completed. Such a bill draft request would terminate the Board and transfer the responsibility for regulating the practice of homeopathic medicine to the State Board of Health as proposed in Senate Bill 98 as introduced.

Thank you, Madam Chair. These recommendations for legislation represent considerable work by the Subcommittee of this interim, and I appreciate the consideration that the Legislative Commission has. I'm happy to answer any questions, and as noted previously, representatives from the entities should still be online for any detailed questions, and the Subcommittee staff is available too. Thank you.

Chair Cannizzaro:

Thank you, Senator Spearman. At this point in time we will turn it over to members of the Commission for questions, but I just did want to clarify, at least in my understanding, this is a vote to allow for those BDRs to be processed. Obviously we'd have separate consideration of the particulars and the policy behind each of those during the legislative session and ultimately take votes on that. The vote today as I understand it, and I'm sure that Ms. Erdoes can correct me if I am wrong, or Mr. Fernley will as well, that this is a vote to allow for these BDRs to be submitted and then the legislative body would consider them during the 2021 Session.

Senator Spearman:

Yes, these are the recommendations that we're submitting.

Chair Cannizzaro:

Great. With that, we will open it up for any questions from members of the Commission on these five recommendations as outlined by Senator Spearman.

Assemblyman Daly:

Madam Chair, not necessarily a question, just a comment on recommendation number two regarding the government purchasing folks and their getting two bill draft requests. I

opposed that in the Committee when we were sitting as the Sunset Subcommittee. I don't support that portion of it going forward today. I'm sure that's not a surprise to Senator Spearman. Anyway, I can expand on that more if you'd like, but I don't support that going forward. And yes, I do understand that this is just allowing the bill to be drafted and that it would go through the regular committee process and introduction and vetting and all of that stuff. I'm still not in favor of that recommendation.

Chair Cannizzaro:

Additional questions or comments from members of the Commission?

Assemblyman Wheeler:

Thank you, Madam Chair. I just wanted to say that while I don't agree with some of them, this goes through a process where we're going to take it to committee, we're going to look at it, it may make committee, it may not make committee, so I don't really have a problem with it.

Senator Denis:

Just real quick. So, we're recommending that we use 5 of our 10 BDRs on these, is that correct?

Chair Cannizzaro:

That is correct.

Senator Denis:

Do we have anything else coming up where we might need BDRs?

Chair Cannizzaro:

I don't believe there is anything, but I'll turn it over to Ms. Erdoes to further let us know about that one.

Ms. Erdoes:

Thank you, Madam Chair. We do have a couple coming I think that I know of that are related to the Legislative Counsel Bureau and the Legislature in general, but I don't believe that we would have cause to get you past the 10 that the Legislative Commission is allowed. At this point, I don't have anything near that.

Senator Denis:

Thank you, Madam Chair. I just wanted to make sure we weren't going to have something else coming up and it we lost these five then we wouldn't be able to consider those other ones since we don't know what they are yet.

Senator Settelmeyer:

Madam Chair, are you ready to take a motion?

Chair Cannizzaro:

Yes, Senator Settelmeyer.

Senator Settelmeyer:

Do pass. I agree with a motion for the five BDR requests.

Chair Cannizzaro:

We do have a motion to approve the five BDR requests as just outlined by Senator Spearman on behalf of the Sunset Subcommittee of the Legislative Commission.

SENATOR SETTELMEYER MOVED TO APPROVE THE RECOMMENDATIONS OF THE SUNSET SUBCOMMITTEE OF THE LEGISLATIVE COMMISSION.

SENATOR RATTI SECONDED THE MOTION.

THE MOTION PASSED (ASSEMBLYWOMAN CARLTON AND ASSEMBLYMAN DALY VOTED NO).

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Chair Cannizzaro:

The motion passes and we will go ahead and have those BDRs to be submitted. Thank you, Senator Spearman, for being with us.

Senator Spearman:

Thank you.

Chair Cannizzaro:

No, thank you. We will move back to our spot on the agenda before we took this item out of order. We are on item V, which is litigation, and we do have a litigation report to be presented by Kevin Powers, so we will turn it over to him to go ahead and update us.

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

Thank you, Madam Chair. I know it's been a long meeting, but we do have several cases to go through, and I will try to move them as quickly as possible. Under agenda item V-A, the first case is *Morency v. State* in the Nevada Supreme Court. In this case, the plaintiffs are challenging the constitutionality of AB 458 of the 2019 Legislative Session. AB 458 revised the amount of tax credits that are available under the Nevada Educational Choice Scholarship Program. Those tax credits are found in subsection 4 of NRS 363A.139 and 363B.119, and they are generally referred to as the subsection 4 tax credits. Through the passage of AB 458, the Legislature froze the subsection 4 tax credits at their existing amount of $6.655 million. The Legislature also eliminated potential future 10 percent increases that were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of future fiscal years. Because AB 458 froze those subsection 4 tax credits and eliminated the potential future on the annual increases for future fiscal years, the plaintiffs claim that AB 458 created, generated or increased public revenue and the bill violated Article 4, Section 18 of the Nevada Constitution because the bill did not receive a two-thirds majority vote in the Senate. On May 20, 2020, the District Court entered an order granting summary judgment in favor of the State and the Legislature and upholding the constitutionality of AB 458. In its order, the District Court found that AB 458 did not increase public revenue because the bill froze the amount of subsection 4 credits at their existing amount of $6.655 million. The District Court thus concluded that AB 458 was not subject to the two-thirds requirement. After this court entered its order, the plaintiffs filed a notice of appeal to the Nevada Supreme Court. On October 26, 2020, the parties completed their briefing for the appeal. The parties are awaiting a Nevada Supreme Court determination of whether it will hear oral arguments in the appeal or whether it will decide the appeal on the case without oral argument. This is the first of the pending two-thirds requirement cases. It is possible that the Nevada Supreme Court will coordinate this case with the next case we're going to discuss that also involves the two-thirds requirement in Article 4, Section 18.

Moving on then to agenda item V-B, there are two cases that will be combined, so I'll combine agenda item V-B and agenda item V-C. That is *Settelmeyer v. State of Nevada*, which is in the First Judicial District Court, and the *Legislature of the State of Nevada v. Settelmeyer*, which is in the Nevada Supreme Court. In the District Court case, the plaintiffs challenge the constitutionality of Senate Bill 542 and Senate Bill 551 of the 2019 Legislative Session. Plaintiffs claim that these bills created, generated or increased public revenue and 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 known as the Plaintiff Senators who voted against SB 542 and

SB 551, and the plaintiffs also include several private businesses, associations and other entities that pay or whose members pay certain taxes and fees associated with the two bills. The plaintiffs named several state officers and agencies, the executive branch and legislative branch as defendants in their official capacity. The executive branch defendants include the Lieutenant Governor, the Governor, the Nevada Department of Taxation and the Nevada Department of Motor Vehicles because those two agencies administer the provisions of SB 551 and SB 542. The executive branch defendants are represented in the litigation by the Office of the Attorney General. The legislative branch defendants are Senator Cannizzaro in her official capacity as Senate Majority Leader and Claire Clift in her official capacity as Secretary of the Senate. In addition, the Legislature is a defendant intervener. All of these legislative branch defendants are represented by LCB Legal as their statutorily authorized counsel under NRS 218F.720.

On September 21, 2020, the District Court heard oral arguments on the parties' dispositive motions on the merits of the constitutional two-thirds issue. On October 7, 2020, the District Court entered an order and final judgment adjudicating all the claims of all the parties and granting final judgment in favor of the plaintiffs and their claims for declaratory and injunctive relief challenging the constitutionality of SB 542 and SB 551. In its order and final judgment, the District Court found that the language of the two-thirds requirement was clear and unambiguous and that SB 542 and SB 551 generated public revenue in any form within the plain meaning of the two-thirds requirement. With respect to SB 542 which dealt with the DMV technology fee, the District Court found that the bill extended the imposition of the fee from June 30, 2020 to June 30, 2022 and that the purpose of the bill was to generate public revenue for 2 more years at an estimated $6.9 million a year. The District Court concluded that but for the passage of SB 542, those funds would not have been produced and they would not exist. With respect to SB 551 which repealed the statutory mechanism whereby the Department of Taxation would calculate the tax rate for the modified business tax, the District Court found that the deletion of this computation formula was estimated to generate an additional $98.2 million in revenue for the state in this biennium and that but for the repeal of the statutory mechanism in NRS 360.203 and related provisions, that public revenue would not exist. Finally, the District Court found that while there is a concept of legislative deference, that deference does not exist to violate the clear meaning of the Nevada Constitution. Consequently, the District Court declared that SB 542 and SB 551 violated Article 4, Section 18 of the Nevada Constitution because the bills were not passed by the Senate by a two-thirds vote. The District Court declared SB 542 and sections 2, 3, 37 and 39 of SB 551 to be unconstitutional and invalid. However, the District Court declared that under the severance doctrine, the remaining provisions of SB 551 are severed and remain in effect. With this order and final judgment, the District Court enjoined the Department of Motor Vehicles and the Department of Taxation from collecting and enforcing the fees and taxes enacted by the two bills and ordered that all fee payers and taxpayers from whom such fees and taxes have already been collected are entitled to an immediate refund with interest at the legal rate of interest from the date collected.

Additionally, in its order the District Court ordered that the plaintiffs are not entitled to recover attorney fees as special damages for bringing their claim for declaratory injunctive relief because there was not bad faith in regard to this litigation. Therefore, the District Court granted final judgment in favor of the defendants on any claims to recover attorney fees as special damages. However, the District Court also concluded that plaintiffs may take appropriate action to request awards of post-judgment attorney fees and costs if they desire and the parties in that event may brief the District Court further on the issue of whether the District Court can grant the plaintiffs an award of post-judgment attorney fees and costs payable by the Nevada Department of Taxation and the Nevada Department of Motor Vehicles.

Finally, defendants Senator Cannizzaro, Secretary Clift, Governor Sisolak and Lieutenant Governor Marshall who were being sued in their official capacities argue that they are not necessary and proper party defendants and are entitled to absolute legislative immunity as a matter of law on this action. In its order and final judgment, the District Court ordered that those defendants be dismissed from the action, so the remaining defendants are the Department of Taxation, the Department of Motor Vehicles and the Legislature. All the individual defendants of the executive and legislative branch were dismissed by the District Court's order.

On October 8, 2020, plaintiffs filed a notice of entry of the District Court's order and final judgment. Because the declaratory and injunctive relief ordered by the District Court was effective immediately, the Chair of the Legislative Commission directed the LCB Legal Division under NRS 218F.720 to take all actions necessary for the Legislature to appeal the District Court's order and final judgment and to seek a stay pending appeal of the District Court's order as soon as possible. On October 9, 2020, the Legislature filed its notice of appeal with the Nevada Supreme Court. On that same day, the Department of Motor Vehicles and the Department of Taxation filed their notice of appeal with the Nevada Supreme Court. On October 12, 2020, the Legislature and State Departments filed in the District Court an emergency joint motion for an administrative stay and a joint motion for a stay pending appeal. On October 13, 2020, the District Court granted the emergency joint motion for an administrative stay and the joint motion for a stay pending appeal. However, on October 20, 2020, the plaintiffs filed a motion for reconsideration, asking the District Court to reconsider its order granting the stay pending appeal. That motion for reconsideration is pending in the District Court and the appeal is pending in the Nevada Supreme Court. Therefore, this case is in a status where both the District Court proceedings are continuing and the Nevada Supreme Court proceedings are continuing, and that litigation will likely last for the next several months as the parties move forward in both the District Court and the appeal proceedings in the Nevada Supreme Court.

The next item is agenda item V-D. That case is *Nevada Policy Research Institute v. Cannizzaro* in the Eighth Judicial District Court in Clark County. In this litigation, the issue is whether state legislators are prohibited by the separation of powers provision in the Nevada Constitution from holding positions of public employment in the state executive

branch or with local governments. At the last meeting of the Legislative Commission on September 18, 2020, the Legislative Commission directed the Legal Division to take all actions that are necessary for the Legislature to appear in, commence, prosecute, defend or intervene in this litigation to protect the official interests of the Legislature. On September 21, 2020, in the interest of promoting judicial efficiency and economy, LCB Legal contacted NPRI's (Nevada Policy Research Institute) counsel by email correspondence and asked counsel whether NPRI would be agreeable to enter into a stipulation regarding the intervention of the Legislature. On September 23, 2020, NPRI's counsel responded by email that NPRI was not agreeable to the proposed stipulation of the Legislature's intervention. Therefore, on September 30, 2020 LCB Legal filed the Legislature's motion to intervene. On October 4, 2020, NPRI filed its opposition to the motion to intervene and the District Court has scheduled a hearing on the motion to intervene for November 19, 2020.

Next is agenda item V-E, *Lander County v. State of Nevada* in the First Judicial District Court in Carson City. This case involves 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. In response to the passage of those resolutions, 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 from the public at large given the restrictions placed on the special session due to the COVID-19 pandemic. At the last meeting of the Legislative Commission on September 18, 2020, the Legislative Commission directed the Legal Division to take all actions necessary for the Legislature to appear in, commence, prosecute, defend or intervene in this litigation to protect the official interests of the Legislature. On October 23, 2020, the parties submitted a procedural stipulation to the court for approval. The procedural stipulation would grant intervention for the Legislature, allow additional plaintiffs to enter the case and establish a briefing schedule for dispositive motions for summary judgment. Today on October 29, 2020, in accordance with the stipulation, Lander County filed an amended complaint that added Pershing County and White Pine County as additional plaintiffs. Upon approval of the stipulation by the Court, the parties will proceed in the District Court with their stipulated briefing schedule for dispositive motions for summary judgment.

The last case on the agenda, agenda item V-F, is *Charleston v. State of Nevada* in the United States Ninth Circuit Court of Appeals. In this case, plaintiffs are challenging the constitutionality of Nevada's laws that give certain less populated counties in Nevada the local option to license and regulate legal brothels. Plaintiffs claim that the state laws and the implementing local ordinances are preempted by the federal criminal laws which involve interstate travel and illegal prostitution and sex trafficking. On October 29, 2019, the Federal District Court dismissed the complaint for lack of constitutional standing to

pursue their preemption claims because the District Court found that the plaintiffs, who were all residents of Texas, had not established that Nevada's laws concerning legal brothels caused the plaintiffs any personal injury in fact that was traceable to those Nevada laws and redressable by the federal courts. Plaintiffs filed a notice of appeal with the Ninth Circuit. The parties have completed their briefing on the appeal and the Ninth Circuit has scheduled oral argument in the appeal for December 9, 2020.

Thank you, Madam Chair. That was lot of information in a short period of time. I'm certainly open for any questions from the members of the Committee. Thank you.

Chair Cannizzaro:

Thank you, Mr. Powers. Any question from members of the Commission?

Assemblyman Wheeler:

Yes, Madam Chair. It's more of a comment than a question. I think what we're seeing here is kind of an example—we're seeing some partisan representation throughout this, and I realize it is quite legal. The majority party is the majority party, but I would like us to think maybe of looking at one of our remaining BDRs to try to have actual partisan representation both during the session and in any type of lawsuits that come against us when we are against each other. I just think that would be a little more fair for the minority party, no matter who the minority party may be. Just something to think about. Thank you.

Chair Cannizzaro:

Additional questions or comments from members of the Commission?

Assemblyman Frierson:

I have a quick question. I should know the answer, but I don't. Mr. Powers, as we see an increasing number of lawsuits and refiling of lawsuits and revisiting of issues that have been addressed before, is there an option—or is it typical for legal fees to be required of the party that does not prevail?

Mr. Powers:

Thank you, Madam Chair. From the Legislature's perspective as an institution, it has not been the policy of the Legislature to seek to recover attorney fees or costs from plaintiffs who bring actions challenging constitutionality of legislation or other actions of the Legislature. That also occurs in the rare circumstances when the LCB Legal Division also represents individual members of the Legislature in their official capacity when they're acting on behalf of the Legislature. Again, in those circumstances the LCB Legal Division does not typically seek to recover attorney fees and costs from any plaintiffs who are bringing those legal actions against individual legislators in their official capacities. That

has been the standing policy up to this point, but the Legal Division as a nonpartisan legal agency takes no position one way or the other. Keep in mind, however, if the LCB Legal Division was directed to seek attorney fees and costs, we'd have to change the way we do our timesheets and recordkeeping, because right now we do not keep track of individual hours spent on individual cases. We also do not keep track of any individualized costs for individualized cases. Obviously those two changes would come with administrative burdens and costs themselves. It doesn't mean that the LCB Legal Division could not do that, it just means that if we were going to go forward from the Legislature as an institution or individual legislators in their official capacity seeking attorney fees and costs from plaintiffs from these lawsuits, that would require a change in the internal processes and procedures. Thank you, Madam Chair.

Assemblyman Frierson:

Thank you, Mr. Powers. You just reminded me why I left billable hours.

Chair Cannizzaro:

Any additional questions from members of the Commission? I am not seeing any, so we are actually going to move to item VI on our agenda. I would remind for anyone who is joining us virtually who is waiting for that second period of public comment, we will be moving to that item as the next item on our agenda since we already addressed item VII. So, we will first hear item VI, the legislative audit, and then we will be preparing for public comment, so if you would like, you can go ahead and I would invite you to get on the call now so that we will have you ready in the queue for when we move over to public comment. Under item VI for the legislative audit we have our Legislative Auditor, Dan Crossman, who has been with us and he's going to present the summary of the audits considered by the Audit Subcommittee. Mr. Crossman, whenever you are ready.

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

Good afternoon, Madam Chair, members of the Legislative Commission. I appreciate the opportunity. I know you've all anxiously looked down the agenda and knew that the Auditor was going to talk, and I know I stand between you and being done, but I look forward to the opportunity always to share a few things about our audits.

Under agenda item VI-A I've included a letter from Senator Parks, Chair of the Audit Subcommittee, indicating that on September 3 of this year, a meeting of the Audit Subcommittee of the Legislative Commission was held in which five reports were presented and accepted (Agenda Item VI-A). During that meeting, we presented a summary of the audits, we answered questions of the Subcommittee members and representatives from the represented agencies, provided remarks and also answered some questions. Today, I will briefly go over the key findings from those reports. Please note that the full reports, as you are well aware, are on our website where more details can be obtained on our specific findings and recommendations. Additionally, while today's

presentation will be an overview of those reports, we are happy to schedule a time to discuss any of these reports in detail with any of the members of the Commission or present any report to any committee during session.

Turning to the next page is a letter summarizing the release of the statewide single audit for the fiscal year ending June 30, 2019. The audit was conducted by the CPA (certified public accountant) firm of Eide Bailly under contract with our office. The single audit incorporates an audit of the state's financial statements and an audit of the state's agencies' compliance with requirements related to the use of federal funds. This is an audit that's required to ensure the continuation of federal funds to the state. The auditor's report included a total of 40 findings. Seven were related to the audit of the state's financial statements. Those findings resulted in some correcting of accounting entries. The auditors issued an unmodified or a clean opinion on the financial statements indicating the financial statements were presented fairly and conform to generally accepted accounting principles. There were also 33 findings related to agencies' compliance with federal grant requirements on the major programs that were audited. The state expended nearly $5.9 billion in federal funds in Fiscal Year 2019. The single audit report is available on our website.

Turning to the next page is a summary of the audit of the Public Employees' Benefits Program (PEBP) contract management report. The purpose of this audit was to evaluate if the Program had adequate controls to ensure vendor selections and payments complied with state laws, policies and contract terms and expenses related to contracts, awards and accreditations were appropriate. Overall, we found that PEBP's contracting practices changed over the past several years, focusing more on amending and extending contracts through private negotiations between PEBP's management and vendors instead of pursuing competitive procurements. Contract amendments should not be utilized as a default to extend contracts and avoid competitive procurement processes. State policy indicates that contracts should be competitively bid at least every 4 years. Additionally, PEBP's contracts were often extended without required approvals, and some amendments significantly modified the contracts' scope of work. We also identified the need for the PEBP Board to improve its oversight of PEBP management contracting processes and practices. Finally, we identified some agency expenditures were unnecessary and not an efficient use of agency resources in pursuit of business awards and accreditations. We issued five recommendations in our report that include developing policies and procedures to ensure competitive bidding practices are employed as well as the PEBP Board developing policies to ensure those competitive procurement practices occur consistent with state guidelines. The office accepted our five recommendations that we made to improve their operations.

Turning to the next page is a summary of the audit of the Office of the State Controller's Unclaimed Property Program. The purpose of this audit was to evaluate their processes for collecting, administering and returning unclaimed property. We found that they can strengthen certain processes over entities' reporting of abandoned property to the Program and claims to recover assets. We identified concerns with the Program's

enforcement of its policy for submitting the unclaimed property payments via its online reporting system which contributed to unprocessed reports and payments. The Program can also improve controls over unclaimed property system and inventory to ensure edits to critical data documenting the ownership of unclaimed property is appropriate. In our testing, we found $374,000 in property that wasn't posted timely to the system to allow rightful owners the opportunity to make a claim. Additionally, the Program should better segregate duties over its unclaimed property system as well as user access to the system. Finally, controls over inventory of the safe deposit boxes could be improved. Some of the issues we identified in this audit were similar to findings in prior audits that we've completed of the Program. The Division accepted our 10 recommendations and, in its response, did indicate that various actions had been taken already to implement many of those recommendations

Turning then to the next page is a summary of our audit of the Real Estate Division (Agenda Item VI-A). Our objective for this audit was to determine if controls over the collection of certain cash receipts and accounts receivable were adequate and whether the Division has adequate processes to ensure licensees comply with laws related to the reporting requirements for broker trust accounts. We found that the Division's financial and administrative controls over revenues were inadequate. Specifically, there are limited system controls in the Division's database to prevent staff from making changes to licensees' accounts to misappropriate cash or to detect fraud once it had occurred. Furthermore, internal control procedures designed to compensate for the lack of system controls were not being adhered to by supervisors and staff. The controls over voiding cash receipts and for making adjustments to real estate licensees' accounts were also inadequate. Agency reports indicated as much as 7 percent of all transactions processed in Fiscal Year 2019 were voided. The Division also lacks controls to ensure refunds are posted timely to its database and that only valid refunds are posted and issued. In our testing we did not identify any specific instances of fraud but felt that these recommendations will help ensure that the identification of such things could prevent the occurrence of some of these types of issues. We cited in our report a scope limitation related to the lack of records associated with the testing of voided receipts. As such, we could not determine the reliability of the agencies' voided transaction reports. The agency was also unable to provide a reliable report from the system to identify the population of transferred funds between licensees' accounts. As a result, we were unable to test whether amounts transferred between licensees' accounts were legitimate. Next, the Division's practices only held brokers that managed properties accountable for submitting annual trust account information. However, regulation requires all brokers to report trust account information or attest that they do not manage trust accounts. Finally, the Division's procedures for monitoring trust accounts are inadequate. For 13 of the 19 broker trust account reconciliations we tested, we observed the information reported to the Division was incomplete or contained un-allowed accounting entries that were not investigated by the Division. For this report, we issued six recommendations to address our concerns with the cash receiving process, including improving controls over voids and refunds. Six recommendations are aimed to improve controls over broker trust accounts.

The last two deal with improving the accounts receivable/collections process. The Division did accept the 14 recommendations we made on this report.

On the next page, last but not least, is our audit report addendum for the Records, Communications and Compliance Division, or RCCD, which contains supplemental findings, conclusions and recommendations from our performance audit of the Department of Public Safety's Records, Communications and Compliance Division information security. This report was originally issued in January of 2018. An addendum to the original report was necessary because security vulnerabilities existed in RCCD's information systems. These vulnerabilities related to outdated or unsupported server software. Providing details regarding those vulnerabilities at the time we published our original report would have unnecessarily exposed those information security weaknesses. As of August of 2016, we identified 19 of the 97 servers were running outdated software. As the Division maintains a significant amount of information that includes criminal history, sex offender registry and point of contact firearm information systems, the current and supported software is crucial on those servers to protect the information. Over a period of nearly 4 years, we met with representatives from RCCD as well as Enterprise Information Technology Services (EITS) Division and monitored their progress, which was a difficult process for them until they were able to successfully close the security vulnerabilities. This report addendum includes four additional recommendations which the Division accepted to help ensure the security of the Division servers going forward.

That concludes my summary of the audit reports issued on September 3 and as presented to the Audit Subcommittee. As noted in the letter from Chair Parks, the Audit Subcommittee recommends that the Legislative Commission accept these five reports. Thank you.

Chair Cannizzaro:

Thank you. Any members of the Commission have questions or comments for Mr. Crossman?

Senator Denis:

I don't have necessarily—these are pretty clear to me and I support approving them. My question comes with this last addendum and just thinking about all of our data systems in the state. If it takes us that long to get to all of these with all the data issues that are going on today, I just had a question of how often are we doing that type of an audit on our server systems to make sure that they are all being kept up to date throughout the whole state? I don't know if the audit—I don't know if he can answer that, but that's just the one thing that I was thinking about as I was hearing that.

Mr. Crossman:

Thank you, Senator Denis. What I can say is that within our office we do have a supervisor and two information system auditors that are dedicated to doing just these types of audits. Currently, they are both working on two separate audits, so there are two of us trying to cover the state, so we don't get to every agency with a lot of frequency on the IT (information technology) side. That said, in the work we did with RCCD and working with EITS, we did have the opportunity to work closely with EITS. Obviously they have a vested interest in the security of many of the state agencies' information by hosting most of that, so a lot of the issues as we bring them up are brought to their attention and so they're able to take some corrective actions on their end before we come in and maybe audit that. Hopefully that helps a little bit?

Senator Denis:

It does, but it's also concerning that we obviously don't have enough people to do it more often, and with all the stuff that we see going on with data breaches, cyberattacks and those kind of things. I know we have policies in place that they should be following, but if we're not auditing them in a more timely manner we could be exposing our data if they are not following those procedures. I guess I don't know what we would do for that, but something that we should definitely be thinking about and see if maybe there's a change—happen so that we can make sure that we are able to figure out where those vulnerabilities are quicker. Thank you, Madam Chair.

Chair Cannizzaro:

I don't see any other folks jumping up for questions or comments for Mr. Crossman. Thank you, Mr. Crossman, for your presentation. I would accept a motion to accept the five audit reports as presented by Mr. Crossman this afternoon.

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

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Cannizzaro:

Thank you again, Mr. Crossman, for giving us that very thorough rundown. We really appreciate your work, and the audit reports have been accepted by the Commission. We are going to move on to our item VIII for public comment, and while we are getting that set up and checking in with the callers that we do have on the line, I did want to just take a moment to virtually present, since we can't meet in person at this point in time, two traditional retirement plaques. We have a plaque to honor Cindy Jones, who has recently retired as our Assembly Fiscal Analyst, and I believe that she is actually not with us today but is currently out of the country on a beautiful beach right now, which sounds very lovely and certainly well deserved for all of her very hard work with all of us. She was given an IFC (Interim Finance Committee) resolution at an earlier IFC meeting, and we just wanted to again say thank you and provide her with that retirement plaque as well and thank her for her service. We do have, however, with us Mark Krmpotic, who also we have a plaque to present to him today and honor him for his upcoming retirement and again just thank him for his dedication and hard work, always being able to be a resource and answer all of our questions and provide advice when we have those questions. I know that he was presented as well with a resolution at the last IFC meeting, but I know we wanted to all take a moment to just again say very much thank you for all of your hard work and congratulations on your retirement, which is also very well deserved. Ms. Erdoes does have the plaques that we can see, but I just wanted to take a moment to say thank you and to virtually present Mr. Krmpotic today with his retirement plaque, and again just thank you for your service. If there is other Committee members who would like to jump in while we are getting our public comment set up, that would be perfectly—fine to jump on in.

Senator Ratti:

There's so many places where we're so reliant on the professionalism and the strengths of our staff, and that's across the board, but I think when it comes to the Finance and Assembly Ways and Means Committees it's particularly true. They just do such a high level of work that, as in many cases, they're behind the scenes that makes us look good, so I wanted to express my gratitude to Mr. Krmpotic for everything that he's done, Cindy of course as well. Perhaps gratitude and apologies for the amount of time that you have had to spend with us explaining some things, but thank you so much, Mark. You've just done a fabulous job and you are going to be missed.

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

Thank you.

Chair Cannizzaro:

Thank you so much.

Senator Settelmeyer:

Thank them both for all the work they've done, and I'm a little bit scared with all the brain drain that's going on around here, to say the least.

Mr. Krmpotic:

Thank you.

Senator Settelmeyer:

Thank you for everything you guys have done.

Chair Cannizzaro:

Thank you, Commission members, and again, just a huge thank you to Mark for your service, and of course Cindy as well. We'll definitely be missing you and really appreciate everything, and congratulations on your retirement. That should be a good thing.

Mr. Krmpotic:

Thank you, Madam Chair.

Chair Cannizzaro:

That leaves us with our final item on our agenda, which is item VIII, our public comment. We are doing this second period of public comment for those who weren't able to join us in the first round or wanted to wait until this last round. If you are wanting to provide public comment, I know we gave you a little heads-up before but if you want to and you are on now, please make sure you call that number that's on the agenda and you'll be informed by our staff of our Broadcast and Production Services when you have been connected and it is your turn to speak. Again, we are going to limit comments to two minutes per person but of course always welcome additional written comments to be included in the record. I am now going to turn this over to the BPS staff to queue up those calling in and they will inform you when it is your turn to speak.

Broadcast and Production Services Staff:

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

Chair Cannizzaro:

Thank you so much for being able to facilitate our public comment. I know we did let folks know earlier that we would be moving to our public comment. Again, always welcome to

take written comments for anyone who didn't want to speak publicly or wasn't able to join us. With that, we'll go ahead and move to our actual last item on the agenda, which is our adjournment, and seeing no further business to come before the Legislative Commission at this time, this meeting is adjourned at 4:56 p.m. Thank you, everyone, for your patience and hard work today. I know it's been a little bit of a long meeting, but we got a lot of business done. I just want to thank you all for your diligence and your questions and comments. See everybody soon.

RESPECTFULLY SUBMITTED:

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Jordan Haas, Secretary

APPROVED BY:

_____
Senator Nicole Cannizzaro, Chair

Date: _____

Agenda Item	Witness/Agency	Description
Agenda Item II A	Peter Tolsdorf, NEMA	Public Comment
Agenda Item II B	Dylan Sullivan, Natural Resources Defense Council	Public Comment
Agenda Item III A-1	Jordan Haas, Commission Secretary	Draft Minutes of the Meeting Held on August 25, 2020
Agenda Item III A-2	Jordan Haas, Commission Secretary	Draft Minutes of the Meeting Held on September 18, 2020
Agenda Item IV-A	Bryan Fernley, Legislative Counsel	Administrative Regulations for Review
Agenda Item IV-B	Bryan Fernley, Legislative Counsel	Emergency Regulations for Review
Agenda Item IV-C	Bryan Fernley, Legislative Counsel	Nevada Cannabis Compliance Board Regulations for Review
Agenda Item IV-D	Brenda Erdoes, Director	Request for Approval of Session Hires for the 2021 Legislative Session
Agenda Item VI-A	Daniel Crossman, Legislative Auditor	Summary of Audit Reports Presented to the Legislative Commission's Audit Subcommittee
Agenda Item VII	Senator Pat Spearman, Chair, Sunset Subcommittee of the Legislative Commission	Recommendations of the Sunset Subcommittee of the Legislative Commission