

## **MINUTES OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO REVIEW REGULATIONS**

**November 24, 2009**

The meeting of the Legislative Commission's Subcommittee to Review Regulations was called to order by Chair Marcus L. Conklin at 2:11 p.m. on November 24, 2009, at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and at the Great Basin College, Berg Hall Conference Room, 1500 College Parkway, Elko, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

### **COMMISSION MEMBERS PRESENT (LAS VEGAS):**

Assemblyman Marcus L. Conklin, Chair, Assembly District No. 37  
Senator Maggie Carlton, Clark County Senate District No. 2  
Senator Steven A. Horsford, Clark County Senate District No. 4  
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1  
Senator Randolph J. Townsend, Washoe County Senate District No. 4  
Senator Joyce L. Woodhouse, Clark County Senate District No. 5

### **COMMISSION MEMBERS PRESENT (CARSON CITY):**

Senator Maurice E. Washington, Washoe County Senate District No. 2

### **COMMISSION MEMBERS PRESENT (ELKO):**

Assemblyman John C. Carpenter, Assembly District No. 33

### **STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legislative Counsel  
Eileen O'Grady, Chief Deputy Legislative Counsel, Legislative Counsel Bureau  
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau  
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

### **OTHERS PRESENT:**

Leslie Johnstone, Executive Officer, Public Employees' Benefits Program  
Ed Cousineau, General Counsel, Nevada State Board of Medical Examiners

Richard Simmonds, D.V.M., MS, Vice President, Nevada Board of Veterinary Medical Examiners

Ted Trimmer, DVM

Teresa Thienhaus, Director, Nevada Department of Personnel

Shelley Blotter, Division Administrator, Employee and Management Services, Department of Personnel

Michael J. Elges, Chief, Bureau of Air Quality Planning, Nevada Division of Environmental Protection

Edgar J. Roberts, Director, Nevada Department of Motor Vehicles

Debbie Wilson, Management Analyst III, Research and Development Division, Nevada Department of Motor Vehicles

Donald E. Jayne, CPCU, Administrator Nevada Department of Business and Industry, Division of Industrial Relations

John Wiles, Division Counsel, Department of Business and Industry, Division of Industrial Relations

Chair Conklin called the meeting of the Legislative Commission's Subcommittee to Review Regulations to order at 2:11 p.m. He requested Ms. Clark call the roll.

Ms. Angela Clark called the roll. All the members were present.

Chair Conklin said this was the first meeting of the interim. The members had a list of the regulations for discussion. He chose to have separate motions based on groupings of the consent items. He said the first grouping was the regulations submitted pursuant to Nevada Revised Statute (NRS) 233B.067 which included 2008 and 2009 regulations. He started discussion with R205-08. Chair Conklin said Ms. Erdoes had comments.

Brenda Erdoes, Legislative Counsel, said there was an error in R205-08. She said in Section 30, 680A.172 should not be repealed. It was an exemption for smaller insurers, and it was not the intent of the Insurance Division to repeal that section. Also, Section 30 would become effective on December, 31, 2009, and the remainder of the regulation on January 1, 2010.

Chair Conklin next mentioned regulations R036-09, R038-09, R039-09, R044-09, R045-09, R048-09, R067-09, R068-09, R104-09, R105-09 and R106-09.

Chair Conklin said three regulations were held for further discussion. Those regulations were R023-09, R046-09, and R072-09. He asked for a motion of consent to approve the remaining regulations.

SENATOR TOWNSEND MOVED TO APPROVE R036-09, R038-09, R039-09, R044-09, R045-09, R048-09, R067-09, R068-09, R104-09, R105-09, AND R106-09.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion of regulations deferred from the October 26th meeting. The regulations pulled for further discussion were R060-09, R088-09, and R111-09. Regulation R063-09 was the remaining regulation for consent.

SENATOR TOWNSEND MOVED TO APPROVE R063-09.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin said there were two regulations for NRS 233B.0681. The regulations were advance approvals. Regulations R127-09 and R141-09 were both pulled for further discussion. No motion was required.

Chair Conklin opened the discussion on R023-09, the Board of Public Employees' Benefits Program regulation. He said Ms. Johnstone would testify.

Senator Carlton asked Ms. Johnstone what they were trying to fix in the regulation.

Leslie Johnstone, Executive Officer, Public Employees' Benefits Program, (PEBP) said the regulation as written specified a plan year that ran from July 1st through June 30th of each year. PEBP was requesting the specific dates for the plan year be removed. She said last year, due to budget uncertainties, PEBP wanted to extend the plan year in order to set rates for the subsequent plan year after the budget was approved. She said they had a temporary regulation and R023-09 would make it permanent.

Senator Carlton said when the plan year was extended last year to October, the employees covered under the program had one year of benefits stretched into October. Once they had reached the maximum on a benefit they could not access that benefit until October. She said they paid every month for their benefits, but they might not have been able to access the benefits.

Ms. Johnstone said Senator Carlton was correct. There were some people negatively impacted.

Senator Carlton asked if the implementation of the regulation meant they would continue on an ongoing basis or would they settle on dates so the people paying for their benefits would know the calendar year for the benefits.

Ms. Johnstone said it was very expensive for the program to do the extension. She said it was not in anyone's best interest to extend the plan year on an ongoing basis.

Senator Carlton asked what the regulations accomplished.

Ms. Johnstone replied in the event something warranted a shorter or longer plan year, the plan had the ability to do it. The plan would go through a noticing process to the participants, but not be subjected to a regulation restriction on a July 1st start and June 30th end-date.

Senator Carlton asked if the regulation impacted groups of employees who opted out of the plan.

Ms. Johnstone said it would change those dates also. She said there had been no applications to opt-out since 2005.

Assemblywoman Kirkpatrick asked what occurred when the Board changed and new medical plans came into place. She asked if stability was affected with the proposed changes.

Ms. Johnstone said at the time it was decided it was better to extend the plan year and go to the open enrollment with solid rates and plan design. She said the budget was in flux.

Assemblywoman Kirkpatrick said the plan stated the Board determined when the open enrollment occurred for the plan. She said if they missed the time to opt-out, it might be inconsistent if the dates were constantly being changed.

Ms. Johnstone said the proposal was not considered a routine practice of the PEBP Board. It was an exceptional year and it was a financial cost to the program to do the extension.

Assemblywoman Kirkpatrick asked what happened to people in the plan if the regulation did not pass. She asked what the calendar date was after the temporary regulation expired.

Ms. Johnstone said the temporary regulation would expire, but it was after the plan year had been extended. She said they would consult legal counsel if anyone challenged it.

Assemblywoman Kirkpatrick asked if anyone testified during the workshops.

Ms. Johnstone said there was no testimony. She said they had received a few complaints about the dental maximum.

Senator Carlton said many of the insured were State employees and they were working when the workshops were held. She stated in the interest of full disclosure she was married to a State employee. She asked Ms. Johnstone if the Board kept track of the number of people in the preferred provider choice list and the number of State employees who took the HMO option. She said the employees who took the preferred provider option were subsidized at a higher level than the employees at the HMO option.

Ms. Johnstone said she could supply the data to Senator Carlton. She said when they went through the budget deductions, they chose how they would subsidize people. They subsidized the base plan at a higher percentage than the other plan. In the past, it was the high deductible preferred provider option. She said it was a continuation from the past to have a base plan receiving a higher subsidy.

Senator Carlton asked if there were any questions about subsidizing people at different levels.

Ms. Johnstone said there were 44,000 participants, and they received complaints from both sides. She said it was a personal situation and their preferences.

Senator Carlton said if the choices had to be made again to extend benefits, discussion should occur before it happened.

SENATOR TOWNSEND MOVED TO APPROVE R023-09.

SENATOR HORSFORD SECONDED THE MOTION.

Senator Carlton questioned how the Legislature would be notified if they extended the plan year.

Ms. Johnstone said they worked through the Legislative Counsel staff, and it was considered part of the PEBP budget process. It was also discussed during their budget hearings.

THE MOTION CARRIED.

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Senator Townsend said at the end of the hearing, there would be discussion of access. He asked if there were changes to the plan that affected State

employees, and if there were, could hearings be later in the workday, after 5:00 p.m., so people had an opportunity to attend the hearings. He said an employee should not have to take leave time to attend a workshop and offer public comment. It was important to give people an opportunity to voice their concerns.

Ms. Johnstone said they would take the suggestion under advisement.

Chair Conklin opened the discussion on R046-09. He said a person from the Board of Medical Examiners was present to testify.

Senator Carlton asked why a definition was needed stating "actively engaged in the practice of medicine."

Ed Cousineau, General Counsel, Nevada State Board of Medical Examiners, said the wording was a direct response to regulations specifically concerning legislation enacted at the 2007 Legislative Session. He said it was NRS 630.1065, the Licensure by Endorsement Statute. One of the requirements of Licensure by Endorsement was being actively engaged in the practice of medicine. The matter was brought before the Board of Medical Examiners and they decided they needed clarification of the statute. He was asked to proceed with an adoption of a definition of "actively engaged in the practice of medicine." He said the definition excluded fellowships and residencies.

Senator Carlton said the Board had a different outlook than she did. A resident was someone who was practicing medicine, but had not yet completed their education.

Mr. Cousineau said the Board's desire was clinical practice which was differentiated from residency. He said there was no guarantee of physical contact with patients during residency.

Senator Carlton asked if there were times when residents in the County Hospital were actually practicing. She asked if that time would count against them.

Mr. Cousineau said the regulation would not allow for the residency.

Senator Carlton said not all residents interacted with patients, but the ones who did would be penalized by this regulation. She asked if that was correct.

Mr. Cousineau said he could not speak to the exposure the residents had, but the Board did not include the training in the residency programs.

Senator Carlton said she did not want to penalize someone who spent two years in a hospital receiving hands-on training and have the two years count against them when they wanted to come to Nevada.

Mr. Cousineau said there were other avenues of licensure. He said the regulation was an endorsement statute which was a lesser requirement. It required Board certification and five years of actual clinical practice. He said it was an alternative to traditional licensure route.

Ms. Kirkpatrick asked if the regulation applied to people who came to Nevada from out of state and brought their own patients for clinical trials.

Mr. Cousineau asked if she meant medical residents, and if so, she was correct.

Ms. Kirkpatrick said she saw a potential where clinics came to Nevada and brought their own patients for clinical trials.

Mr. Cousineau said the regulation offered an alternative means of licensure. He said it applied more to individuals who had just graduated from medical school and had only practiced for several years in a clinical setting and were not necessarily qualified through other traditional means. The Board's concern was they did not want people coming to the State who did not have the experience.

Senator Carlton asked if the Medical Board had an appeal process for someone who was denied licensure through this avenue.

Mr. Cousineau said applicants always had the opportunity to appear in front of the full Board for contemplation of their application. He said if there were questions of propriety of the licensing through the statute, they had the opportunity to come before the Board and explain their circumstances.

Senator Carlton said as tightly written as the regulation was, the Board would not have an opportunity to hear the appeal. She said that was her concern.

Mr. Cousineau said they could advance their circumstances to the Board. He said the endorsement was an alternative to the traditional modes of licensure.

Senator Carlton said without an appeal process, she was opposed to the regulation.

Ms. Kirkpatrick said she understood there was always an appeal process. She said if the appeal process was not already in statute, people had the constitutional right to appeal. She said the regulation gave some safeguards, yet was still flexible enough to move forward.

Senator Carlton wanted to clarify that it was not just the appeal process, but the flexibility component also. The way the definition in the regulation was written, the Board was not allowed to consider the time spent in a residency program. She was concerned flexibility was not built into the regulation.

Chair Conklin asked if there were any additional questions or concerns. He discussed the options available to the Subcommittee. He said they had to make an affirmative action. If they did not take any action, the regulation failed. They could defer the decision to the next meeting or they could adopt the regulation.

Senator Townsend asked if the Board had the authority to say someone met the required criteria because their residency was all hands-on if they appeared under this provision.

Mr. Cousineau said he needed to clarify that it was not really an appellate process. He said normally the individual would be licensed if they met all criteria. If they were unable to meet the criteria, they would be returned to the Board for their determination. He said it was an appeal of the denial of the ability to be licensed by endorsement. They could always go before the Board and explain their position and why they should be granted licensure. He said it was not a denial summarily.

Senator Townsend said the Board had the authority for someone to appeal a denial at the lower level. The Board had the authority to look at the residency and say "yes" it was fully hands-on, and by their definition it was acceptable.

Mr. Cousineau said the Board had the authority to do that and also to consider other routes of licensure.

Senator Carlton said the regulation specifically said: "...means actual participation in a clinical practice but does not include any time spent in a residency program or fellowship training." She asked if future legal counsel would agree with Mr. Cousineau.

MS. KIRKPATRICK MOVED REGULATION R046-09 BE DEFERRED UNTIL THE NEXT MEETING OF THE LEGISLATIVE COMMISSION OR THE SUBCOMMITTEE TO REVIEW REGULATIONS, WHICHEVER TOOK PLACE FIRST.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Conklin suggested Mr. Cousineau discover a way to make Senator Carlton understand the position and be comfortable that a person would have an opportunity for appeal if they did not meet the apparent strict requirements in the regulations.



Senator Townsend said it would be helpful if his discussions with the Board started from the beginning with the concerns of the Board about relatively new doctors applying to enter Nevada. He said perhaps the Subcommittee did not understand the Board's concerns and resolution was possible.

Chair Conklin opened discussion on R072-09, the Nevada State Board of Veterinary Medical Examiners.

Senator Horsford asked why these regulations were necessary now. He said there was a bill considered during Session attempting to do several of the same things. He asked for testimony from members of the public. He said some of the provisions were not supported by the industry being regulated.

Richard Simmonds, DVM, Vice President, Nevada Board of Veterinary Medical Examiners, offered background on the input the Board sought. He said on October 7, 2009, they had a workshop in Reno. It was advertised as required.

Senator Townsend asked Dr. Simmonds what issues motivated the Board to address something in a regulation.

Dr. Simmonds said Section 2 of the requested regulation change was consumer-driven. He said they included some "housekeeping" in Section 3 where they consolidated all the fee structure in one area rather than scattered throughout the regulations. The Board added additional requirements and two sources for continuing education. They had queries from people wanting to come into Nevada but declined to come due to the licensing requirements. Those issues were addressed in Section 5. He said the other sections provided uniformity of requirements.

Ted Trimmer, DVM, said laws were changed for the benefit of the public and their pets or animals. He was concerned about Section 5. He said they needed to ensure the quality of the applicants coming to Nevada. It prevented disciplinary problems in the future. The Board indicated it wanted to change the requirements to make it easier for veterinarians to come to Nevada. He said the Board wanted to be the quality control in determining the requirements for veterinarians. He said they were not following any national or accreditation proven standards. He said quality standards were needed to protect Nevada's pets and the public. Veterinary medicine was international and Nevada needed to be sure quality veterinarians were providing services to the public.

Senator Horsford asked what the specific Internet programs were where out-of-state veterinarians or veterinarian technicians could complete their continuing education courses. He said specific providers were not typically written into laws or regulations. He also asked why the fees were increased, as they appeared to have been doubled or tripled in some cases.

Dr. Simmonds said the fees were not increased in the proposed table. He said the fees were consolidated. He said there had not been an increase in fees for 10 years, and the nonprofit facilities had fees reduced from \$300 a year to \$100 a year. The current regulations said veterinarians could use certain specified Internet sources that were verifiable to count for up to five hours of the required continuing education. He said the new regulations were designed to make it the same for the veterinary technicians. He said the veterinarian training programs asked the Board to include the two Internet sources which tracked the responses of the trainees.

Senator Horsford asked for further clarification on the fee structure. He objected to the Internet process. He took a position that unless there was justification warranting it, the approach described was not used for licensure or professional classifications.

Dr. Simmonds said Board members had the concerns of the public and their pets at heart. He said if the current regulation was not approved they would have to recommend a change to the veterinarians. The current regulations allowed up to five hours of Internet education as long as it was a monitored program.

Chair Conklin asked Ms. Erdoes about the fee structure.

Ms. Erdoes said the regulation appeared to have some increases. An example was given in Section 13 of the regulation, subsection 2(d) where a \$25 fee was deleted. It said it was in section 3 of the regulation. However, in section 3 on page 2 of the regulation, the fee was \$50. She said it appeared some fees were replaced with a higher amount.

Dr. Simmonds said the \$25 fee was for a facility in which the person with the highest percentage of ownership or interest equal to that percentage was a licensed veterinarian. He said the fee of \$25 was the same in the table of fees.

Ms. Erdoes said it appeared the difference was a renewal or a new application. The new application was \$50 and a renewal was \$25.

Assemblywoman Kirkpatrick said the Legislature did not pass it and it did not need to be a part of regulations. She said it was confusing placing all the fees in one area because they could be misinterpreted. She did not support the regulations and she would make a motion to deny the regulations.

Chair Conklin asked to hold the suggestion to deny the regulations until after all the members asked their questions.

Senator Carlton asked Ms. Erdoes if there was anything in the regulation that the Board did not have statutory authority to do.

Ms. Erdoes said her office looked at each one of the regulations. She said for example, on the fee issue the Board had the statutory authority to adopt the fees by regulations. She said other changes were made to conform to the statutory authority, and everything in the regulations conformed to their authority. However, the Subcommittee could find the Board was not within the intent of the Legislature.

Senator Carlton said she asked the Board to become better at putting their fees in statute so the fees could not be changed under regulation without the Subcommittee discussing or knowing about the changes, and they always asked Boards to set a financial cap and work their way up to the cap. She said the veterinarian fees were strewn throughout each section. Senator Carlton asked about the examination in Section 4 of the regulations. She said she looked at the provision as a credentialing program for veterinarians coming into Nevada as another pathway for veterinarians to come and practice. She asked if the term "examination" referred to the national examination.

Dr. Simmonds said current regulations required that the veterinarian had graduated from a school accredited by the American Veterinary Medical Association and had passed the national board examination within 5 years of coming to Nevada. If it was over 5 years, they were required to take an additional written examination. If the veterinarian was from a non-accredited school, such as one of the veterinarian schools in the Caribbean, they also had to have a credential from the American Veterinary Medical Association's Education Commission on Foreign Veterinary Graduates before they could take the national boards. He said everyone coming to practice in Nevada had to take the Nevada jurisprudence exam.

Senator Carlton recapped the discussion. She said an American trained veterinarian at a veterinary school had to take the national exam. A foreign trained veterinarian had to take the competency exam before they could take the national exam. She said ultimately all veterinarians had to pass the same test. Senator Carlton next asked about the 7,000 hours required of being actively engaged in veterinarian practice during the past five years.

Dr. Simmonds said the number of hours was roughly equivalent to at least three and one-half years of actual hands-on practice. Dr. Simmonds said the items in Section 5, subsections 2(b), (1), (2) and (3) all must be met in order for a license to be granted. If they were not met, the veterinarian had to take additional exams.

Senator Carlton said the provisions were for people who passed the exam more than five years ago. She said she agreed with the regulation except for the fact that they limited themselves without high enough financial caps to deal with the flexibility issue.

Senator Horsford asked about the other qualifications beyond the test. He asked why the referral recommendations were reduced from three to one recommendation and why the Board allowed the physical therapists to be reduced from three years to one year. He said the standards, aside from the test, appeared to be lowered. He asked what the rationale was for lowering the standards and where did it put Nevada compared to other states.

Dr. Simmonds said the proposed changes did not lower the standard of care in Nevada.

Senator Horsford said his question was about what the standards were for becoming licensed, not about quality of care.

Dr. Simmonds said it did not lower the standard for acceptance of veterinarians in the State. He said in many areas, Nevada was ahead of other states; many other states simply had reciprocity. He said Nevada was above the middle in the requirements for licensing. The Board wanted more proof of qualifications to be licensed in Nevada. He said there were three accredited veterinarian technician programs in Nevada, and most other states now required education. Transcripts from a formal accredited program and one letter of reference were sufficient proof for the Board. He said reducing the physical therapy from three years to one year was in order to be consistent with the human licensure. He said chiropractors were only required to have one year and animal and human therapists were licensed by both boards.

Senator Townsend asked what the motivations were for changing the regulations, if it was a consumer-driven demand.

Dr. Simmonds said they had complaints from practitioners in the State based on people who declined to come to Nevada as a result of the current statute.

Mr. Carpenter asked which examination Dr. Jack Walther was involved in at this time.

Dr. Simmonds said Dr. Walther was the core supervisor for the Clinical Proficiency Exam that was part of the Education Commission for Foreign Veterinary Graduates Program. The majority of the exams were given in Las Vegas under Dr. Walther's supervision.

Mr. Carpenter asked Dr. Simmonds what Dr. Walther thought about the change in the regulations. He said he understood Dr. Walther was concerned about foreign entities coming to practice in Nevada.

Dr. Simmonds said Dr. Walther had not talked to him about the changes in the regulations. But, Dr. Walther had problems with the bill in the Legislature at the last Session.

Dr. Trimmer said Dr. Walther believed in protecting the people in Nevada and their pets. He would be opposed to the way the regulations were written. He said Dr. Walther believed national standards should be adhered to by the Board.

Mr. Carpenter asked if there were provisions in the regulations that were in the Legislation that did not pass in the last Session.

Chair Conklin said Ms. Kirkpatrick indicated S.B. 52 failed last session. He said some of what was in these regulations failed last session. He asked if there were additional questions from the Subcommittee.

Senator Carlton recommended the Subcommittee give the regulations back to the Board and have them work on them some more. She suggested it be split into various components.

SENATOR CARLTON MOVED TO DENY R072-09.

SENATOR TOWNSEND SECONDED THE MOTION.

Ms. Kirkpatrick said the earlier bill was S.B. 57 from the last session. She said S.B. 52 was the Real I.D. bill.

Senator Carlton said she supported what the veterinarian board was trying to do. She anticipated the regulations returning to the Subcommittee in a clearer form.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R060-09.

Senator Carlton said she had questions concerning the regulation. She said the Subcommittee needed to understand the current practices. She had a problem with the way the Family Medical Leave Act (FMLA) and the other benefits State employees accrued were run concurrently. She said using sick leave also affected the FMLA.

Teresa Thienhaus, Director, Nevada Department of Personnel, said she thought Senator Carlton believed the employee was penalized by having the Family Medical Leave Act run concurrently with the sick leave. She said federal law mandated the employer provide FMLA for any kind of serious health condition.

Senator Carlton said the federal law did not mandate an employee must take sick leave if they took FMLA. She said a State employee earned sick leave through hours worked. The FMLA was put in place to protect employees and gave them choices so they would not lose their job for choosing to take care of a sick family member. She said FMLA allowed 12 weeks, but because sick leave for State employees was used and ran concurrently with FMLA they may have exhausted their leave time by the end of the 12-week period.

Ms. Thienhaus said if there was a long-term State employee that had accumulated sick leave on the books after the 12 weeks of FMLA was used, the employer would still work with the employee to take the leave.

Senator Carlton said she was concerned about when the employee reached the end of the 12-week period. She said if the employee had 12 weeks of sick leave and 12 weeks of FMLA, they had 24 weeks out of the year. However, because the leave was concurrent, the employee only had 12 weeks in a year. She said if any employee earned a benefit such as sick leave, they should not lose the time earned. She said the FMLA was there to provide unpaid leave to employees who needed to take care of sick family members. She believed the process being used was in direct contradiction to the public policy statement in the FMLA, due to the enforcement of the concurrent time clock.

Chair Conklin asked if other organizations have been looked at.

Ms. Thienhaus said all the jurisdictions in Nevada with the exception of Washoe County run FMLA concurrent with paid leave. She said it did not take anything away because FMLA only guarantees 12 weeks of leave. She said because FMLA was unpaid, someone who did not have a full 12 weeks of paid sick leave on the books, could take unpaid FMLA without being penalized. If a person worked one year for the State, they are eligible for FMLA leave. She said the employee might only accrue 50 hours of paid sick leave, but they were able to take 12 weeks under the FMLA.

Senator Carlton said because the hours ran concurrently, it was 50 hours under FMLA also. It was not a true 12 weeks because of the first 50 hours.

Ms. Thienhaus said it was 12 weeks of FMLA but part of it is unpaid. The unpaid part was guaranteed by federal law.

Senator Carlton said the public policy statement that surrounded the FMLA gave employees an opportunity to take unpaid leave to take care of a sick family member. She said the way it was implemented now, the employee used their sick time, which was paid leave. She asked why paid leave was used as part of a component of an unpaid leave status. She said the employee was being double dinged and the leave should run consecutively.

Ms. Kirkpatrick said the Subcommittee should move forward with the regulation. She said she had not heard from any State employees that it was an issue.

Senator Carlton disagreed. She said to allow a change now without a discussion at the Legislative level was not a good policy. She wanted to talk about the policy in its totality before making a decision.

Shelley Blotter, Division Administrator, Employee and Management Services, Department of Personnel, understood the concerns. She had contacted Dennis Mallory with the American Federation of State, County and Municipal Employees (AFSCME), and he said their practices were in line with local government and they had no concerns. She said running leave concurrently was not a problem. However, delaying action on the regulation would impact the armed service members. She said if they were injured, the next of kin could take 26 weeks to care for them. The regulation allowed the employee to use sick time to take care of an injured service member. If the regulations were not adopted, they would not have eligibility to use sick leave.

Chair Conklin said Mr. Mallory of AFSCME had relayed that he thought the regulation was fair. He asked if there were further questions.

MS. KIRKPATRICK MOVED TO APPROVE R060-09.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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Chair Conklin opened discussion on R088-09.

Ms. Kirkpatrick asked why the date being used was 2002 instead of 2008.

Michael J. Elges, Chief, Bureau of Air Quality Planning, Nevada Division of Environmental Protection, asked if the question referred to Section 1, Subsection 2 of the regulation. He said that portion of the regulations required the State to submit a state implementation plan for the Environmental Protection Agency (EPA) approval prior to adopting a more current version of the regulations. The plan had not been submitted to EPA or received their approval. The balance of the regulation related to standards that did not require approval of EPA in advance.

Chair Conklin asked if there were any additional questions from the Subcommittee.

SENATOR HORSFORD MOVED TO APPROVE R088-09.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R111-09.

Ms. Kirkpatrick said this was another bill that had been before the Legislature and did not pass. She asked the people with the Department of Motor Vehicles (DMV) what portion of the regulation was needed to prove the State was moving forward on the federal level. She was concerned with the regulation and thought the DMV had the ability to do a temporary regulation.

Senator Washington said the DMV had gone to great extent to prove their worthiness in complying with the federal regulations. He said the DMV was trying to conform to the issues from the federal government. The DMV removed the concerns that existed in the earlier bills, and it was necessary to comply with the federal regulations in order to receive federal funds for highway and transportation needs. He said it would be irresponsible to not pass the regulations and place the federal funds in jeopardy. Senator Washington recommended passing the regulation in order for the DMV to move forward.

Ms. Kirkpatrick said it was an emergency regulation. She said she could make a motion to deny the regulation.

Senator Washington said the DMV personnel went to great lengths to prove the regulation needed adoption.

SENATOR WASHINGTON MOVED TO ADOPT REGULATION R111-09.

SENATOR TOWNSEND SECONDED THE MOTION.

Chair Conklin asked representatives from the DMV to speak to the Subcommittee. He said there were some concerns about the regulation. Two different classifications of cards were being created, and it appeared there were issues concerning equality. He said the way the federal requirement was adopted created peculiar standards, and there were two very different standards which created a potential way in which discrimination in the employment market could occur. Chair Conklin said the second issue was the federal funding issue. He wanted to know what was required and what was at stake under this regulation.



Edgar J. Roberts, Director, Nevada Department of Motor Vehicles, said the reason for the regulations was S.B. 52 was passed out of the Senate. The Speaker of the Assembly, Mrs. Buckley, approached the DMV and asked that the concerns be addressed in regulations after she met with Mark Krmpotic, Senior Program Analyst, Fiscal Division, Legislative Counsel Bureau. He said they met with Mr. Krmpotic over their needs in regulation. There were two choices of cards: a card for citizens who wanted an advanced secure driver's license or identification and a card for those who wanted a regular driver's license.

Chair Conklin said he had a new driver's license. He described his license and asked if it complied with the federal standard.

Debbie Wilson, Management Analyst III, Driver Programs, Research and Development Division, Nevada Department of Motor Vehicles, said the license Chair Conklin was issued was not the advanced secure card. The DMV had not implemented the program because they were waiting for the adoption of the regulations.

Chair Conklin asked if he could get on an airplane on January 2, 2010.

Ms. Wilson said yes he could as long as the State implemented material compliance with the federal law. She said the State had to meet 18 benchmarks. The license was then valid through 2014 or 2017 if a person was over 50 years of age.

Chair Conklin asked if any of the 18 points of compliance were in the regulation.

Ms. Wilson said all 18 points were in the regulation.

Chair Conklin asked what happened to his license in regard to use at the airport if the regulation was not passed.

Ms. Wilson said the Transportation Security Administration (TSA) was required to abide by the Real ID Act which prevented anyone traveling after January 1, 2010, from using their existing card if the State did not meet compliance.

Chair Conklin said if the regulation was not passed in its current form, people in the State with even the newest driver's license, would not have a valid form of identification to travel on airplanes.

Ms. Wilson said it could not be used as a sole source. Other forms of acceptable TSA documentation would be required to travel.

Chair Conklin asked what TSA documentation was required.

Ms. Wilson said TSA accepted passports, and they had a list of other documentation they accepted.

Senator Horsford asked Ms. Wilson why DMV had not implemented the provisions necessary to meet the federal requirements through an emergency regulation.

Ms. Wilson said the federal law went into effect on January 1, 2010, and because the bill was not passed, it had to be done by regulation. She said there were certain statutes identifying the requirement to adopt things by regulation and there was time to do it as a regular regulation so they did not have to do an emergency regulation.

Senator Horsford said they could do an emergency regulation now.

Ms. Wilson said she did not understand the question. The regulations were done, and they had held public hearings and were able to do the regulations in the required manner and did not have to do them again.

Senator Horsford said if the regulation was not adopted today, the other approach would be implementing them through emergency regulations.

Mr. Roberts said that would be the last alternative and their only option.

Senator Horsford asked if they had talked to the Governor's Office concerning an emergency regulation.

Mr. Edwards said they proceeded with the regulations because during session, Speaker Buckley asked the DMV to address their needs in regular regulations and hold workshops and hearings to receive input from the public. He said the Governor's Office received copies and had not commented on the regulations.

Chair Conklin said members on the Subcommittee were uncomfortable with the regulation. He said some of the members had issues, questions and concerns with the regulation. Senator Horsford was asking if the regulation could be deferred and passed as an emergency regulation.

Senator Washington said there was a motion on the floor. He said the DMV had demonstrated the efforts to meet expectations and fulfill the requirements of the federal government, and the requirements were in the regulation.

Senator Townsend asked Senator Washington to withdraw his motion. He said there were concerns about the individual components of the regulation. He stated if the motion were withdrawn and the Agency pursued an emergency regulation, which gave them 120 days, it would allow the Subcommittee to know if the

federal government was requiring certain things. Senator Townsend withdrew his second of the motion.

Senator Washington said he spoke to the members from the DMV and they said if they were to proceed with an emergency measure, they would not meet the federal requirements. He said it would put the State out of compliance. He said the issue had been discussed many times. He said he did not withdraw his motion.

Senator Townsend asked the people from the DMV why an emergency regulation did not fulfill the January 1st date. He said legal counsel did not agree with the DMV.

Mr. Roberts said the department was unclear as to the requirements of emergency regulations. He asked Ms. Erdoes for information regarding the time constraints imposed on emergency regulations.

Ms. Erdoes said they could file an emergency regulation as soon as the Governor signed the regulation. She said they could file the current regulation as an emergency regulation if the Governor signed it tomorrow. The effective date would become that day and continue being effective for 120 days.

Chair Conklin said Senator Townsend was proposing the DMV give members of the Subcommittee time to talk to other people in the federal administration. He said an emergency regulation would allow 120 days for any changes the Subcommittee deemed necessary. He said they would not deny the regulation, but instead would defer it in order to have more time to work on it.

Mr. Roberts said they would not meet the compliance date of January 1 regarding Nevada issuing an updated driver's license or ID card. He said they did not know what TSA was going to do in the future.

Chair Conklin asked what specifically was not being met in an emergency regulation. He said the exact regulation, R111-09, could be put into effect with the Governor's approval and filing the next day.

Mr. Roberts said the DMV would pursue the emergency regulation as requested.

Chair Conklin asked Mr. Roberts why they would not be in compliance.

Mr. Roberts replied he could not speak for the Governor or his view on an emergency regulation. He said the current law was not in compliance.

Chair Conklin said Ms. Erdoes understood any extension the federal government granted was for the period of the extension of any regulation. He said if an

emergency regulation was in place for 120 days, the federal extensions would also last for 120 days.

Senator Washington said he was not in agreement with an emergency regulation, but he rescinded his motion. He said it was just prolonging something that had to be done in order to comply with the federal regulations. They were putting the responsibility on the Governor for something he viewed as the Subcommittee's responsibility.

Mr. Roberts said there were no more federal extensions; they ended January 1st.

Chair Conklin said he understood there were as many states that had denied the provisions as had actually passed the provisions. He said it was a big federal question as to what would happen on January 1, 2010.

Senator Washington withdrew his motion and Senator Townsend withdrew his second to the motion.

Ms. Kirkpatrick said her biggest concern was that the State was inconsistent in how the DMV accepted identifications. She said two different types of licenses just added to her concerns.

SENATOR HORSFORD MOVED TO DEFER R111-09 AND DIRECTED THE DEPARTMENT OF MOTOR VEHICLES TO PURSUE AN EMERGENCY REGULATION WITH APPROVAL OF THE GOVERNOR. AFTER JANUARY 1, 2010, ANY FURTHER REQUIRMENTS BY THE FEDERAL GOVERNMENT WOULD BE INCORPORATED IN THE FINAL ADOPTION OF THE REGULATIONS.

SENATOR TOWNSEND SECONDED THE MOTION.

Chair Conklin asked Mr. Roberts to remain in close contact with the Subcommittee.

THE MOTION CARRIED. (SENATOR WASHINGTON VOTED NO.)

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Chair Conklin said the Subcommittee would discuss the final two regulations, R117-09 and R141-09. He said both regulations were provided in advance of final approval by the agencies. He said any time a regulation was passed in advance before approval by the public or vetted through the public process was unusual. He asked Senator Townsend if he had further input on R127-09.

Senator Townsend said his main concerns had been addressed by Chair Conklin.

Chair Conklin asked Ms. Erdoes if the regulations were denied if the Subcommittee took no action on them.

Ms. Erdoes said if the Subcommittee did nothing, the regulations were not approved for advance. They had the option of denying the regulation and the regulation would then have to come back to the Subcommittee.

Chair Conklin suggested no action on regulation R127-09. He said he expected the regulation to be resubmitted after the process was completed. Chair Conklin said he had questions and issues with R141-09. He asked the Subcommittee if it would be beneficial to have people from the Division of Industrial Relations speak to them.

Ms. Kirkpatrick said she called the Division and did not receive a response from them. She stated there were not enough public hearings on the regulations.

Senator Townsend said the premise of a regulatory agency was that they were the full-time professionals who possessed an expertise to direct a workshop on the Legislative intent of a statute and take the input of all interested parties. The workshop allowed them to craft a draft regulation to be circulated to all interested parties. The draft regulation was written for further input before a regulation was issued. Then the agency had hearings on the proposed regulation. He said the process had not been completed and the input from the public was not yet heard. He said a regulation cannot be accepted when the public has not had an opportunity to see the proposed regulation in draft or final form. Senator Townsend said the committee did not want to set a precedent or abdicate their authority to the Executive Branch.

Senator Carlton said she believed there was a workshop.

Chair Conklin said there was a workshop in August, but there were concerns about the regulation. He said none of the concerns of the public were addressed in this regulation. He said exemptions were not spelled out in the regulation, and the bill was already in law.

Donald E. Jayne, Administrator, Department of Business and Industry, Division of Industrial Relations was present at the meeting.

Chair Conklin stated the advance regulation issue was a problem for the Subcommittee. He said they had input from many people on this regulation who were uncomfortable because it was not fully vetted and their issues had not been addressed. Chair Conklin said the bill would take effect January 1, 2010. He suggested the Division of Industrial Relations put an emergency regulation into place and use the time in the next 120 days to solve some of the problems. He

said there were legal issues also. The Subcommittee was not prepared to pass an advanced regulation that was not vetted by the public.

Mr. Jayne said he sensed the direction of the Subcommittee. He said they had a regulatory hearing scheduled for December 22, 2009. He needed to consult with his Division counsel to determine when he needed to request an emergency regulation. He said there was wide disparity with some of the challenges in the regulation.

Chair Conklin said the public could be included in the process after an emergency regulation process was used.

Mr. Jayne said it would allow a more open vetting of some of the questions.

Senator Carlton had concerns about an emergency regulation. She wanted the Division to receive more public input and have the regulation answer the concerns of the public. She said the problem might be the current regulation would be in place for 120 days, and they would have two standards.

Mr. Jayne stated when he said he needed to consult with legal counsel, he meant he was concerned there was not enough time to rewrite the regulation after the December 22, 2009, meeting. He said it was their intent to conduct hearings and if there was time to revise an emergency regulation, he would consider that.

John Wiles, Division Counsel, Department of Business and Industry, Division of Industrial Relations, said they had to prepare a Statement of Emergency and have the Governor sign the regulation which became effective upon filing. He said that could be done on the last business day of December.

Senator Townsend asked for the date the Governor signed the bill requesting the regulations be drafted.

Ms. Erdoes said the date was June 16, 2009.

Senator Townsend asked what held up the regulations. He said the Division had input on the effective date for the regulation.

Mr. Jayne said the bill appeared to be fairly direct in its intent to improve safety in the workplace. He said they began to work on the bill immediately, conducted workshops and worked with stakeholders in the interim period trying to find some compromise. They went to language in the bill for definitions that were still continuous today. He said they ultimately took the regulation to the Legislative Counsel for review on September 24, 2009, and they received the regulation back from Legislative Counsel last week.

Senator Townsend asked why they set a December 22, 2009, meeting when they knew January 1, 2010, was the date for enacting the regulation.

Mr. Jayne said he thought he was required to give a 30-day notice for the formal regulatory hearing.

Ms. Erdoes said Legislative Counsel worked back-and-forth with the Agency on the regulation. Due to the change made in 2009 on NRS 233, the Agency was not allowed to give formal notice until they received the final document from the Legislative Counsel. She said November 22 was the first day they could give notice for a December 22nd meeting.

Senator Townsend said the Agency had an obligation to work through the problems. He said if they held more meetings there was a better chance of agreement between the various parties.

Ms. Kirkpatrick said she was not voting for regulations ahead of time. She said it did not address the supervisor position, the on-line schooling, what happened if they already had a card. In her district, 75 percent of the people were construction workers and they had many unanswered questions. She asked why the Nevada Department of Transportation was exempted from the regulations.

Chair Conklin said the Subcommittee planned to take no action on the regulation. He expected them to put an emergency regulation into place after the December 22nd hearing. The regulation could reflect any changes the various parties agreed upon. He said some members of the Subcommittee would assist if needed. He suggested using the additional time to continue having hearings and return to the Subcommittee with a regulation acceptable to all stakeholders involved in the regulation. He said the stakeholders ranged from labor, utilities, governments, and construction workers. Chair Conklin said he was available to help. He said they expected an emergency regulation in place by January 1st.

Chair Conklin said the Employment Security Division could also do an emergency regulation.

Senator Carlton said emergency regulations were a good tool to use to get business accomplished during the interim. She said occasionally emergency regulations did not have what the Legislature thought should be included. She cautioned against using emergency regulations too much. She was confident the LCB made sure the regulations were within the intent of the law.

Chair Conklin asked if there was further discussion or comments from the Subcommittee. He asked if there were public comments. As there were none, Chair Conklin adjourned the meeting at 5:01 p.m.

Submitted by:

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Olivia Lodato, Interim Secretary

APPROVED:

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Marcus L. Conklin, Chair

DATE: \_\_\_\_\_



**EXHIBITS**

**Committee Name: :Subcommittee to Review Regulations**

**Date: November 24, 2009**

**Time of Meeting: 2:00 p.m.**

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster