Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

February 10, 2009

The first meeting in 2009 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Tuesday, February 10, 2009, commencing at 3:48 p.m., in Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada with a simultaneous video conference to Room 4412 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT IN CARSON CITY:

Senator Randolph J. Townsend, Chair
Senator Mike McGinness, Vice Chair
Senator Terry Care
Senator Steven Horsford, alternate for Senate vacancy
Senator Dennis Nolan, alternate for Senator Warren Hardy
Senator Valerie Wiener
Assemblyman Bernie Anderson
Assemblywoman Barbara E. Buckley
Assemblyman John C. Carpenter
Assemblyman Pete Goicoechea
Assemblyman John Oceguera
Assemblyman Lynn Stewart, alternate for Assembly vacancy

COMMISSION MEMBERS EXCUSED:

Senator Warren Hardy

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Brenda J. Erdoes, Legislative Counsel
Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Marilyn K. White, Assistant to Director

The agenda is attached as Exhibit A. Attendance records are attached as Exhibit B.

The meeting was called to order by Chair Townsend. Some items were taken out of agenda order but discussion is placed in agenda order for purposes of continuity. Chair Townsend announced that Regulation R159-08A had been withdrawn.

Item I – Appointment of temporary replacements for disqualified members of Commission on Ethics (NRS 233B.122) – Lorne J. Malkiewich, Director.

Mr. Malkiewich said that before the Commission on Ethics currently there is a case involving Bob Loux, the former head of the Agency for Nuclear Projects. The rules of the Commission on Ethics say that the two people who participate in the panel that does the preliminary review do not participate in the final adjudication. There are two other members who have conflicts and will not be participating and there is currently a vacancy which means at most there would be three members to consider the hearing. The Commission on Ethics is scheduled to have a meeting on the following Thursday and, therefore, do not have a great deal of time to find replacements. It is the reason that this meeting has been held on short notice to attempt to get temporary replacement appointments. He recalled that the members were previously provided information concerning the conflicts by John Marvel and Paul H. Lamboley who have both indicated that they cannot serve due to conflicts. There are two individuals who have been suggested as temporary replacements: Donald Klasic and Robert L. Weise. (A copy of the correspondence and resumes of the two suggested temporary replacements are attached as Exhibit C.) Mr. Malkiewich explained that one of the things about the Commission on Ethics is that it cannot have more that four members of the same political party, there cannot be more than four people from the same county, there needs to be two former public officers appointed by the Legislative Commission and at least one attorney. He said that the two suggested individuals meet the requirements for appointment and are available to serve on Thursday. He said that he had provided members with a letter (copy attached as Exhibit D) from Thomas E. Perkins and Judy M. Sheldrew, the counsel for Mr. Loux, indicating that they had some concern with the matter. It is his understanding that they no longer are objecting to the temporary appointments. He also noted that Patricia D Cafferata, Executive Director of the Commission on Ethics is present in the audience if there are any questions.

Senator Care inquired if the counsel for Mr. Loux no longer objected to the concept of the temporary appointments or to the two individuals who were suggested. Mr. Malkiewich said that he did not believe counsel for Mr. Loux ever had any concerns with the two individuals suggested for appointment and that it was the concept of temporary appointments. He said that they now understand that the entire matter might be decided by one or two commissioners if there are not temporary replacements. He understands they are now supportive of appointing the temporary replacements.

> SENATOR MCGINNESS MOVED TO APPOINT DONALD KLASIC AND ROBERT L. WEISE AS TEMPORARY REPLACEMENTS TO THE COMMISSION ON ETHICS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA.

Under discussion, Ms. Buckley inquired if members were remaining compliant with the political party requirements in making the two appointments. Mr. Malkiewich said that Mr. Weise would replace Mr. Marvel, both are Republicans and both are former public officers. With that, since George M. Keele already meets the requirement for an

attorney among the Legislative Commission appointments and James M. Shaw and Mr. Weise between them make the two public officers requirement, Mr. Klasic is an attorney so there would be one extra attorney. The Legislative Commission would remain in compliance with the rather complicated rules. He said Mr. Klasic is nonpartisan and he thought the breakdown would be 3-3-1 because there is a vacancy on the other appointments.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED.

Item II – Appointment of members to Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860) – Lorne J. Malkiewich, Director.

Mr. Malkiewich said that there have been two vacancies on the council for a while. When the matter was discussed at the December meeting, there was some concern expressed by the commission that they were not familiar with the members. He said that Joseph L. Waltuch, Commissioner, Division of Mortgage Lending, gathered the resumes of the five people who are being nominated. [Materials for this agenda item are attached as Exhibit E.] Mr. Malkiewich said that once it became apparent that a meeting of the commission needed to be scheduled, he put this on the agenda to see if two members could be appointed to fill out the advisory council.

Chair Townsend asked members to speak out if anyone has knowledge of any of the nominees. He said that the only person with whom he is familiar is Wayne Snyder from Zephyr Cove in northern Nevada.

Mr. Oceguera said that while he does not personally know the individuals nominated, he did ask two members of his caucus to read the resumes and provide him with recommendations. He said that both members returned to him with the names of the same people. They indicated that Cindy Stephens and Stephen Brockman would be good choices.

Senator Nolan said that he did not know any of the individuals but wondered if any of them were present. Chair Townsend read the names but no one came forward in either Carson City or Las Vegas.

ASSEMBLYMAN OCEGUERA MOVED APPOINTMENT OF CINDY STEPHENS AND STEPHEN BROCKMAN TO THE ADVISORY COUNCIL ON MORTGAGE INVESTMENTS AND MORTGAGE LENDING. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED.

Item III – Review of administrative regulations – Brenda J. Erdoes, Legislative Counsel.

A. Permanent regulations submitted pursuant to NRS 233B.067.

A list of regulations was previously provided to members and a handout listing additional regulations was provided to the members and available to the public (copy of the final list is attached as Exhibit F). Chair Townsend announced that the usual procedure would be followed. [The chair reviews the list of regulations with the members asking them to identify the regulations they would like held for discussion. The remaining regulations would be identified in a motion for approval. The regulations that have been held would then be reviewed individually.]

Responding to Senator Care, the chair asked Ms. Erdoes if she had a sense of why Regulation R112-06A had been delayed so long and if it had previously been rejected by the commission. Ms. Erdoes said she thought the regulation had just been through the process for a long time in terms of crafting it. This regulation was held for further discussion.

> ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATIONS R211-07A, R119-08A, R148-08A, R156-08A, R168-08A, R171-08A, R172-08A, R176-08A, R180-08A AND R196-08A. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED.

On Regulation R112-06A from the Board for Child Care, Senator Care mentioned that this is the first time he has seen this regulation and it seems that the objection to this regulation and R032-07A is the current financial burden on consumers and the thrust for a 24-month delay is to allow families to recover financially and then to better address the ratio and group size and director qualifications. He wondered if a representative could address that if it was an issue that was raised in prior hearings on this proposed regulation. He said that there were attachments A-H so it appeared as though the regulation got a pretty thorough review.

Barbara Legier, Deputy Administrator for the Division of Child and Family Services appeared before members in Carson City and introduced Amber Howell, the Social Services Chief and Melissa Faul, the Bureau Chief for the Bureau of Services for Child Care. Ms. Legier said that both of the women were involved heavily with the Board of Child Care and the process of the adoption workshops and the subsequent regulation development. She said that Ms. Faul could provide Senator Care with a brief "run down" of the process between the '06 regulatory efforts that occurred and the '07 regulation.

Ms. Faul said if she could provide an historical summary, that may answer many of the questions by the members because the regulations have gone through quite a process. She said that when Nevada's Child Care Licensing Standards were compared to national standards in 2004, only five of the 209 of the most critical life threatening standards

were being completely met. The Bureau realized that work was needed to ensure Nevada's children were in a safe and nurturing environment. The regulatory work groups began in 2005 and completed drafting the regulations in 2006. The Bureau presented the regulatory changes to the Child Care Board on December 20, 2006. The Board did not approve the regulations at that time because they did not feel there was adequate participation from providers and others in the child care field. In response to the Board's recommendation, the Bureau ended up taking strategic steps to plan the new series of work groups which were completed in 2008. Throughout this process, issues and concerns were repeatedly raised regarding the financial impact. Work groups discussed regulatory areas needing further clarification, revision and exploration. The proposals continue to have phase-in periods also. Following the work groups, six additional workshops were held to provide additional public input. Another Board meeting was held November 7, the first board meeting adoption hearing after it was declined. On November 7th, the Bureau provided the Child Care Board with a comprehensive amount of information and community input and presented the revised proposed regulations to the Board and they were approved. The Bureau believes the steps taken in response to the Board's recommendation of 2006 have been achieved and adequate participation was present. Although there is some opposition to the changes, those who support the changes feel the children in their communities deserve smaller group size, lower ratios and facility directors who can train staff to interact and educate in the best manner possible. While the Bureau realizes the proposed changes may impact the financial obligation of some facilities, adopting them will bring Nevada up to middle ground when compared to the nation and increase safety and quality care for children. There has been much consideration, compromise and discussion with many child care providers, educators and other experts.

Senator Care inquired what would be the consequence of a 24-month delay. Ms. Faul responded that there are a lot of regulations that are non-controversial or had no opposition she thought that many of those could be adopted right away and the ones that had opposition could be held for 24 months.

Senator McGinness referred to page 10 which indicates the licensee of a child care institution shall have on duty within the hours of 6:30 a.m. and 9 p.m. at least the following number of care givers. He asked if that means they have to open at 6:30 a.m. Ms. Faul responded that it does not mean that. Senator McGinness inquired about the change in brackets from 1 to 6 children, 7 to 20 and asked if that is where the increased fees are going to come from because the number of care givers will need to be increased. Ms. Faul explained that the work group's recommendation was to change the ratios to be room to room ratios and currently it is counted on average, the children. She said now it is a room-to-room ratio with a group size. Currently, 0 - 9 months is a 1 - 4 ratio and 9 - 18 months is a 1 - 6 ratio and if the nursery contains children for more than one of the age groups, the ratio is determined by average of children in the group. The proposal is 0 - 1 year would be 1 - 4 ratio with a group size of 8 and 1 to 2 years of age would be 1 to 6 with a group size of 12.

Further, Senator McGinness said he understood that there are many different categories and asked what is the average increase in cost. It was indicated that by delaying it, was that to be phased in as well? Ms. Faul said that it would depend on the type of facility, there are family cares, group cares, centers and institutions. It would mainly depend on how many staff they were to hire. The Bureau and different work groups thought that it would probably be the two year olds that may require an additional staff member. It would depend on how much the staff member would be paid.

Ms. Buckley said that as she recalled in the past, the biggest area of concern was the ratio and asked if that was right. Ms. Faul responded in the affirmative. Ms. Buckley asked if that is where there is still concern. Ms. Faul again answered, "Yes."
Ms. Buckley said that she recalled from the hearing there was a sense that they may want to move in that area but would it hurt some providers that are providing a great service and how much costs would be driven up in personnel. Some of the child care providers had a very small margin. She asked how much different is this from the proposal presented in the very beginning on the ratio. Ms. Faul replied that she thought there were some changes. For instance, with the 9 - 18 months it was going to be a 1 to 4 and the 18 months to 3 years it was going to be 1 to 6, so it did go up.

Mr. Carpenter said that he had a real concern about the regulations and how people are going to be able to comply with them. He said that there is one sentence that really caught his attention on page 2. He prefaced his comment by saying that he has seven children and a number of grandchildren. The sentence reads: the universal predictable sequence of child development. He commented that every one of his children was different and he did not think that anybody could predict what the development of those children was going to be, especially the grandchildren – they are "all over the board." He did not understand how a statement like that could be made and, in reality, is just not there and he has a real concern about how people are going to be able to comply with it. He said that it is difficult to get people to care for children, especially in the rural areas and he did not know if they were going to be able to comply with the rules. He said that he has not heard of any horrendous events in the rural areas where children were mistreated or something happened. He thought there was too much bureaucracy for him.

Chair Townsend suggested that Ms. Faul could be more specific and he believed Senator Care's question was an important one and referenced pages 80 and 81. He commented that he had admiration for anyone going into this important profession and has to deal with an 80-page regulation. He said that almost every section has a different implementation date and it varies widely from tomorrow, to January 1, 2010, to August 11, 2010, and he was unsure whether the people being regulated would have an easy time understanding what are the effects of the regulations. He asked if a synopsis of the general portions of the regulations and their effective dates has been provided so that child care givers can understand. Ms. Faul responded that it was a collaborative effort with many work groups. It started in 2004 and there has been a series of work groups who have created different phase-in periods and there is a

document written up with the different sections of the different phase-in periods that would be happening over a long period of time. For instance, ratios would not go into effect until the effective date of 2010.

Chair Townsend asked if the commission chose to accept the regulation in its current form, because it cannot change anything and can only accept or reject, is there a plan to notify their licensees of exactly each component and its trigger dates. Ms. Faul replied, "Yes, I can do that." Senator Townsend said members would like the public to be informed. Ms. Faul said that the licensing surveyors go out and perform inspections with all the providers at least two times a year and provide technical assistance and orientation to all the providers. They are in contact with them on a continuous basis and they would get the information out to everyone, including phase-in dates, effective dates and all the different proposed regulations and training would be held.

Dr. Michael Thompson, representing Child Care Association of Nevada appeared before members in Las Vegas. He said he was appearing on behalf of the children of Nevada, the working families of Nevada and the Child Care Association of Nevada. He said that members should have received a written request in relation to the regulations before them. [A copy of the letter dated February 5, 2009, was obtained by the secretary and is attached as Exhibit G.] He stated, "Each and every day all over the State of Nevada dedicated child care center owners, employees and their staff serve children through quality programs. Each day we create a safe and secure place for children to be while their parents earn a living to support their families. Child care is not a service of want, child care is a service of need. What the children and what our small business industry needs from you now is a delay in implementing just two sections of the proposed regulations. We fully support the implementation of all other sections of the regulations and I was pleased to hear Melissa Faul say the same. Most all of the other sections specifically relate to child safety issues. We believe this honors the good work of many members of the state as well as those who represent the child care industry during the work group process. Parents cannot afford the unintended consequences of changing sections 432A, section 21 and section 22, nor could they afford the unintended consequences of 432, section 300, 10 and 11. Proponents of the wholesale implementation of the regulations today would say that it's all about quality. Those who give their lives each day to the service of children and their parents truly understand what quality is. Quality at what cost to parents. Unfortunately, each week we have parents come into our centers and tell us that they lost their job. Most centers in our community have already experienced a decrease in enrollment between 15 and 30 percent. Some centers have already closed their doors. Decreased enrollments through layoffs with ever increasing costs and the likelihood of continued cost increases this legislative session is a recipe for the destruction of the most needed service for working families in Nevada. It is your decision to honor working families or to let them down. It is your decision to support children in need of quality child care or to let them down. It is your decision to strengthen an industry of need for Nevada or walk away. We respectfully request adoption of all other regulations with a 24-month delay for the

sections so noted. This will give time for Nevada's families to stabilize, for our economy to stabilize and for our industry to stabilize. Thank you so much for your time."

Mr. Anderson said that he appreciated the fact that Dr. Thompson works in the area and the dedicated staff of the social services program equally care about children and the facilities that they deal with in as much of a heart-felt way that Dr. Thompson does. He said that the commission can either accept the regulation in its entirety or reject it in its entirety, it does not have the luxury of choosing one section over another. He said recognizing that as a premise under which the Legislative Commission operates, the relative question of child safety versus economic questions that may impact delivery is one that members are very concerned about. He asked, "In that weighted question, do you perceive that you've not had an opportunity to put your industry's positions in front of the regulator when they were making up the regulation so that they could make that balancing judgement between child safety and economic delivery of program?"
Dr. Thompson said, "I guess the way I would respond to that question is, first of all, as many of you have noted that the process has been long and arduous. And, during the time that we originally began the process were much greener times, much greener pastures for the State of Nevada. We thankfully respect the inclusion of the industry and many of its members during the work group process and we thank Melissa Faul and her entire staff for that opportunity and I think it was a fair opportunity. Unfortunately, we get to today and, as all of us know only too well, our state and our national economy is facing horrendous times. And so even if we were completely in agreement with the regulations as proposed, we just believe that to do it now would so overburden our industry that you could just feel assured that child care centers throughout Nevada will close their doors." Mr. Anderson said, "So then the question I guess the answer is economics over safety?" Dr. Thompson replied, "No because again our request was that we would completely – all of the safety regulations, everything else other than these two sections – we'd comply." Mr. Anderson interrupted noting that was not a choice. Dr. Thompson acknowledged, "Unfortunately."

Before proceeding, the chair asked for a show of hands in the audiences in Las Vegas and Carson City that were opposed to the regulation. He noted most of the people in Las Vegas were opposed. In Carson City, there were none. It was noted that four people in Carson City were providers.

Jack Woodcock appeared before members in Las Vegas and said that in addition to his core business he has a family business, a child care center. He said that it is his hope that the implementation of the regulation could be delayed. He said to his knowledge there have not been instances of child safety that have driven this and it is in the interest of child safety, of course, that some of the things are being considered. However, the instances of concern do not relate to the centers in question. They are not sure of any instances where child safety has been questioned. The ratio change will add approximately 15 to 20 percent to the cost of child care. He said those are figures they have arrived at – about 15 to 20 percent increase in cost. He said they certainly do not intend for cost to drive the agenda over child safety but when they look at the

director qualifications and the ratio issues, those are the ones that stand out and are an issue to them. He said, "If, in fact, we need to wait for two years to implement the entire regulation, that would be our desire instead of implementing it at this time and coming back and revisiting it at a point in the future. Most of our centers are having dis-enrollment as we speak. Children are then being relegated to unlicensed child care and when one is relegated to unlicensed child care, that's where the safety issues will come to the surface to a far greater degree."

Ms. Buckley said that she is "a little torn" as she would like to see the other portions of the regulation go forward. She commented, "I'm a little concerned about going forward with the ratio because I'm not completely clear in my own mind. I picture my son's child care facility and they had such warm, loving, older staff who'd been with them for years and they could do a lot more with one person than I think some of the other child care facilities who had young people taking care of the kids could do with less experience. I worry about putting a burden on some of these child care facilities who are facing lots of other cuts – the cuts of our child care system's budget which we're trying to not cut any more and maybe add a little bit back. We have so many, obviously with the economy, so many challenges on so many small businesses like this that I'm just concerned about the timing. I mean, as Assemblyman Anderson said, we're never going to compromise safety but I think there are some instances where some of the facilities who don't have these ratios are providing wonderful care. So, that's what I'm grappling with in my own mind. The rest of the regulations I know you've worked on forever and we need to pass them and I thank you for working on them forever and I'm concerned because you have obviously reached a compromise with some and at some point it's just hard to get everybody on board but I just worry about the timing and I worry about that sometimes quality depends on people, not ratios, and you can have a really, really fabulous facility and yet not meet the number standard. Any reaction to any of those comments?" Ms. Howell responded, "I think that the Bureau and all the members of the work group struggled with the exact same things that you are talking about. When the work groups were originally put together, it was a different time and when they were proposed to the Board it was in 2006, and then we went back to the drawing board. The economy started changing when we were in the process of moving forward and responding to the Board's recommendations so I think all of the work groups had to reach a consensus and submit their final drafts to the Bureau and we had to submit them as a whole so we definitely struggled with some of the same issues."

Further, Ms. Buckley said, "If we were to ask the group to withdraw the two recommendations, to resubmit the rest and if you could prevail on the good graces of the Chairman and the Senate Majority Leader for a meeting where normally we wouldn't do one for a couple of months but do an earlier one, do you think that would meet your goals at this time?" Ms. Faul mentioned that all the regulations can go through a waiver process in front of the Board for Child Care in order to get waived too. Ms. Howell said, "I think as many of the regulations that we could pass because of all the work and time that everyone's put into it. We always want all of them to pass but if we had to pass a majority of them, that would be more preferable than not passing any of them."

Chair Townsend said that Ms. Buckley has articulated a process that might benefit everyone. She has also stated what he thought everybody in the room and everybody in southern Nevada has probably wrestled with as well. He said he would take a motion to not to accept the regulation as it stands and ask the parties to go back and address those issues and get back to the LCB as soon as they can with a new regulation that addresses the issues that are driving the problem or the agency could simply withdraw the regulation and the commission could move on from there.

Ms. Buckley said that it would be with the ability to then go ahead and just resubmit everything as it is and they would not have to go back. She said that the agency could work with the Legislative Counsel and obtain advice as to the process but they could resubmit the regulations with the rest of the content that is not in controversy. She said there is a mechanism to do that without another public workshop and the Legislative Commission could either reconvene or the Legislative Commission's Subcommittee to Review Regulations, a smaller group, could meet rather than have the agency wait and it could be done within the next 30 to 45 days. Ms. Legier stated, "We'd be happy to do that." Chair Townsend said he would consider the regulation withdrawn and suggested the agency contact Ms. Erdoes on the process and either the commission or subcommittee would meet again.

On Regulation R032-07A from the Board for Child Care, Mr. Anderson said that he is concerned about pages 4 and 5, sections 8 and 9, noting that the first of which deals with some verbiage change from caretaker and care giver relative to 432A.020 and deals with the natural person and then he sees the loss of the 16 year old age threshold who is responsible for the direct care, supervision and guidance. He asked, "That doesn't mean that we're going to end up with in a care facility someone who could be working who may be a family member or someone else who is under 16 years of age or is that covered somewhere else and I've missed it in your regulations?" Ms. Faul responded that it would be 16 to 18 years old and it would not be under the age of 16 because they would not be an employee or working directly with the children. She will provide where it is in the regulation. Mr. Anderson referred to section 9 and asked when determining the 35 square feet of indoor space for each child and multi-purpose rooms and gymnasiums are for regular use if someone was a care facility that may be adjacent or part of a church or synagogue or some other area that might have a social hall and may be part of that. Ms. Faul responded, "If they are not regularly used, we will not be counting them but it depends on the facility and if they are regularly used and it's a part of the facility, we would determine that at the consultation visit." She confirmed that the determination is on-site inspection as to whether they use it on a regular basis or not. Mr. Anderson asked if it is used once a week would it fall into the category.
Ms. Faul replied if they use it just once a week, it probably would not.

ASSEMBLYWOMAN BUCKLEY MOVED APPROVAL OF REGULATION R032-07A. MOTION SECONDED BY SENATOR WIENER AND CARRIED WITH SENATOR MCGINNESS AND ASSEMBLYMEN CARPENTER AND GOICOECHEA VOTING NAY.

On Regulation R129-08A from the State Engineer, Jason King, Deputy State Engineer, and Susan Joseph-Taylor, Chief of Hearings Section, Division of Water Resources appeared before members in Carson City. Mr. Anderson said that he needed to be reassured relative to water questions as there has always been great concern in the past and he wanted to make sure that "we are not stepping back across the line and going back the other way" relative to public opportunity to speak at the hearings, that they are not losing ground relative to the question of what the standard is for being able to raise the questions of water issues and water quality issues in any way. Ms. Joseph-Taylor replied, "These hearings are quasi-judicial proceedings. They have applicants and formal protestants and are not a wide open proceeding but every proceeding has public comment provided for at the end of the hearings. Sometimes we 'flex' that to accommodate the public in a particularly long hearing when they won't know when the end of the hearing is and we have left the record open to take written public comment after some of the more controversial hearings."

Mr. Anderson said that he is mindful of a few years ago when there was some controversy as to whether people were being impacted or whether those groups would be able appear and get their information into the record and he did not want it to go back to that particular scenario that excluded that and he wanted the assurance that this regulation did not do that. Ms. Joseph-Taylor explained, "This regulation eliminates the provision for interested person status because it was never provided for by statute, it is not being used as intended, it's unworkable as currently written and it's being litigated constantly so the State Engineer is going back to the statutory interpretation of who are participants in a water right hearing."

Mr. King said that Mr. Anderson has the assurance that if a person chooses not to enter this process as a protestant, say to a water right application, they always will have the ability to provide public comment at every one of these hearings. They have the avenue as a protestant and they also have the ability to speak as a general public.

Ms. Joseph-Taylor stated that the Legislature addressed this matter last session when they had four applications coming after the ones pending. Now if they are not heard within a certain amount of time, the protest period is reopened and they have that ability but that time frame has not yet come about. She reiterated it is in the statutes.

Mr. Goicoechea said that he believed statutorily if someone is not involved as a protestant, they truly do not have standing. He asked if that was correct.
Ms. Joseph-Taylor responded, "That is correct, Mr. Goicoechea. The statute provides for applicants and protestants." Mr. Goicoechea indicated that he heard Mr. King say that someone always has the ability to be heard in the public comments portion. He said that he does support the language in the regulation as it has gotten so cumbersome that they have people coming in after a hearing has been set and attempting to intervene when they truly do not have any standing. Ms. Joseph-Taylor commented that the State Engineer has been working very diligently to assist the public in the public comment period. In some of the more controversial hearings, they have had remote

sites where they have been able to go to Baker and Ely and make that public comment. She said that they have used the Legislature to do that to try to make it accessible to the public. In the more controversial hearings, they have held them at the Legislature so the public can watch.

Ms. Buckley asked, "Didn't we have this very same discussion last session in a bill?" She asked if the regulation is coming from the statutory change made last session. Ms. Joseph-Taylor responded, "These regulations are also being addressed because they haven't been amended since they were written in 1995 and it was time to take a look at them like the motion section was not in the old regulations and more and more motions are coming and people are trying to figure out what's the rules for the timing for replying for them. They just needed some cleanup but you're correct, Madam Speaker, that issue was addressed on reopening protest periods during last session and an amendment was adopted to the NRS."

Ms. Buckley said she would like the opportunity to review the regulation a little bit more. Chair Townsend indicated he would hold the regulation a little while to give Ms. Buckley time for more review and return to it later in the meeting. He proceeded with the next regulation.

The following discussion on this regulation took place prior to the end of the meeting.

Ms. Buckley said that she had a chance to read the regulation a little more thoroughly and she had a couple of specific questions and wanted to make sure there was adequate opportunity for everybody to participate. She saw the comments about how the agency weighed some of the suggestions or opinions that they were given. She asked if the agency representatives could describe the range of participation in the hearings or workshops. Ms. Joseph-Taylor responded that there were nine people who attended the workshop and eight people who came to the hearing and 11 written comments.
Ms. Buckley asked how many comments were concerns with the way it was finally drafted versus earlier versions of it. Ms. Joseph-Taylor replied that many of the comments were incorporated, some were not and she was not quite sure how to answer that question. Ms. Buckley asked, "What's your sense were most folks, I mean there wasn't any huge controversies over your final decisions, would you say?"
Ms. Joseph-Taylor said that there were people from California who thought the state should finance protestants to protest water right applications and hire lawyers.
Ms. Buckley clarified that she meant reasonable concerns. Ms. Joseph-Taylor said they had opinions both ways but there was consensus on most things. Ms. Buckley referred to page 4 section 9 where it has the person presenting public comment, the change of definitions there. Was the change on number 2 regarding a project proposal where it was changed to the hydraulic effects – was the rationale for that if it is the project proposal, it is already contained in number 1. Ms. Joseph-Taylor explained that the intent of that was that the state engineer's process is not the National Environmental Policy Act review. The State Engineer is trying to keep his hearings focused on hydrologic issues. Responding to further questions by Ms. Buckley, Ms. Joseph-Taylor

said that it is because of the environmental document and the agency was working with the regulation as it already existed. Ms. Buckley referred to page 5 section 11 number 2, the taking out the provision "allow questions to be addressed to a person presenting public comment" and asked what was the rationale for the change. Ms. Joseph-Taylor said that the agency was just trying to simply the regulations, they have asked questions but they are not really presenting testimony, they are presenting public comment. She explained, "These rules have to work for the complex hearings with 13 lawyers and the general public, who is Farmer Joe and Farmer Fred, who are fighting over something simpler and aren't represented by a lot of lawyers, so we were really just trying to make them work for everyone."

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R129-08A. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

On Regulation R142-08A from the Board of Examiners for Social Workers, Mr. Anderson said that he was concerned and wanted to be sure he understood. It looked to him like they were just changing the word "applicant" to "endorsement" throughout the regulation and some of those are clarified in section 10. He asked, "If I were somebody who is currently licensed, I would not be impacted by the change from reciprocity to by endorsement and I want to make sure I get that on the record so that those people who are currently under your control are still in the same status, it doesn't change there and then the renewal fee in the rest of that deals with that same kind of question." Rose Tuana, Executive Director, Board of Examiners for Social Workers, appeared before members in Carson City. She said, "That is correct. Anybody that's currently licensed would not be affected by this revision."

Further, Mr. Anderson said the second part of the regulation that he is a little concerned with is on page 29 of the regulation where it says, "if a provider does not submit a response to a request made pursuant to paragraph a. the Board may deny any further programs submitted by the provider." He said, "Kind of a broad, sweeping if you don't respond to us on this little small issue, we're gonna ignore the rest of your paperwork. Or am I drawing the wrong conclusion?" Ms. Tuana responded, "At this point, this was added in because we had a complaint from a licensee that a provider had substituted a speaker who had [unintelligible] the qualifications to teach a course. We repeatedly wrote letters to this provider requesting them to respond to us. They did not respond to us and so we finally denied any future programs and that's what we would use this section for." Mr. Anderson asked if this is "using a sledgehammer to get a fly?" Ms. Tuana replied that they had only used it one time. She said most people respond when you request information. It is when they deliberately continue to advertise things that are fraudulent. Mr. Anderson indicated that he thought it was a little heavy handed. Ms. Tuana reiterated, "It only has to do for when we receive complaints from our licensees of programs that have not met the qualifications of their areas."

Mr. Carpenter said if a person holds a license in another state and they want to become licensed in Nevada and it says that you have to have had a license for 20 years and 50 percent of the practice has to be in the immediately preceding 10 years. He asked if anybody from other states is going to be able to get licensed with those kinds of criteria. Ms. Tuana explained that those are not the criteria for everybody, that is a new addition for people that may be coming in from another state that have retired, do not want to take the exam and it is a way for them to avoid the exam. That is just one of a number of ways they can get licensed. Most people come in from other states with what they call the "substantially equivalent" requirement which means that they have taken the exam and done the hours. But there are people that, prior to 1990, did not take an exam but have been in the field for many, many years and this is an attempt to bring in people that typically have lots of experience but are uncomfortable taking the exam. It is an option, it is not the only way to get licensed from another state.

Additionally, Mr. Carpenter inquired if Ms. Tuana would say that the regulations make it easier for someone from another state to become licensed in Nevada. Ms. Tuana responded, "Yes, particularly people from California and New York, where we get a number of applicants because California has their own state-constructed test and they have many people who have been in the field for 20 years would like to retire in Nevada or even just move over and start practicing here but they have what is called 'test anxiety' and probably would have no problem with the exam but that deters them from coming over to the state. So, we've been asked on a number of occasions because of the lack of mental health people, to consider other options. The 20 years does seem extensive when you look at it. Our Board has discovered over the years that you start off conservative and loosen up rather than start off loose and try to tighten up. And, there are the other avenues which are typically coming in with meeting the standard requirements across with the 3,000 hours and the exam so we have other options."

Senator Wiener said based on the last comments of starting more stringently and then loosen up, hypothetically, would members anticipate as you monitor this that at some point in the future the board would come back and reconsider the 20 years. Ms. Tuana replied, "Absolutely, this is true for not only licensure requirements but for C.E. requirements. It's usually typically easier for us to start off a little bit conservative and monitor it and if we find we're being too strict, we review ours every two years. Every year after the legislative session we come in and if we determine that we should loosen up, we will." Senator Wiener asked, "Have you done that in the past?" Ms. Tuana replied, "Yes."

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R142-08A. MOTION SECONDED BY SENATOR WIENER AND CARRIED.

On Regulation R146-08A from the Director of the State Department of Agriculture, Mr. Anderson referred to page 2 section 8 the new language "must not be allowed to take another examination for at least 6 months" an applicant who uses an unauthorized aid during an examination. He asked if there was a list of authorized aids that an

applicant can use during a test and what happens if someone is hearing impaired or has poor math skills and needs a calculator as compared to a laptop computer – there would be a major difference between those two in his mind. Chuck Moses appeared before members in Las Vegas and said he administers the program at the Nevada Department of Agriculture. Mr. Moses said they do not have a list of unauthorized aids. The regulation came about because the agency discovered an individual who had the answers to an examination with him when he came in to take the exam. They investigated and found that at least 40 other individuals had the same exact answers as the individual. They dismissed the individual from the test and according to their regulations, they had a five day waiting period to come in and retest. They had no penalties for a person who was caught with one of the unauthorized aids. He said the individual has nothing to lose if he shows up and gets caught because he could just come back in five days to test. He said the department has a similar program to license pest control operators and they wanted the requirements to be similar to those. In the license program, there is a six month waiting period if a person gets caught using that unauthorized aid. When individuals come in to take the test, there is a sign that says you cannot have any materials with you including things like a cell phone but it does not say you cannot bring the answers in with you. It essentially says they have to take the test without any additional information. He did note that calculators are allowed.

Mr. Anderson inquired if the agency were notified ahead of time, is there an avenue available for individuals who need to use additional devices. Mr. Moses responded that the agency does make allowances for individuals and, in some cases, they actually read the examinations for people that have trouble reading them. They will sit down and read every question to them and there is always the opportunity for them to ask questions if they have specific questions about the test. They try to make every allowance possible.

Senator Nolan commented that if there is an individual who is coming in and testing to be a certified applicator of pesticides who can't read the test, he would be concerned if they could read what is on the container of whatever it is they are mixing and spraying. He said it was just a thought but he was sure the agency knew a lot better than he did about what they were doing. Mr. Moses said the agency has some examinations that are in Spanish and part of the test for competency is that a person has to read a label. They do have labels they have to read while they take the exams and be able to interpret the information off the pesticide labels. So, if they cannot read the label, they will not pass the examination.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R146-08A. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

On Regulation R147-08A from the Director of the State Department of Agriculture, Mr. Anderson asked if this can be done for crop dusters, why is it not done for the other major businesses that are engaged in this practice that they do a monthly report. Also, he asked would it not be to the agency's advantage that everyone who engages in this tell them what they have done and where they have done it.

Chuck Moses representing the State Department of Agriculture, appeared in Las Vegas. He explained that the way the overview of the regulation is written it appears to indicate that only the aerial or agricultural ground applicators have to keep records. Essentially, what the department is doing in this particular case is they are relieving their structural applicators which is everybody except the agricultural applicators from the monthly reporting requirements. He said they still have to send to the department at the end of the year a summary of all the pesticides that they used. The reason the department wants the information on a monthly basis from the aerial and agricultural applicators is, in most cases, they are using highly toxic pesticides and the department needs the information for its ground water and surface water monitoring program and also for its organic program. The information is needed to ensure people are not using pesticides that want to certify organic. In the structural end of things, everyone except the agricultural applicators only use two or three what the department considers hazardous pesticides and they know who those people are and they perform regular record checks at their places of business. There are about 400 companies that the department monitors on a regular basis and looks at their records. When the agency gets complaints, it generally means they have to go to the applicator's place of business and see if they are keeping records. There is a requirement of all applicators that they keep records for two years of the pesticides that they use. There are many ways to look at the records and this particular requirement is for about eight companies at the most. The structural applicators that they are relieving of the monthly use reporting, the agency already knows what products those individuals use so it is not a problem. He said it is relieving them of a record keeping requirement that is "pretty minor."

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R147-08A. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

On Regulation R173-08A from the Commissioner of Insurance, Peggy Willard Ross, Chief Insurance Examiner, Division of Insurance appeared before members in Carson City. Mr. Anderson said that he is always concerned about the notary question. He indicated that he thought the LCB Legal Division had already answered the question for him but he just wanted to confirm. He asked if somebody has already filed with the international group and the agency does not have any direct relationship to them there is no reason to obtain a notary. But, if they are filing with the agency direct, they would still need to have a notarized statement to file with the agency even if they are an out-of-state company. Ms. Willard Ross responded that was correct.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R173-08A. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

On Regulation R208-08A from the State Quarantine Officer, Mr. Anderson indicated that his question concerns the age of the bull and inquired why the agency would go from 8 months to 12 months of age. Dr. Anette Rink representing the Animal Industry Division of the Nevada Department of Agriculture appeared before members in Carson City. She explained that the initial 8 month limit that was set was to err on the side of caution. The youngest bull that has ever been diagnosed with trichomonosis was 9 months old and was a case in Utah. However, there is a lot of young bull movement in and out of the state and there is no change of ownership involved with that. The bulls come from California predominately to be "finished" in Nevada and then they return without change of ownership. It was felt that the industry did not actually benefit from the young testing requirement. The 12 month requirement is a compromise between the initially desired 18 month testing requirement. She explained that the 18 month testing requirement is because it is biologically very viable because they can "teeth" the bull and identify the age. She said under Nevada range conditions they cannot tell by weight or appearance of a bull whether he is 6, 10 or 12 months of age. If they don't get anything to eat for the first 4 or 5 months of their life, they just don't grow and so it is very hard to identify age. She said that various practitioners approached the agency at the end of the hearing and said that even though 18 months is very viable, "we're never ever going to 'mouth' a bull anyway so let's split the difference." A one year old bull can logically be perceived to have had sexual contact so the risk is there at 12 months much more so that it was at 8 months but they are still in the same "gray" zone as in how do they verify 12 months exactly. It is up to the producer to identify the age of the bull and for the veterinarian to judge the age of the bull based on the production system that he is looking at. Further responding to Mr. Anderson, Dr. Rink said, "At 12 months, we can both essentially gauge the age but it's not a very high risk factor in terms of being already infected. At 18 months, most of the bulls have already been sexually active."

Mr. Goicoechea referred to section 6 subsection 4 where it says "the testing is performed in accordance with any testing procedures approved by the Administrator." He said there was some concern from the industry that maybe the agency would come up with a test and it would get to the point that it would be unaffordable, instead of moving away from PCR into maybe some DNA or something like that. They were concerned about what testing procedures the agency would approve and make sure it was affordable. If it would cost $50 to test an animal, it would be counterproductive. He indicated that he was looking to get something in the record that would address the testing procedure and the affordability. Dr. Rink responded, "It is not the intent of the animal disease lab to offer a test that is not affordable for the industry. The reason why this was put in here is because technology is moving rapidly and technology can afford better, faster, more reliable ways of actually establishing if a bull is infected or not. So, if we do offer a test, obviously, we would like to offer some sort of savings either savings per test or savings for the entire testing procedure. Right now we are looking at implementing a PCR based test, a real time PCR based test, that essentially has the same sensitivity and specificity as the current three test regimen in an infected herd requires. Currently, we have to test a bull three times to actually identify with about

96 percent or 97 percent confidence level that that bull is not infected. There is currently no test that is 100 percent. That new test that we're hoping to bring on by July 1st is going to be a test that probably will have a 97 percent sensitivity in one test and the cost is going to be significantly less than if you had to test a bull three times."

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R208-08A. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

The chair returned to Regulation R129A before proceeding with the remaining agenda items and the discussion is included with the previous discussion.

B. Regulations resubmitted pursuant to NRS 233B.0675.

At the beginning of the meeting, Chair Townsend announced that Regulation R159-08A had been withdrawn and would not be addressed at this meeting.

Item IV – Informational Items:

Chair Townsend commented that as members were well aware, the informational items are things that members should review particularly if they are areas of interest to them. He said that he wanted to commend people in the audience who have remained at the meeting. He referred to a couple of reports from state agencies – the Excavation Damage Report from the Public Utilities Commission of Nevada (PUCN) and a report from the PUCN on consumer sessions of general interest in Washoe and Clark counties. He said the individuals were kind enough to stay to answer any questions on those two items even though they were informational only. He said any questions could be asked now or after the meeting and acknowledged the presence of Richard Hackman and David Noble from the PUCN.

A. Legislative Committee Reports. Material for this item is attached as Exhibit H.

B. Legislators' Travel Reports. Material for this item is attached as Exhibit I.

C. Quarterly Reports on Disciplinary Action from the following Boards or Agencies: Material for this item is attached as Exhibit J.

1. Board of Dispensing Opticians.
2. Board of Examiners for Alcohol, Drug & Gambling Counselors.
3. Board of Examiners for Long Term Care Administrators.
4. Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors.
5. Board of Examiners for Social Workers.
6. Board of Hearing Aid Specialists.
7. Board of Homeopathic Medical Examiners.

8. Board of Landscape Architecture.
9. Certified Court Reporters' Board of Nevada.
10. Chiropractic Physicians' Board of Nevada.
11. Commissioner of Financial Institutions.
12. Division of Mortgage Lending, Department of Business and Industry.
13. Health Division, Department of Health and Human Services.
14. Nevada State Board of Architecture, Interior Design and Residential Design.
15. Nevada State Board of Athletic Trainers.
16. Nevada State Board of Dental Examiners.
17. Nevada State Board of Massage Therapists.
18. Nevada State Board of Medical Examiners.
19. Nevada State Board of Nursing.
20. Nevada State Board of Optometry.
21. Nevada State Board of Osteopathic Medicine.
22. Nevada State Board of Pharmacy.
23. Nevada State Board of Veterinary Medical Examiners.
24. Nevada State Contractors Board.
25. Private Investigator's Licensing Board.
26. Real Estate Division, Department of Business and Industry.
27. State Board of Physical Therapy Examiners.
28. State Board of Professional Engineers and Land Surveyors.

D. Miscellaneous Reports from State Agencies and Others: Material for this item is attached as Exhibit K.

1. Excavation Damage Report from Public Utilities Commission of Nevada submitted pursuant to Section 6 of Senate Bill 396 of the 2007 Legislative Session.
2. Response from Mortgage Lending Division to questions from previous meeting and requested Staffing Plan.
3. Las Vegas Office Annual Report.
4. Performance Audit of Nevada's Child Welfare System conducted by the Nevada Institute for Children's Research and Policy at the University of Nevada, Las Vegas (listed for documentation purposes – report previously transmitted to all members of the Legislature prior to meeting).
5. Report from Public Utilities Commission of Nevada on consumer sessions of general interest in Washoe and Clark counties (listed for documentation purposes – report previously transmitted to members prior to meeting).

Item V – Public Comment:

There being no comments from the public, the meeting was adjourned.

Respectfully submitted,

Marilyn K. White
Assistant to Director

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Senator Randolph J. Townsend, Chair
Nevada Legislative Commission