

Minutes of the
LEGISLATIVE COMMISSION
Nevada Legislative Counsel Bureau (LCB)
December 16, 2008

The fifth meeting in 2008 of the Legislative Commission, created pursuant to Nevada Revised Statutes (NRS) 218.660, was held on Tuesday, December 16, 2008, commencing at 1:43 p.m., in Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair (in Carson City)
Senator Mike McGinness, Vice Chair (in Carson City)
Senator Terry Care (in Las Vegas)
Senator Warren Hardy (in Las Vegas)
Senator Steven Horsford (in Las Vegas), alternate for
Senate vacancy
Senator Valerie Wiener (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City)
Assemblyman John C. Carpenter (in Carson City)
Assemblyman Marcus Conklin (in Las Vegas), alternate for
Assemblywoman Barbara E. Buckley
Assemblyman Pete Goicoechea (in Carson City)
Assemblyman John Ocegueda (in Las Vegas)
Assemblyman Lynn Stewart (in Las Vegas), alternate for
Assembly vacancy

COMMISSION MEMBERS EXCUSED:

Assemblywoman Barbara E. Buckley

OTHER LEGISLATORS PRESENT IN LAS VEGAS:

Assemblyman David R. Parks

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Brenda J. Erdoes, Legislative Counsel
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Marilyn K. White, Assistant to Director

The agenda is attached as Exhibit A. A packet containing materials for the meeting was provided to commission members and available to the public in attendance. 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.

Item I – Approval of Minutes of the September 17, 2008, Meeting – Senator Randolph J. Townsend, Chair.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE MINUTES OF THE MEETING OF SEPTEMBER 17, 2008. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item IV. B. and then returned to agenda Item II.

Item II – Legislative Auditor:

A. Summary of Audit Reports presented to Legislative Commission's Audit Subcommittee (NRS 218.623) – Paul V. Townsend, Legislative Auditor.

Mr. Townsend stated that he has two sets of audits. One is from the September meeting and one is from the meeting that was held the previous week. He directed attention to material in the meeting packet containing information on the first set of audits and information on the second set of audits is contained in a handout (copy attached as Exhibit C).

Mr. Townsend proceeded to discuss the first set. The first audit was Inmate Programs, Grievances and Access to Health Care at the Department of Corrections. It was found that the Department of Corrections can more effectively manage its correctional programs and although the department uses a variety of assessments to identify inmate needs, these assessments are not always used to prioritize which inmates are placed in program classes. Although Nevada provides inmates with educational opportunities similar to those found in other states, auditors found more emphasis was needed on vocational programs. They were also asked to look at the inmate grievance process and they found that the department has developed a process which is similar to other states; however, better oversight is needed to ensure grievances are addressed within established time frames, files contain required signatures and department responses are adequately documented. In addition, auditors looked at access to health care and they found that the department has established a system to ensure all inmates have access to health care and these methods are also comparable to states surveyed and national standards, however, improvements can be made in some areas. Those areas include ensuring vital equipment is available and in working order. Auditors noted that two institutions were without dental chairs for periods of six months which created unnecessary delays in receiving dental treatment.

The next audit was of the Training Division of the Department of Public Safety. Auditors found that the Training Division generally complied with state laws, regulations, policies and procedures significant to its financial administration. However, some employee salaries were not paid from the correct budget account, work performance standards were not always developed and many employees did not receive annual performance evaluations.

Another audit was of the Records and Technology Division, Records Bureau, within the Department of Public Safety. Auditors found that the bureau needs to make improvements to the sex offender registry program. A significant portion of the offender information that auditors tested in the sex offender registry and on the community notification website was either inaccurate or incomplete. Auditors also found that although the bureau has successfully reduced the backlog of adult criminal fingerprint cards, it has been previously over 40,000 for a number of years, they did have it down to less than 5,000 by the end of last year. However, there is still a significant backlog of court dispositions and juvenile criminal fingerprint cards that have increased in recent years. Auditors also found that for more than four years the bureau used incorrect criteria to evaluate criminal histories for certain civil applicant background checks. As a result, the bureau issued some responses indicating applicants had committed certain offenses when they had not. All recommendations were accepted.

The final audit in the first set was of the Division of Emergency Management, Department of Public Safety. Auditors found that the Division of Emergency Management had not adequately monitored emergency operation plans or emergency response plans prepared by other entities. In addition, they had not adequately tracked emergency equipment in the state. It was also found that the division had not established management controls to help ensure compliance with state and department policies and procedures. Specifically, the division could not locate plans for 53 out of 95 state agencies, local jurisdictions, charter schools and school districts, resort hotels and tribal nations that they were asked to provide to auditors. There was little documentation in the files showing that the Division of Emergency Management worked with the other entities to encourage them to update and prepare their plans. Ten recommendations were made and initially the division accepted six of those and did not accept four. When it was presented to the Audit Subcommittee in September 2008, the subcommittee asked them to reconsider their position on that and coordinate with auditors to ensure that there was a clear understanding of what the recommendations entailed. The Division of Emergency Management did that, returned to the Audit Subcommittee last week and have accepted all 10 recommendations and are working towards preparing a plan of corrective action which will be due December 23, 2008.

Senator Care referred to the summary on the audit of the Records and Technology Division and noted that it was found that 22 percent of the registered sex offender information required by statute to be included in the registry was inaccurate or incomplete. He asked Mr. Townsend to elaborate on that statement. The senator said he gathered that auditors at random tested information and he did not know if it meant

that people who were known sex offenders were not listed, people who were not sex offenders were listed as such or if the information for sex offenders was just not accurate. Mr. Townsend responded that in this case auditors were looking at sex offenders that were on the database and the types of inaccuracies found were: it was incomplete as far as the location of the offense, the court of conviction, information regarding the victim and what type of victim – was it an adult or a child – and that type of information has been found to be helpful in monitoring these individuals. He could not provide more detail but it is in the report if Senator Care would like it.

Mr. Anderson said that Senator Care “hit” on part of his concerns relative to the technology. He said that he was under the impression that with the Adam Walsh Act, they are waiting for the Attorney General to make some further determinations. He asked if that was part of the problem and if there have not been clear enough guidelines or is it just an input-output error that they are having. Mr. Townsend said that at the time auditors were looking at that audit, he believed the Adam Walsh Act had not yet gone into effect and that was going to add another complete layer of responsibilities. Auditors were going back into a prior period and, basically, it was input issues and a lack of supervisory review to make sure the information was getting in there accurately.

Further, Mr. Anderson asked about the Division of Emergency Management issues and noted that he is always concerned about this particular area because of the high probability of earthquakes in the State of Nevada and the preparedness of emergency management. He said that he knows that does not seem to be the focal point but he thought that fire, floods and earthquakes are the three things people are concerned about on a regular basis along with other responsibilities. He inquired is the lack of coordination only on the homeland security question or is it on the other emergency management questions in addition, along with the movement and shipment of hazardous materials. Mr. Townsend responded that the focus on this audit in this area was there were a number of plans that are required to be completed by the local entities and they are then required to submit a copy of that plan to Emergency Management for them to keep stored there in the event they would need to help coordinate. There were two types of plans – emergency response or emergency operation plans – that would include the type of disasters to which Mr. Anderson was referring.

Continuing, Mr. Anderson inquired if the local groups, school districts or other governmental bodies are just not aware of their responsibility to submit the plan and the lack of “teeth” by the Emergency Management to obtain the information or is it an unfunded mandate question. He said he was trying to figure out why this was taking so long because it seemed to him that it has been about six years that they have been dealing with the issue. Mr. Townsend said that auditors saw it largely as a lack of coordination, primarily on the part of Emergency Management, in communicating with them to let the local entities know that there is a statutory requirement that they submit the plans and submit them promptly after there is any revision to them. The division did indicate they were concerned because of their lack of enforcement ability but auditors believed, as they did the audit, that the first step is for them to request the plans and

have a good list of who is required to submit them, who has not submitted them and then respond to that. He thought that is what they are working towards now as to who is supposed to have one there and who has not. He thought there would be some objections from the entities on whether they want to submit the plans. They have indicated that some of the utilities are reluctant to submit vulnerability assessments and that sort of thing. Mr. Townsend said he believed that once they get a good catalog of who has submitted plans and who has not, then they will be in a better position to talk about whether they need more extensive enforcement ability.

Mr. Carpenter said with regard to the Division of Emergency Management, there was a recent earthquake in the City of Wells last winter and so far they have not been able to get reimbursed from the Office of Emergency Management for mainly law enforcement and people like that who had to be called in. He said that he did not think they were having problems with their plans but they are having problems to take care of their responsibility to the entities. Individuals went out and collected money for the community and over \$500,000 was collected. The people themselves have been taken care of but the City of Wells that had to put out all the money to pay for the emergency people who had to be called in was still "holding the bag." He opined that through the audit and complaints from legislators, maybe the situation in Wells could be straightened out also.

Mr. Townsend said the next set of audits is contained in the handout (copy attached as Exhibit C). The first of those audits is of the Office of the Attorney General. Auditors found that the office substantially complied with state laws, regulations, policies and procedures significant to its financial administrative activities, however, better monitoring and updating of internal controls is necessary to ensure transactions are proper, accurate, complete and in compliance with laws and regulations. In the principal findings, auditors noted that staff hours used in calculating the Attorney General's cost allocation plan were not always properly accounted for and as a result agencies charged for costs through the plan may be over- or under-charged. It was also found that the office reported about \$1.8 million in accounts receivable in December 31, 2007. However, auditors do not believe that information is complete or accurate because they have not included the amounts due from persons extradited to this state from another state. He said what happens there is when a felon is brought back to Nevada, the Attorney General's Office does cover the cost of bringing that individual back. That amounts to about \$500,000 a year in extradition costs. It then becomes a debt owed to the state by the felon. Often that debt cannot be collected because they will be going to prison but they do collect about \$80,000 a year through that process. The database on which that information is contained is fairly cumbersome and it is believed the office could organize that better and would be in a position to take some of them, write them off and perhaps do a better job of collecting the others. It was noted that statutes require agencies to seek Board of Examiners approval to designate accounts as uncollectible, however, the office did not always identify uncollectible accounts, specifically the extradited felons. In other cases, the fiscal staff did write off some accounts from state records without obtaining approval and 12 accounts were identified

where that occurred and totaled \$7,000. The Attorney General's Office accepted all the recommendations and is moving forward with corrective action.

The next audit was of the Nevada Equal Rights Commission (NERC). It was found that NERC could improve its financial and administrative practices in several areas and under the findings, auditors noted that they did not adequately monitor staff's work to ensure discrimination investigations were completed timely. Their investigative staff's productivity has slipped in recent years and has declined 37 percent from 2005 to 2008. In numbers, they were closing 1,200 cases in 2005 and they had only closed 761 in 2008. Because of that decline in productivity, they did not process the cases timely and maximize their federal contract revenue. For federal fiscal year 2007, the agency did not close enough cases to meet its contract and lost the opportunity to collect about \$53,000 in federal monies. The agency is working towards improving their productivity. There is a new administrator "on board" and all recommendations have been accepted.

The next audit was of the State Public Works Board (SPWB). Auditors found that although the SPWB generally complied with laws, regulations and policies for managing Capital Improvement Program (CIP) projects, additional controls are needed to help strengthen its construction management processes. Auditors noted that particularly in change orders, change order items totaling approximately \$1.6 million did not have sufficient documentation to verify their propriety and a good example of that is \$344,000 in use tax was approved through a change order without any documentation indicating the contractor paid the tax. It was not until after auditors requested additional information that the contractor submitted documents showing that the tax had been paid nearly one year after the change order was processed. It was also found that they did not obtain sufficient documentation to ensure the appropriateness of several construction reimbursements to the Nevada System of Higher Education. As a result, the College of Southern Nevada (CSN) received more than \$500,000 in duplicate payments and these were for expenditures related to the Telecommunications Building. Furthermore, the SPWB was not able to obtain sufficient evidence that CSN had contributed the entire \$1 million to the project that was required by the 2001 CIP.

Another audit was of the Division of Mortgage Lending. It was found that the division did not always provide adequate regulation of mortgage companies. During calendar year 2007, the division did not meet its statutory duty to perform annual examinations of licensees. The items listed included test results and a review of division records identified 77 percent of the companies tested did not have an examination during 2007 which is required by law. The division did not perform a timely followup examination for 13 of 15 companies that had received a poor rating on an examination. These were licensees that were rated four or five on a scale of one to five so they had some serious deficiencies and they had remained active for at least one year after obtaining that poor rating. It was also found that high-risk licensees that maintain certain types of trust accounts or arrange loans provided by private investors were not always examined timely in 32 percent of the time. Also, the division did not perform timely initial examinations for 38 of the 52 licensees auditors tested. The untimely examinations

ranged from 15 months to 4-1/2 years after the original license was obtained. There were 13 recommendations and all were accepted. He noted that the Director of the Department of Business and Industry as well as the Deputy Director and the Commissioner have indicated that they have a serious concern and intend to fix the problems.

The final item is the Review of Governmental and Private Facilities for Children. His office conducted the reviews pursuant to Assembly Bill 629 from the 2007 session which required auditors to visit governmental and private facilities for children. Based on the procedures that were performed and the processes in place at the 13 facilities reviewed, it is believed that they do provide reasonable assurance that they adequately protect the health, safety and welfare of youth. During the reviews, auditors noted a common issue among facilities: facilities sometimes allowed newly hired employees to have direct contact with youth prior to receiving the results of both state and federal background checks. In talking with them, as well as the Criminal History Repository, there are ways they can get those background checks processed quicker so they should not have to hire people until those are obtained. Under observations, auditors noted some deficiencies related to complaint processes. Some of the problems noted were that complaint forms were not always readily available to youth. There were also concerns over the documentation of medication that is administered to youth. Youth medical files did not always contain clear documentation that a prescribed medication had been dispensed, whether there were discrepancies, if the youth had refused to take the medication and sometimes there was no evidence of a physician order for the medication that was being administered. Auditors also found that some facilities need to strengthen control over accessed items considered contraband and well as posting what they do consider contraband at those specific facilities so the family of the youth know not to bring certain items into the facility if it is prohibited.

Mr. Anderson said he was trying to understand with the Equal Rights Commission that the number of complaints that they are processing is down relative to the aggregate number. He said he would have anticipated maybe in the past there was a high number because the Equal Rights Commission was just beginning and the numbers would be high because people were just becoming aware of it. As people began to understand that this is not acceptable practice, hopefully, there would be no complaints – that is the goal. He asked for clarification. Mr. Townsend explained that the commission is not processing the same number of cases that they had in the past and it is believed that it is due to a lack of productivity. The people who are processing complaints have certain job performance standards where they are required to process so many a week and they were not meeting that goal. There was some turnover in the agency where the administrator was out and another key deputy and so they were allowed to slip and they “pretty much weren’t getting the work done.”

Mr. Anderson asked regarding children being sent out of state if they are monitoring in any way how the children are being treated when they are in out-of-state placement or was that noted at all in the audit. Mr. Townsend said that as part of the work on the

audit, they have been identifying facilities as they proceed. He thought they ended up with 57 facilities and 14 of those were out of state. Those are being identified mainly through the state. When local jurisdictions send youth out of state, auditors are not certain they have captured all that yet and are still working on it. It is his understanding that when they initially send a youth to one of the out-of-state facilities, an inspection is done at that time and they may not be back to follow up on it. A large part of what his office is doing is requesting information on complaints and they have contacted each of the facilities out of state as well as in state and asked them to provide them with copies of complaints. Generally, what the out-of-state facilities have done is provide them with complaints from Nevada youth. Auditors have been monitoring those and if they were to see a complaint that causes them great concern, they would be notifying the appropriate parties.

Further, Mr. Anderson recalled that between the 2005 and 2007 sessions, there was an interim committee that was looking at and setting up a protocol for complaints at the various institutions that were being monitored by the group from the University of Nevada, Las Vegas (UNLV). He asked if the audit reflected some of the information they discovered as to how the state was or was not processing complaints from clients. When the youth were putting them in was their confidentiality being maintained and were they looked at objectively as to whether it was a legitimate complaint about the institution and treatment. Mr. Townsend replied that auditors communicated with UNLV and in many cases they picked up where they left off and have obtained quite an extensive database of complaints. It was an area auditors looked at and at 9 of the 13 facilities, they did have some issues. For example, the best practice is to have complaint forms readily available and have a lock box also available where a youth can also submit their complaint anonymously, more or less, and know that it is in a safe place. Sometimes auditors found if somebody has to ask someone to get a complaint form out of a drawer, that is not a real good method. That is a lot of what was found. Auditors are still seeing some type of that situation and for the most part the facilities have been responsive to their recommendations.

Senator Wiener asked about the background checks and the length of time of the different practices that were engaged in where the children may be vulnerable to someone who should not be working in the facility. She said that she noticed that some alternatives were provided such as scanning fingerprints and so forth but she is concerned about that. With the substantial increase in the abuse of prescription medications especially among the young which often towers over what are considered street drugs or illegal drugs, she is concerned about what looks like an attitude or course of behavior where the distribution and/or use of medicated drugs is not being monitored. She is very concerned that these are young people who are in the care of the state and the abuses are allowed to continue. She asked if Mr. Townsend could share some of what the dialogues might have been or the commitment to corrective behavior or procedures. She commented that those are two extraordinary issues for her in terms of the welfare and best interests of the children. Mr. Townsend said on the first issue of the background checks, auditors were concerned with that as well. He thought there

was a general lack of understanding of what it takes to get them processed quickly. In some cases the facility would say, "Well, it could take up to four months to get a background check and we can't take a risk on losing an employee. The person will go and find another job in that point of time." He said auditors had recently done some work with the Criminal History Repository and were aware of changing technologies. One thing that is now available is scanning. The delay in the past was getting back the Federal Bureau of Investigation background check and if someone submitted a manual fingerprint card, it would take a long time. Now the way it is being done is a lot of sheriff's offices have obtained scanning equipment and the background checks can be received within a week. He thinks part of the issue is auditors communicating to them that there are alternatives rather than just saying, "Yeah, those take a long time." Letters have been sent to all facilities, not just the ones looked at, to let them know this is something they have found and that they should be considering. On the second area regarding medications, Mr. Townsend said what auditors saw was not the best documentation in the files. He noted perhaps things do get a little lax in the daily routine and no one is really checking on them. A lot of responses when it was brought to the attention of individuals was that they had strengthened their policies, had a meeting with their nurses or had done a better job of securing medication. Hopefully, that will get a good response. His office also sent its report and results to all the facilities, even the ones they had not visited yet, so it will be a good reminder to everyone.

Mr. Stewart referred to the Division of Mortgage Lending audit and noted that the figures are pretty dismal. He asked if any of that is due to a lack of staff and if there is any indication that things have improved since the new commissioner has arrived.

Robin V. Reedy, Deputy Director of Administration, Department of Business and Industry, appeared before members in Carson City. She said that she has been in the position four months. She said that there may have been staffing issues in 2007 and they are analyzing that but there has been improvement with the new commissioner and, in fact, after she read the report she immediately made some phone calls to the agency in Las Vegas. She said that she was pleased to see that they were already addressing a lot of the issues prior to the audit being released and there is improvement. The current commissioner was in place for only three months of the year of the audit.

Mr. Conklin said that he was curious about the dollar amounts shown at the bottom of the assessment. There is \$490,000 in assessments uncollected through 2007-2008 and \$975,000 in unpaid fines. He asked if that is through 2008 as well. Mr. Townsend said that auditors were focusing on 2007 on those so that is not through the end of the fiscal year. Mr. Conklin commented that there are two numbers totaling approximately \$1.5 million. He asked when were those fines assessed versus collected. Mr. Townsend replied the first figure is assessments if legal services are provided. They also have a Certified Public Accountant on staff and that is where those collections come in. It was found that, like a lot of state agencies, there is not a real active collection process. If a notice is sent out and nothing is returned, there is not a real

aging of the account receivable or taking certain action within a certain number of days to send another letter or take stronger action. Unfortunately, what happened here was there was a real downturn in the number of licensees and when prompt action was not taken, a lot of the people have disappeared. They are out of business and gone.

Moving slowly on these was one of the causes they were not collected. Mr. Conklin asked if that was the same case for the \$975,000. Mr. Townsend responded in the affirmative and said that may even apply more so because you are talking about fines and where they have been identified as somewhat disreputable, the doors shut quickly on some of those. Mr. Conklin asked if the state has, through any of its agencies, or a contract in place, where these agencies can refer the collections to obtain more timely payment. He observed that the state could be missing out on a lot of revenue.

Mr. Townsend replied that currently the Office of the State Controller has a debt collection process in place. He said that is going through some changes and his office is currently conducting an audit of that. The new Controller is working to make a lot of changes there and if it does reach a point where an agency has exhausted their efforts, they can refer it to the Controller. He believed that office has debt collection agencies on contract and they take it from there. Mr. Conklin asked if the money collected goes back to the agency and could it be used for staff or does the money revert to the General Revenue Fund. Mr. Townsend responded that money has not been a problem for this agency. He said they had collected and had significant reserves, in fact, some of the reserves were used to help with the budget crisis. He thought it was just a matter of "ramping up." The Legislature actually wanted to increase staff and told them they had the opportunity to go to the Interim Finance Committee with a staffing plan as needed to address these issues. He thought there was just a slow reaction to get the adequate staff and now things are going in a different direction with a drastic drop in licensees but he still believes they need a staffing plan to make sure they can do all the examinations necessary.

Mr. Anderson said that in reading through the interesting report, he is very, very concerned and thought all members were. He wanted to make sure he was drawing the right conclusions relative to if someone is in a group of mortgage lenders where problems were discovered, there is very little likelihood that they are going to be reexamined in a timely fashion. If 13 in 15, or 87 percent, of the cases they did not do that, has the agency done those they know are doing a good job on a regular basis or are they avoiding doing those that are on the periphery of the mortgage lending market.

Mr. Townsend responded that he was not sure that his office identified any type of intent like that and it was mainly a workload and organization issue. In some cases, they indicated they are responding to complaints as well and sometimes examiners may be redirected to respond to complaints and that would reduce the number of examinations they could do. He suggested that perhaps the Deputy Director would like to respond. Ms. Reedy stated that Mr. Anderson was accurate. In 2007, there was very little likelihood of an audit coming back to you. Prior to the audit and as part of the audit, the agency is realigning how it audits and trying to prioritize those that are ranked in certain ways to make sure they are audited more quickly and are devising a staffing plan. Mr. Anderson said he guessed the first step is the "meat of the problem" and the

second part of that is according to the audit principal findings in 73 percent of the cases, the initial examination did not take place in a timely fashion. If the initial examination doesn't take place for four years, and it was found to be inadequate in the followup, not likely to happen at all, in 83 percent of the cases then is it a surprise that they're having problems. He asked if it is a matter of not finding people to do the job or just because of the hiring freeze they are not able to fill the positions. Ms. Reedy responded, "I find myself in a position where I do not want to give excuses. There are instances that lined up, moons lining up, where the mortgage lending was going so strongly and growing so fast, we did not keep up with it very, very clearly. When we finally got approval for staff, we did not respond quick enough to that growth and then we could see that the growth of the industry was going down. Now, I'm not smart enough to correlate whether all of that caused the housing problem that we have right now in Nevada."

Mr. Anderson said that he wanted to compliment Mr. Townsend and his staff once again with the thoroughness of their audit and the timeliness and he is happy that the Mortgage Lending Division is taking it seriously as we all are.

Senator Townsend said his comments are geared to being helpful and not pointing any kind of finger in the direction of not being constructive. He said that, obviously, this audit has caused great concern to the Audit Subcommittee. He said he understands what may have led to this and, hopefully, what gets us out of this. He said Nevada is six weeks away from a legislative session and he did not think it was too much to ask if Ms. Reedy could provide to Mr. Townsend in the week before session, a two-page update addressing the statistics in the audit for the year 2007, including staffing and collections. He thought that should be disbursed to not only the Legislative Commission but to the chairs of Senate and Assembly committees that deal with those areas, leadership and the chairs of the two money committees. He said that he is aware that they cannot just go out and hire an examiner and send him out tomorrow to do that work as it takes a certain level of expertise and he appreciates that. Since there is a downturn in terms of hiring, it is an opportunity to find really good people to bring in because Nevada will "come back." He said it does beg the question that if folks are licensed and they could not then turn around and audit them within 12 or 24 months, then maybe they should not have been licensing as many as quickly as was done. That needs to be reviewed. Also, he suggested that Mr. Townsend may want to address this with the chairs in the money committees. He said the question posed by Mr. Anderson and Mr. Conklin that many state agencies are not very good at collecting what is owed them "sends chills down the spine" of those legislators who have a deep concern about the budget shortfall. He commented, "I don't know how we cannot collect money that is due them." He mentioned, "If we cannot figure out what is legitimately owed to this state that is taxpayer money because we provided a service in some way or they missed a deadline or whatever the issue is, then really we are not doing our job. I think that might be a larger question than just the Mortgage Lending Division and that should be addressed by the upcoming Legislature."

ASSEMBLYMAN GOICOECHEA MOVED ACCEPTANCE OF THE AUDIT REPORTS AS PRESENTED. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

B. Summary of Six-month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Audit Subcommittee – Paul V. Townsend, Legislative Auditor.

Mr. Townsend stated that there are two sets of six-month status reports. The report from September is in the meeting packet and the second report from December is a handout (copy attached as Exhibit D). He proceeded with the report from September. The Audit Subcommittee accepted three six-month reports as shown. The Office for Consumer Health Assistance now has all recommendations fully implemented although the material indicates one partially implemented but they did provide information after the meeting. The Investigation Division, Department of Public Safety has all recommendations fully implemented. The Hearings Division and Victims of Crime Program, Department of Administration still has two recommendations that are partially implemented and his office is monitoring those. He said the next page addresses the Board of Homeopathic Medical Examiners who have returned to a number of meetings and came to the December meeting.

Mr. Townsend directed attention to the handout containing the report for the December 11, 2008 meeting. He said there was one six-month report on the Office of the Governor and all three recommendations were fully implemented. He said that the following page lists agencies who had returned from prior meetings and did not have all their recommendations implemented at the time of the six-month report. The first of those was the Board of Homeopathic Medical Examiners. He said it was a report that was issued two years ago and as of the meeting had implemented all of the recommendations and his office will not have any further action with them. The next agency was the Department of Taxation and was also an audit that was issued a little over two years ago. At this point, there are five recommendations that are still not implemented, however, four of them address a new information system that is supposed to go “on line” January 1, 2009, and involves the insurance premium tax which their findings were on. His office will monitor that process and will talk with the Director. In the event that it does not go “on line” as planned on January 1, 2009, they will want to make a referral to the money committees just because of the large amount of money that the insurance premium tax does collect and the length of time it has taken to get the system up and running. One other recommendation involves regulations being implemented and his office will continue to monitor that for the Department of Taxation. The final report involved the Department of Agriculture and was an audit that went back a couple of years. They had some challenges with turnover in management. Most recently, they had four recommendations partially implemented and they have provided his office with draft policies and procedures that look pretty good and he believes that if they can just provide the final version, his office will be done with them and be able to call their recommendations all fully implemented. He said Senator Dean A. Rhoads and

the members of the Audit Subcommittee recommend the Legislative Commission accept the reports.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE SIX-MONTH STATUS REPORTS. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

Prior to proceeding with the next agenda item, Chair Townsend, Senator Horsford and members of the Legislative Commission presented a proclamation to Thelma Clark, a Las Vegas resident, honoring her for her long time activism on behalf of senior citizens as well as others in the state.

The chair directed attention to agenda Item IV. A. before proceeding with agenda Item III. A.

Item III – Progress Reports and Appointments:

A. Litigation currently in progress – Brenda J. Erdoes, Legislative Counsel.

Ms. Erdoes said her report is brief today. There is no activity on the Gypsum Resource case, the Red Rock Canyon case, that is still under a stay pending the outcome of the federal case on the same issue. In Carrigan v. Ethics Commission, since her office filed the amicus brief on behalf of the Legislative Commission in August supporting the Ethics Commission's argument that the ethics statute is constitutional, she did not believe there has been any activity in that case. In representation of Senator Hardy before the Ethics Commission which is now no longer confidential, her office appealed the latest ruling of the Ethics Commission which was a denial of their motion to dismiss on the basis of legislative immunity. Her office appealed that to the District Court and District Court Judge William A. Maddox ruled from the bench in their favor and they are still awaiting the written decision from that case. Thirty days from the receipt of that decision, the Ethics Commission has to appeal to the Supreme Court. The Ethics Commission has tentatively indicated that they will likely be appealing that case to the Supreme Court.

Chair Townsend noted that the Assembly will have a member chairing the Legislative Commission beginning in June 2009. He said that he will work with whoever that might be and Ms. Erdoes. There are a number of cases in which the Legislature is not directly a participant, however, they significantly affect the state particularly on the financial side. He suggested briefing members in June regarding those cases. He said there is one case that the Tax Commission is involved in and while he did not know where that was at the moment, it has a small price tag attached to it that could directly impact what the Legislature does.

Senator Hardy stated that he wanted to express his appreciation to the legal counsel. He said, "Hopefully, nobody will ever have the opportunity or occasion to be represented

by them as I have. But to say that I was ably represented would not do justice to the work that they've done. Their understanding and breadth of knowledge of the statutes and laws and so forth, their professionalism is just unparalleled in my experience and I just wanted to publicly express my appreciation to them for their competence, their compassion and their talent. Thank you."

The chair commented, "Well stated. I think we all endorse that, those of us who have been fortunate to work with them over the years. Their work on behalf of the public is impossible to measure and I hope that everyone in the State of Nevada at some point has a chance to meet anyone who works for the Legislative Counsel because they will see what wonderful people they have working for them that help us do our work to do the job that we're supposed to be doing."

B. Appointment of member to Commission on Ethics (NRS 281A.200) –
Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material contained in the meeting packet concerning applicants for filling a vacancy on the Commission on Ethics. At the last meeting, there was just one applicant, Adriana Escobar. The commission was reluctant to make an appointment with only one applicant. The commission is not in that position at this meeting. The material in the meeting packet includes information on several applicants including former Assemblyman Bob Beers, Sue Camp, Adriana Escobar, former Assemblyman John Marvel, Barbara Myers, Jim Weston and Stacy Woodbury. In addition, a handout (copy attached as Exhibit E) was provided containing information on an additional applicant, Linda Simpson. The vacancy was created by the resignation of Randall V. Capurro and, therefore, the appointment would just be for the unexpired term, which has been confirmed, to end September 30, 2009. All of the people meet the qualifications. Because there are four other Democrats of the seven members, the person cannot be a Democrat and there are no restrictions on county of residence. All of the applicants are interested in serving and are eligible for appointment.

Senator Care said that he has not discussed this with any of his colleagues but his personal opinion is that this item should be "tabled" until resolution is obtained on current litigation. He said, "We apparently have at least some members of the Ethics Commission as it's presently made up who don't mind engaging in ad hoc rule making, that is to say creating standards as opposed to interpreting standards under NRS 281A.242. So, I'm not inclined to, and that's no slam on any of the names that are before us. I want to make that clear. But, I don't see why we have to at this time appoint anybody to the Ethics Commission so long as we have that big unanswered question out there. What does the Ethics Commission see itself doing? Is it going to create standards or is it just going to interpret the standards that we create by statute?"

The chair asked Ms. Erdoes how long does the commission have to decide whether they are going to appeal the decision by Judge Maddox and also how long does the Supreme Court usually take on an average, particularly with a legislative session coming and their

funding hanging in the balance. Ms. Erdoes responded that is a difficult question. The 30 days is the period from the date once the opinion is issued and she thought that would happen sometime this week. She would not hear until sometime in January whether there would be an appeal. Obviously, if there is not, then there needs to be some legislation to take out the provisions that the judge has essentially overruled in the statute. Otherwise, if there is appeal, the Ethics Commission has in the past, in the cases her division has followed, asked the Supreme Court for expedited action on their appeals. The very latest one of which she is aware, is the Carrigan case which she indicated they filed their amicus brief in August and she did not believe there has been any resolution on that and that was an expedited case as well. She reiterated that she was not sure.

Senator Townsend commented that with the growth in the state and the fact that there is no appeals court level, they are overwhelmed and legislators have been kept abreast of that situation. He said they have been very good about trying to manage their workload and he thought they have done a good job given the increase in it. He said, "It's pretty tough for us to go in there and ask to be put ahead of everybody else." He did not think Senator Care's comments were out of line and were on point because legislators are confused by all of the actions. He said, "The tough thing is how we deal with the next session because if a ruling came down after we left, there would be no opportunity to clean up the statutes in order to meet the Supreme Court ruling or at least have debate on it. So, it puts us in a very difficult position."

Senator Care said that he realized the position it puts legislators in. He stated, "In an ideal world even, we would have comments from these people whose names are before us what their personal interpretation is of 281A.420 subsection 2. just in a general sense, not as to any particular fact pattern. I know that you, Mr. Chairman, at one point earlier this year postponed a similar appointment, you gave me the opportunity to personally contact all the people who had expressed an interest and I found that to be insightful. I just feel uncomfortable, given where we are today with the litigation, and not knowing where any of these, I'll call them nominees, might stand on the current statute. I just, personally, this is only me, feel uncomfortable going forward with any kind of a nominee or naming anybody to the Ethics Commission in spite of the difficulties that it might present for us. Thank you."

Chair Townsend said that Senator Care's point is well taken and asked if the item is postponed, would he like to see those applicants who still have an interest at the next meeting which he believed would be, unless there is an emergency meeting, in June when all the commission appointments are changed by statute. He asked Senator Care if he would like to have those people who are still interested to come in front of the commission to be interviewed. He said he would be glad to send that request out. Senator Care responded in the affirmative noting that he knew that might be time consuming. He said, "Given the role of the Ethics Commission and the prominence that it has and the headlines that it can generate or that other people can

generate simply by filing a complaint with the Ethics Commission, I think it is important that we have a process like that at least for this entity.”

Mr. Anderson said that he appreciated Senator Care's position and he understands that he prefers to study the list for this particular commission or any of the appointments over time. He said that he saw at least two people on the list that he thought were very, very well qualified. He said given the nature of the upcoming session but the need for trying to keep the Ethics Commission on task and doing what is hoped for it to do, he agrees with the senator's position that it is not their responsibility to make the regulation but rather to interpret them. He said he has no qualms about that issue. He did think that there were a couple of people, one in particular who has a reputation for holding the integrity of the Legislature pretty highly. He felt very confident that members can find somebody who would do a good job from among those applicants. He said he would like to see the members move forward.

ASSEMBLYMAN GOICOECHEA MOVED TO APPOINT FORMER ASSEMBLYMAN JOHN MARVEL. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED WITH SENATOR HARDY ABSTAINING DUE TO HIS PENDING CASE AND SENATOR CARE VOTING NAY INDICATING THAT HE HAD NOTHING AGAINST MR. MARVEL.

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

Mr. Malkiewich referred to the meeting packet for information on this item. The cover sheet indicates the people who have been nominated for appointment and two letters from Commissioner Joseph L. Waltuch indicating that Jenny Lopiccolo and Sean Corrigan had resigned. A number of people who were originally nominated in October 2007 for appointment are no longer in the industry. The remaining members from that list the commissioner had forwarded to the commission are at the top of the page: Kelly Graham, Gloria Fillmon, Wayne Snyder and Matthew Tesdall. In addition, between the commissioner and Tom Powell, the current chair of the Advisory Council on Mortgage Investments and Mortgage Lending, four other names were suggested: Cindy Stephens, Bruce Specter, Cathie Jackson and Steve Brockman. He stated there are two vacancies on the Advisory Council.

Mr. Conklin said that he was looking down the list and does not recognize a single name. He said he did not feel comfortable casting a vote without some information about any of the folks.

Mr. Malkiewich said that if the commission members would prefer, he could try and contact Mr. Waltuch and Mr. Powell to obtain some background information on all the nominees and bring it back to the commission so members would have a better idea and perhaps some additional individuals for nomination.

Chair Townsend stated he thought Mr. Conklin had identified a problem with some of the appointments. He said, "I see a name on a list because statutorily a certain agency or a certain person is required to give us names. I think out of respect for the commission and the fact that we are part time, it is important that all of these agencies submit the appropriate background with it. If they don't have one, then that might tell us something. But, you have a broad section of the 63 of us sitting on this panel and as you know, Mr. Conklin, if the 12 of us don't recognize any of these names in just a normal course of everyday work, not as our status as a legislator, we need to be able to have background enough to understand who we might want to call, as Senator Care has done with the Commission on Ethics in his questioning of those applicants. I think it would be important that they submit their initial either curriculum vitae or their background or something so that we have an opportunity to do our due diligence. Would that be fair? I don't think it was a ridiculous statement, I think it was spot on." The chair announced he would hold this agenda item.

D. Appointment of members to Advisory Board on Maternal and Child Health (NRS 442.133) – Lorne J. Malkiewich, Director.

Mr. Malkiewich explained that this committee and the following committee are two of the very few to which the Legislative Commission appoints legislative members to outside of the normal period which is shortly after a legislative session. The statutes are included in the meeting packet for both items. On this Advisory Board, the legislators serve terms which begin the third Monday in January of odd-numbered years and end the third Monday in January of the next odd-numbered year. The commission needs to appoint one member of the Senate and one member of the Assembly. The current members are Senator Maggie Carlton and Assemblywoman Peggy Pierce. The chair asked Senator Horsford and Assemblyman Ocegüera if those individuals are ones they would still recommend and if they are still interested. Mr. Ocegüera stated for the Assembly side, if they did not come forward and say they did not want to serve then they should continue to serve. Senator Horsford agreed with Mr. Ocegüera and said that he had not heard anything different and he would support the nomination of Senator Carlton and Assemblywoman Pierce.

SENATOR HORSFORD MOVED TO REAPPOINT SENATOR CARLTON AND ASSEMBLYWOMAN PIERCE. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

E. Appointment of members to Gaming Policy Committee (NRS 463.021) – Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material in the meeting packet containing the statute and current members. One member of the Senate and one member of the Assembly are to be appointed by the Legislative Commission. The terms begin when the Legislature convenes and continues until the next regular session of the Legislature is convened. The current members are Senator Mark Amodei and Assemblyman Anderson.

Mr. Ocegüera indicated that if Mr. Anderson wanted to continue to serve it would be fine. The chair noted that Senator Horsford had to step out of the room but the new chair of the Senate Judiciary Committee is present. He asked Senator Care if it would be his intent to serve on the Gaming Policy Committee and noted that there might have been a precedent set in the past that traditionally the chairs of the Judiciary committees serve on the committee. Senator Care concurred with the comment about tradition and he said that he needed to disclose to the commission that in the 2003 Legislative Session, he proposed an amendment to a bill to abolish the Gaming Policy Committee. He said that Mr. Anderson will recall that this committee did meet after the neighbors appealed a decision by the Clark County Commission that had voted three in favor and one against and three abstentions for the creation of a casino in the Spring Valley area that was outside the gaming corridor. It turned out that was the first time the committee had met since a meeting during the administration of Governor Richard Bryan. He said he had asked about that and it was on that basis he sought the abolition of the committee. He noted the amendment died and having disclosed all of that information, he would be more than happy to serve as a member of the Gaming Policy Committee.

Mr. Anderson said that he wished to assure the Legislative Commission and Senator Care that he believed the entire committee has not met in the 20 years he has served in the Legislature and he thought it was only a subgroup of the committee that met to look at the neighborhood gaming issue in Clark County. He opined that the likelihood of the committee meeting again is "slim and none" based upon his past experience.

ASSEMBLYMAN CARPENTER MOVED TO APPOINT SENATOR CARE AND ASSEMBLYMAN ANDERSON TO THE GAMING POLICY COMMITTEE. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

F. Appointment or reappointment of members to Nevada Silver Haired Legislative Forum (NRS 427A.320) – Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material in the meeting packet containing a memorandum dated December 2, 2008, from Mary Shope, Coordinator of the Nevada Silver Haired Legislative Forum, listing the appointments that are proposed. He also called attention to a handout (copy attached as Exhibit F) for informational purposes of a summary report to the Legislative Commission from the Forum listing the members and containing recommendations made for this interim period. The action for the commission is to appoint the members listed in the memorandum.

Mr. Anderson noted the provision in the statute that says "after consulting with the members of the Assembly residing in his or her district" that the senators will make such recommendation. He was curious whether that provision had been followed up and if there is some methodology that is being used to ensure that it is. He thought that had been sporadic over the time this has been in place and has been a problem from time to time. He mentioned that several Assembly members have been involved in senior issues

and he would like to hear something to assure himself that the appointments were at some point paraded by the Assembly members that were involved.

Mr. Malkiewich commented that he would like to thank Mr. Carpenter for indicating that he was consulted and he would let Ms. Shope continue but he would suggest that he did not know if she would be able to police this but what she could do would be an information campaign to make sure that when the members are appointed when she is contacting the senators that she ensures that they are aware of that requirement. He asked if Ms. Shope would like to add anything else. Ms. Shope said that it is more on an informal basis through the senators that they work hand-in-hand with the Assembly members. She has not heard anything back on an informal basis but she has heard quite a compliment of the body and those that are up for reappointment at the present time. She said they could do something better for next reappointment cycle next December and make sure that there is a more formal process if the commission would like. Senator Hardy said that he has been contacted and his appointee, Mimi Rodden, stays in touch with him which he appreciates.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE NINE INDIVIDUALS
NOMINATED FOR REAPPOINTMENT AS SHOWN ON THE MEMORANDUM.
MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

G. Report of Committee to Consult with the Director (NRS 218.6828) – Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to the meeting packet which contained a memorandum dated December 8, 2008, concerning the committee. He said among the activities of the committee was reviewing a very timely issue, Senate Bill 490, and the requirement that state and local government requests be prefiled by December 15th. December two years ago there were 19 bills prefiled. As of the previous day, there were 206 bills prefiled. There were 144 all of last interim and there are 180 fewer bills than last interim. About one quarter of the bills that have requested have already been prefiled in the Legislature. He thought that would have a couple of benefits. First, it will give the legislative committees a lot to do the first month of session and get off to quick start. He thought that would be a tremendous benefit when they get to the deadlines for committee passage and house passage of bills. It will also mean that from this point forward, the Legal Division will be able to focus on bills requested by legislators and legislative committees. He was hopeful the presence of 206 bills will encourage legislators to prefile those bills as they become finished. The committee reviewed the 120-day calendar for session and also recommended a bill draft, which he thought was the biggest action that the committee is requesting, that the Legislative Commission authorize a bill draft concerning the interim committee process. He said it hoped to take a more detailed look at that process, unfortunately, the timing of the first special session got the committee off its schedule. The committee did recommend getting a bill draft to take a look at some of the recommendations for reforming the interim committee process to make it more of a strategic part of the overall legislative function rather than

a place where a committee is created to make up for a bill that has been “killed.” He said he asked the committee to review proposals for the budget submission to try and save some money in the budget to limit certain areas, to not include payment of dues to national organizations in the proposed budget, to limit the amount of travel for legislators and to restrict the budgets of statutory committees. He said it would be easy for him to make those proposals rather than cutting his own budget so he wanted to “run it by the committee.” He said it would save about \$1 million over the biennium on the budget. He explained that acceptance of the report would include approval of the bill draft request.

Senator Wiener that she had learned earlier about the proposal to limit memberships in some of the national organizations that take legislatures as members. She said that she knows historically that Nevada has relied on them substantially for research and helping them develop best practices and models for legislation. She asked how will not joining some of those organizations affect the ability to do the research and determine the best practices in other state legislatures. Mr. Malkiewicz said, “I guess the short answer is I don’t know. What I can tell you in speaking with the representatives of these agencies including, Senator Care, I’ll let you know that the National Conference of Commissioners on Uniform State Laws, that this is not a unique situation for Nevada, that many states are looking at this. All I am asking at this point is not to include them in the dues up front. We can negotiate with these agencies during session, determine if we pay this much could we continue to, you know, have membership, could we still work on this perhaps have a deferred payment schedule – something along those lines. All I’m asking is to keep this money out of our budget submittal so that we can use the money to try and preserve some of the rest of the budget while facing the major cuts we’re going to have to make.”

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE REPORT OF THE COMMITTEE AS WELL AS AUTHORIZE A BILL DRAFT CONCERNING THE INTERIM COMMITTEES. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

H. Report of State Board of Parole Commissioners on status of Regulation R018-08 and certain related matters – Connie S. Bisbee, State Board of Parole Commissioners.

Connie S. Bisbee, member of the State Board of Parole Commissioners, appeared before members in Carson City. She expressed her appreciation for allowing her to return and report on the State Board of Parole Commissioners adopted regulation R018-08. As a result of attending the meeting on September 17, 2008, the agency held an additional public meeting on this particular regulation on October 3, 2008, and invited the public to attend. There had been some question that there were some things on which members of the public were not clear. With the assistance of Senator Parks, the meeting was held and it lasted approximately three hours and they were able to review the regulation in its entirety. They found that the risk assessment used by the Board of Parole

Commissioners had the most concern and it ended up that many of the concerns were directly related to particular inmate issues. They were able to go over each of those items – how those items came about and how they are interpreted in terms of, if a particular inmate gets the risk assessment back what they are looking at. They were able to do that. It was a no action meeting but they have invited the public to continue to offer comment and be in that process when they review regulations. A particular discussion was the fact that it is a validated objective risk assessment instrument developed by Dr. James Austin and validated by Dr. Austin using specifically Nevada inmates. The other issue that came up at the September 17, 2008, meeting was a question from Mr. Anderson and Mr. Carpenter regarding the returned face-to-face hearings with the inmates. She said that she is happy to announce that they returned to face-to-face via videoconference on the first of December. They are holding several hundred of those face-to-face hearings and there are approximately 100 that will be held in absentia and they intend to be 100 percent face-to-face in January. She said the reason for the 100 in absentia was that they had a scheduling issue, a conflict with the site panel, which was none of their fault and they were not positive that they would be able to be 100 percent face-to-face in December. The other issue was that they were in a “use or lose situation” with leave with several commissioners and, obviously, do not have the funds to pay off leave. Therefore, they had commissioners taking leave at the end of the month so they could be fiscally responsible.

Mr. Anderson commented that this is a topic that he has been following for some time. He asked if there is a handout that was prepared for her presentation. Ms. Bisbee replied that there was not but she would be happy to provide any information he would like to have. Mr. Anderson said that he thought members were looking for some response from the Parole Board in writing so they would have something to refer to since “we seem to kind of go from time to time to time to time and hear the same explanation.” He said, “I have been following Dr. Austin around for several years as he has dealt with parole and probation and the sentencing questions as a whole as we’ve gone through these many gyrations since ‘91 and so I’m a bit concerned, especially if you’ve adopted a new matrix for that that we don’t have here in our commission packet.

I know you may have presented that, and Dr. Austin may have presented that to another group, that is not this commission however and so I think that trying to keep this commission up to date of where things are proceeding would be most helpful. One of the members in the south will be the chair of the Senate Judiciary in this upcoming session and this will be an issue that he’ll be dealing with. While I believe that you will not be coming in front of the Assembly Judiciary committee but rather to the new Assemblyman Horne’s committee, I’m kind of curious how come you didn’t bring it if there is a new rubric that you are using.” Ms. Bisbee replied, “This isn’t a new risk assessment. This is part of the adopted regulation that became effective April 17, 2008. The meeting was held because there still seemed to be some members of the public that didn’t understand the particular risk assessment so we reviewed it in its entirety. And, I do have a copy of that if you would like to have that.”

Mr. Anderson said he thought that was the reason that Ms. Buckley, himself and several others had raised some of the questions at the initial adoption that she felt that was necessary and then in the June special session it was felt necessary to try to deal with the backlog of prisoners that could potentially be moved forward and the multiple questions of process that was symptomatic of the interim study that was done between the 2005 and 2007 sessions and they still do not have the answers to that entirely in front of us. He said he is not sure they are getting a response to the initial questions that were asked. The last time the response was that members were told the board did not have those questions in writing and therefore did not feel it was necessary to respond. He said, "I'm still stuck right where I'm at and feel that we shouldn't have passed the regulation I guess initially is what you are telling me." Ms. Bisbee responded, "No, I'm certainly not telling you that I don't think the regulation should pass. The regulation is necessary to do our job. We have two different issues here. What was referred to as the bubble was as the result of A.B. 510 and the credit and that is no longer an issue. We had, with the special session and your allowing S.B. 4 to pass, we were able to hold the hearings in absentia. In fact, held over 4,900 between S.B. 4 going into effect in July and the end of October. So, that was a separate issue that you allowed us to clean up that bubble that was as the result of 510 and that has been cleared."

Mr. Anderson said that it seemed to him when the commission passed the regulation it was with the understanding that the Parole Board needed the regulation in order to implement the problems they felt were created by the piece of legislation and put into place. It was with the clear understanding that you would come back to this committee and report how the process had cleaned up and that there would be some followup to those kinds of questions. He said, "I believe Speaker Buckley put forth several points at that time as did myself and I think there were others who were concerned about the legislation as to whether they were following what we had hoped with that piece of legislation that it was going to accomplish. Whether it has or not you and I can disagree. I feel that we still have not gotten the response to our concerns that were raised several months ago other than come in and go well everything is just as it was, and I'm really flabbergasted by what's going on here." Ms. Bisbee replied, "The regulation and the way it was written was as a result of S.B. 471 and that was the process issue. The problem we ran into was it butted up against A.B. 510 which all of a sudden made a couple of thousand inmates immediately parole eligible. So, in order to comply with what we were required to do via 471, we had to come in and ask you to make an exception for a period of time which you did, and allowed us to not be in strict compliance with that until I believe the first of July 2009. We got this moving, we took advantage of your allowing us S.B. 4 to all of these folks in absentia, not using the process that you had developed for us via S.B. 471. There is no bubble any longer. We are at this moment caught up. The only people that are not being seen in advance, at least two months in advance of the parole eligibility, are those that are coming to us immediately eligible for jail credits or probation violators that hit the institution already eligible. What we are in the process now, is going back to complying with what you asked us to do in S.B. 471 in terms of the noticing, in terms of the participation, and we

are nearly in compliance with that six months in advance and expect to be in full compliance with that by March 1st. One of the things that was criticized was the risk assessment and that was as the result of inmates, in particular, not understanding it and we are literally going over that with the inmate – their particular assessment – this is what your risk is and this is where it came from and allowing them to comment or assist us in making changes. I would say that we are absolutely complying with what you allowed us to do via S.B. 4 and we are nearly in compliance nearly six months early with S.B. 471.”

Chair Townsend invited public comment on this agenda item and acknowledged the presence of Senator David R. Parks in Las Vegas who wished to make some comments.

Senator Parks said that there were quite a few issues that were brought up at the October 3, 2008, hearing that was scheduled to review the R018-08 regulation. While no action was taken at that hearing, it was more of a hearing than a work session and he thought there were some very valid ideas that had been put forward that were worthy of further review and examination that could have been used to incorporate into subsequent regulations. He noted the upcoming legislative session and said in light of some factors, it might be necessary to look at it more specifically in legislation as opposed to trying to achieve what the intent of the Legislature is through a regulation that seems to have rather inherent flaws.

Chair Townsend requested that persons providing comment do so briefly as this regulation has been dealt with time and time again and he has tried to accommodate everyone. He asked that people providing testimony be to the point of what is in the regulation and whether they agree with it or do not agree with it, it will be helpful to members.

Florence Jones, private citizen, appeared before members in Las Vegas. She expressed her appreciation to the commission for again dealing with the regulation. She said that she was present at the October 3, 2008, hearing and the regulation was attempted to be read by Commissioner Bisbee so that it could be heard once again. She said they were able to dispute some of the significant parts that are violating the law that the constitution says legislators are the only ones that can make. She said through R018-08, the Parole Board has effectively, with the LCB's approval, changed by the Nevada Administrative Code, the law. She thought it was a very serious situation that Senator Hardy brought up in April when it was presented and he was concerned about the process. She said, “I think it's a serious process where we have folks who are working for the elected officials making regulations that then become NAC that become effective law that they are following that completely disregard what you have spent hours, months, years possibly creating. One of the issues that was just brought before us was this Nevada parole risk assessment which Commissioner Bisbee is speaking. She said that was the big issue of October 3rd and I can tell you there was an issue regarding education. They want to give one point for one possible dynamic risk factor, negative point, for education – one. So someone is in prison for 5 years, 10 years, 15 years and

they get their G.E.D., they go on and get other programming, they do other accomplishments, they get no additional credits. So they are significantly encouraged to do very little or nothing, once they get their one point. I spoke to this and was chastised, I felt, by Commissioner Mary Baker who said all this would do to increase this particular issue of education by giving a dynamic negative point for accomplished credits, accomplished treatment programs, accomplished training programs which is what I pray we are about so people will come out and come back to us better equipped to be successful. I was told all this would do would be to encourage or to reward the rich, had nothing to do with what was available for the inmates. I spoke to the fact that we have had in the past the Pell and we certainly hope to have that again. We also have education in the form of G.E.D.'s high school and at one time we did have college.

That's been I believe excluded and removed and many of our treatment programs have been reduced. As far as the risk assessment that Dr. Austin worked so hard to prepare for us and I must admit I have followed his work and I certainly support it – he's brilliant.

But, it seems to me that he gives seven to eleven suggestions to the Parole Board and they accept one and I say this sadly.” Chair Townsend interrupted

Ms. Jones's testimony and reiterated that members are here for one reason and one reason only and that is to find out if they are recommending to this commission to reject this or asking to recall this regulation or asking members to change the law in the coming session. Ms. Jones said that what she is asking specifically is a document that has been prepared under the direction of Senator Parks from the April 16th meeting that brought into line all of the good recommendations of the April 16th hearing and what Senator Parks and Assemblyman Harvey Munford were presenting and has it ready June 6th for the June 16th hearing. She said it was not put on the record according to Mr. Malkiewicz because he was at fault and made a mistake. She said it did get on the September agenda but only as a report. She said Commissioner Bisbee asked if there were any questions and no one seemed to be aware. She indicated she missed it as a report and thought it was coming back as a regulation never believing that the regulation had been accepted by the commission with criticism and needing changes and took it to the Secretary of State on April 17th and presented it to them in adopted form saying that there had been no comment or complaints with this division. Ms. Jones said, “I say to you that we have a very serious issue here and I, at the very least, under 233B.100, it allows for any interested party according to Risa Lang, you the commission, do not have the right to repeal but we an interested party and we are presenting to you the interested party document asking that the document prepared under Senator Parks be accepted as a total for the amendment or at the least to repeal this R018-08 until the new legislative body can review. And I certainly would ask that the caveat be put on that there be some serious control between this NRS legislative LCB approval and the R.O.'s going to NAC coming back here for a rubber stamp. I'm beginning to see a pattern where people who have an agenda are making changes in law that you, the elected officials, are spending so much time, energy and work to make work for us. We cannot as interested parties in the State of Nevada allow this. This is only one that I'm pretty sure of, no I'm very sure of it, I've followed it and I can tell you that if this one exists there may be others. I think this process has to be reviewed as Senator Hardy pointed out back in April. Again, Senator Townsend, I would ask that this August body

take into consideration removing R018-08 or totally amending it by the proposed document that has been prepared with David Parks' direction."

Mr. Malkiewich said, "For the record, I think I need to go back over the history of this a little bit. I think there has been some misunderstanding as to the authority of the Legislative Commission and the effect of the actions that it took in February. When this regulation came before the commission in February, the commission approved it and that's why Ms. Lang filed it the next day. The motion to approve by Speaker Buckley and this is in the minutes of the commission, indicated that there were concerns but that the commission felt that we needed to have that regulation on the record and asked the Parole Board to continue working on the regulation with the interested parties and try and revise it. There is also a request to report back to future meetings of the commission on the actions of the Parole Board and that is why at the last meeting and this meeting, the Parole Board has come back and reported to us. The proponents of the changes in the regulation, I think, believe that the document that was prepared that amended the regulation is something the commission could adopt. It could not. Whether or not it had been brought back to the next meeting or the meeting after or any other meeting, the Legislative Commission does not have the authority to adopt a regulation or to revise a regulation. As we are about to go through these other regulations, the decision of the commission is either to approve the regulation or reject it. Any amendments to the regulation would have to be made by the Parole Board and that's why the commission referred the matter back to the Parole Board.

[NRS] 233B.100 on the petition for repealing a regulation, that petition needs to go to the adopting body, similarly it's a separation of powers issue. The constitution allows the Legislature to create a body such as the Legislative Commission, to review regulations but the statutes do not allow the Legislative Commission to prescribe specific amendments. We can just reject the regulation or approve it. If we reject it, send it back to the agency for revision. In this case, since we approved the regulation, it is in the hands of the Parole Board whether or not to make any amendments to that regulation. I believe this is why Senator Parks is saying, believing that that will not be done, that perhaps this would best be handled at the next session of the Legislature. Again, I believe there is some serious misunderstanding here. The Legislative Commission does not have the authority to amend this regulation, does not have the authority to adopt a substitute amendment for R018, or whatever the correct number is, that all we can do and what we are doing pursuant to the motion of Speaker Buckley at the February meeting is reviewing the actions of the Parole Board to review that regulation."

Michelle Ravelle, private citizen, appeared before members in Las Vegas and stated "If you all don't have the right to repeal the regulation, I do as an interested party in this state, it says in NRS 233B.100. I requested from the Parole Board the form that needs to be filed which is what's in the NRS that we need to file a form and the agency should have that form. This regulation does not meet the intent of the Legislature, the Parole

Board is doing whatever they want and you all approved a regulation for them that now you can't repeal. But I can repeal it. I cannot believe that this is how this government works. Thank you."

Chair Townsend commented, "Well, Mam, all we're doing is trying to follow the law as we understand it. You have a right to appeal it. I hope you do. You have the chairman of the Judiciary Committee in the Senate in front of you, the chairman of the Assembly Judiciary is here in Carson City. They can process a bill to overturn that regulation and to change the statute if it is not clear. Those are the processes we have available to us."

Ms. Jones said with regard to the form, there is in NRS 233B.100 the form is identified and it said it is to be of record by the agency. She said they requested that from the Parole Board and to date they have not had any response from them. One of their advocates has called and is told the person they need to speak to is not available. They have attempted as interested parties to bring this to the attention of the agency that could correctly handle it and so far they are being stopped similar to the information that Assemblyman Anderson is calling for. She said she thought it was a serious problem and they are unable to get the current information they need as interested citizens of the state to bring to the legislators information so that they can deal with the myriad of data that they are faced with every day. She reiterated that it is a serious issue and they do need the support of the legislators and will be asking for them to entertain looking at the document that they have prepared and requesting that the Parole Board immediately take action.

In addition to the testimony, a handout from several people identified as the Self Appointed Interested Citizens Oversight Committee for the Nevada Parole Board, including Ms. Jones and Ms. Ravelle, was provided and is attached as Exhibit G. Also a handout regarding this agenda item was provided from Patricia A. Hines who was unable to attend the meeting and it is attached as Exhibit H.

Teresa Werner, a private citizen, appeared before members in Carson City. Ms. Werner provided a written statement to the secretary and that document is attached as Exhibit I. She said that in the interest of time she would not read from it. Chair Townsend said that members would obtain copies of it. Ms. Werner commented with regard to Ms. Bisbee's report that it is not that the public does not understand the risk assessment or some of the things that are in the document, it is that 90 percent of the time the board does not follow them. She said that she was disturbed about the audit report about inaccurate information about sex offenders. She said that was across the board that there are huge, huge amounts of inaccurate information which is the information the Parole Board uses to come up with the risk assessment information. She said that inmates are told repeatedly from their case workers, the Parole Board knows all this stuff is inaccurate, it doesn't matter, but that's what they base these decisions on. She indicated that her personal passion that she will state briefly is that with the risk assessment tool/worksheet she has seen so many inmates with low risk. They go

through the worksheet and they are given a low risk to re-offend and even with that low risk, they are still denied parole for a maximum of three years even when they are going to a consecutive sentence. So, they are not even being released to the streets, they are still denied – a three year denial – and they are given a low risk assessment. As a public citizen, she is wondering who they are paroling if they are not even paroling low risk people according to their own worksheet, just going to another sentence. She said that with the state's economic situation, noting that she herself does not have a job because of it, for every three year parole denial, it costs the state \$60,000. For every three year denial, it costs a teacher her job and also it costs a lot of health and human services. She said her handout included some suggestions and recommendations for a better course of action for the Parole Board.

Tonja Brown, a private citizen, appeared before the members in Carson City. She said that she concurs with Ms. Werner and everyone who testified from Las Vegas. She said with the worksheet information members have been provided, there is something that has not been included. She would like it put on the record for future reference. Something that the Parole Board will do in denying an inmate is say that they are a risk to society, they are a threat to society. She said that she would like amended into the information provided by Senator Parks, the Parole Board to define what is a "threat to society." She said, "I will tell you first hand that I know to be true, that I have seen personally, that the Parole Board is and can be vindictive and retaliated against an inmate for whatever reasons. For example, I have seen this Parole Board deny an inmate his due process at a process hearing. For example, he was asked to sign a waiver not to sue the State of Nevada because he had been not presented to the Parole Board for several years and he should have. A federal judge ordered him a due process in which he appeared before the Parole Board. They offered him a deal – tell you what we'll do, we will keep your granted paroles from the early 90's, we will change your '97 and 2004 denials to grants but sign the waiver not to sue us. He refused. So what did they do? They brought him before the Parole Board. They went back and revoked on expired sentences – these are expired, they no longer even existed, to put him back onto the first sentence and it continues. That's retaliation and that's vindictiveness because why – he wouldn't sign a waiver not to sue because they violated his rights. This went to and is still pending in court and this is not just one case that they have done this to, this is other cases, where they will take them to a parole hearing with no progress report. It is required by law that N.D.O.C. provide a progress report to the Parole Board. Without that, you cannot have a parole hearing yet, in this particular case, they denied him parole. Again, violation. I have letters from inmates who have recently through absentia have gone through, been given a denial for parole based on you need to complete these programming. Apparently, the Parole Board are not even looking at the programming records because they have completed them. They have done everything that is being required and the Parole Board is denying them based on this. They are denying them because they haven't passed the psych panel. Well, by law, once they pass the psych panel they are not required to pass the psych panel again

unless they have committed a crime of the same act. And yet, recently again in December, denied because he didn't pass the psych panel. These are several, several inmates."

Responding to the chair, Ms. Brown said what she would like to see put in place is a work factor, like the risk assessment guidelines, a work factor to define what the Parole Board deems a threat to society. She said that needs to be detailed because all they have to say is threat to society. They may not like the way you look and deem you a threat to society and that's all they have to put down. Further, she said that the next day during the Advisory Commission on the Administration of Justice there is a bill draft being proposed on preservation of DNA evidence. She said that she has given her recommendations to that which she hopes will be taken in.

Further, Ms. Brown referred to the information on regulations that had been provided to members, pages 10 and 22, information in red is what has been asked to be added to R018-08. The chair reiterated his previous explanation that the commission could not do that. She said that she just wanted to explain because it deals with what will happen at the meeting the next day and she wanted to give members a "heads up" on it.

She proceeded to explain what they would be asking relative to an inmate's appeals and deals with maintaining innocence and the right to appeal. Also, she commented about the fact that DNA evidence is exonerating people in the prison system every day. She stated that the psych panel and the Parole Board will never release an inmate to the streets until they admit guilt to them. She said that is wrong and is why she had asked that part be put into the recommendation.

The chair concluded the public comment on this agenda item and commented that those who have testified would address their concerns to the next Legislature particularly the two committees on the Judiciary. He noted that the two chairs and some members of the Legislative Commission sit on those committees. He said they are familiar with the issues and they will do the best they can because they work very hard.

I. Interim Studies in accordance with Rules and Policies of the Legislative Counsel Bureau, Rule No. 6, "Progress reports of studies; completion of studies and distribution of reports; approval required to carry over studies," – Lorne J. Malkiewich, Director.

Mr. Malkiewich indicated that most of the study reports were submitted at the previous meeting. The Legislative Committee on Education report is included in the meeting packet. In addition, a Staff Study Concerning Alternative and Complementary Integrative Medicine, Homeopathic Medicine and the Use of Nonembryonic Stem Cells in Bioregenerative Medical Technology was provided as a handout and a copy is attached as Exhibit J. He said that the action on this item is to accept the reports. As with all reports to the Legislature, acceptance of the report does not signify support of any of the recommendations contained therein but just to transmit it to the Legislature.

ASSEMBLYMAN CARPENTER MOVED TO ACCEPT THE INTERIM STUDY REPORTS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

Item IV – Legislative Commission Policy:

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

1. Permanent regulations submitted pursuant to NRS 233B.067.
2. Regulations resubmitted pursuant to NRS 233B.0675.

A handout (copy attached as Exhibit K) of a revised list of regulations was provided to the members and available to the public. 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.]

Statements of disclosure were made by various members on certain regulations and are noted where appropriate.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATIONS R162-05, R129-07, R185-07, R074-08, R101-08, R105-08, R117-08, R150-08, R151-08, R154-08, R158-08, R160-08, R191-08, R192-08, R204-08, R214-08, R085-08, R216-08 AND R217-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA. SENATOR HARDY ABSTAINED ON R150-08 AND R191-08 AND DISCLOSED ON R204-08 AND R214-08 THAT HE IS PRESIDENT OF THE ASSOCIATED BUILDERS AND CONTRACTORS OF LAS VEGAS AND IS CONFIDENT THAT THEY DO NOT IMPACT HIM OR HIS MEMBERSHIP ANY MORE THAN IT DOES ANYBODY ELSE IN BUSINESS OR IN THE CONSTRUCTION INDUSTRY AND WOULD THEREFORE VOTE. THE MOTION CARRIED.

The chair returned to agenda Item III. A. before proceeding to address individual regulations that were held for further discussion.

On Regulation R167-08 from the Commission on Professional Standards in Education, Mr. Anderson said he would like to disclose that he is a retired teacher from the Washoe County School District and read from his written disclosure (copy attached as Exhibit L) and indicated that he would not abstain from voting. He said that the reason he held the regulation was so that he could formally enter it into the record.

Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education, appeared before members in Carson City. He said the regulation was put forward to provide an incentive to keep veteran, highly qualified teachers and allowing them to retain their license and be used as mentors or whatever in the school districts. He said he would appreciate passage of the regulation.

Mr. Stewart said that he would like to make the same disclosure that Mr. Anderson just made.

Chair Townsend said, "Dr. Rheault, I want to let you know the effort you're making although it may seem small to those who sat through today, is one of the many creative things we need to be aware of that can be done to try help us solve some of these challenges we face and if we can all quit arguing and taking stances and drawing up sides and start being Americans who have the most ingenuity of any group in the world, we can find solutions to those. I believe that very strongly and something as simple as this, hopefully, can be beneficial. If it only helps a handful of people, then it helps a lot of kids and I appreciate what you've done on this."

ASSEMBLYMAN GOICOECHEA MOVED TO ACCEPT REGULATION R167-08.
MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED
UNANIMOUSLY.

On Regulation R080-08 from the State Environmental Commission, Mr. Goicoechea said the part of the regulation that "gives him heartburn" is section 3 and the change that says the landowner must approve or has technically veto power on a reclamation bill and that has been removed in that particular section while leaving the Bureau of Land Management and the U.S. Forest Service. He said that he wanted to establish the legislative intent of that is the adoption of a reclamation plan by the Nevada Department of Environmental Protection requires that the landowner be notified but he does not have the veto power that existed before. That it does not in any way impair his ability to negotiate or deal with the mining company that ultimately would be involved in the project. He asked, "Is that correct?"

Leo Drozdoff, Administrator, Nevada Department of Environmental Protection appeared before members in Carson City. Responding to Mr. Goicoechea, he said, "Yes, Assemblyman Goicoechea, that is completely correct." Mr. Goicoechea said with that assurance and the legislative intent, he would make a motion to approve unless Mr. Carpenter has some issues with the regulation.

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R080-08.
MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Under discussion, Senator Care said that he had a followup to Mr. Goicoechea and asked how is the owner of record going to be in a position to negotiate if he does not have any sort of veto power. Mr. Drozdoff explained, "What we have done is to make it the responsibility of the applicant to provide us with the owner of record. With that information, we would public notice the owner of record and in accordance with section 2 item 5, which has been added, we would consider and respond to any comments received. If that owner of record doesn't believe that we've adequately taken that person's position into account, he could do one of two things. He could appeal our decision to the State Environmental Commission as anybody could or if it's outside the

scope of the descriptions of the post-mining land use and it's really a property dispute, they have the ability to pursue legal redress like any other property owner would."

Mr. Goicoechea addressed Senator Care saying that he felt the real key to this is the fact that they are talking about the reclamation plan, not the mine plan. Clearly, the landowner would be noticed in the mine plan and at that point would have the ability, in talking about split estates where someone owns the surface and the mining company owns the mineral assets underneath, which was his concern and why he wanted it established that the regulation was only talking about the reclamation plan and it does nothing to impair the rights of the landowner to go ahead and negotiate and deal with the mining company as it pertains to his property surface rights.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED WITH
SENATOR CARE VOTING NAY.

On Regulation R034-07 from the State Board of Pharmacy, Senator Care referred to section 1 at the top of page 3 where it says the Board may impose any term or condition on the license that the Board determines necessary and appropriate. He thought that would seem to be a pretty broad use of discretionary power. He said that he is not saying that it is not legitimate but he was curious how would the Board make that determination and is there any limitation to the conditions that could be imposed. Also, he wondered if other states have similar language in their regulations.

Larry L. Pinson, Pharm.D., Executive Secretary and Carolyn J. Cramer, General Counsel representing the State Board of Pharmacy appeared before members in Carson City. Mr. Pinson said that he thought a little background would help and proceeded to explain that the whole intent of the regulation at the beginning has to do with what they call "closed door pharmacies." He said that closed door pharmacies basically are a scheme to introduce counterfeit drugs and move around counterfeit drugs in the country. He said years ago the Board received application after application for a closed door pharmacy, that being a pharmacy that does not serve the general public where a person could walk in and get a prescription filled. They allegedly fill prescriptions for nursing home patients and after a while they got to thinking that they had licensed enough of those to have one pharmacy per patient and thought something else was going on. They figured out that they are moving counterfeit around, the grey wholesale market, through these closed door pharmacies. That was when the regulation first came up. In the meantime, the Board wanted to make sure that it is fair to those pharmacies that are legitimate, that do want to serve nursing homes, and that is why the new language is easier. He noted that in the first line of page 3 pointed out by Senator Care, it says "the Board may impose." Basically, what the Board does is have an applicant appear and then they will quiz the applicant about the legitimacy of their business. Prior to that, it was unbelievable the applicants they had. They would have "straw people" – the city manager from some city in Montana supposedly running a pharmacy and he did not know a pharmacy from a load of hay. They were just moving drugs around. The regulation allows the people to appear and then the Board can mandate such things as

do you have a contract with a wholesaler, do you have contracts with nursing homes, it is an attempt to figure out whether the applicant is legitimate or not.

Ms. Cramer said that Senator Care was correct and before, the language was somewhat restrictive. It required that the Board make sure those items were in place. By the amendment that is being proposed by the Board, it is permissive. What the Board intends to do, and what the language would allow, is that the Board can go through the items that are delineated and make reference to those items in any form or fashion but not limited thereto to make sure that the public intent is maintained – that this be a legitimate pharmacy and not a diversionary pharmacy. She said, “What we’re hoping is that it does allow some more flexibility to allow other people to enter the field who wish to do closed door pharmacy but wish to do it legitimately and not be imposed with restrictions that are too onerous.”

Senator Care said he appreciated the background information and was now more comfortable with the regulation. He asked, “If that were to happen and you go through this exercise an actual finding of fact or something so that the applicant, the licensee, understands why the restrictions are imposed.” Ms. Cramer responded, “Typically, what our Board members do is that when they do make a finding, they will state an actual grounds for it. They will say that they are not comfortable based on there not being a contract or there not being basis to show that there’s enough volume for this business to work. Those are the type of things that they make in their motions so, yes, there is generally a finding at the time they make their motion.”

Mr. Anderson said that he spoke with Ms. Cramer previously about the regulation. He said that he noticed in the informational statement at the end that the number of persons who attended, there were no public responses. He asked, “Was there no one there?” Mr. Pinson replied that there were 30 people there, he does have a sign-in sheet, but they had no public comment from any of those people and it had been discussed over a period of a year or so. Mr. Anderson said that when he reads the regulations, he tries to do two things. First, he reads the digest provided by the Legal Division in the front and then he turns to the informational statement to see if there were any problems that were identified and when he sees that there was nobody there, he wonders if the agency had a public meeting or not. He said he was a bit surprised and wanted to bring it to the representatives attention primarily because he thought the members would be getting into the discussion about two hours earlier. He said he thought Senator Care brought up a very valid point about whether members were giving up a prerogative of the legislative body by giving such broad powers to the Board of Pharmacy.

Chair Townsend commented, “For those folks who’ve sat here for the first time, and particularly for my friends and colleagues in southern Nevada in leadership, as you pick your next members of this commission, please remind them this is not just some ceremonial appointment. This particular commission, like all the things we do, is a lot of work and it requires a lot of reading as you can see by the questions that have come up

by the members. It requires someone who is really willing to read because these regulations are the ones that directly affect the public immediately and so it's crucial that we do this kind of work."

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R034-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

On Regulation R050-07 from the State Board of Pharmacy, Mr. Anderson indicated that he had spoken to Ms. Cramer about this regulation and the reason he held it was that he wanted to make sure that the patient relationship with their pharmacist is not going to be changed in any way by this regulation. He said he wanted assurance from the Board that was the intent and that this is merely a track within the pharmaceutical house in terms of whether it is in the script that comes from the doctor or if it is done on the computer which was fine with him and is not a concern of his. It is a concern to him where the relationship is with the patients and he wants to make sure the patient knows if for some reason his prescription has been changed by the doctor or if the nature of the prescription has been changed by the pharmacist. Mr. Pinson replied, "Rest assured this has nothing to do with the relationship between the patient and the pharmacist. This, basically, is a tool for pharmacies to get more into the computer age. As we fill prescriptions now, the pharmacist has to make a handwritten initial on just about everything he or she does and it's become cumbersome. As you know, the number of prescriptions we have to fill now are just insurmountable, practically. We now have computer systems with biometrics where you just put your finger down and that identifies the pharmacist, they have retinal scans, we have 3D bar codes, passwords, all of that stuff. This simply allows those new computer systems to be used and the initial will be electronic rather than the handwritten one. It comes at the request of the industry itself and like the reg before, we had probably a year, year and a half of workshops and public hearings on this. We don't do anything excathedra but it will not affect the patient-pharmacist relationship at all."

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R050-07. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

On Regulation R192-07 from the State Board of Osteopathic Medicine, Senator Care referred to page 10, section 13 subsection 1 b and said he had a couple of questions. It says that "the following sanctions may be imposed" and that's discretionary and it mentions administration of a public reprimand which suggests that there may be such a thing as a private reprimand and that would be his first question. He said that begs the larger issue and that is the sanctions, whatever they may be, will they be made public. Barbara Longo, representing the State Board of Osteopathic Medicine appeared before members in Las Vegas and announced that she had only been employed by the Board for 2-1/2 months. She said that what she understands is that they used the Physicians Assistant regulations adopted by the medical board as a template for their regulations so that the Physicians Assistants would be treated the same. Senator Care said if that is the case that is fine. He said that he knew the subject of what the consumer is entitled

to know in the way of disciplinary action taken and sanctions taken. That is a larger issue and not confined to this board so he is willing to wait until another day. He commented that he thought members would see that issue arise in a couple of months as part of the "fall-out" of what happened in southern Nevada in various clinics.

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R192-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R073-08 from the Bureau of Services to Persons Who Are Blind or Visually Impaired of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation, Assemblyman Carpenter said the reason he had the regulation held was because he was concerned that when they increased the price of one of the vending apparatus, it might preclude small vending machines like those put in by the Lions Club because he knows that it does not cost one of those small vending machines. He wanted it to get on the record why it was being changed.

Deborah Braun, Administrator of the Rehabilitation Division appeared before members in Carson City. She said that the regulation is just changing the amount from \$100 to \$500 and it is for purposes of their inventory. There are a number of blind vending snack bars around the state and they keep an inventory of all their equipment that they purchase. She said it is merely to change their requirement of what they would be tracking on their inventory and will not have anything over Lions Club or any such devices in restaurants or any other places and is strictly for their snack bars.

Further Ms. Braun said she did want to add that during their regulation hearing they did remove section 1 and that should not have been included in this regulation. The only thing they were really looking at was changing the \$100 to \$500 and the cafeteria definition was removed.

Mr. Anderson asked in light of the fact that section 1 is included in the regulation and that is not necessary can the commission proceed with the approval of the regulation. Ms. Erdoes said she would treat that as an error on the part of the Legal Division and there was a mis-communication. She said they would just mark out that section, convert the regulation and file the correct language. She said she would not treat it as a change that the commission is making. It is just an error in getting the adopted regulation here.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R073-08. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R081-08 from the Secretary of State, Senator Care said that he had three questions. One is in section 6 subsection 1 where it says "the listing without consent of the name or signature of a person." He asked if it could ever happen that maybe there is no consent but nonetheless the information is accurate. Question two is in section 6 subsection 6, the filing of records that contain a false statement. He wondered if there

is a distinction to be made between an intentionally false statement and a false statement. His third question pertains to page 4 section 7 subsection k which is about a statement whether the aggrieved person is willing to testify and he wondered what happens if the aggrieved person is not willing to testify and would that affect the outcome of any hearing or action.

Scott Anderson, Deputy Secretary of State for Commercial Recordings, on behalf of Secretary of State Ross Miller appeared before members in Carson City. He said that in section 6 subsection 1, the reason it came about was because often times the office would receive a complaint from an innocent third party stating that their name has been used without their consent and they may or may not know the person who is making the filing but they have not consented to the use of their name or their signature is listed and it may not be theirs on articles of incorporation or annual lists that are filed with the office or any document that is filed with the Commercial Recordings Division and there has been no recourse for that other than for them to go to court. This way, his office would be able to take a look at it and if there has been no consent and if there is discussion from the party that the complaint is against and no rebuttal to that, then his office would be able to correct the listing and correct the correct public record. Further, Mr. Anderson said that on subsection 6, it was designed to be able to remove a false statement of material fact whether it was intentional or unintentional it would allow his office to correct the record. One of the purposes of the Commercial Recordings Division is to put business entity filings on public record so that the public has access to correct information. If there is something in the records that is deemed to be a false statement of material fact, they would like that corrected so that the record so reflects that.

Senator Care said he would assume and it could be made a part of the record that whether it was intentional or unintentional would be a factor to be considered. He asked Mr. Anderson if he would agree with that. Mr. Anderson responded, "Yes, we could do that and we would, Mr. Chairman through you to Senator Care, I think that would depend on what that statement is. Regardless of whether it was intentional or unintentional, we would like to make the record correct. However, if it is something that is deemed to be really unintentional, more than likely that would be done through an amendment to the documents. This regulation is designed to protect those innocent third parties that are named, information is put on there without their consent, to keep the record clear and to protect those innocent third parties so they don't have to go through a lengthy court battle to get their name or other information removed from the record. Granted, it doesn't necessarily remove the information, it just removes it from our database and a filing officer statement would be put in there to define the incorrect statement and to correct that statement on the record. I hope I made that clear, Senator Care."

Senator Care said that he thought this was a discussion that goes all the way back to the 2001 Legislative Session and he indicated that a bill was introduced that would have put an impossible burden on the office but it would have been to ascertain whether a document filed was truthful or false but at any rate it got the issue going of what

happens when somebody is an aggrieved person because of a false filing. He said he understood the intent of the regulation.

Mr. Anderson said with regard to section 7 subsection k on page 4, a statement indicating whether the aggrieved person is willing to testify regarding the complaint in a court of law or administrative proceeding. He said the language is modeled off of their Securities Division complaint form and the regulations in place for their Securities Division and the reason for that is they wanted to put something in there to make sure that the person really had a reason to file the complaint and would they be willing to discuss that with the division and be willing to testify in regards to it so that it would not be a frivolous complaint that would take up their time and efforts when there are other issues to take care of. He said that is the main reason for that and if for some reason it does go further, because the regulation does allow the Secretary of State to forward the information to other investigating bodies, that would also allow that investigating body to know that the person would be willing to testify in regards to the matter. Senator Care said that he was satisfied.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R081-08.
MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED
UNANIMOUSLY.

On Regulation R104-08 from the Director of the Department of Business and Industry, Senator Care said that his only question is on page 12 section 6 subsection 12, it adds the language “with an appropriate fiduciary bank” and in section 8 there is NAC 3490.60 is hereby repealed and the text of the repealed section following that. His question is is the language in section 6 subsection 12 “with an appropriate fiduciary bank” intended to replace the deleted language and if not what choice does the applicant have in selecting, with the approval of the Director, the bank or trust company, et cetera. Lon DeWeese, representing the Department of Business and Industry appeared before members in Carson City. Mr. DeWeese said that the language the senator is asking about has to do with the fact that the applicant does have a choice. They may ask that their personal bank be utilized or they make take advantage of the deep discount relationship the department has with the fiduciaries due to the fact they put out to bid over 100 bond issues. The fiduciary role allows them to get a very deep discount relative to that which the applicant themselves can ask for from their personal bank. He said they tried to homogenize and make the language consistent and, in that regard, he said he wished to thank a member of Ms. Erdoes’s staff, Andrew Min, in helping him to draft the regulations and trying to make sure that they were consistent throughout.

Chair Townsend asked when Mr. DeWeese originally drafted the regulations before they got to this point in the process today, how long has that been. He asked has it been a couple of months, six months? Mr. DeWeese replied, “Mr. Chairman, the genesis of these regulations came about at the request of the State Board of Finance in both December and January of this current year. The original draft of these regulations I

believe I put together in March or April and sent them around for administrative review and I believe the first hearing was in mid-Summer.” Chair Townsend asked, “Could we agree that things have changed substantially since mid-Summer in the financial world?” Mr. DeWeese responded, “Absolutely they have and I feel more comfortable with the draft now than I did when I first put it together.” The chair asked if the regulations were still applicable and Mr. DeWeese responded, “Oh, yes sir, they’re more so.” Chair Townsend said, “Well, I’m reading them and I’m starting to break out in a cold sweat here. I just want to make sure that you’re comfortable, the Director’s comfortable, the Board of Finance is comfortable that these still have the kind of, I think, regulatory stranglehold that’s necessary in today’s economic world without it being so restrictive that we cut off our ability to finance what we do with government. Can we agree to that because, you know, this is a very sensitive time for us?” Mr. DeWeese responded, “Mr. Chairman, let me address your question and your deep cold sweat concerns because I’m the one that has to put my name on these applications before they go to the Board of Finance that they have, in fact, been underwritten and I feel more comfortable, sir, standing in front of you and this August panel today that the extra effort we took to make sure that these underwriting standards, which originally were proposed in ‘93 but my predecessors never quite got around to incorporating, are probably as tough as possible and they match up almost identically with what we have over at the Housing Division which is independently rated AA and, in fact, is about to be upgraded. So, these standards are as close as we can make them without trying to stifle the creative energies of the capitalist system and we believe that they match up very carefully with what the State Board of Finance has come to expect in the way of thorough review and consistent use of the financial markets in the safe and sound fashion recognizing that these are private activity bonds, not state bonds or an obligation of the taxpayers of this state.” Chair Townsend thanked Mr. DeWeese and said that he just wanted to make sure all of that got on the record.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R104-08.
MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R109-08 from the Nevada Tax Commission, Dino DiCianno, Director of the Department of Taxation appeared before members in Carson City. He pointed out that the document listing the regulations incorrectly indicated that the regulation is from the Committee on Local Government Finance. Senator Care said that he did not have a question about the language in the regulation but wanted to put it in the context of what he thought was a larger story. He said that he gathered the regulations have to be read in tandem with what he will refer to as the “remainder man” issue which was another regulation some months ago. He said, “My understanding is that at one point there were two additional sections or passages to this regulation which are not in here now that are going to undergo further work. One of them may have some definitional issues that impact some zoning matters in Pahrump and perhaps some development along the ‘Strip’ and maybe even off the ‘Strip.’ Do I have that correct?” Mr. DiCianno responded, “You’re absolutely correct. To be very clear, we’ve gone through 10 workshops with this regulation. It’s been heard by the Tax Commission three

different times. To say the least, it has been frustrating but I think the commission has done as best as it could with respect to this. Yes, you're correct there is some additional issues that need to be addressed and we will address them and, hopefully, we get to the end of this." Senator Care thanked Mr. DiCianno and said from what he understands, he was hoping but doesn't know, that the additional regulation – the sections that are not in the current regulation – will in essence will be substantively in the end what the department had drafted earlier.

Chair Townsend said that he has appeared before the Tax Commission and attends a number of the workshops and he could assure the members that whether they agree with the conclusions, it has not been because of the efforts of the Department of Taxation, the Nevada Tax Commission and the department staff who work diligently with a number of taxpayers as they move through the process, it is very complex and Senator McGinness, former chair of the Senate Taxation Committee, knows it is the kind of stuff that can really give someone an intellectual challenge. He said on behalf of the taxpayers in the state, he can assure them that all of the regulations, no matter where they ended up, have been fully vetted and everyone has had an opportunity more than once to state their case whatever it may be.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R109-08.
MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R120-08 from the State Emergency Response Commission, Senator Hardy referred to section 20 and said it looks like the requirement for a progress report has been removed and he wondered what was the thought process behind it. Karen Pabon, Executive Director, State Emergency Response Commission (SERC), appeared before members in Carson City. She said that the intention behind the repeal of that section is that the SERC grants its awards based on the application request which would be for planning, equipment, training, that type of thing. At the point she receives the reimbursement request for the funding, they basically have the response to any progress – that the equipment was purchased at a price or the training was done, that type of thing.

SENATOR HARDY MOVED APPROVAL OF REGULATION R120-08. MOTION
SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R126-08 from the Manufactured Housing Division of the Department of Business and Industry, Gary Childers, representing the Manufactured Housing Division appeared before members in Las Vegas. Mr. Goicoechea said that his real issue with the regulation is on sections 15 and 16. Since some members of the commission did not have this regulation, discussion was postponed until everyone had a copy.

The chair returned to this regulation after the discussion of Regulation R211-08. Mr. Goicoechea said that it is his understanding that the agency now requires that before a person can do any work on a manufactured home anywhere in Nevada they

must have a permit and then the person doing the work has to be licensed. He said he has some real concerns with the regulation because as he looked at section 16, before anyone can touch anything, repairing skirting, awnings, plumbing or replacing a hot water heater a permit is required and a licensed person is required. He said, "I think it is a real reach especially in rural Nevada when you start talking about travel times and the people there that are available for license or could be licensed." Mr. Childers responded that those are issues that have been tossed a lot and what they have tried to address under the permit program are life safety issues that were looking at requirements from HUD and the HUD standards and by having a permit issued is to ensure that people are not installing the wrong water heater that would put themselves and their family in danger. He said they have tried to limit the permits and the requirements of licensees to life safety issues and left the awnings, skirting and things of that nature off of the permit list so they are not required to be permitted but any electrical or gas situations, gas piping systems, all of those are clearly on the list for permit.

Mr. Goicoechea said that he appreciated that but as he looked at page 16 section 16 subsection 2, it says that person has to be licensed to do installation or repair of awning, roofing or skirting, plumbing, heating or air conditioning systems or electrical systems. Mr. Childers explained that is referring to, if one is going to make a business out of repairing awnings, roofing, skirting then, yes, that person must be licensed to do that. If one is collecting some kind of compensation for doing that work for other people, they would be required to be licensed to do that. A homeowner is more than welcome to do those type of repairs on their own without permits when they are talking roofing, skirting or awning situations. He said what they are seeing in the changes within the regulation was to include factory built housing and manufactured buildings because of the statute that blends the buildings that were constructed under NRS 461 into

NRS 489. That was the purpose of the change in that regulation. All of the things that are still listed in subsection a, those have been within the regulations for a considerable amount of time. Mr. Goicoechea said, "Yes, I see that but I'm still getting, Gary, you have to understand a lot of 'push back' from rural Nevada not only myself but some of my colleagues because of the permitting process that's now in place that requires them before they do any of this work to have a permit." He said his next question is who is the enforcement arm of that? Mr. Childers said that their enforcement comes from their inspector that is based out of the Elko area and out of the Carson City and Las Vegas areas. The enforcement is pretty much after the fact because they just do not have the personnel for aggressive compliance and then it comes in the way of complaints after the fact. If somebody has done something wrong they usually contact the local building department or the division and file a complaint and that is how they know whether or not the permits have been pulled and the proper processes and inspections have been done.

Further, Mr. Goicoechea said under section 15 it discusses general serviceman, specialty serviceman – these are how these people get licensed to work on a manufactured home and he asked Mr. Childers if that was correct. Mr. Childers asked for clarification on the question. Mr. Goicoechea said, "If you look at section 15, the division may require an

applicant for a license as a dealer, manufacturer, general serviceman or specialty serviceman so you're saying you're going to make it illegal for me to change my own water heater, so then I've got to find a serviceman or a specialty serviceman to do that and he's got to come back and comply with what's required here in 126 in order to be licensed, in order to work on my manufactured home that I'm required to have a permit on." Mr. Childers responded, "No, that's not correct. The only time that comes into play is if that home is located within a manufactured home park. That's covered under the statute of 118B. A private landowner having their home on their own land is more than welcome to do any and all of this work only by buying a permit and calling for inspections on completion. A homeowner is allowed to work on anything that they own and do any work that they own. The only place that there is a restriction is, like I was saying, in a manufactured home park where other people in close proximity could be affected." Mr. Goicoechea said, "Just so I can get this on the record and then I'll quit and I'll let Mr. Carpenter take you on the mobile home parks but, then you're saying that if I don't live in a mobile home park and I get a permit and I want to change my hot water heater, I can do that without having a licensed technician do it?" Mr. Childers responded, "That's correct." Mr. Goicoechea asked how the agency was going to know whether he got a permit or not when he changed it. Mr. Childers replied, "Well, we're going to leave it to your good honest nature, sir."

Mr. Carpenter said that his question is on page 14 subsection 5 where someone has to notify the division within five business days. He said in the real world, five business days are pretty hard to comply with because there are illnesses and deaths and it seemed to him that five days is putting people in a real bind to notify the division. Mr. Childers said that this section of the regulation is addressing issues that it had in the past of responsible managing employees taking up work and moving to a different employer and the division not being notified for months that the responsible managing employee, which is a requirement for him to be there in order for that business to run, has left months prior and there has been nobody to replace him. He said that he knows that it is not on the draft but the very next section in the regulations is the section that gives the company the ability to file a written request for an extension of that five days. He said where this comes into play usually is when businesses are going out of business or they're moving their employees around or they have an employee that quits and moves on to someplace else. Mr. Carpenter thanked Mr. Childers for the response but said that he still thought the five days was just too short. Additionally, Mr. Carpenter observed that the division expects people to comply with all the rules and regulations and if he calls the agency number in Las Vegas, it still says that Rene Diamond is the Administrator and it has been some time since she left. He said the agency expects people to comply and yet it lets things go on forever and he has a problem with that. He thought they needed to have a little more common sense in the rules and regulations.

Senator McGinness said that Mr. Goicoechea went through the part about persons changing their own water heater. He asked, "If my home is not in a park and I want to have somebody change my water heater, can I call the local electrician in order for him to change it out?" Mr. Childers responded, "If that person that you are calling is a

business that is in the business to make money and is going to charge you for it, yes, they must be licensed with Manufactured Housing to do that change out in a manufactured home.” Further, Senator McGinness asked, “In order to be licensed, do they have to take an additional test beyond there?” Mr. Childers replied, “That’s correct. There is two licenses available by Manufactured Housing – there is a general service license which covers just about everything that they can do in a manufactured home or they can have a limited license in which, if they have a contractor’s license say for an electrician, a plumber or anything, then they can apply for a limited license with us with minimal application and in some cases, no exam at all in order to get our limited license which will allow them to work within the scope of their contractor’s license.” Senator McGinness inquired about a list of the individuals licensed throughout the state. Mr. Childers said that their licensing department has lists for all of the categories by state or by county. Senator McGinness asked Mr. Childers for a copy of the list excluding Washoe and Clark counties. Mr. Childers indicated he would provide the list.

Mr. Goicoechea said that he appreciated what Mr. Childers has done for rural Nevada especially with Steve in Elko and rural Nevada but he is getting a lot of “push back” and there are a lot of issues that need to be resolved and clarified.

ASSEMBLYMAN GOICOECHEA MOVED TO REJECT REGULATION R126-08 AND BRING THEM BEFORE THE LEGISLATURE. MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Under discussion, Senator Hardy said that since the regulations were not in the binder of regulations he assumed that they were being withdrawn. Therefore, he said that he would need to abstain on them as well since they impact the universal code.

Mr. Goicoechea said that there is no way the regulation could be amended because there is a lot of “good stuff” in the regulation that probably should be adopted but he does have concern about the licensing requirements on the technician and as well as the property owner being required to get a permit.

THE CHAIR CALLED FOR A VOTE AND THE MOTION TO REJECT FAILED WITH SENATORS CARE, HORSFORD AND WIENER AND ASSEMBLYMEN CONKLIN AND OCEGUERA VOTING NAY AND SENATOR HARDY ABSTAINING.

It was determined that the regulation was not rejected and would, therefore, be filed. Senator Townsend addressed Mr. Childers and said that even though the regulation would be filed, he might take the concerns of those in rural Nevada into consideration. He said he did not think they were unreasonable and a solution could be found.

On Regulation R127-08 from the Administrator of the Manufactured Housing Division of the Department of Business and Industry. Mr. Carpenter said he wished to disclose that he has a mobile home park and he will vote on the regulation. He said his question is on section 8 subsection 2 page 3 and he noticed that they are finally letting the owners

have some lee-way on fixing things and they can change a light bulb, a smoke alarm and things like that. He thought it should be carried further because what is happening now in the industry if they have to have a person put on skirting or change a water heater, the people who have the licenses are charging \$85 - \$100 an hour and the people living in the homes just cannot afford that kind of cost. He opined that the agency needs to further amend the regulation so that homeowners could at least put on skirting and maybe put on a roof because in the rural areas it is difficult to find people who are licensed to do the work. He suggested taking the regulations further so the people can really be helped.

The chair held this regulation until R126-08 had also been distributed because they have a relationship. After the discussion and action on that regulation, he returned to Regulation R127-08 for any additional discussion or action.

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R127-08.
MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED
UNANIMOUSLY.

On Regulation R152-08 from the State Environmental Commission, Mr. Anderson said that he had the opportunity to speak to Cliff Lawson about the regulation and wanted to get part of the conversation on the record. He was concerned about the change from the regulation and he was assured that it was a "clean-up" regulation to reflect some legislative changes but that they are not taking any responsibility in terms of water quality away from local health departments in terms of monitoring their water supply and assuring their own communities of the nature of the water and its health value.

Leo Drozdoff, Administrator of the Nevada Division of Environmental Protection (NDEP) appeared before members in Carson City. He noted Mr. Lawson was in the audience if members needed to hear from him directly. However, Mr. Drozdoff said he would just state for the record the answer to the question. He said nothing in the regulation changes any work or responsibilities of local health districts. Essentially, the programs came to the Division of Environmental Protection from the Division of Health and there were just a number of sections in the regulations that still referred to the Division of Health and not NDEP so they have made those changes and they are "clean-up."

ASSEMBLYMAN GOICOECHEA MOVED TO APPROVE REGULATION R152-08.
MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED
UNANIMOUSLY.

On Regulation R159-08 from the Board of Dental Examiners of Nevada, Senator Care said that he was handed a note from Kathleen Kelly, Executive Director of the Board of Dental Examiners who had to leave to pick up her children. He said that he still had

some questions and wondered if he should put his questions on the record or if the regulation should be held. He could follow up with a phone call to Ms. Kelly unless there was someone else present who could answer the questions.

The chair said the regulation could be held and as soon as Senator Care's questions are answered the regulation could be referred to the subcommittee. Senator Care inquired if there would be other matters for the subcommittee to handle and not just be convened for the purpose of the one regulation. Ms. Erdoes said that it is likely there would because there are other regulations currently being adopted and those could go to the subcommittee as well. Senator Care said he would like to hold the regulation and then contact Ms. Kelly.

SENATOR CARE MOVED TO HOLD REGULATION R159-08. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R186-08 from the State Environmental Commission, Ms. Erdoes asked the chair to hold the regulation because she has found that the regulations sent electronically to members are not contained in the binders of regulations and copies are currently being made and should be provided shortly. The chair indicated he would return to this regulation later in the meeting.

Later in the meeting after the discussion of Regulations R126-08 and R127-08, the chair returned to R186-08. There were no questions on this regulation.

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R186-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R187-08 from the Committee on Local Government Finance, Chair Townsend said that he and Mr. Anderson are probably the only ones interested in this regulation because it was Mr. Anderson's bill originally and Senator Townsend served on the committee along with other legislators. He said the regulation relates to taxation, prescribing the contents of any ordinance adopted to impose the taxes recommended by the Washoe County Schools Construction and Revitalization Advisory Committee. At the end of the voting period, they were not successful and since that part is not needed he asked if there is anything else in the regulations that would be helpful to the Department of Taxation. Dino DiCianno, Director of the Department of Taxation appeared before members in Carson City. He responded to the chair that all they were attempting to do was comply with the law that the Committee on Local Government Finance was to adopt certain regulations associated with that ordinance by a certain specific time. He said, unfortunately, the ballot question did not pass so he guessed the regulations were moot.

Responding to the chair who asked if the regulation should be withdrawn, Ms. Erdoes said that would be her suggestion if the agency is okay with that. She said the issue, for the record, is that the bill which required the committee to adopt the regulations did

not have a provision in it that said the regulations did not need to be adopted if the ballot measure is not approved. The chair suggested that the regulation be withdrawn. Mr. DiCianno said, "That's fine, Mr. Chairman." Chair Townsend said that the real tragedy besides the effort that was put in by his colleague, Mr. Anderson, to try to help people understand and even Washoe County to revitalize the older schools. He said once the problem was understood and in today's downturn economy had the question won the amount that could be bought today would be more than could be bought two years in the future. He said it breaks his heart because it is going to be more expensive two years and four years from now. He said that he appreciated all the work done by Mr. Anderson, his colleagues, all the participants and Mr. DiCianno for drafting the regulation and was sorry it turned out to be moot.

On Regulation R211-08 from the Committee on Local Government Finance, Mr. Carpenter said that his only question is will it cost local governments more for their audit with the standards being changed. Dino DiCianno, Director, Department of Taxation said that he would ask Terry Rubald to respond to the question because she works directly with the Committee on Local Government Finance. Ms. Rubald said that she did not believe that it would. When the committee was looking at the matter, what it will do is require the auditors to have a certain amount of educational credits in governmental accounting/auditing and they were very careful to include them in the discussions and it is believed that the auditors who will be enforcing the standards were amenable to the regulations. Further, Mr. Carpenter asked if the auditors currently performing the audits already have the education. He observed that if they do not, particularly in the rural areas, they may raise the cost of the audits to the local governments. Ms. Rubald said that it is her information and belief that the current auditors already doing local government audits are already qualified under the regulations but they wanted to ensure that they were using the governmental standards that are the most appropriate for local governments. With regard to the concerns about costs, there are other issues that the Committee on Local Government Finance are considering that will be in a bill draft request being proposed to the Legislature to actually reduce the costs for local governments.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R211-08.
MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

3. Temporary regulations submitted pursuant to NRS 233B.0633.

The temporary regulation submitted under this item was discussed prior to those regulations held for further discussion under agenda Item IV. A. 1. and 2.

The chair directed attention to temporary regulation T002-08. He inquired why a temporary regulation was being put forward at this time when the Legislature would be convening in six weeks. David Noble, representing the Public Utilities Commission of Nevada (PUCN), appeared before members in Carson City. He explained that the bill draft requests are as a result of the PUCN taking action and adopting the temporary

regulation. He said it is an issue that has been “fester” for about four years and until the PUCN actually took action there was no substantial effort to have the issue addressed by the Legislature. For that reason, the PUCN moved forward so that the Legislature knows exactly what the PUCN believes is the interpretation of the NRS chapter 455 provisions with regard to sewer service laterals. Chair Townsend stated, “Perhaps the inaction by the Legislature is a statement in and of itself on this issue. I’m not sure that an action by the commission number one, is inside your scope; number two, makes a lot of us very happy, you heard what the last people said; number three, this is a major policy issue. You may be in your legal rights, you may be, I may disagree with our own counsel on this, you may be within your legal rights but I can assure you the size of this policy issue is something that belongs in front of 63 of us, and particularly given the changeover in the Legislature due to term limits, we have a lot of new people there that should hear these issues. These are serious, serious issues. I would recommend that we ask you to withdraw this so that I don’t have to round up enough votes to not accept it. That would be my recommendation. Would you like to comment and you’re more than welcome to. You are the nicest guy in the world and we’ve worked together a long time and somebody at the commission threw you under the bus on this one. And, by the way, I’ve never received a phone call from anybody on this from your shop. Now you might want to think that one through. I know I’m in the minority now and I may be a lame duck but believe me, I’m the biggest, baddest lame duck you’re ever going to run into when it comes to public policy and the interest of the public. So, a simple phone call might have saved a lot of people a lot of heartache. This has eaten half of my time in the last three weeks so I’m not very happy about it. You want to comment on that because whatever you say, you’re not changing my mind just so that you know going in. I want to save you some time.”

Mr. Noble suggested that instead of voting to reject the temporary regulation that the PUCN offer to not file the temporary regulation with the Secretary of State. That way it does not become effective and it allows the Legislature to address the issue during the legislative session. If the Legislature decides not to change any of the statutes that would affect this regulation, then the PUCN would move forward and file that language with the Secretary of State but would hold that language until the Legislature takes action or decides to take no action with regards to this issue. Chair Townsend asked, “Do you guys think you can out wait me?” Mr. Noble replied, “No.” The chair said, “Okay, because believe me until the next person is elected, I’m going to serve out this term at 100 miles an hour. Which means I’m not going to not keep an eye on you guys over there. I’ve been watching you for 30 years, I’m not blinking now. Okay? I’m not wild about that idea.”

Mr. Anderson said that he was just going to point out to Mr. Noble that from his point of view the Legislative Commission made a mistake in accepting a regulation from the Parole Board a few months ago with the understanding that a promise was going to be made that has not been completed as far as he is concerned. He said now there is another agency asking them to go ahead and accept it. He said that members know they can reject it or the agency can withdraw the regulation. No action on the part of

the commission makes it a regulation and how do the members know that the agency will do what it says it will. He said, "We've been burned here in other cases and I'm not in a mind to think that's a good idea in this particular case."

Mr. Noble said, "If it is the desire of this commission to have the utilities commission withdraw the regulation from consideration, we will do that." The chair commented, "That's probably in your best interest. And, please don't make me come to one of your hearings. If you think today was long, sit through one of your hearings. But, the work you do is remarkably important and I do respect everybody over there and what they're doing because it's tough, especially, in today's world." Mr. Noble confirmed the regulation would be withdrawn.

The chair returned to the other regulations that had been held for further discussion.

B. Approval of request by Nevada Arts Council for display during 2009 Legislative Session – Fran Morrow, Artist Services Coordinator, Nevada Arts Council.

Susan Boskoff, Executive Director/Administrator for the Nevada Arts Council, and Michael Fischer, Director of the Department of Cultural Affairs, appeared before members in Carson City. Ms. Boskoff stated they were present to ask permission to install the Legislative Exhibition Series for the 2009 Legislative Session. A copy of the display schedule was provided to the secretary and is attached as Exhibit M.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE REQUEST. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED.

C. Approval to transmit budget to Department of Administration – Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to a memorandum in the meeting packet for this item. He said what he is seeking is authority to transmit a budget to the Department of Administration at the level they have been directed to do. He said he would like to tell the members what that level is but he is still waiting for a final number. He said that the last direction he received was to cut 14.12 percent out of the LCB budget but he does not believe that will be the final target. He said when he does receive that information he would like to incorporate that into the recommendation along with the recommendation made by the Committee to Consult with the Director to reduce the budget of the Legislative Commission as discussed earlier.

Senator Townsend provided some background noting that it is very important for the operation of the body. He indicated that the budget has been worked on by Mr. Malkiewich, Mr. Ghiggeri and Mr. Stevens. He said that it has not been easy to do for a couple of reasons. First and foremost, it is a moving target. Everyone is aware how the changes in state government and the revenue picture changes and it also changes it for the LCB. Two, balancing the interest of, most importantly, what the

public needs from the LCB versus what legislators need has been very difficult to draw that line because legislators represent the public as does the LCB. As legislators move through the “cut” process, it has not been easy but he wants to commend the majority leaders in both houses as well as the speaker and the two minority leaders and himself who make up the Committee to Consult with the Director. There have been difficult choices but they have been made together in a collegial manner to move the process forward. As more numbers come out of the budget office, members will be kept abreast of it. There was an attempt to ensure that whatever division was affected, they tried to not affect what the public needs and that is not always an easy thing to do because when anything is cut, it directly affects the public.

SENATOR MCGINNESS MOVED APPROVAL TO TRANSMIT THE BUDGET TO THE DEPARTMENT OF ADMINISTRATION. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

D. Amendments to Rules and Policies of the Legislative Counsel Bureau, Rules 25 and 57 – Lorne J. Malkiewich, Director.

Mr. Malkiewich said there are two separate amendments. The first one is to Rule 25 and is just to provide that if a person works overtime during session and is paid for the compensatory time after session is over that compensatory time will be charged back to the legislative session. It is an accounting matter that will help save a few dollars out of the budget. The second amendment is something requested by the Chief Clerk of the Assembly and the Secretary of the Senate and is just clarifying and updating the rules on allocation of space in the Legislative Building including the deletion of the reference to Room 119. If the amendment is approved, he requested that it be approved with one change. He said he missed one change, a very important one, suggested by the Secretary of the Senate, in old subsection 4, new subsection 5, the requirement that legislative leadership offices be furnished with typewriters during the interim, and they would like to delete that requirement. [The amendments are contained in the meeting packet.]

SENATOR MCGINNESS MOVED APPROVAL OF THE AMENDMENTS TO RULES 25 AND 57. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

E. Amendment to Rules and Policies of the Legislative Counsel Bureau, Travel Policy for Legislators Attending Meetings of National Organizations – Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material contained in the meeting packet on legislators' travel. He said it is amending the travel policy to provide that instead of the two fully funded trips plus the one partially funded trip, that for the next two years legislators will be entitled to attendance at one meeting per year with the full funding with the exception remaining in place for approval by leadership or if someone is in a position of

leadership. The amendment is scheduled to sunset July 1, 2011. Ideally, if the next budget cycle looks better than the current one, it would return to the former travel policy.

Senator Wiener inquired what would qualify as a trip. Mr. Malkiewicz explained that rather than a qualification, they were limitations. If a legislator attended a meeting of one of the listed organizations, up to two times a year a legislator would get full compensation and there was a third trip authorized and it didn't matter what entity a legislator attended, they would have limited compensation. He said since the policy would be limited to one trip a year, the limitation was removed. If a legislator wanted the one trip to be to the National Conference of State Legislatures Annual Meeting, it would qualify but if the one trip the legislator wished to take was to a meeting of an organization that is not on the list, it would still qualify.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF THE AMENDMENT TO THE TRAVEL POLICY FOR LEGISLATORS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Item V – Informational Items:

A. Legislative Committee Reports.

B. Quarterly Reports on Disciplinary Action from the following Boards or Agencies:

1. Board of Dispensing Opticians.
2. Board of Examiners for Alcohol, Drug & Gambling Counselors.
3. Board of Examiners for Audiology and Speech Pathology.
4. Board of Examiners for Long Term Care Administrators.
5. Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors.
6. Board of Examiners for Social Workers.
7. Board of Hearing Aid Specialists.
8. Board of Homeopathic Medical Examiners.
9. Board of Landscape Architecture.
10. Board of Occupational Therapy.
11. Board of Psychological Examiners.
12. Certified Court Reporters' Board of Nevada.
13. Chiropractic Physicians' Board of Nevada.
14. Commissioner of Financial Institutions.
15. Division of Mortgage Lending, Department of Business and Industry.
16. Health Division, Department of Health and Human Services.
17. Nevada State Barber's Health and Sanitation Board.
18. Nevada State Board of Accountancy.

19. Nevada State Board of Architecture, Interior Design and Residential Design.

- 20. Nevada State Board of Athletic Trainers.
- 21. Nevada State Board of Dental Examiners.
- 22. Nevada State Board of Massage Therapists.
- 23. Nevada State Board of Medical Examiners.
- 24. Nevada State Board of Nursing.
- 25. Nevada State Board of Optometry.
- 26. Nevada State Board of Osteopathic Medicine.
- 27. Nevada State Board of Pharmacy.
- 28. Nevada State Board of Veterinary Medical Examiners.
- 29. Private Investigator's Licensing Board.
- 30. Real Estate Division, Department of Business and Industry.
- 31. State Board of Cosmetology.
- 32. State Board of Physical Therapy Examiners.
- 33. State Board of Professional Engineers and Land Surveyors.

Mr. Anderson said that he is always concerned about this particular agenda item because he had hoped that this would be made a little clearer for everyone. He said, "In reviewing these as I always do, I note that many of them do not again include, and I thought this was going to happen, the total number of licenses that particular board is looking at, not just in the quarter but as the number of license holders so we know why that board is of some importance and how many are coming up with problems on a regular basis as a percentage. I thought when we approved this template a couple of meetings ago, that that particular part was going to be included in there that they would be listing the total number of licenses that they were currently supervising in the various categories and I don't see that there. That concerns me. A couple of them in particular I thought were very strange and so I'm hoping that we can get some way of getting some level of uniformity and enough information so that we can make sure that the public is properly protected by the board and this just isn't a rubber stamp kind of thing. That continues to disturb me." Mr. Malkiewicz said that he would talk to the Information Technology staff and see if the template could be changed to include an entry they can make on the total number of licensees in each category that they license so the information would be presented.

Chair Townsend said Mr. Anderson's point is everything being consistent so the template is the same for each board. He said, "The boards should accommodate us, not having us try to accommodate them because we are putting this up in order to give the public the information they need."

Mr. Anderson pointed out that the Board of Examiners of Alcohol, Drug & Gambling Counselors did a good job in their report whereas some of the others, he doubts that they only have 20 license holders. He said he thinks it leaves the wrong impression.

C. Miscellaneous Reports from State Agencies and Others:

1. Annual Report from the Public Utilities Commission of Nevada regarding competition in the local markets for telecommunication service (report previously transmitted to members prior to meeting).
2. Report from Division of Health Care Financing and Policy, Department of Health and Human Services concerning uncompensated care percentage.
3. Letter from Chair of Legislative Commission appointing Budget Subcommittee and special committee to receive Governor's message on condition of the State.

Item VI – Public Comment:

There were comments from members of the public concerning agenda Item III. H. relating to the State Board of Parole Commissioners and the discussion is included under that item.

Tosh Dawson, private citizen, appeared before members in Carson City. She said that she wished to discuss agenda Item II. A., the summary audit reports and some of the contents. She said under the Inmate Programs, Grievances and Access to Health Care Audits, it says to determine the feasibility of creating a citizens advisory committee to monitor grievances. She said it is listed but not brought up again, yet in the results in brief section of the audit, the third paragraph, it says the department has developed an inmate grievance process which is similar to other states, however, better oversight is needed to ensure grievances are addressed within established time frames, files contain required signatures and department responses are adequately documented. They identified two states with a grievance oversight committee and although the committees have different powers and duties both states reported their committee had a positive impact on the grievance process. Ms. Dawson said she thought it might be a good idea for Nevada. She said a lot of grievances are made out of boredom and while people never say that, she opined that it is true. She thought if someone on such a committee could sort through and take the grievances that are important and make sure they are dealt with but also take the grievances that are preposterous and ridiculous and make sure they are not dealt with and not much time is spent on them. She thought it would be great way to save time and money. Her second comment was regarding the audit highlights for training divisions. She said under principal findings, second paragraph, second to the last sentence which reads, "We reviewed 10 personnel files and found seven employees did not receive a performance evaluation during fiscal year 2007. When evaluations are not completed, employees receive automatic merit pay increases regardless of their job performance." She said she could not imagine that would be true because what that says to her is that a correctional officer who is exemplary is going to remain exemplary and is going to get a merit increase but a correctional officer who is a bully is also going to get a merit increase and he knows that in 16 days he is going to get another \$1.50 regardless of whether he continues to "poke" at that inmate or not. She said that was not a very good idea and frightens her. On the audit highlights of the

Records and Technology Division Records Bureau, she said that this is a personal problem for her because she does not advocate for prisoners/inmates. She said that she is present because her husband, Al Dawson, is in prison and it is her job and her passion to find out how to bring him home. She said that there are plenty of people in prison that she thinks deserve to be in prison. She said, "I never want them to get out ever and usually most of those are sex offenders because I do not believe that they belong to walk this earth with the rest of us. I do not believe that they change." Under principal findings, it says that criminal history records are incomplete without dispositions which indicate whether charges were dismissed or upheld and whether the suspect was found guilty and they are sex offenders they are talking about. She noted that from July 2003 to early October 2007, the bureau utilized the wrong criteria to evaluate the criminal histories of certain subjects of civil applicant background checks. She asked how could a mistake go on for four years on something as important as a criminal sex offender past. She reiterated that she did not understand that.

A handout was provided from James C. Fitzgerald who was unable to attend and is attached as Exhibit N. The handout dealt with the subjects of the mortgage industry, the Mortgage Lending Division and foreclosures in Nevada.

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

Respectfully submitted,

Marilyn K. White
Assistant to Director

Senator Randolph J. Townsend, Chair
Nevada Legislative Commission