Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

September 17, 2008

The fourth meeting in 2008 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Wednesday, September 17, 2008, commencing at 1:42 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 Warren Hardy (in Las Vegas)
Senator Steven Horsford (in Las Vegas), alternate for Senator Terry Care
Senator Dina Titus (in Las Vegas)
Senator Valerie Wiener (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City)
Assemblyman John C. Carpenter (in Carson City)
Assemblyman Pete Goicoechea (in Carson City)
Assemblyman William Horne (in Las Vegas), alternate for Assemblywoman Barbara E. Buckley
Assemblyman Garn Mabey (in Las Vegas)
Assemblyman John Oceguera (in Las Vegas)

COMMISSION MEMBERS EXCUSED:

Senator Terry Care
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
Gary Ghiggeri, Senate Fiscal Analyst
Mark W. Stevens, Assembly Fiscal Analyst
Paul V. Townsend, Legislative Auditor

Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Marilyn K. White, Assistant to Director

The agenda is attached as Exhibit A. 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 April 16 and June 16, 2008, Meetings--Senator Randolph J. Townsend, Chair.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE MINUTES OF THE MEETINGS OF APRIL 16 AND JUNE 16, 2008. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

Item II--Legislative Auditor: Request for approval of basic audit program (NRS 218.635 and 218.850)--Paul V. Townsend, Legislative Auditor.

Mr. Townsend directed attention to material in the meeting packet containing a letter from him dated September 5, 2008, regarding the audit plan for the next two years. Schedule 1 lists the audits that are currently in process and requires approval to continue on with them in the event they are not completed by the start of the next legislative session. Schedule 2 lists the agencies he is proposing to audit over the next two years. The list was developed based upon a risk assessment process that is employed and considers such factors as the amount of revenues and expenditures flowing through an agency, history of problems with the agency, length of time since the last audit and any other concerns that have been raised by staff, legislators or others. In accordance with NRS 218.850, he requested approval of the plan and said he was happy to answer any questions.

Chair Townsend suggested that legislative leaders help new members understand the value of the Audit Division for their purposes as legislators. He noted that there will be a transition occurring over the next three years that is very important to the state and there is an obligation as new members come in that they are helped to better understand the value of the LCB for the public they represent. He recommended working with the various division heads noting that it will benefit everyone.

SENATOR MCGINNESS MOVED APPROVAL OF THE REQUEST. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

Before proceeding, the chair announced that agenda Items III. F. and G. would be held until the end of the meeting because those are presentations and he did not want to interrupt the flow of the items that are necessary to have all members present.

Item III--Progress Reports and Appointments:

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

Ms. Erdoes said many of the cases just had procedural changes but she would quickly review them. The Red Rock case, which is the oldest case she has, has not had a change since the last meeting of the commission. The state case is still "on hold" pending the federal case being decided. On the federal case, they are still in a "stay" for discovery that has been extended three more months. The Sparks Nugget case was finally decided and is the one in which the Sparks Nugget challenged the taxation of complimentary meals. Her office filed on behalf of the Legislative Commission an amicus brief in support of the Department of Taxation's brief for reconsideration of that case. On July 16, 2008, the Nevada Supreme Court issued an order denying the petition for rehearing so that case is over. The Carrigan v. the Commission on Ethics case is one in which her office was asked to file an amicus brief and the district court decided in favor of the Ethics Commission which was being supported in the amicus brief. The case has now gone to the Nevada Supreme Court and on August 25, 2008, her office filed an amicus brief on behalf of the Legislature in support of the Ethics Commission's decision. The issue is whether a statute in the ethics chapter is unconstitutional. The fourth case that is pending is We the People v. Miller and actually this one is over. It is another case that challenges the same petition that is currently going on but in We the People v. Miller, her office filed an amicus brief upholding the constitutionality of NRS 295.056. The Supreme Court disagreed with her office, held it unconstitutional but now that same petition is in a second challenge with the Nevada State Education Association in which her office is not participating. She said there was a decision on that the other day and the court found the petition, for a variety of reasons, did not meet the standard there. She believed that case was going to the Supreme Court the following Monday. In the Miller v. Burk case, the term limits case, nothing has changed there other than the basic underlying decision is that the term limits petition to the constitution is constitutional and it applied to some of the local officials that were challenged in that case but it did not apply yet to legislators. Her office also has a variety of ethics cases it is working on that are confidential to the legislator clients that it has.

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

Mr. Malkiewich referred to a two-page handout (copy attached as Exhibit C) of an application from Adriana Escobar for appointment to the Commission on Ethics. He noted that it is the only application he has received. The current vacancy is due to the resignation of Randall V. Capurro. Because there are currently four Democrats and three

Republicans on the commission, the next member cannot be a Democrat because there cannot be five members of the same party on the Ethics Commission. There is also a requirement that there be at least two public officers among the four Legislative Commission appointments and the other three currently have just one public officer among them so the commission needs to appoint a former public officer. There is a limit on how many members of the Ethics Commission can be from the same county but currently there is not any county that has four members. The Legislative Commission needs to appoint someone anywhere in the state but the person cannot be a Democrat and must be a former public officer. He said Ms. Escobar meets the requirements of the statute for the appointment but at this point she is the only applicant he has for the position.

Chair Townsend said that he is a "little uncomfortable" with appointing someone who is the only applicant and he is not sure that is in the best interest of the public. He noted that considering there are members of the Legislative Commission that are "in front of" the Ethics Commission for it to appoint someone in the middle of that kind of litigation might be problematic. He recommended holding the appointment and do the normal process of asking people to apply to give the Legislative Commission an opportunity to review those.

C. Appointment of Member to National Conference of Commissioners on Uniform State Laws (NRS 459.0091)--Lorne J. Malkiewich, Director.

Mr. Malkiewich directed attention to the meeting packet containing a letter dated August 14, 2008, from the Dean of the William S. Boyd School of Law. It notes that Professor Annette Appell left the law school. He advised the Dean that the commission likes having more than one applicant for a position especially when it says submit a list, and the letter indicates two nominees: Professor Jay Mootz and Professor Keith Rowley. The Dean recommends Professor Mootz.

Responding to Mr. Anderson, Mr. Malkiewich explained that the statute provides that the Boyd School of Law gets two appointments to the National Conference of Commissioners on Uniform State Laws. The statute was amended after the School of Law came into existence to add the two members. The NCCUSL rules require that people be attorneys licensed to practice and the Nevada statute provides that the commission appoint legislators to four positions if it has them. Currently, Nevada has four of its legislators appointed to the NCCUSL; the Legislative Counsel serves and is allowed to appoint one or more of her deputies; and the statute also provides for two representatives from the School of Law.

Mr. Anderson said he thought it was a life-time position – once you have been on it although circumstances may change you still remain a member of the group. Responding, Mr. Malkiewich said he thought what Mr. Anderson was referring to was the provision that states that a former member of the NCCUSL may continue to serve by giving notice to the conference that they intend to serve. He said that he is a former

member but is not currently. Also, some people are like Frank Daykin who served for many years since leaving as Legislative Counsel and is still active in the conference. Mr. Anderson said that the reason he was asking the question was because in looking at Professor Mootz' qualifications, it appears that he is a former NCCUSL commissioner from Pennsylvania and therefore would be entitled to that privilege if he so desired it. He asked if LCB pays for NCCUSL. Mr. Malkiewich replied that he did not believe that Professor Mootz would be able to serve because it is a Nevada statute that allows someone to continue to serve and he did not believe his prior service in another state would allow him to serve. He said that LCB does, for those former members who have elected to continue, pay for the expenses for attending the meetings.

ASSEMBLYMAN ANDERSON MOVED APPROVAL TO APPOINT PROFESSOR MOOTZ TO THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS. MOTION SECONDED BY ASSEMBLYMAN HORNE AND CARRIED UNANIMOUSLY.

Mr. Anderson commented that the Dean might understand that the commission did not need his recommendation to make a choice since both individuals are really well qualified and it could have drawn its own conclusions based upon just putting in two names rather than trying to force the commission into a position in support of him as the new Dean.

D. Presentation by State Board of Parole Commissioners on status of Regulation R108-08 and certain related matters--Dorla M. Salling, Chairman.

Connie Bisbee, Commissioner, State Board of Parole Commissioners appeared before members in Carson City. She explained that Chairman Salling is on medical leave and sends her regrets as she is not physically able to attend.

Chair Townsend said that there were a number of questions that came from Assemblywoman Buckley and he wanted to ensure that those were thoroughly vetted. He said if anyone has questions, now is the time to raise them. Ms. Bisbee noted that there is a written response from Chairman Salling dated September 3, 2008, contained in the meeting packet. Ms. Bisbee indicated that she is happy to answer any questions if members have particular questions about the progress of anything.

Chair Townsend noted that he had spoken to Ms. Buckley about an hour and a half ago and wondered if Senator Horsford or Mr. Oceguera had spoken with her regarding this issue. He commented that while he and Ms. Buckley had discussed a number of issues, this item was not one of them and asked if they had more information than he did. Mr. Oceguera responded that he had spoken to Ms. Buckley as well but this was not one of the issues she discussed with him.

The chair asked Ms. Erdoes if the purpose of this presentation was to answer questions relative to the hard copy received and if this is one of the regulations to either adopt or defer. Ms. Erdoes responded that this item is related to a regulation that the Legislative Commission approved two meetings ago and they had asked the Board to return because there was some question about it. She believed that everything asked about is contained in the report provided unless there were other questions.

Mr. Anderson referred to the minutes of the meeting of April 16, 2008, noting that on page 43 there is a long dialogue that occurred when the commission was discussing the impact of the commission requested change and change of statute and its concern on the backlog of individuals in the system. He thought that was the nature of Assemblyman Parks' concern and Mr. Carpenter and he have also had concerns about that and whether they were going to meet in a timely fashion since there seemed to be a "slowdown" in paroles for a while and a bubble had been created and wondered whether it was going to be clear of that by the first of October. Ms. Bisbee responded, "Fortunately because of S.B. 4, we have been allowed to go in absentia to clear up what's being referred to as the bubble. We saw, actually ended up hearing in absentia, over 3,000 inmates between July 21st and the approval of that and the end of August. We have, I think, about 1,700 that we're considering in absentia for this month, another over 1,500 that are scheduled for October. The plus of all of this is that by the October calendar we're actually going to be seeing most of those folks that are not past or even that date eligible, so it's working. We're getting these people seen. We're going to get back to normal. We should be able to start hearing people in person again no later than the December agenda and there won't be a bubble at that point. There's approximately 800 that are scheduled for November."

Mr. Anderson asked if she thought by the time the legislative session begins or even at the next meeting of the sentencing commission that the board will report that it will be fairly close or will it still be dealing with 13,000 or so individuals that are out on parole. Ms. Bisbee asked about the date of the meeting and Mr. Anderson replied that he thought it was two weeks or a week and a half. Ms. Bisbee said that the board will not be caught up two weeks from now but it certainly will be by December and will be going back to the face-to-face hearings.

Further, Mr. Anderson asked, "And the overall backlog of the actual prison population therefore we can anticipate meeting the goals that were set out?" Ms. Bisbee replied, "Absolutely, there's no reason that, I'll go out on a limb here, there is absolutely no reason that we won't be back face to face in December." Mr. Anderson noted that he thought that was the purpose of Ms. Buckley's question initially.

Responding to Mr. Carpenter, Ms. Bisbee reiterated that at the end of October the huge bubble that was the result of some changes in the law will be gone. At the end of September, another large group will be on the agendas so that the Board can get back to hearing people in advance. The reason for seeing people in advance is in the way it was done previously before populations changed, the Board saw inmates four months before

they were eligible to be released on parole. It was able to make a determination and if they were granted parole, that then gave the Division of Parole and Probation the opportunity to investigate their plan, to check out their housing and jobs and then get them out on the day they were eligible. What happened as a result of the additional thousands becoming eligible for parole, was the Board was not able to see people until they were actually past eligible to go out or at their date eligible to go out. They were not able to go forward again so they could see them in advance and get them out on their actual dates. At the end of September, what the Board will be doing is starting to see people again at least two months in advance so it can give the Division the opportunity to approve them to be released on their actual eligibility dates instead of working backwards. She reiterated that she could not give an actual date that the Board will start the face to face meetings but she will guarantee legislators will not be in session without them being seen. At the earliest, it would be towards the end of November and at the very latest, it will go back to in-person hearings in December.

Mr. Malkiewich explained that at the April meeting the regulations were approved but the motion to approve by Ms. Buckley indicated a request that the Board return at a future meeting and work with interested parties. A number of concerns were raised by the commission and others concerning the regulations and therefore the request to the chair was to come back and discuss both the progress on the regulation and the issue being discussed: the bubble and the workload of the commission. One of the items was to discuss progress on clarifying the regulations. The response from the chair indicates that they had the impression that there was to be a letter of intent coming from the LCB and he has no idea where they got that idea and it certainly was not discussed in the April meeting or indicated in the motion. The letter from him to Commissioner Salling, which is contained in the meeting packet, indicates that the request was to work with interested parties to clarify the regulations and report back to a future meeting of the commission. He said it appears that they have been waiting for something that the LCB was not preparing to send and, therefore, as far as he could tell there has been no work done on clarifying the regulations although perhaps some information could be obtained on that as well.

Chair Townsend acknowledged that Ms. Bisbee has been put in a “tough spot” because she got volunteered to appear. Ms. Bisbee said that she thought the letter of intent they thought they were going to receive is on the language regarding mandatory parole release. She said, “To our knowledge, we have always followed the law in terms of considering those inmates on the mandatory parole release and we are unclear – there seemed to have been some discussion from a few folks that they didn’t feel that we were acting by the intent of the law – so the clarification is we truly don’t have any idea what part of that law that we’re not acting by the intent of the law and that’s the issue and that was the letter of intent that we had been anticipating.”

Mr. Malkiewich said that he thought the two issues have been confused. He said, “If you look at the motion that Speaker Buckley made, it was first simply that the statements made by Mr. Parks and Mr. Munford be included in the record as evidence of

the legislative intent. I don't believe there was necessarily a problem with it, just wanted to make sure that that law was being carried out as intended. And, in the response from the chair of the commission, there is a very good explanation of how that law is being interpreted. But I believe it was a separate issue to clarify the regulations. I think the Speaker had serious concerns with some of the specific provisions in the regulations and I'm sure there are a number of other people who have concerns with those regulations as well as my e-mail will attest and I think that was the other issue she wanted addressed is she wanted the Parole Board to continue looking at the regulations. She didn't want to hold up the regulations. If we objected to them, they wouldn't have taken effect at all so she wanted to approve filing the regulations but didn't want that to end discussion of clarifying some of the issues, some of the problems that had been raised with the regulations. Rather than hold up the commission, perhaps I could meet with the member of Parole Board after the meeting to discuss it."

Chair Townsend said that it is quite clear from the motion that the Speaker intended for the statements made by Assemblymen Parks and Munford direct the intent, that there was nothing in the motion that said that the commission would actually send a letter of intent. The chair commented, "We can send you something of intent but it might look like a lawsuit – I'm not sure that's what you want." Ms. Bisbee responded, "We'd prefer not." Chair Townsend commented that he thought it best that "we just follow what we have here" and Mr. Malkiewich will meet with Ms. Bisbee after the meeting.

E. 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 referred to material in the meeting packet which contained progress reports of most of the committees and the remaining reports will be provided at the next meeting of the commission, probably in December. He noted that for the last several sessions, the commission has merely passed along the reports of the various statutory and interim committees to the Legislature. He said if there are any questions concerning the recommendations he will try to address them but the key point is in accepting the recommendations it is not expressing the intent of the commission that it in any way supports the individual recommendations but rather would just be a motion to pass along the reports to the 75th Session of the Legislature for consideration.

ASSEMBLYMAN CARPENTER MOVED TO ACCEPT THE REPORTS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item IV. A. and returned to the following two agenda items prior to the end of the meeting.

F. Presentation concerning "Nevada's Legislators Back to School Program" of the National Conference of State Legislatures--Chelsey Glasson, Research Analyst.

Chelsey Glasson, Research Analyst, Research Division of the LCB appeared before members in Carson City. Ms. Glasson provided a handout containing materials for the program (copy attached as Exhibit D). She stated that the program is a nonpartisan civic education initiative that encourages state legislators to visit Nevada's K-12 classrooms to talk to students about the legislative process, hear the concerns and ideas of Nevada's young citizens and well as to promote civic education and participation. The program is sponsored by the National Conference of State Legislatures which creates all the program materials as well as the LCB. It was founded in 1999 and she was excited to announce that this week is the official "kick off" week for the program for this school year. She asked members to keep in mind that it is a year-round program and legislator classroom visits can be scheduled at any time throughout the school year. She said the previous school year, eight legislators participated in the back to school program and together they visited approximately 6,500 students. The activities ranged from speaking to large assemblies of students to meeting with smaller groups of students in individual classrooms. She announced that the program has its own website where teachers, students and legislators can go to learn about the website. She provided a demonstration on accessing the website through the Nevada Legislature's home page where there is a link. She explained the website is a great resource for students interested in learning about the legislative process and state government.

G. Demonstration of Disciplinary Action Report Computer Application--Andy Harvey.

Andy Harvey, Web Developer, appeared before members in Carson City. Mr. Harvey recalled previous appearances before the commission to obtain input and discuss ideas in allowing boards and commissions to enter their data for their disciplinary action reports online. He is before members to show where the project is and said he is ready to wrap up development on what has been discussed and begin testing. He wanted to ensure they were on the track members were expecting and would deliver a program that will work for legislators. Mr. Harvey proceeded with his demonstration noting that it is very similar to the existing legislative website where anyone can go to review the disciplinary action reports that have been presented. Boards previously submitted their reports in paper form and are now submitting their reports on an Excel spreadsheet form as they move towards a full database environment. A paper form will always be available for those who find that more convenient. The goal is to allow boards to enter the information electronically online so that it becomes searchable and is something that reports can be run against for the commission. New technology is available that will allow one to bring up the same information that is currently reported but with data grid features it will allow someone create a report on their own or view the report in a different structure. Since the information would be in a database, anyone can go in and search the data across all boards and commissions or any individual board or commission. It is anticipated that the public will be interested in looking for someone's

last name or a company name. The program will handle a certain level of misspelling. There is an administrative section for LCB administrators where they can designate the person who is going to be entering the information for a particular board or commission and there is a way for each of the boards or commissions to go in and edit their information and have the ability to release it to the LCB website on their own when they are ready. He said that LCB will have the ability write a report that will show who has not submitted on time. He asked members to think about any other reports they might want as staff will be able to write reports against the information that will suit the needs of legislators as the information will be in a database.

Mr. Anderson said that he appreciates how much work has gone into the project particularly when he looks at the reports that have been generated for members, particularly with consistency and ease of access. He observed that there was one report in particular, from the Board of Examiners for Alcohol, Drug and Gambling Counselors where he liked the information provided. It showed the total number of licenses issued not just in the quarter but how many licenses there are in the various categories. Someone can get a general idea when they say there was no activity in the quarter that they are talking about 300 people and there have been no reported problems, as opposed to where there are 126 people and there are 12,000 licensees. He thought the report was a huge quantum leap forward, knows that it took a great deal of work and he applauded the efforts. Mr. Harvey said, with regard to the total number of licenses report, he met with staff and that will be a part of the project. Mr. Anderson said the program is exactly what he was looking for and he appreciated the hard work. Mr. Harvey thanked Mr. Anderson for his support over the years and he will make sure it is a part of the program.

Chair Townsend thanked Mr. Harvey for the "outstanding job" and noted that it took the LCB less time to do what legislators have been asking licensing boards to do for 30 years. He commended Mr. Harvey and Scott Young of the Research Division for all the work done. Chair Townsend said, "Thanks to all of you and when we slowly start to take LCB for granted, and we've all done that at times, you guys come up with something else that reminds us how good you really are on behalf of the public because this is what they need. This is what they really want."

Mr. Carpenter asked if members would still receive the reports as they are in the meeting packet today. Mr. Harvey responded in the affirmative.

At the end of this discussion, the chair proceeded to agenda items V. and VI.

Item IV--Legislative Commission Policy:

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

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

A handout (copy attached as Exhibit E) 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.] Prior to the start of the meeting, the chair announced that Regulation R128-07 from the Labor Commissioner and Regulation R200-07 from the Board of Medical Examiners had been withdrawn.

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

Senator Hardy stated, "Mr. Chairman, if you will indulge me for a minute I think in light of the most recent actions by the Ethics Commission in my case, I think I need to make some disclosures and abstain on a number of these items on the agenda. I want to do that because of some uncertainty and I also I think at some levels a voice of warning to some of my colleagues and so I'd like to give you just a brief update on what the commission did and where that whole thing stands. Essentially, each of the matters in the complaint have been dismissed on the merits with the exception of one bill – Senate Bill 509 during the 2007 session. And it's fairly evident to me that the Ethics Commission is holding that one back as a test case because they want to test or challenge at least the advice that we are given as legislators relating to abstention and disclosure. Essentially they have said, and all this is a matter of public record from our hearing a week or so ago that they think that the advice we are given by counsel relative to abstention and disclosure is insufficient. I want to be very clear about the advice that I followed from counsel and what I did on Senate Bill 509. For the record, I am President of the Associated Builders and Contractors of Las Vegas so I have sought the advice of counsel in terms of when I can vote, when I can't vote, what I have to do as far as abstention and what I have to do as far as disclosures. And so I am clear, I want to speak in terms that the Legislature will understand of what I did on Senate Bill 509. On Senate Bill 509, well, on all matters related to the 2007 Session, I filed a disclosure letter with the Director of LCB relative to my employment. We're all familiar with that letter and most of us file those letters disclosing our employment and that we will be cautious and look at each bill and determine whether or not the bill impacts us any more than it does anybody else in our similar situations. Senate Bill 509 dealt with prevailing wage which impacts all contractors so using my understanding of the ethics laws I disclosed in the letter and then I voted on the bill, or on the amendment specifically, but I want to be clear that in addition to the letter that I filed with the Director of LCB, on that particular bill I made additional disclosures, verbal disclosures, in the Senate and I made an additional verbal disclosure in the Assembly. So, I think that meets and exceeds any standard of the Legislature relative to what we are advised as our obligation to disclose. The Ethics Commission has essentially acknowledged that in all these matters I followed the advice of our counsel and that nevertheless those disclosures are not appropriate. And so I wanted to make that very clear to members because that might impact some of them today and I don't presume to speak for Ms. Erdoes relative

to what counsel she will give going forward, I will only suggest that in my case without question I did my best to follow the advice of counsel and the Ethics Commission has deemed that to be insufficient. So with that, Mr. Chairman, I would like to abstain and, again, I want to make clear that on all of these that I'm about to abstain on, I certainly do not feel that any of them impact my employer, the members of my association, more than anybody else in the construction industry but I have been told that that is not a sufficient standard any longer so therefore, unfortunately, out of an abundance of caution I'm going to abstain on the following: I'm going to abstain on Regulation R030-08 relating to the Board of Cosmetology because my wife and daughter are both licensed cosmetologists. I'm going to abstain on R071-08 relating to the State Public Works Board. I'm going to abstain on R084-08 relating to the Commission on Ethics because I have a matter pending before them. I'm going to abstain on R090-08 relating to the State Contractors' Board. I'm going to abstain on R091-08. I'm going to abstain on R128-08 relating to the Contractors' Board. And, I'm going to abstain on R102-08 from the State Fire Marshal dealing with building plans. Again, Mr. Chairman, I don't want to presume to put words in the mouth of our counsel. It's a decision of every member of this Legislature to decide what they're going to do but I would admonish my colleagues based on what's happened to look very, very carefully at each of these items and if they impact in any way, shape or form their private employment they should give serious consideration to abstaining until this matter is resolved with the Ethics Commission. Thank you, Mr. Chairman."

Chair Townsend said, "Thank you, Senator Hardy. Well stated and we appreciate it and so note for the record his abstentions. It's a very serious matter that not only the colleagues that currently serve but those that will follow us as a result of term limits need to be very sensitive to as this moves through its appropriate administrative and legal process, particularly for the public. The concern that I think has been vetted here goes back to the heart of a citizen Legislature and that is something that needs to be considered as we move forward. Alright, any other statements regarding those issues that are now before us?"

Mr. Anderson said, "I need a little bit of guidance in light of Senator Hardy's statement which I agree is one that we all need to be very, very concerned about. Having one of my children as a classroom instructor and thus subject to the regulations and licensing process of the Department of Education, it would appear that I then fall into the category and would need to disclose that R169-07 which of course is held, R17-07 [R170-07] and R06-08 [R061-08] and R12-08 [R012-08] all dealing with the Department of Education would, three of them are particularly with charter schools and she is not a charter school instructor but she is within the department. It is my intention to participate in the discussion in R12-08 [R012-08] but I want to disclose the fact that I have a member of my immediate family who is employed in the education profession and intend to participate in the vote."

Senator McGinness said, “Thank you, Mr. Chairman. I don’t think I’ve ever had to declare a conflict on anything being in radio, it’s regulated by the Federal Communications Commission and they do a good job on their own without anybody from the state but Mr. Anderson brought up a good point. My daughter is a classroom instructor as well and so I guess I will declare a conflict there as well.”

Mr. Goicoechea said, “My wife is a licensed cosmetologist, however, I will vote on this. I don’t think it affects her any different than anyone else. As we go through these statutes, I’m sorry I hold water rights, I intend to vote on those. I believe that is what we are here and elected for and if the Ethics Commission wants to take us apart on that then so be it.”

Senator Hardy said, “Mr. Chairman, thank you. It appears that my colleagues believe that a disclosure is sufficient and I have abstained and I don’t want to set a precedent here necessarily and I’d like to maybe ask Ms. Erdoes if she would opine on whether or not it’s necessary for me to abstain given what’s currently going on.”

Ms. Erdoes said, “I guess I would suggest that you continue to abstain until we get a clearer indication from the Ethics Commission especially as to your case in particular. I do think that at the conclusion of the case, it will be, if the case stands the decisions that they made thus far, all of the legislators will be hearing from our office to explain what the standard as interpreted by the Ethics Commission is and then it will be your choice as to whether you comply with that. The main thing that I think has become clear with the Ethics Commission hearings that we’ve had on these issues is that they are expecting a much more detailed disclosure, oral disclosure, and in fact the ones that they have held thus far, again these decisions are not final yet, but they’ve held thus far that were insufficient was pretty much what we’ve done here today. They are asking that in addition to stating a profession or the actual conflict that you must also be able to indicate how that conflict would play out and how it would affect you and how it would affect your decision in the specific issue that you are discussing but, again, at this point I’m not sure we have a final decision there and are ready for that with everybody else.”

Senator Hardy said, “Thank you, Mr. Chairman. With that I’ll allow my abstentions to stand but I did want to make that point – that the issue really is, is unclear is what level of detail that we have to provide in our disclosures. That is unclear and, therefore, out of an abundance of caution I’m going to abstain.”

Chair Townsend asked if someone was present from the Ethics Commission. An individual spoke from the audience but the response was off microphone and not intelligible. The chair responded, “That’s a career move you’ll have to decide.” There was laughter from the audience. The chair then said, “Let me take a motion on this and then if you don’t mind I need to ask you a question if that would be okay. Let’s take a motion to accept those that have been read unless there are any other questions.”

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATIONS R035-06, R106-06, R018-07, R121-07, R127-07, R199-07, R210-07, R028-08, R030-08, R032-08, R041-08, R043-08, R063-08, R064-08, R065-08, R079-08, R084-08, R089-08, R090-08, R091-08, R106-08, R114-08, R115-08, R116-08, R121-08, R128-08, R145-08, R161-08, R162-08, R163-08, R164-08, R165-08, R166-08, R170-07, R061-08 AND R102-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED. [SENATOR HARDY ABSTAINED ON THOSE PREVIOUSLY IDENTIFIED BY HIM.]

Adriana Fralick, Counsel for the Commission on Ethics, appeared before members in Carson City. Chair Townsend said, "Ms. Fralick, the discussion that's previously gone on in front of this body leaves one question at least for purposes of what we're doing here today. If there is a disagreement between your office, which is an Executive Branch office statutorily constructed by us, and our counsel are you saying if there is a disagreement we as legislators or those who follow us will have to go to your office in order to get opinion about how we vote. Is that the question that is before your commission?" Ms. Fralick responded, "Mr. Chair, the question before our commission is packaged as a complaint and basically the complaint is with regard to a inadequate disclosure and abstention. That issue is still pending, there's still a hearing on the merits so until we go to a hearing and the commission determines whether or not the facts specific to Senator Hardy, whether or not his disclosure was adequate, whether or not he should have abstained, I think that will probably answer some of your questions with regard to whether or not your disclosures now are adequate. Certainly, legislators are a little bit different than most public officers. There are some, some of the ethics law contains specific provisions to legislators, the commission certainly will take that into consideration but as far as disclosure and abstention, you know I'm not your counsel so I would say that you keep doing what you are doing until the issue that is before us comes to a conclusion."

Chair Townsend said, "Okay, well at a time that wouldn't waste others time, I'd love to debate this with you at some length because I think Senator Hardy's point today was this is about the institution of the Legislature, not about him, not about any of us, it is about our institution and it will be a good debate and I know we will have this in the future whether it's in front of this commission, the Legislature itself or another branch of government." Ms. Fralick responded, "Thank you, Mr. Chair." The chair replied, "You bet."

Mr. Horne said, "Mr. Chairman, I just wanted to note that it was just commented that her advice was that we keep doing what we've been doing until a determination has been made so anybody who gets brought up on complaint for making a vote again could use this day's minutes to show that we were told to keep doing what we're doing."

Chair Townsend commented, "Well, I can assure you that we have two very able bodied individuals over there. If they can sort out what the minutes say after this hearing, they need a couple of comp days which, so there is no cost to the taxpayer, I'm glad to pay

for but if they can figure out what has gone on here today from a legal point of view, good luck. I'm curious – the Board of Wildlife Commissioners, you objected to that Mr. Carpenter? Do they cover nightclubs? Because if they do I want to declare a conflict so that I don't get in trouble with the Ethics Commission. If they don't, it doesn't matter. Alright, let's move on."

On Regulation R180-07 from the State Board of Pharmacy, Mr. Anderson indicated that he had an opportunity to speak with Mr. Ling and he and Mr. Hillerby are coming to the witness table in Carson City. He said he appreciated the feedback he received from Mr. Ling and he was generous enough to allow him to call him at home and impose upon his free time. Mr. Anderson said that he was concerned that the regulation might prevent a pharmacist from being able to do charitable work or be called in to fill in at another location. He noted that Mr. Ling explained to him that pharmacists are not licensed to a particular location, that the location itself is licensed and the pharmacist is separately licensed. Mr. Anderson said, "The purpose of this then in reality is, and I want to make sure that we are not going to cut off the opportunity for that kind of charitable work when somebody is called in to fill in somewhere else because a pharmacist is not available or the nature, like a hospice or those other kinds of things." Louis Ling, General Counsel for the State Board of Pharmacy said that charitable work is on page 3 of the regulation, section 3 subsection 2. H. at the top of the page and was specifically taken into account. He explained, "Truly, just charitable work – you're going to go down and be a pharmacist somewhere, at a senior center was what brought up to us – is already exempted from this regulation. If you are going to be substituting for somebody because they got sick or they couldn't show up to work, as long as you're a licensed pharmacist in Nevada you can work in any licensed pharmacy. So that substitution notion is already taken care of in other provisions of the law."
Mr. Anderson thanked Mr. Ling and said he wanted to make sure that was entered into the record.

Further, Mr. Anderson said that he wanted to thank Mr. Ling for his service with the State Board of Pharmacy and his quick response. He said that if there is a part of the regulations he looks to it is the back page where he sees the methodology that has been used to contact the public and he knows Mr. Ling uses good methodology and it is always very clear that he tries to include everyone. It is very helpful to him as a legislator to know that he is warning those people who are going to be most affected by the regulation. He reiterated that Mr. Ling has done an excellent job and he hopes he does as well in the next position.

Fred Hillerby, representing the State Board of Pharmacy, said he wished to expand a little bit on what Mr. Anderson said. He said tomorrow is officially Mr. Ling's last day as the Board's general counsel and he wanted to mention his personal feelings that it has been great working with him for a long number of years and noted that Mr. Ling will be moving along to become the Executive Director of the State Board of Medical Examiners.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT REGULATION R180-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R184-07 from the Hearings Division of the Department of Administration, Mr. Anderson said that the division responded to his questions. Bryan Nix appeared in Las Vegas on behalf of the Hearings Division. Mr. Anderson said he spoke to Mr. Nix the previous day and he was most kind in responding to his questions and concerns raised at that time. However, since that time he and others received a note from the Nevada Attorney for Injured Workers who is concerned about the process, particularly relative to individuals who might have a different language background and not be aware of the overall conversation that was taking place at a hearing since they did not communicate or it is not their native language or their inability to understand the comments and recommendations that were made and the inference that is drawn by the nature of those questions. He was unsure Mr. Nix had an opportunity to see the concerns but he was curious as to how he might respond. He knows it is a major concern for injured workers and the working population where there is a language problem.

Mr. Nix said that they considered Nancyann Leeder's input at both of the public hearings held on the regulations. The division has a policy of providing an interpreter for the hearings before an appeals officer when the purpose of that interpreter is to make sure that there is a record of the proceeding that the judge and a reviewing court can understand. These policies clarify that they will provide an interpreter when it is necessary to make sure that testimony is adequately and properly recorded for purposes of the record. Mr. Anderson said he wanted to compliment the division again on very adequate discussion and including information about the "give and take" and concerns section by section of explanation and concerns that were raised at the hearings so they would give members a hint as to the nature of this and the long discussion process that had taken place. He asked, "What about the fact that this person may not know what's going on? I realize that you have a need to create a record, how about their need to know what's going on?" Mr. Nix replied, "I think there is certainly a lot of debatable issues concerning at what level somebody who is a participant in a hearing needs an interpreter to understand all of the activities in the court room. Our policy is geared towards ensuring that that person who does not speak the English language has an adequate record of their testimony so that the judge can understand what their testimony is. Ms. Leeder's position is that she thinks a person who doesn't speak the language should have someone interpreting during the entire proceeding what's going on around them. I don't personally disagree, that might be a nice thing but we are an agency of limited resources. The resources we have we want to make sure are utilized to ensure that their basic rights are protected. The difference I have with Ms. Leeder is she is just as capable as coming to the Legislature and asking for funding to provide an interpreter for her clients to understand what she's saying. Our concern is more about what the witness is saying to the judge and for the record. It's really a matter of who's going to pay for these interpreters and my feeling is that if Ms. Leeder feels she needs

an interpreter for her client, then she ought to provide an interpreter for her client. The employers are paying for the interpreter regardless of whether it comes out of my budget or her budget but I think our needs are met by making sure that their testimony is adequately translated for the court."

Mr. Anderson asked what percentage of hearing cases Mr. Nix believed involve people with a limited knowledge of or in need of an interpreter in order to have adequate representation. Mr. Nix replied, "You know I can't give a number off the top. We have a growing number of people who need interpreters to make sure their testimony is adequately interpreted. What we found, the reason this regulation was clarified, is we found more and more attorneys ordering an interpreter whenever they had a non-English speaking client, whether that client was going to participate in the hearing or not. You have to understand, the large majority of these cases do not turn on the testimony of the injured worker quite frankly. It turns on the testimony of the doctors about what the medical condition is. It turns on the testimony or the facts in the case and it's rarely, you know, rarely is the testimony of the injured worker the factor that is going to decide a case. Certainly, in those cases we want to make sure that they are adequately interpreted. So this is really an issue, and quite frankly, the percentage of cases even where we provide an interpreter, those interpreters do not tend to sit there and interpret the entire proceeding. That creates a lot of confusion in the court room. I don't know if you recall but we recently transferred from using a court reporting service to a digital recording service, much like you use here in the Legislature. When you have people talking in the background, an interpreter talking while parties are presenting testimony or argument to a judge, that discussion disrupts the recording. It makes it very difficult to get a clear record and it is confusing often for the judge. My survey of all the appeal officers indicate, and even cases where they have approved an interpreter for that proceeding, the parties do not request and the interpreters rarely ever engage in interpreting the contents of the proceeding during the proceeding. Some judges flat out won't allow it because it is so disruptive to the proceeding. It interrupts their ability to concentrate on the case. So, I think this is a red herring. I think if Ms. Leeder needs help with her clients understanding her arguments or her discussions in the court room other than in testimony to the judge, that she should ask the Legislature to fund her budget to provide those interpreters for her needs. We don't have a need for an interpreter as our agency is constituted to discuss the ongoing proceedings during the proceedings. In fact it's a disruption to our hearings. But we wouldn't object if Nancy Leeder wanted to bring an interpreter so that her client can understand what she is saying or what other people in the court room are saying. We don't object to her doing that but we don't have a budget for it and nor had we planned on requested to fund everybody who doesn't speak English who comes before a hearing or an appeals officer to have an interpreter."

Mr. Oceguera said that he would agree with the line of questioning that Mr. Anderson has brought forth. He has an issue with the way it's being stated from Mr. Nix that you have an injured worker and that somehow it is their responsibility to provide an interpreter. He said he did not agree with that logic. Secondly, he said that the issue

came before his committee and Senator Townsend's committee and he believed the date was June 30th when the regulation was supposed to be. He had an issue with that also and wondered if Mr. Nix could tell him why it took so long to get the regulation out. Mr. Nix responded, "You might want to check with the Legislative Counsel Bureau. We submitted our initial information, I think, back in December or January – there was a several month delay before they completed their draft of those regulations. So, I'm not sure what that delay was."

Senator Titus commented that several sessions ago, although she did not recall what year it was, the Legislature passed a law that required court interpreters in court rooms because it is very difficult to understand another language regardless but when you are looking at legal jargon and legal terms, it really is almost impossible. They did not think justice could be done without court interpreters being provided for people who are in the court room because too often they just get somebody out of the audience or a relative will "holler out down the hall – anybody down there speak whatever the language might be" and see if they can find somebody to interpret and that is not adequate in situations like this. She said, "I would hate to see us take a step backwards now from something that we've done and we've supported at the judicial level. Is there not some middle ground? If it's a budget problem, is there not some middle ground where you could provide interpreters in the hearing specifically but not dealing with all the things that you've described as being background or associated procedures? Is that not possible? Maybe Mr. Nix can answer that." Mr. Nix responded, "Well, I think there are possibilities of many compromises. Again, we've tried to work within the resources we have, we've traditionally had, from the Legislature in funding our agency. This really is simply a money issue. If the Legislature wants a policy that we provide an interpreter for every non-English speaking person who requests a hearing, we can do that if you want to fund it. It's not a ideological difference, it's simply a matter of we have so many resources, we work within those resources. If an individual attorney feels that their client has special needs or additional need for interpretation, I think it is incumbent upon that attorney to make sure that their client is adequately represented. Nancy Leeder has a budget just like we do. If she needs to have interpreters available, I don't know how they prepare their cases without an interpreter. How do they talk to their clients before they come to court? I'm simply suggesting that it can be funded by her for her clients. It can be funded by us if the Legislature wants to fund us to do that. It's simply a matter of dollars and cents. We have adjusted in our policies to try to function within the resources you've provided us each session and that's the basic bottom line for these particular policies on interpreters."

Chair Townsend asked if the commission rejects the regulation, what happens to him financially since he says it is an issue of dollars. Mr. Nix replied, "Well, if this body wanted to say, for instance, that we think it ought to be incumbent on the division to provide interpreters, that's a policy issue I'm not going to argue. I think that's a fine policy position if the Legislature wants to fund it. If you're going to fund us at the levels that we've been historically funded at – and I haven't made a strong case to try to increase this – because, again, I think that the funding can come not just necessarily

from our division like I said, I think Nancy Leeder is perfectly free to provide her own interpreters on her cases, but if this body feels it's necessary to fund it, send a message to the money committees. We've already submitted our budget but that could always be adjusted during the session and provide us with the funding. We can come up with an estimated number that we think it would cost if we are going to provide interpreters on demand and we'll do that. The bottom line at this point is, these policies were directed at our current resources, and quite frankly our concerns – we want to make sure we get an adequate record so that that individual's rights are protected. We have marshaled our resources to ensure the protection of their rights most effectively and with regard to the issues of, it would be nice if they could hear everything going on in the court room, I don't disagree. I don't think it's as critical as it is in a criminal case where somebody's rights or their freedom are at issue. Most of these cases, of course, involve some medical benefit or other type of benefit, which is important but not as critical as a life and death issue in the courts where you've already required interpreters at all levels apparently. So we're, I think that you could reject, personally I would rather see you accept these and if the Legislature funds this and if it comes forward in a couple of months that the funding is available and the committee 'buys off' on this philosophy, we can easily amend these regulations and redo this particular regulation and state what the new policy would be. I don't think you have to hold up this entire package of regulations and if you look at this package, Senator, you'll see that this covers issues of training, conduct, there are a lot of procedural issues, this is a fairly comprehensive amendment of the division's overall regulations. And this one small issue, again, if the Legislature wants to fund it this session then we can simply easily come in after the session is over and amend that one, I don't even know that we need an amendment to the regulation to start providing it if that's the Legislature's request."

Chair Townsend inquired if either Mr. Nix or Ms. Leeder have any parameters around the potential costs if members do not pass it and it stays where the Attorney for Injured Workers can request this. He asked, "No matter which pot of money it comes from, do we know what the cost would be?"

Mr. Nix replied that he did not have the cost at his fingertips but did not think that it would be an outrageous number. He said, "I would just off the top of my head guess we get maybe 20 percent of our cases are probably English-impaired in some manner so you know there might be some need of interpretation. We can run numbers. I can have that for you in a very short order and try to figure out what the impact would be. I don't think it is a number that is going to bust anybody. I don't think it's a number that is going to be so huge that it would cause shock. I just know it's not a number we've had in our budget to support this in the past. I'd be happy to get that together for you."

Nancyann Leeder, Nevada Attorney for Injured Workers (NAIW), appeared before members in Carson City. A handout of a letter from Ms. Leeder dated September 15, 2008, was provided to members and is attached as Exhibit F. Ms. Leeder said, "I think, if I remember correctly Bryan, when you went to the BOE you got contract authority for $75,000 – three different interpreters in Spanish. We estimate also it's 20 percent of

our cases and we differ, I think, in the idea as to the purpose of the appeals office in providing interpreters. NAIW believes that there should be a fair hearing and in order to have a fair hearing, the injured worker who only has this way to adjudicate his entitlement to benefits in workers compensation has to be able to understand what's going on. There are witnesses testifying against him. He needs to know what they're saying and then he passes notes to his counsel during the hearing. He also needs to know what the appeals officer is saying in order to appreciate what's going on around him that's affecting his life. Now, Nevada has a policy that judicial hearings are supposed to be fair and that means fair whether it's an English speaker or not an English speaker and in fact the Supreme Court so stated. Now the case in which it so stated was a small claims court, it was not an appeals officer hearing in workers compensation. I think that the same thing applies. Now, Mr. Nix said that NAIW can put in its budget that it needs additional monies for interpreters. Well it can, however, think of the practical consequences of having two different interpreters in the same proceeding. The appeals officer's interpreter would then be interpreting the testimony of NAIW's client and NAIW's interpreter would be interpreting everything else that's going on. It seems to me that that is just impractical and unmanageable and, therefore, we ask not that you reject the entire thing but only that you reject the proposed changes to section 14, no, 16."

Chair Townsend explained that the commission cannot reject sections but can only accept or reject the entire regulation and that is the predicament it is in. He asked if Ms. Leeder would agree with Mr. Nix that this is a function of money or if she had philosophical differences. Ms. Leeder responded, "Well, apparently, from Mr. Nix's statements at the beginning, we have a philosophical difference because we believe that there cannot be a fair hearing if the person who is affected by the hearing doesn't know what's going on."

Mr. Carpenter said, "I really have a hard time to make an excuse that we don't have enough money to make sure that justice prevails so I don't think that I'm in favor of this regulation the way it's written."

Mr. Anderson said that he is very sympathetic to one part of the argument that Mr. Nix put forward is the fact that the questions of procedure they have been working on – the other parts of this regulation – are really needed in order to do something in a meaningful way. He said, "It's one of those classical examples where we're caught between a rock and a hard place because the ethical questions which are articulated here: the training requirements for appeals officers and the statement of a code of conduct for hearing officers is something that I think that Mr. Nix has been trying to get into place for some time and so I am very, very, very concerned with this and I agree with Mr. Carpenter, however, the overlying factor here is there has to be a single voice that the individual who is having a difficulty understanding has the confidence that they're being included in the process and the procedure. Therefore, I'm afraid that we're probably going to have to reject this and I don't think I can support it."

ASSEMBLYMAN ANDERSON MOVED TO REJECT REGULATION R184-07. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED WITH SENATORS HARDY AND TOWNSEND VOTING NAY.

Chair Townsend commented that it is one thing to have a philosophical difference in front of the commission because it is where those issues are resolved but if agencies have a money difference, this is not the place for it. The commission can help with that but the Interim Finance Committee and the Budget Office are the places for money differences and the commission does not have the authority to give additional money or contracts.

On Regulation R024-08 from the State Engineer, Mr. Carpenter said he had extensive discussions with Mr. King and he would like to have him state the way they will administer the regulations. Jason King, Deputy State Engineer, appeared before members in Carson City. Mr. King set the following framework for how the office sees the regulation being implemented. A violation or an alleged violation will occur. The office will find out about it through its staff in the field or by someone filing a complaint with the office. Depending upon how egregious the violation is, and that can run the gamut, there are three options. The office can send out a warning letter putting a person on notice telling them it appears they are in violation and need to come back into compliance. Option two would be, say, a repeat offender, someone who has violated the water law previously and maybe even been issued a penalty and they are doing it again and the office might issue them a violation order and require them to come to a "show cause" hearing before their office and plead their case. In the most egregious of offenses, the office can seek injunctive relief. He would consider an egregious violation to be someone who might go out, build a dam and store water behind that dam without a dam permit, perhaps without a water right. If that dam were upstream of a small or large community and if that dam were to fail and cause loss of life, that would be a very serious violation to him and is something on which he would seek injunctive relief, order a controlled breach and issue a violation order. Depending on the seriousness of the violation, there are three options for the office to take. Mr. King said, "I do want to point out that if we do decide that we need to issue a violation order, then that person has the opportunity to come to a show cause hearing before staff of the State Engineer. He's allowed to bring legal counsel, he pleads his case, he has his day in court. After that show cause hearing, that information is taken under advisement and is decided whether or not a penalty should be issued. If a penalty is decided to be issued, the respondent then has the opportunity, if he still does not like that decision, has the opportunity to appeal that to an independent advisory committee. That independent advisory committee is made up of members selected by the director of our department, not the State Engineer, and again he may go before that advisory committee and plead his case as to why he should not be assessed a penalty. If after that, the independent advisory committee comes out and still wants to assess the penalty, the respondent always has the ability to elevate that appeal to a district court. I'm skipping over a few boxes in my flow chart here but I really want to express our number one goal is to

achieve compliance of Nevada's water law and minimize any kind of enforcement action. We've gone on record: we hope we never have to take one dollar in fines. We are just after compliance. Currently what we have in terms of going after violations is ineffective, it's cumbersome and it's costly to Nevada and we feel that we need these regulations in order to better protect the water resource." Mr. Carpenter expressed his thanks and said he just wanted to get that "on the record."

Mr. Horne asked if Mr. King can explain if there is a procedure in place on making the determination on levels of degrees of noncompliance, of severity, not the procedure afterwards of appeal but who would "make that call" whether it is a minor violation as opposed to a severe violation and if it is a severe violation is there some type of procedure before someone is imposed a fine and has to go through the appeal process. Mr. King responded, "At the show cause hearing, again, the respondent will plead his case, his counsel will, that will be before the senior staff of the State Engineer's office. At the conclusion of that show cause hearing, there will be what we called a penalty panel which is just a closed meeting of senior staff of the State Engineer that will in considering whether or not a penalty should be issued, and I'm going to read you right from our proposed regulations: that the amount of penalty assessed will be based on the gravity of the violation including without limitation any economic injury or impact to others, whether the respondent made significant progress towards correcting the violation – and I really want to emphasize that because if someone is working towards coming into compliance, I think they're going to be in good shape with any possible penalty – whether the respondent made significant progress towards correcting the violation and attempted to comply with any applicable orders of our office, whether or not there was any prior violations committed by the respondent. We would look at the economic benefit, if any, derived by the respondent from the violation. In the case of unlawfully using waste in the diverting water, we would look at the relative amount of water involved. In other words, if someone had a 1,000 acre foot right and they pumped 1,005 acre feet, that is something different than someone who has a 5 acre foot right and is pumping 50 acre feet. And we also will allow for water measurement in terms of meter error or errors associated with reading surface water through other means. So that is the criteria, that is the foundation of what the penalty panel will look at in assessing a penalty. So that would be issued by the State Engineer and then the respondent would have that ability to then appeal it to the independent advisory committee. And, maybe this goes without saying, but I will say if it ever got elevated to the point where they are before a district court judge, the last place the State Engineer, our office, wants to be is being slammed for being heavy-handed on any kind of fine or penalty that we issued. If the respondent is working towards compliance, that's going to go a very long way."

ASSEMBLYMAN GOICOECHEA MOVED TO ACCEPT REGULATION R024-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R040-08 and R048-08 from the Public Utilities Commission of Nevada (PUCN), Mr. Anderson said that the PUCN responded to his earlier inquiries and he had a discussion with Ms. Wenzel who was most helpful. Noting he held both regulations because there came to be a confusion in his mind, he was concerned about how it would potentially impact a person who has a Lifeline system and the assurance that no one who has a Lifeline is going to be abandoned because of a small or large carrier pointing to someone else who was supposed to "pick them up." He referred to pages in the regulations and asked for clarification. Nancy Wenzel, Utilities Hearing Officer, PUCN appeared before members in Carson City. She said, "Under this regulation, a Lifeline customer, if there is one Lifeline customer that is eligible to receive that service and is receiving that service, although I cannot speak for the commission, if an application was filed to discontinue basic network service and there was one customer receiving Lifeline, I do find it hard to believe that this commission would grant that application because they have to make a finding that it's in the public interest and that's why the regulation requires the provider of last resort to provide the commission with a detailed explanation of who's receiving service and what service so the commission can make the decision of whether there are customers in need of basic network service before they grant that application."

Mr. Anderson asked if a smaller utility says that a larger utility has a similar service in an adjoining area and can pick it up, that is not an "out." Ms. Wenzel responded that was correct. She said that kind of refers to the next regulation R048-08 which she will also testify on and stated, "If a small scale provider of last resort files an application to become a competitive supplier then they can be regulated as a competitive supplier under the statutes. However, if they want to discontinue basic network service as a provider of last resort, they are still the provider of last resort. So, they would have to file an application under R048-08 to discontinue basic network service." Mr. Anderson said he wanted to make sure that was on the record because he did not want there to be confusion in the future if somebody says they are on Lifeline and do not have the service that it is needed and are living in a more remote area that may have the possibility of being excluded from service.

Chair Townsend indicated the PUCN had done a good job on the regulations and noted the importance of availability for those that need the land line with Lifeline service.

> ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF REGULATIONS R040-08 AND R048-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R060-08 from the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors, Dr. Colleen M. Peterson, President of the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors appeared before members in Las Vegas. Mr. Carpenter said this is a very important regulation especially in the rural areas of the state because they have had a hard time to get people licensed in those areas. He said, hopefully, this will go a long way to help get

counselors in the rural areas. He requested an explanation of why the Board thinks the regulation will help to get people in rural and urban areas certified. Dr. Peterson responded, "We are excited to have this new classification of mental health providers available. In the process of developing the regulations for this and in the discussions that were had for the statute for this particular license, clinical professional counselor, we heard testimony that there were perhaps 200 to 400 people who would qualify for this so we are excited. Just for your information, our office has the applications ready, they are going to go online tomorrow morning at 8 a.m. with the hopes that this regulation is passed and will go into effect tomorrow morning and we're ready to have those applications come in and process those as quickly as possible."

Mr. Carpenter expressed appreciation and said that they are grateful that the regulations will be "coming on now" because what he heard early on was that it would be at least January or some time before these regulations were drafted to be put into place. He had talked to the Attorney General and she assured him that they would get working on them so he is glad to see they would be ready to go tomorrow.

ASSEMBLYMAN CARPENTER MOVED TO ACCEPT REGULATION R060-08. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R066-08 from the Board of Wildlife Commissioners, Mr. Goicoechea said, "I just want to know the rationale was for allowing you, if you kill a little antelope, then you can have a tag next year." Maureen Hullinger, Program Officer for the License Office, Nevada Department of Wildlife appeared before members in Carson City. She explained that the change to the regulation changes the waiting periods for someone who obtains a tag through the draw and, if he was speaking about antelope, it would be the "horns longer than ears or buck hunt." If the person does not harvest an animal and reports that they do not harvest on the required questionnaire, then they would be eligible to apply for a tag the following year. Mr. Goicoechea said, "And I guess that's where I start to get concerned because technically you are saying if they don't harvest then they come back how you're going to police it or ensure that the horns weren't in fact, I know you're calling it a buck, but longer than the horns. Why don't we talk about sex rather than horns longer than the ears?" Ms. Hullinger responded, "Their tag is specific to a horns longer than ears animal, a buck animal, while they're in the field they're required to hopefully take an animal in such a manner that it meets that physical requirement. If they don't harvest though, and they report that they don't harvest, and it's all programmed into the system as part of the required programming for the program, it will make them ineligible the following year when they apply if they don't harvest. Now if they harvest and report something smaller at least they've harvested, they've met the reporting requirement and then if the Department would go forward in investigating that would be up to our law enforcement office." Mr. Goicoechea commented, "I don't want to belabor this. It just didn't make any sense to me but I mean technically what we're saying though if they do harvest an animal that the horns

are shorter than the ears they are eligible to apply for a tag the following year. That's what the reg says." Ms. Hullinger indicated she understood where Mr. Goicoechea was going with his questions and acknowledged it depends on what the individual reports.

Senator McGinness asked if a person does not turn in their questionnaire card are they ineligible the next year. Ms. Hullinger responded, "For all our big game species if you do not turn your questionnaire in, you are ineligible for all big game for one year."

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R066-08. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

On Regulation R071-08 from the State Public Works Board, Mr. Carpenter said he had some concerns that one employee can give an initial report and worried that it might give someone who did not like a certain contractor too much authority even though there are a lot of safeguards. He requested an explanation.

Evan R. Dale, representing the State Public Works Board, appeared in Carson City. Mr. Dale explained, "I'd like to start off by saying that the evaluator on these contractors does not have enough power to disqualify the contractor. The contractor would, in addition to a poor evaluation from the project manager, need to be in violation of some of the other criteria on the evaluation form in order to be disqualified. Furthermore, the contractor is given the opportunity to file his response to the project manager's evaluation which would then become part of the record and if the project manager as well as the project manager's supervisor wishes to let the initial evaluation stand, the contractor would have the opportunity to appeal that evaluation to the Public Works Board where the project managers vendetta would be aired in public and the Public Works Board would then have the opportunity to disregard the evaluation and allow the contractor to be qualified. So there are, we feel, adequate measures to prevent an abuse of this authority."

Susan K. Stewart, Construction Law Counsel, Deputy Attorney General for the State Public Works Board, appeared in Carson City. She said, "Mr. Carpenter, I would also like to point out that NRS 338.1375 specifically says that no one person can exercise their discretion in qualifying a contractor and it was with that statute in mind that this regulation was promulgated and put together."

No motion was forthcoming and the chair moved on to the next regulation.

On Regulation R075-08 from the Nevada Transportation Authority, Mr. Goicoechea said he had a conversation with Mr. Mackay and he would like to have his statement on the record that the tow truck industry was, in fact, very involved in establishing the nonconsensual tows and does endorse the regulation. He said it looks to him like having to have a photograph in your possession after you have towed someone and you have 30 minutes to notify the jurisdiction, some of these might be a hardship especially in the rural areas. Andy Mackay, Chairman of the Nevada Transportation Authority,

Department of Business and Industry appeared before members in Carson City. He said that the testimony received at the workshops as well as the adoption hearing shows that the tow industry was in support of all of the draft regulations. He said, "It's worth mentioning that frankly with respect to these regulations that we have in fact adopted that are in front of you, they were made possible because of the involvement of the tow industry. We received, as you have probably seen in your packets the minutes, very good attendance and copious amounts of testimony. To address the issue with respect to photographing vehicles, if it's parked either in front of a fire hydrant, a red zone or in a handicapped spot, as the law is currently drafted they would have to receive if it is in an apartment complex for instance, they would have to receive a signed specific request to tow from the property owner. What this does is it enables the tow operators to enter into a specific agreement with the property owner or representative and then they will be able to, if they observe somebody that is in violation of the law that being blocking a fire hydrant, a red zone or a handicapped spot, they will be able to in fact tow the vehicle. The purpose of the photograph is to ensure that an entity just doesn't just arbitrarily tow a vehicle and they claim that is in fact parked in front of a red zone. So that's sort of the check and balance to ensure that it was legitimate. I hope I answered your question on that." Mr. Goicoechea said, "Yes, thank you. I just, when they start beating me up, I wanted to make sure they got you too." Mr. Mackay responded, "You can throw me under the bus, Assemblyman."

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R075-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R085-08 from the Board of Homeopathic Medical Examiners, Mr. Mabey said he had some concerns regarding the proposed regulation. He referred to page 10, section 7, subsection 6 and said it appears to him that they are trying to lower the threshold of somebody that does not pass the test. Anyone that scores 71 to 75 percent can then take an oral exam and if they pass the oral exam they will add six points which would then make them pass it. He said it seems an unusual type of way to pass a test. He has always seen in tests for most professional organizations where there is a distinct line and it is important that someone pass that line in order to be licensed. Under section 8, subsection 2, he needs some clarification where it says a graduate of a foreign medical school must have completed six months of post-graduate medical training in the United States. In reading the statute now, they have to complete three years and actually a person that graduates from the United States would have to complete one year. He said that maybe it just means that of those three years, six months of those have to be in the United States. Another concern he has is on page 15, section 14 where it talks about a notification of the board if there is a judgement or settlement of $50,000 or more. Currently, his understanding is for the allopathic and possibly osteopathic even if there is a lawsuit, the person has to notify the board within 45 days. If a person enters arbitration, they have to notify the board within 45 days or if there is a judgement, that has to be entered within 45 days. He said in this regulation

it seems to him that a lawsuit could occur, be settled and the board would never know about it and he thought that would be inappropriate. He reiterated his main concerns are on sections 7 and 14.

Dr. Fuller Royal, President of the Board of Homeopathic Medical Examiners appeared before members in Las Vegas. Dr. Royal said, "The questions raised with regards to examination, that wording is already in place. The percentages are somewhat different is already in place for homeopathic assistants and what the board would like to do is to standardize those test procedures and that is the way it reads, as I said, for the homeopathic assistants. We raised the percentage points and put it in for both the licensees and for the advanced practitioners. The purpose here is that when you are practicing complementary alternative medicine such as homeopathy, you're dealing with holistic medicine. Many times the examination requires some intuitive insight as to what kind of therapy would be needed to help an individual who is ill and sometimes those questions are not answered properly and therefore are looked upon as being failed. In some instances, it has been a very narrow failure and so the board felt very strongly that it was better to allow these people at least to come before the board which they have to anyway for an oral examination and if they made certain percentage points that it would then be up to the board as to whether or not the board would go ahead and pass them. The second question, I believe, had to do with section 8, paragraph 2, and that was put in specifically to make sure that six months of their allopathic training that they were supposed to receive would be done within the United States. With regards to 14, I didn't realize that the medical board had those kind of requirements and neither did the board. This was discussed and it was felt by the board members that $50,000 was an adequate figure to require any kind of report after that. There can be a lot of suits which are not necessarily elevated in very much, $5,000, $2,000 and so forth, we felt like we didn't really need to have that kind of information. The homeopathic board has had very, very few complaints and so we don't have the same kinds of complaints that the Board of Medical Examiners does and felt that this was a fair figure for asking reports after $50,000 to the board."

Mr. Mabey said, "I still feel strongly. He answered section 8 and I understand that makes sense to make sure that six months of the three years is in the United States but it seems to me there should be a line in the sand and if you pass the test, you pass the test. I think it's a protection to people. There can be a lawsuit and as we all know it can take months or years for that to be resolved and it would be wise, I think, for the board to be aware that there is a lawsuit in case there is a problem with that position. So, I cannot support the regulations the way they're written."

George Eversol appeared before members in Las Vegas. He said that Dr. Royal is his supervisor. There were no questions for Mr. Eversol.

Chair Townsend addressed Dr. Royal and said that there was not clarity on Mr. Mabey's question regarding subsection 6 of section 7. He asked what is the current passage standard. He acknowledged that things are so unique to this particular profession that

sometimes people need an opportunity orally to explain an answer they wrote. He asked for clarification on the current standard. Dr. Royal responded, "As it now stands there is the standard examination which requires the applicant to pass 76 percent of the questions asked." The chair asked what problem the board had that required it to add a subsection 6. Dr. Royal replied, "We've had occasionally individuals for example who have gotten themselves a bit confused in trying the subjective questions versus the objective questions, multi-choice questions and so some of them have become very close to passing but because of running out of time they were not able to do so. In those instances, we've often felt like that they really should have had a chance to at least come before the board and have the board question them with regard to the test. But, because they had not gotten to 76 percent, they were failed." Chair Townsend said that he understands the answer as he believed Mr. Mabey did but he was just not sure it was the right answer. The bright line test which is particularly important in the health care arena is probably crucial. He said, "To remind all of the boards that we are there to protect the public interest first and the licensee second and if I have to say that any more times than I have over the last 28 years, there is probably somebody going to shoot me, but section 14 makes no sense to me at all. If you are not burdened now, then why do you need a new threshold. If you say you don't have much legal action, why do you want to raise the threshold." Dr. Royal responded, "Mr. Chairman, this was presented to us by some licensees and the board considered that and introduced it as a result of further investigation. That's how it came about." Responding to the chair, Dr. Royal said the board had three public members. Additionally, he said the public members agreed that this was a correct figure. Chair Townsend said, "Well, it's not about a correct figure, it's about a filing altogether no matter what the number is. I believe that was Dr. Mabey's point." Dr. Royal said he understood.

Diane Kennedy, a public member of the Board of Homeopathic Medical Examiners, appeared before members in Carson City. She stated, "As long as I've been on the board the basic thing I think people need to understand the difference between the modalities of both boards. The modality that the testing for the homeopathic board is it is an open book test. They are given a test, there are certain books that have been approved that are approved by different places throughout the world: England, Italy. They sit and they go through, they are given questions and they can look up the answers. As you can imagine, when you are looking at some of these modalities, one person may say one thing and another person may say another thing. There isn't necessarily a yes and no answer. I can say that I think this has happened maybe one time since I have been on the board where a person who is extremely well qualified, had practiced for a long time and had come to Nevada to take the test. They missed the test by two points. At some point, it was decided that they could take an oral exam and they passed the oral exam with very, very difficult questions. So, that was the reasoning behind putting that in. It was suggested by numerous of our practitioners that we put that into the regulation."

Mr. Horne said that he was going to have to side with Dr. Mabey on this issue particularly in section 16 where it was indicated that they are not having any legal problems anyway. He said in section 7, paragraph 6, it seemed to him that the floor for passing the test is 76 percent, which is arguably a C+, and then they are saying they will give another opportunity because they could not meet that threshold to do it orally. He said it seemed to him that the question, as Dr. Mabey alluded to and the chair spoke of, is basically protecting the public and it is a level of competence and if someone cannot get a C+ on their exam, maybe they need to be going back and "hunker down" again. He said he could speak from experience on his multiple bar exams and what he missed by, would he be incompetent in practicing law, no, but this is the floor and you've got to meet it. There is no gray area especially when talking about treating patients, he thought that should hold true as well. He opined that they might be able to make the argument if their floor was 85 percent or higher, a B+, and they had someone who just missed B+ by a percent or two. The person is obviously not incompetent. He said here it is not the case with the current standards and he said he could not support the regulation as written.

Ms. Kennedy asked to make one comment. She said, "As a lay person on this board, I take what I do very seriously. Our job as a board is to protect the public and I think, I personally as a member of this board, that's what my job is, is to protect the public and anything I do and decisions I make on that board have that goal in mind." The chair said he appreciated that and while he did not know who would follow him in his job but they probably would not say it as much as he does but maybe everybody will understand that since it was written in law that is why he is perplexed by some of these.
Chair Townsend said that as he understands it the current applicants do not have to be Board of Medical Examiners licensees but they must be Medical Doctors, which means they had to meet a standard somewhere. He said he was not sure that "fudging" this standard based on one applicant is a reason to have a regulation. He said, "Now if you need the other things that are in here, the $50,000 thing, I have no idea where that came from and so far I don't think you've made the sale to anybody because as you know I've been a supporter of your board forever but you haven't made a sale with me so that's a pretty low threshold. But, if you do need the fees and we understand that all of these boards are self-funded as they should be and that costs are rising particularly those of litigation we understand the cost of those, those are things you ought to bring back and I think the commission would look favorably upon those but I certainly can't support these other two things because you don't give me a reason to support them. Just because somebody thought them up – there's no public person out there, there's no patient out there, there's no crisis of health care to the patient that is saying we ought to make these changes and although the first one gives me some concern, the first one being the standard, the floor as Mr. Horne so articulately put it, the last one makes no sense to me at all. We've made a public policy about litigation with regard to health care that the public ought to be able to know this stuff and to just put in, well if it's $50,000 or more, I don't think you've made the sale. I mean I apologize but and by the way nobody ever contacted me to kind of explain this to me before today and all of our phone numbers and e-mails are available to everybody. So maybe in the future you

might want to get some guidance from a few of us who might be able to be helpful to you. Would that be okay? Is that fair?" Ms. Kennedy responded, "Thank you very much. That's very fair."

ASSEMBLYMAN MABEY MOVED TO REJECT REGULATION R085-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R107-08 from the Department of Motor Vehicles (DMV), Mr. Anderson said that he attempted to contact the agency but did not receive a return call which is very uncharacteristic of that department. He said he had several questions but first wished to make an observation. He thought that each member approaches the regulations differently and he generally reads the summary provided by the LCB and looks at the back of the regulation containing the methodology in terms of how the public hearings are conducted and attended and what kinds of criticism was available. He said that it is a little ambiguous on this regulation as it does not make any reference to a list of businesses contacted. He said that since this particular regulation dealt with commercial drivers licenses, he felt that there was probably a readily known group of individuals who participate and he was somewhat surprised that they had not been contacted. He was additionally surprised when he saw that no one attended any of the meetings so that caused him some concerns. He referred to page 20 of the regulation, section 20, subsection 3 where it says "If an investigation conducted by the Compliance Enforcement Division of the Department indicates that a conviction has been recorded on the driving record" and asked how it is handling someone who is a victim of identity theft and what is the current practice of trying to keep them from being penalized by someone who has stolen an identity and is cited here or in another state and how is the victim's record kept clean. Jude Hurin, Driver Programs Manager, Research and Development Division of the DMV appeared before members in Carson City. Mr. Hurin apologized to Mr. Anderson and said he never received any notification of any questions and he would appreciate the opportunity to work with him to figure out where the "hiccup" went. He said that he may have failed to indicate that when the regulations were reviewed by the LCB, he did send a separate notification to the motor carrier associations and he believed Assemblymen Carpenter and Goicoechea were on that e-mail as well because they have been very crucial in assisting the department with the previous commercial driver's license (CDL) commercial motor vehicle regulations. The e-mail and the invitation to have a workshop with them prior to the formal workshop was sent to them because of the CDL proposals. In response to that, he received no opposition, no real feedback from the associations, unions and officials to whom he sent it. He said in hindsight he should have put that on there to make reference to that. Mr. Anderson commented that it says "no one attended or provided support or opposition" on August 28th or September 3rd and he found that surprising and was the reason why he questioned it. He suggested that Mr. Hurin might want to look at the back pages on some of the other regulations and noted that there is a form from the LCB that has a "check-off" process for a regulation. Mr. Hurin responded that to his knowledge the department did file the appropriate forms with the LCB and public workshops and hearings were held separately.

Mr. Anderson reiterated his question about how the department is going about taking care of people with identity theft. Mr. Hurin said he did not have a member of the Compliance Enforcement Division with him and so he could not specifically handle that but noted that division does handle any of the identification fraud situations, create cases for that and investigate that thoroughly. He thought this was proposed in the regulations to allow them to further correct that in those identification fraud cases that they actually have and assist the actual victim and give them the authority to do so.

Mr. Anderson referred to page 21and said that his second question deals with section 21, subsection 2 which is language that is being removed regarding excessive speed and apparently they will move to whatever the federal guidelines are as outlined in the recorded driving license denials and withdrawals and convictions of motor vehicle-related offenses from the federal government whereas in the past they had indicators that if you were exceeding the speed limit by 15 miles an hour, or following a motor vehicle too closely or changing lanes improperly that those things would be taken into consideration. He commented that traditionally Nevada has not liked speed limits in the open areas and it was agreed to set 70 miles an hour in some areas. He said 15 miles an hour in a 65 mile an hour zone or 85 miles an hour through the Washoe Valley area might be a bit of concern to him if someone is "sitting on his tail" when he is trying to do the speed limit and if it is a large truck he is "truly intimidated." To look up in his rear view mirror and see nothing but metal is not a pleasant sight as he was sure many have experienced. Because of the length allowed for trucks and trailers in Nevada, if they change lanes improperly that also causes him concern particularly because there are many roads in the state that are not multi-lane roads. He said, "I need to know a little bit of why we're dropping our particular Nevada impact into national regulations so that our flavor, our public is protected on the roads because it appears we are backing away from those." Mr. Hurin responded that he would have to get a little more specific information for this but he said it is their intent that they work directly with the federal government in a lot of ways for the commercial drivers. They have a higher standard that they need to go by and a lot of federal regulations through their audits and through the federal motor carrier safety administration he knows they need to work with them and abide by them. A lot of times there are strong results to the consequences that a certain person has behind that "18-wheeler." Mr. Anderson said that he has a philosophical difficulty with abrogating Nevada's responsibility for looking out for the public safety of its individuals versus those of the national government. He said they have had these kinds of questions where the federal government wishes to preempt the state in the past and they are very, very protective of ensuring Nevada's statutes remain in place so that their expectation of public safety is what is expected in Nevada. He said he is concerned about those two questions in particular and he wished to vent his frustration at it and he apologized that he and Mr. Hurin were not able to communicate earlier in the week so that he could have found out and Mr. Hurin would have had an opportunity to bring with him individuals who might have been able to answer the questions because they are enforcement questions more than anything else. Mr. Hurin said that he thought he and Mr. Anderson could agree that the DMV's biggest concern is that the person behind the wheel should be behind that wheel and the safety of the

roadways. He said it is their intent to make sure that any changes they make actually overflow in a positive way to the public in safety on the road. He believed strongly that any changes in the regulation were not meant to "chip away" at Nevada's rights or anything like that but wanted to enforce and make sure the roadways were safer especially for the commercial drivers that were behind the wheel.

Mr. Carpenter commented that the way the regulation reads now is if a person has a CDL and gets a .04, the license will be taken away. He asked what is the procedure that a person goes through to get the license back. Mr. Hurin responded, "They would actually not be able to at that particular time. Per our regulations here we want to make sure that a commercial driver, if pulled over by an officer for those offenses, that they are not allowed to continue driving on a restricted license because of that pending case. It is crucial, as I've mentioned to Assemblyman Anderson that we make sure that that person behind that commercial vehicle is a safe driver and if there is any incidents where that person may have their license revoked, suspended due to a consequence of that nature we need to make sure that they do not continue to drive until that action is resolved. If that goes into revocation or suspension, that person is not allowed to drive a commercial vehicle because of that consequence. They can obtain a noncommercial drivers license and I think that is the safest approach and I believe that I can say safely that the motor carrier associations believe the same way because they, as employers, do not want their drivers to be driving on the road with their products when they are in a suspended or revoked status. They have to go through the same procedures and that's where a lot of the times the federal consequences on commercial drivers are higher and that we agree with. They need to be held to a higher standard." Further responding to Mr. Carpenter, Mr. Hurin said, "Those individuals do go through administrative courts of the department as well as for DUI situations they'll still have to go through the courts as well to see if that individual is actually convicted of a DUI and they go through the same procedure as anybody else. They can ask for an administrative hearing through the Department of Motor Vehicles but there is at least a 90-day revocation as we wait for the district courts to determine whether or not it's an actual DUI or not. But, there is consequences to that initial offense." He also said that a .04 constitutes an alcohol situation that is a potential DUI and it is determined by the courts if it is an actual DUI. He reiterated that it is an alcohol-related incident and there are consequences as they wait for the courts to determine that case.

ASSEMBLYMAN ANDERSON MOVED TO REJECT REGULATION R107-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Under discussion of the motion, Mr. Anderson said he would be happy to see the regulation again when members get the answers to the questions.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED UNANIMOUSLY.

On Regulation R155-08 from the Board of Wildlife Commissioners, Mr. Carpenter said that he held the regulation so he could vote no.

SENATOR TITUS MOVED APPROVAL OF REGULATION R155-08. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED WITH ASSEMBLYMAN CARPENTER VOTING NO.

On Regulation R169-07 from the Department of Education, Mr. Carpenter said he was wondering whether the regulations will make it easier or harder to start a charter school. Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City. He said that the regulations just clarify and he thought it would be easier because it specifies dates by when the department receives an application how many days they have to return the application. It does include the new allowance that a college or university can be a sponsor so that adds another sponsor to charter schools and in general it may be of some assistance in helping charter schools get started up in Nevada.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R169-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R012-08 from the State Board of Education, Mr. Anderson indicated that he would not go into a long discussion about grading as he did previously. He said he did not understand where the difference is in this regulation as compared to the last one. He said that it seemed to him it still has the same grading parameters. While he has not had a discussion with Dr. Rheault, he has with some individuals in Washoe County who have been involved with the Department of Education in trying to set up the parameters. He said that there are other things going on in the Washoe County School District that may not be going on statewide and he realized that should not hold up a statewide regulation but he was a little bit confused. He was under the impression that the option was going to be that there would be some gradation within the new scale to include minus and plus grades even though the university system really dictates this other policy of flat grade. He noted that grades are only the "big thing" at the high school level which is always a difficult problem. He said, "In part, this is a problem created by the university system. If you could help me here, I'd appreciate it."

Keith W. Rheault, Ph.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City. Dr. Rheault said, "Mr. Anderson, I can tell you what we did from the time it was rejected to what you have in front of you today and we made only three changes or revisions to the original regulations that were rejected. We didn't get an official letter from the Legislature saying here's the specific concerns but what we wrote we thought we heard that there was no indication of what was a failing grade so on page 1 of the regulations, we did add the new wording below 60 as an F and you get zero value for that. What we did do was go back out to the school districts, I had staff do that to see if, brought the concern that we should be considering

plus or minus, to my knowledge there was only one of the 17 districts that we heard from and that was Carson City School District that wanted to support a plus/minus gradation in the uniform grading. The only other one at the public hearing that we heard from was the Davidson Academy for Profoundly Gifted Students and they would have preferred a plus/minus but all the other 16 districts were strongly in support of what was originally adopted, the A, B, C, 4.0 or 3.0 grade. The second change we made had to do on page 2 subsection 3, because of the number of courses taken we did increase the rounding under subsection 3 from a two decimal to a three decimal just to give a little bit more in variation in how they determine, for example, a valedictorian under this grading system. And then the final change, and this was kind of a compromise wording was on the third page, subsection 7 is a brand new section and that's the one where we put in that the Board of Trustees of the school district or the governing body of the charter may adopt a policy where they allow the plus/minus as part of a teachers grade although I think you're correct in that it does not change the actual uniform grading. It would still need to be reported on the final grade as an A, B, C or D but an individual teacher through a policy adopted, if a school board wants to do that, could allow individual grades at the site level to be a plus/minus and that was the attempt to at least allow some of that but you know we held a workshop and two public hearings and there was strong support that we listen to districts on how they would implement this and I understand your philosophy or understanding that you would like the plus/minus."

Mr. Anderson said, "Obviously, the educational profession has changed dramatically because of computers in terms of grading scales and in terms of the way grades are applied and reporting to parents and the whole parameters of this process and yet we have a system that is still letter grade bound rather than a percentage which could just as easily be reported and much more accurately reported with where a student stood from one institution to another and then let the other institution draw its conclusions as to where they wish to place in the academic program. A 10-point grade variation, the difference between an 89 percent student and a 82 percent student is dramatic because one is almost within the A- range, or what I consider to be the A- range, and the other is not and is kind of waltzing with the C's and that's when we used to say that a C was what you expected everybody to come to a C grade. That was the average. I realize that those days don't seem to exist anymore and public education seems to be criticized about this. I'm still concerned about this regulation but I surely do not want to hold it up and prevent it from going forward but I, personally, don't feel it fits within my philosophy of what educational excellence is supposed to be about nor does it foster the higher standards that we should be encouraging our students to reach to. And, I'm concerned about some of the other issues involved here but I would encourage that, obviously, there are some issues here that need to be taken care of and I appreciate the hard work of your department in trying to get there. Thank you." Dr. Rheault responded, "Mr. Anderson, I did go back to Assembly Bill 212 to make sure, I went through all the minutes to see if there was any indication maybe I missed something in the intent that I would have applied and I didn't see any discussion related to whether it

should be a plus/minus or a flat grade, it just left it open." Mr. Anderson commented, "I believe that was the dialogue that took place on the floor at one of the floor [sessions] on the Assembly side." Dr. Rheault reiterated he went through all the committee meeting minutes.

Senator Titus said that she agreed with Mr. Anderson and believed the plus or minus works as an incentive for students to do better. She wondered that if they are not given it hurts Nevada's students when they compete to get into colleges and universities around the country where a 3.5 is more impressive than a 3.0 and that student might be equal to a 3.5 but that is not what his or her grade shows. She indicated that she appreciated the other parts of the regulation but she did not support the grade portion.

Mr. Anderson said he appreciated the senator's support. In discovering the parameters of how the policy came to be, it was because the universities were not longer accepting the reports of plus or minus grades. They were only accepting from the high school transcript officers the flat letter grade. Thus, since the only grade that was being reported was the A, B, C, D or the failing grade. The only place the grade variation was being used was in determining salutatorian, valedictorian and other honor students. The purpose of the regulation is laudable in terms of giving those students who have the courage to take honors courses in the curriculum and, therefore, he thought that is the more important part of the issue. He still feels there is some difficulty with how they are going about grades but it is in part because of the way the universities took it. He said, "It's too bad but apparently it's been going on for some time."

Senator Titus inquired about the wording "the universities" and asked if that meant the University of Nevada, Reno; University of Nevada, Las Vegas; or is it based on a national survey and does it include public and private schools – what does that mean?
Mr. Anderson responded, "From preparing for this, it is apparently a general policy that that's the way they are being reported to all colleges and universities that return the SAT ACT scores are reported separately and those to the universities that are so designated, you know, by the test taker and the universities and colleges are the responsible officer at every schools adopt those transcripts only since flat-letter grades. Now that is the way it was reported to me within Washoe County and it was my understanding that they did it to all universities and that was what was being solicited from the universities."

Senator Horsford asked if the options are to approve it, reject it or take no action and it is adopted. Chair Townsend confirmed that if the commission does not act on the regulation, it automatically will be filed with the Secretary of State's Office, otherwise members could reject it or accept it. Senator Horsford said he is reluctant to support the regulation and feels that it needs to be vetted in more of a public policy discussion and to hear all the aspects. He said, "But I agree with Senator Titus and Assemblyman Anderson that to move in this direction kind of unilaterally without understanding the full

impact on the students of the State of Nevada, I just am not comfortable with so to allow it to be implemented tacitly doesn't sound like a very good option so if there is no other member prepared I would move to reject the regulation."

SENATOR HORSFORD MOVED TO REJECT REGULATION R012-08. MOTION SECONDED BY SENATOR WIENER AND CARRIED.

On Regulation R210-08 from the Office of Disability Services of the Department of Health and Human Services, Mr. Carpenter said that while he may not have received all the pages, he did not see where there any hearings held like shown in other regulations. Paul Haugen, appeared before members in Carson City representing the Office of Disability Services as two other staff members were unable to attend. Mr. Haugen said there were two workshops held, one in northern Nevada and one in southern Nevada and two hearings held, one in the north and one in the south. He said it was his understanding that there was a high level of consensus and a high level of participation with the regulations. The deaf community was represented and interpreters and captioners were also in attendance. He confirmed that there was not opposition to the regulation.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT REGULATION R210-08. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

B. Approval of Session Hires for 2009 Legislative Session--Lorne J. Malkiewich, Director.

Mr. Malkiewich directed attention to a memorandum from him in the meeting packet for this item. He recalled that the commission approved the early session hires at the last meeting and those people are currently "on-board." The memorandum identifies the positions for the LCB that will be filled for the legislative session. He represented that the list is roughly comparable to what has been done in the past. While the numbers might be up or down one or two in different places but overall it is about the same size staff that is brought in by LCB each session.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF SESSION HIRES FOR 2009 LEGISLATIVE SESSION. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

C. Request for bill draft concerning Legislature and Legislative Counsel Bureau--Lorne J. Malkiewich, Director.

Mr. Malkiewich said that there is no written material for this item and it is just the generic LCB bill draft request. This request has been done the past several sessions and instead of requesting several bills concerning the Legislature and the LCB, staff just asks

for one bill and puts in various matters relating to the Legislature and the process has worked very well. Provisions can be added or deleted depending upon what the Legislature does or does not like. He requested authority to put in the bill draft request.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE REQUEST FOR BILL DRAFT. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

D. Approval of Regulation on Lobbying--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to the meeting packet for this item. The packet contains all of the materials concerning lobbyist registration including the letter that will be sent to them. Prior to each session the commission adopts a regulation and there have been a couple of minor changes. There will be a flat fee of $120 for paid lobbyists rather than the $95 plus $1 per client and the fee for an unpaid lobbyist would be $20. He reiterated that there have not been any other substantial changes.

SENATOR MCGINNESS MOVED APPROVAL OF THE REGULATION ON LOBBYING. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

E. Resolution recognizing 97th Anniversary of the Founding of the Republic of China--Lorne J. Malkiewich, Director.

Mr. Malkiewich directed attention to a draft of the resolution contained in the meeting packet. He said the anniversary is also referred to as Double Tenth Day, October 10th the founding of the Republic of China on Taiwan. This resolution acknowledging the anniversary is approved through the Legislative Commission each year.

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

F. Amendment of Policy Concerning Use of Legislative Grounds--Lorne J. Malkiewich, Director

Mr. Malkiewich explained that this item is a result of a few issues that have occurred in the parking areas and on the legislative grounds. The grounds use policy was reviewed as it had not been updated since 1993. The policy has been updated to address some of the concerns and for the most part includes a few prohibited uses and mainly just saying that the LCB needs advance notice so staff can be prepared for certain things – not prohibiting them but just ensuring there is adequate security and planning and approval is obtained. The rules of the LCB basically state that the commission will approve policies concerning use of the grounds. The amended policy was provided as a handout and is attached as Exhibit G.

SENATOR MCGINNESS MOVED APPROVAL OF THE AMENDED POLICY CONCERNING USE OF LEGISLATIVE GROUNDS.. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

After discussion of the above item, the chair returned to agenda items III. F. and III. G. prior to proceeding with Informational Items and Public Comment. Discussion is included under those headings for purposes of continuity.

Item V--Informational Items:

A. Legislative Committee Reports.

B. Legislators' Travel Reports.

C. 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 Landscape Architecture.
9. Board of Occupational Therapy.
10. Board of Psychological Examiners.
11. Certified Court Reporters' Board of Nevada.
12. Chiropractic Physicians' Board of Nevada.
13. Division of Mortgage Lending, Department of Business and Industry.
14. Health Division, Department of Health and Human Services.
15. Nevada State Barber's Health and Sanitation Board.
16. Nevada State Board of Architecture, Interior Design and Residential Design.
17. Nevada State Board of Athletic Trainers.
18. Nevada State Board of Dental Examiners.
19. Nevada State Board of Massage Therapists.
20. Nevada State Board of Medical Examiners.
21. Nevada State Board of Nursing.
22. Nevada State Board of Optometry.
23. Nevada State Board of Osteopathic Medicine.
24. Nevada State Board of Pharmacy.
25. Nevada State Board of Veterinary Medical Examiners.
26. Nevada State Contractors Board.

27. Real Estate Division, Department of Business and Industry.
28. State Board of Cosmetology.
29. State Board of Funeral Directors, Embalmers and Operators of Cemeteries and Crematories.
30. State Board of Physical Therapy Examiners.
31. State Board of Professional Engineers and Land Surveyors.

D. Miscellaneous Reports from State Agencies and Others:

1. Report on quarterly meeting of Nevada State Board of Medical Examiners.
2. Annual Report 2007 from Nevada State Board of Medical Examiners.
3. Memorandum from Public Employees' Benefits Program on Regulation R016-08 regarding domestic partnership.
4. Report on Nevada State Use Program from Rehabilitation Division of the Nevada Department of Employment, Training and Rehabilitation.
5. Annual Report from Nevada Commission on Ethics.
6. Annual Report from Las Vegas Monorail Company (report previously transmitted to members prior to meeting).

Item VI--Public Comment:

Alexandra Profont appeared before members in Carson City and said that she was present as the Incline Village Crystal Bay representative to the Truckee North Tahoe Transportation Management Association and well as the Director and Founder of the Tahoe Foundation. She said she would like to speak as an informational item to what the mission of the Tahoe Foundation is and that is to create a platform or venue for the purpose of promoting, preserving and nurturing architecture, innovation, design, the arts and other humanities related fields as well as providing education, research and marketing tools to be centered in the American rural west. The Foundation may publish various educational materials for the purpose of educating the public beginning with the Lake Tahoe's humanities and their related histories as well as the American rural west. In addition, it may provide educational services namely arranging, organizing and conducting conferences, symposiums, seminars, forums, classes, workshops, award programs and affiliate programs in the fields of architecture and community planning and distributing materials in connection therewith. The Foundation also anticipates making grants for the same purpose and it is a Nevada not-for-profit charity corporation. Ms. Profont referred to a report from the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System and noted that she was unable to attend that meeting and the Tahoe Foundation is trying to be recognized as a nongovernment organization to be considered as a serious entity "at the table." She stated that at the latest Tahoe Transportation District meeting there was a comment made by someone representing the TRPA that caused her great concern. The person said that they would like to see the federal government's role be greatly expanded in the Tahoe basin.

Ms. Profont inquired about one of the regulations concerning fire codes and how existing buildings would come into compliance and she wondered how the Legislature handles that in relationship to the State Historic Preservation ordinance. Ms. Erdoes responded that there is a separate code that takes into account the historic nature of the buildings and the way they are put together. A part of it requires that persons are made to comply with the code as the building exists until it is renovated and some of the renovations are treated differently in historic buildings and they do take it into account but they are not completely exempt and they do have safety standards for the historic buildings.

Mr. Anderson stated he wished to acknowledge the date of September 17th as the birthday of the Constitution of the United States. He noted that many cities in the United States make this date a major event with parades and other kinds of historic pronouncements. He said he wanted to make sure that members did not pass the date without due notice.

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

Respectfully submitted,

Marilyn K. White
Assistant to Director

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Senator Randolph J. Townsend, Chair
Nevada Legislative Commission