Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

June 16, 2008

The third meeting in 2008 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Monday, June 16, 2008, commencing at 1:35 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 Mark Amodei (in Carson City), alternate for
Senator Mike McGinness
Senator Terry Care (in Carson City)
Senator Warren Hardy (in Las Vegas)
Senator John Lee (in Las Vegas), alternate for
Senator Valerie Wiener
Senator Dina Titus (in Las Vegas)
Assemblywoman Francis Allen (in Las Vegas), alternate for
Assemblyman Garn Mabey
Assemblyman Bernie Anderson (in Carson City)
Assemblyman John C. Carpenter (in Carson City)
Assemblyman Marcus Conklin (in Las Vegas), alternate for
Assemblywoman Barbara E. Buckley
Assemblyman Pete Goicoechea (in Carson City)
Assemblyman John Oceguera (in Las Vegas)

COMMISSION MEMBERS EXCUSED:

Senator Mike McGinness
Senator Valerie Wiener
Assemblywoman Barbara E. Buckley
Assemblyman Garn Mabey

OTHER LEGISLATORS PRESENT IN LAS VEGAS:

Assemblyman David R. Parks

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Brenda J. Erdoes, Legislative Counsel
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Madilyn Zike, Information Technology Services Manager
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--Legislative Auditor:

A. Summary of Audit Reports presented to the Legislative Commission's Audit Subcommittee (NRS 218.6823)--Paul V. Townsend, Legislative Auditor.

Mr. Townsend directed attention to material in the meeting packet containing a letter from the chairman of the subcommittee, Senator Dean A. Rhoads, indicating that the subcommittee met on May 15, 2008, and accepted six audit reports. The reports are summarized following the letter and Mr. Townsend proceeded to review them.

Mr. Townsend said that the first audit was of the Office of the Lieutenant Governor where auditors found the office substantially complied with laws, regulations, policies and procedures but could strengthen internal controls over inventory and expenditures and update some of their procedures in-house.

Continuing, Mr. Townsend said that the next audit was of the State Board of Finance which also substantially complied with laws and regulations but needed to adopt regulations for granting authorization to smaller cities and municipalities for lending securities from their investment portfolios.

The next audit was of Information Technology Security at the Department of Health and Human Services and involved testing about 400 computers throughout the state. Auditors found that they were largely in compliance with state standards for securing information systems, however, auditors did identify situations where computers were missing security updates, did not contain adequate anti-virus protection and where certain personal information was not encrypted. The department staff worked to resolve the issues immediately when auditors notified them and did accept all recommendations.

Mr. Townsend said the next audit was of the Nevada Attorney for Injured Workers, Department of Business and Industry. Auditors found that some property was not accounted for properly and not all personnel requirements were met in regard to written job performance standards and personnel evaluations.

The next audit was of the Bureau of Disability Adjudication, Rehabilitation Division, Department of Employment, Training and Rehabilitation. Auditors found that the bureau could improve its safeguards over sensitive information and strengthen controls over equipment. Also, while the bureau's accuracy rates were comparable with national and regional averages, improvements could be made in reducing its processing times. It was found that it took between 15 and 25 days longer than the national average to process initial claims.

The final item was of the Single Audit of the State of Nevada. This audit is performed under contract with the Certified Public Accounting firm of Kafoury, Armstrong & Company. The audit is required by the federal government and it included financial statements which received an unqualified opinion as well as the expenditures of federal awards that totaled over $2.3 billion in Fiscal Year 2007. There were 11 findings and no questioned costs on those.

All of the audit recommendations on the reports were accepted and the Audit Subcommittee does recommend the Legislative Commission accept the six reports. Mr. Townsend said he would be happy to answer any questions.

Mr. Anderson said that he was particularly concerned about the Information Technology Security questions in terms of the nature of the multiple agencies and the continuing issues that revolve around it. He said that while he recognized that an update is expected on a quarterly basis, he asked why we would not want to make sure that was done because of the sensitive nature of the information that may be included therein, that some of those basic things were not going to be done immediately and that a reassurance was received. He asked Mr. Townsend if there was any kind of assurance from the agency that it would be moving more rapidly in that area. He said he heard Mr. Townsend say that they were but he would like to see something more substantial. Mr. Townsend responded that auditors looked at the six major divisions within the Department of Health and Human Services and most of those did have Information Technology Security Specialists assigned to make sure that the items were secured. He believed that one division did not and it committed to getting someone in there and noted it was a division that had a number of weaknesses that were found. The audit did highlight the weaknesses and was a reminder to them. When they did appear at the subcommittee, they indicated they would be working on it. The agency will be going through the normal audit followup process so his division would be keeping an eye on it. Mr. Anderson indicated he remains concerned particularly because of the sensitive nature of much of the information. It seemed to him that it might be one of the areas where a more thorough update might be appropriate and perhaps someone from Mr. Townsend's office could drop in and make sure that, in reality, the agency was really following

through. He said it might be requested from the chair. Mr. Townsend replied that he would do that.

Chair Townsend asked if Mr. Townsend fully understood what Mr. Anderson was asking and if he could focus in on it. Mr. Townsend responded that he believed Mr. Anderson was asking him to check with the chair of the Audit Subcommittee and see if the auditors could go back to the department, rather than waiting to go through the entire audit followup process, and see how they are doing right now.

Mr. Carpenter said that he was looking at the Nevada Attorney for Injured Workers and in 1998 there was a recommendation that they should look at how their people were performing their jobs and it is still a problem. He thought it pointed out that a lot of the agencies just keep doing whatever they want to do even though they are audited all the time. Mr. Townsend replied that it was a finding in the last audit and they did go through the audit followup process. Unfortunately, when they get the recommendations implemented, the agencies sometimes slip back into the old methods and that is why auditors have to catch it on the subsequent audit. He said it is an unfortunate occurrence in this case.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE SUMMARY OF THE AUDIT REPORTS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

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

Mr. Townsend referred to the meeting packet containing a letter from the chairman of the Audit Subcommittee describing the followup activities that took place at the meeting of the subcommittee on May 15, 2008. There were three followup reports on agencies who were returning from prior meetings that were presented. A summary of activities on the three agencies is presented on the following page.

The first was the Board of Homeopathic Medical Examiners and they had one remaining recommendation to implement but, unfortunately, no one from the Board attended the meeting so they will be returning to the next meeting to respond to questions.

The next agency listed is the Department of Taxation. He said the department continues to have seven partially implemented recommendations and four of the recommendations are dependent on a new information system going on-line which is supposed to occur next month. The remaining three recommendations involve issues such as revising forms, issuing guidelines and adopting regulations.

The third agency returning was the Department of Agriculture and this agency still has six recommendations not fully implemented that will help to improve their efficiency in

their accounting and collecting of fees. He said this agency has had significant turnover including since the audit, two new directors, a deputy director and an administrative services officer. The current director did state that he is committed to getting the recommendations implemented and he will be returning to a future meeting to provide an update.

Returning to the letter, Mr. Townsend noted that the subcommittee also discussed closer monitoring that is going to be occurring with the Division of Parole and Probation and the Division of Health Care Financing and Policy. That action is per direction of the Legislative Commission at its last meeting. When Mr. Townsend presented the reports, the commission had instructed him to ask the chair of the Audit Subcommittee to look at these a little closer. Those agencies will be returning to the next meeting of the Audit Subcommittee to discuss their 60-day Plans of Corrective Action. In addition to that, the new chief of the Division of Parole and Probation did attend the May 15th meeting and indicated progress is being made although he had only been on the job one month at that point. Auditors are continuing to closely monitor those agencies as well. He will be reporting to the commission on that progress. He said that the Audit Subcommittee does recommend that the commission accept the summary of the progress on the audit recommendations and he would be happy to answer any questions members may have.

Mr. Carpenter asked which recommendations to the Department of Agriculture had no action. Mr. Townsend responded that several of the recommendations dealt with its accounting area. One thing auditors wanted them to do was to take a look at possibly consolidating some of their activities. The department has a lot of accountants working in Reno and program personnel who are responsible for collecting money out in the field and that is normally not their area of expertise. The department needs to make a consideration if that is the most effective way of collecting those fees and they had not had an opportunity to take on that task yet. There are a number of issues they are working on and his division will help them out as best they can but the department does have some challenges it is facing.

Mr. Anderson asked in light of the failure of representatives of the Board of Homeopathic Medical Examiners to show up at the May 15th meeting of the Audit Subcommittee after getting a "by" from the previous meeting, would there be a way the commission could move in the agenda to the item on the request from the chair of the Audit Subcommittee for subpoena power to mandate the Board's attendance since they don't seem to care much to appear in front of legislative members.

> ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE SUMMARY OF SIX-MONTH STATUS REPORTS ON THE IMPLEMENTATION OF AUDIT RECOMMENDATIONS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item III. G. prior to addressing the next item.

Item II--Progress Reports and Appointments:

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

Ms. Erdoes said that there are a number of cases on which to report. The first case is the Red Rock case, Gypsum Resources v. Legislative Commission, and the state case on that is "on stay" pending federal case determination of the same issues. As of May 22nd on that case, the District Court entered an order staying the proceedings in the federal court for a period of three months until August 22, 2008, to allow the parties to engage in settlement discussions in order to explore whether a land use solution to the action is possible. She noted that is the case in which staff had worked with the Attorney General's Office regarding the discovery that was going on as of the last meeting but now apparently they are looking at a settlement conference. Additionally, she said another case is the Michael Carrigan case. He is a member of the Sparks City Council and he sued the Commission on Ethics based on a decision that the Commission on Ethics made and this commission chose to file an amicus brief in that case and the District Court held in favor of the Commission on Ethics. Instead of an appeal in this case, Mr. Carrigan filed a petition for an original action in the Supreme Court for writ of mandamus or in the alternative a writ of prohibition. Therefore, the Legal Division will be reviewing that as soon as they have a chance. The next case is Angle v. Miller and is about the initiative petition provisions on the amount of time they have to file an initiative petition. The Marijuana Policy Project v. Miller case, the so-called 17 county statute case, is in the Federal District Court and the Legal Division is working on an amicus brief to file with that court in tandem with the Office of the Secretary of State's brief in that case. Currently, they are on an extension of time for that case.

Responding to Senator Titus on the Term Limits case, Ms. Erdoes said staff had prepared a motion for intervention in the Term Limits case. On Friday at the scheduling conference, the order came down and the court deferred opining on whether to grant the motion for intervention and so at this point the motion for intervention in that case has not been decided although the oral argument is coming up on July 1, 2008, and they will be waiting to hear from the court on that.

The chair proceeded to agenda Item II. E.

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

Mr. Malkiewich called attention to a handout of a memorandum from him dated June 15, 2008, (copy attached as Exhibit C) concerning the appointment. He said that two people who are qualified for appointment have expressed interest. Based upon the composition of the Commission on Ethics, the other seven members and the fact that James Kosinski is "going off," he needs to be replaced with a former public officer. There are four representatives from Clark County and four Republicans on the commission so the appointee needs to be a non-Republican, not a Clark County resident

and a former public officer. When the meeting packet was sent to members, Mr. Malkiewich sent information indicating that former Assemblywoman Vivian Freeman was interested in serving and he just recently learned that former City Councilman and former Washoe County Commissioner Jim Shaw is also interested in serving. Some biographical information on Mr. Shaw is contained in the memorandum. He said that both applicants meet the qualifications and are interested in serving.

Mr. Anderson said that it is a difficult position for him knowing both candidates very well. He worked with Mr. Shaw for many years when he served on the Sparks City Council and on the Washoe County Commission. He also knew him when he was a vice principal of one of the high schools in Washoe County prior to his retirement. In all, Mr. Anderson thought he had known Mr. Shaw for about 45 years. He also had the pleasure of serving with Ms. Freeman in the Assembly. He thought Mr. Shaw would be the better of the two candidates because he has had experience at both the city council and county commission levels and has dealt with a wide variety of interest groups and, therefore, his background in the ethics questions would better serve him. He said he would be happy to put forth Mr. Shaw's name as the candidate although Ms. Freeman is a very, very well qualified person.

> ASSEMBLYMAN ANDERSON MOVED TO APPOINT JIM SHAW TO THE COMMISSION ON ETHICS. MOTION SECONDED BY SENATOR AMODEI.

Under discussion Senator Titus said that she was sure that Mr. Shaw would be great and she appreciated Mr. Anderson speaking for him. She said she would like to speak on behalf of Ms. Freeman. The senator said that Ms. Freeman chaired the committee in the Legislature that oversaw the writing and passage of many of the ethics bills and has a real understanding of how they are supposed to work and what the requirements are and would also make an excellent member of the commission.

Senator Lee commented that he had served 12 to 14 years in the Assembly and served with Ms. Freeman and observed how she conducted herself over many of those years. He would also like to "put a plug in" for Ms. Freeman as he thought she was one of the most ethical people he worked with. She did what she thought was right for Nevada and should be considered highly.

> THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED WITH SENATOR HARDY ABSTAINING.

Under discussion, Senator Titus explained that the chair could add her vote in support of Mr. Shaw and that she only wanted people to hear about Ms. Freeman. Mr. Anderson said that he agreed entirely with Senator Titus and he reiterated that Ms. Freeman is very well qualified for the position and that his supposition in putting forth Mr. Shaw's name was based upon the fact that he had served at several different levels of government and was aware of some of the ethical questions that might present themselves at those different levels. He commented that both candidates are extremely

qualified and it is always a pleasure to see that really good people want this kind of a tough job.

C. Designation of Nominees for Appointment to Commission on Nuclear Projects (NRS 459.0091)--Lorne J. Malkiewich, Director.

Mr. Malkiewich said that he received a request from Robert Loux, Director of the Agency for Nuclear Projects indicating that the Legislative Commission needed to submit nominees for the Commission on Nuclear Projects. The current two members are Richard Bryan and Paul Workman. Mr. Malkiewich said that he does not have any additional nominees at this time although he believed that there may be other suggestions from the commission. A copy of a letter from Mr. Malkiewich to legislators dated May 19, 2008, was included in the meeting packet.

Chair Townsend called for any other suggestions for the Commission on Nuclear Projects and there were no names forthcoming from members.

> ASSEMBLYMAN ANDERSON MOVED TO SUBMIT THE NAMES OF RICHARD BRYAN AND PAUL WORKMAN TO THE GOVERNOR FOR APPOINTMENT TO THE COMMISSION ON NUCLEAR PROJECTS. MOTION SECONDED BY SENATOR CARE AND CARRIED UNANIMOUSLY.

D. Revision of Membership of Committee to Consult with the Director (NRS 218.68249)--Lorne J. Malkiewich, Director.

Mr. Malkiewich said that the Committee to Consult with the Director membership includes leadership of all four caucuses so that any decisions arrived at are with the knowledge and participation of the leadership. He spoke to Senator Titus regarding the matter and with Senator Steven Horsford now serving as the Senate Minority Leader. He discussed with Senator Titus the possibility of having Senator Horsford replace her on the committee. Unless the senator has changed her mind, he thought she approved of the replacement. He said that the other thing he would like to suggest is that since most of the activity by the committee is advisory and recommendations to the next session, he believed it is important to have all four caucuses participating. He would also like authority for the chair, in case someone is not able to attend one of the meetings, to designate someone else from the appropriate caucus. He recommended that Senator Titus's position be taken by Senator Horsford and that the chair of the Committee to Consult with the Director have the authority to appoint an alternate to replace a member that is unable to attend.

SENATOR TITUS MOVED TO APPOINT SENATOR HORSFORD TO REPLACE HER ON THE COMMITTEE TO CONSULT WITH THE DIRECTOR AND GIVE AUTHORITY TO THE COMMISSION CHAIR TO APPOINT AN ALTERNATE RECOMMENDED BY THE HEAD OF THE SAME CAUCUS TO REPLACE A MEMBER UNABLE TO ATTEND A MEETING. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

Chair Townsend returned to agenda Item II. A. prior to moving on to the next item.

E. Report of Legislative Commission's Information Technology Subcommittee--Madilyn Zike, Manager of Information Technology Services.

Mr. Malkiewich referred to material in the meeting packet containing a report to the Legislative Commission for Assemblyman Mo Denis, the chair of the Information Technology Subcommittee. The primary recommendation that the subcommittee is making is rather than purchasing new laptops for the next session, that staff should just purchase warranties for the current laptops. As negotiations are continuing, the price keeps going down and it now looks like $150 a piece which is a lot less expensive than purchasing new laptops. He said that Ms. Zike is in the audience and available for any questions but otherwise the question before the commission is whether to accept the recommendation on the warranties.

Chair Townsend asked Ms. Allen, who is a member of the subcommittee, what are the parameters of the warranty and how much are new computers and how long will they last. Ms. Allen responded that the members speculated at length and came to the decision that it is not smart to have computers that are six years old at this point but the fiscally prudent thing to do is not to purchase new laptops when they are having to cut the state's budget. The subcommittee discussed whether to go with or without the warranty. Since it is not possible to predict how many computers will break, particularly after six years, the subcommittee decided unanimously to go ahead and recommend the purchase of extended warranties for a two-year period. After two years, new computers could be purchased. Responding to the chair, Ms. Allen said she thought it would cover approximately 65 computers.

Ms. Zike said that there are currently 63 laptops for which they would purchase the warranties which would be about $149 each. If new laptops were to be purchased, the cost would depend on the model but the estimated cost would be $1,000 to $1,200 a piece, so it is a significant savings.

ASSEMBLYWOMAN ALLEN MOVED APPROVAL TO ACCEPT THE RECOMMENDATION OF THE INFORMATION TECHNOLOGY SUBCOMMITTEE TO PURCHASE WARRANTIES FOR THE LAPTOP COMPUTERS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Item III--Legislative Commission Policy:

A. Review of administrative regulations submitted pursuant to NRS 233B.067--Brenda J. Erdoes, Legislative Counsel.

The chair asked members to indicate which regulations they would like held for further discussion and proceeded to review the list. It was announced that Regulation R128-07 from the Labor Commissioner and Regulation R199-07 from the State Board of Architecture, Interior Design and Residential Design had both been withdrawn. Senator Care disclosed that his law firm represents a charter school currently in litigation with the State Department of Education and he would be abstaining from voting on Regulations R169-07, R170-07 and R061-08. Senator Townsend said he would hold all three of the regulations and take them as a separate motion. Senator Hardy said that Regulation R161-07 probably impacts the construction industry and he wished to disclose that he is employed in that industry as President of the Associated Builders and Contractors but did not think that there is any reason to abstain. Various members requested certain regulations be held for further discussion and the remaining regulations are identified in the motion for approval below.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATIONS R053-07, R078-07, R134-07, R150-07, R151-07, R162-07, R193-07, R205-07, R207-07, R008-08, R009-08, R010-08, R011-08, R020-08, R025-08, R027-08, R033-08, R037-08, R038-08, R039-08, R049-08 AND R050-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

Chair Townsend directed attention to Regulations R169-07, R170-07 and R061-08 from the Department of Education. Senator Care reiterated that his law firm represents a charter school currently in litigation with the Department of Education and the State Board of Education and he wished the record to reflect that he did not participate and would abstain from any vote.

Senator Hardy referred to R169-07 and said that in his reading of the regulation it looks to him like fairly broad discretion is being given to the staff to be able to reject the applications and then it limits the number of times that the applications can come back. He wondered if the staff can reject the application because it is incomplete or because staff does not like something in the application and it could be rejected before it gets to the elected decision makers. He asked what are the parameters and if a representative could comment on the regulation. Keith W. Rheault, Ed.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City. He explained that the regulations were attempting to make it crystal clear what the timelines were for submitting charter school applications and it does clarify when the staff will approve for completeness. If some of the deleted regulations within the document are reviewed, it replaces some of the deleted input. Regardless, if the department staff says it is an incomplete application, the department staff notifies the charter school applicant

saying, 'Here is what we are looking at that did not meet our completeness requirement.' The applicant has 30 days to resubmit and address those concerns. Even if it is rejected, if it is getting close and he gets the appeal or hears it, it at least makes it to the board for consideration even though there might be some pending conditions to which staff has not fully agreed. Senator Hardy said that the wanted to create a legislative record that the intent is not to give the staff discretion beyond a ruling of completeness of the application and that sounds like what he is hearing. Dr. Rheault responded, "Senator Hardy, in my view of these it was really to make it clear to both the department and the applicant that there is 30 days to do this, we've got five days to respond, you get another 30 days so that there is no leeway to where there was mis-communication as to how an application will be processed." Senator Hardy said, "I do not think that was direct enough for the legislative record. So, we're not giving the staff discretion beyond the ability to rule on the completeness of the application." Dr. Rheault responded, "Senator Hardy, I will say we're not giving them any more than we've already had currently. We've had that discretion to determine completeness and compliance with the applications and this one doesn't give any more." Senator Hardy said, "I've no question about that or concern if they're ruling on completeness and compliance with the request. That's not my concern. My concern is that they can reject it or send it back for some reason other than completeness or compliance, and you're saying that that's not the case. I don't have a problem with complete discretion to the staff for those two issues. There is not reason to tie up the time of the Board relative to that issue but if they can decide to reject an application based on something other than a lack of compliance or completeness, then I would have some difficulty with that." Dr. Rheault replied, "Senator Hardy, I'll just say that only the Board has the authority to approve or reject the applicants and our primary mission is completeness and compliance." Senator Hardy said, "That still doesn't give me much comfort, given the question that I've asked but we'll leave it at that. Thank you."

The chair asked for additional questions on the three regulations.

Mr. Goicoechea said that he also is concerned about there being any real parameters in the regulations for rejection. It is an issue he "really has a problem with." It does not really outline what is a complete application, what are one of the reasons it could be rejected and he would personally like to see the regulations tightened up. He thought there is the ability for the Department of Education, or system of higher education, to off-hand reject them and not with, really, the justification. He reiterated he would like to see the regulations tightened up and he thought that was where Senator Hardy was headed.

Mr. Carpenter said his question is along the same lines with Regulation R061-08. It seems like it could be rejected for practically no reason at all. He knows there are people in Elko that have been trying to establish a charter school and it has been very, very difficult because the regulations are so loose and the personnel are telling them, "Well, you need to do this," and then they come back and say, "You need to do that." He stated, "I thought we were going to try to establish charter schools to help our children

but I don't think this is the situation, as far as I can see, in what's happening in these regulations and what's happened in Elko. Thank you."

Chair Townsend addressed Dr. Rheault saying, "There's obviously concern voiced by a number of committee members with regard to an objective nature of measurement. It is important for everyone in the state who comes in front of a state agency to be able to know what exactly the rules are. Whether you call it objective measurement, or anything else, and whether it's about curriculum or performance or anything else that those that would apply to your department would know exactly whether they've met the standards or not. Apparently, I think it's been better articulated by my colleagues but, apparently, there seems to be some leeway that would not lend itself to an objective kind of measurement standard and leave it in a more ad hoc or arbitrary position. I do know, and I want to read this into the record, this is from Barbara Myers in Carson City: I'm writing regarding an item on your agenda for Monday, 6/16. That item is: R061-08 submitted by the Department of Education at the request of the State Board of Education. I am a member of the State Board of Education. I was the only member to vote 'No' on this new language. My concern with the language is that it is so broad and subjective that it will, in my opinion, hinder the ability of charter proposals to be approved by one possible sponsor, the State Board of Education. I would ask that you look closely at the proposed language and see if it meets the test that is objective and can be uniformly applied across all charter applications. If it doesn't meet the test, I hope you will return the language to the Department of Education and, ultimately, to the State Board of Ed. While I do support having a method by which some objective criterion can be applied to proposals, I do not believe this language fulfills that need. Sincerely, Barbara Myers." (A copy of the letter from Barbara Myers is attached as Exhibit D.)

Chair Townsend said, "A number of us have had concerns and phone calls regarding this and I know there was some significant debate at the Board. As a result of that perhaps, commission, we should ask them to go back and hold additional workshops on this and maybe they could find a tighter word smithing that could maybe give some comfort to the commission and you probably understand that Mr. Rheault, you're a pretty savvy guy."

> ASSEMBLYMAN OCEGUERA MOVED THAT REGULATIONS R061-08, R170-07 AND R169-07 BE RETURNED. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED WITH SENATOR CARE ABSTAINING.

Later in the meeting, Mr. Oceguera clarified the language of the motion should be "rejected" rather than "returned" and a subsequent motion was taken.

> ASSEMBLYMAN OCEGUERA MOVED THAT REGULATIONS R061-08, R170-07 AND R169-07 BE REJECTED. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED WITH SENATOR CARE ABSTAINING.

On Regulation R009-07 from the Board of Massage Therapists, Mr. Carpenter referred to page five and said the way he reads it is in order to get credit for attending a program you have to submit it to the Board. He said that it seems to him that it is unworkable. He knows that in the real estate area, their Board has already approved programs for continuing education. He commented that if the massage therapists have to go to the Board first for their approval, it is going to be very difficult to obtain the credits. He also noted that he did not know how many times the Board meets each year and that might be another problem. He asked for an explanation of the thought process for section 9 on page five. Lisa Cooper, Executive Director, Board of Massage Therapists appeared before members in Carson City. Ms. Cooper referred to page three under section 7 and said that is a set of national credentialing that the Board accepts carte blanche. There are three different ways massage therapists can obtain credit – the national board is one of them. Credit can be obtained through an agency such as the ABMP [Associated Bodywork and Massage Professionals] or the AMTA [American Massage Therapy Association], or if there is a class that does not meet those credentials or that criteria, then the therapist can go to the Board for pre-approval. She explained there are many ways to do it, going to the Board is just the last way. She said that the criteria is all in the regulation for that.

Mr. Carpenter said that is what he is having a problem with is going to the Board for them to approve the program and he does not know how long that process takes. In the rural areas, it is difficult to obtain continuing education credits and it seems to him that this procedure makes it more difficult. If there are programs that the Board has already approved, it would make it much simpler for a person to say, "Well, I can take that class and I'm going to get credit for it."

Billie Shea, Chair of the Board of Massage Therapists, said that the intent is to allow a greater freedom to be able to get those classes that are not exactly outlined as massage specific. A lot of massage therapists do energy work, they take business classes and they do all kinds of classes that they feel will improve their business. The Board met several times over the last year and approved the chair to be able to pre-approve those classes that the chair feels are acceptable or they can take the classes and then put in for approval from the Board or the chair. If the chair does not approve the class, then the applicant has the right to appeal it to the Board and ask for a final decision. Because the nature of massage therapy is "kind of spiritual" and they do not set real hard guidelines as to what types of classes they can take, the Board felt it was important that they had the freedom to do distance learning, all kinds of classes that would fit into that category. The Board currently meets every other month. Mr. Carpenter reiterated that he thought it is a cumbersome process for someone to try to get the continuing education credits.

SENATOR TITUS MOVED TO APPROVE REGULATION R009-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED WITH ASSEMBLYMAN CARPENTER VOTING NAY.

On Regulation R089-07 from the State Quarantine Officer, Senator Care referred to section 1, subsection 5 at the bottom of page two and said that there is a deletion in the current regulation of a contract between the department and the Federal Government and he wondered if there is something else in the regulation, new language, that would be a substitute or if that is no longer necessary or "if we've fallen out of favor with the Federal Government again." Dawn Rafferty, Department of Agriculture appeared before members in Carson City and said to her knowledge there has been no falling out. She said that she has only recently taken over the position and she is not exactly sure why that was changed but she believed that the Federal Government is in the process of changing some regulations and that the department was trying to make their regulations consistent with those of the Federal Government. She said that they have no changes in the relationship they have and the way inspections are done with the Federal Government at this time.

SENATOR CARE MOVED APPROVAL OF REGULATION R089-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED WITH SENATOR LEE ABSTAINING.

On Regulation R131-07 from the Public Utilities Commission of Nevada (PUCN), Senator Care said that he does not practice in this area and asked if someone could "walk me through" regarding the effective difference between what exists now and what the regulation would do. He noted the deletion in section 1, subsection 1 of "shall" and it becomes discretionary "may" and then the addition of certain third parties such as the Consumer Advocate, interveners and a rearrangement of the order in which they are permitted to testify. He indicated that for his comfort level, he is trying to figure out what is the necessity for the change. Robyn Mellender representing the PUCN appeared in Carson City and said that she is the Administrative Attorney to Chairman Jo Ann Kelley. Ms. Mellender referred to section 1 and indicated that the section that states the presiding officer "may" instead of "shall" and "order in" instead of "stage of the proceeding at" was just to bring the language in line with the current practices. As to the breaking out of the Consumer's Advocate from the class of individuals called interveners, it was just to give the Consumer's Advocate the recognition of its statutorily defined role. The other interveners generally must show that they have a direct and substantial interest in order to be granted party status. The order was changed in recognition of the fact that the commission staff has a unique role in representing a broader interest – they're representing ratepayers, the shareholders of the company – so to have them be in sort of a 'clean-up role' at the end made more sense. She said how it has been working in practice is you would have the intervener, then the Bureau of Consumer Protection and then you would hear from staff.

Senator Care referred to interveners and inquired if it changes the current practice as to the determination of who is and who is not an intervener and what short of stake must the intervener have in order to be an intervener. Ms. Mellender said this does not change any of the standards that go to who is an intervener. The Bureau of Consumer Protection are interveners as a matter of right according to the statutes – staff must

"come to the table." For interveners, it just lays them out separately for when some other individual party or company is going to intervene in a proceeding before the PUCN. Senator Care said that a bill was enacted in 2005 and repealed in 2007 that may or may not play into this and someone had to demonstrate they had a financial stake in the outcome or something like that and it was repealed in 2007. He asked if this regulation "plays into that at all." Ms. Mellender responded, "To the best of my knowledge, it doesn't. I believe that that was separate and it was before I came to the commission so in evaluating it I wasn't considering that particularly."

Chair Townsend said, "What the good senator was trying to explain to you is that I have read this regulation like he has a couple of times and I was trying to figure out why you're here. If you didn't bring it up, we wouldn't be asking any questions since nobody has called to complain, why you just wouldn't keep doing what you're doing until somebody complained. That probably is rhetorical, I'm going to save you. There isn't a rule, and I have read enough NRS, that requires you every single time the commission meets to bring us a regulation. It's okay if you skip a session or two. It'll be okay. And I would hope that next time you come with one, you come with one that has slightly more gravitas than one that has to do with the order of intervention."

Senator Titus said that she had the same concern with the regulation because she recalled the bill very well. There were a handful of legislators who voted against it the first time it passed in 2005 because it limited the ability of people to testify at some of the hearings or be interveners and they didn't think that was right. She said she wanted to be sure that this regulation in no way does that. She said she realized that on the surface it looks like it does not but sometimes we see things out of context and she wants that reassurance because she does not want in any way to limit people's ability to present information, especially the Consumer's Advocate, in these hearings with the price of gas and the price of power the way it is today.

David Noble, Assistant General Counsel of the PUCN, appeared in Carson City. He said this regulation does not affect the intervener standards for anybody that wants to intervene in a proceeding before the commission. It is a direct and substantial interest and is a standard that is set out in NAC 703.590 and the subsequent regulations. Senator Titus said, "I appreciate that but sometimes the order in which you present makes a big difference and I see that you have moved the intervener ahead of the commission staff and so that gives the staff an opportunity to shoot holes in the intervener as opposed to the intervener the opportunity to shoot holes in the staff. That can make a big difference, is that just accidental or was that part of the discussion." Mr. Noble responded, "That was part of the discussion." Senator Titus said, "I thought it might have been." Mr. Noble continued, "What the regulations establish now is the general order of proceedings before the commission, however, the commission has a waiver regulation, NAC 703.115, that allows the commission to change-up that order when it becomes clear that staff may be aligned with, it's position is aligned with certain parties, whether it's the intervener or other participants and so they will be divided up accordingly. They won't have staff going last all the time so that they can start to poke

holes in and have an unfair advantage with regards to the applicant or other interveners where it looks like they are a – what the commission does is try and group the interests together so that the presentations are consistent."

Further, Senator Titus asked, "And why do you think we need this change from how it is working now?" Mr. Noble replied, "The reason why we asked for this change is that this represents what the commission does on a day-to-day basis. What it's had to do is basically waive the regulations as they stand now to change-up that order of appearances in the proceedings and so we are trying to make it so that the regulations reflect the reality of the situation."

Chair Townsend said that he would repeat the same thing to Mr. Noble but he thinks he got the message. He said, "If we don't have more important things to do at the commission than worry about a change in a regulation that probably could be done in practice without ever done, then I'm worried about you. Okay? Particularly you, Mr. Noble."

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R131-07. MOTION SECONDED BY SENATOR AMODEI.

Under discussion, Senator Care said that he would support the motion but he thought it has been made clear on the record with the understanding that the change in the regulation is no substantive change at all, this does not impact at all the rights of the interveners and, certainly, the Consumer's Advocate.

Chair Townsend said that he has not heard from the Consumer's Advocate with regard to the order or if they want to go in a different order. He asked Mr. Noble if the Consumer's Advocate had a concern and if they were in the debate with the PUCN. Mr. Noble responded, "They were in both the workshop and hearing and this was a consent language amongst all of the participants in the rule making."

Mr. Anderson said that since he would be voting in the negative, he wanted to make sure that everyone understood that he is uncomfortable with the change because of the past practices, as Senator Titus outlined, and the concerns that they have about people having an opportunity to give testimony at these kinds of hearings and being precluded from it. He said he was very uneasy about it.

Chair Townsend said, "I think you're getting a sense that independent from this reg there has been concern by commission members about an individuals ability to become interveners and, just as importantly, the order in which they are taken. So whether this passes or not, if it does, I think you ought to take that issue up and if it doesn't, then I think you really need to take it up."

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED WITH SENATOR TITUS AND ASSEMBLYMEN ANDERSON, CONKLIN AND OCEGUERA VOTING NAY.

Chair Townsend addressed the audience and asked if they understood what occurred. He said, "Please try not to bring us regulations unless they are really, really important to the public. If they have to do with your procedure that is interfering with the public's ability to work within your framework, that's one thing. If you're just trying to clear something up, you might want to think differently."

On Regulation R161-07 from the Department of Transportation, Mr. Goicoechea said he just needed a clarification on the record. He asked if someone had something that is under 14 feet but over 12 feet, it is either towed or loaded and is not being driven, he is exempt as owner-operator and it is an implement of husbandry, does that require a permit at that point. He referred to section 12, subsection 3 and said the regulation is not clear. Jeff Richter, representing Nevada Department of Transportation appeared before members in Carson City. He responded that as he understands it, there is nothing in the regulation that precludes or requires a permit in that case.

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R161-07. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

The chair noted that Senator Hardy made a disclosure on Regulation R161-07 earlier in the meeting that he was employed in the construction industry but did not see a need to abstain.

On Regulation R002-08 from the Department of Motor Vehicles (DMV), Senator Care mentioned that he does not sit on the Senate Transportation Committee so he does not recall the measure that takes effect January 1, 2009. Secondly, he said that when he gets calls from constituents, not an uncommon call is the one from somebody who says that they got a new car or a different car and had tried to get their old plates moved to the new car or they were moving out of state and could not get any money from the DMV and they inquire why rental cars always get to have license plates from Utah, Montana and the like. They ask, "Why shouldn't they have to go through what I go through?" The senator said that it may be that the regulation does not impact rental cars but that was what he thought of when he read it. He asked if someone could tell him what it does to fleets owned by rental car companies who rent to tourists coming into the airports in Nevada. Sean McDonald, Management Analyst, DMV, appeared before members in Carson City. He said that the regulation is geared strictly to motor carrier vehicles. An auto rental vehicle is geared to be a regular car and ten or more regular vehicles constitutes a fleet. However with motor carrier, one vehicle is considered a fleet, so if you have one truck you are considered a fleet. He said they tried to define this further with this particular regulation to indicate vehicles that are intrastate – so these are semi-trucks that are traveling within the State of Nevada.

Senator Care said that he is thinking of rental vehicles that for the most part stay within Nevada but have plates from states outside of Nevada. He said he realizes that it is not the intent of DMV for this regulation to reach to that situation and maybe the Legislature will have to take a look at it. He wished someday the Legislature could "tackle" that issue.

Mr. Anderson asked, "So what we're trying to do here is give the single operator of a large transport vehicle the opportunity to pay his motor vehicle registration fees quarterly instead of 'in one fell swoop' and that's really all – we're giving him a break?" Karen Winchell, Management Analyst with Motor Carrier Division, DMV, appeared before members in Carson City. She said that the intent of these regulations is to allow intrastate vehicles to vary their registration period. Currently, they all expire on December 31st each calendar year. She said the DMV would institute quarterly registration periods and they would still maintain their quarterly installment payments. Mr. Anderson inquired if there will be a loss in revenue and would the operator be able to pick and choose which quarters in which they would operate or do they have to be continual. Ms. Winchell responded that they are Nevada-based vehicles and they would be pro-rated to the next period and then they would be required to register for a 12-month period. Mr. Anderson asked, "We're not going to lose any money?" Ms. Winchell replied, "No, sir."

Chair Townsend commented that at another time the DMV representatives might want to take some time to explain to a few of the members why a fleet is one vehicle.

Mr. Goicoechea said he wanted to disclose that he is an owner of a one truck fleet but it would not affect him any differently than anybody else so he will be voting.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R002-08. MOTION SECONDED BY SENATOR AMODEI AND CARRIED UNANIMOUSLY.

On Regulation R003-08 from the Nevada Tax Commission, Senator Care recalled previous regulations that were approved by the Legislative Commission's Subcommittee to Review Regulations. He asked if these regulations are stand-alone regulations and are different than the ones that went to the subcommittee and if these regulations in any way may somehow present an opportunity to some other property that has not already been considered to have "fallen into that window." Dino DiCianno, Executive Director, Department of Taxation, appeared before members in Carson City. Mr. DiCianno said this regulation has nothing to do with the sales tax abatement. It has to do with the property tax abatement. The regulation is attempting to comply with section 3 of Assembly Bill 621. The Director of Energy is the one who makes the determination whether a property qualifies for the property tax abatement. All the regulation has done is given a road map to the county assessors and county treasurers as to how to apply that abatement to the property tax bill. He emphasized that is all this regulation does.

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R003-08. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R012-08 from the State Board of Education, Mr. Anderson commented that the school teacher in him bristles badly on this particular issue. He said, "With this particular regulation you are going to be doing away with the opportunity for the classroom instructor to give a negative letter grade and will only be reflective of a flat A, B, C or D if I am reading this correctly, if I'm only seeing this as a 90-100 as an A, a 60-69 as a D." Keith W. Rheault, Ed.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City. Dr. Rheault responded, "I guess we interpreted it and discussed it differently during the regulations. Since it was a uniform grading policy to earn some kind of grade point, you had to get the values identified in the reg and anything below 60 is no value for a grade point average so it definitely includes a grade lower than D. The only difference is in the regs it doesn't include any grade points towards graduation." Mr. Anderson said that his teaching career predates the computer in terms when there were such things as pluses in the grading scale and for those students who exceeded an A, that is did all the extra credit work and thus could earn an A+ and there was a certain value to that and that was eliminated as an opportunity because colleges and universities only wanted a particular kind of grade. Now I see with this, if I am to understand, that the value of an A student is any student who falls in that 10 point range–90 to 100–and thus there is no gradation within that group as reported in the uniform grading scale." Dr. Rheault responded, "Yes, if they score between 90 and 100, it is an A whether they had a 99 or a 91."

Continuing, Mr. Anderson said, "I realize that the final grade is a question that is somewhat different than the intermediate grade that is often given in mid-semester, which is often given by a teacher to try and encourage the student either to do better in the class or to recognize the hard work and potential that is there. So, you're taking away from the instructor the opportunity to give those kind of messages in a graded format to the parents and to the student both in recognition of that, is that what the potential outcome could be and that's where my concern rests." Dr. Rheault responded, "Assemblyman Anderson, the State Board started with six different variations of the uniform grading and one of them went all the way from an A+, A, A-, you know, three, four point differences between to something a little less than the one they adopted. They heard discussion both pros and cons for that. If a person had a 93 that would be an A-, it would be like a three, five. If you get a 94, you get the A. And so there were negatives under that system as well and because this required every district to change their student accountability and grading system, we thought we'd start with a simpler format first and get it implemented among all 17 districts under this system but it's nothing that probably couldn't be revisited after it gets implemented uniformly across the state. I didn't give you the answer you wanted." Mr. Anderson said, "And you know, Dr. Rheault, when I read the regulation I knew I wasn't going to get the answer that I wanted. I'm afraid that I see this regulation taking the opportunity for the classroom

instructor to both encourage his students and to send them a meaningful message and the art of teaching is becoming much more regulated by formats that are not reflective of the ability to encourage students in the educational process, particularly, at the secondary and middle school level and I wanted to show my concern and I guess my professional outrage at that loss of prerogative and disappointment. I happen to come from the old school when 93 was an A- and 86 was a B and 78 was a C and to see grades being worked away the value of and the achievement of the student who works really, really hard and the opportunity to encourage students in there with a grade value to send a clear message. I used to tell my students, and probably improperly, but I would tell them that I gave you a D, you earned a letter grade, but I gave you this negative grade was something for me to make a value judgement on as an instructor, you probably deserved an F but I gave you a D- and now you are going to be limiting the teacher's ability, I think, in that regard and so I'm disappointed with this policy."
Dr. Rheault said, "Just one final comment, Assemblyman Anderson, I know there was consensus among the 17 districts although I will agree with you that it doesn't take away the ability of an individual school district because it's a state uniform policy to say we want to give A- and B+, I think that's probably why I think Nevada is only the third state to require uniform grading across the state out of the 50 and so most of them are individual school district determined. Although the Board didn't have too much, it had to adopt some policy and from the consensus we could work out with the districts, this is the one that was most widely supported."

Mr. Carpenter asked, "Why did you have to do this?" Dr. Rheault said Senate Bill 184 of the 2007 session required the State Board of Education to adopt a uniform grading standard for the state to include advanced placement courses, honors courses and international baccalaureate.

Mr. Anderson said that when that particular bill came forward, he raised several of his questions at that time and was reassured that it would not affect that and its primary purpose was to make sure that those baccalaureate and honors courses were properly weighted so that they would reflect the higher nature of those particular courses. Having had the opportunity to teach those courses in addition, it is proper that they be reflective of the stronger grade. He thought that the vast majority of the students that they have in the classes and the vast majority of the students in the educational programs are not necessarily on an honors-bound program and, therefore, what they are trying to do is to maintain their position within their classes and encourage their high academic performance. He said he was not sure that this particular interpretation of that bill reflects that although he did think it solved the problem of the baccalaureate and international questions and he saw where there would be a certain value to be reflective of transfer grades coming in so that they are created uniformly. He said he dislikes the gradation of only one flat letter grade as if every child fits into the five potential letter categories which is known not to be the case. He said, "I think you can do better."

ASSEMBLYMAN ANDERSON MOVED TO REJECT REGULATION R012-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R016-08 from the Board of the Public Employees' Benefits Program, Mr. Oceguera said that he is in support of the regulation, however, he is concerned about the fiscal impact. In further reading of the regulation, he thought it would be wise to point out in sections 19 and 20 it talks about something about which he is concerned and it says, "The Board of the Public Employees' Benefits Program will determine whether funding has been approved to carry out the provisions of this regulation. The Board will make a public announcement of its determination pursuant to this section." He observed that if the Board determines there is not funding to carry out this regulation, then they don't have to. He said that he would be in support of the regulation with that language included.

Senator Hardy said that he did not have a question but indicated that he would be unable to support the regulation. He said, "Independent of the issue, I think this is a fairly significant policy decision to be made at the regulatory level and I know there has been some discussion through the years at the legislative level but I think that's where the policy decision of this magnitude more appropriately resides so I will be unable to support the regulation."

Mr. Goicoechea said he also would be unable to support the regulation. He said, "I just think it is so broad-based I don't know, I know you've got a list in the regulations of what you're gonna, they not be married and they're going to sign an affidavit but I can sign an affidavit every six months. I just think this is going to be a revolving door to the PEBP program for i.e. domestic partners and I can't support it."

Mr. Carpenter stated, "I can't support it for two reasons. Number one the fiscal cost and also I just think it's so loosely worded that we really don't know what may happen in the future on something like this."

Chair Townsend announced that there were two representatives of the Board present in Carson City and invited them to put on the record explanations of the fiscal issues with regard to funding and to address the comments brought forth by members. Specifically, he referred to section 19 where it says "On or before June 30, 2009, the Board of the Public Employees' Benefits Program will determine whether the funding has been approved. . ." He asked, "That is approved by whom. Is that the Legislature, IFC, the Governor's Office? Whom would that be because it is not clear to me?"
Leslie Johnstone, Executive Officer of the PEBP, appeared before members in Carson City. She explained, "The background for that provision was a vote that the Board took in January of this year that provided that the dependent coverage that was being discussed in relation to domestic partnership would be funded in the same manner as other dependents on the plan – that is that the state shares in part of the cost – and so that generated a separate vote that said we wanted the regulations to move forward

but it to be contingent upon funding and with the previous action that had been taken by the Board, that was intended to be funded by the Legislature and approved by the Governor as part of the next biennial budget. So that's the background for that funding statement. I would also like to point out that one of the things that goes into this fiscal impact is that this was to provide coverage or eligibility to be on the plan for dependents of any domestic partner whether it be same sex or opposite sex couples so that also went into the calculation. There are a lot of assumptions about what this cost would actually be. The main driver behind this estimate was the percent of households in the last census that were reported to be dual adults without marriage and so we don't know if the participant population that's in the PEBP program matches that statewide population or not and we don't know what the participation would be even if that kind of household did exist. So, there are a lot of assumptions but it was estimated 2.7 million that was at the current year's plan rates so naturally that cost would increase as we go into 2009 without any other changes in the either subsidy structure or the plan design."

Senator Amodei said speaking actuarily, "In all the work that we've done so far, or harm that we've done in trying to help you since Mr. Thorne's departure, if this regulation comes about and this group comes into the program, do you have any idea of how that's going to impact the cross section of your membership or whatever, and I'm asking that in the context of, we did a lot of work to make sure that people weren't loading, you know retirees or whatever into it, so that you had a healthy mix. Is there any reason to think that if this comes about, the mix is going to be affected in any material way – too early to tell, don't know?" Ms. Johnstone replied, "The actuaries will say that this population is no more or less expensive than regular married population and the only thing that I would add to that is if there is a different funding source, so if the subsidy is provided for some but not others, then you probably run the risk of some adverse selection in that if someone is willing to pay the full cost, then they will tend to be the more expensive population, similar to with the COBRA provisions. But if the funding is the same, then it would not harm the mix."

Further, Senator Amodei asked, "Are you saying there that if one of the options down the road for funding is if I fit in this category that I can be part of the group but I've got to pay my own cost unsubsidized that your actuarial data available indicates that people willing to do that tend to be more intense users of the service?" Ms. Johnstone responded, "Yes, because of the high percentage of cost that is currently paid by the subsidy and if that goes away, and so for this population if they had to pay the full cost they would tend to be the ones that know that they need to use the benefits and they'd tend to be more expensive."

Mr. Goicoechea said that he just needed to get it clear in his mind and asked, "Under the existing regs today, if you are a participant in the PEBP program and you have established paternity or do have dependents, you can have them covered under PEBP without this regulation in place." Ms. Johnstone replied, "That's correct. Dependent children are eligible no matter what the marital relationship."

Ron Swirzek, Outgoing chair and PEBP Board member, appeared before members in Carson City and said that he has been part of this discussion for the last six months. He said, "Part of the guiding statutory provisions that gave us some authority to move forward was found under 281.370 and just let me read it in part: It says state, county or municipal departments, housing authorities, agencies, boards, or appointing officers thereof shall not refuse to hire a person, discharge a person from employment, or discriminate against any person in compensation or in any other terms or condition of employment because of his race, creed, color, national origin, sex, sexual orientation, age, political affiliation or disability. So part of the discussion and through all the public hearings was, is this to be considered a marriage benefit or is it an employment benefit. And, if it's an employment benefit, then there is this next step that we bring forward to you. As part of the funding, we had considerable discussion and we all know and are very sensitive to what's happening in the state as far General Fund dollars are concerned and that's why what was brought up even in section 19, if it turns out that there is no General Fund dollars to go around, which it doesn't look like there is for a while then, yes, people under this provision of 281.370 would be eligible to participate in the plan but they then in turn would have to pay the full subsidy themselves. There would be no state subsidy so there is no impact on the General Fund. And I'm telling you we went through a lot of, a lot of discussions and again, I want to emphasize, being very, very sensitive to the current financial conditions."

Senator Amodei asked, "So, Ron, ultimately the Board concluded that this was an employment benefit?" Mr. Swirzek responded, "That's part of the discussion, yes, an employment benefit not a marriage benefit. But, again, back to some statutes that were passed about five or six years ago, which is 281.370." Senator Amodei inquired if there was any coordination with the Legislative Counsel on any of that. Mr. Swirzek replied, not to his knowledge. Ms. Johnstone stated, "We had not pursued that. It was part of the discussion that we had with the Attorney General's Office and I think that because of the background and the votes that were taken regarding the funding, I would need to consult with them some more about whether or not any change on the funding mix would impact the intent of these regulations. I'd just been given some caution by our counsel."

Jim Richardson, Ph.D, representing the Nevada Faculty Alliance, appeared before members in Carson City and said that he thought he could safety speak on behalf of the rest of the university. He stated, "The University System officially brought this request to the PEBP Board some time ago. All eight presidents of the System institutions signed a petition to the Board, a very substantial petition, explaining the need for this in terms of recruitment and other matters but particularly recruitment and retention of faculty. It turns out that over 300 of the universities with whom we compete for faculty have this benefit currently and that number is growing. It's a fact that in every state around us except Idaho this benefit is available to higher education faculty and that may surprise some of you but I can give you details if you would like. The fact of the matter is if you look at the western United States, we and Idaho are alone now in not offering this benefit at all to any public employees or to university employees. This benefit is also

available in the State of Nevada to, I think, the second largest group of public in the state and that's the Clark County school teachers through their health trust. They straight up offer benefits for domestic partners and that's been the case for several years. I think there are other public employee groups in the Las Vegas area that also offer this benefit. So, we have a problem and we're trying to speak to it and I appreciate the seriousness with which the PEBP Board and their staff has approached this issue trying to help us deal with the competitive nature of the hiring market and higher education nationally and regionally. I would also point out that I know the reason section 19 was placed in here and I understand that that is a possible way that this benefit could be funded for all state employees. In the grand scheme of things, that amount of money that Leslie mentioned is relatively small in comparison to the entire PEBP Board budget but it looks like a big absolute number particularly in light of the news we're facing every day and the reason you're having a special session next week. But, I would point out to you that whether by design or accident, I think the wording in section 19 does allow some flexibility because there is some ambiguity there. Lawyers love ambiguity and some of the rest of us occasionally do as well because it is not clear, as Senator Townsend just pointed out, where the funding has to be approved and it could be that the Board could, if there wasn't money to fund this through the legislative process, that the Board could make a public announcement as called for in the second sentence of section 19 that they have approved a regulation that would, in fact, allow the employee to carry the full cost of this benefit. I think there is the possibility of that option. I certainly defer to your counsel and to others but I think you can read it that way and I would certainly encourage you to read it with that kind of flexibility and certainly I would strongly urge you not to turn this very serious policy issue down on the basis of cost alone because what this regulation says is that on June 30, 2009, the PEBP Board would have to make some statement and if the Legislature hadn't funded it, they would either say it was not funded or we have found another way to fund it. That's certainly possible and we would be very appreciative if you would allow that interpretation and allow this to move forward. It would help us a lot in the university and community colleges in this state. Thank you."

Mr. Anderson referred to section 19, the last sentence, and asked if it is the vagueness of that last sentence that Dr. Richardson believed allows for, or could conceivably allow for, the Board to make it an option available to pay for it themself rather than as a stated choice. Dr. Richardson responded, "Well, the Board has considerable authority as the Attorney General stated. Part of the time taken to get to this point is to seek an opinion from the A. G.'s Office about the authority of the Board and the Board does have considerable authority to define the term dependent. It's not defined by statute, it's defined by the PEBP Board and that's what's before you today is an attempt to broaden that a bit but, yes, I think that last sentence, it says the Board will make a public announcement of its determination pursuant to this section and it could determine, as I said, that although the Legislature chose not to fund it because of the fiscal crisis we are in that they could go ahead and offer the benefit if paid for through another mechanism and the only other mechanism I'm aware of would be the employee paying for his or her dependent and the children involved."

Mr. Anderson asked if it would be Dr. Richardson's understanding, given the current fiscal crisis, would every subsequent Legislature then have to make a similar determination to the PEBP or would this be binding a future Legislature that could conceivably have money. Dr. Richardson responded, "That is certainly possible. The PEBP Board has the authority to define the term dependent and to determine what the programs it will fund in the health care area are. I think we're all aware that there's tremendous pressure to limit cost in that area and there's been some public discussion of that but it is feasible, conceivable that in the future the Legislature could fund this benefit.

Further, Mr. Anderson asked if the PEBP Board would then have an equal opportunity to spread it as a cost over its other existing members. Dr. Richardson replied, "I can't imagine that happening. They have the authority to do a lot of things but they are a responsible group and I can't imagine that they would take the cost of this kind of benefit and force it on other members of the program. It's also worth noting that the impact of this is relatively minor. The major amount of the cost involved, as I understand the reports, and I've done a lot of reading in this area and listened to the actuaries myself, most of the cost will actually come from domestic partner, from people using it who are unmarried heterosexual couples, because there are more of them than same sex couples and so that's where most of the cost would come from if we did this. There are reasons people choose not to marry, as you may be aware, some elderly people live together without the benefit of marriage because if they married they would lose some kind of benefit, some kind of retirement benefit, that has accrued to them over the years. So, there are various constituencies that are interested in this change of regulation."

Senator Amodei recalled that work was done a couple of interims ago in terms of trying to provide some stability to the membership of the system – all in or all out – and he asked if the passage of this would be seen as making it easier, for example the Clark County School District who has a similar policy, for its benefit fund. He observed that after the interim committee completed its work and thought it was pretty clear, all of that work was promptly "turned on its head" by several groups saying "That's fine, I think we'll all come in and we want the subsidy too" which is nowhere in the minutes of the interim committee work. By creating a benefit that parallels one in one of the larger groups that has at least "chatted" about "Well, we think we'll opt in and ask for the subsidy," he asked if this does in any way allow a back door for continuity of benefits for something like that to happen. The senator commented, "I will interpret your silence as I wish you hadn't asked the question." Dr. Richardson replied that he was thinking about the question as it is a serious question. He said that the major motivation for bringing it to the PEBP Board and them considering it had to do with some kind of basic fairness and equal treatment issue. The senator said that he did not dispute that for a minute and the basic work of that interim committee for two interims was to do the same thing and it was promptly "wadded up into a wad of paper, poured gasoline on it and started on fire and used as the subterfuge for something that had never been discussed in the committee." Senator Amodei said, "I'm not implying that that's here. I

think the decision ought to be made on sound insurance policies and I believe when the outgoing chairman of the Board says, 'We did this as an employment policy thing,' I believe him. But, I want to at least have something in the records of some legislative thing having learned from mistakes of my own making in this area recently, that it was at least discussed so that at some point in time if anybody cares they can point to it and say, 'Yeah, at least we discussed it for a minute and here's what we thought we were doing or weren't doing.' So, no discussion about that in the context of this policy?" Dr. Richardson responded, "No, but I would comment that I think the idea of the Clark County Health Care Trust becoming a part of the PEBP operation is a huge decision with many ramifications, as I'm sure you're aware because you chaired the committee, and I must say for the record, since we're making a record, that I think this issue would be a very minor one in the context of what to do about union contracts and other obligations and how they're allowed to handle money and things of that nature. So, I think it becomes a de minimis concern, with all due respect, that we might offer domestic partner benefits as part of the PEBP program."

Senator Care said it was not clear to him and asked if the prior testimony is that this regulation is consistent with legislative intent apparently the 2003 session or at least an earlier session or is the regulation today the promulgation of new policy even if it is de minimis. Dr. Richardson said, "It is worth noting for the record that in the lengthy and substantial petition filed with the PEBP Board by the university system, the first point we made is that we think the PEBP policies are out of cinque with that 2003 legislation. We were just saying that to point out that there is a regulation that supposedly governs how the State of Nevada operates and the PEBP Board, you could make the claim that there is some discrimination in their policies. Now that's one for the attorneys to argue but it is worth noting that we did try to make that point to help support the argument we were offering that this needs to be done – here's a legal reason to do it – and then the bulk of the petition talked about the competition we're facing from other universities and colleges in this region and around the country."

Senator Lee inquired if the wording "not related by blood" was removed and the wording made so generic that if you loved somebody you could choose to make them important in your life rather than the continual sexual orientation and bills that just seem to be attacking certain fundamental beliefs that they have a distinction. He wondered how much effect the removal of the wording would have on what is being done now and if it would make any difference at all. Dr. Richardson responded, "Some states do, in fact, do exactly what you said. They have one dependent and you get to name the dependent, whether it's a spouse, whether it's a partner of the same sex, whether it's an elderly parent or a sister that you're taking care of. So, that is policy in some states. However, when you start costing it out, it's very difficult to cost out and it obviously would drive up the cost of this. So, there was several choices. At one end of the spectrum, you could just limit it to same sex couples and that's the most minimal impact because according to the census, that's less than one percent of the population. At the other end, you could say you can name one dependent, no matter who it is and how they're related to you or whether they are or not, that's the most expensive option.

What the PEBP Board chose to do was settle somewhere in the middle and make it available to same sex and opposite sex couples who are willing to sign the affidavit and meet all those requirements. So, some of us prefer the plus one dependent idea but the cost figures were higher and we decided to support what the PEBP Board did and we are appreciative of it but your question is a good one because some states actually use that kind of approach."

Senator Lee said, "I firmly stand committed to my beliefs that I think the family is a very important structure in what we do in this country. I also believe some people care and love and nurture relationships with other people that they have found close relationships with and I think those are two underlying areas that are, sometimes they're both right. But in this particular case if we're going to continue down this path, then I think I'm going to start working very hard towards the second goal that you talked about – that's to see that everybody could chose one person that they want to share this benefit with rather than carving up, continually carving up these kinds of things and put people at odds with each other. If this passes or doesn't pass, I don't know, I've been trying to take some kind of track, but I'd be willing to work on that next session but at this point in time I'd like to take the 'related by blood issue' and just go for it, make it right for everybody and give everybody a chance to show their concerns for the people they care about." He said he didn't know how bad an effect that would have but he would almost make a motion but he didn't think he would get any response today for it.
Dr. Richardson said, "I really appreciate and respect that view, Senator Lee. I would urge you in the strongest possible terms to support this regulation. If this regulation is turned down, it's sent back. As I understand how this process works, this is not a place where you can amend or delete. You either reject or accept. I would have to say that half a loaf is a lot better than no loaf at this juncture and it's taken us two years to get to this body with this issue and I would strongly urge you to support this as a half step with the thought that we could all work together if we want to try to expand it even a bit more along the lines of what you said. Thank you very much."

Senator Lee asked why are not more people discussing this issue and why are there 12 people making this decision. He said he did not recall having this conversation or hearing about it in any of the committees he served in and he though a lot of his colleagues have not had the opportunity either. He indicated it was an important issue and discussions could have taken place regarding the spouse plus one or whatever. He would have liked the chance to make a pitch for what he thought would have been a bigger, broader benefit program.

Mr. Anderson said that he understood Senator Lee's frustration in dealing with regulations and the inability to craft them at this meeting as is done during a legislative session. He suggested that a possible solution might be that the entity be asked that it re-examine the regulation and see if it could arrive at language closer to that suggested by the senator so that they're not opening areas of discussion that people seem to be concerned about. He said that he is convinced that section 19 does in part solve one of his concerns. However, he is also concerned in section 19 that he would agree with

Dr. Richardson that it necessarily draws the conclusion that a person would be able to purchase it as an option. If it were more specific in that area, he would be more supportive of that conclusion. He said he appreciates that it has taken a long time to get it moved to this particular point in the process.

ASSEMBLYMAN ANDERSON MOVED TO REJECT REGULATION R016-08. MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Under discussion, Senator Amodei reminded the members that Ms. Johnstone's testimony was that if you make them pay for it themselves, they tend to be folks who use it more. He said, "When you put your actuarial hat on in terms of health of the program, by asking for something to come back that says 'if the state doesn't pay for it, but you can still get in' that creates a mechanism for people who maybe are going to be heavier users of the program and therefore affect the actuarial realities for other folks an entree into the program. Now that's not a lot of people and I'm not saying that because I intend to vote against this or for the motion, but what we're talking about here is an insurance decision, I think, and so I just want to remind people that the testimony that nobody's got up and argued with is – if you make them pay for it themselves they tend to be higher users. So, I'm not sure what that means in the context of actuarial down the road but I would at least encourage people to give that some thought before they vote if they are concerned about the health of our system and keeping it off the radar screen more than on."

Chair Townsend recalled that there was a bill in the last session but it was not specifically geared towards this kind of policy question. He asked if this matter was heard in some context in one of the "money" committees last year. Ms. Johnstone responded, "No, it was not Mr. Chair. It was brought to the Board by the System of Higher Education directly." Dr. Richardson noted that there was a bill drafted by Mr. Parks that would have had this effect and even a broader effect but when he understood about the university's effort to move with the PEBP Board and get them to deal with the issue on a limited fashion, he decided not to press his bill.

Mr. Parks said that over the years he has had several bills going back to the 2001 Session. The bills have been introduced but never got approval out of the respective committee. He noted the comment made earlier about the Clark County School District providing domestic partner benefits and said it is also his understanding that the Las Vegas Metropolitan Police Department is another agency that offers those benefits. He said that in looking at other programs around the country, whether they are public or private, better than 80 percent of those individuals who avail themselves of those programs are typically opposite gender as opposed to same gender individuals. He said there did not seem to be in the hearings held by the PEBP Board over the last number of months strong opposition from any of the member agencies that also are members of the PEBP Board. Mr. Parks said, "For myself personally, I have my own insurance through Clark County self funded and when I presented testimony in front of the Judiciary Committee a number of years ago, I had contacted two actuaries and I asked

them a simple question: I'm paying so many dollars every month, at that time it was in excess of $300, now it's approximately $400. Of that amount of money that I spend out of my pocket for insurance coverage, how much of that goes to subsidize an individual for whom I cannot add onto my policy. The answer was somewhere in the range of 8 to 10 percent. So, I'm paying every month, somewhere in the range of $40 for somebody that I'm not allowed to put on my insurance."

Mr. Anderson said he wanted to make sure that it is clear that it is his intent that it could come up again with the amended language and that it is not a dead issue in and of itself.

Senator Titus said she had heard in the testimony and the questions a lot of concern that members do not have some hard answers with new numbers and new impact on how many people it will be, how much it will cost and if it results in more people using the system if they have to pay a certain percent. She suggested that rather than rejecting the regulation outright and then it may or may not come back again, she would rather see the commission hold it and bring it back to the next meeting where some of the questions could be answered. She asked if that was a possible alternative to outright rejection.

> SENATOR TITUS MOVED TO AMEND THE MOTION TO DEFER INSTEAD OF REJECT THE REGULATION AND IT BE RETURNED AT THE NEXT SCHEDULED MEETING OR AS SOON AS THE INFORMATION IS AVAILABLE. ASSEMBLYMAN ANDERSON CONCURRED WITH AMENDING THE MOTION AND SECONDED THE MOTION.

Under discussion, Senator Lee requested that his question concerning what other states do regarding someone being able to choose a designee be included. The chair agreed that could be part of the actuarial response so it could be known how large that field could be. The chair asked if Ms. Johnstone if she understood Senator Lee's question. Ms. Johnstone said they could gather some comparative information and indicate which one best correlates to the population but noted that the actuaries are very hesitant to give any numbers under that scenario because until it is defined exactly who that one other person is, it is difficult.

Also under discussion, Senator Hardy said that he understands this is an extremely emotional issue and he thinks his position on it is fairly well understood. He indicated he supposed he could support the motion because it is important that all his colleagues have their questions answered and "We go into this with our eyes open." But, he said, "I remain concerned that this is, and I'm not going to say it's an intentional effort to circumvent the legislative process, but I do think that this question more properly belongs before the full Legislature. In addition, I think this question has been brought to the full Legislature and the Legislature has spoken on it. I do think that at some level, the integrity of that process is in question here and I would be uncomfortable if we ever got to the point that we started to go to regulation to get around an answer we don't

like from the Legislature. And I can't remember the specifics but I know this has come up at least twice in my legislative career and so separate from the entire emotional issue that has very legitimate emotional feelings on both sides, I just want to speak out for the integrity of the process and however I choose to vote on this motion, I want to express my discomfort with bringing this or any other emotional or controversial issue to the regulatory process when the Legislature at some level has spoken. That will probably be the last comment I make on this. I'm going to vote my conscience but my concern is that – the integrity of the legislative process."

THE CHAIR CALLED FOR A VOTE. THE MOTION FAILED ON A TIE VOTE WITH SENATORS CARE, HARDY AND TOWNSEND AND ASSEMBLY MEMBERS ALLEN, CARPENTER AND GOICOECHEA VOTING NAY.

Mr. Anderson said that his original intent was that the regulation would return to the commission and not to see an end to the question but rather answers to the other issues. He felt that Senator Titus clarified his original motion. Now he cannot even support his own motion.

The chair said that the questions posed and the statements made have all been excellent and he hoped that the Board and support groups of the regulation would bring the answers back anyway so that the Legislature could be fully versed. He asked if there was any other motion since it is his understanding that if the commission does not act to either defer it or reject it, it will be filed.

SENATOR AMODEI MOVED THAT THE REGULATION BE DEFERRED FOR FURTHER CONSIDERATION BY THE LEGISLATIVE COMMISSION SO THAT THE QUESTIONS POSED CAN BE ANSWERED. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA.

Under discussion and in response to Senator Hardy, Senator Amodei explained if no action is taken, the proposed regulation goes into effect. He said now the regulation is in limbo. If members want it to go into effect, then they probably ought to defeat this motion too.

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

On Regulation R017-08 from the Board of the Public Employees' Benefits Program, Mr. Carpenter asked if this regulation makes it easier or harder for local governments to join the PEBP. Ms. Johnstone said it would add an additional requirement so it will probably be viewed as making it more difficult. The intent behind it is because the program has been able to acquire reserves for rate stabilization, incoming groups that want to join the plan after the adoption of the regulation if that is the course not be able to take advantage of that reserve for rate stabilization and that they would be required to "buy into it" so that when it is used, it can be used across the board and it would have

been acquired as fairly as can be obtained. Mr. Carpenter asked whether the cost would be a lot or a small amount or is the amount known. Ms. Johnstone said it would depend on the size of the group. The thought is that the funded portion of the reserve by the current population would be taken and apply that to the population count of any incoming group. Mr. Carpenter commented that he thought they were trying to expand the program but he guessed they are not. Ms. Johnstone responded, "We are trying to receive some commitment from the local governments that do join the plan in who they bring with them onto the plan and the duration that they stay with the plan. So, they would also put everybody on a level playing field on access and use of the reserves that the program has." Prior to the motion, Mr. Carpenter commented that philosophically he did not agree with doing that.

Mr. Anderson asked if it was required that small groups who were joining to do similarly when they joined over the last five or six years. He thought some legislation was passed and some of it may have even been his that put it in place. It was determined that the year was 1994 and Mr. Anderson asked if they were expected to do so at that time when those groups joined. Ms. Johnstone responded that the idea of having a reserve for rate stabilization did not exist at that time. The program had a difficult time funding its "incurred but not reported." Mr. Anderson asked, "And so they've been paying for it as they moved along?" Ms. Johnstone responded in the affirmative.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT REGULATION R017-08. MOTION SECONDED BY SENATOR AMODEI AND CARRIED WITH ASSEMBLYMAN CARPENTER VOTING NAY.

On Regulation R166-07 from the Nevada Tax Commission, Mr. Goicoechea commented that he does not even pretend to understand exactly what the regulation means but there are a number of assessors present. He asked if they could come forward and either endorse or pick apart the program it would be beneficial to the commission members. Josh Wilson, Washoe County Assessor, appeared before members in Carson City. He said, "If you are asking whether or not this is a perfect regulation, I'm not sure there is such a thing. In the recognition of the mass appraisal process that all the assessors throughout the State of Nevada implement, I think it is a giant leap forward in acknowledging those techniques." Jeff Payson, representing Clark County Assessor's Office, appeared in Carson City on behalf of Mr. Schofield who was unable to attend. He asked that it be relayed to the commission that they fully support the proposed regulation. Doug Sonnemann, Douglas County Assessor, appeared in Carson City and said that he thought the Tax Commission made every effort to find consensus and with the help of the department he thought they have achieved a long way towards that goal.

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R166-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R172-07 from the State Board of Health, Senator Titus recalled that at the last meeting she had a lot to say about this regulation because she was very concerned that in the older neighborhoods, houses are being purchased and used for transitional housing and there is very little oversight and regulation of that housing. It is scary to neighborhoods and children. There are ex-felons there and nobody is checking to see that health and safety standards are maintained. She was concerned about how many people could live in one of those residential houses. She said she wanted to be absolutely sure that now if it is a single family dwelling, eight is the most people who can live there. While she thought eight was too many, she could deal with that number. She said that she also wants to express real concern when they say they do not impose any new fees. Last time she asked, she was told they inspected those facilities once every six years and she thought that was unacceptable. In many cases, a fee is charged to help pay for inspections and if anything needs inspecting, it is these facilities. She said that she hoped, even though this regulation does not include a fee, that the Legislature will look at imposing a fee so that these transitional living facilities for ex-felons can be inspected more than every six years and that the people who are making money off of providing this housing for the ex-prisoners will help to offset the cost of those inspections. She asked if she could have the reassurance that there are no more than eight.

Chair Townsend said the senator's articulation last meeting and this meeting are equally compelling. He asked if there is an amount of persons and a time frame or a range in which the inspection should take place that she is comfortable with that the commission could ask them to re-craft the regulation or redo their fees so that they could have the inspection. Senator Titus said she did not know how much it would cost to do an inspection or how many of the facilities exist and the agency would have to be asked that question. She thought annual inspections would not be unreasonable and certainly not once every two years but once every six years, she would have been embarrassed to have answered the question. She said some people would want to have more than eight in apartment complexes and she did not have a problem with that but in a single family dwelling in the older neighborhoods there are probably not more than three bedrooms in those houses – two people per bedroom would be six and that would be crowded plus a supervisor. She thought that number might be more reasonable.

Marla McDade Williams, Bureau Chief for the Bureau of Licensure and Certification of the State Health Division, and Jennifer Dunaway who was before the commission when the regulation was last considered, appeared before members in Carson City. The regulation itself was as a result of Senate Bill 354 of the 2007 Session which required the Bureau of Licensure and Certification to adopt regulations consistent with the bill which itself says that a facility, if it was originally constructed as a single family dwelling, the facility must not be authorized for more than eight beds. She said that was the intent of the regulation. In terms of the inspection schedule, the facilities as newly licensed, have to be inspected as newly licensed facilities so that is the initial inspection. They do have annual renewal in terms of fees. The inspection schedule itself is driven by financial resources and they have a schedule that has been developed for all facilities that are

certified and licensed. If the suggestion is to come back with a schedule that puts these particular facilities on an annual schedule, the budget that is proposed would be in line with that consideration.

Senator Titus said she was unsure whether anything can be done this day and she appreciates that the statute says not more than eight but that does not mean that it has to be eight. Not more than eight could be six, five or seven. The maximum may not necessarily be the best and might be what would be used under really pressed circumstances so that is not justification to her for allowing eight. She said that she did not hear information about what would be the cost for annual inspections and if that is absolutely impossible maybe they could be done every 18 months. She emphasized that six years is just not acceptable. She believed people are making a profit and noted that one person who testified in the hearing as one of the small businesses said they are making money and that is why they wanted to have more than eight and wanted to have 10 or 12. She thought they could help pay some of the cost and so a fee to cover the cost of an inspection did not seem unreasonable. She said maybe it could not be done in this regulation but she hoped that somebody would re-visit that during the next legislative session.

Chair Townsend asked if the agency had the authority in the current statute to set the fees based on the demand that might be set through a regulation for increasing the frequency of inspections. Ms. Williams said it does have the authority and how it plays out is the Legislature ultimately authorizes how much it is willing to allow the agency to collect in terms of fees each year. The chair inquired if she had any idea how much it cost to do an inspection. Ms. Dunaway said she did not bring the cost per survey data with them but the licensing fee for an initial license is $2,020 and for the annual renewal it is $1,010. She said that in the Nevada Administrative Code regulation there is a requirement for an automatic sprinkler system for facilities with greater than 16 beds. The State Fire Marshal requirement allows a facility with five beds or less not to have sprinklers. She said that is driving most of the facilities towards having five individuals in the home rather than eight. Currently, there are 10 applications pending and they have conducted two surveys. They are awaiting an acceptable plan of correction to be able to issue a license. She said they do not have that many facilities at this point. The other thing to consider in Clark County is that a special use permit is required for this type of facility to obtain a license. Chair Townsend asked of the 10 applicants what bed level are they requesting. Ms. Dunaway responded that one facility is requesting eight beds and the other facilities have requested five beds in northern Nevada and she will check to see if she has the information for southern Nevada. The chair asked if eight was decided just because the maximum is set at eight. Ms. Dunaway responded, "Yes, that's what's contained in S.B. 354." The chair commented so that is fairly easy to adjust if the agency were to go back and do a workshop and another regulation, it could be adjusted without much change because it was simply an arbitrary decision to go to the maximum. He asked if that was correct. Ms. Dunaway replied, "The regulation was drafted to support S.B. 354." Ms. Williams said that what the agency would do at this point would be to get an opinion from their Attorney General to make sure they were not

in violation of the statute if they went back for regulations to limit it to five. The chair said the Legislative Counsel could give an opinion without the agency having to go to the Attorney General. Ms. Williams said she was referring to their counsel.

Chair Townsend asked Ms. Erdoes if it was possible for the agency to go back to hearings and go through the appropriate regulatory mechanisms whether it is workshop, subsequent hearing, draft regulation, and come back at five beds and also for annual inspections and setting the fees accordingly. Ms. Erdoes said, "My belief is that they could go back and make most if not all of those changes in the regulation."

SENATOR TITUS MOVED TO REJECT REGULATION R172-07 SO THAT CHANGES DISCUSSED TODAY COULD BE MADE. MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Senator Lee said that as he looks at the regulation it appears that the state is usurping the municipal codes. He is aware within certain municipalities if one has so many bedrooms you only have so much septic and sewer or something happens and so many people living within that residence. By statutorily saying eight beds, it does more to harm the municipal codes than to strengthen them so he will be voting no and he would say they may not more than eight beds or unless municipal code defines otherwise. One of the problems at the state level is that it does not relate and work together with the municipal organizations very well and he would like to stay with their codes and procedures and work alongside them to make their communities as beautiful as they would like to make them.

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

Chair Townsend said that he hoped the commission gave Ms. Williams enough guidance where they might go back to hearing. He suggested working with the legislators who had concerns because they will try to help where they can. He said it is a real "flip of the coin" of which is a greater challenge, the eight beds or the six year inspections. He suggested staying in contact with Senator Titus, Senator Lee and himself and any other members who have an interest and they would try to help the agency through this matter. Ms. Williams thanked the chair and said it was nice to see so many familiar faces.

B. Approval of Resolution commending James Kosinski for his service as Chairman of the Commission on Ethics--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to the meeting packet containing a proposed resolution for Mr. Kosinski. He recalled that earlier in the meeting members approved Mr. Shaw as the successor to Mr. Kosinski. The resolution thanks Mr. Kosinski for his service, particularly since he served a year as chairman as well.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE RESOLUTION COMMENDING MR. KOSINSKI FOR HIS SERVICE. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

C. Approval of revisions to Retention and Disposal of Records for Fiscal Analysis Division--Lorne J. Malkiewich, Director.

Mr. Malkiewich recalled at the last meeting when members approved records retention schedules, he mentioned that the schedule for the Fiscal Analysis Division was still being worked on. He referred to the schedule for the division contained in the meeting packet. The main effect of the change is to take some of the things being maintained permanently and destroy them after 10 years or six legislative sessions.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE SCHEDULE FOR RETENTION AND DISPOSAL OF RECORDS OF THE FISCAL ANALYSIS DIVISION. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

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

Mr. Malkiewich called attention to the meeting packet containing a list of the early session hires and noted he would return in September with the list of the ones that will be starting in November, December or January. The list in the meeting packet contains the positions that are necessary to bring in a little earlier, including the transitional plan for Mr. Stevens and Mr. Ghiggeri so that Brian Burke and Tracy Raxter can be trained to succeed them when they retire.

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

E. Approval of transfer of Appropriated Sums from Year to Year and Among Legislative Commission and Various Divisions of Legislative Counsel Bureau--Lorne J. Malkiewich, Director.

Mr. Malkiewich said that the General Appropriations Act allows him to move money between the different divisions and from year to year. He said although all of the divisions should be well under budget for the year, he has asked for that general authority in case it is necessary to move money around. However, the main reason for this is that there are projects in Fiscal Year 2008 that are not completed and the money needs to be moved forward to 2009. The memorandum in the meeting packet lists all of those and in addition he has a couple of others he would like to add. There is $100,000 budgeted in each fiscal year for unanticipated retirement costs and that money, as members who served on the budget committee know, he had indicated would be used

only if necessary. It was not used last biennium and has not been used this fiscal year but just in case there is a situation where the LCB ends up having extensive retirement expenses in Fiscal Year 2009, he would like to transfer that money forward again with the same understanding that if it is not needed it will not be spent and will revert to the General Fund. He said there are also a few projects that he would like to balance money forward such as preservation of records, office and other equipment, instructional supplies, computer hardware and software updates and some repair and remodel money all for projects budgeted in 2008 that were not included. He said at the end of the fiscal year, he wants to make sure that LCB "pushes back" and will revert to the General Fund a few million dollars to help out with the budget shortfall. Before carrying the money forward, staff will take a look and ensure they are reverting a sufficient amount of money to cover that. He said that although he would like authority to move all the money forward, staff will wait until the books are closed to determine that there is a sufficient balance left in the accounts to "hit our targets" and then roll forward the existing money. With the approval of the commission, the determinations will be made after the books are closed.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF THE REQUEST TO TRANSFER APPROPRIATED SUMS. MOTION SECONDED BY SENATOR AMODEI AND CARRIED.

F. Approval of language of Ballot Questions--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material in the meeting packet containing the proposed language for the three different ballot questions that the Legislature has proposed. By statute, the Legislative Commission is required to approve this language. The first one is Assembly Joint Resolution No. 10 to amend the Constitution to delete the unconstitutional requirement of six months residence prior to voting in an election. The second one is Assembly Joint Resolution No. 16 requiring certain findings concerning any changes to creating an exemption from the property tax or sales tax. He noted both of those are constitutional amendments. The third ballot question is an amendment to the sales and use tax act concerning streamlined sales tax allowing provisions to be amended without an additional vote of the people and repealing an exemption that is unconstitutional concerning aircraft and aircraft components. He said that staff worked together to assemble the language on these questions and he expressed appreciation to those who worked on them and sent them out for comment to those who had expressed interest in these issues when they were before the Legislature. While they were not issues that were tracked by a large number of people, some comments were received and were incorporated into them. He believes that the folks who worked on them no longer have any concerns with the language and are all happy with what was developed.

SENATOR AMODEI MOVED APPROVAL OF THE LANGUAGE OF THE BALLOT QUESTIONS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED.

G. Delegation of Authority to Issue Subpoenas to Legislative Commission's Audit Subcommittee pursuant to NRS 218.6821--Paul V. Townsend, Legislative Auditor.

Mr. Anderson indicated that it appears that Mr. Townsend, as the Legislative Auditor, and at the direction of the chair of the Audit Subcommittee, is requesting the opportunity to utilize the subpoena power of the Legislative Commission to ensure the attendance of the Board of Homeopathic Medical Examiners at the next meeting so the Legislative Commission is not ignored.

Chair Townsend directed attention to the letter from Mr. Townsend dated June 9, 2008, contained in the meeting packet.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL TO AUTHORIZE THE CHAIR OF THE LEGISLATIVE COMMISSION'S AUDIT SUBCOMMITTEE TO ISSUE A SUBPOENA FOR PURPOSES OF BRINGING A REPRESENTATIVE OF THE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS TO APPEAR BEFORE THEM. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item II. B.

Item IV--Informational Items:

A. Legislative Committee Reports.

B. Legislators' Travel Reports.

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

Mr. Malkiewich said that he wished to point out that under this item are the printouts from the legislative website. He said that agencies are now submitting the disciplinary action reports online and what is seen in the meeting packet is what appears online. The next step will be to create the technical software side so that they will be searchable and could be used to check for disciplinary action reports.

1. Board of Examiners for Audiology and Speech Pathology.
2. Board of Examiners for Long Term Care Administrators.
3. Board of Examiners for Marriage and Family Therapist and Clinical Professional Counselors.
4. Board of Examiners for Social Workers.
5. Board of Hearing Aid Specialists.
6. Board of Homeopathic Medical Examiners.
7. Board of Landscape Architecture.
8. Board of Occupational Therapy.
9. Board of Psychological Examiners.

10. Board of Registered Environmental Health Specialists.
11. Chiropractic Physicians' Board of Nevada.
12. Commissioner of Financial Institutions.
13. Division of Mortgage Lending.
14. Nevada State Barber's Health and Sanitation Board .
15. Nevada State Board of Accountancy.
16. Nevada State Board of Architecture, Interior Design and Residential Design.
17. Nevada State Board of Massage Therapists.
18. Nevada State Board of Medical Examiners.
19. Nevada State Board of Nursing.
20. Nevada State Board of Optometry.
21. Nevada State Board of Pharmacy.
22. Nevada State Contractors Board.
23. Private Investigator's Licensing Board.
24. Real Estate Division, Department of Business and Industry.
25. State Board of Cosmetology.
26. State Board of Funeral Directors, Embalmers and Operators of Cemeteries and Crematories.

D. Miscellaneous Reports from State Agencies and Others:

1. Report from the Nevada State Board of Medical Examiners.
2. Annual Immunization Report 2008 from Nevada State Board of Pharmacy.

Item V--Public Comment:

Chair Townsend reminded members who also serve on the Committee to Consult with the Director that the meeting for Wednesday has been cancelled due to the potential for a special session. The meeting will be rescheduled.

Knight Allen, private citizen, appeared before members in Las Vegas. A handout was provided by Mr. Allen and is attached as Exhibit E. Mr. Allen spoke on the subject of green tax breaks and referred to articles in the Wall Street Journal and local Las Vegas newspapers. He said it is now clear that building green is "way different" than trying to generate green energy which takes tremendous capital and long-term "paybacks." Building green is cheap and profitable and a quick return on investment and the tax break that big corporations have received on buildings is not warranted. The taxpayers and the state have enough problems than to have that amount of money "drifting out" on a regular basis. He recalled the Governor's veto of Senate Bill 567 which would have repealed the green tax breaks and at that moment in time with a special session coming up and Assembly Bill 3, he could understand that and is not trying to second guess either the Governor or the Legislature when it sustained the veto. He said the record is now clear that the tax breaks are outrageous and have to be stopped. He suggested

that S.B. 567 be reintroduced and the bill repealed. It could prevent a crisis from happening "down the road." He quoted a newspaper article that said applied analysis projects that the cost of the tax breaks will be $515 million.

Continuing, Mr. Allen commented on a recent headline that said "High Court Defies Lawmakers on Salaries" and an article that indicated the justices say their employees' pay is their business, not the Legislatures. Mr. Allen also spoke on a recommendation at a previous meeting made by Bill Freed who wanted to create another blue ribbon panel to review Nevada's tax base. Mr. Allen talked about attending meetings over a period of a year of a previous committee he called the Governor's Task Force on Tax Policy and the results of that effort. He strongly suggested that another panel should not be created. Mr. Allen also expressed his frustration on the comments and name calling done by columnists, media people and pundits. He also spoke on political courage and the lack of courage by members of such panels, noting that they will not result in anything that has any kind of value and will just recreate the mess from 2003. Finally, Mr. Allen mentioned a bulletin from the State Department of Education on student enrollment and licensed personnel information. He said in the last four years, state enrollment in K-12 has gone up 12-1/2 percent over a four year period. Over the same period of time, the number of teachers has risen 17 percent. He thought everyone on the commission must feel good about that because he knows there is a genuine concern about teacher-student ratio and the number of teachers are rising by a rate 1/3 faster than the enrollment. However, he noted that the number of non-teaching personnel has risen 33 percent, more than two and a half times the enrollment rate. He said something is wrong and he has a real problem with that. He held up a report noting that it is education bureaucracy as of 2005 and it hasn't gotten any better. He related details of his encounter with the chancellor of the Nevada System of Higher Education on the subject of the bureaucracy. He said the average salary of the non-teaching personnel is $68,774 a year and opined that this is an area where there is a lot of money if budget cuts are necessary and it will also help the teachers and the children and their education.

Maureen Flansburg, taxpayer and Parole Board reform advocate, appeared before members in Las Vegas. She said that her understanding was that the Legislative Commission at its meeting on April 16, 2008, authorized Assemblyman Parks to clarify R018-08. She asked if that is going to be on the agenda for the next meeting since it is not on the agenda for today's meeting. Mr. Malkiewich said that he believed what happened at the last meeting was that the regulation was approved and staff was directed to have the Parole Board return and report both on the progress on the regulation and on efforts to clarify some of the points the commission had with it. There were some concerns about specific provisions and they wanted the Parole Board to work with Mr. Parks and people who are interested and bring it back. He said that because of the short time between the two commission meetings he did not have a chance to review that and he totally forgot to put it on this agenda. He said he asked Mr. Parks the previous week if he wanted it addressed as an informational item or just held until September and he was fine with holding it until September. He said that he did not think the Parole Board could have made changes within that period anyway as it has

only been two months since the last meeting and he was not sure how much progress has been made on proposing changes. He said in any event there will at least be an item on the September agenda for a report from the Parole Board and we will give them plenty of notice that they are expected to come in and report on progress both on implementing the regulation and addressing the issues that were raised by Mr. Parks and others at the last meeting. He apologized for forgetting to put it on the agenda for this meeting.

Tonja Brown, advocate for the innocent, appeared before members in Carson City. She said she wanted members to be aware that the Parole Board does not follow the laws with regard to paroles. She provided a handout (copy attached as Exhibit F) and read from the recent newspaper article about an inmate who filed a writ of habeas corpus saying that the Parole Board illegally reinstated one of his life sentences because he refused a deal agreeing not to sue the state if he was released. He has maintained his innocence on the charges. The circumstances outlined in the article are one of the reasons that in Assembly Bill 416 of the 2007 Legislative Session proponents wanted to have an oversight committee. She said the oversight committee is needed to look into the Department of Corrections, Parole and Probation and the Parole Board. She said she has to question how many other rights have been violated with inmates' due processes because they refused to sign a waiver not to sue the state. She said she has the waiver, it is very damaging and eventually will cost the state a great deal of money when it proceeds. She wondered how many others will there be if the Parole Board is given the discretion to do whatever it pleases. She questioned how the Parole Board can go and take back sentences that have expired years before and no longer exist. She said the Board is doing whatever it wants to do and they should not be able to get away with it. Also, she said that in Washoe County if an inmate files an appeal, it is sent back until the inmate conforms to its practices and policies of Washoe District Court. She said that this is a writ that is pending, that it still not been filed and the time counts. It will eventually go to the Nevada Supreme Court and they don't care because they know that the inmate does not have access to a hole punch or having it bound as required by Washoe County. She said that by the time things get into the federal courts the time is running and all appeal ability could be lost and that is where the state becomes held accountable. She opined that it will happen in the future and the state will be held accountable because of the fact that some of the courts are holding, not filing what needs to be filed and each day counts.

There being no further 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