Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

April 16, 2008

The second meeting in 2008 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Wednesday, April 16, 2008, commencing at 1:42 p.m., in Room 4100 of the Legislative Building, 401 S. Carson Street, Carson City, Nevada with a simultaneous video conference to Room 4401 of the Grant Sawyer State Office Building, 555 E. Washington Avenue, Las Vegas, Nevada.

COMMISSION MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair (in Carson City)
Senator Mike McGinness, Vice Chair (in Carson City)
Senator Terry Care (in Las Vegas)
Senator Warren Hardy (in Las Vegas)
Senator Mike Schneider (in Las Vegas), alternate for Senator Valerie Wiener
Senator Dina Titus (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City)
Assemblywoman Barbara E. Buckley (in Las Vegas)
Assemblyman John C. Carpenter (in Carson City)
Assemblyman Pete Goicoechea (in Carson City)
Assemblyman Garn Mabey (in Las Vegas)
Assemblywoman Peggy Pierce (in Las Vegas), alternate for Assemblyman John Oceguera

COMMISSION MEMBERS EXCUSED:

Senator Valerie Wiener
Assemblyman John Oceguera

OTHER LEGISLATORS PRESENT IN LAS VEGAS:

Senator Maggie Carlton
Senator Bob Coffin
Senator John Lee
Assemblyman Mo Denis
Assemblyman Harvey J. Munford
Assemblyman David R. Parks

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Brenda J. Erdoes, Legislative Counsel
Gary Ghiggeri, Senate Fiscal Analyst
Mark W. Stevens, Assembly Fiscal Analyst
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Marilyn K. White, Assistant to Director

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

The meeting was called to order by Chair Townsend. Some items were taken out of agenda order but discussion is placed in agenda order for purposes of continuity.

Item I--Approval of Minutes of Meeting Held January 30, 2008--Senator Randolph J. Townsend, Chair

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE MINUTES OF THE MEETING OF JANUARY 30, 2008. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED.

Item II--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 chair of the Audit Subcommittee indicating that the subcommittee met on February 29, 2008, and heard five audits that were presented. Summaries of the audits were included in the meeting packet.

The first report was of the Office of the Governor. Auditors found that although the office substantially complied with state laws, regulations, policies and procedures there were some existing internal controls that could be strengthened. Three recommendations were made to strengthen the controls and all were accepted by the office.

The next audit report was of the Office of the Military. It was found that although the office improved its administrative operations following the last audit in 2001, there were still some additional improvements that could be made. An example was that some payroll and personnel activities do not comply with laws and regulations, some textbook

and tuition reimbursements to guard members were processed incorrectly. Additionally, contracting requirements were not always followed. Eight recommendations were made in the audit and all were accepted by the Office of the Military.

The third audit report was of the Nevada Highway Patrol (NHP). It was found that the NHP generally complied with laws, regulations, policies and procedures. However, it was noted that there were some problems related to personnel requirements, accountability over property and equipment and credit cards. Relating to credit cards, the NHP did not have a complete, accurate record of fuel and other credit cards issued to employees and did not always review fuel invoices for questionable charges prior to payment. The agency's fuel costs were nearly $1.9 million in fiscal year 2007. The audit contained eight recommendations and the NHP accepted seven and only partially accepted one and that related to the item about reviewing fuel invoices for questionable charges prior to payment. The NHP did have some concern that the large volume of transactions, particularly with the Department of Transportation fueling depots, would create problems. Since that time, auditors have worked with the chief and he believes they could do a better job of tracking the fuel expenses so they have now fully accepted the recommendation.

The next audit was of the Division of Parole and Probation and it was found that the division needs to improve its case management practices for high risk offenders. Specifically under the principle findings, auditors found that the division did not perform timely assessments for high risk offenders. Almost one out of every three offenders auditors examined did not have a timely initial assessment and three out of four did not have timely reassessments which are required to be done every six months in the event there are any changes. When the assessments are not done in a timely manner, there is an increased risk the offender is not properly supervised. It was also found that the division did not perform monthly personal contacts for high risk offenders. Auditors examined contacts with 100 high risk offenders over a period of about six months and of 1,200 required contacts, about 31 percent of those were not performed. The division also did not comply with its employer notification requirement for certain sex offenders. The division's policy requires an employer notification within two working days of the officers knowledge of employment for all sex offenders assessed at tier level two or three with three being the highest. Of the 27 sex offenders who met the employer notification requirement, the employer was not warned for 21 of those. Auditors also found that the division's offender tracking information system did not have accurate and complete information regarding the tier levels for sex offenders. A report was obtained that showed a total of 165 sex offenders convicted of felonies did not have a tier level in the system. It is important to know that tier level for notification purposes. The division did not regularly utilize its past due DNA report and an analysis by auditors of the report listing about 640 offenders found it was not reliable. Auditors looked at 30 offenders in the report and found 13 of them should not have been included on the report because they had had their DNA tested. As a result, the division did not know which offenders needed a DNA sample and they need to better utilize the report in the future. It was also found that there were some administrative weaknesses in the area of restitution,

accounts receivable and personnel. This was an audit where the Audit Subcommittee decided it did not want to wait and go through the entire audit follow-up process of 60 days and a subsequent six-month report and it has requested that the division report at the next meeting of the Audit Subcommittee which is to be held May 15, 2008, and report at that time on their progress on implementing the recommendations and correcting the deficiencies.

Continuing, Mr. Townsend said the next audit was of the Division of Health Care Financing and Policy, or Medicaid. It was found that the division had not implemented sufficient procedures to identify improper Medicaid payments that may have resulted from fraud, abuse or noncompliance with established billing procedures. Under the principle findings, auditors noted that the division did not adequately review claims that were paid as a percentage of the amount billed by providers as opposed to those billed at fixed rates. This method relies on the provider to bill the correct amount but there was no system or controls in place to ensure the billings were appropriate. This resulted in $16 million being paid to providers that should not have been paid. The majority of the overpayments occurred over a three-year period for a drug used for the treatment of end-stage renal disease that is provided by kidney dialysis clinics. Auditors also found that the division did not monitor or limit the manner and amount in which two unlisted drug codes were used – they were almost like a miscellaneous drug code. Auditors estimated that the division could have paid about $4.8 million more than necessary for these drugs due to the high utilization and payment methods. Another area that was reviewed in billings was the number of units billed and it was found that they were not always reasonable. Auditors found 16 claims for a drug used for the management of renal disease (called Epoetin Alpha) and there were monthly dosages billed ranging from 570 to over 3,300 units per recipient. Medicare literature states the maximum dosage for this drug over a month's time is 500 units. Auditors estimated the excess amounted to more than $930,000 being paid than should have. Errors were also found and one error was an improper rate for an inpatient medical hospital charge that had been entered into the claims payment system incorrectly. As a result, over 200 claims were paid at an improper rate resulting in nearly $1 million in overpayments to hospitals. The rate that should have been paid was $250 a day and it was paid at over $1,300 a day. Several other errors were found and another area that was reviewed and brought to the attention of the auditors by the division was that payments for medical services were inappropriately paid for newborns who should have been on managed care. Based upon reports generated, the payments amounted to about $4.4 million that should have been paid by managed care and instead were paid on a fee for service basis. Due to the issues on the audit and some of the information obtained, auditors met with staff from the Attorney General's Medicaid Fraud Control Unit, discussed the issues with them and provided information regarding the claims that had been paid as a percentage of providers billed charges in this manner. The unit is working on the matter.
Mr. Townsend said that at the February 29, 2008, meeting the division administrator testified that they had sought recovery of payments and had already received $4.6 million in cash and had another $5.6 million in repayment programs – a total over $10 million at that point. The administrator also indicated that staff was doing further

audits of kidney dialysis clinics and identified another $8 to $10 million in potential recoveries. He was confident that a significant portion of the claims incorrectly paid out was recoverable. Approximately one-half of the recovered amounts are federal funds and the other half will flow through to the General Fund.

Mr. Townsend said that the chair of the Audit Subcommittee recommends the Legislative Commission accept the five audit reports and he would be happy to answer any questions the members might have.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE REPORTS OF THE AUDIT SUBCOMMITTEE. MOTION SECONDED BY ASSEMBLYMAN CARPENTER.

Under discussion, Ms. Buckley requested a report from the Audit Subcommittee on the audits of the Division of Health Care Financing and Policy and the Division of Parole and Probation as they are so bad, particularly the Division of Parole and Probation. She said it is disheartening to read what a poor job is done in some of the supervision of the high risk offenders and she would like to receive a report back. The chair inquired if Ms. Buckley would like a report at the next meeting or a written report. She asked if Mr. Townsend would work with the Audit Subcommittee and give some appropriate follow-up when they go back in to look at them that would be sufficient and she would appreciate it. Chair Townsend asked Mr. Townsend to communicate by phone with Ms. Buckley and any members that have specific questions and try to obtain answers and follow up so that there could be additional dialogue at the next meeting. Mr. Townsend responded that there would be another meeting of the Audit Subcommittee on May 15th and he will have a report to the commission after that meeting.

THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED.

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 chair of the Audit Subcommittee which listed 10 six-month reports that were reviewed at the February 29, 2008, meeting. The 10 reports included 98 recommendations. In some cases, updated information was requested from the agencies regarding the implementation status and that information is included on the schedule following the letter from the chair. He noted that on page two of the Schedule 1 it indicates that as of February 29th, the 98 recommendations included 83 that were fully implemented, 14 that were partially implemented and one that had no action. The schedule also includes some information regarding the status of recommendations. As an example, he noted that the Board of Homeopathic Medical Examiners was unable to attend the meeting and they will be reviewed at the upcoming meeting on May 15th. In other cases, the agencies have provided a time frame on when they expect the

recommendations to be implemented. He said that the division will continue to monitor the status of the recommendations not yet fully implemented and agencies will be returning to future meetings of the Audit Subcommittee to provide reports on the progress being made. He said an example of a returning agency is the Division of Insurance which is shown on Schedule 2. It came back from a prior meeting and all recommendations are now fully implemented for that agency. Mr. Townsend said the Audit Subcommittee recommends the Legislative Commission accept the 10 six-month status reports and he would be happy to answer any questions.

Mr. Anderson said that he was concerned about the welfare and support services response and partial implementation which seemed to be lagging rather dramatically. He asked if Mr. Townsend thought they would be making any progress in that area given his prior presentation. Mr. Townsend responded that the Division of Welfare and Support Services attended the meeting. Of the five recommendations that are partially implemented, four of those relate to an automated case management system they are currently installing and that sometimes is the reason for some of the delay in implementing recommendations. The agency indicated at the meeting that they anticipated having the system "on board" by December 2008. The remaining recommendation related to conducting employee performance evaluations and that will, hopefully, be implemented sooner. The agency will return to the subcommittee meeting in December and he will have an update prior to the beginning of the legislative session. Mr. Anderson asked how many of the seven recommendations are a repeat from the previous audit, if any. Mr. Townsend replied that in this case he was not sure auditors reviewed the same issues as in the previous audit so he is not certain that any of them are repeat recommendations.

Mr. Anderson referred to the Department of Public Safety, Fire Marshal Division and asked on the seven recommendations that are partially implemented if any of them are repeated from earlier audits. Mr. Townsend responded that several of them were repeat recommendations relating to the identification of facilities that store hazardous materials. However, he referred to Schedule 1 which shows status as of February 29th. His office has been working with the agency and it did provide information that indicated it has fully implemented those as of February 29th. There were three remaining and they are fully implemented as of this date.

Mr. Carpenter inquired about the status of the Department of Agriculture on the audit that was performed on it. Mr. Townsend replied that the Department of Agriculture has been having trouble implementing the audit recommendations, however, he has spoken to the new director of the department the previous week and the agency will be attending the Audit Subcommittee meeting on May 15th. His office is looking forward to working with the new director to try and get the outstanding recommendations implemented. He will have a report to members at the next Legislative Commission meeting.

ASSEMBLYMAN CARPENTER MOVED TO ACCEPT THE SIX-MONTH STATUS REPORT FROM THE AUDIT SUBCOMMITTEE. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item III. C.

Item III--Progress Reports and Appointments:

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

Ms. Erdoes said she had five cases on which to brief the members this day. The first case is the Public Employees' Benefits Program (PEBP) vs. Las Vegas Metro. The case was commenced on June 7, 2006, by Las Vegas Metro seeking a declaratory judgement that it not be required to pay the subsidy for its retirees to join the PEBP if the retirees were covered by a collective bargaining health trust. Clark County ultimately joined the case as well. The District Court held in favor of Metro and Clark County and then the case was appealed to the Supreme Court on September 27th. The Legal Division filed an amicus brief on the side of the PEBP on October 30, 2007, and was granted leave by the court to file a reply brief which it did on December 3, 2007. Oral arguments on the case were held on January 24, 2008, and a written opinion was issued on March 20, 2008. The court held that the lower court has misinterpreted the subsidy requirement and improperly granted the relief and basically reversed the order of the District Court and held in favor of the PEBP.

The second case is MGM Mirage Steel Engineers vs. Nevada Insurance Guarantee Association. It is a case before the Supreme Court on appeal from an order granting a summary judgement for the plaintiff respondent Nevada Insurance Guarantee Association. It was in the Eighth Judicial District Court and the question in the case was whether MGM Mirage and the Steel Engineers, Inc. who are self-insured for the purposes of workers' compensation should be able to recover under the Nevada Insurance Guarantee Association fund for claims that were not paid by an insolvent insurer under the excess claims policy that they carried. Currently, the Legal Division has filed on behalf of the Legislature a motion for leave of the court to file a brief as amicus and a ruling on that motion is currently pending so it has not yet submitted a brief.

The third case is the Red Rock Canyon case – Gypsum Resources vs. State of Nevada and is the case where the Legislative Commission is a party to the state case but the state case is stayed pending the outcome of the federal case. In the federal case, a couple of weeks ago the defendant's motion for summary judgement and dismissal was denied so the Attorney General is headed into the discovery phase and the Legal Division has been working with them as a part of their discovery process. Ms. Erdoes said on that case it looks like it will be two or three years before the federal case is actually decided.

The fourth case is Carrigan vs. the Commission on Ethics and is a case where the division was asked to add an amicus brief that would defend the constitutionality of an ethics statute that was challenged in that case basically on the side of the Ethics Commission. The division has filed that brief and on February 25th after the court accepted it they set a hearing date for Monday, May 12th at 9 a.m. and they directed the division to participate in the oral argument which it will do.

The fifth case is the Sparks Nugget vs. the Department of Taxation and is the one that was filed in the Supreme Court challenging the comp and employee meals sales tax and use tax provisions. The Legal Division filed an amicus brief in support of the Attorney General's amicus brief asking for a rehearing in that case and argued the statutory interpretation, legislative and voter intent arguments in that case. The division is waiting to see if the court will accept the brief at this time.

Senator Care inquired what is the constitutional question in the case of Carrigan vs. the Commission on Ethics. Ms. Erdoes said that Michael Carrigan has alleged that NRS 281A.420A is unconstitutionally vague under the due process clause. She said it is a case where Mr. Carrigan voted on an issue in which his campaign manager of long standing testified and the Commission on Ethics found that he had violated the ethics code and he is now challenging that ethics decision on the basis that the statute was unconstitutionally vague.

Ms. Buckley said, "First of all, I really want to thank Brenda and all of our lawyers with the Legal Division for the excellent work they are doing on some of these briefs. Sometimes they are given a five-day turnaround time and they are producing briefs that, I think, surpass any of the work of the major law firms in the state. I just can't thank them enough for their hard work and to let them know how proud we are of the work product that they're producing."

Further, Ms. Buckley said she wished to ask a question about the MGM Steel case and what position was planned to be taken by the Legislature should the court grant leave to file the brief. She said she initially looked into the issue and it seemed to her to be a close question of law. Ms. Erdoes said the division was directed by the Chair of the Legislative Commission to file an amicus brief on the side of the Nevada Insurance Guarantee Association and the argument they are looking into making will be related to the standing issue and it looks like it is possible that the parties below did not argue the issue that the claim actually came up before workers' compensation claims were in 1999 covered by the guarantee association and that is the argument staff is currently planning on making. Ms. Buckley said she would like to be provided with any information on the matter because she found the legal arguments interesting.

Chair Townsend said to Ms. Erdoes, "I think we all echo the Speaker's comments regarding the work that you and your staff put in. It's been remarkable. It used to be that we only had one or two of these a year, maybe that gives away my age, but now it's a regular part of your practice and we certainly appreciate it."

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

Mr. Malkiewich called attention to material in the meeting packet containing a copy of a memorandum that he sent to members approximately two weeks ago concerning the appointment to the Commission on Ethics, a matter that was held from the previous meeting. He recalled that applications from three of the four nominees had been received within the last 24 hours before the meeting and so it was asked that the item be deferred until this meeting. Material in the meeting packet includes a document showing exactly what are the vacancies. He said that the commission appoints four members and no more than four of the eight total members can be of the same political party or from the same county. As a result, the current vacancy is to replace Caren Jenkins who resigned. The person cannot be a Republican because there are already four Republicans on the commission and cannot be a resident of Clark County because there are already four residents of Clark County. Otherwise, it is required to have two former public officers and one former attorney and those are covered by the other members, therefore, there are no other requirements for filling the vacancy. He noted that the names include the four people who applied before the last meeting: Janette Bloom, Tosh Dawson, Paul Lamboley and Maureen Mullarkey. Since that time, two other people – ElizaBeth Beyer and Colleen Hemingway – have applied for the position. He has also been informed in a letter from the Executive Director of the Commission on Ethics that Jim Kosinski, the former chair of the commission, will be going off July 1st. Mr. Kosinski is one of the two former public officers. Mr. Malkiewich explained that the members could either fill the one vacancy and since there will be another meeting in June take up Mr. Kosinski's vacancy at that time or both of the positions could be filled at this time. If members determine to fill both vacancies, it will be necessary to appoint a former public officer to fill Mr. Kosinski's position and the only applicant who meets that qualification right now is Janette Bloom, the former Clerk of the Supreme Court. He said that at this point, for the one vacancy, any of the six applicants could be appointed to it and if the commission desires, the prospective vacancy for Mr. Kosinski could be filled.

Chair Townsend asked the members since there is only one person in the list of applicants that would meet the qualifications for Mr. Kosinski's position that would come up at the next meeting, should that position be held so that additional applications could be received. Senator Titus said that she thought it would be fair to wait since a notice has not been put out about the prospective vacancy and there might be others who might be interested in applying. She thought if the members made the decision today it would be unfair to other interested persons. The chair said that is a point well taken and the commission would hold off on the appointment to fill Mr. Kosinski's position. At the request of the chair, Mr. Malkiewich reiterated the names of the current applicants. Additionally, he said that he would change the advertisement currently on the legislative website to emphasize the need for a former public officer and solicit additional input to get more former public officers to apply. He noted that of the current applicants, Colleen Hemingway is a current state employee and the Commission on

Ethics did discuss that issue and although they did not find anything that was a disqualification, they did have some concern about having a current state employee serving on the Commission on Ethics. Other than that, all six of the applicants are qualified and there is just the one proviso concerning Ms. Hemingway.

Senator Care recalled that at the last meeting, members postponed any action because they had just recently received two or three additional letters of interest and that appears to have happened again. He said that he is personally not inclined to put this matter off one more time. At the last meeting, he thought it was an appointment of some significance and wanted to interview the four names that had been provided and he did that with the exception of Tosh Dawson because the number provided was no longer in service. He said that he had discussions with Ms. Bloom, Mr. Lamboley and Ms. Mullarkey.

The chair asked Senator Care if, based on his discussions, he had a recommendation. Senator Care responded that all three of them are very impressive, competent people. He indicated that Ms. Bloom, former Clerk of the Supreme Court, was intimately familiar with Chapter 281A which governs the ethics commission but he thought members may not receive another application from a former public official and was not tempted to submit her name for the current vacancy. Therefore, he said for him it takes the recommendation down to Mr. Lamboley and Ms. Mullarkey, both very impressive people. He discussed with them the two issues he raised previously: in the absence of a statutory definition of a gift, how would they handle that and any discussion about the use of the word willful, such as a willful violation of a statute under Chapter 281A. He said that his recommendation would be Mr. Lamboley and he would hope that if Mr. Lamboley is appointed that Ms. Mullarkey applies again.

> SENATOR CARE MOVED TO APPOINT MR. PAUL LAMBOLEY TO FILL THE VACANCY ON THE COMMISSION ON ETHICS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON.

Prior to the vote, Senator Hardy asked the Legislative Counsel if, since he has a question before the Commission on Ethics, he should vote on this item. Ms. Erdoes suggested that Senator Hardy abstain.

> THE CHAIR CALLED FOR A VOTE AND THE MOTION CARRIED WITH SENATORS MCGINNESS AND TOWNSEND VOTING NAY AND SENATOR HARDY ABSTAINING.

Chair Townsend thanked Senator Care for taking the time to ask questions that have been debated during Government Affairs committee meetings and addressing those with the applicants.

The chair proceeded to agenda Item IV. A.

C. Appointment of members to Commission on Minority Affairs (NRS 233J.020)--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material in the meeting packet for this item containing a suggested slate of candidates and some alternate candidates submitted by the Ombudsman for Minority Consumer Affairs Leticia Bravo and a handout (copy attached as Exhibit C) of name of an additional person that has been submitted. The names of the nine individuals recommended were: Hui-Lim Ang, Elena Brady, Lonnie L. Feemster, Lucy Flores, Danny A. Gonzales, Victoria Napoles-Laza, Napoleon A. McCallum, Xavier Rivas and Phil Swain. He said that Assemblyman Mo Denis is present to testify in the matter because he was the sponsor of the bill that not only created Ms. Bravo's position but repealed the "sunset" on the Commission on Minority Affairs and put that entity under the Department of Business and Industry.

Mr. Denis indicated that he has been working with Ms. Bravo in attempting to assemble names of different members to suggest for the Commission on Minority Affairs. He noted that it has not been functioning for a while. He has reviewed all the suggested names and they appear to represent the demographics in Nevada and he is hopeful approval can be given this day so that the commission can move forward as there is some work that needs to be done. He said that he is available for questions.

Chair Townsend asked Mr. Denis if he has spoken to all of the people. Mr. Denis responded that all of the people have been contacted and they had to apply for the process. The chair inquired if Mr. Denis, as sponsor of the legislation, is encouraging them to be more active than some of the individuals who have been serving in the past. Mr. Denis responded in the affirmative noting that they have tried to make it clear that they have work to do and they need to accomplish that work, even though they do not have a lot of money to do so. He said those individuals proposed are all willing to move forward, meet and get some work done.

> ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE SLATE OF NINE NAMES RECOMMENDED. MOTION SECONDED BY ASSEMBLYWOMAN BUCKLEY AND CARRIED UNANIMOUSLY.

In making the motion, Mr. Anderson expressed his appreciation for the hard work of Mr. Denis and ensuring that a Native American was included in the recommended group and taking into consideration the rural areas of the state.

The chair directed attention to agenda Item III. A.

D. Presentations and Recommendations for Legislative or Regulatory Changes with Respect to Hepatitis C Cluster in Las Vegas and Related Public Health Issues:

The discussion of this agenda item took place at the conclusion of agenda Item IV. E. and is placed here for purposes of continuity.

Chair Townsend stated that there are a number of committees in place and they are the appropriate place for some of the dialogue and hearings. Members respect the work of those committees and will support the work of those committees. He said the purpose of the abbreviated testimony today is to determine of there are things that the Legislative Commission needs to do to get ready for the next session from two perspectives: the statutory perspective and the regulatory perspective. It is the purpose of this agenda item this day. He addressed the presenters and said, "This is not to be an advertisement for your agency or your group, you are not to be defensive because we are not here to put you in that position. We are here to see if there are things going forward that we can do together to focus on one thing and then I will have a closing comment about that and that one thing is patients. We love all of you but this is about the patients, okay, so that's where our focus needs to be and it needs to be on the public at large. If you have recommendations, if you have things that are important to you whatever they are that could improve this process and I will be asking Mr. Willden later on about something that happened yesterday or the day before in Tahoe because that is the freshest of the issues."

1. Department of Health and Human Services (DHHS)

A copy of a letter dated March 3, 2008, from the chair to Mr. Willden was contained in the meeting packet.

Michael J. Willden, Director, DHHS, appeared before members in Carson City. He referred to three documents he would be discussing. A packet containing a letter dated April 3, 2008, outlining what the entities are working on and some of the future things they are continuing to work on and nine attachments (copy attached as Exhibit D) and a handout containing a "bubble chart" and two attached pages on ambulatory surgical centers (copy attached as Exhibit E). The handout contains a summary of immediate actions that were taken and some future things that are being worked on by those identified in the "bubble chart." He also identified an additional item provided concerning recruitment efforts (copy attached as Exhibit F) to bring staff on line to assist with surveying efforts. He noted the recruitment subject has been discussed at other committee meetings and probably does not need to be discussed this day.

Mr. Willden introduced Ihsan Azzam, M.D., M.P.H., State Epidemiologist, Health Division, DHHS; Richard Whitley, Administrator, Health Division, DHHS; Dr. Mary Guinan who was recently reappointed as the State Health Officer and is Dean at the School of Public Health at the University of Nevada, Las Vegas; and Pam Graham, Acting Chief, Bureau of Licensure and Certification, Health Division, DHHS, all of whom were present

in Carson City. He noted that Dr. Jade Miller of the State Board of Health was present earlier in the day but had to leave for a prior commitment.

Mr. Willden said he wished to discuss the "bubble chart" as he thought it was an important document. The issue being faced is not really a single agency issue and there are multiple agencies involved. As the chair indicated, what the system is about and cares about is the patient in the "middle bubble." Responding to the chair, Mr. Willden directed attention to the packet and page two of his letter dated April 3rd, under BLC Actions. He said in his opinion several things have needed to change and they have changed things in the Bureau of Licensure and Certification (BLC). Timeliness of investigations was an issue, timeliness of communications to the various boards and he noted that is one issue that segue-ways into notification of licensing boards. They interface with four other boards and there is not the easiest process of communicating between those boards when problems are found. A handout entitled State Board Complaint Procedures was provided and is attached as Exhibit G. He said the BLC takes an anonymous complaint and will act on it and the other extreme is a written specified document which has to be notarized for a complaint. He thought the first recommendation is that the notification process needs to be streamlined, particularly professional to professional, one board to another and one of the recommendations is a fast-track, easy to make a complaint to any one of the boards. He said those discussions are ongoing and he did not think much argument would be heard about that recommendation. He referred to Attachment 6, Emergency Regulations, and noted that some emergency regulations have been issued regarding the Ambulatory Surgery Centers and he guessed they would eventually make their way to the commission. Two regulations primarily dealt with ensuring that appropriate infection control procedures were in place and also following the manufacturer's instructions for the dispensing of the medicine – single dose, multiple dose vial issue. Those regulations were adopted by the Governor, are "out there" and will wind their way through the process. He said two more regulations are being reviewed but final decisions have not been made on them, segue-waying to the accreditation process. He referred to the bottom of page 3 of 5 of his letter, in the Facility Accreditation Process, and said going around the "bubble chart" there are a number of organizations that contribute to patient care and patient safety. Currently, accreditation is voluntary. Out of the 50 Ambulatory Surgical Centers (ASCs), 32 are accredited, 18 are not accredited and 10 are in "deemed status." His personal recommendation which is being vetted through discussions with the accrediting organizations is that Nevada may want to require accreditation of all ASCs. He said the centers which had the more egregious problems, some were accredited and some were not so he cannot say that everyone that was accredited was clean and those that were not had problems. He thought it needed to be reviewed whether it be by statute, regulation or policy and procedure. The relationship needs to be reviewed and some states have Memorandums of Understanding in place with the accrediting organizations and more freely provide information back and forth and that did not exist in Nevada and it is being worked on. Another regulation that is being considered is being even more firm in law or statute prohibiting the use of multi-dose vials and that does have a health care cost.

Chair Townsend asked if most of the proposals have been vetted with the Legislative Committee on Health Care. Mr. Willden responded, "In preliminary stages, but there is another meeting with the Health Care Committee on the 21st and all of those are set up for vetting at the Health Care Committee." The chair said that would be important. Mr. Willden said that accrediting organizations, associations, the Center for Disease Control and DHHS will all be attending. Chair Townsend asked that Mr. Willden advise them that he has briefed the Legislative Commission and it will assist wherever it can.

Continuing, Mr. Willden said that there are a couple issues under BLC that need to be reviewed and he was unsure whether it requires a law or regulation change but he is concerned about the organization of BLC. Currently, it is a combined organization that does both state licensing and the certification process under contract with "the feds" and they have spent a lot of time on the federal regulations, the rules and the certification process and maybe not as much on the licensing as it would have liked. He said this organization, Health and Human Services and BLC often comes under quite a bit of pressure to get people certified so that they can bill Medicaid and Medicare. It may be appropriate to separate the two functions with a physical firewall that one staff work on licensing and one staff work on the certification process and not having the competing needs of both. That issue is being worked through and it will either come forward through a budgetary change in 2009 or if it is thought to be appropriate ahead of time, bring it to IFC or whatever it needs to do. He mentioned medical records and noted that the agency has very broad powers currently in the regulations and statutes to close down facilities and it has shifted from just issuing statements of deficiencies and issuing penalties to people but in the last couple of situations, an eye clinic in Las Vegas and one at Lake Tahoe the previous day, the department has moved to actually doing a "cease and desist" order that they cannot practice anymore. Why it is shifting that way and one thing different than totally closing the facility is that in Clark County there are thousands of people without access to their medical records and trying to work through the access to medical records issue. One of the issues the agency is working on is stopping the unsafe procedures but letting the facilities stay open to have access to medical consult and medical records. Those are significant areas that need to be worked on. Mr. Willden said that he thought the fines and penalties are "out of whack" including the $1,000 a day fine and it needs to be worked on in regulation. He said he did not know what the right one was but there are a lot of smart people "out there" that they are talking with. He indicated that the largest penalty that has been charged was about $3,800 in the years of penalizing. Chair Townsend suggested that could be done through emergency regulations.

The chair acknowledged that several members of the commission serve on other committees and will have heard the items presented and he did not want it to be repetitive but he said that the testimony has been important for him because of all the licensing matters. He commented that going into detail with the Legislative Committee on Health Care is absolutely crucial so they can figure out what can be done.

Mr. Willden called attention to the two-page spreadsheet attached to the "bubble chart" (previously identified as Exhibit E) and said it was a "thumbnail glance" of some of the immediate actions the agency has taken and some of the future things on which it is working and is being used as a guide on seven major areas.

Senator Carlton said she is speaking as a member of the public and will be attending the April 21st meeting of the Legislative Committee on Health Care and she will be interested in hearing from Mr. Willden on the licensing and regulating issues. She said that under the Bureau of Licensing and Certification (BLC) there is a fee for licensing and fees for certifications and she wondered if there is a separate fee for inspections, how that works out and what are those. She asked if the agency is "up against their limit" now, if the fees are in regulation or are in statute and what does it need from legislators to deal with the fees. She observed that there will be a cost to the agency for undertaking the issues and she understands that somebody will need to pay for that. Mr. Willden said that he will address the finance part of the question and will leave the specific fees to Ms. Graham. He said that currently money is not the problem in the BLC and it has about a $5.5 million reserve. The reserve has been growing for the last four or five years so the fee structure for the immediate need does not require adjusting but the fee structure for ongoing may need adjusting. For the current biennium, he did not believe additional fees are needed. Once the agency could fill the 14 or 15 vacancies, it would start rapidly depleting the reserve and why it has a reserve is that it is very difficult to recruit the health surveyors particularly the nursing option in the health surveyors. Recruiting and retaining staff is the immediate need but as that is done it may need to address the fee structure.

Ms. Graham explained that the state licensure fees are based on actual time and efforts. The agency determines the cost per facility type and the amount of work that the facilities require over time and the licensure fees are approved by the Board of Health based on those time and efforts. While she could not provide the exact fees at this time she said there is an initial licensure fee for each facility type and then those facilities also have each year a re-licensure fee based on their time and efforts. As an example, for a hospital there would also be a per-bed charge that is attached to the fee. When the Center for Medicare/Medicaid Services (CMS) certification is done, the agency is paid by CMS to perform the function for it and that is part of their time and efforts and there is not an additional charge to the facility for the CMS certification. She reiterated Mr. Willden's comments about fees being correct but not being able to fill vacancies. As a result, for the some of the facilities in which the agency was unable to perform the CMS certification timely, the facilities then went to one of the national accrediting bodies, were accredited and then applied for "deemed status" at that time. There is an additional charge to the facility by the national accrediting organizations for the accreditation and "deemed status" process.

Senator Carlton said that she has heard over and over again that the agency just cannot seem to hire the staff. She asked if it is because of the pay scale that is being offered that that they cannot be recruited from other places or there just are not enough certified

people to do the work. Mr. Willden asked members to look at the health facilities surveyors recruitment plan (previously identified as Exhibit F) when they had a chance but he said, "I think I can say it in a nutshell. There are two, I think, things that stick out here. If you look at this plan, I think it is on pages 13 and 14, nationally our health surveyor nurse option salaries don't look bad. We are ranked fifth in the nation of what we pay but everything is local – what have you got to do to compete with hospitals and others. If you look on pages 13 and 14 in our recruiting plan, you'll see that health facility surveyors are paid about 10 percent less, nurse option surveyors, 10 percent less than the psych nurses in our mental health system, 10 percent less than the correctional nurses and 10 percent less than our community health nurses. That has been a problem that we've been trying to address for six legislative sessions. We have a 10 percent difference built in and it primarily relates to the system has valued direct care nursing more than administrative nursing. I'll say again I think it is wrong. To me, I would say a law enforcement officer if you go to internal affairs, you wouldn't want internal affairs being paid less than the cops on the street. This is something we've been trying to correct that needs to be corrected, in my opinion, and it will probably help with the recruitment process. It's probably been heard for three, four, five sessions. We've made some progress but we don't seem to value both administrative nursing and direct care nursing the same and so I think that when we do that that will help."

Chair Townsend thanked Mr. Willden for his forthrightness and noted that he has heard him testify a number of times in various committees and appreciates that he told the members what they needed to hear whether they liked it or not and he appreciates it very much. He told Mr. Willden that members will do everything they can to help with the challenges that have been identified.

The chair said that it is his understanding that there were some problems between agencies with regard to the facility and situation at Lake Tahoe in terms of getting information and sharing information and once the information was shared was it acted on. Mr. Willden said that his agency is conducting a second round of investigations and inspections and federal surveyors are in and have teamed up with his surveyors and found a second round problem in the Lake Tahoe clinic. The issue about communication in his opinion goes to what he said earlier about the four or five boards and the need to have instantaneous communication. In the materials, it shows that they have put all of their surveyors under work performance standards that says they must immediately communicate to a licensing board, a business licensing entity and the local health district whenever they find an issue. His concern is that he does not want to have to be told to put it in writing, get it notarized and mail it in. He thinks the verbal report is the report that starts action and that is the process he wants to work towards. He is willing to follow up in writing but there should be an immediate reporting capability.

2. Nevada State Board of Medical Examiners--Drennan A. Clark, J.D., Executive Director/Special Counsel

Mr. Clark appeared before members in Carson City and introduced Heather Higgins, one of the chief investigators who is working on the Endoscopy Center of Southern Nevada investigation case. He referred to a report requested by Chair Townsend which was submitted on March 31, 2008, for the Board. The referenced report was included in the meeting packet. He said two small statutory changes were identified that would assist the Board by putting it in the queue for availability of information that other agencies are developing when they are undertaking investigations. It would be a small addition to NRS 629.069 and another small addition to NRS 441A.220. Those are the only changes he could think of at this time but he would say in support of Mr. Willden's testimony, when they got word of the problems at the south Tahoe clinic, they notified the Medical Board immediately and they opened up a potential investigation as a result of that information so the new plan is working.

Chair Townsend noted Mr. Clark's use of the wording "potential investigation" and said, "I think the question there is when you say potential investigation if this is a health issue somewhat like the one in southern Nevada, there shouldn't be a potential anything. You should be the swat team in there saying 'what the heck is going on.' You may find out nothing's going on." Mr. Clark responded, "That's right. That's what we're doing. We're looking at the one M.D. that's involved up there." Chair Townsend said, "Well, don't look into looking into it. Okay?" Mr. Clark replied, "I guess I didn't say it right." Chair Townsend remarked, "Well, you may not have but I don't want there to be any misunderstanding because I've been doing this for a long time, in fact, longer than you have, you've been doing other things, you were running National Guards for a long time. Let me just read you something, and I don't know if Senator Carlton is there but this is important for all the boards that are up there. This is NRS 622 in case you haven't read it lately: Duty to enforce provisions of title for protection and benefit of the public. That's the title of the statute. It doesn't say for the licensee and I know because we put it in there. In regulating an occupation or profession pursuant to this title, each regulatory body shall carry out and enforce the provisions of this title for the protection of the public and benefit of same. It can't be any clearer – 630 Legislative declaration. I'm not going to read it to you – it's there. I don't think there's any misunderstanding and I'm telling you not just as chairman of the Legislative Commission but as a guy who's been there longer than anybody except for one and we all know who he is. I've been doing this, 27 years doing this, focusing on these licensing boards. I now have a young protégée in southern Nevada who has picked up the mantle and is doing a heck of a job. This can never, ever, ever have the licensee ahead of the public, ever. And if you want your lawyers, and I know you are one General, if the lawyers are going to get a way of protecting the public you are going to have a legislative crash that you will not believe. I just am alerting you to that. So, don't get hung up on the language – get hung up on the patient. The thing that irritated me about southern Nevada was one thing while everybody pointed a finger, while everybody ran around trying to get political advantage, nobody bothered to say round up all the people we're concerned with and

get them tested. Nobody said that. There's plenty of money, people volunteered money but we spent all of our time covering our backside. That's ridiculous. You know it. Everybody in the audience, the entire public knows it. It's about fixing the problem. That's what this Legislature does and I think the Speaker identified that on another issue very clearly. So, we can put in the law. We can do everything we can so there really aren't any excuses, all we're asking you for is come forward, tell us what you need for the changes but I can assure you that there's going to be misunderstanding between agencies and pointing fingers and we don't have the authority and if you want to hide behind the law when you're talking about the public, you're in front of the wrong group. And, the worst thing that can happen to you is a legislator who can't run again because that means we doubly mean it. So, please, I ask you as persons that I respect, you have got to change your mentality about this. It's about the people that your licensees serve – not about your licensees. So when you come forward, please bring your changes based on these things that have been in the statute for a long time. That's crucial and you've got to learn to work together. That's enough of my statement. You've already sent a letter, General, and I appreciate that and you were very specific and I'm going to have and I don't know if that got to Senator Carlton but will you make sure that she gets copied because I want her to be in the loop on this so that she knows what the proposals are because they come to her subcommittee." Mr. Clark responded that he would.

3. State Board of Osteopathic Medicine--Larry J. Tarno, D.O., Executive Director.

A copy of a letter to the State Board of Osteopathic Medicine is included in the meeting packet. No one appeared before the members to represent the State Board of Osteopathic Medicine.

4. State Board of Nursing--Debra Scott, M.S.N., R.N., A.P.N., Executive Director.

Ms. Scott appeared before members in Carson City. She said that the chair's initial letter was answered (copies of letters are contained in the meeting packet) and a handout was provided (copy attached as Exhibit H) containing her testimony and recommendations. Ms. Scott said she would encapsulate what is on the materials provided and noted that the Board has 30-plus open complaints at this point. It immediately had six Certified Registered Nurse Anesthetists voluntarily surrender their licenses so they are out of practice. They have done many, many interviews already and are working very closely with the BLC, the Board of Medical Examiners, the Attorney General's Office, Las Vegas City Attorney, Medicaid Fraud and a lot of information is going back and forth. They do have a statute [NRS 632.310] in place and it is shown on the last page of the handout and she has highlighted the text which reads "The Executive Director may, upon receipt of information from a governmental agency, conduct an investigation to determine whether the information is sufficient to require an investigation for referral to the Board for its consideration." She said that they are

loosely interpreting that at this point to say that they can immediately begin investigating upon a phone call from any other governmental agency. The chair suggested the use of the word "must" instead of "may." Ms. Scott said that they do need to change a couple of words and they have obtained an opinion from the Attorney General's Office that said they better be very careful about how they did that. She said the change in the future would be "must" and that would be very helpful for them.

The chair inquired about the text highlighted in red "upon the verified complaint in writing" and Ms. Scott explained that is what they have in place for individuals who make complaints. It is something that would be helpful to get changed but that does not get in the way of the investigation, it is subsection 2. that gets in the way of investigations. Ms. Scott said on investigations at this point, she thought they could have gotten documents early on had there not been some lag time so she thought that would really help. Ms. Scott introduced Fred Olmstead, their general counsel.

The chair expressed his appreciation and said he respected what they are trying to do. The various committees that have jurisdiction over the subject are subcommittees of the Legislative Commission and are the ones that will take the lead. He knows they are doing a great job because they are spending hours upon hours upon hours on the matter. He requested those present to provide the same kind of cooperation to them as they have to the commission.

At the conclusion of the above discussion, the chair proceeded to agenda Item VI. Public Comment.

Item IV--Legislative Commission Policy:

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

Chair Townsend reviewed the list of regulations with the members asking them to identify the regulations which they would like held for further discussion. The regulations remaining for approval are identified in the motion. The chair announced that Regulation R128-07 from the Labor Commissioner had been withdrawn. Statements of disclosure made by various members on certain regulations follow. Senator Hardy referenced Regulations R128-07, R146-07, R147-07, R148-07, R188-07, R189-07 and R193-07 which relate to matters involving the construction industry and disclosed that he is employed as the President of the Associated Builders and Contractors of Las Vegas. He said in accordance with the Woodbury opinion he believed he needs to disclose but does not need to abstain as the items do not impact his members or sector of the industry any more than any other sector of the industry. Also, on Regulation R187-07 from the Commission on Professional Standards in Education, he disclosed that he has a brother who is a teacher who the regulation may apply to and out of an abundance of caution he wishes to disclose that for the record but would not be abstaining. Senator Townsend referenced Regulation R165-07 from the Real Estate Commission and disclosed that his wife is a licensee of the Real Estate Division but the

regulation would not affect her any differently than any other licensee. Mr. Carpenter referenced Regulation R165-07 from the Real Estate Commission and disclosed that he held a broker's license with the state. Senator Care referenced Regulation R135-07 and disclosed for the record that he represents a charter school that last week sued the State Board of Education and while he does not believe the regulation goes to the heart of that action, as an abundance of caution he would abstain from voting on that regulation.

SENATOR MCGINNESS MOVED APPROVAL OF REGULATIONS R008-07, R070-07, R088-07, R093-07, R135-07, R142-07, R146-07, R147-07, R148-07, R165-07, R171-07, R173-07, R174-07, R175-07, R181-07, R190-07, R191-07, R196-07, R197-07, R201-07, R204-07, R206-07, R004-08, R006-08, AND R015-08. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED WITH SENATOR CARE ABSTAINING ON R135-07.

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

On Regulation R145-07 from the Commission for Common-Interest Communities and Condominium Hotels, Chair Townsend disclosed for the record that his wife is a Certified Property Manager with all the appropriate licensing requirements under the Division of Real Estate, however, she does not do high-rise hotels or most of the other items.

Senator Care asked with the regulation is it leaving pursuit or occupation or avocation of Reserve Study Specialist to a very few people. He said he has no idea how many people could become or are a Reserve Study Specialist and wondered if a common-interest community would have no choice but to rely on or select from one, two or three possibilities. He said if that is true, and he did not know it to be true, what that might say about the charging of fees if there was no competition or very little competition.

Ann McDermott, Administrator, Real Estate Division of the Department of Business and Industry appeared before the members in Las Vegas. She said that at last count the division had about 22 people who would potentially be qualified to prepare reserve studies. Senator Care indicate that response answered his question.

Mr. Carpenter said that with all the qualifications the people would need he is sure that the cost is going to be prohibitive for the small associations and, therefore, he would be voting against it.

Chair Townsend said he wished to recognize two members of the Senate Committee on Commerce and Labor who are present. He said that Senator Schneider has put in tireless hours over multiple years to do everything possible to ensure that the very complex and burgeoning area of law has been dealt with and he wished to commend him not only personally but professionally for all he has done. He noted that these are very tough decisions to make and he has put in a remarkable amount of time and developed a unique expertise. Chair Townsend also recognized Senator Carlton who deals with boards and commissions as a Senate Committee on Commerce and Labor subcommittee

chair and puts in tireless amounts of hours on things that are not easy to do and on which they do not make a lot of friends but it has to be done and he admires what they have done.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R145-06. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED WITH ASSEMBLYMAN CARPENTER VOTING NAY.

2. Regulations submitted pursuant to NRS 233B.067.

On Regulation R003-07 from the Peace Officers' Standards and Training Commission (POST), Senator Care said that he re-read the regulation and his question has been answered.

Senator Carlton, present in the audience in Las Vegas, said that she had a question about process on this particular regulation. She said that in the interest of full disclosure, her husband is a POST-certified peace officer within the State of Nevada. She said she had made a phone call to the contact person in an attempt to "get a handle" on this matter. She indicated that it is wanting the officers to return and be fully trained before they resumed their duties but it was left a bit ambiguous as to how the different municipalities or entities would enforce it. She guessed it is more of a procedure such as an officer comes back either from a family leave or possibly serving overseas to get their job and they have to get the training. She asked how do they get the training if they are not back on the job. She said, "It seems to be a bit of a round robin, so I would like to understand how that process will work for these officers. And, there was nothing in here but if there is an appeal process also. You may have had an officer leave, serve overseas for two years, come back and may not be able to perform some of these functions at 100 percent. It may be 65 below the 70. How are we going to deal with any possible appeals?"

Chair Townsend noted that Senator Carlton's questions would be under public comment for the record. They are placed here for purposes of continuity.

Tim Bunting, Deputy Director for POST, appeared before members in Carson City. He said he would answer the appeal question first, noting there is no way to appeal. He said, "The purpose of this refresher training is just that. A peace officer who's had extended leave of 12 months or more but less than 60 has to come back and go through a show proficiency training. It's nothing different than what they would do for their 24 hour continuing education that they are required to do. By regulation, if you read it, it's paragraphs b through e which is the officer would have to show proficiency in his firearm, his impact weapon and a less than lethal weapon; show proficiency in defensive tactics; demonstrate minimum level of proficiency in defensive tactics; carotid restraint if the agency authorizes it; and review the use of force. It's the same thing they have to do every year. It's no different. It's just when they've been away, we want them to

have that before they go back on the street. They can be hired, they can be getting paid, they just aren't enforcing the law as a peace officer until they go through that training."

Senator Carlton noted the answer leads to one clarification. She said currently if the officer does not comply with the ongoing training or qualifications, they have time to "re-up" and get remedial help or do whatever in order to be able to keep their certification current. She said if she understands correctly, when the officers return they would have the opportunity to do this. She asked if they still get the same chances as far as the second try at qualifications, the second try at some of the physical things. She said is someone is coming back from a workers' compensation injury, medical leave injury or any number of different things, it may take a while to get up to "full speed." She wondered if those same opportunities would be afforded to the officers coming back. Scott Johnston, Bureau Chief of the Professional Standards Bureau for POST, appeared before members in Carson City. He said, "If I understand your question correctly, the question is when they're returning back to duty after being on an extended absence for more than a year or less than five years, if they were having difficulties in meeting this standard would there be provisions for them to receive as much training as necessary so that they could be proficient and then return to their duties. Was that a correct interpretation?" Senator Carlton responded, "Yes, sir." Mr. Johnston continued, "The requirements when they return back to duty it is up to the agency to provide that training to the proficiency level that that agency has set. If the officer doesn't meet their, for example, firearms qualification the first time, then the agency continues with the training program until they have demonstrated the proficiencies that they need to return to their active duties."

Further, Senator Carlton asked, "How are we going to deal with returning veterans as far as this goes because some of them may have been gone possibly two and one-half years?" Mr. Johnston replied, "It doesn't matter if you're coming back from active duty in the military or if you were on a long-term extended absence due to an illness or if you had left law enforcement and then subsequently returned back, the provisions are the same. The agency sets the minimum proficiencies for each of these categories and they provide the training to the officers and, again, it doesn't matter the reason for their absence, the mere fact that they're coming back, we want them to be able to show that they are proficient in all areas that the agency requires. I may add one thing. The agencies may not require all of these areas. If the agency doesn't require their officers to use firearms such as some of the category 2 agencies, then they don't have to meet that requirement. Only if the agency requires the officer to do some of these things as outlined in section 4 or if the duties of the officer requires them to perform those duties, those are the critical functions that they must demonstrate proficiency in before they return to duty." Senator Carlton thanked the representatives for their explanations and noted that she has some concerns about some of the ambiguities and she would not want to read about a situation where a returning veteran came back, tried to get their job back and found out through one of these standards that they would not be allowed

to return to what they were doing before they left. Her concern is about the openness and allowing agencies to set different policies when POST is a state recognized qualification.

The chair indicated that Senator Carlton's point is well made and he knows that individuals such as the representatives will take into account the returning men and women who are in uniform so if there are challenges to what they are trying to accomplish, he hopes the service they provided will be taken into account.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R003-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

Ms. Buckley commented that perhaps staff could check into this but she thought that the Soldier and Sailors Relief Act would "kick in" against the state with regard to returning veterans and if any veteran is turned away, she is certain that she or Senator Care could find them a pro bono lawyer to represent them. Chair Townsend asked that legal staff provide the appropriate federal regulations or statutes to Senator Carlton so that she could review them.

On Regulation R067-07 from the Commissioner of Insurance, Senator Hardy said that Senator Lee was present and had a question about this regulation and another one. However, he had to leave but his wife is present to address the question. He thought this might be addressed under public comment but is included herein for purposes of continuity.

Marilyn Lee appeared before the members in Las Vegas stating that she wished to address the regulation because she feels the language in it is still not quite strong enough. Due to her personal experience with a home warranty company not responding, she incurred extra damages to her property. They did not respond in a timely manner and then the residence became uninhabitable. Due to the language in the regulation, it still seems very much in the hands of the home warranty company and that the homeowner has very little input. She was not allowed to change the contractor when she felt that the contractor was not responding or returning telephone calls. When she spoke to the home warranty company, they told her not to change and it would take even longer to fix. It was a residence in the mountains where the snow came and she was advising them that a cold front was coming through. It still took over a month before the problem was finally resolved with daily phone calls to the contractor and home warranty company. The matter should not have taken so long. As a result, she feels that the language as it is written now still belongs to the benefit of the home warranty companies and it does not address urgency in the situation. It does not require that the home warranty company become responsible for ensuing damage that comes from their delay in getting the matter resolves. It does not advise the homeowner if they have to move out what their rights or remedies might be. It does not allow the homeowner to request a change of contractor and get satisfaction in that manner. She believed that the notice of intent to act upon the regulation specifically states that the

purpose and need for the amendment changes in the language of the regulation are due to the warranty companies not responding as they already should. They are simply told to commence and not to complete a project within a certain number of days and without language requiring some urgency on their part, it still "has no teeth" as far as she can see. She would like it to address that and also to address the fact that they need to have the responsibility for ensuing additional damages that result from their inaction. At this time, her only recourse is to take them to court and she did not think a homeowner should have to do that.

Elena Ahrens, Assistant Chief, Property and Casualty Section, Division of Insurance, Department of Business and Industry, appeared before members in Carson City. She said she would first like to address the difference between a service contract and a homeowner's policy. She said that a homeowner's policy is a contract of insurance and a service contract is not considered insurance in the State of Nevada. She said there was a fine line they were dealing with when working on the proposed regulation and had the consumer's interest. They received some startling complaints that they were trying to address, specifically what Mrs. Lee was referring to was one of them. She feels they have addressed that as far as they could in the proposed regulation. They have done what they can under Chapter 690C and have made a service contract provider basically "step up to the plate" by addressing an emergency situation within a specified time. If they cannot address it in that specified time they are in constant contact with that contract holder whereas before there was a loophole in the law. What they were doing was showing up on their doorstep, taking a look at the problem and that was basically it. Now they are required to stay in contact with the contract holder and they have to give them written or verifiable means as to how the repair is going, estimated time to complete the repairs, the parts if that is a problem, the status of those parts and they also have to have a commitment to get back with the contract holder within a 24-hour period if the contract holder contacts them. She said they feel with a verifiable means and an auditable trail that the service contract providers will "step up to the plate" and will come through with what they need to accomplish in an emergency situation. They felt that they have addressed the concerns. She said that when it comes to ensuing damages, that is more in a homeowner's policy and it crosses the line of going into insurance which a service contract is not.

Chair Townsend addressed Mrs. Lee and said he thought one of the things that would be important is to work through this process because she felt strongly enough to appear because she has a certain situation she faces. He was sure she was not alone and what would be a concern is that if the commission does not accept this regulation it means that there will be no regulation against which individuals can be held accountable. He said that while it is not as strong as she would like, in the meantime he thought she could work with a number of members of committees that have jurisdiction over the subject and get back to the division and perhaps tighten it up as things move along. He thought working with the division is "the way to go." He thought everyone should be cognizant that if it is not accepted, they would have no regulation and if they have no

regulation, then the division has zero control over those selling those kinds of products. He asked Ms. Ahrens if that was a fair statement. Ms. Ahrens responded that is a very fair statement and thanked the chair.

Senator Care referred to section 1, subsection 1 c on the second page saying there is no definition of defects but maybe it is contained in statute. He wondered if there was any attempt to promulgate a definition of defect. In looking at the notes, he said apparently there was an interesting discussion about using the word eminent as opposed to immediately and he wondered if Ms. Ahrens could tell him the distinction between immediately and eminent and if that tilts in favor of the person that is inhabiting the dwelling. Ms. Ahrens said, "I believe that eminent was just a stronger term and immediately was a compromise that industry was satisfied with and the division did not want eminent in there." Senator Care asked about the word defect and indicating that it was on the bottom of page 1 where the language of uninhabitable was stricken and substituted was unfit for a person to live in because of defects on the top of page two. Ms. Ahrens asked for clarification on the question and asked if it was why uninhabitable repairs was stricken. Senator Care said his question was in the use of the word defects if there was any discussion about coming up with a definition of what constitutes a defect. Ms. Ahrens replied that was not a part of the conversation in the hearings or the workshop.

Senator Hardy said that in light of the chair's comments, he thought that was the way to proceed and he wanted to offer his help to Mrs. Lee to pursue this further as things move forward because he thought it would be a mistake not to adopt the regulation.

> SENATOR HARDY MOVED APPROVAL OF REGULATION R067-07. MOTION SECONDED BY SENATOR MCGINNESS.

Under discussion, Ms. Buckley asked Ms. Ahrens if the division was getting a rash of complaints. Ms. Ahrens responded, "We were definitely receiving complaints about the timely repair of service contracts. Basically, it would be air conditioning or heating related and that is what prompted us to go forward with this regulation."

Further, Ms. Buckley commented that one of the things that could have been added or perhaps it could still be done through a policy memorandum, would be to require that the companies report to the division if they are not able to make these repairs within three days so they could "stay on top of this" to ensure many citizens are not stuck without services for which they paid. Ms. Ahrens replied that the division could issue a bulletin, which is not law, in the meantime and the division would be happy to work with Mrs. Lee and anybody else willing to come forward. She said the division noticed this and had asked for participation and is willing to work with anybody that will come forward and work with them because that is what they are there to do. Ms. Buckley said she thought that was "great" and would be supporting the motion but would ask that they look for the policy bulletin to continue this and work with Mrs. Lee. She said that she thinks that people do not use the Consumer Protection Division of the Attorney

General's Office because there is no interest group for homeowners that are about to be hurt by the failure of their home warranty company. There are plenty of industry groups but there are not consumer groups and they are the ones that need to be heard from. Ms. Ahrens replied that the division would do that.

Chair Townsend asked that when the bulletin is sent out, it should be sent to Legislative Counsel and they could distribute it to all of the commission members.

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

On Regulation R081-07 from the Commissioner of Insurance, Ms. Buckley asked the division to provide a little background on the regulation. John Marshall, Management Analyst with the Division of Insurance, appeared before the members in Carson City. He said the regulation is making permanent a temporary regulation, LCB File No. T015-06. The original temporary regulation was utilized in order to be able to satisfy certain legal requirements for an initial public offering of common stock of a converted mutual company in connection with implementation of a plan of conversion approved by the Commissioner. The regulation was implemented in order to be able to facilitate the conversion of Employer's Insurance Company of Nevada from a mutual structure to a stock structure and subsequently offer an initial public offering on the New York Stock Exchange. Without the definitions, certain opinions offered under an ABA accord with the New York Stock Exchange would not be considered a "clean" opinion. Instead, they would be considered a "reasoned" opinion which may have given the New York Stock Exchange reason to decline the registration of the securities that were offered in that initial public offering by Employer's Insurance Company of Nevada.

Ms. Buckley asked, "Shouldn't these terms be defined in statute and not by regulation?" Ms. Erdoes responded that she thought either way would work. The usual way the Legislature does it is if there are some things that may need to change frequently or may need the agency's input then that could be in regulation. It has the same force and effect of law but it could certainly in the NRS as well.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF REGULATION R081-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

On Regulation R114-07 from the Secretary of State, Senator Hardy said that he wanted to make sure that there was a document associated with that from LCB to the Office of the Secretary of State objecting to a portion of that regulation. He asked about the status and if it has been addressed in the new regulation as it did not appear to him that it had and he wanted to give the Legislative Counsel an opportunity. Nicole J. Lamboley, Chief Deputy, Office of the Secretary of State, appeared before members in Carson City. She stated that the provision was discussed with LCB staff and they agreed somewhat to disagree based on the testimony that the Secretary of State's Office provided to committee members when questioned regarding the nature of allowing people who lived in the rural or smaller communities of the state and being able

to provide them ample opportunity to seek a training course. They agreed to address it in regulation which would allow a conditional appointment by a person who was seeking a notary appointment. Some of the notary publics are required under their job description to have a notary appointment and the office did not want to restrict them. She said that to date, they have trained over 1,400 new notaries and 32 of those received conditional appointments. Today, they have a training class in Elko and all but two of those conditional appointments are attending the class. The condition was just if they couldn't get there because of weather or a class was not there within the month that they sought their appointment.

Senator Hardy said he thought there was some wisdom in what the Secretary of State's Office did and he would defer to some of the more senior members with regard to any kind of precedent for approving a regulation over the concerns or objections of the Legislative Counsel.

Mr. Carpenter said his question has been partially answered and asked how often does the office intend to hold classes in the rural areas of the state. Ms. Lamboley said they try to hold monthly training classes throughout the state and have held to date one every month in Las Vegas, actually three different classes, to which any notary or person seeking a notary appointment can attend. They have held several in the Carson City area, in Yerington, and several in Washoe County. They try to be diverse and get to either Winnemucca, Ely or Elko on a rotating basis every three to four months. It just depends on the need. The Elko class that is being held this day has 126 people signed up for it.

Mr. Carpenter inquired about the requirements and asked if people have to attend the classes every year. Ms. Lamboley explained new notaries, anyone who is seeking a first time appointment, needs to attend a four-hour training class. It also applies to any notary who in their current appointment seeking renewal had a violation or any notary who let their renewal lapse greater than one year. It really is trying to be aimed at those individuals who are new notaries or those who committed an act that is considered a violation. Further, Mr. Carpenter asked if someone who has been a notary for a number of years without a violation would have to attend the class. Ms. Lamboley replied, under the law they are not required to although they do see a number of notaries who do voluntarily attend.

Ms. Erdoes said that her office was just trying to point out that there is an absolute requirement in the statute for the training before the notary be given the designation of notary. She thought working out the conditional approval solved the problem.

SENATOR HARDY MOVED APPROVAL OF REGULATION R114-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R145-07 from the Commission on Economic Development, Ms. Buckley mentioned that during this time of "bleeding" state and local revenue, she is going to be taking a closer look at all abatement regulations to be clear exactly what is being done, to see if they are expanding the scope of tax abatements and the fiscal impact. She asked if a representative of the Commission on Economic Development could talk about the purpose of the regulation and whether they anticipate being able to expand their incentives under the regulation.

Jerry Sandstrum, Acting Executive Director of the Commission on Economic Development appeared before members in Carson City and indicated that with him was Tim Rubald, the previous Executive Director, who was the person that oversaw the workshops and preparation of the regulation and could better respond to questions. Mr. Rubald said that the regulation does not expand the situation that currently exists. It has to do with NRS 704.223 with regard to electrical situations and simply provides some assistance to the Public Utilities Commission of Nevada (PUCN) as stated in the statute. He said this is considerably different than what was originally submitted, which was a change in NAC 231.040 that was simply a "clean up." He did not see where it expands it in any way, shape or form and it simply provides some guidance to what are the requirements in addition to the PUCN requirements that are in the statute and in their regulations. He said they would return later with another effort to accomplish what had been intended which was to "clean up" NAC 231.040.

Ms. Buckley asked, "And the business referred to in NRS 704.223 is what?" Mr. Rubald responded that his understanding in reading the statute is that it is a business that would basically want to enure some benefits from receiving electricity from other than utility sources perhaps. He said that he is not sure he is reading the statute correctly as he is not an attorney but it has to do with any business that would choose to use some of the opportunities addressed in Chapter 704 that allows them to purchase electricity from other than standard providers. Ms. Buckley said what concerned her was that the definition is that the business being considered is the type of business that is consistent with the current goals of the commission. She thought it was awfully vague. Instead of the regulation clearly setting forth who's eligible and who's not, it depends on what you adopt. She guessed it is still constrained by the statute in the underlying mission but she just wanted to get on the record that this is not going to let anyone else in who is not already in or expand in this time of dismal economic outlook. Mr. Rubald indicated that if one was able to look at the existing and the original proposal of NAC 231.040, which he presumed will be published immediately previous to this regulation should it be approved, that does stipulate what are the goals of the commission concerning industrial development diversification. The original proposal did not weaken those, it was just a "housekeeping" type of situation that cleaned up some of the redundancy in there that appears in other portions of the NAC and NRS as well.

Senator McGinness said that in reading further on page two it says the business has obtained a statement from the governing body, the affected county school district and city, if applicable, acknowledging the possibility that business obtaining the benefits. He

asked if one of the agencies – school district, county or city – could oppose the approval of such benefits to a company if they felt it was going to adversely affect them. Mr. Rubald responded, "Absolutely, and that has taken place occasionally in the past." He indicated that it was a policy of the commission. He believed it was in the 2005 Session that it was put into NRS that they request those letters. This regulation would actually codify it a bit stronger that they obtain them for this particular purpose. They want their opinion and he has never seen the commission not go with a local government opinion.

Chair Townsend said he thought it would be important for the members who are active in a number of other committees or commissions and donate a lot of their time and – it is very hard to ask part-time legislators to turn this job into a full time one – but it would behoove all members, when they can, to attend at least one of the meetings of the various agencies who come before the commission because it helps to understand the process. He noted that he has been before various commissions and he thought it was helpful to understand how the administrative procedures act works in real time and see some of the workshops.

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R145-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R166-07 from the Nevada Tax Commission, Dennis Belacourt, Deputy Attorney General appeared before members in Carson City.

Les Barta, resident of Incline Village, appeared before members in Carson City and noted that he has been involved in the process of making regulations for several years. He said the problem with the regulation stems from the new concept that was introduced the previous year. He said they had a perfectly good set of regulations but there were some improvements that were needed. When the Tax Commission introduced the new mass appraisal concept, it created some conflicts with law and created a problem in that almost nobody understands it. He thought it is the statutory scheme to keep the assessment regulations in matters concerning the assessment of property and taxation as simple and clear as possible. He said the problem with the mass appraisal approach, at least the way it is codified now, is that it is so complex and so arcane that it contains like multiple regression analysis, stratification and other items that one has to have the substantial education of an appraiser to be able to understand. He said this type of concept is brand new and it essentially replaces the historic concept of the sales comparison approach which has worked well for many years and is something most taxpayers can reasonably understand. The new concept assigns value rather than appraises value and uses a form of statistical analysis that he doubts anyone can understand. He said what he is essentially saying is the mass appraisal scheme set up in regulations does not work to provide taxpayers a simple, understandable way to determine how their property was appraised. He said there are some specific conflicts with statute such as NRS 361.227 subsection 5 requires that when you are using sales

comparison approach you have to use sales based on actual selling prices in market transactions. The mass appraisal system uses what is literally defined as a hypothetical value which is not an actual selling price in a market transaction so there is a statutory conflict. Additionally, Mr. Barta said that there are problems with the regulations in that in the State of Nevada vs. Bax case there was a standard that was listed in that case which defined what has to be done in order to have uniform constitutional regulations. What it said was that any methods or standards that were used by assessors had to be "expressly adopted in regulations." He said that basically means that any methods or standards that are not adopted are unconstitutional. He said there are a number of methods that are being used in connection with the mass appraisal approach that are not codified – it is just a framework, it is wide open to interpretation. The regulations have to go back and they have to make sure that all the assessors statewide are using the same standards and the same methods because that is the requirement that the Supreme Court set forth in its decision. He said it could be simpler for assessors to use this, but this system as it stands today falls far short of satisfying the constitutional standard. Not only that but there are additional items of value that have no standards written into regulations – there are items of improvement value such as site improvements, excavation, grading, paving, land use consultation fees – these could be significant cost items and there are no standards in the regulations as to how to value them. He stated, "What I am telling you is that there is a body of regulations that is currently in the administrative code that was passed in 2004. Inasmuch as that may need some additional clarification and improvement, it is there and it can be used. Before this commission puts this set of regulations, which is unconstitutional as it stands today, into the administrative code it needs to go back, it needs to be redone, built from the ground up. I mean there isn't even a definition for land. Just another example, how can you pass regulations on how to assess land when you don't even know what land is. Some people put improvements, some assessors appraise land as a site with certain improvements in it and other assessors may appraise land as undeveloped property. All of these things need to be done. You have to know what you're assessing before you try to attempt regulations on how to assess it. I would strongly recommend and urge the commission to send these regulations back and tell the Tax Commission to make sure that when they're putting something as significant, a significant transformation such as this into regulations that they do it right. Thank you."

Chair Townsend thanked Mr. Barta noting that he was very articulate on the issues and he appreciated that.

Terry Rubald, Chief of the Division of Assessment Standards, Department of Taxation, appeared before the commission in Carson City and said that Mr. DiCianno asked her to convey his regrets that he was unable to attend the meeting today as he is addressing the Assessors Association Conference.

Chair Townsend asked Ms. Rubald if the regulations were a result of something out of the Department of Taxation or generated by the assessors. Ms. Rubald responded that the original genesis came from the special study that the department was requested to

do with regard to the Incline Village study. After the study was presented, the Tax Commission became aware that it may need additional regulations and this was the first draft. There were four workshops on the regulations and as Mr. Barta had mentioned the Bax decision did say that regulations need to expressly adopt. There was concern that the long standing work practices of the county assessors with regard to mass appraisal should be referenced in the regulations. The mass appraisal techniques used by the county assessors in order to use the methodology of the sales comparison method has been in place and used by the county assessors. That was verified by the department through a recent survey and the department audits them every year in ratio studies. They know the techniques fulfill the requirements of the sales comparison method.

Suellen Fulstone of the Village League appeared before members in Carson City. She said she believed there were many constitutional deficiencies in the regulations as drafted, some of which were mentioned by Mr. Barta. She said her statement today is a more practical one. She said that the Tax Commission has appointed a Blue Ribbon Commission to study this issue which primarily involves the situation at Incline Village where there is a scarcity of vacant land sales on which to base a comparable sales analysis. Because the Blue Ribbon Commission is meeting, active and studying the issue and because these particular regulations have been presented as nothing more than a clarification of existing regulations, she disagrees with that. She thought they make substantial, significant and unconstitutional changes but at the same time it is not necessary for them to be adopted at this time. She thought the better practice would be, rather than to have the set of regulations that was adopted in 1982 when the tax shift was passed, the set of regulations that were adopted in 2004 after this issue first arose, this set of regulations and then yet another set of regulations, to simply let the Blue Ribbon Commission complete its work as it is addressing these issues including the definition of land. She said she is not on that commission but that is what she understands it is doing along with other issues particular to Incline Village and the assessment of residential real property there. Her recommendation would be to defer these regulations until the commission has completed its work and whatever needs to be done can be done in a single revision or addition to the regulations.

Senator Care indicated that he did not know Mr. Barta but he read his letter and thought all members received it. [No copy of the mentioned letter was provided for use as an exhibit.] He said that he has a number of questions. First, was there any discussion in promulgating the draft about whether assessed values would go up or down if the methods were used by the county assessors. He recalled that caps were imposed in the 2005 Session. He also wondered if there are other jurisdictions outside Nevada that employ these methods. He commented that he had been in the Legislature since 1999 and he always hears that part of the confusion is that there are 17 different county assessors and that on occasion, historically, there would be as many as 17 different applications of existing law. Another question he has is in section 8, it says a county assessor shall apply the sales comparison approach using a mass appraisal technique. He did not know if a county assessor must use this method or if the county assessor

chooses to do it then this is how it is to be applied. He wondered if the regulation would have more of an impact on the folks in Incline Village as opposed to anybody else throughout the state.

Chair Townsend said that Senator Care has identified some significant issues that representatives are welcome to address, however, he suggested the following be done. He noted he sits on the Blue Ribbon Task Force on the issue as does Assemblyman James Settelmeyer; Mr. Barta; Josh Wilson, the assessor from Washoe County; the assessor from Douglas County; and the assessor from Clark County. There are also a number of other members from the Tax Commission, various groups and homeowners. He said until he opened his meeting packet, he had no idea this regulation was coming. He said that was a bit of a surprise since he sits on the task force and their last meeting was just four or five days ago. He said it makes it unfortunate for him since they are trying to balance a lot of interests here and to have a regulation come before the commission while the task force is doing its work is a bit untimely. He thought perhaps it would be best that the regulation be held for the next Legislative Commission meeting which will be in June and, more importantly, the next Blue Ribbon Task Force meeting where they can actually talk about the regulation and its potential effects. He said he did not want to turn this into an Incline Village, Washoe County or Douglas County issue because it is not. This is a regulation for the entire state and they have to be very careful. He said that Mr. Schofield has been a remarkable asset in the debate because he represents 70 percent of the homes and all the additional property in Clark County. He said he has not heard from him on the regulation nor from the other assessors on the task force or Mr. DiCianno. He said he was not exactly sure this regulation has the "steam" necessary to vault us into the next round, perhaps it is time to "slow this down." Chair Townsend said, "I will certainly allow you the opportunity to address Senator Care's questions because they are on point and they are important but I have a concern that we're going down two different tracks and at some point that train may split in half."

Ms. Rubald said one of the questions was whether the methods are employed elsewhere, do others use these methods, and the answer to that is an emphatic "Yes." The mass appraisal concept is not new to the United States, in fact, most other jurisdictions use mass appraisal. She said what mass appraisal really is is the ability to use the data from a number of sales instead of just three sales. The assessors use all of their sales and use the data therefrom to get even more accuracy than from the fee appraisal approach. However, these regulations do permit both ways so that is certainly available. On the question of whether there would be 17 different applications, the answer is "No" and is why these regulations are being proposed to this commission because we are actually reflecting only two ways – we use the base lot method and the comparable property method. Each of them are just ways of organizing the data so that the best answer can be derived. On the question of whether section 8 is a "must use," she thought she already answered that – the reference is really that if the mass appraisal method is used, then the assessor must use it in this manner but it does not preclude the assessor from using the single property appraisal method.

Senator Care thanked Ms. Rubald for the answers and said the only other question he had was if there was any discussion in putting the regulations together whether they would have an actual practical impact on the current assessed values given what was done in the 2005 Session with the caps. He asked could assessed values go up or come down significantly. Ms. Rubald said her belief is no, because these tools are already being used to establish value. This is simply a recognition of what is already being used. For instance, the comparative unit method, the vast majority of the rurals use this method; the regression analysis that is provided for, she is told that Clark County uses that when they have to defend their values at the county and state boards. She reiterated that these things are already in place and she does not believe that there would be a serious increase in value.

Chair Townsend said that if members did not mind, the regulation would be held as long as there is another committee working on it until there is opportunity to get additional background. He would like some assessors present to "bless" the regulations and explain what was done and why it was done as well as the head of the Department of Taxation. While there was one assessor present in the audience, the chair did not wish to "put him on the spot."

SENATOR MCGINNESS MOVED TO DEFER REGULATION R166-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R168-07 from the Commission on Economic Development, Ms. Buckley asked if the regulation was to attract a grocery store in west Las Vegas and what the background was on the regulation. Terry Sandstrum, Acting Director of the Commission on Economic Development appeared before the members in Carson City. He responded that the west side is exactly the area that the regulation covers. It was a bill that was sponsored by Senator Steven Horsford and the regulations were written to meet the needs of the bill. Ms. Buckley asked if it was narrowly drawn and what were the boundaries. She is aware that there is a lot of development around old west Las Vegas and wondered if it would apply to those grocery stores. Mr. Sandstrum replied that the boundaries are described in the regulation as the Southern Nevada Enterprise Zone and it is north of Charleston, south of Cheyenne, east of Rancho and west of Interstate 15. Ms. Buckley said that she wanted to ensure that it does not include areas that are not in need of the abatements that are in the regulation but it sounds like it is describing just the west Las Vegas area. She asked if Mr. Sandstrum was comfortable that it only includes areas that are economically distressed. Mr. Sandstrum responded in the affirmative.

Senator Titus said that while her question was not related to this regulation she wanted to ask what happened to the funding that was put in for economic development in rural Nevada special projects that resulted from 2005 legislation that took so long to complete the regulations. She asked if that funding has all been used or is there still some remaining and what is the status. Mr. Sandstrum said that it was interesting the senator asked that question because it is being reported on at the Commission on Economic

Development meeting currently in progress. He said there were a total of 11 projects that were approved in eight counties, the largest being a grant of $436,000 and the smallest being a grant for $10,000 with grants all the way in between. The money has all been committed but they required that the applicants submit invoices for their expenses as they go along and so the money has not all been expended. Senator Titus asked, "That's not in jeopardy of getting cut is it?" Mr. Sandstrum replied that he did not have control over that but he did not think so. Senator Titus said that she would not want to cut that because it sounds like it has turned out to be quite a good program. Mr. Sandstrum responded that they feel very good about it. Senator Titus said that she did too since it was her legislation and it sounds like it has been quite successful and she is glad to hear it.

Senator Schneider said that he has not spoken to Senator Horsford about it but he wondered if anyone has taken a look at it and if the "count" is there for a grocery store. He knows that grocery stores and developers look at the number of rooftops before they put in a grocery store. He said he has noticed a lot of vacant land when he has driven through the west side and not many rooftops. He wondered if a grocery store would even come in as they need several thousand rooftops before they even move in.
Tim Rubald of the Commission on Economic Development responded that there has been one inquiry at this point in time. The enabling legislation for this regulation was actually passed twice, once in 2005 and once in 2007. Because regulations were being written for Senator Titus's bill, they did not get the regulations written for this through the start of the 2007 Session. It is a situation where rooftops are an issue and any type of demographic information particularly economic demographic information is critical to those types of businesses. There have been grocery stores in that area that have left and this is an effort to try to recruit that back into that particular region.

ASSEMBLYMAN ANDERSON MOVED TO APPROVE REGULATION R168-07. MOTION SECONDED BY SENATOR TOWNSEND AND CARRIED UNANIMOUSLY.

On Regulation R172-07 from the State Board of Health, Mr. Anderson indicated he spoke to a representative from the agency. He said his question is a frequent one he gets from constituents relative to transitional housing for offenders. He asked how the agency goes about making sure that the eight beds are only eight beds and that the local zoning ordinances and other issues are being followed through on. Jennifer Dunaway representing the Bureau of Licensure and Certification, State Board of Health appeared before members in Carson City. Ms. Dunaway explained that during the initial licensure process they review to ensure that the facilities have zoning approval and they would accept any complaints from visits of Parole and Probation if they had concerns that there were more than eight beds in a licensed facility. It would be investigated as a complaint. Additionally, there is language in the administrative code that says the administrator of the facility does not admit more residents than for which they are licensed.
Mr. Anderson asked about the proximity of one facility to another and if it is based on

local ordinance. Ms. Dunaway responded that it was based on local zoning requirements. Mr. Anderson thanked Ms. Dunaway for her testimony and noted that he wanted to get it on the record.

Ms. Buckley inquired where the number eight came from. She said her worry is that in a single family neighborhood having eight unrelated people–prisoners–seems a lot to her. Ms. Dunaway responded that Senate Bill 354 added a subsection that states if a facility was originally zoned as a single family residence, they would be limited to only eight beds. The regulation was promulgated based on that legislation passed in the 2007 Session.

Senator Titus asked for clarification on what kind of offenders they were speaking of and could they be eight sex offenders in a neighborhood. She commented on the problem of neighborhoods seeming to go "downhill" when the group homes locate in an area and attempts to put distance requirements in place. Ms. Dunaway said while she was unsure whether it was included in S.B. 354, she thought there was a limitation on the number of sex offenders that may be placed in a licensed transitional facility and she thought it was limited to three but she would have to return to the commission with the specific citation.

Senator Titus said that her problem with the situation is that follow up is not done. The licenses are issued and representatives do not return to see if health standards are being met, if the people are reporting in and making sure that there are only eight and not 15 because the person who owns a half-way house can make more money. She said, "I've been round and round with your department about some of these facilities in the past and not gotten much cooperation, so it makes me reluctant to vote for something like this when I don't see any indication that things are going to get any better. Maybe you could give me some assurance that things have changed or that you've got enough staff to inspect these places once you've given them a license or that the people who are running these are being checked to be sure that they don't have criminal records themselves. Could you give me some of that assurance that you're able to do that? Do you have the staff, the time, the money to be able to do that or are you just going to issue the license and then let the neighborhood deal with it?" Ms. Dunaway responded, "We would take on complaint investigations after the facility was initially licensed. We do have a memorandum of understanding with the Department of Parole and Probation. We work closely with that agency to investigate complaints if they identify concerns, which is a new agreement that we've entered into that I believe will address some of your concerns. Yes, we have added staff. We did in one of the last IFC meetings in '07 add one staff member to investigate new facilities. Currently, we have 10 pending applications and two are getting very close; we're just waiting for clearance from the State Fire Marshal's office and we will be doing our initial inspection. And, we have included them in our survey frequency and we will go out and do periodic investigations every three to six years. Right now, it's every six years." Senator Titus interjected, "Every six years? That gives me no comfort whatsoever and I know that Parole and Probation is down 30, 40, 50 people so they're not going to give you much help and I

know that once somebody complains and you all look into it, it seems to take forever for you to pull a license. What you usually do is blame it on the county, the county says 'no, it's the state', the state says 'no, it's the county or the local government, they give the business license.' It's a disaster and it's our neighborhood, it's where these people are. I mean I know we have to have some kind of optional housing, maybe, to transition people out but that housing should be much better overseen than it is. I can't support this cause I've just seen too many bad things happen with these programs in the past."

Senator McGinness asked if the regulation would limit the number of beds over what the current standards are? Ms. Dunaway responded that the particular regulation before the members today is just in response to S.B. 354 which limits a single family residence to just eight beds. Further, Senator McGinness asked, "So, if we don't pass this regulation, how many beds could you have conceivably. Could you have 12?" Ms. Dunaway said that it may be in conflict with the language in S.B. 354 that was adopted. She said it would not be limited to eight in regulation. Senator McGinness reiterated, "So, if we don't pass this, there could actually be more people in a home than eight?" Ms. Dunaway responded, "Sir, I believe the issue is that there was concern that there would be too many released offenders in a home that was built as a single family residence."

Ms. Buckley said that she would like to move that the commission either defer or reject the regulation. She said she is reading the statute that was referred to and she believed that the 10-bed discussion is about residential homes for group, which are individuals with disabilities and not offenders that are released and, obviously, there are different standards that are required for assisted living, residential homes for group, transitional housing, sex offender housing – they are as different as night and day. You need to have different standards for them and she believed that the more expansive definitions that were utilized in the bill were for individuals with disabilities, not released offender programs. She said that she would like the opportunity for legal counsel to meet with the division, the attorney general's office to review the bill because while she believes the eight-bed limit was the absolute maximum, that was for all types of housing and that doesn't necessarily mean that it is appropriate for all of the folks that are being regulated by the bill – the elderly, the disabled, transitional housing. She thought the folks needed to "go back to the drawing board and rework it."

Chair Townsend indicated that deferring the regulation would give the division an opportunity to work with Legislative Counsel regarding the intent of the law, Ms. Buckley and someone else who was active in that area on the legislative point of view. They could get back with the agency as soon as possible to clear up the matter and have the regulation drafted in a manner that could meet the concerns of the legislators.

ASSEMBLYWOMAN BUCKLEY MOVED TO DEFER REGULATION R172-07 TO CLARIFY THE INTENT AND MEET THE CONCERNS OF THE LEGISLATORS. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R187-07 from the Commission on Professional Standards in Education, Senator Care said that his question does not deal with the change in the years but the inclusion of the addition of special teaching license in music and art, aside from the special education, and he wondered what was the rationale for that. Keith W. Rheault, Ed.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City. He explained that the regulation is directly related to the No Child Left Behind Act and when the act was first passed in 2002, states were given until June 30, 2006, to have 100 percent of their teachers highly qualified. When the first regulations came out, they specified clearly what one needed to be highly qualified in for elementary and secondary but they did not discuss the other areas which include the arts, foreign language and special education. They since came out with that and what this regulation will allow him to do is to continue to issue provisional licenses through 2010. Technically, they were supposed to end in 2008 but not one state has met the No Child Left Behind requirements and rather than put all 50 states out of compliance they had them do a compliance agreement with the federal government to work towards meeting it. He said this is included just to make sure it is clear that he can continue to issue provisional licenses that were not specifically addressed in the first regulation in music, art and special education.

Mr. Carpenter inquired how many teachers in the state have provisional licenses. Dr. Rheault said that the problem is they hire 2,000 to 3,000 new teachers a year and 75 percent of them come from outside the state. One of the requirements for licensing is that they have a test for the teachers and he estimated that one-third of all the new hires are given a provisional license because they are short some little piece, whether it is the required state test or a course. Under the No Child Left Behind Act, the only way one can be highly qualified as an elementary teacher is to take the test that the state requires. When teachers arrive, rather than turn them away he would prefer to give them a provisional license than have a district hire a long-term substitute because they cannot find a highly qualified teacher. He said that is 1,000 a year and currently about 86 percent of all their teachers are highly qualified. If the state makes it to 90 percent, he thought it would be the "max" he sees only because they have 2,000 new teachers coming in every year, mainly from out of state.

Further, Mr. Carpenter commented that in reality if Dr. Rheault has to comply with the regulations, there would be a greater shortage of teachers than now exists. Dr. Rheault responded that it would exacerbate the problem because special education is the biggest problem. He said if he could not issue a provisional license for special education, secondary math, science, ELL, they would really be in "tough shape." He said that he has argued with the U.S. Department of Education and he thinks they still would like to

have seen this and they put it in the compliance agreement. He indicated he told them until they could give him a list that he can give to the districts of highly qualified teachers, don't tell them they cannot issue a provisional license.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R187-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R188-07 from the State Public Works Board (SPWB), Senator Care inquired about the contract prices in the draft regulation noting that in some cases they go up five-fold and in some cases it is less than that. He wondered how long the existing figures had been in place and asked about the thought process in proposing the figures that are in the draft regulation. Chris Chimits, Deputy Manager, SPWB appeared before members in Carson City. He said that the figures had been in place for over 10 years and they were raised to be more in keeping with current construction prices.

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R188-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R189-07 from the State Public Works Board (SPWB), Mr. Anderson said that he had spoken to the agency several times. He is concerned about a common complaint that legislators hear relative to not the primary contractors but the subcontractors and whether they are licensed in the state and how they maintain that the contractors are not bringing others onto state-bid jobs that are other than licensed contractors and how that is monitored. He said he has had numerous complaints about the situation. He asked for clarification for the record. Chris Chimits, Deputy Manager, SPWB appeared in Carson City. He said that the SPWB collects a complete list of all subcontractors that are included in the general contractor's bid. It is done within 48 hours after the Notice to Proceed letter has gone out. On the list, it is required to list the name of the subcontractor, the nature of his business and the license number. Staff verifies that the license is valid and current for the work he is contemplating to do. Staff also verifies the list of subcontractors against the SPWB pre-qualification standards, which has to be done before an Owner-Contractor Agreement is issued. It is also required that any subcontractor provide bonding if his work is over $50,000 or one percent of the overall cost of the job. That is also a process that lends to validating the people who are listed on the subcontractor list.

Susan Stewart, Deputy Attorney General, Construction Law Counsel for the SPWB, appeared in Carson City and stated that they also have, by statute, the authority to remove a subcontractor in the event he does not meet those qualifications.
Mr. Anderson referred to page 5 subsection 3 of the regulation noting the reference that says violations may not pertain to discrimination in employment with respect to performing primary contractor and asked if that background and history is checked in addition. Mr. Chimits responded that during the pre-qualification process the SPWB staff

checks that and will verify whether they have been involved with any proceedings or convictions and, if so, then they lose the pre-qualification status when they go to be qualified again.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R189-07. MOTION SECONDED BY ASSEMBLYMAN CARPENTER AND CARRIED UNANIMOUSLY.

On Regulation R203-07 from the Personnel Commission, Mr. Anderson said he was concerned about the regulation and had spoken to the Department of Personnel. He referred to number 4 on page 2 of the regulation where they are expecting the person who has the complaint to be more specific in writing as to the nature of their complaint and what solution they want. He said he is unclear as to why the department is looking for an additional 30 days to respond on page 4 of the regulation. He said he understands why they would want the complaint to be in writing so that they could find a solution as quickly as possible but is unclear why the department needs the extra time since they are going to go "through the extra hoop" in the beginning. Shelley D. Blotter, Division Administrator for Employee and Management Services, Department of Personnel, appeared before members in Carson City. She referred to NAC 284.152 and noted that what the department is trying to accomplish is that if an employee is appealing his classification decision to the Personnel Commission, the employee would articulate what the concerns are and what are the areas of disagreement with the Department of Personnel's decision. The documentation of what the employee is disagreeing with is currently at the director level but is not at the commission level. She explained that what happens between the director level and the commission is that they try and work out as many issues as possible and it may be narrowed in scope by the time it ends up at the Personnel Commission. This regulation is just making certain that the Personnel Commission knows what are the remaining concerns. She noted that in section 3, which is NAC 284.830, they are asking for additional days. It had been 90 to 120 days if some party was recommending a regulation change. She noted this is different than the first topic and is where they are asking for approval of a regulation change at the Personnel Commission. The reason for the request for an extension is because during the last legislative session, there were rules put in place about adopting regulations and making certain that there were 30 days of posting of the language prior to it being adopted. Previously, they had run processes concurrently so they had submitted their proposed regulations for pre-adoption review to the Legislative Commission and also held their workshop. She said they now prefer to have the workshop first, work out any problems before submitting those proposed regulation changes to the Legislative Counsel Bureau so they are not wasting their time and then they can post the approved language for the full 30 days. She reiterated that they are two different issues.

Mr. Anderson asked regarding the regulation on 120 days if it will become beneficial to the employee who is going to be reclassified or is it to the benefit of the Department of Personnel in terms of processing its paperwork. Ms. Blotter responded that it is just

clarifying for all parties how much time it will take to get through the process. If they anticipate taking 90 days, she did not believe they could carry through on that. She gave an example of her chart of events that will occur for the September 12, 2008, Personnel Commission meeting. She said at 105 days prior to the meeting, the notice of workshop was sent out. It is just giving them 15 days prior to that so they can start the process. If an employees' association submits a regulation change to the department, it gives the department enough time to discuss it with them, prepare an explanation of change, draft the regulation, have a workshop, submit it for pre-adoption review, post it for the 30 days and then it could be actually decided upon at the Personnel Commission.

Senator Care inquired under this regulation, suppose an employee writes out the nature of the issue on appeal and then on the 31st day, the director in good faith says, this appeal is drafted in such a fashion that I really don't understand what the complaint is. He asked if the employee at that point will be given an opportunity to amend and resubmit it or has the employee, because the 30 days will have run, waived the opportunity to appeal under those circumstances. Ms. Blotter said, "If we are unclear about what they're appealing, we will make every effort to clarify the issues within that 30-day period and our intent is to try and resolve any differences prior to taking it to Commission. That's what we try to do always. It's always as a last resort that we would go to that length. So, they don't lose out on appeal right unless they chose not to appeal within that time frame."

> SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R203-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED WITH ASSEMBLYMAN ANDERSON VOTING NAY.

Regulation R005-08 from the State Environmental Commission, Senator Hardy said that he did not see where the regulation required any retrofitting and looked like it was going forward on anything that was installed or replaced after July 2008. He wanted to make sure that there was no retrofitting requirement.

Jim Najima, Chief, Bureau of Corrective Actions, State Environmental Commission, appeared before members in Carson City. He clarified that the regulation is for all new facilities being installed in the State of Nevada and any repairs. Senator Hardy said that is what he understood but he just wanted to get it on the record.

> SENATOR HARDY MOVED APPROVAL OF REGULATION R005-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

Regulation R014-08 from the State Environmental Commission, Mr. Anderson said that he had an opportunity to speak with the agency. They were very cooperative in their response and he wished to get the explanation on the record. The question was why is it necessary to re-establish regulations that are done by federal act within Nevada's own statutes and what is the value of that for the people in the state with regard to safe drinking water. Tom Porta, Deputy Administrator, Nevada Division of Environmental

Protection (NDEP) appeared before members in Carson City. Mr. Porta said that based on his conversation with Mr. Anderson he understood that he wanted to ensure that the state is not bearing any unnecessary burden as a result of the adoption by reference of the federal regulations. He explained that the division goes through a fairly significant public review process on each of its regulations, usually prior to the workshop, contacting regulated entities. They conduct the workshops and then eventually present their petition before the State Environmental Commission for its consideration. He said it is usually done with the support of the regulated entity in most cases. When the U.S. Environmental Protection Agency (EPA) proposes rules, the agency reviews the rules extensively and contacts the impacted regulated community for its comments and then provides comments to the U.S. EPA on the federal rule accordingly. Typically, years before the Legislative Commission meets to consider regulations from the agency and the State Environmental Commission, it is engaged at the federal level ensuring that Nevada's interests are heard. He commented, "Sometimes that happens, sometimes it doesn't." Additionally, Mr. Porta said that when the regulations are contemplated, federal rules for adoption by reference, they consider funding issues to both the regulating entity and NDEP, consider whether they are better to implement the rule or EPA and also take into consideration third party lawsuits: if they do not follow through with the third party rule, are they going to be subject to some type of third party lawsuit which is provided for by either the Clean Water Act, Clean Air Act or Safe Drinking Water Act. Mr. Porta said that Mr. Anderson made them an offer they could not refuse and that was to put this on the record.

Mr. Anderson commented that he was concerned about ensuring that Nevada maintains its own position relative to questions of transportation, hazardous materials and water and other kinds of issues like that. He continues to be concerned about that because occasionally it seems Nevada is abrogating its responsibilities and he wanted to be reassured that Nevada is not giving the federal government something it should not have and hold Nevada's predominance in those areas. With the assurance of the agency, he did not object to the regulation.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R014-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

Chair Townsend said he wished to commend all the agencies who take the time to respond to the questions of commission members because it is important that questions get resolved before coming to the full commission.

Regulation R018-08 from the State Board of Parole Commissioners, Mr. Anderson said that he had the opportunity to observe one of the interim committees on a regular basis and prison overcrowding is an issue. He said that the Parole and Probation Division is frequently the center of the discussion. He also mentioned legislation and matters were discussed in a Select Committee in the Assembly chaired by Assemblyman Parks. In light of the audit which was previously presented by Mr. Townsend and some of the

other ongoing issues, Mr. Anderson asked, "Will this mean that you're going to do something and actually get some folks out of prison before they zero their time out and that is a real concern, I think, to all of us in light of the last legislation that kind of changed the methodology by which you could earn good time credit and move forward . . . Will this mean that you're going to get off the dime and do something, I guess to put it bluntly, I'm concerned."

Dorla M. Salling, Chair of the Nevada Board of Parole Commissioners, appeared before members in Carson City and introduced David Smith with the Parole Board, also present in Carson City. Ms. Salling responded to Mr. Anderson saying, "The Board, we haven't been sitting on the dime. Since the statutes were changed, the Board has always been able to do about 700 hearings per month and as a result of the statutory changes, immediately from the time – October 1st – those statutes became effective from that day forward, we were thousands of hearings behind and so we've been trying to play catch-up ever since but as I have explained, the problem is we're doing the hearings as fast as we can. The hearings not only are thousands more people eligible than were before but we have statutory requirements that have lengthened the time that is required for the hearings, so the hearings are taking longer. So, we're doing all the hearings we can every day, we're doing as many as we can, but as fast as we are doing them hundreds more are becoming eligible. It has dramatically speeded up the eligibility of hundreds of inmates." She explained that before the statutes became effective, they were just getting them done and then suddenly thousands more became eligible and then the length became longer. She said when you put all that together, literally there are not enough hours in the day. They are working as fast as they can. In the regulations, one of the provisions looked at was the possibility of using a provision that would allow the Board to see some of the inmates in absentia and if the Board granted parole, it could get through some of those faster. She stated that is what they were trying to do and it is not to avoid the legislative intent but to try to speed up the process as best they could.

Mr. Anderson asked how it would aid in this. He said according to the interim study by Dr. Austin, which they are trying to pay attention to very carefully, he noted that had it not been for the fact that the local jail population and arrests are down and as a consequence the number of sentencings are down, the parole hearing back up is over 1,300 cases. He said he was trying to imagine how the regulation is going to change and get things moving forward. He asked for some specifics on how it will help.

Mr. Smith said that if Assembly Bill 510 had been the only bill that affected the Parole Board that had passed, it would not be in the situation it is. It was the last minute amendment to Senate Bill 471 which put in place provisions regarding hearings to consider inmates for parole. It prohibited the Board from denying parole to inmates unless it afforded certain rights to them. He said what A.B. 510 did was that it did not affect anybody with a life sentence but it affected every inmate serving any other type of sentence. It essentially cut sentences that a court imposes in half. They will expire in half or less than half the time that the court imposes. It includes violent and sex

offenders. It speeds up the mandatory parole date on those offenders. A list was pulled the previous week and 42 percent were violent or sex offenders. When the board first began trying to conduct the hearings in absentia, it held that 50 percent were denied, it was just adding to the backlog. What they have been doing is conducting hearings because they do not know who is getting granted or denied until after they have been considered. These provisions put into place what the Legislature had intended that the inmates be given reasonable notice and that if they don't give them notice they can grant parole. In light of the nature of the crimes that most of these offenders are serving time for, most of them will get their hearings because otherwise they cannot deny parole and they simply increase the number of people they have to actually hold hearings on. The Board anticipates about 10 percent of the backlog will be reduced once the regulations go into effect. That allows the Board to grant parole, for example, to inmates on house arrest, in Casa Grande and NNRC without actually bringing them in and conducting a hearing.

Mr. Anderson noted that the Board's normal grant rate is about 10 percent so they will be "hitting the same stride" as normal. Mr. Smith explained that the grant rate is typically 50 percent and the Board will be clearing up 10 percent of the backlog without holding formal hearings. It will, in turn, allow more time to conduct hearings on the others. Mr. Anderson asked if the regulation will give the Board the opportunity to do a "paper screen." Mr. Smith responded in the affirmative noting that it would be on low level offenders but not violent or sex offenders. He said that unfortunately some of the people seen that might be in for a drug charge have prior sex or violent offenses and until the Board starts reviewing them it does not know the nature and severity of the prior criminal history. Mr. Anderson said that he is concerned about the statute and whether it is going to accomplish the needs in the state.

Ms. Buckley said she had just a couple of points of clarification. She said that about one and a half years ago the Supreme Court held that the parole hearings were subject to the open meeting law. Her understanding was that the Parole Board stopped doing parole hearings altogether, there was a motion for rehearing, it was still pending before the Supreme Court so part of the reason the Legislature had to act was because of that situation. What the Legislature tried to do was enact a "middle of the road" but not the full requirements of the open meeting law but a notice and an opportunity to be heard. She said that she takes exception to the "last minute" nature of this because it really does not describe the full set of circumstances as to what was happening. Secondly, she said that she is very dissatisfied with the Parole Board's progress. All of the laws enacted were effective in June. There was a late June Interim Finance Committee (IFC) meeting and there was no request for staff made there and there was a September IFC meeting and no request for staff was made there. The committee did grant staff in November and no staff have yet been hired. The ability to grant parole to individuals without them having been present has been available since June of last year and it is not until April that members finally have a solution for those cases. She said that could have been done a long time ago. She felt that there has not been enough problem solving done by the Parole Board. There is obviously a backlog and that needs to be addressed

and instead of problem solving, which is done every single day when there are issues, it is "we can't do this, we can't do that" and she thought it has resulted in a number of frustrations from families and from legislators and it has been quite unfortunate. Ms. Buckley stated, "At this point, we've got to move on. The Interim Finance Committee has approved every request that you have submitted. I understand temporary hearing officers have been hired and will be on board within a week, two weeks, by the beginning of May or so and I'm very pleased at that progress and think that that will help. With regard to this regulation, I believe both the Parole Board has worked with the Attorney General's Office and with our legal counsel, Brenda Erdoes, at least on portions of it and those portions will clear up at least a portion of the backlog and I am anxious to approve that today so that, again, more of the backlog can be cleared out allowing less of a backlog to accumulate and to begin to get through these cases and I would hope at this point that we get routine progress reports both at IFC and with the interim committee on the rest. Assemblyman Parks is in the audience and has waited all afternoon. I don't know if he has any comments or anything that he feels he needs to get on the record since he has been following this and has chaired the interim committee and taken a leadership role in this. While he's coming up, I guess my last comment is I want to make it really clear on the record that any good time credits allows folks to apply to the Parole Board but if there is any threats to safety, you know the expected response will be, of course, denial. So I just wanted to make that clear that on the record that anyone that is deemed to be violent or not a good risk still will be denied. So with that, Mr. Chairman, with your indulgence I would like to hear from Assemblyman Parks if it meets with your approval." The chair replied, "Absolutely. Mr. Parks, welcome."

Mr. Parks said that he has talked to a number of commission members and he will be very brief. The concern he had was that when A.B. 510 was passed, they had in the wording for NRS 213.1215, wording to the effect that the inmate must be released on parole 12 months before the end of the maximum term. When he reviewed the regulations on page 14, section 13, he read the words "the prisoner may not be released" and the word "may" versus the word "must" created a major amount of concern for him. Based on that and then following the wording, he thought that there was some concern. He has since heard that this has had substantial review through legal counsel at the LCB as well as some other outside counsel and he accepts that. Since there seems to be a little confusion, he would like to ask the commission to make sure that the interpretation of the regulation, especially section 13, by the Parole Commission covers the intent of the legislation in that when they plan to have their hearing no sooner than 150 days that is 150 days prior to the mandatory 12 months before the end of the maximum term for prisoner.

Mr. Smith explained on the 150 days that the reason for putting it into statute is that in NRS 213.1099, subsection 7, the Board is prohibited from considering an inmate for mandatory parole when they are considering them for discretionary release. The purpose of the 150 days because of the credits mandatory parole dates are coming at the same time as the discretionary release, it could be a month or two after, and the purpose is

that if they are within 150 days of the mandatory parole release date, not the expiration of sentence but the release date, the board will consider that standard of danger to public safety first. If they would grant parole under mandatory parole, they can do a second step and consider releasing them early under discretionary parole without violating the provision in NRS 213.1099.

Responding to the chair, Mr. Parks said cover's necessary for the record. The chair invited Mr. Parks to ask any other questions as the debate continues.

Ron Cuzze, President of the Nevada State Law Enforcement Officers Association appeared before members in Las Vegas. He said they have some concern with the regulation as it is written because of the effect that it could possibly have on Parole and Probation. He recalled the discussion of the audit of the Division of Parole and Probation at the beginning of the meeting. Since the audit, the answer in southern Nevada was to start administrative case loads which is virtually non-supervision. Currently, there are 4,200 parolees and probationers in the administrative case loads. In the in-take unit, they have approximately 1,800 as of this morning. As of last Friday, with Lieutenant Dixon's retirement, Parole and Probation is down 56 officers. He stated that Mr. Parks commented earlier in the hallway that this is going to be a train wreck. He said that he knows that the Legislative Commission itself cannot do a lot to fix the situation at Parole and Probation and perhaps some of it needs to come out of IFC but the commission needs to take it into consideration in any decision it makes concerning it. Further, he said that as this meeting is going on, the new Director of Public Safety Jerry Hafen is meeting with the new Chief of Parole and Probation Bernie Curtis. He said that he has known both gentlemen for quite some time and they are both capable and will take matters into hand and change some of this around. Right now in southern Nevada they cannot supervise the number of offenders they have with the number of people and the system they are using. His concern with the regulation is that if it goes the other way and they start not watching who they are putting out, it is going to make the Parole and Probation officers in southern Nevada even more disastrous. He stated, "We understand the intent of A.B. 510. We may not agree with it but we know it's law but we just don't want the system to be abused."

Ms. Buckley said, "I think we all realize that P&P is not where we need it to be. The audit shows that. We have some new leadership there. We're hoping that things are going to be better and I think you already have the commitment of this commission and the IFC that we're going to be monitoring this very closely and making sure that things improve there. That's our commitment. Thank you."

Senator Care directed his comment to Mr. Smith and said in section 9, subsection 2 of the regulation there are some enumerated aggravating factors that would include whether the prisoner has engaged in repetitive criminal conduct, whether the prisoner has committed increasingly serious crimes and his question was does this contemplate consideration of crimes for which the defendant has been charged but not convicted and even accused of but never even charged or is it only criminal history and is criminal

history confined to those crimes for which he or she has been convicted. Mr. Smith responded that basically the factors listed in subsection 9 are in addition to the risk assessment that the Board conducts prior to the hearing. He said that the Board is focusing primarily on convictions and in this revision the language that referred to previous arrests is actually being repealed. While not sure which section, he believed it was in the back section of the repealed portions of this NAC so it is not contemplated that the Board is considering merely arrests but mainly conviction history.

Mr. Munford appeared before the commission in Las Vegas and said that he was just going to speak in reference to NRS 213 on the economic factors aspect of it. According to NRS 213.1215, prison inmates must be released 12 months before expiration date of the end of the sentence and all inmates in minimum custody within the Department of Corrections must be transferred to the Parole and Probation Division for parole supervision and planned development according to NRS 213.140. He said that he wanted to stress that it is not cost effective to keep the inmates for the additional 12 months. What it leads to is an additional cost of housing an inmate in minimum custody for that additional 12 months which is $18,000 per year. If the inmate was to be released on mandatory probation as stated in NRS 213, it would save the state and cost approximately $1,800 per year in Parole and Probation. He said it would be a tremendous savings to the state if the inmates were not required to stay the additional 12-month period. Legislators are very much concerned about budgets and costs at this time and he could see where having the inmates stay the additional 12 months would be a great expense to the state.

Florence Jones, a private citizen, appeared before the commission in Las Vegas. She said that she is listening to the situation of money in the state and she feels a great concern. She concurred with Mr. Munford's comments that $18,000 per year to keep someone in minimum security prison versus $1,800 to have them on parole seems to be a very serious issue during these bad financial times. She said, "The other flip side of that is we just don't want to open the doors and have folks out on the street without proper supervision." She indicated that she put together a diagram showing the mandatory parole release coming direct to Parole and Probation (the diagram mentioned and additional written comments from Ms. Jones are attached as Exhibit I). She said that would just be for minimum security. She knows there is talk about threat to society but the Department of Corrections (DOC) that people rely on to keep them safe when they identify someone as minimum security under their administrative regulation 521, they have determined that inmate is not a threat to society. Those are the inmates who are out fighting fires, who are cleaning up the yards of the cemeteries and who are working throughout communities in the whole state. She said they are at minimum camps. She is hearing figures but from what she knows about the folks that are in prison, there about 3,000 people who are minimum security inmates that this may very well affect. She said, "My suggestion is that we would look to bypass a parole hearing for these individuals and take them direct to the 12 month must release based upon the DOC's already having determined they're not a threat. There is a significant difference between MPR [Mandatory Parole Release] of minimum versus the MPR of those who are

not minimum. We really do need a parole hearing on those individuals. That's where our violent sex offenders start falling into place and certainly on discretionary parole, I think we not only need a hearing, we need a full blown hearing. We need our Parole Board to have the time to really take a close look at these people before they're returned to us in society." With regard to what should be done with the inmates who would have a "direct shot" to Parole and Probation who would produce a plan, she said that she has looked at Casa Grande very carefully and she knows that in the infinite wisdom of the Legislature and under the direction of Jackie Crawford [former director of DOC] when that facility was built, it was developed with a transitional thought in mind. If full and double bunked, she believes it could handle 800 people. She said she realized that Parole and Probation would probably have to hire supervision and move into the building with the inmates but she thinks that would be better then having individual neighborhood houses of eight. She said that she certainly did not want them living in her neighborhood and was sorry to say that. She has family in prison and she visits a lot of the folks and knows them but to have people in transitional homes all through neighborhoods is "a little scary" to her. She would much rather see them in an organized operation like Casa Grande that is in an industrial area that could be supervised and where people could get a shower, get out to get a job and possibly have their year parole there and then be "on their way." She thinks there might be a chance to stop the recidivism swinging door that everyone is looking at and talking about. She said, "I know it's probably a little off the wall to suggest that and probably Director Skolnick would not be real pleased with having to move his offices back to one of the prisons but I would encourage this group that is right now, of course, in leadership because we don't have our full Legislature in place to seriously take a look at getting out of the nine DOCs and making some hard decisions about what we can do with these people to move them out of prison into a facility where they can be educated, trained, back to work and back into our communities successfully."

Mr. Carpenter said that as a member of the Advisory Committee on the Administration of Justice, the former chief of Parole and Probation was asked many times if he could take care of the people that were going to be let out of prison and he reiterated to the committee at each meeting that there was no problem and he was prepared to take care of them. At the meeting before the last one when the audit came up, he said 'don't worry, I'll take care of that right away' and three or four days later he resigned. Mr. Carpenter thought the Parole Board could have moved a lot faster than they have on the regulations and obtained the people that could have assisted them but that did not happen and hopefully the regulations will help them. Whether it will or not depends on the attitude of the people on the Parole Board. He said that there is one question he wished to asked and referred to section 12. The informational statement says that the Board changed the section entirely to allow for an inmate to appeal directly to the Board without a recommendation from the Department of Corrections and clarified that the section does not prevent the Board from considering a previous denial of parole when a significant change in the status of a prisoner occurs. He said in reading section 12, he does not see that in there and it says it must base a request on circumstances which existed at the time of the meeting at which the Board considered whether to grant

parole. He said that it seemed to him that they have to consider what was given them before and not a significant change in the status of the prisoner if that occurs. He thought it would have been better if it had said in section 12 that they could get a hearing if there had been a significant change, not that it had to be based on what was brought to the Parole Board at the hearing. Mr. Smith referred to page 15, subsection 5 and explained that because the Board cannot contemplate every scenario or situation that may occur, it did not wanted to limit situations strictly to the hearing and so section 5 says "the provisions of this section do not limit the power of the Director of the Department of Corrections or his designee to notify the Board of a significant change in the status of a prisoner or to prevent the Board from reconsidering a denial of parole if a significant change in the status of a prisoner occurs." He said that is the outside option. Mr. Carpenter said that he read that also but the statement says that it is in section 12 but it is not. He thought it could not be changed at this time but it needs to be kept in mind when you are having people come back. Mr. Smith reiterated that he thought it was in subsection 5 of section 12 on page 15. Mr. Carpenter said that might cover it and he hopes the Board does take those things into consideration and if it could get some of the people out of prison, money could be saved and everyone will be better off and hopefully Parole and Probation can now "get their act together."

Tosh Dawson appeared before the members in Carson City and noted that she is the same person who applied for the position on the Commission on Ethics and provided a telephone number. She said that her questions and comments today are limited to the regulations by section. Her concern is that they not speed up the process to the detriment of the parolee. She referred to section 7 regarding the severity level of a crime and asked what factors go into determining the level and are the same factors used by both the Department of Corrections and the Parole Board. She noted that section 8.1 states that the Board will assign to each prisoner who is being considered for parole a risk level of high, moderate or low according to the level of the risk that the prisoner will commit a felony if released on parole. She said she would like to know what is the source of the information, the statistics that were used to assign the risk and what are the statistics. If the risk level is assigned to the prisoner and not the crime, then it seems that the risk level should be based on the actions and improvements, or lack thereof, of each prisoner up to the current date rather than the severity level assessment of the crime itself. She said that section 8.2 states "to establish the risk level, the Board will conduct an objective risk assessment using a combination of risk factors that predict recidivism." She asked what are the risk factors and what constitutes a risk to public safety, what constitutes a threat to society and how current is the information, what are the definitions of each of them. She asked if an inmate's level of risk and threat is based on an inmate's current record or on the crime he committed "X" number of years ago. She said that section 9 uses the words "severe, extreme or abnormal" and she would like to hear a definition of those aggravating factors. In section 9.1 the inclusion of the wording "which the Board may consider" as opposed to "must consider" makes it a subjective assessment which directly contradicts section 8.2 calling it an objective assessment. Section 15.1.b. says inmate is to participate in a program that addresses behavior which led to his incarceration. She asked if the inmate record reflects no

participation in said program, does the Board ever inquire as to whether or not such a program was ever made available to the inmate. In section 15.1.c., mitigating factor of participation of inmate in educational, occupational or vocational programs, she asked if it is absent from the inmate's record is investigation made as to whether the program was offered and/or whether that institution allowed that particular inmate to participate in these programs. She asked if the Board is made aware that most of the prisons do not have such programs available and are they made aware that an inmate who desires to educate himself above high school level must somehow pay for that opportunity and if an inmate desires to attend but cannot afford college is it accepted or rejected as a mitigating factor. She thanked the commission for letting her speak.

Mr. Anderson said that among the things members ask of the Board of Parole Commissioners when it submits regulations is the number of public meetings that are held prior to their drafting and the workshops it held. He asked Ms. Dawson if she had an opportunity to appear at any of the workshops to bring forth her concerns. Ms. Dawson responded that due to her work schedule she was not able to attend those, however, she has regularly attended every single meeting of the administration of justice commission meetings. Mr. Anderson noted that the regulations are not from that committee but from the parole commission. He asked if she had an opportunity to submit written statements to them that was afforded to her and take that into consideration when the drafting was being done. Ms. Dawson said that she is attempting to do that now since she did not have the full information before this day and she is attempting to put into the record today the comments she has.

Tonja Brown appeared before members in Carson City and identified herself as an advocate for the innocent. She commented that she had attended some of the workshops and some of the items mentioned by Ms. Dawson have been brought up during the workshops. She stated, "However, they do not consider our input because none of our input has ever been put in any of this." She said that she concurred with Mr. Parks, Mr. Munford, Ms. Jones and Ms. Dawson and everything they said and she thanked the members for allowing them to speak today. She referred to section 12 and appeals where it states "not later than 45 days after the meeting at which the Board considered whether to grant parole." She said she discussed this during the workshop the previous month and suggested that they do it on an appeal. If an inmate files an appeal, they are not given any notice whatsoever whether it is going to be heard, granted or denied. She cited an example where an appeal was file on October 2, 2007, and it has yet to be addressed by Ms. Salling.

Chair Townsend stated that the commission does not do personal things or mention people by name. He acknowledged her frustration but explained this meeting is not the appropriate format and instructed Ms. Brown to address the regulation. Ms. Brown said she is suggesting that there has to be a time limit of so many days and not what the Board has listed as practicable. She questioned whether that is ten days, two months or six years? Additionally, she said that she has not seen this but heard that there is going to be a support staff that is going to be looking at the appeals. She was unsure whether

that was correct. She said that she did not think there should be a support staff and when an appeal is filed by an inmate, she thinks there should be an oversight committee and not the parole or Department of Corrections because there are times when there are certain members who are vindictive and will retaliate against an inmate and totally deny them their appeal. She thought that was a major problem and she would like to see section 12 removed. Additionally, she referred to section 9 subsection k., whether prisoner has demonstrated remorse for the crime for which parole is being considered, and said that is a "catch 22" situation. She gave an example of an inmate that doesn't feel remorseful for the crime acknowledging that there may be innocent people in prison that may feel remorseful because something happened but that does not mean they actually committed the crime. The Parole Board has an unwritten policy that you must admit guilt in order to be paroled to the streets. She said part of A.B. 510 on the appeals process on whether to grant or deny parole on appeals was her amendment to that bill based on these reasons. She gave another example of an inmate whose conviction gets overturned and there is a new trial and because he has told the Parole Board that he is remorseful, not that he is admitting guilt, because something terrible happened, that very well could be used against him in an upcoming trial or at a future parole proceeding. She said that has to be considered too because one's due process is being violated. She said that she also concurs with what the next speaker is about to tell the members.

Pat Hines from Yerington, Nevada appeared before members in Carson City. She said that she had three things she would like present as concerns and solutions. She appreciates what other speakers have said and agrees with a lot of it. Her first concern is that the Board is going to a severity rating scale. Ms. Dawson alluded to the fact that she thinks the risk factor scale should have more weight than the severity rating scale and she does also. She thinks that part of the proposal has been rushed into too fast in trying to get things done. The severity rating scale that is suggested for use is one that says is levels for Nevada Department of Corrections (DOC) classification. There is no date, there is no DOC form, you don't know when it originated, you don't know when it was last reviewed and her concern is that it is not complete in the number of crimes and that is obvious because in the first section the first few pages there are 62 items listed under property offenses but they don't have any in the severity level in the proposal. Her concern with it is what it does not show. All it shows on the particular severity rating scale is that which is used by DOC whose purpose for having a severity rating scale is to be used at intake and ongoing classifications. She thought the severity rating scale used by the Parole Board should be further along considering things that are done in prison and anything that relates to getting out of prison instead of way back in the beginning when the crime existed. The rating scale being used divides the crimes into highest, high, moderate and low moderate. She would like to see them use or look at another crime level that is listed in a document called selected Nevada Revision Statutes relating to felonies which was given out in February at the Advisory Commission on the Administration of Justice. It contains categories listing the crime and the association or relationship to the NRS. It gives the category such as A, B, C, D, E and gives the sentence. She suggested that if a risk assessment is going to be done, money should be

paid to get it done and have it so it is something that everybody can use and find beneficial. Another concern she has is something that is being repealed: 510 through 540. One of the things being repealed is the alphabetical category listing. She asked what is that going to do to other criminal justice agencies and if the Parole Board is going to be on a different wave length? She said that apparently the Parole Board and, maybe, the DOC are the only ones that are going to be using it. Everyone she has spoken with seemed to think that the alphabetical category, with the exception of so many category B crimes, has been working well and it has been revised and revamped and adjustments made to it. She recommended that it be reconsidered and at least that portion returned for revision.

Continuing, Ms. Hines said that people are being sent out to be under supervision of Parole and Probation. She said that absolutely needs to be done rather than having them being released to "the streets." She said that a group that is not being considered in this and anywhere else is the parole violators. They are being put back in prison at an increasing rate and she cannot find anyone who is keeping statistics. If someone knows of some she would appreciate knowing about it. She said the highest percentage of the parole violators are being put back in for technical violations. There is no premeditation and no new crime and no victim. If it was known how many there were and members wanted to "get the bubble out of the Parole Board," it might be a place to consider looking.

Michelle Ravell, private citizen, appeared before members in Las Vegas. She referred to section 12, subsection 1. b. and said that part of the requirements for submitting an appeal to the Board to reconsider denial of parole says "submit with the request a statement from an employee of the Department of Corrections or the division who supervises the prisoner" and under the Department of Corrections, these are not allowed under their administrative regulations. By inserting b., it has effectively taken away the right of every person to appeal. In addition to her comments, a page was submitted by Ms. Ravell for inclusion into the record and is attached as Exhibit J.

Mr. Smith said that section 12 was entirely revised and that particular provision was removed and replaced with the appeal process directly to the Board. He said it was revised at the April 1st meeting of the Board and the document being considered shows effective April 17th and the older revision was dated March 31st.

Ms. Buckley commented, "I'm a little bit torn. I think that the regulation could be clearer but I'm also afraid that if we send it back to the Parole Board, it could be a very long time before we get it back and in the meantime the bubble will continue to grow. I'd like to throw out a motion for consideration and then we could debate it."

ASSEMBLYWOMAN BUCKLEY MOVED APPROVAL OF REGULATION R018-08 AND HAVE READ INTO THE RECORD AS LEGISLATIVE INTENT THE COMMENTS MADE BY ASSEMBLYMEN PARKS AND MUNFORD TO CLARIFY WHAT THE INTENT IS WITH REGARD TO THE MANDATORY PAROLE ISSUE AND TO ASK EITHER THE COMMISSION, MR. PARKS OR LEGISLATIVE COUNSEL TO WORK WITH THE PAROLE BOARD ON MANY OF THE EXCELLENT SUGGESTIONS MADE TODAY TO MAKE THINGS CLEARER AND HAVE THAT BE BROUGHT BACK AT A FUTURE MEETING. THE MOTION TRIES TO ADDRESS ALL ISSUES BROUGHT FORWARD TODAY BUT TO HAVE THE ABILITY TO HAVE SOME ACTION FAIRLY SHORTLY. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Regulation R021-08 from the Nevada Tax Commission, Senator Hardy wondered if there were discussions dealing with out-of-state purchases on off-highway vehicles and if so why it was not included. Christopher Nielsen, Deputy Executive Director, Department of Taxation appeared before members in Carson City. Mr. Nielsen said the issue in this regulation with regard to off-highway vehicles was not addressed. The purpose of this regulation was to help the State of Nevada become a full-time member in the streamline sales and use tax agreement. The state is now a full-time member as of April 1st. It addresses to a certain extent the so-called out-of-state sales. He said he was not 100 percent familiar with what has historically occurred on the issue of off-highway vehicles but he knows the department is currently working with dealers, including out-of-state dealers and the Department of Wildlife to make sure that on the out-of-state purchases that use tax is being paid in Nevada.

SENATOR HARDY MOVED APPROVAL OF REGULATION R021-08. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulations R022-08 and R023-08 from the Committee on Local Government Finance, Senator Care said that he has to read R022-08 in tandem with R023-08 and the distinction is that one goes to property located in a redevelopment area and the other to property outside a redevelopment area. He said his understanding is that the regulations are basically mandated by statutes that took effect earlier this year. He said he is primarily interested in R023-08 and wondered if it goes to the issue of the so-called remainder man. John Sherman, Washoe County Finance Director and a member of the Committee on Local Government Finance appeared before members in Carson City. He explained that the two regulations do not impact remainder parcels. They are specifically addressing the allocation of abatement to taxing entities, that is that the tax bill can only grow by the 3 or 8 percent formulas and if you calculate the tax bill that is higher than that the amount is abated and it has to get allocated to the taxing entities. Regulation R023-08 does that to all entities outside of redevelopment and tax increment areas and R022-08 does that allocation within redevelopment and tax increment areas.

Mr. Goicoechea commented that it seemed like there would have been a way to do this a little simpler. If one reads the two regulations, they are extremely confusing and hard to "walk through." One would have thought it would have been possible to arrive at an abatement process or be able to apportion it a lot simpler than 45 pages that is hard to understand. Mr. Sherman responded, "We agree but the committee, and these are arguably some of the best minds in the state on how to deal with financial and tax matters, are struggling with trying to make sure that the laws as implemented are not only fair for the taxpayer and get the tax policy results that the Legislature enacted but also make sure that there is no unintended consequences amongst the entities who receive these tax revenues and we've discovered a number of cases where there is some unintended consequences where agencies are being disadvantaged or advantaged against one another and this is the mathematical way we have figured out how to do it. If we could find a better way or a more simple way, we absolutely would."

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R022-08. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R023-08. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

B. Request from Legislative Commission's Subcommittee to Study Issues Relating to Senior Citizens and Veterans for approval to hold additional meeting (A.C.R. 35)--Amber Joiner, Senior Research Analyst.

Mr. Malkiewich explained that the request is not asking for additional money, just the approval for an additional meeting. The committee has been saving money on travel expenses, therefore, it will not require a budget adjustment. A letter from the subcommittee chair is included in the meeting packet.

ASSEMBLYMAN CARPENTER MOVED APPROVAL OF THE REQUEST FROM THE SUBCOMMITTEE TO STUDY ISSUES RELATING TO SENIOR CITIZENS AND VETERANS TO HOLD AN ADDITIONAL MEETING. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

Under discussion, Mr. Anderson said it should be understood that the bill draft requests from the study should be "in on time" and there will be no extension of time.
Mr. Malkiewich explained that the request is not to waive the time limit, just a request to add another meeting within the same time limits the committees have.

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

Mr. Malkiewich referred to the schedules contained in the meeting packet and noted that the few additions and minor changes are insignificant. A handout (copy attached as Exhibit K) was also provided of the schedule for the records of the Chief Clerk of the

Assembly. The schedule for the Fiscal Analysis Division will follow at a subsequent meeting. The schedules have not been updated since 2002 and the revisions reflect current information.

ASSEMBLYMAN CARPENTER MOVED TO APPROVE REVISIONS TO THE RETENTION AND DISPOSAL OF RECORDS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

D. Request for reimbursement of travel expenses for certain members of the Advisory Commission on the Administration of Justice--Lorne J. Malkiewich, Director.

Mr. Malkiewich said this item is a request that was received from the chair of the Advisory Commission on the Administration of Justice which had a meeting the previous Monday where the members toured prisons in Las Vegas. He said that most of the members of the advisory commission are public employees and their employer paid for their trip. One member of the advisory commission is not and Dr. Richard Siegel paid his own way and the chair would like to have those travel expenses reimbursed out of the commission budget. The amount is $223.

ASSEMBLYMAN CARPENTER MOVED TO APPROVE THE REIMBURSEMENT OF TRAVEL EXPENSES FOR DR. RICHARD SIEGEL. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

E. Timeline of Amendments to Statutory Provisions Concerning Interim Budget Reductions--Lorne J. Malkiewich, Director.

Mr. Malkiewich referred to material in the meeting packet containing a timeline showing statutory amendments concerning reserves. The material is very familiar to members of the Interim Finance Committee (IFC) and the issue raised by Senator Coffin. The Appropriations Act has a provision that says if the General Fund ending balance goes below $80 million, that the IFC is supposed to approve the amendments that the Governor proposes for reducing the budget. The NRS 353.225 allows the Governor to make these reductions. He said what has happened in 2002 and this year is that reductions have been made under the general authority avoiding the IFC provision contained in the Appropriations Act.

Senator Coffin appeared before members in Las Vegas. He thanked the chair for placing the item on the agenda. He requested that the item be put on the agenda because he thinks the Legislature has lost its power to control the budget because of the way the Governor is interpreting the statutes and quite possibly the way the statute is written. He thought, by accident, the statute says that the Governor is supposed to come to the IFC if the ending fund balance comes close to $80 million. He is then allowed to reserve funds which are then brought to the IFC for approval or denial. What the Governor has done is reduced budgets, in essence created reserves prior to the calculation of the

ending fund balance and set up a situation where it will never reach $80 million, therefore taking to himself the sole authority to reduce the budgets without the involvement of the Legislature which was the intent of the budget bill of the last session: A.B. 628. He emphasized that something has happened badly and the Legislature has really lost the "power of the person" and that is the main duty of the Legislature. He opined that in the three branches of government the Legislature is third with term limits and the courts taking themselves out of that and the Legislature is losing its control of the budget to the Executive Branch and are really on the verge of just becoming a debating society because legislators cannot guarantee to any citizen of the state that they have done work on the budget when a member of the Executive Branch can adjust it at their leisure and at their pleasure. He hopes the Legislature can find its way to creating statutes that would be impervious to this kind of "finagling." He thinks it is the commission's job to do that although any legislator could put in a bill draft request. He said he did not think that legislators wanted to have the Executive Branch do an "end run" which then undermines the Legislature's authority. Senator Coffin said, "I think this all happened by accident. I don't think our Legal Division ever contemplated that a Governor would take advantage of some sort of a way of evading our statute and twisting it to their benefit but he has done so, that is the Governor, and I don't know whether that will stand up in the courts. I really don't know if there will be an attempt to reassert the authority of the Legislature through the courts. Certainly it should be there as I have urged you, Mr. Chairman, however I think to separate that request of mine of you from this particular request, we need to find a way to draft our legislation for the next session so that we can avoid this and I consider that the end of my remarks."

Chair Townsend said, "Senator, you and I have had this discussion at length, probably since we both came into this process. I think you've made some outstanding arguments, I'm glad that the Legislature, particularly leadership, and the Governor are starting to have better dialogue. I've always believed that those members of the money committees who do sit there day after day after day have an insight that not everyone has and should be part of that process and as a result I think that sitting with our counsel as much as we'd, at least in the north, they're looking forward to a nice summer I know you in the south might be hoping it gets by in a hurry. We're going to be back into session very quickly. I think addressing this as you've discussed and clarifying what we think we know we meant so that there is no misunderstanding is important. I think it should be done. I think the Legislature should not give up its authority. I'm not a lawyer, I don't play one on television and I certainly don't play one in this body and I wouldn't attempt to figure out what the courts would or would not do with a challenge. But since we are substantially strapped for money, litigation is probably not in the public's best interest but I would think a bill would be. I think that debate would take very few minutes. We could probably read into the record your statement from today and your letters to me and that would be enough to pass the bill and move it on for signature. So, I would hope you would continue to do that. Whether you want a commission draft, which I would be more than glad to have or you want to do one of

your own, whatever you think is in the best interest. I appreciate your being passionate about this and doing as much research as you have because I really didn't understand it as well as the way you've explained it before you brought it up. So, I do appreciate that."

Senator Coffin thanked the chair for his comments and indicated that he would be happy to provide his letter providing clarification to the chair dated February 5th to the secretary for the record (copy attached as Exhibit L). He said he is asking the commission to ask for the research be done so that the legislation can be properly drafted. He said that it is more important for a joint request to go to the Legal Division. He said, "It's been an embarrassing moment for us all to find that we had no power – that we had lost our power. I would also ask that the duties of our Legislative Counsel include such addition to their charter to tell us whenever a piece of legislation could conceivably impinge on our own authority in the Constitution. I don't think we've ever told them to do that and they're so busy and, frankly, overworked I don't think that they would think of that. We told them in the past to tell us to not draft anything unconstitutional. We are told that none of our bills will be unconstitutional and, in fact, it just happened that we may have done that by accident and I think that special care needs to be paid to all bills in the future to make sure that there is no further erosion of legislative authority."

Chair Townsend said, "Your point is well taken. I would ask the staff on behalf of all of us on the commission to go ahead and do that research and start that process and I would certainly ask that Senator Coffin be the point person on this with the Speaker and Majority Leader and the two house Minority Leaders to be kept in the loop on that so that they are aware that we're moving down that road. I think that your suggestion is an excellent one with regard to are we giving up any authority that is constitutionally given to us that we shouldn't be and I think that's a good point."

Ms. Buckley said, "I support your direction to staff and appreciate your comments. I just don't want anything in the record to, I believe that by law all work programs have to be submitted to IFC anyway, so I just don't want our actions in requesting further clarification to be taken as acquiescence that we believe the Governor's position is correct. I'm all in favor of proceeding with the research though as you had indicated."

Chair Townsend stated, "I would support that analysis of that. That's a very important clarification for the record."

Mr. Anderson said that he agreed with the intent and he also wants to clarify that the legal staff speaks quite frequently to legislators about the constitutionality of pending legislation. He stated, "I don't think that any of the actions that we take either in binding the courts to do what we demand or binding the executive to do what we think is the right for the executive departments are anything other than an affront to their powers. I think that in reasserting our own we need to be mindful of our own powers that we don't give them away. I don't think that Legislative Counsel has intentionally ever done that and I wouldn't want us to go on record in anything other than mindful of

the fact that, I think that's, in fact, one of my pet peeves personally is the fact that legislative oversight of Mr. Townsend's fiscal division which I think is very, very important too, not only do we pass the laws but we make sure that they're enforced and sometimes I think we're neglectful of that part of the thing and that's the reason why I think Mr. Townsend's responsibilities and oversight is so very, very important. So, I just don't want us to be on the other side of that issue either because clearly I think our legislative Legal Division is more than adequately making us aware of the impact of any of the legislation that we deal with."

The chair directed that all remarks be made part of the record, particular Ms. Buckley's remarks regarding the intent.

Chair Townsend noted that the next agenda item contains informational material and returned to agenda Item III. D. at the conclusion of the above discussion.

Item V--Informational Items:

A. Legislative Committee Reports.

B. Legislators' Travel Reports.

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

1. Board of Examiners for Alcohol, Drug and Gambling Counselors.
2. Board of Examiners for Social Workers.
3. Board of Occupational Therapy.
4. Board of Oriental Medicine.
5. Nevada Board of Dispensing Opticians.
6. Nevada Certified Court Reporters Board.
7. Nevada State Board of Accountancy.
8. Nevada State Board of Athletic Trainers.
9. Nevada State Board of Dental Examiners.
10. Nevada State Board of Hearing Aid Specialists.
11. Nevada State Board of Nursing.
12. Nevada State Board of Physical Therapy Examiners.
13. Nevada State Board of Professional Engineers and Land Surveyors.
14. Nevada State Board of Veterinary Medical Examiners.

D. Miscellaneous Reports from State Agencies and Others:

1. Annual Report from the Nevada Renewable Energy and Energy Conservation Task Force.
2. Report from Nevada Consumer Affairs Division, Department of Business and Industry.

3. Report from Division of Health Care Financing and Policy, Department of Health and Human Services.

4. Confidential Documents List submitted by the Department of Information Technology (report previously transmitted to members prior to meeting).

5. Housing Element Annual Progress Report from Housing Division, Department of Business and Industry (report previously transmitted to members prior to meeting).

Item VI--Public Comment:

There were questions from Senator Carlton regarding Regulation R003-07 and that discussion is included under that agenda item for purposes of continuity.

There were questions from Marilyn Lee regarding Regulation R067-07 and that discussion is included under that agenda item for purposes of continuity.

Several members of the public provided comments regarding Regulation R018-08 and that discussion is included under that agenda item for purposes of continuity.

Mr. Malkiewich announced that the Legislative Commission would meet again on June 16, 2008, at 1:30 p.m. and one of the items on the agenda will be to appoint new members to the Commission on Nuclear Projects or reappoint the current legislative appointees. He said he would send out a memorandum but if any members have people they would like to suggest it will be on the next agenda. Additionally, he will advertise for the appointment to the Commission on Ethics for someone who is a former public officer.

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

Respectfully submitted,

Marilyn K. White
Assistant to Director

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Senator Randolph J. Townsend, Chair
Nevada Legislative Commission