Minutes of the

LEGISLATIVE COMMISSION

Nevada Legislative Counsel Bureau (LCB)

January 30, 2008

The first meeting in 2008 of the Legislative Commission, created pursuant to *Nevada Revised Statutes* (NRS) 218.660, was held on Wednesday, January 30, 2008, commencing at 8:04 a.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 and Room 118 of the Greenhaw Technical Arts Building, Great Basin College, 1500 College Parkway, Elko, 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 Dina Titus (in Las Vegas)
Senator Valerie Wiener (in Las Vegas)
Assemblyman Bernie Anderson (in Carson City)
Assemblywoman Barbara E. Buckley (in Las Vegas)
Assemblyman John C. Carpenter (in Elko)
Assemblyman Pete Goicoechea (in Carson City)
Assemblyman Garn Mabey (in Las Vegas)
Assemblyman John Oceguera (in Las Vegas)

OTHER LEGISLATORS PRESENT:

Senator Bob Coffin (in Las Vegas)

LCB STAFF PRESENT IN CARSON CITY:

Lorne J. Malkiewich, Director
Gary Ghiggeri, Senate Fiscal Analyst
Paul V. Townsend, Legislative Auditor
Donald O. Williams, Research Director
Risa B. Lang, Chief Deputy Legislative Counsel
Marilyn K. White, Executive Assistant

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 Meetings Held September 18, and October 30, 2007--Senator Randolph J. Townsend, Chair

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE MINUTES OF THE MEETINGS OF SEPTEMBER 18, AND OCTOBER 30, 2007. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED.

Prior to continuing with the agenda, there was a brief discussion concerning the volume of material received by commission members.

Mr. Oceguera said that he appreciates the outstanding work of staff but the volume of material weighs about 40 pounds and he said that two days to digest about six inches of material is rough. He suggested that there should be some way to have a deadline of two weeks or 10 days prior to the meeting so members can get the material and have some time to review it. The chair replied that Mr. Oceguera's point is well taken and as long as he has sat on the commission, which he estimated to be about 25 years, the problem has existed and attempts have been made to address it.

Mr. Malkiewich said that the statute was changed to give the commission more time. However, what happens is that agencies submit regulations right on the deadline which is about two weeks before the meeting. Getting the information together, getting the digest done and getting the language correct usually takes staff pretty close to the deadline. He realized that the material did go out late and attempts will be made in the future to get the material to members earlier. It was not the intention to have the regulations go out at the last minute but getting them all cleaned up and ready for transmittal took a little longer this time.

Chair Townsend commented that Mr. Oceguera was not alone and that Senator McGinness received his materials the previous night when he got home, which requires a substantial amount of reading and being able to digest all of that is almost impossible. The chair encouraged early submittal by all state agencies who want the commission to review things. He noted that many of the members will tend to reject something if they have not had an opportunity to review it because they do have a responsibility. He suggested to Mr. Malkiewich that there might be a point at which they will have to be cut off which will be sad for the regulatory agency but staff cannot be put under any more pressure and get the materials out four or five days before. He stated, "If they can't get to something, they can't get to it and that's just the way it is and it will encourage agencies to get their stuff in sooner."

Mr. Anderson said that he was also concerned about this particular issue since he received the regulations mid-day Monday. He said that he noticed they had gone out Friday and if they had gone out overnight express that would have at least given

members an opportunity to look at them over the weekend and he would have had an additional one or two full days more to review them. He suggested that they receive them at least five calendar days before the meeting and that they be shipped overnight express. The chair said, "I think we'll just go ahead and do that. I think it's a point well taken. I know that by the time I unpacked them, I realized I was facing a monumental task and I kept looking at all those folks on the commission who have multiple responsibilities outside of the Legislature and I figured this is going to be a challenge for all of us. We'll make those changes."

Item II--Legislative Auditor:

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

Mr. Townsend directed attention to material in the meeting packet containing a letter from the chairman of the Audit Subcommittee indicating that on November 1, the subcommittee met and three audit reports were presented. Highlights from each of the reports were provided in the meeting packet.

The first report was of the Investigation Division, Department of Public Safety. Auditors found that the division substantially complied with state laws, regulations and policies. It was also noted that they did not maintain accurate inventory records for property and equipment and did not conduct annual physical inventory counts as required. Auditors found that some bank accounts were not titled properly as the State of Nevada and one account was in the state's name when it actually belonged to a local government. Five recommendations were made to address these issues and all were accepted by the agency.

Continuing, Mr. Townsend said that the next audit highlight is of the Office for Consumer Health Assistance, Office of the Governor. Auditors found they substantially complied with state laws, regulations and policies. However, it was noted that they need to provide a closer accounting of sources and uses of funding. Reserve funds from hospital assessments were used to pay General Fund expenditures which were not repaid. Therefore, the General Fund owes the Bureau for Hospital Patients $180,000 and repayment of this amount will reduce future assessments on hospitals. Auditors also noted the need to improve the quality of performance measurement information, including the amounts claimed as savings for consumers. Six recommendations were made and accepted by the agency.

The next highlight is of the Hearings Division and Victims of Crime Program, Department of Administration. It was found that the Victims of Crime Program needs to improve its oversight of financial and administrative processes. The program had not established a process to ensure its ability to pay victims claims was properly communicated to the Board of Examiners. As often happens, victims claims exceeded the programs available funding during fiscal year 2006 and into 2007. As a result, $3.8 million in victims

claims were unpaid as of December 31, 2006. Payment on some of the claims had been delayed for more than one year. Auditors found that the claims were being subjectively selected for payment when available funds were insufficient to pay all of the claims. Program management had established an unwritten policy of first paying the victims wages, other direct reimbursements to victims, counseling, therapy and pharmacy bills. Hospitals and other selected medical service providers were then paid last. Although this method does maximize immediate benefit to victims, some service providers have not been receiving payment and consequently $2.4 million of the $3.8 million in unpaid claims at the end of the year were to three large medical service providers. Therefore, the program needs better communications with the Board of Examiners when claims exceed available funding. When the program elected to pay certain claims rather than request the Board to set a reduction in payment percentage for all claims, it was not following the statute. Although this was not done during the period of the audit, auditors did see examples in the past where the Board of Examiners had reduced the payment percentage from 100 percent to 80 percent for all claims across the board from April 2002 to 2004 when revenues were not sufficient to pay all claims. Auditors also found that the Hearings Division needs to improve oversight of financial and administrative processes and instances were noted where contract maximums were exceeded and services were received before contracts were approved. It was also found where it did not adequately monitor its budget authority which caused a disruption in the performance of hearing services. One office in Carson City had to postpone two weeks of scheduled hearings at the end of the fiscal year, roughly 60 hearings, because budget authority to pay for court reporting services had been exhausted. The report contained 11 recommendations all accepted by the agency. The Audit Subcommittee recommends the commission accept the three reports.

Mr. Anderson said that he was concerned when he read the full report on the Victims of Crime Program particularly as it has been an ongoing problem. He said that he is aware that there is a report they are required to comply with in 60 or 90 days. He wondered if there could be a statement of which of those specifically they are going to be complying with. "Because we cannot continue to go down this road with victims of crime especially since we've made so many promises to them. I'd like to see additional information, if that would be alright with the chairman, on this particular program," he said. Mr. Townsend responded that the division will be going through the normal follow up process. He noted that an additional item that occurred on this with regard to the unwritten policy is that the program did obtain approval from the Board of Examiners with new revised policies and procedures which are somewhat in line with what auditors found but not quite directly following the statute that provides for a percentage reduction for all claims across the board. Staff is following up with that currently and may have to request the Legislative Counsel to review it as well. He will be reporting back to members on that matter.

ASSEMBLYMAN ANDERSON MOVED TO ACCEPT THE AUDIT REPORTS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND 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 lists 14 six-month reports that were reviewed at the November 1 meeting. This was the first meeting after the end of the legislative session so there were a large number of reports that included 108 recommendations. As several months had gone by, auditors requested updated information and that is included on the schedule following the letter. He referred to page two of the schedule which indicated that as of November 1 with the updated information included 75 of the 108 recommendations that were fully implemented, 31 that were partially implemented and two that had no action. The schedule also includes some information regarding the status of the recommendations. He noted that on page two at the top, the Department of Taxation indicates implementation of the remaining recommendations will be dependent on the completion of the Unified Tax System which should be occurring soon. In other cases, the agencies have provided a time frame on when they expect the recommendations to be implemented and auditors will continue to monitor the status of recommendations not yet fully implemented and many of the agencies will be returning to future meetings to provide the Audit Subcommittee with reports on the progress being made. The Audit Subcommittee recommends the Legislative Commission accept the 14 six-month reports.

Mr. Carpenter said that he sees that the Department of Agriculture has four recommendations on which there was no action and he wondered what the status was and what kind of follow up will be done. Mr. Townsend said that by the time November 1 arrived, the Department of Agriculture had moved four of the no action items to two. The two items involve policies and procedures to ensure payments are safeguarded, accounting duties are separated, receipts are reconciled to deposits, revenues are deposited timely and to update their policies and procedures and distribute copies to the staff responsible for financial activities. In this department, auditors found some fairly significant weaknesses in the way they were accounting for the collections of their revenues as well as maintaining them and the efforts put forth by the accounting staff in maintaining their records. There is a new director in place and according to the director full implementation of the recommendations was delayed because the newness of her in the position and there has also been some turnover in staff. The director has indicated that she is committed to getting those implemented. Auditors have met with the department and will continue to meet with them and provide whatever assistance they can in helping them get the recommendations implemented. There are some concerns with that agency and he is sure it will be returning to the Audit Subcommittee soon.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF THE SIX-MONTH STATUS REPORTS. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

Item III--Progress Reports and Appointments:

A. Litigation currently in progress--Risa B. Lang, Chief Deputy Legislative Counsel.

Ms. Lang said that there are two cases which are pending. One is the Red Rock Canyon case which is Gypsum Resources vs. State of Nevada and is still pending. That case was stayed by the District Court awaiting a decision in a nearly identical federal case and there have not been any changes since the last report to the commission. The second case is one in which an amicus brief was filed in the case of Public Employees' Benefits Program vs. Las Vegas Metropolitan Police Department on October 30, 2007, and was mentioned by the Legislative Counsel at the last meeting. A reply brief was also filed on December 3, 2007, and oral arguments were held the previous week on January 24, 2008, at the Supreme Court. The Supreme Court promised to expedite the case and a decision should be issued by the end of March.

Mr. Anderson asked if the time line for appeal has run out on the case of O'Connor vs. Heller that is with the U.S. Supreme Court. Ms. Lang said she believes that case is still pending as well.

Later in the meeting the chair returned to this agenda item and Ms. Lang reported that she had received word that on the case of O'Connor vs. Heller, the U.S. Supreme Court denied "cert" so that case is now closed.

The chair said that the next two items would be moved to the end of the agenda after the review of regulations so members would have more time to review the handout material provided at the beginning of the meeting.

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

At the beginning of the meeting, the chair called attention to a handout (copy attached as Exhibit C) for this agenda item containing names of three additional applicants for the Commission on Ethics in addition to the material in the meeting packet containing one additional name. At the conclusion of the discussion and action on agenda Item IV. A., the chair returned to this item for the following discussion.

Mr. Malkiewich said that there is a vacancy on the Commission on Ethics. The Commission on Ethics has eight members, four are appointed by the Governor and four are appointed by the Legislative Commission. Caren Jenkins, who the Legislative Commission recently reappointed, decided to run for the District Court Judge position of Judge Maddox. He referred to material in the meeting packet containing a copy of the statute, a list of the current members and an application from Paul H. Lamboley to serve on the Commission on Ethics. He also referred to the handout provided at the beginning of the meeting containing three other applications. The first is from Janette M. Bloom

who is retiring as Clerk to the Nevada Supreme Court so she is both a former public officer and an attorney licensed to practice law. The second application is from Tosh Dawson a resident of Virginia City and member of the general public who has expressed an interest in serving. The third application is from Maureen Mullarkey asking to serve on the Commission on Ethics as well. He said he just received the one from Ms. Mullarkey this morning. He believes she meets all of the qualifications and knows the other applicants do meet the qualifications and are willing to serve.

Chair Townsend asked if any members have questions and noted that the caveat is always that if you have not had time to review the applications or interview the candidates at least by phone, there is no mandatory requirement that an appointment be made today. He said they have come in on short notice and Mr. Malkiewich has done everything he can through the legislative website and his contacts to come up with names of qualified individuals who show an interest.

Senator Titus said that there are some very good applicants in the pool and sometimes the commission has a hard time getting people to serve on the Ethics Commission. Senator Titus said she would nominate Paul H. Lamboley as she thinks most people know him and he would be a good representative.

> SENATOR TITUS MOVED TO NOMINATE PAUL H. LAMBOLEY. MOTION SECONDED BY ASSEMBLYMAN ANDERSON.

Under discussion, Senator Care said he thought it was unfortunate members received the letters of interest so late. He said, "My personal opinion is these are four-year appointments and members of this commission have extraordinary powers. They can impose fines, they can reach certain conclusions that may lead to a vote of articles of impeachment, removal of office, this, that and the other. I would like to talk to them and so I intend to if we don't act today. I'm not prepared to do anything today. One of the hang-ups that I've seen in the newspapers and transcript of hearings is this whole definition of a gift. There is no statutory definition of a gift and I wouldn't ask any of these candidates to take a position that they would be stuck with were they ever appointed and that issue were to come up but I would like to feel them out on that particular issue."

Senator Hardy indicated he wished to associate himself with the remarks of Senators Care and Titus. He said he was very encouraged with the high level of interest in the position by some very talented and capable people but he is concerned about that as well and thinks the members should take a little time to interview those interested.

Chair Townsend said he knows only one of the individuals who is qualified, however, he does not know the other three. He thought Senator Care's point is an extremely important one and he would be reluctant to move forward. He indicated it is not like it is an appointment for one year which needs immediate action. He indicated his willingness to call a meeting soon and noted that the appointments are becoming extremely complex

and more important every day. He said he would echo the sentiments of Senators Care and Hardy.

Mr. Anderson said that he knows three of the applicants. He has had an opportunity to work with Ms. Bloom and Mr. Lamboley is well known in northern Nevada and has been for some time. He has also had the opportunity to have conversations with Ms. Mullarkey. They are very good and qualified applicants and still feels strongly about Mr. Lamboley but if the majority of members wish to wait a while . . .

Chair Townsend said there is a motion on the floor. He said he would rather wait. He knows one of the applicants but would like to know the other three before he makes a decision but it is up to the members whether they want to call for a vote or wait until the next meeting.

Senator Titus said, "We can wait, that's fine. I want everybody to be comfortable with the choice that we make and I think after they interview people and find more information, they'll still think Mr. Lamboley is the best choice. Thank you."

SENATOR TITUS WITHDREW THE MOTION AND ASSEMBLYMAN ANDERSON WITHDREW THE SECOND ON THE MOTION.

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

At the beginning of the meeting, Chair Townsend called attention to a handout (copy attached as Exhibit D) for this agenda item containing additional names of applicants for the Commission on Minority Affairs.

Mr. Malkiewich referred to the meeting packet containing a memorandum from the Nevada Consumer Affairs Division, Department of Business and Industry, with a list of nominees for appointment to the Commission on Minority Affairs. The entity has been in existence for several years but due to a lack of funding and staffing has not been active in the past few years. In the past session, the position of Ombudsman for Consumer Affairs for Minorities was created and that person was also charged with providing services for the Commission on Minority Affairs. The bill placed the commission within the Department of Business and Industry so it has a bit of support. The person who has now been appointed, Leticia Bravo, has submitted the names of individuals recommended for the Commission on Minority Affairs. There is the list of nine members suggested for appointment, also an indication of some ex-officio members who had worked with them and there is a handout of four additional nominees. The ombudsman still recommends the nine names but wanted to pass along the names of additional people who had expressed interest. The statute provides that the Legislative Commission appoint nine members from lists submitted to it.

Mr. Anderson indicated that he spoke to Mr. Malkiewich and Ms. Bravo relative to the appointments. He had two concerns, one of which is partially alleviated. He said is always uncomfortable when there are nine appointments to be made and only nine names are provided to the commission and it doesn't seem the members have any real choice. He knows that finding qualified applicants is difficult. He was concerned when he read that the membership reflect Nevada's minority demographics and that the Native American groups are not represented with a voting member. He was reassured by the ombudsman that they are part of the ex-officio group and was informed of the problems in selecting someone who might represent the Native American communities as a group and the difficulty in that, along with the fact that the non-urban areas of the state are less represented while they do have minority population. He said that he saw only one name from Elko County and that concerns him. He was not sure that the concerns about the Native American representation and the rural area representation are answered with the additional names.

Mr. Carpenter noted that Danny Gonzales has been nominated. He said that he knows him quite well and thinks he would be a very good representative. Although he would like to see more people from rural Nevada on the commission, he would like to make sure that Mr. Gonzales is one of the nominations.

Chair Townsend said there are a number of recommendations and also statements of interest and resume highlights of recommended individuals. He asked if all nine recommended individuals would become members of the Commission on Minority Affairs. Mr. Malkiewich said that the recommendation of the ombudsman is that the nine names in the meeting packet be the nine who would be appointed but the list that has been submitted includes the four others in the handout. He said that as Mr. Anderson indicates his two areas of concern – representatives of Native American population and rural Nevada – are not aided by those four. He said members do not have a nominee in those areas. He thought the commission's options were to appoint nine of the 13 who have been submitted or another option is to not appoint a full commission and appoint seven or eight of the nine members just to leave a position or two vacant if the Legislative Commission has a desire to have other representatives on the Commission on Minority Affairs. The ombudsman could be directed to return with an additional list. Otherwise, the Legislative Commission could move to approve any of the nine of the 13 names submitted.

Chair Townsend commented that three of the four names that have been added are from southern Nevada and asked Senator Titus if anyone in the delegation is familiar with any of the three. Senator Titus said that the members in Las Vegas have been talking and think it would be better if all of the appointments were made at the same time. That way, it doesn't make it look like somebody is an afterthought. She suggested that the item be deferred to the next meeting and get busy to recruit some more nominees.

The chair noted that there are a number of individuals in the meeting packet that are different from the handout and many of the members know them and yet there are some

they have not heard of although they have remarkable credentials. He thought it would behoove the members to spend a little time on the appointments and maybe some of the new folks that have asked to be considered could give some energy to that commission and it could be helpful to those that it represents.

Chair Townsend said this item would be held and proceeded to agenda Item IV. C.

D. Appointment of members to Nevada Silver Haired Legislative Forum (NRS 427A.320)--Lorne J. Malkiewich, Director.

The chair noted that no senators have come forward with additional nominations for the Nevada Silver Haired Legislative Forum. No action was necessary on this item.

Item IV--Legislative Commission Policy:

A. Review of administrative regulations submitted pursuant to NRS 233B.067--Risa B. Lang, Chief Deputy Legislative Counsel.

Chair Townsend referred to a handout (copy attached as Exhibit E) of the revised list of regulations to be reviewed and the binders of regulations provided to members. He announced that Regulation R178-07 from the Personnel Commission had been withdrawn by the agency.

The chair asked that members who had concerns about an individual regulation inform him of the regulation number and it would be held for further discussion. He would then take a motion on the remaining regulations before proceeding with discussion on the regulations held.

Mr. Anderson indicated he spent a good deal of time reviewing the regulations and had an opportunity to talk with some agency representatives on the regulations on which he had concerns. He said he appreciated their candor with him in discussing the issues. He would like some of their answers to become part of the record. He asked that the following regulations be held for discussion: R179-05, R145-06, R36-07, R64-07, R79-07, R102-07, R126-07, R140-07, R144-07, R155-07 and R157-07.

Senator Care requested that the following regulations be held for further discussion: R65-07, R86-07, R94-07, R106-07, R109-07, R132-07, R133-07, R153-07, R167-07, R176-07 and R182-07.

Senator Hardy asked that R037-07 be held for further discussion.

Mr. Carpenter requested that R145-06, R065-07, R077-07, R102-07, R123-07, R124-07, R138-07, R144-07 and R157-07 be held for discussion.

Chair Townsend identified the following regulations as those which are remaining: R049-07, R066-07, R068-07, R082-07, R083-07, R104-07, R110-07, R111-07, R120-07, R122-07, R125-07, R136-07, R137-07, R139-07, R141-07, R143-07, R149-07, R152-07, R154-07 and R156-07.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF THE REMAINING REGULATIONS IDENTIFIED BY THE CHAIR AS NOT BEING HELD FOR FURTHER DISCUSSION. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R179-05 from the State Environmental Commission, Mr. Anderson said that he would like it on the record as to how the regulation would help to solve a problem that exists in the landfill operation east of the City of Sparks in the Lockwood area and how it would help the public in solving some of the problems that have been going on relative to that particular site.

Leo Drozdoff, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources appeared before the members in Carson City. He introduced Colleen Cripps, Ph.D., Deputy Administrator and Eric Noack, Chief, Bureau of Waste Management from his agency who were also in attendance in Carson City. Mr. Drozdoff said that the regulation became necessary as a result of court cases as well as the federal Environmental Protection Agency reviewing their existing regulation that had been in place for years with regard to daily cover. In the past, daily cover actually meant once every six days. This regulation now tightens that requirement to require cover every day. One way to establish that cover is to have a 24 hours a day, seven days a week operation. It essentially "boiled down" to one facility which was the Lockwood facility. In the past, it was acceptable to have waste for a number of days on the face not being covered. Now it will require the facility to either work continuously or to cover daily. The agency has worked extensively with local government, the federal government and the company in question. He said that in his view, it is definitely a strengthening of what the agency has done in the past and has been done with a great amount of work with the Lockwood facility.

Mr. Anderson asked if the facility will be given a sufficient amount of time to implement the requirement so that they are not caught off guard. Mr. Drozdoff responded in the affirmative and said that as part of their discussions with the facility, it has until April of this year which allows them to work at the site and try various practices.

Mr. Carpenter asked how the regulation would affect Elko and if it is a Class I. Mr. Drozdoff responded that it would not affect Elko as it really affects the two large facilities in Las Vegas and in Lockwood. He said that Las Vegas has been a 24 hours a day, seven days a week operation for years.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R179-05. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R145-06 from the Commission for Common-Interest Communities and Condominium Hotels, Michael Buckley, Chairman, Commission for Common-Interest Communities and Condominium Hotels appeared before the members in Las Vegas.

Mr. Anderson said that he was concerned with section 4 of the regulation with the new language which holds the federal but apparently drops the requirement for retaining those funds in state institutions and also allows for a private insurance to enter into the program. He wanted to know what assurance members have that the private insurance is going to meet the same standard in these trying economic times as those that are supported by federal protection of those funds. Mr. Buckley said that the intent in the regulation was simply to clarify that it is not the financial institution that is federally insured but the accounts that are federally insured. He said that the language mentioned by Mr. Anderson is the Legislative Counsel Bureau (LCB) language referring to NRS 678.755. He stated, "I think what the commission was after was that if you have associations that have large amounts of funds, those are sometimes held with money market accounts and those are federally insured as I understand it. The language was added by Legislative Counsel and I guess I would defer to them for exactly the meaning of 'the private insurer pursuant to NRS 678.755.'"

Ms. Lang said that she is going to look up the reference but she thought that since the commission has on record what the intent is she can make sure the language comports with that and make any minor adjustments that might be necessary.

Chair Townsend said that if he follows Mr. Buckley's thinking, that larger associations make deposits by money markets, certificates and so forth and may not use a federally chartered bank but may use someone licensed to do business by the Securities and Exchange Commission. Mr. Buckley responded, "That's correct, Mr. Chairman."

Further, the chair asked in the case of 'insured by a private insurer' was that a result of looking at some of the larger things that are covered privately as opposed to federally, is that where that language came from? Mr. Buckley responded that language came from the LCB and he did not think the commission used the words private insurer.

Ms. Lang said that it appears that is a phrase that is used frequently in NRS and 678.755 is the section that has approval of private insurers and contracts of insurance that the Commissioner of Insurance looks at and has certain considerations that have to be met. She said, "I'm guessing that the drafter, in putting this together, was following language that has been used in other parts of NRS when referring to these."

Chair Townsend asked if there was a representative of the Division of Insurance present and invited that individual to the witness table.

Mr. Buckley said, "I would say, Mr. Chairman, this doesn't affect the obligation of the board of directors or the managers to choose a bank or depository that is a prudent place to put money. There still is that obligation."

Van Mouradian, representing the Division of Insurance, appeared before the members in Carson City. Mr. Mouradian said that he was unsure what the issue was. The chair explained that the regulation before the commission re-established how monies are going to be deposited for common-interest communities or condominium hotel associations and they removed the term "federally insured financial institution authorized to do business in the State of Nevada" and said that a "financial institution that is federally insured or insured by a private insurer approved pursuant to 678.755." He said apparently that is a drafter's copy of what we do in the rest of the statutes. He asked, "How many private insurers for financial institutions do we have?" Mr. Mouradian responded that he did not know and would have to obtain that information.

Mr. Anderson said that he wanted to make sure from Mr. Buckley that if he is drawing the correct inference that there is no authority that they have to be doing business in the state unless it is repeated in NRS 678.755. Mr. Buckley reiterated that the commission only used the words "federally insured" and so he does not know from where the other language came. He said that he was unsure whether the whole regulation has to "stand or fall at once" but if there has to be a "hold" that only the problematic language be held rather than the entire regulation since it deals with permitting of reserve preparers which the statute requires and the other items were ancillary and "thrown into" the more important regulation. The regulation deals with permitting reserve study preparers which is required by statute since July 1, 2007, and this is the regulation that accomplishes that.

Ms. Lang said, "As you know, we can't just approve certain parts of the regulation. However, if this was a drafting issue and it's something that wasn't in the adopted reg, we can certainly clarify that and make it comport with what was submitted to us. However, what I would advise you is that I think this language was taken from the statutes and it appears that there is more than 40 instances of this language where in various titles of NRS where we refer to federally insured or insured by private insurance insurer approved pursuant to 678.755. So, I think it was adopted from those NRS provisions." Chair Townsend observed, "So, it's a standard language provision I guess."

Senator Care referred to page 15, section 20, noting that it says that a reserve study specialist is subject to disciplinary action. He asked if that is a discretionary call and the reason he asks is that in subsection b. it says if the reserve study specialist has ever had a permit revoked or suspended in another jurisdiction. He asked if it is possible to become a reserve study specialist in Nevada after disclosing that there has been a suspension in the past that was later adjudicated not to have merit. He said, "Isn't this something that you're going to know prior to this person becoming a specialist in Nevada or is it something that would be discovered after this person becomes a specialist?" Mr. Buckley said that Nevada is the only state that has permits. The

commission tried to not have them permitted but the legislation failed. He said a person would not be licensed if there were permits and there was a problem, but if one came up the intent is that this would allow the agency to revoke the permit. It would be discretionary by the agency.

Mr. Carpenter said that there are small associations in Elko and other locations and he did not think they would be able to "stand" the cost of having the specialists. He said that he has even heard that there are really no courses for nationally recognized professional organizations and he wondered how the people are going to be permitted. In the areas that he represents, if consultants have to be obtained the cost is going to be horrendous. In some of the associations, the only thing they are maintaining is a road and a couple of culverts. He said he really has a problem with it. He recalled that there was legislation in the previous session that would have taken care of the problem but the governor vetoed it so they are still having a problem with the small associations. He was wondering if there could be some kind of language that would give them some relief rather than having to hire one of the specialists that are going to have to charge a lot of money for their services.

Mr. Buckley said that his response would be that the statute requires a permit so the regulation is a means to obtain the permit. He said the commission supports the removal of a requirement for a permit but, unfortunately, that is in the statute. He said they tried to make it the easiest way possible. There are a couple of national agencies which do certify reserve study specialists and it is hoped the state would not be involved too much in reviewing these permits. He reiterated that the state requires the permit so they need to have a process to have the permit. The statute also requires the reserve studies in most situations.

Chair Townsend asked if there was a threshold in terms of either units, income or age or something where the smaller associations mentioned by Mr. Carpenter would fall out from the requirement. Mr. Buckley said there is no exception for reserve studies. Every association that is subject to Chapter 116 has to have reserve study, however, there are some exemptions for small associations but one would have to look at exemption from the overall act and not just the reserve studies because if they are subject to the act, they have to have a reserve study.

Chair Townsend said the commission would return to this regulation later in the meeting.

At the conclusion of the discussion of Regulation R182-07, the chair returned to Regulation R145-06. Those comments are placed herein for purposes of continuity.

Chair Townsend recalled that there was a question regarding a change from an institution that is federally insured or privately insured under a certain area of the NRS. He said that he believed the original answer was that it was drafting and they wanted to make it conform to the rest of the statutes or regulations regarding depository institutions. He asked if there were further questions.

Mr. Anderson said that he is still concerned about what is going to happen. He understands the federal insured question is taken care of. His concern is the fact that the people are not going to be required to be in the state and he is not sure that the bill drafter was covering that particular part of the issue. He said it was unusual for him to disagree with a bill drafter because they generally are on his side and he "hesitates to go there" but he did not know if there was a problem with the commission holding the regulation for another meeting or if there is a question of timeliness that needs to be taken care of. The chair said that since Nevada is the only state that has allowed a licensing requirement, he does not have a problem holding the regulation until the questions have been answered unless other commission members have a problem doing that. No commission members expressed a concern about holding the regulation until another meeting.

ASSEMBLYMAN ANDERSON MOVED TO REJECT REGULATION R145-06. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

Chair Townsend requested that Mr. Anderson speak with Legislative Counsel and Mr. Buckley to address and resolve the concerns.

At conclusion of the above discussion and action on Regulation R145-06, the chair proceeded to agenda Item III. A.

On Regulation R036-07 from the State Board of Pharmacy, Larry L. Pinson, Pharm.D., Executive Secretary, State Board of Pharmacy appeared before the members in Carson City.

Mr. Anderson said that he had an opportunity to speak with the individual listed as the contact who was very helpful in helping him understand the regulation. He said that he is concerned about section 2. 6. II. on page 5 of the regulation and is trying to understand what is going to happen with the individual who is from another state and fits into the category of being a pharmaceutical technician and will apparently be "grandfathered in" to Nevada. He wondered how that will line up with the reality that in every other part of the statutes, the two requirements seem to be complying with the American Society of Health-System Pharmacists (ASHP) folks and the passing of drug testing by the state when they are doing study. He asked what happens to the individual who is transferring in from another state and how is Nevada assured that their program fits the requirements of the ASHP and a drug testing program and is that made a part of Nevada's concern. Dr. Pinson responded that the regulations throughout the nation are "all over the board." Some states do not register or license technicians at all. The concern in the industry is that pharmacy technicians are needed and they don't want to impede those coming into the state to practice. The board essentially relies on a state. Some states have the same type of requirements that Nevada does such as

requiring a ASHP and some drug test and some do not. Basically, if a pharmacy technician is licensed in another state and is "okay" with that board, then they are able to come into Nevada.

Mr. Anderson asked if the post-secondary school where they originally received their training has to be accredited by the same standard that Nevada has in order to for this to happen. He said that he noticed in I. it sounds like it is a two-step process that they have to be school trained and accredited within another state. He asked if Nevada at least has that as a backup and is there uniformity in the schools. Dr. Pinson responded, "No. Some schools are ASHP accredited and, there is another accrediting body that just surfaced that we didn't know about and will probably incorporate later, some are not. The main problem here was that we have so many of these schools just popping up all over the place with no accreditation at all and the impetus of this is I had an entire class from one of the schools in Reno show up at my office one day, and it costs a lot of money, they had spent something like $8,000 -$10,000 for this program to become a pharmacy technician and they didn't have an instructor. They were supposed to be teaching math or something and apparently this guy couldn't even do a fraction. They said, 'You know, I just feel like I've been ripped off and you've got to do something.' We thought there must be an accrediting body out there for these programs and so we formed a work group with industry support and came up with ASHP which seems to be pretty much the standard throughout the country but I can't say in all states. They do have an exam that a pharmacy technician can take and if they take that then they become certified, which is good. It's difficult because everybody's laws are different."

Mr. Anderson said that is where his point of concern is that if one goes to a school at any one of the five states bordering Nevada, is hired and put into practice in one of those states, then Nevada will "grandfather them in" so he was unsure whether Nevada has closed that door and made sure that the quality control is where it should be, which is what is trying to be done. He said he is not reassured. Dr. Pinson stated that the majority of pharmacy technicians do not go through these schools. The majority are trained on the job by chains, especially in Nevada. There are not that many individuals who take that route. He said, "One of the things that assures us about the drug testing, which is one of the biggest problems, we meet every six weeks and I probably have between two and six cases of technicians diverting drugs for their own use, which bothers me. All of the chains and all of the employers pretty much drug test now so it doesn't matter who's coming in from where, I'm pretty well assured that they're going to be drug tested and, hopefully, close that loop."

> ASSEMBLYWOMAN BUCKLEY MOVED APPROVAL OF REGULATION R036-07. MOTION SECONDED BY SENATOR CARE AND CARRIED WITH ASSEMBLYMAN ANDERSON VOTING NAY.

On Regulation R037-07 from the State Board of Pharmacy, Senator Hardy said that the previous discussion serves as a segueway into his comments on this regulation. He said he wished to get some comments on the record. He said, "It seems like from the time

I've been involved in the Legislature, particularly on the Committee on Commerce and Labor, that we've chipped away at what pharmacists do. I guess my question is in section 1 of the regulations we're providing that pharmaceutical technicians may prepare, package, compound and label prescription drugs pursuant to the prescriptions or orders for medication if the pharmacist inspects the final product and initials the record. I just wonder how much of the responsibilities that we're currently giving to pharmacists that we're now giving to pharmacists, it seems like we can just have one pharmacist there and I know we increased the number of technicians that can be in training and that may be supervised by a pharmacist, I just think the training they receive is critical. Everybody has a story and I know at least two or three occasions of my own family and friends where pharmacists have caught drug interactions and other things that would have been really catastrophic had they gone through. I'd just like somebody from the Board of Pharmacy to address that. It seems like we're giving all of the duties of a pharmacist to a pharmaceutical technician." Dr. Pinson said that was a great question and he thinks he can clarify this all. He said, "We're actually trying to improve the quality of care and here is the situation. The way things are now, pharmacies can have pharmacists working, pharmacy technicians working and clerks working. The way prescriptions are filled primarily in our country is somebody, ancillary help, will do the input and then a pharmacist checks that work. In my opinion, that's almost backwards because you have somebody now, the least trained person, with that piece of paper interpreting what it says – they are trying to figure out what the drug is, what the directions are, read the doctor's handwriting and that sort of thing. They're putting it in the computer and then it goes down the line and the pharmacist checks it. I can tell you after presiding over close to 12-13 years of cases for the Board of Pharmacy that 80 percent of the errors are made at input by the clerk or the technician and it is something that the pharmacist did not catch. What this does is essentially takes the clerk out of that operation so that at least we have some trained people doing that input. Clerks now are out of the pharmacy, they can work in the pharmacy and do the register and they can put in demographics like names and insurance companies and that sort of thing, but when it comes to interpreting that prescription, we now have at least a licensed person, which is the pharmacy technician or the pharmacist, doing that input and not these clerks which is the way it was. So we are trying to improve that."

Senator Hardy inquired, "So are we prohibiting then the clerks from doing that, this just allows them to do it, is that just going to be a matter of practice or are we going to prohibit clerks from doing the input." Dr. Pinson responded, "Yes, that's correct. We are going to prohibit that and that's towards the, I think, section 3 on the last page." Senator Hardy commented that he just received his material last night also and was just looking at the digest. He suggested to the chair that this matter might be something that the Legislature might want to review during the next session. He said, "I understand now where you're trying to go with this and support that. I just think that the fewer people that handle these things the better and if we just have a pharmacist but I didn't know that's how it works. Thank you, Mr. Chairman. Unless there are any other concerns from the commission, I'd make a motion that we accept the regulation."

SENATOR HARDY MOVED ACCEPTANCE OF REGULATION R037-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Chair Townsend addressed Dr. Pinson and said that Senator Hardy's concern is a legitimate one. He asked when he had an opportunity in early summer that he contact Senator Maggie Carlton who heads the subcommittee on boards from the Senate Commerce and Labor Committee, Senator Joe Heck when he returns from serving overseas who have developed the expertise and also Senator Hardy so that some of the concerns can be addressed. He commented that a great thing about a citizen Legislature is that members run into some of the same things as many of their constituents do. Further, the chair said that when a drive-up window is used, he never knows who is dispensing the medication – whether it is a clerk, technician or pharmacist unless the pharmacist has a particular jacket on with a label. He thought some of those things need to be addressed. Dr. Pinson said that those were all good points and noted that pharmacists "hate" drive-up windows and they are one of the worst things that have been invented. He said, "The thing that we all have to keep in mind is that with our population bubble as it is, the projections for the numbers of prescriptions that need to be filled, especially in the next few years, is just phenomenal and I don't know who's going to do them. We don't have enough pharmacists. Technical help is going to have to be in there somewhere just to take care of the load." Further, he said Nevada has good counseling laws in the state and is very progressive and, hopefully, the pharmacists will do their job and take care of everybody.

On Regulation R064-07 from the Commission of Appraisers for Real Estate, Mr. Anderson inquired if appraisers are required to have background checks similar to those of real estate salespersons who go out in the field. Brenda Kindred Kipling, Appraisal Officer, Real Estate Division, Department of Business and Industry appeared before members in Carson City. She responded that the background check procedure for appraisers is identical to that for salespersons in that they are fingerprinted and run through the state repository and the Federal Bureau of Investigation.

Senator Care referred to section 1, subsection 2 which says that the commission's approval of a course is effective for one year and subsection 5, when it gives the grounds to withdraw, it talks about poor quality of the curriculum. He wondered if the course is approved by the commission, how can there be poor quality of the curriculum and asked if course and curriculum are one in the same. Ms. Kipling responded that the course and the curriculum is reviewed by the division and then approved by the appraisal commission. The courses are then audited throughout the year and if it is determined that the instructor is not following the curriculum or not teaching the curriculum that was approved, then the approval for the course can be denied.

Further, Senator Care commented then it is not so much the poor quality of the curriculum but maybe the poor quality of the way that it has been presented or taught deviating from the approved course. He asked if that is what that means. Ms. Kipling responded in the affirmative.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF REGULATION R064-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R065-07 from the Nevada Interscholastic Activities Association (NIAA), Senator Care referred to page two, section 2, subsection 3 and said the regulation would amend the existing language deleting "the" and adding "any" and he wondered when is there a season when there is no sanctioned sport. He said he does not know enough about this but it seemed to him that any sport is going to be sanctioned as he understands it so when would they have a time when there is no season for a sanctioned sport. Eddie Bonine, Executive Director, NIAA appeared before members in Carson City. He said that the senator is correct and there are sanctioned seasons for all times during the school year. This change would put student athlete participants in a particular season in conflict with an all-star season where an athlete may be a dual-sport athlete. He cited an example where a student played football and baseball and during the baseball season, football would have some form of all-star game and it does not put a student athlete in a position where they have to make that specific choice. The majority of the all-star games are held outside of the regular school year such as summers, or traveling teams. But there are situations where winter sports will carry over into spring sports and put athletes who would like to participate in those in a position of not being able to because they have made a choice to stay in a spring sport that is sanctioned at the time versus one that may carry over into another season by all-star status.

Mr. Carpenter asked why non-voting members are being put on the board. Mr. Bonine said that in northern Nevada they have a commissioner that oversees all of the northern Nevada schools and structure. The present board structure has two individuals on the board – historically, the Director of Athletics for the Washoe County School District and an assigned trustee from the Washoe County School District and they still have a northern 4A commissioner. He said once he became the Executive Director and had held that other position in Washoe County, they had tried to get that northern representation onto the board. There has been some reorganization in administration in the southern 4A, specifically Clark County, and historically their Director of Athletics also sat on the board by assignment of their trustees on a four-year term. He said they have since hired an assistant that oversees the majority of the athletic piece, if you will, as there are a large number of schools to monitor and they would come on as a representative of the 4A south, similar to the structure that is in the northern 4A. Mr. Bonine said that they do have 3A, 2A and 1A liaisons with two-year terms that rotate north and south to facilitate them as they need information from the outlying counties as well. It just falls into place with what they have in the other classifications.

Mr. Carpenter said he had another question along the line of Senator Care's and asked, "When you put any sanctioned sports, is that really going to harm some of these athletes that are competing in two or three sports – they won't be able to be on an all-star team – doesn't that hinder them?" Mr. Bonine responded, "Mr. Carpenter, actually I would think it would be just the opposite. They will still be able to participate

in those but if you, for example sir, were the baseball coach and your best pitcher is also a pretty good basketball player, I wouldn't think that you'd want your best pitcher to miss two or three or four days and/or week and your season to have to choose to go play in a basketball all-star game that's being held by, possibly, an outside property – say a corporate sponsorship of some sort that's running it, a large shoe company or something like that – it would be a conflict. It really puts them in a position where these all-star games would be more accessible outside of the seasons and the majority again, as I said earlier, are in the summer time however there are some that would overlap or actually step on another sport."

Mr. Carpenter said that he had a real problem restricting the youth. He commented that it seems like we want them to excel but on the other hand we restrict them and it seemed to him that could be worked out between the coaches and the athletes. He said he had a problem with that especially in the real small schools.

Mr. Goicoechea said that he believed the NIAA would have the ability to sanction or accept these if there was not a conflict and asked if that was correct? Mr. Bonine replied that was correct. Mr. Goicoechea said, "So really what we're doing we're facilitating it for the athlete, the only real burden would be placed on those persons that are trying to put i.e. an all-star team or an event together." Mr. Bonine responded that was correct. Mr. Goicoechea further said, "And they would have to again work with you and the school to ensure that no one was being impacted." Mr. Bonine replied, "That is correct."

> ASSEMBLYMAN GOICOECHEA MOVE APPROVAL OF REGULATION R065-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED WITH ASSEMBLYMAN CARPENTER VOTING NAY.

On Regulation R077-07 from the Real Estate Commission, Ann McDermott, Administrator, Real Estate Division of the Department of Business and Industry appeared before members in Las Vegas.

Mr. Carpenter said that ranches are specifically named in the regulation and he wanted to make sure that also includes farms. Ms. McDermott responded, "Yes, it would."

> SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R077-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED.

On Regulation R079-07 from the Department of Motor Vehicles, Edgar Roberts, Administrator, Motor Carrier Division, Department of Motor Vehicles (DMV) appeared before members in Carson City.

Mr. Anderson said that the DMV was most helpful in the discussions he had with them the previous day, however, he was still concerned about the movement of rubber-tired vehicles which will be moved five miles down the road. He said, "I'm concerned about

how you assure yourself that somebody isn't hop-skipping down the road – go five miles, pull off, stay there for 45 minutes and then proceed an additional five miles. That's number one of my concerns. Two would be my concern is if it's permissible in utilizing the statute for someone to move a vehicle from their home site or their yard, their equipment yard, to a work site each day if that distance is less than five miles and thus tying up traffic and creating a potential hazard. I recognize that there clearly is a need for moving special mobile equipment from one work site to another work site utilizing public thoroughfares in order to do that and I think it's in the best interest of the public to do so but I'm concerned about those two aspects of this and how we make sure that the work site is indeed only 4.6 miles away and not some longer period of time and how you're going to reassure yourself that the distance that they move that piece of equipment is less than five miles." Mr. Roberts responded, "In the regulations under section 1. D. specifies 'initially entered the public highway' so from where they first entered the public highway if they were to be pulled over by a highway patrolman commercial enforcement, commercial enforcement is here today to speak to that, but also I'm sure that they would ask when you entered and they would presume if they'd gone over the five miles. In regards to a commute, special mobile equipment is not really designed to be commuter vehicles. They have big knobby tires and the more you run those on the pavement, it wears them down."

Mr. Anderson said, "So, if I have an equipment yard and I'm concerned about the work site and I move that vehicle back to my equipment yard every Friday mid-day and bring it out every Monday morning for the job, I tie up traffic every Friday and every Monday on a narrow road in some of the parts of the state that would not be unusual because I would want it where I can service it and servicing it would be of some concern at five miles." Sergeant Brad Smith, Nevada Highway Patrol, Commercial Enforcement Division, Department of Public Safety, appeared before members in Carson City. Sergeant Smith explained that at the present time, the enforcement officers do keep an eye on equipment on the roadway and when they do stop one of the pieces of equipment, they ask the operator where they entered the roadway and where they are going. The officers have access to the Internet and actually do a search and find out how far apart the two locations are before they enforce it. On the question of moving the vehicle to and from every Friday and Monday, if the equipment operator or company is going to move that, they have two options. One is to 'road' the vehicle and the other one is to load it up on a 'low-boy' and transport it if they are going to do that. Through the regulation and the conversations held, there was a consensus that it would tie up traffic less to have the piece of equipment moved the five miles at 35 miles an hour than to have the 'low-boy' stopped on the road in front of the construction site actually blocking traffic to load the piece of equipment and take it down the road and that was how they came to that conclusion.

Mr. Anderson asked if compromises have been reached in this particular regulation relative to the distances. Sergeant Smith responded in the affirmative. Mr. Anderson further asked if "everybody has signed off on it." Sergeant Smith said, "We've had several discussions and we've all decided that this is very workable. From my

perspective and my paradigm, I want to make sure that this regulation is easily enforceable and is fair to the motoring public and to the operators of this equipment and we've decided that this is a fair compromise."

Mr. Goicoechea said that he did not have any questions on the regulation although he did spend considerable time working on the regulation in response to the legislation that was passed last session and he would make a motion for approval if there are no other concerns.

Chair Townsend asked if the gentlemen had discussions with members of the larger commercial contracting industry because they called him yesterday and said they have concerns. Mr. Roberts responded, "Mr. Chairman, yes, we did work with the AGC chapter and I believe they're here today. We used to have this similar language back in 2002 which was a 10 mile radius and then we came to a compromise down to 5 which we thought was much more workable between industry and law enforcement."

Jeanette Belz, representing the Associated General Contractors (AGC) Nevada Chapter, appeared before the commission in Carson City. She stated, "We have been involved in this all along and the reason you received a phone call yesterday was because we heard that there were some concerns, we didn't know what they were and we just wanted to make sure that you knew that we were involved. We approve of this, we have been working with it and there were many compromises made along the way."

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R079-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R086-07 from the Private Investigator's Licensing Board, Mechele Ray, Executive Director for the Private Investigator's Licensing Board appeared before members in Carson City.

Senator Care referred to section 1 and said that he didn't have a chance to check the Nevada Administrative Code (NAC) but noted that there are fines to be imposed for violation of subsection 1 of NAC 648.530 and also fines to be imposed for violation of NAC 648.525. He was wondering if Ms. Ray could tell members what those violations would be. Ms. Ray said that they removed NAC 648.530 from subsection 2 and moved it up to subsection 1. She apologized for not bringing her matrix and she has everything else except for 530. She believed 530 is one of their newest regulations and is specific to advertising. She said that 525 is failure to not include your license number on all forms of advertising and on 530 she would have to get back to the members as she did not know. Senator Care said that it is an existing regulation as Ms. Ray pointed out and they have simply moved it elsewhere in this proposed regulation and there is not a change in the regulation. Ms. Ray responded that was correct and the change to NAC 648.530 was limited at a fine of $50 and by moving it up to subsection 1 it is now $50 for the first offense, $100 for the second offense and $200 for the third and subsequent offense. Senator Care said then as he understands it all that is being done

here is creating a penalty, a fine, for failure to include the license number on the paperwork referenced, primarily advertising. Ms. Ray replied that the board has regulations over time that it didn't have any authority to issue any administrative fines so it has included those new regulations so they could issue the administrative fines and increased some of the existing fines and increased the amount of fines that could be issued.

SENATOR MCGINNESS MOVED ACCEPTANCE OF REGULATION R086-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R094-07 from the State Contractors' Board, Keith Lee, Legislative Counsel to the State Contractors' Board appeared before members in Carson City.

Senator Care referred to section 2, subsection 1 of the proposed regulation where it reads "if the board prescribes a shorter or longer period of validity for the license pursuant to" and it referenced a statute. He said he looked at the statute and the board may do that but it goes on to say "the board will notify the licensee of that fact." He said his question is what would be the objective criteria determining whether the license period should be for two years or something less than two years and how would that determination be made. Mr. Lee responded that this is all part of Senate Bill 279 and his recollection was that the discretion would be used sparingly and would be based upon primarily previous disciplinary actions against the contractor, if any, in the state or elsewhere and prospectively primarily a financial condition of the licensee including the bonding limit and just the financial wherewithal of the licensee. He reiterated it would be used sparingly but those are essentially the criteria that were presented at the hearings on this matter during the last session.

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R094-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R102-07 from the State Board of Education, Keith W. Rheault, Ed.D., Superintendent of Public Instruction, Department of Education appeared before members in Carson City.

Mr. Anderson said that he had an opportunity to speak with Dr. Rheault the previous day. He said that he had concerns in two areas and wanted to be reassured that since it appears to be a rather extensive and dramatic regulation that in implementing it the impact on the schools changing their English curriculum textbooks in the current position and the economic hardship that might fall on the individual school districts to implement this regulation. He said while it is addressed in the summary statement, he wanted the reassurance that it will not break the school districts in trying to get the regulation into place. Dr. Rheault responded, "The academic standards council is charged in the state to adopt the standards and, way back when, they are also charged with the periodic

review of the standards. The standards in English that you have before you are the revision process, so these were first adopted seven years ago. I can assure you that with the textbook adoption cycle, the way it works is the standards are adopted actually three years before the textbooks are to be purchased. So with the adoption this year of the English language arts standards, the school districts have the remainder of this year and all of next year to revise their curriculum to make sure it's aligned with the standards and the first textbook adoption with the new standards will occur in 2009-10 school year. And so it's still a process of working its way through the normal revision process. The ones that they're currently adopting this year had to do with the math that were adopted in 2006 the year before. So it's a normal process, it's just part of the revision. They've had previous standards that they've worked with and these did change some things around and it's going to take some additional work on school district staff but it's just a normal process they go through every time – either the course of study was revised or the standards – so I think they're well aware of it."

Mr. Anderson said that he noted in the very thorough explanation of what took place at the hearings on page two of the ending document that Ms. Ward in Clark County apparently was concerned about the request to table this for a longer period of time because she was concerned about the whole language versus the phonics approach and a chronological question. He was trying to figure out why they were not able to or why they decided not to take that into consideration or, if they did take it into consideration. He said that he noticed that Ms. Holloway from the literacy council in Clark County also had concerns about irregularities and regular sight words and all the rest of those things that English teachers love to discuss. Dr. Rheault responded that he knew of three workshops and hearings in the academic standards side. The standards were on the website for public comment and three separate town hall meetings were held in Elko, Reno and Las Vegas for public input. When they went to the board, it was the first concern they heard and it was Sheila Ward from Carson City and a small group in Carson City that thought there was not enough mention of phonics in the program. He thought at the public hearing itself, school district representatives who were on the revision team plus his department staff pointed out all the locations where phonics is mentioned including the very first page at the bottom where it starts with phonological awareness and works its way through the whole document. He thought when the board listened to the school districts, they did not find enough merit in the concern that it was a whole language document and did not include phonics and agreed with the academics standards council that it was a good document. The districts were excited to have it and did not change any of the document.

Mr. Carpenter said his question was also in regard to phonics. He asked if Dr. Rheault could go through and make sure that phonics are still going to be a part of learning the English language. Dr. Rheault responded, "Mr. Carpenter, I can assure you there is phonics throughout every grade level starting with kindergarten through the 12th grade standards and I know it's a very important piece of the learning to read standards in this document and we've had all the school district curriculum specialists, the school district

teachers, we had parents sitting on the review and revision panel, we had business people, we had university people. It's a good document and just built on the original standards that were adopted seven years ago."

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF REGULATION R102-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R106-07 from the Board of Athletic Trainers, Senator Care said his only question is that in section 6 there is a list of fees that the board may charge. He specifically mentioned the sixth one and to some degree the seventh – for a list of business addresses of licensees – and noted that would be public information and is the distinction between everything else on that list. He said he knows that agencies and departments charge copying fees when someone requests documents but he is wondering if this is something that other agencies, departments, boards or whatever do is to charge for information like that and if so, what is the rationale and determination of the figure of $25.

Stacey Whittaker, Executive Secretary, Board of Athletic Trainers appeared before the commission in Carson City. She explained that when they established fees for the board, they used guidelines from other boards such as the physical therapy board. They conducted research into the fees and determined those were applicable for their board. To this point, they have not given out any list of business address of licensees because a lot of addresses are personal home addresses. It was discussed with their attorney general representative whether or nor to distribute addresses and they were advised not to do so unless they consulted with him first.

Senator Care asked for further clarification on home address or place of business. Ms. Whittaker explained that with athletic training there is a little bit of both as there are a lot of individuals who work for high schools part time as athletic trainers so when they send in their application or renewal forms it does not necessarily state a business address, it is often a home address. She said for them to monitor business addresses is almost impossible. Senator Care said, "But if someone is going to hold themselves out to the public as a trainer, as I understand it your legal advice though is nonetheless not to release the address if it is a home address." Ms. Whittaker responded in the affirmative and said that is the advice of their attorney general representative.

SENATOR WIENER MOVED APPROVAL OF REGULATION R106-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED WITH SENATOR CARE VOTING NAY.

On Regulation R109-07 from the Commissioner of Insurance, Van Mouradian representing the Commissioner of Insurance appeared before the members in Carson City.

Senator Care said he was wondering not so much about the content or the language but inquired if there is anything that governs the size of the print. He said, "I say that because we all rent cars, you go to the airport and somebody shoves something to you that says you initial five or six places. Nobody reads that stuff and I'm wondering if it's conceivable that the situation might arise where somebody – they sign off on this but the print is so small there might be an argument made later that 'I didn't realize, not because I didn't read it but because I couldn't read it.'" Mr. Mouradian responded, "We have a requirement that it has to be 10 font minimally unless there is something that makes it predominate or requires it to be predominate."

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R109-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R123-07 from the Department of Motor Vehicles, Mr. Carpenter asked why the regulations are necessary and why did they have to change them.

Debbie Wilson, Management Analyst, Department of Motor Vehicles appeared before members in Carson City. She explained that the change was made based on Assembly Bill 584 and just identifies that regardless of the type of driver's license you hold, if you are operating a commercial motor vehicle these provisions apply to you. It needed to be changed to match both statute and federal regulation.

Mr. Goicoechea said he gets a little nervous about the definition of a commercial motor vehicle. He asked by definition is it possible that a person might not realize they were driving a commercial vehicle. Ms. Wilson responded, "By definition, a commercial motor vehicle would be any vehicle over 26,000 pounds or if it is placarded for hazmat or if it transports 16 or more passengers. I can't answer whether somebody would know or not know. If they are operating a Class C vehicle, say a pickup truck, and it's placarded for hazmat materials, they very well may not know. However, it still needs to fall under the federal regulations and our NAC's do need to mirror that requirement."

Further, Mr. Goicoechea said, "And I'm a little concerned about when they moved away from – clearly, if you knew you had a commercial driver's license that you're B and you knew that fit in. Now if you happen to be working for a drilling company, let's say, and you did have over the 70 gallons of diesel fuel on and you were placarded as flammable – and I'm not defending you know whether you're an 04 or an 08 – but let's say if you were an 04 and got pulled over, then you would lose your driver's license. Where typically driving that pickup truck, you would be at an 08 before you would lose your driver's license or a DUI." Ms. Wilson commented, "If that vehicle is a commercial motor vehicle or licensed as such the, yes, regardless of the type of license you hold even if you have a noncommercial Class C, you would lose your license."
Mr. Goicoechea said, "I'm not too sure I like the changes on either one of these so thank you."

Senator McGinness said that Ms. Wilson mentioned a vehicle that holds 16 or more passengers and asked if school buses come under that category as well. Ms. Wilson responded in the affirmative.

SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R123-07. MOTION SECONDED BY SENATOR HARDY AND CARRIED UNANIMOUSLY.

On Regulation R124-07 from the Department of Motor Vehicles, Mr. Carpenter said that after re-reading the regulation he was "okay with it."

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R124-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R126-07 from the Board of the Public Employees' Benefits Program (PEBP), Leslie A. Johnstone, Executive Officer for the PEBP appeared before members in Carson City.

Mr. Anderson thanked the office for responding so quickly yesterday to his questions and inquiries and he wants to make sure everyone else understands the regulation as he does. He said that he was concerned after reading the regulation relative to what was going to happen in the smaller jurisdictions that are currently in the state health care program. He was particularly concerned with somebody such as a 20-year employee who may be in the local government system and then went into the state system when their local insurance group "fell apart." Then, in 2010 that person retires and in 2015 the local government decides that it no longer wants to be in the state system and pulls out and goes into a cooperative with other local governments to get a better practice. He asked what happens to the employee who is retired between that time period since it is after September of 2009 and is in the state system and since the local government pulled out of the system, he is left without insurance. He asked, "Who does he go to?" Ms. Johnstone explained, "This part of the regulation is implementing Senate Bill 544 that was approved during the last session and retirees that are on the PEBP program as of November 30, 2008, will have what's referred to as grandfathering rights so that they will still be eligible to continue in the program regardless of what goes on with their last employer. All other retirees that are part of the program are only going to be eligible if their last employer is participating in the program. If the employer decides to acquire their benefits from some other program other than PEBP and they pull out of participating in PEBP then the active employees with that employer as well as retirees that joined after November 30, 2008, will also be ineligible to continue their participation. So, the retiree in that case may have options through that employer and may not and we would also interpret in NRS 287.0475, that's the section that requires PEBP as well as all other employers to offer a reinstatement every two years for their retirees to rejoin that plan and I think that some plans affect that and honor that provision and some do not provide those reinstatement provisions. So, that would be different employer to employer, I believe."

Mr. Anderson said, "I'm concerned about when you tell me that some honor it and some do not honor it, recognizing that they may not like to pick up their tail, their retirees, because that's going to impact the group moving in because they are not contributors yet the bulk of this person's time has been contributing into – both their active work time and their retirement time – has been contributing to our system and they'll have never made a contribution into the new system and that may be the concern. I'm trying to figure out why they wouldn't get to opt either one way or the other." Ms. Johnstone responded that she thinks that just comes out in the policy decisions that were approved as part of Senate Bill 544. Further, Mr. Anderson asked if that individual would have a federal option to sue the local government to ensure that they have the insurance available to them because it is a federal statute? He said that he believes that it is a federal statute that makes that available. Ms. Johnstone said that she did not recall any federal statute that requires employers to provide retiree benefits. There are continuation of coverage requirements at the federal level but what is being discussed is retiree benefits and that is something different.

Mr. Goicoechea said, "I just want to elaborate a little bit, Leslie, on where Assemblyman Anderson was going. Under 387, it says they have to have the open rolls and you are allowed to go back to the health care coverage you had at the point you retired, isn't that correct?" Ms. Johnstone responded, "Yes, or join the PEBP plan." Mr. Goicoechea continued, "So we've got a group of people where Assemblyman Anderson was headed, they opt to join PEBP, they're in the program for the four years that are required under 544. This person retires, that is the retirement health care plan that was available to him upon his retirement which he's supposed to be able to go back to under 387. So then the local government drops out of PEBP after their four years, they've fulfilled their contract but this retiree has retired in the interim and he, therefore, doesn't have the option of going back to the coverage that he had when he retired because we don't allow it under 544 and 387 says you shall allow him to come back under open rolls." Ms. Johnstone said that she would need to double check what she is about to say but she believed that NRS 287.0475 allows for some changes in that plan coverage so that you don't have to go back to the exact same plan that was in existence when you retired because it understands that there will be changes that occur over time to plan design and who offers that benefit. She thought that it still puts the burden on the last employer.

Further, Mr. Goicoechea reiterated that under 387 it says you have available to you the health care coverage that was available when you retired but under 544 it would not be available to you so you would have to go back to the local government that had employed you and they would not have a plan. Maybe their plan would not want to cover you and you would not have the option of having the open enrollment every two years because it would be PEBP and that is precluded by statute.

Ms. Johnstone asked the chair if she could get some information back to the commission as she has a slightly different interpretation of that section and will have to look to their attorney general for some guidance. She said that it is not a PEBP issue, per se but she appreciates they are the ones helping implement 544.

The chair asked Ms. Lang if she had any information that could help the discussion. Ms. Lang asked if the question could be re-stated and she will look at 287.0478 and maybe she will be able to assist with that.

Ms. Johnstone said that she thinks the issue is under .0475 if the person at the time of retirement was receiving their benefits from PEBP and because of changes they are no longer eligible to join PEBP is there then any obligation on the employer to provide health benefits or is that person precluded from any plan because they are no longer eligible for PEBP.

Responding to the chair who asked if that was the question, Mr. Goicoechea responded, "That's it precisely."

Ms. Lang said, "I'm not entirely sure, looking at these, how it would work. It seems like PEBP may be able to place some requirements if somebody exits, if a local government for example were to exit the plan, that they could make it a condition of the exit that they accept these people back but I think I would have to look at this more closely to see how it works with S.B. 554."

The chair said he would hold the regulation because of the concerns but he did not know whether fixing the concern is available to the board under the statutory scheme but he would hold the regulation until the questions are answered.

Chair Townsend proceeded to the next regulation and subsequently returned to R126-07 later in the meeting. The following discussion took place after the discussion of Regulation R140-07.

The chair said he wanted to make sure that everyone understands the questions that were posed by both assemblymen are important and he did not know whether the regulation or the jurisdiction of the PEBP statutes can reach to fix that problem.

Ms. Johnstone said that NRS 287.0475 was amended in Senate Bill 544 and she read a short section, "the non-state retiree could reinstate an insurance except for life insurance that at the time of reinstatement is provided by the last public employer of the retired public officer." She said what that says is that the reinstatement rights are into whatever benefit that last employer is now offering. It allowed for it to no longer be PEBP in how it was written.

Mr. Anderson asked if it would be correct for that person to assume that they would have a right to be guaranteed that they would have to get their retirement benefit from

their old employer in their new insurance. Ms. Johnstone responded, "I believe the answer to that is yes." She said the only gap in coverage that might occur here is if the last employer left PEBP sometime before the next reinstatement period occurred. The reinstatement periods only happen every even numbered year but she did believe the intent of NRS 287.0475 is as it's always been for the retiree to have a plan to go back into. Mr. Anderson suggested, "We might want to take under consideration the fact that the leaving could only take place in even numbered years." Ms. Johnstone replied, "Right now that's not provided for in statute but that may be one adjustment."

ASSEMBLYMAN GOICOECHEA MOVED ACCEPTANCE OF REGULATION R126-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

Chair Townsend expressed appreciation to Ms. Johnstone and stated, "These are very, very sensitive issues to our employees and there are a number of legislators who have followed this at some length and because they have a certain detailed understanding of the complexities, we want to make sure that they get fully vetted and we appreciate you coming back and helping that." Ms. Johnstone replied, "Thank you, Mr. Chair, and that's important for the program as well so that we don't get askew of what the intent was."

At the conclusion of the above discussion, the chair directed attention to Regulation R144-07.

On Regulation R132-07 from the State Board of Education, Keith W. Rheault, Ed.D., Superintendent of Public Instruction, Department of Education appeared before the members in Carson City.

Senator Care said that the proposed language deletes in section 1 "commercial" so they are just talking about photography. In subsection 2 of section 1 there is a reference made to the area of laws and ethics regarding photography. He was curious what that might be. He said the same question would also apply to the following proposed regulation regarding video. He noted that ethics is open to interpretation but he did not recall seeing that associated with any course of study with photography or broadcast or video in the following regulation. Dr. Rheault responded, "Senator Care, I don't know how specific I can be in answering your question but I do know that from the standards the individual school districts take the curriculum and include on their local advisory committees actual business people that work in the area. I think for the ones that, at least what I heard when these standards were being discussed, regarding the laws had to do with using commercial photography and making copies of them. As far as the ethics, where you can use someone else's picture giving them credits, that type of thing. I don't think it's a detailed – I don't think they give a lot of emphasis although they wanted to make sure it was discussed in the courses that are provided for both of these that we're talking about, to make sure students were aware that there needed to be some ethics applied to using their photographs or somebody else's as well as what the

laws say on how you can photocopy, particularly with the digital age happening currently, all those get shared all over the world. That's about all I can tell you. I do know the business group that were on the revision and writing teams felt it was important to at least address this in both the photography and the public broadcasting regulations."

Senator Care thanked the chair noting that will take care of it and based upon Dr. Rheault's testimony he will not have any questions on R133-07 either.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R132-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R133-07 from the State Board of Education, Senator Care had requested that this regulation be held but stated in the discussion of the previous regulation that he did not have any questions on this regulation based upon Dr. Rheault's testimony.

> SENATOR MCGINNESS MOVED APPROVAL OF REGULATION R133-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R138-07 from the State Board of Health, Fergus J. Laughridge, Program Manager, Emergency Medical Services and Trauma Program, Health Division, Department of Health and Human Services appeared before members in Carson City.

Mr. Carpenter referred to section 8, page 4 of the regulation and said that it looks like the providers of emergency medical services in the hospitals in rural areas would have to provide the information and have to contribute to the cost of software and equipment. He has a concern as the emergency medical services in the rural areas are "strapped" now and he wondered what the cost of the equipment might be and whether the state would help in the cost because it could be an imposition on the small services.

Mr. Laughridge responded that the provision of section 8 would apply only to those services participating in the study or the collection of data. He referred to Senate Bill 244 of the 2007 Legislative Session which amended NRS 450B.790 to require that the State Board of Health establish a system of collecting data concerning the wait times for the provision of emergency medical services and the care of persons who are transported to hospitals. The genesis of that bill was the Legislature's ongoing concern that in Clark County excessive wait time – times greater than 30 minutes – was elapsing from the point an ambulance arrived at a hospital's emergency department to when the hospital assumed responsibility for the patient and the ambulance was able to depart. As a result, the Legislature in adopting its language essentially established a three-tiered approach by making data collection mandatory in Clark County but discretionary for the remaining 16 counties. In the 16 other counties, participation in the State Board of Health's data collection system would occur either as a result of a county-driven process

or by board discretion as specified in NRS 450B.795, subsection 3, and NRS 450B.795, subsection 4, respectively. At that point, only if they were a participating county or entity would that be a requirement on the hospitals or the providers of emergency medical services.

Mr. Carpenter said, "So small counties would not have to participate in this collection, is that what I'm hearing?" Mr. Laughridge responded, "That is correct unless it was deemed that the wait times for the transfer of a patient from an ambulance gurney to an appropriate location in the hospital exceeded 30 minutes. The State Board of Health may, at that time, consider having an ongoing collection of data so they could analyze that. Currently, I can tell you that does not occur and we have a very good response system in our rural counties. It's in the metropolitan areas where we're seeing the inference of this occurring."

ASSEMBLYMAN GOICOECHEA MOVED APPROVAL OF REGULATION R138-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R140-07 from the Nevada Tax Commission, Dino DiCianno, Executive Director, Department of Taxation appeared before members in Carson City.
Mr. Anderson said he had the opportunity to speak to Mr. DiCianno relative to what happens to the request in section 3.2 and about the potential proprietary information in a public document and what would happen to the request where the consideration is being put forth by the taxpayer as to his position of why he considers his defense to be [portions of the question unintelligible due to technical difficulties] to his business and then the commission decides to hear it but then rules against him. What happens to the document that he initials his filing with, does it become a public document and thus file a road map to the issues that he considers to be sensitive within his documents?
Mr. DiCianno responded, "First of all, I think it's important to understand that the regulation's in response to Assembly Bill 433 which has to do with the open meeting law. Clearly, the commission if it does receive a request for a closed hearing and if you'd look on page two, paragraph 3.b. of the regulation, it states 'if the commission receives a request for a closed hearing in accordance with the provisions of this section the commission will hold and protect the information included in the request and any information included in any briefs' and so on and so forth until the determination can be made whether or not that hearing should be closed or not. If the commission makes a determination that it doesn't meet that standard in the bill, then it will be an open meeting and that information would become a public record."

Mr. Anderson said that is where his concern rests that the assurance that would not become a deterrent for people making the request for this because knowing if it goes against them, his request becomes part of the open record. Mr. DiCianno replied, "That's an extremely important question because that gets to the heart of this whole issue. Clearly, I would believe that the commission has a good handle on whether something should be held proprietary or not. It is up to the individual taxpayer to convince the commission at that point in time that it should be closed because of the

nature of that information that's being provided in that case. Again, that's a call the commission's going to have to make each and every time."

Ms. Buckley stated, "In Assembly Bill 433, we made it very clear that the only items that can be kept confidential are the proprietary and confidential information which was very specifically defined and we further stated that a meeting that is closed may only be closed to the extent specified in the statute and the presumption is that everything else is open and public. So if the person requesting a closed hearing is unable to show that they meet that specific proprietary information as set forth in NRS 332.025 or otherwise meets the very specific terms of the statute, I think the public policy was that all of that would be kept open. I have the same question on the same section that was just discussed but with kind of a different question. It says if you receive the requests for a closed hearing, you indicate that it's closed on the agenda, which is fine, hold and protect that information but it doesn't say anywhere, does it, maybe I'm missing it that if they fail to convince the commission that that information then is public. I'm satisfied if that's the legislative intent as we approve this as indicated by your testimony on the record that that would be open but we pretty clearly said 'you know, it's a new day, we want sunshine, everything is open unless those two specific definitions are met.' If they are not met, it must be open. Would you agree with that statement?" Mr. DiCianno responded, "I would agree with you. If we look on page three, paragraph 5. B., the commission has to make a determination by the majority vote of the quorum, whether or not that information qualifies as proprietary or confidential. If it does not, then it will go into an open meeting. There is no wiggle room there that I can see. If the commission determines that that information meets the criteria in the statute, then the hearing is closed. If it does not, then it has to conduct the meeting in open. There is no wiggle room there."

Further, Ms. Buckley said, "And the documents that were submitted in requesting the closed hearing, as long as they don't meet the definitions of proprietary or confidential as stated in the law that we passed, then that would be open as well." Mr. DiCianno responded, "That's correct."

Chair Townsend asked if an applicant for a closed hearing is denied, does the taxpayer have the option of saying, 'well, since it's going to be open, I'll go ahead and pay whatever I'm required to pay by the department, I'm no longer going to appeal it' because they may still feel rather than appeal it to the court, it is proprietary enough they'll go ahead and pay it – do they still have that option? Mr. DiCianno responded, "Mr. Chairman, that's absolutely correct." The chair opined that is a decision each business owner would have to make "on the fly" so to speak.

Responding to the chair, Mr. DiCianno introduced Christopher Nielsen, Deputy Executive Director - Compliance, Department of Taxation.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF REGULATION R140-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

The chair returned to Regulation R126-07 for further discussion which is included under that regulation for purposes of continuity prior to proceeding with the following regulation.

On Regulation R144-07 from the Nevada Interscholastic Activities Association (NIAA), Eddie Bonine, Executive Director, and Paul J. Anderson, Counsel, of the NIAA appeared before the commission in Carson City.

Mr. Anderson said that he had a lengthy discussion with Mr. Bonine the previous day and he explained in greater detail the problems with economic distress. He was concerned about a student whose family's economic situation might change through divorce or loss of employment and in readjusting their income to meet their new circumstances, the student leaves a private institution where the tuition might be high and goes into a public school. He wondered if that would preclude particularly a freshman or sophomore and would the student have to sit around and wait for 180 days when he leaves a school at the end of the school year and makes the transfer the following school year. He asked when the 180 days begins because that would preclude him from participating in football or basketball and he wondered how the NIAA intends to take care of appeals without this particular event because the student athlete is not in control of his parents financial situation. He said it is that youth about whom he is concerned.

Mr. Bonine responded, "I'll answer the first piece of that and then I will yield to Mr. Anderson, our counsel, who has a longer history in working with this regulation than I at least in my first year as Executive Director. The freshman/sophomore reference that you have, the individual transferring from a private to public, we have a regulation that allows eligibility upon approval at that school for sub-varsity participation. A sub-varsity rule has been a godsend and has allowed a lot of individuals like you just referenced to leave a private to public or go from a public to private and allow them participation in the two sports in which – in all sports – but the two specifically that you mentioned. So, we do have a regulation that addresses that. We, for the most part, have gone in a complete circle from the definition of hardship which is what we're attempting to move back to in identifying the hardship, not so much a financial – financial does become a piece of that – but what was the reason that alluded to the financial. At this point if it's okay with chair and yourself, sir, I would yield to Mr. Anderson for further comment." Mr. Anderson representing the NIAA said with respect to the financial piece of the issue he would like to provide some history. He said, "We've always had the definition of a hardship that's governed all transfer appeals with respect to students regardless of whether they are transferring from a public school to another public school or a public school to a private school or private to public. That's defined elsewhere in our regulations as circumstances beyond the control of the pupil, the parents or both and not

related to athletic competition. The financial part of it came to be several years ago and what that pertained to primarily was students as you've indicated, Assemblyman Anderson, are at a private school paying tuition, there is a change with respect to a family's situation and the family can't afford the tuition any more. It gave them the opportunity to leave that school and maintain their full athletic eligibility at a public school where they didn't have to pay for tuition. What then happened just a few years ago is we began getting cases from students in public schools who now wanted to transfer into private schools because they had a, what we call a reverse financial, hardship occur. That's where all of a sudden the family came into some money and miraculously their intent all along was to attend the private school and now they ought to be able to do that because of this windfall that's come to be. There has been, what we believe, significant manipulation in the private school sector with respect to that piece of this regulation and therefore it's been the recommendation, as we're presenting here, that we eliminate financial hardship altogether. If a pupil has a hardship and needs to leave a private school because of a financial reason, they still can do that as Mr. Bonine indicated under our normal hardship definition but we're just eliminating the financial piece to avoid some of these cases that we get. And, the other reason for that, we have had some of these cases challenged in court and the problem that we have with the financial aspect is there is nothing objective about it. Even if you have CPA's looking at this, determining what is a financial hardship to one family as opposed to another is virtually impossible to put your finger on and so we get hit with the courts telling us we're being arbitrary and capricious with respect to the application of the rule. Hopefully, that long-winded explanation explains a few things." Assemblyman Anderson thanked Mr. Anderson noting that he wanted to get it on the record because he thought it would be something they would be stumbling across because legislators get a lot of questions about the NIAA because it is a major concern. He appreciates the comments and the candor given by the representatives.

Senator Care said that counsel made reference to the manipulation and he does not sit on a legislative committee that ever entertains legislation along this line but in reading "between the lines" particular in section 3 where it now would just say "school" he was wondering how extensive the problem is with manipulation. He said, "I can tell you there's a feeling, having just put a daughter through high school down here, that some schools excel in sports over other schools in part because athletes are recruited and I'm wondering what sort of sanctions there are available – I realize I'm straying from the regulation, what sanctions are available to impose upon coaches or parents, if any, who participate in that sort of thing – and in getting back to the regulation what section 3 does to address that issue. Thank you." Mr. Anderson said, "If I understand your question, you're asking whether or not there's regulations in place concerning sanctions that can be imposed with respect to recruiting of athletes. There are and we have some significant ones in place that apply. We also have regulations in place that apply to parents who attempt to shop schools for their student. In other words, they're trying to look for the best athletic program for a student. So there are significant regulations in place and Mr. Bonine may have more on that."

Mr. Bonine stated, "When we get a report of recruiting we, at that particular juncture, have an investigation that we work cooperatively with the school. Where we run into a stumbling point is those individuals who call and/or want to communicate with us that there's been recruiting are reluctant to put it in writing and sign their name to it so that we can validate that investigation. Then it becomes a, if you will, a he said she said, and it becomes difficult for us because the imposition of the penalty – if a coach is proven to be guilty of the alleged, it's a two-year suspension from coaching. And the parents, if there is an alleged violation or a proven violation of using false identification, false residency to get into a particular zoning of a school, then there is a 360-day period of ineligibility for that particular athlete. If you look at the history, those sanctions have been far and few between because of what I eluded to earlier where we were able to get the valid information and have people actually step up to the plate, if you will, and give us something in writing and know exactly when and where it took place and then we go through the interview process, in fact counsel gets involved. We do a formal hearing and do the questioning under oath, if you will. So, that's been a stumbling point for us with that but, sir, we do get comments and allegations on a regular basis of students not being in their zone, students being recruited to go play for a particular coach and it seems to circulate around out-of-season participation in club sports that where numerous schools in respective counties, athletes are sharing a coach or sharing a particular team and then they decide they want to go to the school where that team may have a better program and then that's when we get involved with that process. Hopefully, that long-winded answer would help you as well."

Senator Care thanked the chair and indicated the issue goes outside of the scope of the regulation so he will end the discussion here.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R144-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED WITH ASSEMBLYMAN CARPENTER VOTING NAY.

On Regulation R153-07 from the Public Utilities Commission of Nevada (PUCN), Dave Noble representing the PUCN appeared before members in Carson City.

Senator Care referred to section 1, subsection 1 and asked what is the significance of the one year and one day period running from January 1 of this year. Mr. Noble responded, "In section 6 of S. B. 396, the Legislature requested that the commission report back to the Legislative Commission on, I believe, by December 31, 2008, of the impact, if any, of the decrease in the marking tolerance from 30 inches to 24 inches for marking subsurface installations and so the time frame in section 1, sub 1 of the proposed regulation is meant to encompass the potential dig-ins during that period."

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R153-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R155-07 from the State Board of Education, Keith W. Rheault, Ed.D., Superintendent of Public Instruction, Department of Education, appeared before members in Carson City.

Mr. Anderson said that he spoke to Dr. Rheault regarding his question and he wished to have it on the record his concern relative to the fact that being put in place is an opportunity for students who failed for another alternative testing for reading but it is not being done for science. He knows there are some concerns about the science test which is going to begin this year and he wanted to be reassured that they were going to try to do something if there are a large number of people who have difficulty in remembering the periodic table and other great scientific endeavors. Dr. Rheault responded that he thought the urgency currently was to get the writing alternative assessment in place as it is effective this year for seniors. He said, "I'll go on the record that Senate Bill 312 exempted reading and math from being an alternative assessment but starting this year, as you mentioned, students – the 10th graders – are taking the science exam but they're going to have to pass by 2010 when they are seniors. As soon as this reg gets implemented for the writing, staff and school districts will be meeting to determine how we can incorporate alternative assessment for science and this commission will be seeing that reg down the road here as soon as we can get it developed." Mr. Anderson said he just wanted to get that on the record and thanked Dr. Rheault.

> ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R155-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

On Regulation R157-07, from the Administrator of the Division of State Parks of the State Department of Conservation, Senator Hardy said that he had a question on this regulation in section 8, which appears to be a "housekeeping change," and asked what was the impact of that relative to if the administrator deems the use of an off-highway vehicle to be appropriate in a park. The current regulation is the administrator may grant designated areas of the park and it is being changed to grant final approval. He just wanted to make sure that it is not expanding the number of people who can for some reason deny access to off-highway vehicles. He said he wanted to know what was the purpose for the change and why it was being made.

Allen Newberry, Chief of Operations and Maintenance, Division of State Parks, Department of Conservation and Natural Resources, appeared before the commission in Carson City. Mr. Newberry explained that the reason for the change is that the Administrator does have final approval for that and usually through the recreation programs the park supervisors recommend that they put designated trails in state parks for off-highway vehicles use and the administrator has the final approval and it is reviewed through the master plan process and so the final approval is through the administrator. Senator Hardy said that he just wants to get it on the record and he asked Mr. Newberry if his testimony is that this is not in any way to expand the number

of individuals or people that can check in on this and maybe disallow the use of off-highway vehicles in certain areas – that's not the intent. Mr. Newberry responded, "No, that is not the intent. You're correct."

Mr. Anderson said that he was able to contact Mr. Newberry and had a discussion relative to this regulation. He said he is concerned about whether the state "picks up" any additional liability with this new regulation and how it is going to impact where someone may come into a park and park a vehicle and then it does not start and they have to hike out to get to where they can have someone come in and the park closes before they get back to their vehicle. He asked if the state incurs anything and what happens to the vehicles – are they towed out? He said he was assured that this regulation gives the agency the opportunity to tow vehicles that might be in the way of an emergency vehicle that has to enter an area and that was the reason behind it. He said he is trying to get an idea of what happens in terms of liability for the state and for the rights of individuals who may leave their car in the park through no fault of their own, other than "mis-maintenance." Mr. Newberry responded, "That will not change the liability. Primarily the reason for the regulation originally, if you go back to NRS 487.235 and 487.230, those regulations specifically outline who can and who cannot enforce abandoned vehicles and who can remove them off of state lands and properties. Where the concern came up for state parks is all roadways in state parks are designated as state highways but not all parking areas, campsites, et cetera. What this regulation does is amends that and assures the language so that we can remove abandoned vehicles out of parking areas and campsites and areas where emergency vehicles need the access but it doesn't change as far as the legal responsibility as far as to the state in terms of impoundment. We would still use certified and bonded towers. The regulation currently says that the visitors do notify the park staff prior to abandoning that vehicle or leaving the park. Normally, we contact everybody. We run the vehicles through DMV and find out who is the licensed owner and try and contact them before we remove a vehicle in case it's an emergency."

Further, Mr. Anderson gave the following example, "Let's say that I'm off snowmobiling, I'm in a state park and I throw a chain and the vehicle is abandoned out there in the middle of nowhere and now all of a sudden you need to get up the road and you're going to be able to tow that vehicle, or that snowmobile or that cat out of the way and that's purely what you're really kind of looking at, an addition." Mr. Newberry responded, "Assemblyman Anderson, primarily this is in congested areas in state parks. This wouldn't be in the back country in the park. This would just be on state highways or state parking lots inside the interior and, like I said, normally we do contact those registered owners prior to towing them – that's required by NAC anyway."
Mr. Anderson asked, "So a boat that might be left up on the beach or a sno-cat that is out there in the middle of the park someplace would not be subject to this kind of thing if it's within the park?" Mr. Newberry replied, "The only time that it would be subject to that is if it was left on a ramp or some area where traffic would be impeded by leaving that vessel there or that vehicle."

Mr. Carpenter said his question is along the lines of Mr. Anderson's question. He referred to section 3, 1 and 2 and said that he understands if the vehicle is left abandoned or unattended but if they just park it he does not understand "what they're trying to get at." Mr. Newberry explained, "Primarily what we're trying to do is to deal with vehicles that have been left or abandoned in the parks primarily in our congested use areas. We have primary problems at the Valley of Fire State Park, also Lake Tahoe, where it is very congested and people are leaving campsites or trying to leave vehicles left unattended. They are also trying to reserve them by leaving these vehicles or leaving them in use sites where people need access to them. By statute with the NAC we also try and contact those registered owners and we don't remove them unless it's necessary to protect and allow other users to come into those facilities." Mr. Carpenter inquired if the agency has a sign up that informs the public if their vehicle breaks down to go to the park ranger or someone and tell them. Mr. Newberry responded, "In all of our state parks we do have regulations that they're responsible to know the rules and regulations. This isn't a widespread problem. We do have people contact the staff and they do notify us if they're broken down. If there is a rare emergency, usually in the winter time, we will deal with those issues if they are left and abandoned and contact those owners. We haven't been towing those."

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R157-07. MOTION SECONDED BY SENATOR HARDY AND CARRIED UNANIMOUSLY.

On Regulation R167-07 from the Department of Health and Human Services, Todd Butterworth with the Office of Disability Services appeared before the members in Carson City.

Senator Care said that he has three questions. He commented that he was going to guess that the regulation, because of its length, is in response to newly enacted legislation. He said that if it is or if it is not, he needs to "get a handle" on what they are trying to do because he does not sit on the legislative committee and does not have the benefit of the legislation that led to the proposed regulations. Also, in section 13 there were a couple of fees – $2,748 and $1,374 – which seemed to him to be peculiar as opposed to a figure with a couple of zeros after it and he was wondering about the determination of those figures. Additionally, about section 44, on the breakdown of the levels of severity he wondered if someone could elaborate on how those determinations are made and the amounts for each violation. He asked if it is comparable to what other departments, boards, agencies impose and what is the rationale for those figures. Mr. Butterworth explained that the fee levels were adopted from a companion set of regulations put forth by the Bureau of Licensure and Certification (BLC). He gave a brief history behind the bill stating, "In 2005, the Legislature passed a bill regulating agencies that provide personal care services in the home but that bill specifically said that those services had to be non-medical and that caused a conflict with another section of NRS that said that medical services could be provided in the home under certain circumstances so we had to resolve that conflict. This past session, the Legislature passed A. B. 576 and the compromise was that we would divide out personal care

agencies and this new term – ISO's – intermediary service organizations. The major distinguishing factor between the two is that ISO's provide self-directed services and those medical services that were referred to in NRS are self-directed. The bottom line is if you're receiving these light medical services like bowel and bladder care and receiving medications and those sorts of things, you have to receive your services under an ISO. If you're not receiving those kinds of services, you have the option of a standard agency model or choosing this self-directed model. Again, the compromise was that we would divide out agencies and ISO's. What we decided to do because our agency hasn't been in the regulatory business in the past, is just to adopt the exact same fee structure that BLC was using in their companion regs for in-home care agencies. Our intent moving forward is to look at what our actual expenditures are and to adjust those on an annual basis. The population of ISO's is relatively small so we're thinking six to ten agencies we're going to be certifying, we're going to have to contract out for all of that work and so I'm hopeful that this fee level will cover those costs. I'd be happy to field any questions specifically related to those fees."

Senator Care said, "Well, this is a lot. On the other hand I note here that the hearings that were held on this if I read this correctly, only two attendees gave testimony, there were no written comments received. How many people participated in the input and the workshops on this regulation." Mr. Butterworth replied, "We held our hearings actually in conjunction with BLC and so both sets of regulations were heard at the same time and both, actually, the workshops were very well attended. There were probably somewhere around 40 or so people in the north and 50 or so people in the south and we did receive some commentary at the workshop level and we incorporated all of that stuff in the regs but when the hearing actually came, I think, my feeling is we did a pretty good job of answering the concerns of ISO's in the disability community and so the hearing wasn't very well attended because the regs cover what the community was looking for."

ASSEMBLYMAN ANDERSON MOVED APPROVAL OF REGULATION R167-07. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

On Regulation R176-07 from the State Board of Health, Lisa Jones with the Health Division, Bureau of Licensure and Certification, appeared before members in Las Vegas. She noted that there were also program specialists for the medical laboratory staff present in Carson City. Senator Care indicated his focus is on section 4, subsection 2 and the new language which says upon receipt of a complaint the bureau may conduct an investigation. He wondered under what circumstances the bureau would determine that it would or would not conduct an investigation. He said then it goes further and says enter the premises of any other laboratory which may have information. He asked how would the determination be made that another laboratory may or may not have information. Ms. Jones said, "The issue of complaints, we generally review any complaint that comes in and determine whether there's features to that complaint that fall under our jurisdiction and so we've generally been using the complaint investigation process. This little change to the language is just to clarify that our authority is there

and we would be doing the process based on the nature. We investigate complaints, or we get a lot of complaints, related to unlicensed operations so part of that is coming from other facilities is based on what they can tell us about the scope of operations, if I'm answering your question." Senator Care said, "Yes, but if I could just continue for a moment, Mr. Chairman, if it's a jurisdictional issue that's your first inquiry when you receive a complaint. What about the second step which I guess would be whether the complaint has merit? Would you as a matter of course conduct an investigation regardless of whether the complaint might cause some doubt as to whether there's something to it?" Ms. Jones responded, "Really, as long as we determine that we have jurisdiction and there is a feature that would have a regulatory component, we would conduct an investigation. The thing that we do in our agency is establish a priority to the complaints that come in so we have a tiered system and if the complaint alleges that there's going to be or could be a severe harm to someone, then we would investigate that within a two-day time frame. On the other end of the spectrum, if there's a complaint about say cleanliness or something like that, then it would be a lower priority that we would investigate on another routine visit."

Senator Hardy inquired at what point do these complaints become available to members of the general public or do they become a matter of public record. Ms. Jones responded, "They do. Almost anything in our system is available for public record and the process in place is that if a finding is made, then we issue what's called a statement of deficiencies to that facility. The facility has a 10-day time period to reply with a plan of correction and upon receipt of that plan of correction all of that becomes public record." Senator Hardy asked, "At that point, after there's been a finding and there's been a response from the – then it becomes a matter of public record." Ms. Jones said, "Right, after the facility's given the opportunity to provide a response." Senator Hardy said, "And not up until that point." Ms. Jones replied, "Right."

SENATOR MCGINNESS MOVED ACCEPTANCE OF REGULATION R176-07. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

On Regulation R182-07 from the State Board of Health, Senator Care said that to some degree his questions were answered on the testimony from Mr. Butterworth on Regulation R167-07. He noticed the fees were the same as contained in this regulation and he does not have any questions now.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE OF REGULATION R182-07. MOTION SECONDED BY ASSEMBLYMAN GOICOECHEA AND CARRIED UNANIMOUSLY.

Prior to continuing with the next item, the chair returned to Regulation R145-06 for additional discussion and the comments are included under that item for purposes of continuity.

B. Request for approval of Campaign Contributions and Expenses Reports from the Office of the Secretary of State--Lorne J. Malkiewich, Director.

Mr. Malkiewich said this item is approval of a form submitted by the Secretary of State and the form is included in the meeting packet along with a letter from the Secretary of State and his deputy, Matt Griffin. This is approval of the Ballot Advocacy Group Contributions and Expenses form. He said he needed to apologize to the commission for not bringing it to their attention. The letter is dated November 28th and at the time it was submitted, he did not recognize that technically it would need to be used by January 15, 2008. He probably should have had the commission meet before then so it could be approved. He said the LCB has reviewed the form and it is basically the same form that is used for other contribution and expense reports, it is just for this new group – the ballot advocacy group. Staff found no problem at all with the form and would recommend approval.

SENATOR MCGINNESS MOVED APPROVAL OF THE BALLOT ADVOCACY GROUP CONTRIBUTION AND EXPENSE REPORT FORMS. MOTION SECONDED BY ASSEMBLYMAN ANDERSON AND CARRIED UNANIMOUSLY.

The chair proceeded to agenda Item V.

C. Amendment to Rule No. 28 of the Rules and Policies of the Legislative Counsel Bureau--Lorne J. Malkiewich, Director.

Mr. Malkiewich said this item is amending Rule No. 28 to provide that a person who leaves and returns within a year if they leave under certain conditions gets their annual leave restored. There is currently such a provision for sick leave but not for annual leave. As a general rule if someone works more than six months, their annual vests and they get paid for it when they leave. But, if someone only works three months and then leaves, such as a student who might work the summer in the Grounds Unit, they do not yet have enough annual leave to get paid for it. This provision would say if a person is rehired within a year, they would get credit and that annual leave would be restored. This would also apply to any session hires who work for less than six months and then find a position with the LCB in October or November. They would have their annual leave from session restored. The Executive Branch already has this benefit and it was brought to his attention by the Accounting Unit that the LCB does not have a similar benefit. It is a fairly narrow circumstance in which it would be restored because if someone works six months, they receive their annual leave but for the few people in this area, he believes the benefit should be extended.

ASSEMBLYMAN ANDERSON MOVED ACCEPTANCE TO THE CHANGE TO RULE NO. 28. MOTION SECONDED BY SENATOR MCGINNESS AND CARRIED UNANIMOUSLY.

The chair returned to agenda Item IV. B.

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 Long Term Care Administrators.
3. Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors.
4. Board of Examiners for Social Workers.
5. Board of Psychological Examiners.
6. Board of Registered Environmental Health Specialists.
7. Chiropractic Physicians' Board of Nevada.
8. Health Division Bureau of Licensure and Certification, Department of Health and Human Services.
9. Nevada Board of Dispensing Opticians.
10. Nevada State Barber's Health and Sanitation Board.
11. Nevada State Board of Architecture, Interior Design and Residential Design.
12. Nevada State Board of Athletic Trainers.
13. Nevada State Board of Dental Examiners.
14. Nevada State Board of Massage Therapists.
15. Nevada State Board of Medical Examiners.
16. Nevada State Board of Nursing.
17. Nevada State Board of Optometry.
18. Nevada State Board of Pharmacy.
19. Nevada State Board of Physical Therapy Examiners.
20. Nevada State Contractors Board.
21. Private Investigator's Licensing Board.
22. Real Estate Division, Department of Business and Industry.
23. State Board of Cosmetology.
24. State Board of Professional Engineers and Land Surveyors.

Mr. Malkiewich said that under V. C. 11., on the quarterly report on disciplinary action from the Nevada State Board of Architecture, Interior Design and Residential Design, Mr. Anderson had requested a representative attend the meeting to answer his question.

Betty Ruark, representing the Nevada State Board of Architecture, Interior Design and Residential Design appeared before the members in Las Vegas.

Mr. Anderson said that he noted the closed enforcement cases in the report and that quite a few of them, 8 of the 23, are closed relative to the statute of limitations. He indicated he is trying to figure out why the statute of limitations becomes effective and why things are allowed to sit for such a long period of time so that it precludes the board from taking action or is it because when an event is brought to the board's attention it is already outside of the statute of limitations. Ms. Ruark responded, "The majority of those cases, when the event was brought to our attention was already outside the statute of limitations." Mr. Anderson said, "The reason I can't tell that is because there is no opening date in your report and I was under the impression that was one of the things that we were going to be seeing as to when reports were opened and when the complaint was filed and when it was closed. I was kind of curious about that. I had the feeling that that was because of the former, that it was already outside the statute of limitations. Thank you for the clarity."

Senator Care said similar to Mr. Anderson's question, he noticed in reviewing the reports in some cases the boards make no reference and don't reveal any names but others do. He was unsure whether it has to do with a case where the matter is fully adjudicated under 233B as opposed to a simple complaint being filed. As an example, he pointed to the architectural board where the names are given when there are board approved settlements but the names are not disclosed when someone receives a letter of caution. He said, "I'm of the school that the public benefits whenever those names, whatever the department or agency might be, are disclosed, then the public has the ability if it wishes to find out who it believes it may be dealing with. So I don't know if Lorne is prepared today to talk about it or maybe we can get this at a subsequent meeting – when is it appropriate for these boards, when should these boards disclose these names or when is it appropriate for them, should they be disclosing them under circumstances when those names be made public."

Mr. Malkiewich said in response as to when it's appropriate, he thought it was just a case of what the statute provides and it is one of the problems that exists in this area. Although there is a uniform form for reporting disciplinary action, there are about 25 different chapters of NRS that provide the criteria for the occupational licensing boards. He said NRS 623.131, the provision relating to this board, provides for the confidentiality of certain records of the board. Perhaps what we need to do is have an omnibus bill taking a look at the different statutes and have some kind of uniformity on exactly when a complaint is made public or not. In this case, one of the issues we looked at when this question came up was why all of the items on this report indicated confidential and it is because the statute 623.131 provides as much. He said the board is just following the statute.

Mr. Anderson said that he noticed even with the social workers, we have every consent decree that they've issued and I don't think we need to see that level of detail. He thought the whole purpose they were looking at a uniform form was so they fit on the legislative website and to ask and encourage the departments to hold websites so that the public would have access to names and concerns and that the Legislature was only

going to have those brief things. He said he did not like something hanging over somebody's head for two or three years. He was still concerned that a uniform level has not been reached and would hope that it would.

Chair Townsend assured the members that he would speak with Senator Carlton about a bill for the next session that could – omnibus makes it sound like it is 40,000 pages and it will be substantial, probably 150 – where you go through and clarify, based upon the policy of the Legislature, what exactly the process is for divulging complaints, adjudications, names, dates and so forth. He said he would make sure that gets done and then a legitimate debate could be had and it resolved so that it is not different for every board.

D. Miscellaneous Reports from State Agencies and Others:

1. Annual Report from Las Vegas Office of the Legislative Counsel Bureau.
2. Report from Nevada State Board of Medical Examiners.
3. Annual Report from Public Employees' Benefits Program.
4. Annual Report from Office of the State Treasurer.
5. Report from Nevada State Board of Athletic Trainers.
6. Report from Public Utilities Commission of Nevada on consumer sessions of general interest in Clark and Washoe counties.

Item VI--Public Comment:

Senator Titus said that Senator Coffin was present earlier and had to leave because his daughter was sick. He was going to request that since there has been so much conversation lately in the Interim Finance Committee, the press and everywhere about who has certain authorities in the budget process, if the legal staff would put together some kind of time line and explanation of the legislation that has been passed since the budget cuts of 1991 to help lay that out and bring it back to the next commission meeting.

The chair indicated that in the future he would appreciate it if Senator Coffin ensured that the chair had received any written communication before releasing it to the press.

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

Respectfully submitted,
Marilyn K. White
Executive Assistant

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Senator Randolph J. Townsend, Chair
Nevada Legislative Commission